

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 379 of 2015

**BETWEEN** : **CENTRAL FINANCE LIMITED** a limited liability company having its registered office at 208 Waimanu Road, Suva.

PLAINTIFF

**AND** : **NAR DEO MISHRA** of Lot 15, Koroniavia Road, Nausori, Construction Worker.

DEFENDANT

**BEFORE** : **Master Vishwa Datt Sharma**

**COUNSEL** : **Mr. P. Kumar** for the Plaintiff  
**Mr. Tuifagalele** of the Defendant

**Date of Ruling** : **12<sup>th</sup> July, 2017**

**RULING**

[Summons for leave to issue and serve Third Party Notice pursuant to  
Order 16 Rule and 3 of the High Court Rules, 1988 and  
Inherent Jurisdiction of the High Court]

APPLICATION

1. This **Summons** has been filed by the **Defendant** seeking the following orders-
  - (a) Issue and Serve Third Party Notice;
  - (b) Matter to take its normal cause; and
  - (c) Costs of the Application be costs in the cause.
2. The application is made pursuant to *Order 16 Rule and 3 of the High Court Rules, 1988 and Inherent Jurisdiction of the High Court.*
3. The Plaintiff opposed this application and filed an Affidavit in Opposition.

THE LAW

4. *Order 16 Rule 1 (O.16, r.1) deals with Third party notice:*

1. (1) Where in any action a defendant who has given notice of intention to defend -

- (a) claims against a person not already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action; then, subject to paragraph (2), the defendant may issue a notice in Form No. 9 in Appendix A, (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(underline mine)

5. *Order 16 Rule 2 (O.16, r.2) deals with an application for leave to issue third party notice:*

*2.-(1) Application for leave to issue a third party notice maybe made ex parte but the Court may direct a summons for leave to be issued.*

*(2) An application for leave to issue a third party notice must be supported by an affidavit stating-*

- (a) *the nature of the claim made by the plaintiff in the action;*
- (b) *the stage which proceedings in the action have reached;*

*(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and*

*(d) the name and address of the person against whom the third party notice is to be issued.*

**6. Order 16 Rule 3 (O.16, r.3) deals with the Issue, service and acknowledgment of service, of third party notice**

*3.-(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.*

*(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action and a form of acknowledgment of service in Form No. 2 in Appendix A with such modifications as may be appropriate.*

*(3) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(3), Order 10, Order 11 and Order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if-*

*(a) the third party notice were a writ and the proceedings begun thereby an action; and*

*(b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action; Provided that in the application of Order 11, rule (1) (c) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.*

**DEFENDANT'S CASE**

7. The Defendant claims contribution or indemnity from the Third Party in respect of any verdict obtained against it and the costs of this action for the following reasons:

(a) At all material times, the property described as Certificate Title No. 33138 being Lot 15 on DP 8512 located Koronivia Road, Nausori was originally owned by the Defendant.

(b) That the Defendant undertook the subdivision of the subject property Certificate of Title No. 33138 as agreed with the 1<sup>st</sup> Third Party Ajit Vikash Singh, who is the Defendant's son-in-law into 2 residential lots being Lot 1 and 2 the new subdivision survey plan has been approved and registered with the Registrar of Survey Office.

(c) That the agreement between 1<sup>st</sup> Third Party Ajit Vikash Singh and the Defendant was for the Defendant and his family to be issued a CT over Lot 1 whilst the 2<sup>nd</sup> Third Party be issued a separate CT over Lot 2.

(d) That the Defendant transferred the full property to 1<sup>st</sup> Third Party Ajit Vikash Singh so the 1<sup>st</sup> Third Party can be granted a mortgage from Housing Authority in order for both the Defendant and the 1<sup>st</sup> Third Party to finance the subdivision costs of the property.

- (e) That the Defendant has requested 1<sup>st</sup> Third Party Ajit Vikash Singh on numerous occasions to discharge the Housing Authority mortgage after the completion of the subdivision of the property and surrender Certificate of Title No. 33138 so that 2 new separate titles can be issued according to the new survey plan.
- (f) The 1<sup>st</sup> Third Party Ajit Vikash Singh failed to honor the verbal agreement between himself and the Defendant and instead served a notice for the Defendant and his family to vacate and have them displaced from this property. The said originating summon filed by 1<sup>st</sup> Third Party Ajit Vikash Singh was struck out subsequently by this Honourable Court, being High Court Action HBC No. 26 of 2013 - Singh v Sharma, struck out delivered on 30<sup>th</sup> May 2013 by Justice Amaratunga.
- (g) The 1<sup>st</sup> Third Party Ajit Vikash Singh then subsequently sold the whole property to the Plaintiff where the Plaintiff is unknown at the moment to be aware that Ajit Vikash Singh only owns Lot 2, perpetually half of the property. The 1<sup>st</sup> Third Party Ajit Vikash Singh knew all along about the subdivision of the property and he fraudulently duped the Plaintiff by selling the whole property to it.
- (h) The 2<sup>nd</sup> Third Party Registrar of Titles has also been advised to process the issuance of the two certificate of title previously by the Defendant. The Defendant has further taken time to notify the 2<sup>nd</sup> Third Party to cancel the registration of the transfer to the Plaintiff for fraud only after the Defendant was served with an eviction notice to vacate the property by the Plaintiff.
- (i) At all material times, the Defendant company relied on the assurance of the 1<sup>st</sup> Third Party's representation to surrender the property described as CT No. 33138 which he has not done to date, let alone completing his payment of his Housing Authority mortgage.
- (j) That there is no basis available for the two-named Third Party to deny indemnity to the Defendant.

