

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 200 of 2013

BETWEEN

BHIKABHAI BHINDI of 9062 141a Street Surrey, British Columbia, Canada.

PLAINTIFF

AND

DESHMUKHBHAI BHINDI of 55 Toorak Road, Toorak, Suva, Businessman.

DEFENDANT

Counsel : Mr. V. Singh for the Plaintiff
Mr. A. Singh for the Defendant

Date of Hearing : 27th November, 2018

RULING

(On applications for amendment of statement claim, discovery of documents & consolidation of actions.)

[1] The plaintiff filed this summons on 13th September, 2018, pursuant to Order 20 rule 5, Order 3 rule 4, Order 35 rule 3 and Order 24 rule 7 of the High Court Rules 1988 seeking the following orders:

- A. That the trial date set for 17 and 18 September 2018 be vacated.
- B. That the defendant make an affidavit stating whether the following documents have at any time been in the possession, custody or power of the defendant and if not in his possession, custody or power, when he parted with it and what has become of it;
 1. Copies of all tenancy agreements for the property since 1994.
 2. Copy of loan agreement for loan from Shanta Ben.
 3. Copies of all receipts and invoices for expenses incurred in relation to the property for the past 7 years.
 4. Copy of the current Engineer's Certificate for the property.
 5. Copy of the current Insurance Policy for the property.
- C. That the plaintiff be at liberty to amend his statement of claim and file an amended statement of claim.
- D. That this action be consolidated with High Court Action No. HPP 03 of 2018.
- E. That the time for service of this summons be abridged.
- F. That the costs of this application be costs in the cause.


[2] The trial dates set for 17th and 18th September, 2018 have already been vacated.

- [3] The plaintiff has tendered his draft amended statement of claim along with the affidavit in support. The defendant has not filed an affidavit in opposition nor did his counsel raise any objection to the amendment at the hearing of this application.
- [4] The amendment sought by the plaintiff is to include a claim for damages from the defendant for failing to repair and maintain the property, failing to insure it, failing to which is the subject matter of this action since 1994, failing to obtain proper market rental and many other grounds averred in paragraph 12 of the draft amended statement claim. Since there is no objection I see no reason not to grant leave to amend the statement of claim. Therefore, leave to amend the statement is granted.
- [5] The other issue is whether this matter and the HPP 03 of 2018 should be consolidated. This is a matter that was once fixed for trial. The other matter that is sought to be consolidated with this matter is before the Master of the High Court and still at the pleadings stage. For these two matters to be consolidated the other matter should also reach the trial stage and this matter cannot wait for some more years until the subsequent action reaches the trial stage. Taking up these two matters separately for trial will not prejudice the rights of any of the parties. For these reasons I refuse the application for consolidation.
- [6] The plaintiff also sought an order directing the defendant to make an affidavit stating whether the documents mentioned in the summons are in his possession and if not when he parted with those documents. The learned counsel submitted that any cause of action arising out of these documents would be time barred since some of the documents date back to 1994. The plaintiff has already filed the draft amended claim which I have dealt with above. Therefore, his pleading will not be based on these documents but he might use them as evidence if available and the admissibility of these documents will have to be decided as and when the plaintiff seeks to tender them in evidence.
- [7] For the reasons aforementioned I make the following orders:

ORDERS

- (1) The defendant is ordered to make an affidavit stating whether the following documents have at any time been in the possession, custody or power of the defendant and if not in his possession, custody or power, when he parted with it and what has become of it;
- (i). Copies of all tenancy agreements for the property since 1994.
 - (ii). Copy of loan agreement for loan from Shanta Ben.
 - (iii). Copies of all receipts and invoices for expenses incurred in relation to the property for the last 7 years.
 - (iv). Copy of the current Engineer's Certificate for the property.
 - (v). Copy of the current Insurance Policy for the property.
- (2) Leave to amend the statement of claim is granted.
- (3) Costs in the cause.




Lyone Seneviratne

JUDGE

06th December, 2018