

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 307 of 2018

IN THE MATER of an application for partition proceedings under section
119 of the Property Law Act.

BETWEEN

VIJAY KUMAR SINGH of Kalokalo Crest, Makoi, Nasinu, Suva, Carpenter and
AJAY KUMAR SINHA of Nepani, Nasinu, Suva, Aircraft Refeuller, as
Surviving Administrators in the Estate of **PARAS RAM SINHA**.

FIRST PLAINTIFFS

AND

VIJAY KUMAR SINGH of Kalokalo Crest, Makoi, Nasinu, Suva, Carpenter and
AJAY KUMAR SINHA of Nepani, Nasinu, Suva, Aircraft Refeuller and
RASMI DEVI a.k.a. RAHSMI SINHA of 26A Navigator Place,
Papatoetoe, Auckland, New Zealand as Administrators in
the Estate of **RAJESH KUMAR SINHA**.

SECOND PLAINTIFFS

AND

MONITA PRABHA SINGH of Nepani, Nasinu, Suva, as Executor and
Trustee of the Estate of **NIRMAL KUMAR SINGH.**

DEFENDANT

Counsel : Mr. R. Singh for the Plaintiffs.
Ms. N. Karan for the Defendant.

Date of Hearing : 22nd August, 2019

Date of Judgment : 29th August, 2019

JUDGMENT

[1] The plaintiffs on 12th October, 2018 filed this originating summons seeking the following orders:

1. The property comprised in Housing Authority Lease No. 263480 being Lot 28 on DP 4266 containing an area of twenty four point six (24.6) perches be sold.
2. The defendant to appoint a reputable valuer to carry out valuations on the property unless the defendant undertakes to purchase share of the plaintiff and undertaking being given to direct valuation of the shares of the plaintiff.
3. The said property be sold at the best price obtained by any of the parties and first priority be given to either parties to purchase the property.
4. The plaintiff's solicitors to attend to the transfer of the said property on behalf of the defendant.
5. Proceeds received from the sale of the said property to be used to pay off the costs associated with the sale of the said property including the

legal fees and transfer after which proceeds are to be shared equally, however all the arrears of city rates and land rent shall be paid from the defendant's share of proceeds.

6. The defendant to execute the transfer of Housing Authority lease No.263480 being Lot 28 on DP 4266 and all other incidental documents pertaining to the sale of the said property as being one of the beneficiaries of Housing Authority Lease No. 263480.
7. In the event the defendant fails to execute the transfer the Deputy Registrar, High Court of Fiji to execute the transfer of Housing Authority Lease No. 263480 on DP 4266 and all other incidental documents for and on behalf of the defendant as being one of the beneficiaries of Housing Authority Lease No. 263480.
8. Costs of this action be paid by the defendant.

[2] Paras Ram Sinha, the father of the plaintiffs was the registered proprietor of the property which is the subject matter of these proceedings. Upon the demise of Paras Ram Sinha the Letters of Administration was granted to Nirmal Kumar Singh, Ajay Kumar Sinha, Rajesh Kumar Sinha and Vijaay Kumar Sinha. Nirmal Kumar Singh and Rajesh Kumar Sinha died on 15th September, 2014 and 03rd May, 2016 respectively. The administrators of the estate of Paras Ram Sinha have been registered as the proprietors of the said property.

[3] On 24th November, 2014 the defendant who is the administrator of the estate of Nirmal Kumar Singh entered into an agreement with Rajesh Kumar Sinha, Ajay Kumar Sinha and Vijay Kumar Singh to buy this property within 12 months, however, the defendant failed make payments within the said period of 12 months.

[4] These facts are not disputed by the defendant. In fact in her affidavit in response she has admitted these facts. The position of the defendant is that she would agree to sell the property if the plaintiffs pay \$28,562.48. The details of the defendant's claim are as follows;

Nasinu Town Council Rates 1994 to 2018	-	\$3624.21
Housing authority Rates 1970 to 2018	-	\$383.68
Building of Flat 2, material and labour	-	\$15,500.00

Repairs to Flat 1 and painting since 2010 to 2018 - \$9004.17

- [5] The plaintiffs in paragraph 24 of the affidavit in support has averred that the defendant has collected \$300.00 as rent for the additional flat since 15th December, 2014. However, the plaintiffs are not claiming for reimbursement of that money but the defendant must clear town rates and land rent to the Housing Authority up to the date of settlement with the new purchaser.
- [6] The learned counsel for the plaintiffs submitted that the rent collected by the defendant from 15th December, 2014 till to date must be set off against the defendant's claim. This was not objected to by the defendant. Subject to the above condition both parties agreed that the property in question can be sold.
- [7] The plaintiffs are entitled to 2/3rd out of the rent collected by the defendant which comes to \$11,200 (16,800 x 2/3) which will be set off against the amount claimed by the defendant for the maintenance of the property.
- [8] Accordingly the court makes the following orders.

ORDERS

1. Within 28 days from the dated of this judgment, the defendant must appoint a valuer to carry out valuations of the property. The valuer should be acceptable to the plaintiffs' solicitors.
2. The opportunity is given to parties to purchase the shares of the other joint owners within sixty (60) days from the date of the valuation report for the value given in the valuer's report.
3. In the event the parties not being able to purchase the shares of the other joint owners within sixty (60) days from the date of the valuation report the defendant must call for tenders by advertising the property for sale in at least two daily newspapers.
4. The property should be sold to the highest tenderer and the sale price should not be less than the value given in the valuation report.
5. The defendant to execute the transfer of Housing Authority lease No.263480 being Lot 28 on DP 4266 and all other incidental documents pertaining to the sale of the said property as being one of the beneficiaries of Housing Authority Lease No. 263480.

6. The plaintiff's solicitors to attend to the transfer of the said property on behalf of the plaintiffs.
7. Out of the proceeds of the sale the defendant, in addition to her share of the property, should also be paid \$17,326.48 (\$28,526.48 - \$11,200) and costs of the sale.
8. In the event the defendant fails to execute the transfer the Deputy Registrar, High Court of Fiji to execute the transfer of Housing Authority Lease No. 263480 on DP 4266 and all other incidental documents for and on behalf of the defendant as being one of the beneficiaries of Housing Authority Lease No. 263480.
9. Upon the settlement the defendant's solicitors shall forthwith pay into court the settlement moneys and furnish an account of disbursements and costs incurred by the defendant in the sale of the property.
10. Within one month after payment into court of the sale proceeds, each party is to furnish to the other and file in court his or her claim in respect of the sale moneys supported by documentary evidence of payments alleged to have been made or expenses incurred in the sale of the property.
11. Parties will bear their own costs of the action.



Lyone Seneviratne

JUDGE

29th August, 2019