### PLAINTIFF'S CASE

8. (a) That the Plaintiff is the registered proprietor of a property comprised in Certificate of Title No. 33138 being Lot 15 on DP. 8512 in the District of Rewa and in the Island of Vitilevu containing an area of 2000 m<sup>2</sup> (referred to as the "said property").
- (b) That the Plaintiff purchased the said property from Ajit Vikash Singh (referred to as Ajit) for a consideration sum of \$50,000.00.
- (c) That the said property has a wood and iron residence which the Plaintiff believes is presently occupied by the Defendant and his family and or agents.
- (d) That when the Plaintiff was negotiating with Ajit to purchase the said property the Plaintiff enquired with Ajit as to who is occupying the said property and was informed that it was occupied by the Defendant who is refusing to vacate the property.

- (e) Ajit informed the Plaintiff that the Defendant has no right or interest in the property and that if the Plaintiff intends to purchase the property, it will be Plaintiff's responsibility to seek for vacant possession from the Defendant.
- (f) That the Plaintiff then made further enquiries by carrying out a Title search of the property at the Registrar of Title Office and found out that there was no other adverse interest registered on the Title of the property by the Defendant.
- (g) That the Plaintiff then proceeded to purchase the property and soon after settlement was effected, the Plaintiff's agents visited the property to inform the Defendant and his family to vacate the property but the Defendant refused and neglected to do so.
- (h) That on or about 24<sup>th</sup> June 2015 the Plaintiff's Solicitors, Messrs Nands Law of Suva issued and served Eviction Notice dated 24<sup>th</sup> June 2015 on the Defendant to give Vacant Possession of the said property.
- (i) That on 7<sup>th</sup> July 2015 the Defendant lawyers wrote to the Registrar of Titles Office inter alia advising of the arrangement between the Defendant and Ajit in respect to subdivision of the property into 2 lots.
- (j) That the Plaintiff had no knowledge and or notice of this arrangement at the time when the Plaintiff was purchasing the property, furthermore the Plaintiff's enquiries revealed that the Defendant had not registered his rights and interest on the Title.
- (k) The Plaintiff claims that the Plaintiff is a bonafide purchaser and that the Defendant cannot occupy the said property without the Plaintiff's consent.
- (l) The Defendant's refusal to give vacant possession is interfering the Plaintiff's rights as proprietor to utilize the said property for its own use.
- (m) That the Plaintiff has now filed this action against the defendant claiming to own the whole of the subject property after it was transferred to it by the 1<sup>st</sup> Third Party. He states that the 1<sup>st</sup> Third Party is very much aware of the subdivision process that has taken place and he is further aware that he only owns Lot 2 and not the whole property.
- (n) That he states that he is still occupying the said part of the land known as Lot 1 as he knows that this portion belongs to him. He renounced owning Lot 2 which is owned by the 1<sup>st</sup> third Party which he repeats is still vacant to date. Therefore the transfer of the whole of the subject land to the Plaintiff is rendered null and void based on the memo dat principle.
- (o) That he states in all fairness that the two named Third Party should be included as parties to this proceeding to respond to issues and questions raised by the Plaintiff against the defendant and further states that there is no basis available for the two named Third Party to deny indemnity to the Defendant.

