

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 164 of 2013

Yogesh Narain Maharaj

First plaintiff

And

Vishwa Narayan

Second plaintiff

v

Chandra Wati

First defendant

And

Registrar of Titles

Second defendant

Counsel: Mr M. Nand for the plaintiffs  
Ms S. Ali for the defendants

Date of hearing : 14<sup>th</sup> May, 2019

Date of Judgment: 4<sup>th</sup> July, 2019

### **Judgment**

1. The first and second plaintiffs seeks an order for the division of CT no. 23933, Lot 2 on DP 5882, (the property) and other incidental orders. The amended statement of claim states that the plaintiffs, the first defendant and Kusum Kumari aka Kusum Maharaj are the registered proprietors of an undivided one-fourth share of the property. Kusum Kumari's share is "*being transferred equally*" to the plaintiffs and the first defendant. The transfer documents have been executed by Kusum Kumari. The plaintiffs further state that they intend to subdivide the property into three equal lots, in order that the plaintiffs and the first defendant have separate titles issued to them.

2. I granted leave to Jiten Reddy, Lawyers to withdraw as counsel of the first defendant. The statement of defence of first defendant was subsequently struck out, as the first defendant failed to attend Court.
3. The first plaintiff testified. He produced the relevant certificate of title. He said that the first defendant agreed to the sub-division. He relied on a document given by the first defendant on 15<sup>th</sup> June, 2005. This provides that he agreed to share the cost of the separation of titles.
4. It transpired in the evidence in chief of the first plaintiff that the document was signed by the husband of the first defendant.
5. The first plaintiff said that Kusum Kumari agreed to transfer her share to the other three owners. He produced the terms of settlement entered into by Kusum Kumari with the plaintiffs and the first defendant, in that regard.
6. Ms Ali, counsel for the second defendant asked the witness whether Kusum Kumari was aware of the intended transfer, as she is not a party to this action. He answered that she had given her consent for the transfer of her interest.
7. It emerged in his re-examination, that the terms of settlement relied on were entered into by Kusum Kumari, when she was a party to this action. The writ was subsequently amended and she was omitted as a party in this action.
8. In any event, the terms of settlement contains only a manifestation of Kusum Kumari's willingness to transfer her interest in the property to the other three owners. Moreover, she is not a party to this action.
9. *Peter Butt, LAND LAW*,(6<sup>th</sup> Ed,2010) at para 14.78 states:

*A joint tenancy may be severed in equity by agreement between all the joint tenants henceforth to hold as tenants in common.*(*Williams v Hensman* (1861) 1 J & H 546 at 557,558; [1861] EngR 701; 70 ER 862 at 867; *Wright v Gibbons*...(emphasis added)

10. In *Tirikula v Tirikula*, [2014] FJCA 195; Misc.19.2012 (7 November 2014) Calanchini P cited the judgment of Mason CJ and McHugh J of the High Court of Australia in *Corin v Patton*,(1990) 169 CLR 540 at pg 548 as follows:

*.. as a matter of history and principle, the severance of a joint tenancy can only be brought about by the destruction of one of the so-called four unities: See Blackstone, Commentaries on the Law of England (1778), vol. 2, pp.185 – 186. Unilateral action cannot destroy the unity of time, of possession or of interest unless the unity of title is also destroyed, and it can only destroy the unity of title if the title of the party acting unilaterally is transferred or otherwise dealt with or affected in a way which results in a change in the legal or equitable estates in the relevant property. A statement of intention without more does not affect the unity of title. Thirdly, if statements of intention were held to effect a severance, uncertainty might follow; it would become more difficult to identify precisely the ownership of interests in land which had been the subject of statements said to amount to declarations of intention. Finally, there would then be no point in maintaining as a separate means of severance the making of a mutual agreement between the joint tenants. (emphasis added)*

11. In *Corin v Patton*, Brennan J at pg 565 stated that “*the mere manifestation of an intention to sever is insufficient to sever a joint tenancy*”

12. In an action for division of a property, all the registered proprietors must be made parties. An order cannot be made affecting the rights of parties not before Court.

13. The application of the plaintiffs for a subdivision of the property and the incidental orders is declined.

14. **Orders**

- (a) The action of the first and second plaintiffs is declined.
- (b) I make no order as to costs.



*A.L.B. Brito-Mutunayagam*

A.L.B. Brito-Mutunayagam

JUDGE

4<sup>th</sup> July, 2019