

IN THE HIGH COURT OF FIJI SUVA
CIVIL JURISDICTION

Civil Action No. HBC 269 of 2015

IN THE MATTER of an application pursuant to Order 31 of the High Court Rules 1988.

IN THE MATTER of an Application pertaining to the sale of Certificate of Title
No. 9138 Lot 10 of DP 2170.

BETWEEN

HEM RAJ of 37 Yarawa Road, Nabua, Retired / TaxiDriver.

PLAINTIFF

AND

RAVINESH DINESH PRASAD of 44 Namena Road, Nabua,
Self-employed.

DEFENDANT

Counsel : Mr. Kumar S. for the plaintiff.
Mr. Vulakouvaki for the defendant.

Date of Hearing : 27th June, 2019

Date of Judgment : 16th July, 2019

JUDGMENT

- [1] The plaintiff filed this originating summons pursuant to Order 31 of the High Court Rules 1988 which was later amended seeking the following orders:
1. An order that the property in certificate of title 9138 be sold pursuant to an order of this court.
 2. An order that each party to these proceedings be at liberty to make an offer to purchase the said property.
 3. An order that the proceeds from sale be distributed as per the entitlements under the Certificate of Title 9138.
 4. An order that the Registrar of the High Court be able to execute all necessary conveyancing documents including a transfer in order to pass the title in Certificate No. 9138.
 5. An order that the costs of this application be reimbursed to the plaintiff out of the sale proceeds from the sale or purchase of Certificate No. 9138.
- [2] The plaintiff became a joint owner of this property on 12th January, 2009. The plaintiff alleges that the defendant unjustly enriching himself from the rental income he received from the property without sharing it with the plaintiff. The plaintiff also alleges that the defendant has not carried out any repairs and the premises have been left in deplorable state.
- [3] The defendant alleges that the plaintiff has transferred half share of the property to him fraudulently. The defendant has reported this matter to CID Headquarters and various other authorities. It appears from the documents filed in support of the affidavit in response that there had been a Magistrate's Court case but the defendant does not say what happened to that matter before the Magistrate's Court. The plaintiff has tendered a certificate of court proceeding in support of his affidavit in reply and according to that certificate the state has withdrawn the charges and the plaintiff has been acquitted.
- [4] Referring to Order 31 rule 1 of the High Court Rules the learned counsel for the defendant in his written submissions says that there is no necessity or expedient purpose for the property to be sold as the plaintiff can relocate as outlined in the Order relied on.

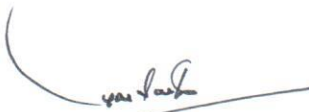
- [5] Since 2009 the defendant has not shown any interest in giving the possession of the share of the property to the plaintiff instead he complained to the Police but to no avail and now says there was no urgency in the matter as required by Order 31 rule 1 of the High Court Rules 1988. Taking into consideration the status of the building on the property and the fact that the plaintiff does not pay rates and other payments due to the local authority the only remedy available to the plaintiff to sell this property and divide the proceeds of the sale between the joint owners. For these reasons the court is of the view that it is expedient to order the sale of this property.
- [6] The court is concerned about the defendant's health condition and that he will have to move out of the house if the property is sold. However, the plaintiff has a right over this property which he cannot be deprived of.

THE ORDERS OF THE COURT

1. It is ordered that the property be sold subject to the following terms and conditions.
2. Within 30 days from the date of this judgment the plaintiff must appoint a valuer to value this property.
3. If the parties cannot agree to a valuer the court will appoint a valuer after consulting the parties.
4. Upon receipt of the valuation report the plaintiff must call for tenders and sell the property to the highest tenderer. The selling price should not be less than the valuation given by the valuer.
5. It is also ordered that the proceeds of the sale to be distributed as per the entitlements under the Certificate of Title 9138.
6. If any of the parties refuses or fails to execute the transfer the Chief Registrar of the High Court is hereby empowered to execute the same.
7. The defendant is at liberty to make an offer to purchase the property.
8. The plaintiff is entitled to recover \$2000.00 as costs of these proceedings from the proceeds of the sale.



16th July, 2019


Lyone Seneviratne

JUDGE