**ANALYSIS and DETERMINATION**

9. The issues for this Court to determine are:
- (i) Whether the Defendant should be granted an order to Issue and Serve Third Party Notices;
  - (ii) Whether the Matter should take its normal cause; And
  - (iii) Whether an order for Costs be made.
10. Order 16 of the High Court Rules, 1988 deals with Third Party Proceedings.
11. Particular references are made to *Order 16 Rule 1 (1) (a) and Rule (2)* which provides as follows-
- 1.-(1) Where in any action a defendant who has given notice of intention to defend -*  
*(a) claims against a person not already a party to the action any contribution or indemnity.*
- (2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.*
12. In this instant, the Plaintiff has filed and served a Writ of Summons against the Defendant seeking orders for Vacant Possession of the property comprised in Certificate of Title No. 33138 being Lot 15 on DP. 8512, Mense profits and Occupational charges, Damages and Costs respectively.
13. The Defendant filed his Acknowledgment of Service showing his intention to defend the within action and apply for a stay of execution against any judgment entered by the Plaintiff.
14. Before proceeding any further to file and serve his Statement of Defence, which should have been the next cause of action in terms of the pleadings, the Defendant opted to File and serve an Application for Leave to Issue Third Party Notices to Ajit Vikash Singh (1<sup>st</sup> Third Party) and Registrar of Titles (2<sup>nd</sup> Third Party).
15. The Defendant thought fit to take this step because he states in his Affidavit in Support that:
- (a) *At all material times, the property described as Certificate Title No. 33138 being Lot 15 on DP 8512 located Koronivia Road, Nausori was originally owned by the Defendant.*
  - (b) *That the Defendant undertook the subdivision of the subject property Certificate of Title No. 33138 as agreed with the 1<sup>st</sup> Third Party Ajit Vikash Singh, who is the Defendant's son-in-law into 2 residential lots being Lot 1 and 2 the new subdivision survey plan has been approved and registered with the Registrar of Survey Office.*
  - (c) *That the agreement between 1<sup>st</sup> Third Party Ajit Vikash Singh and the Defendant was for the Defendant and his family to be issued a CT over Lot 1 whilst the 2<sup>st</sup> Third Party be issued a separate CT over Lot 2.*

- (d) That the Defendant transferred the full property to 1<sup>st</sup> Third Party Ajit Vikash Singh so the 1<sup>st</sup> Third Party can be granted a mortgage from Housing Authority in order for both the Defendant and the 1<sup>st</sup> Third Party to finance the subdivision costs of the property.
- (e) That the Defendant has requested 1<sup>st</sup> Third Party Ajit Vikash Singh on numerous occasions to discharge the Housing Authority mortgage after the completion of the subdivision of the property and surrender Certificate of Title No. 33138 so that 2 new separate titles can be issued according to the new survey plan.
- (f) The 1<sup>st</sup> Third Party Ajit Vikash Singh failed to honor the verbal agreement between himself and the Defendant and instead served a notice for the Defendant and his family to vacate and have them displaced from this property. The said originating summon filed by 1<sup>st</sup> Third Party Ajit Vikash Singh was struck out subsequently by this Honourable Court, being High Court Action HBC No. 26 of 2013 - Singh v Sharma, struck out delivered on 30<sup>th</sup> May 2013 by Justice Amaratunga.
- (g) The 1<sup>st</sup> Third Party Ajit Vikash Singh then subsequently sold the whole property to the Plaintiff where the Plaintiff is unknown at the moment to be aware that Ajit Vikash Singh only owns Lot 2, perpetually half of the property. The 1<sup>st</sup> Third Party Ajit Vikash Singh knew all along about the subdivision of the property and he fraudulently duped the Plaintiff by selling the whole property to it.
- (h) The 2<sup>nd</sup> Third Party Registrar of Titles has also been advised to process the issuance of the two certificate of title previously by the Defendant. The Defendant has further taken time to notify the 2<sup>nd</sup> Third Party to cancel the registration of the transfer to the Plaintiff for fraud only after the Defendant was served with an eviction notice to vacate the property by the Plaintiff.
- (i) At all material times, the Defendant company relied on the assurance of the 1<sup>st</sup> Third Party's representation to surrender the property described as CT No. 33138 which he has not done to date, let alone completing his payment of his Housing Authority mortgage.
- (j) That there is no basis available for the two-named Third Party to deny indemnity to the Defendant.
16. On the other hand, the Plaintiff has opposed the Summons and filed an Affidavit in Opposition. The Plaintiff's contention is:
- (a) That the Plaintiff is the registered proprietor of a property comprised in Certificate of Title No. 33138 being Lot 15 on DP. 8512 in the District of Rewa and in the Island of Vitilevu containing an area of 2000 m<sup>2</sup> (referred to as the "said property").
- (b) That the Plaintiff purchased the said property from Ajit Vikash Singh (referred to as Ajit) for a consideration sum of \$50,000.00.
- (c) That the said property has a wood and iron residence which the Plaintiff believes is presently occupied by the Defendant and his family and or agents.
- (d) That when the Plaintiff was negotiating with Ajit to purchase the said property the Plaintiff enquired with Ajit as to who is occupying the said property and was informed that it was occupied by the Defendant who is refusing to vacate the property.
- (e) Ajit informed the Plaintiff that the Defendant has no right or interest in the property and that if the Plaintiff intends to purchase the property, it will be Plaintiff's responsibility to seek for vacant possession from the Defendant.

