

**IN THE HIGH COURT OF FIJI**  
**IN THE WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**Civil Action No- HBC 144 of 2015**

**BETWEEN** : **SUNIL GUPTA SEN** of Wailailai, Ba, Businessman.

**PLAINTIFF**

**AND** : **RAIDU BHIM KRISHNA AND RAMESH NAIDU** of Los Angeles, America, presently of Wailailai, Ba, as Trustees of the Estate of Krishna Raidu, late of Wailailai.

**DEFENDANTS**

**Appearances :** **Mr. Niven Ram Padarath for the plaintiff**  
**(Ms.) Salote Veitokiyaki for the defendants**

**Hearing :** **02<sup>nd</sup> December, 2019**

**Ruling :** **07<sup>th</sup> February, 2020**

**RULING**

- (01) By writ issued on 15<sup>th</sup> October, 2015, the plaintiff seeks a declaration from this court that *“the plaintiff is the owner of and has exclusive right of possession of approximately 1000m<sup>2</sup> in area of land comprised in CT 20584”*.
- (02) The trial commenced on 02/12/2019. During the evidence in chief of the plaintiff, counsel for the plaintiff referred to several unstamped agreements and exhibits in the affidavit evidence of the plaintiff.

- (03) A preliminary legal issue arose during the trial. The issue concerned whether the plaintiff could rely in evidence upon unstamped agreements.
- (04) Section 41 of the **Stamp Duties Act**, [Chapter 205] is a clear prohibition against allowing an instrument chargeable with duty and executed in Fiji to be pleaded or given in evidence unless it is duly stamped in accordance with the law in force at the time when it was first executed.
- (05) For the sake of completeness, section 41 of the **Stamp Duties Act** is reproduced below:
- “Except as aforesaid, no instrument executed in Fiji or relating (where soever executed) to any property situate or to any matter or thing done or to be done in any part of Fiji shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.*
- (06) Counsel for the plaintiff in paragraphs (16) of his written submissions filed on 21/01/2020 gave an undertaking to the Court to lodge the copy of all the unstamped documents to the Commissioner for assessment and pay the duty.
- (07) Counsel for the defendants in his written submissions filed on 16/01/2020 states that the unstamped agreements referred to in the plaintiff’s evidence in chief are invalid and should not be admitted in evidence.

The submission is correct. The documents are invalid until properly stamped.

Section 100(1) of the **Stamp Duties Act** provides;

*100(1) Any document which ought to bear a stamp under the provisions of this part shall not be of any validity unless and until it is properly stamped nor shall any Judge, Magistrate or Officer of any Court allow such document to be used, although no exceptions be raised thereto, until such document has been first duly stamped.*

Counsel for the defendants cited the judgment of this court in **Rama Devi v Shiro Mani & Others HBC 074 of 2013 (06<sup>th</sup> December 2019)**

- (08) In Rama Devi (supra), the plaintiff did not seek leave of the court to rectify the omission by late stamping which could have given a retrospective validation. There was no application by the plaintiff for late stamping.

- (09) In the present case, counsel for the plaintiff in paragraph (17) of his written submissions gives an undertaking to rectify the omission by late stamping.
- (10) Therefore, in my view, counsel for the defendants cannot derive any assistance from Rama Devi (supra).
- (11) The court has discretion to order documents to be stamped **[late stamping]** under section 100(2) of the Stamp Duties Act which provides;

**Court may order document to be stamped**

- (2) *But if any such document is through mistake or inadvertence received, filed or used without being properly stamped, the Court in which the same is so received, filed or used may, if it thinks fit, order that the same be stamped, and thereupon such document shall be as valid as if it had properly stamped in the first instance.*

A late stamping under the eye of the order of the court could give a retrospective validation.

- (12) The powers of the court appear to be sufficiently wide to enable the omission to be rectified without the necessity of rejecting the document which was not duly stamped.

No doubt it is of importance that the proper duty should be paid on all instruments which are to be given in evidence but where the matter is open to remedy it is preferable that the duty be paid with any due penalty so as to enable the ends of justice to be served than that the courts should be deprived of evidence which might be material to a proper resolution of the case which is being tried.

Section 39 (1) requires a judge to take notice of any insufficiency in the stamping of any instrument chargeable with duty which is produced in evidence before him. It goes on to provide that it may be received in evidence on payment of the amount of the unpaid duty and certain penalties.

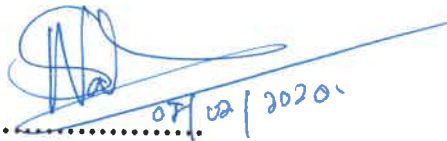
**ORDERS**

- (1) The plaintiff to submit evidence to the effect that the following agreements referred to in the evidence in chief of the plaintiff were tendered for stamping/evaluation for stamp duty by the Commissioner for Stamp Duties.

(2) I grant leave to tender the following mentioned documents as evidence subsequent to the filing of an affidavit to the effect that the following mentioned documents were tendered for stamping.

- (1) Agreement dated 30<sup>th</sup> January 1981
- (2) Deed dated 05<sup>th</sup> March 1996
- (3) Sale and purchase agreement dated 08<sup>th</sup> December 2006.



  
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**Jude Nanayakkara**  
[Judge]

**At Lautoka**  
**Friday, 07<sup>th</sup> February, 2020**