

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 245 of 2015

BETWEEN : **BICKY RAM** aka **BIKI RAM** of Qavia, Serua, Retired Businessman.
PLAINTIFF

AND : **CLAUDIUS RAM**, Executor and Trustee of the Estate of Esther Ram of 249 Gateway Drive, Pacifica, California, USA 940944, Businessman.
1ST DEFENDANT

AND : **ITAUKEI LANDS TRUST BOARD** a body corporate under the provision of the iTaukei Lands Trust Act, Cap 134.
2ND DEFENDANT

AND : **REGISTRAR OF TITLES** a government entity having its office at Civic House, Victoria Parade, Suva.
3RD DEFENDANT

AND : **THE ATTORNEY GENERAL OF FIJI** the Nominal Defendant of the Government of Fiji of 7th Floor, Suvavou House, Victoria Parade, Suva.
4TH DEFENDANT

Counsel : **Mr. Bukarau T for the Plaintiff**
Ms. Salele P for the 1st Defendant
Ms. Raitamata E for 2nd Defendant
Mr. Sherani J for 3rd and 4th Defendants

Date of Hearing : **18th July, 2016**
Date of Judgment : **2nd August, 2016**

JUDGMENT

INTRODUCTION

1. The Plaintiff filed the Originating Summons seeking a declaration that he is the sole and lawful tenant of the Instrument of Tenancy No. 4503. He had obtained the said Instrument of Tenancy No 4503 as the executor of the estate of his mother late Esther Raja Ram. This initial entry was 'rectified' in 2012 and there is no reason given for such

rectification at this hearing. The 1st Defendant is alleging fraud for such rectification, hence oppose to the declaration sought by the Plaintiff.

ANALYSIS

2. The Plaintiff filed the Originating Summons seeking the declaration that he is the sole and lawful tenant of the instrument of Tenancy No 4503. This instrument of tenancy comprised of a land called 'Qaviu' having an area of 5.6657 ha (14 Acres) in the Province of Serua in the District of Serua.
3. The Plaintiff was also the Executor of the estate of his late mother Esther Raja Ram who allegedly obtained the rights to a larger land called 'Qaviu' having an area of 49 Acres and 2 Roods, upon the demise of her late husband Raja Ram.
4. An agricultural lease called Native Lease No 12558 was issued in the name of aforesaid, late Raja Ram for a period of 30 years from 1966. Before the expiration of the time period said Raja Ram died and there is no evidence as to how this property was enjoyed by his wife till her demise.
5. Wife of Raja Ram, Esther Raja Ram in her last will had appointed the Plaintiff as the sole executor, and while he was the executor the lessor (2nd Defendant) had re-entered the property in 1983. So the Native Lease No 12558, which was valid for 30 years from 1966 came to an end.
6. A new lease called Instrument of Tenancy No. 4503 was issued in the name of the Plaintiff for an area of 14 Acres (5.6657 ha) from the land called 'Qaviu' and it was issued on or around 16th September, 1993.
7. In the said Instrument of Tenancy, the Plaintiff was granted the rights as '**Executor and Trustee of the Estate of late Esther Raja Ram**'. He held the title to the land described in Instrument of Tenancy No. 4503 as an Executor or Trustee from 1993 to 2012.

8. **On 29th August, 2012** by way of a Deed of Rectification the abovementioned description '**Executor and Trustee of the Estate of late Esther Raja Ram**' that appeared on the Instrument of Tenancy No 4503 was removed. This changed the status of the Plaintiff as regards to the land in issue as his status of being a trustee of the Instrument of Tenancy No. 4503 changed. There are no reasons given for such a sudden change after being aware of his position of the title for approximately two decades.

9. The 1st Defendant alleges fraud against the Plaintiff. Though I gave an opportunity to the lessor (2nd Defendant) to provide additional material as to the circumstances that resulted this sudden change of the Plaintiff's status, it had not done so. So this issue cannot be dealt by affidavit evidence alone. The allegation of fraud is not a fact that can be determined though Originating Summons through affidavits. It needs further examination of evidence on oath. The factual matrix is disputed and fraud needs to be established by the party alleging it. I can't make a determination regarding fraud from affidavit evidence.


10. The Originating Summons is converted to writ of summons.

FINAL ORDERS

- a. The Originating Summons is converted to writ of summons
- b. The action to take normal cause.
- c. Cost in the cause.

Dated at Suva this 2nd day of August, 2016




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Justice Deepthi Amaratunga
High Court, Suva