

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION  
CIVIL CASE NO. HBC 50 OF 2014

BETWEEN: ANTELOPE INVESTMENTS LIMITED PLAINTIFF

AND: KABA ENSOR DEFENDANT

Appearance: Plaintiff - Mr. Sharma V with Mr. Naidu V  
Defendant - Ms. Devi S with Ms. Nasedra S

Date of Hearings : 9<sup>th</sup> and 10<sup>th</sup> August, 2017  
Date of Judgment : 15<sup>th</sup> March, 2018

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**JUDGMENT**

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Introduction

[1] The Plaintiff is the last registered proprietor of the property. There is no allegation of fraud as to the Plaintiff's acquisition of the property. It was acquired through a mortgagee sale by the predecessor to the title. The Defendant's father –in-law had sold the land to late Hari Prasad who had consented to allocate 2 acres of and land for the benefit of the vendor's family. She had resided in the land after the marriage and remained the land for over 40 years. There was a survey to subdivide the 2 acre land, for

the family of the Defendant's father-in-law, and this subdivided plan was also registered. The title has not passed to the Defendant or her relatives.

### Facts

- [2] Following facts are admitted at the pre-trial conference.
1. Oak investment Limited was the registered owner of land comprised CT38531.
  2. The Property was transferred to Oak Investment Limited on 16<sup>th</sup> December, 2012.
  3. That the Defendant is occupying a portion of the said property being Lot 5 in DP No .10124.
  4. The Defendant has refused to vacate the Property.
  5. Deposit Plan 10124 forms a part of and derives its title from CT 38531.
  6. Westpac Banking Corporation, carried out the Mortgagee sale (of the property).
- [3] For the Plaintiff a shareholder Director of the Plaintiff gave evidence and marked the certificate of incorporation and also the CT 38531.
- [4] Oak Investment had transferred the title to the Plaintiff and it is recorded in the CT 38531.
- [5] The Defendant gave evidence and she said that her father in law was the owner of entire freehold land that was transferred to late Hari Prasad on 26<sup>th</sup> January, 1977.
- [6] He had transferred it to Maravu Plantation Resort Limited on 12.3.2003.

- [7] Both Hari Prasad and Maravu Plantation Resort Limited had not only let the Defendant to be in possession of the part of land, but they had also taken steps to subdivide the same and the said portion is depicted as Lot 5 in DP 10124. This survey plan was approved by Surveyor General in 2010 was marked as D1.
- [8] From the evidence of surveyor it is proved that he was instructed to subdivide the land and allocate the Lot 5 of the subdivision in DP 10124 for the Ensor family (Defendant's husband's family).
- [9] No title was issued for the said subdivided lot 5 in DP10124 and the entire land was sold under Mortgagee Sale to Tagimoucia Resort Limited in 2012.

### Analysis

- [10] For the Plaintiff director and shareholder of the Plaintiff gave evidence. According to him this property comprised in CT 38531
- [11] The Plaintiff had derived title from the purchaser of the Mortgagee sale in 2012.
- [12] According to the Torrens System the registration of the title acquire indefeasibility. This was reiterated in a Fiji Supreme Court case *Star Amusement Ltd v Prasad* [2013] FJSC 8; CBV0005.2012 (23 August 2013).
- [13] Even though Maravu Plantation and Resort Limited had got the land subdivided and had instructed a surveyor to leave Lot 5 in DP 10124 to the Defendant's relatives as caretakers the title was not transferred to them and the entire land was sold under mortgagee sale, before the issuance of title for subdivided Lot 5 in DP 10124.
- [14] So any equitable interest that Defendant had against Hari Prasad and or Maravu Plantation and Resort Limited had ended with the mortgagee sale by the bank to a bona fide purchaser.

- [15] The Plaintiff had obtained the ownership to the CT 38531 in 2016 and in the absence of any fraud the title is indefeasible.
- [16] The Defendant had admitted that she is residing Lot 5 in DP 10124 and that it is part of CT 38531.
- [17] The Plaintiff had proved its title to the CT 38531 as the its last registered proprietor. So the claim for eviction of Defendant succeeds.
- [18] The Defendant had not counter claimed for the reliefs sought in the Statement of Defence. In any event she cannot claim equitable relief from Plaintiff as a bona fide purchaser.
- [19] No general damage is granted to the Plaintiff as they were fully aware of the possession of the Defendant on the land and due diligence before purchase would have revealed the basis of existence, too.
- [20] Considering the circumstances of the case and specially the Plight of the Defendant who had lived in the said property for nearly 50 years in expectation of the transfer of 2 acres of subdivided land, I allow the Defendant 9 months from the date of judgment to remove any structure voluntarily. After the expiration of said period the Plaintiff may execute the orders for eviction.

### **Conclusion**

- [21] The Defendant cannot seek equitable relief from the Plaintiff as a bona fide purchaser. Though there are steps taken to transfer the property by Maravu Plantation and Resort Limited, before it happened the entire land was sold under mortgagee sale. Defendant is ordered to grant vacant possession the Plaintiff, but considering the circumstances the execution of the eviction is stayed for 9 months for the Defendant to remove any structures on the land voluntarily. Considering the circumstances of the case no costs are awarded.

**Final Orders**

- [22] a. The Defendant is ordered to vacate the property comprised in CT 38531.
- b. The above order is stayed for 9 months from today, in order to allow the Defendant to remove any structures on Lot 5 of DP 10124.
- c. No costs



  
**Deepthi Amaratunga**  
**Judge**