

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 196 of 2021

BETWEEN: **PARMA NAND NAIDU** also known as **PARAMA NAND NAIDU**
of Malaqereqere, Sigatoka in the Republic of Fiji Islands, Bus Driver.
PLAINTIFF

A N D: **MOHAMMED JANIF** of Sigatoka in the Republic of Fiji Islands,
Businessman.
DEFENDANT

Appearances: Mr. Chetty with Mr. Singh for the Plaintiff
 Mr. D. S. Naidu with Mr. Daveta for the Defendant

Date of Hearing: 06.10.2021

Date of Ruling: 08.11.2021

R U L I N G

1. On 06 September 2021, Parma Nand Naidu filed a Writ of Summons and Statement of Claim. He also filed an Ex-Parte Notice of Motion on the same date.

2. The Notice of Motion seeks the following orders;
 - (1) That the Defendant and/or agents and/or representatives and/or servants and/or employees be restrained and/or refrained from entering into the land comprised under Certificate of Title No. 44643 being Lot 1 on Deposited Plan No. 10606, land known as Malaqereqere in the district of Cuvu containing an area of 4043 square meters until further orders of the Court.
 - (2) That the Defendant and/or agent and/or representatives and/or servants and/or employees be restrained and/or refrained from dealing with Certificate of Title No. 44643 being Lot 1 on Deposited Plan No. 10608, land known as

Malaqereqere in the district of Cuvu containing an area of 4043 square meters in any manner whatsoever until further orders of the Court.

- (3) That the Defendant be forthwith ordered to deposit the original title of Certificate of Title No. 44643 being Lot 1 on Deposited Plan No. 10608, land known as Malaqereqere in the district of Cuvu containing an area of 4043 square meters into the custody of this Honorable Court.
- (4) Costs of this application to be borne by the Defendant.
- (5) Any other order that this Honorable Court think fit and just.

3. The Motion is supported by an affidavit of Parma Nand Naidu sworn on 06 September 2021.
4. On 06 September 2021, I heard Mr. Singh *ex-parte* on the Motion and granted Order in Terms of prayer (2) only. I then directed Mr. Singh to serve all documents on the defendants in seven days and directed the Registry to re-date the Motion to 22 September 2021.
5. When the matter was called on 22 September 2021, Mr. Daveta appeared for the Defendant and I allowed him time to file an affidavit in opposition, and Mr. Chetty time to reply. I then adjourned the hearing of the Motion to 06 October 2021.
6. An Affidavit of Mohammed Janif sworn on 21 September 2021 was filed on the same day in opposition to the Motion. Parma Nand Naidu swears an Affidavit in Reply on 01 October 2021.
7. The subject matter of the dispute is a piece of land which is 1000m² in size and which is part of CT 11490 Lot 1 DP2472.
8. Parma Nand Naidu is the registered proprietor of the land in question. He and Mohammed Janif entered into an Agreement on 15 October 2016 for the sale and purchase of the said land. The land has since been transferred to the Defendant pursuant to their Agreement.
9. Parma Nand Naidu alleges that the Defendant has not paid him the full consideration. He wants the land back.
10. Their arrangement is complicated because there were actually three separate agreements involved. One of the main issues in this case is whether these

agreements are relevant in their dealing or whether the last one superseded the two earlier ones. It is not for me to try and get to the bottom of it at this stage.

11. Suffice it to say that it would appear to me that the Defendant is protected by the doctrine of indefeasibility in the Land Transfer Act.
12. There is no real suggestion in the affidavits filed that the Defendant had committed fraud, or misrepresentation, or undue influence so as to vitiate the agreement, so as to entitle the Plaintiff to a remedy in equity to have the land be transferred back to him.
13. Ideally, the Plaintiff should be suing in contract for specific performance to recover the balance that he alleges is owing to him. But then again, another issue raised from the affidavits is whether there is any balance owing at all.
14. Mr. Singh points to clause 23 of the agreement, which, in effect provides that should the Defendant / Purchaser default in any material part of the agreement, the Plaintiff is entitled to have the property re-transferred back to him.
15. While I have come misgivings about the enforceability of such a clause as it tends to be counterproductive to the essence of the land Transfer Act and the principles of indefeasibility, I will give the Plaintiff the benefit of the doubt for now, and will reserve it for trial with other severe issues to be tried.
16. There are serious issues to be tried and I am convinced that the balance of convenience, in this case, favours the continuation of the injunction until the matter is finally disposed off or until further orders.
17. Parties to bear their own costs.



Anare Tuilevuka
JUDGE
08 November 2021