- (f) That the Plaintiff then made further enquiries by carrying out a Title search of the property at the Registrar of Title Office and found out that there was no other adverse interest registered on the Title of the property by the Defendant.
- (g) That the Plaintiff then proceeded to purchase the property and soon after settlement was effected, the Plaintiff's agents visited the property to inform the Defendant and his family to vacate the property but the Defendant refused and neglected to do so.
- (h) That on or about 24<sup>th</sup> June 2015 the Plaintiff's Solicitors, Messrs Nands Law of Suva issued and served Eviction Notice dated 24<sup>th</sup> June 2015 on the Defendant to give Vacant Possession of the said property.
- (i) That on 7<sup>th</sup> July 2015 the Defendant lawyers wrote to the Registrar of Titles Office interalia advising of the arrangement between the Defendant and Ajit in respect to subdivision of the property into 2 lots.
- (j) That the Plaintiff had no knowledge and or notice of this arrangement at the time when the Plaintiff was purchasing the property, furthermore the Plaintiff's enquiries revealed that the Defendant had not registered his rights and interest on the Title.
- (k) The Plaintiff claims that the Plaintiff is a bonafide purchaser and that the Defendant cannot occupy the said property without the Plaintiff's consent.
- (l) The Defendant's refusal to give vacant possession is interfering the Plaintiff's rights as proprietor to utilize the said property for its own use.
- (m) That the Plaintiff has now filed this action against the defendant claiming to own the whole of the subject property after it was transferred to it by the 1<sup>st</sup> Third Party. He states that the 1<sup>st</sup> Third Party is very much aware of the subdivision process that has taken place and he is further aware that he only owns Lot 2 and not the whole property.
- (n) That he states that he is still occupying the said part of the land known as Lot 1 as he knows that this portion belongs to him. He renounced owning Lot 2 which is owned by the 1<sup>st</sup> third Party which he repeats is still vacant to date. Therefore the transfer of the whole of the subject land to the Plaintiff is rendered null and void based on the memo dat principle.
- (o) That he states in all fairness that the two named Third Party should be included as parties to this proceeding to respond to issues and questions raised by the Plaintiff against the defendant and further states that there is no basis available for the two named Third Party to deny indemnity to the Defendant.
17. Upon the perusal of the Court record, it reveals that **Ajit Vikash Singh** who allegedly bought the property from the **Defendant** had instituted earlier civil proceedings seeking an order for **Vacant Possession** against the **Defendant** in terms of *s. 169 of the Land Transfer Act, Cap. 131. Civil Action HBC 26 of 2013 refers.*
18. The **Defendant** alleged therein that though the entire property was transferred to **Ajit Vikash Singh**, the **promise** was to transfer **part of the property excluding the dwelling** where the **Defendant** resided. The Court upon hearing the application for **Vacant Possession** **dismissed** the application on 30<sup>th</sup> May, 2013 on the ground that an **arguable case**



was established for the **Defendant** to remain in possession of the said property based on **promissory estoppel**.

19. Some, thirty (30) months later, the **Plaintiff, Central Finance Limited**, who had bought the said property from Ajit Vikash Singh, commenced this proceedings on 09<sup>th</sup> October, 2015 seeking orders for Vacant Possession against the **Defendant**.
20. The current application filed by **Plaintiff Central Finance Limited** prompted the **Defendant** to file an **Application** and seek the Court's **Leave to issue Third Party Notices on Ajit Vikash Singh and The Registrar of Titles** and join them as parties to this proceedings so that it would enable this Court to hear and determine the pending issues akin to the current property comprised in the **Certificate of Title No. 33138 being Lot 15 on DP. 8512**, accordingly.
21. Reverting to **Order 16 Rule 1 (1) (a) and (2) of the High Court Rules, 1988**, the Defendant had filed an Acknowledgment of Service showing his Intention to Defend the matter. Without proceeding any further to file and serve his Statement of Defence, he proceeded to file and serve a Summons for Court's Leave to issue Third Party Notices on Ajit Vikash Singh and the Registrar of Titles, which entitles him to do so in Law.
22. For the aforesaid rational, I accede to the **Defendant's** application and accordingly **Grant** the orders sought for in terms of the Summons filed on 13<sup>th</sup> May, 2016.

#### FINAL ORDERS

1. The Defendant is granted leave to issue and serve the Third Party Notices to Ajit Vikash Singh and the Registrar of Titles;
2. The Matter to take its normal cause; and
3. The Plaintiff to pay the Defendant costs summarily assessed at \$650 within 14 days;
4. Orders accordingly.

DATED AT SUVA THIS 12<sup>th</sup> DAY OF JULY 2017



VISHWA DATT SHARMA  
Master of the High Court