

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 81 of 2019

BETWEEN : **NARENDRA PRASAD** of Vitogo, Paipai, Lautoka

PLAINTIFF

A N D: **MAHENDRA SINGH** formerly of Vitogo, Paipai, Lautoka
now residing at 58 Odelia Crescent, Plumpton NSW 2761,
Australia

1ST DEFENDANT

A N D: **ITAUKEI LAND TRUST BOARD** a body incorporated
under the iTaukei Land Trust Act Cap 134 with its registered
office at 431 Victoria Parade, Suva

2nd DEFENDANT

(NOMINAL DEFENDANT)

Appearances: Mr Rattan for Plaintiff
Ms Chand A. for first Defendant
Ms Raitamata E. for the second Defendant
Date of Hearing: 15.08.2019
Date of Ruling: 15.11.2019

R U L I N G

1. Pending before the Agricultural Tribunal is a reference prompted by the plaintiff's application for a declaration of tenancy over a portion of i-taukei land which is all demised in Native Lease No. 28778 in favour of the defendant.

2. The land is known as Vakasoso Lot 1 on ND 2410 in the tikina of Vitogo in the province of Ba having an area of 15 acres and 1 rood.
3. The plaintiff alleges in his claim that, in 2008, he and the defendant had also entered into an oral agreement for the sale and purchase of the land together with the concrete dwelling house erected on the land as well as a tractor and an assortment of farming tools and implements.
4. The statement of claim pleads that the consideration was to be \$120,000. The arrangement was that the plaintiff would cultivate the farm and the cane proceeds was to be applied towards settling the sale price.
5. The arrangement was also that upon receiving full payment of the consideration sum, the defendant would obtain the consent from all the relevant authorities and then transfer the property to the plaintiff.
6. As pleaded in the claim, at some point later in 2008, following the above arrangement, the defendant gave power of attorney to the plaintiff authorizing the plaintiff to deal with and manage the farm and then emigrated to Australia.
7. The plaintiff alleges that, pursuant to their arrangement, he would proceed to cultivate, deal with and manage the farm. All cane proceeds were deposited into the defendants ANZ account and between 2009 to 31 May 2018, the plaintiff has paid a total of \$129,908 in cane proceeds to the defendant.
8. The plaintiff pleads that he also took over payment of the defendant's household insurance premium under the name of the defendant with New India Assurance.
9. The plaintiff pleads that by 2017, he had satisfied the agreement and paid the defendant the agreed sum from cane proceeds. However, despite numerous requests, the defendant has refused to transfer the property to the plaintiff.

10. The defendant instead responded to the plaintiff's request by demanding rent and threatening to evict the plaintiff and his family. He also threatened to disconnect power supplies.
11. The plaintiff also alleges that he has made substantial capital improvements on the property over the years in renovation and maintenance works.
12. The plaintiff seeks various relief, notable amongst which are the following:
 - (i) An injunction to restrain the defendant from interfering with the plaintiff's cultivation and quiet enjoyment of the land.
 - (ii) Specific performance of the oral agreement
 - (iii) FSC to withhold all cane proceeds from sugar cane farm until determination of the Agricultural Tribunal Ref W/D 03/19
 - (iv) All future cane proceeds be paid into court
 - (v) Damages
 - (vi) Equitable damages
13. At this time, I assume that the facts pleaded in the statement of claim are all proven.
14. The facts appear to suggest that whatever arrangement the plaintiff and the defendant had was all working well until the plaintiff requested that the land be transferred to him.
15. I accept the plaintiff will have great difficulty obtaining an order for specific performance because of the lack of consent and, because, in any event, consent is not usually given to oral dealings because an oral dealing would offend Fiji's statute of frauds provision in the Indemnity Guarantee & Bailment Act.
16. Frankly, it will be hard for the plaintiff to convince any court that he has a valid enforceable proprietary interest in the land because of all the above.

17. I accept that, the fact that the plaintiff has been cultivating the land for more than ten years, *prima facie*, may entitle him to a declaration of tenancy under ALTA and that he may have some prospects of success in that.
18. Does the fact of the pendency of the ALTA action which has good prospects for the plaintiff entitle the plaintiff to sustain proceedings in this court even if the current proceedings disclose no reasonable cause of action?
19. The answer is *No!*
20. While I do not think that the plaintiff has any prospect of success in the current proceedings in terms of securing an order for specific performance, or in getting any declaratory order which confers to him a proprietary interest in the land in question, the facts however appear to suggest that the plaintiff may have an equitable interest in the cane proceeds.
21. For this reason, I will exercise my discretion against granting an order to dissolve the injunction or to strike out the claim.
22. The parties are to bear their own costs.
23. Case adjourned to Thursday 22 November 2019 for mention before the Master. Matter taking its normal course.



Anare Tuilevuka
Judge
Lautoka