

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

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 89 of 2021**

**BETWEEN** : **SATYA NADAN** of Navakai, Nadi, Fiji, Businessman as the  
Administrator of the **Estate of Enkataiya** late of Navakai, Nadi, Fiji,  
Retired, Deceased, Testate.

**PLAINTIFF**

**A N D** : **VINOD CHAND** and **MONISH NADAN** both of Navakai, Nadi,  
Carpenter and Tertiary Student, respectively.

**1<sup>st</sup> DEFENDANTS**

**A N D** : **THE DIRECTOR OF LANDS** of Government Buildings, Suva.

**2<sup>nd</sup> DEFENDANT**

Before : Master U.L. Mohamed Azhar

Counsels : Ms. J. Bhavna for the Plaintiff.  
Mr. S. Nand for the First Defendants.  
The Second Defendant was excused.

Dates of Affidavits: 26<sup>th</sup> and 27<sup>th</sup> April 2022

Date of Hearing: 28<sup>th</sup> April 2022

Date of Ruling: 29<sup>th</sup> April 2022

**RULING**

01. The plaintiff and first named 1<sup>st</sup> defendant are biological brothers and the second named 1<sup>st</sup> defendant is the son of the first named 1<sup>st</sup> defendant and nephew of the plaintiff. The late Enkataiya – the father of both the plaintiff and the first named first defendant - was the proprietor of the Crown Lease No. 15037 which consists of a house and a temple. The said Crown Lease was later transferred to the first named first defendant. The plaintiff alleged that, their late father by his Last Will dated 22.08.2018 appointed his

wife Rukhu as sole executrix and trustee and bequeathed all his estate both real and personal to his sons Satya Nadan, the plaintiff and Rudra Nadan. He further alleged that, their late father had intention to transfer the said Crown Lease No 15037 to him and made all the arrangements for the same. However, the process of transfer was on hold due to the health condition of their father. The original lease instrument was in possession of the plaintiff. The first named first defendant however fraudulently obtained a provisional instrument of title and transferred it to his name with the collusion of the second defendant who is director of lands. The plaintiff therefore prayed for several orders, including declaration that the said transfer was fraudulent and order for revocation of said transfer etc.

02. On the other hand, the first defendants completely denied the allegation of fraud. The first defendants stated that, the plaintiff fraudulently tried to transfer the said lease to his and his mother's name and their late father instructed the land department to stop the plaintiff's move. The first defendants further stated that, the second defendant duly followed the procedure and transferred the said lease to him. The first defendants also made a counter claim against the plaintiff for maintenance of their late father and for his funeral expenses.
03. The second defendant also vehemently denied the allegation of fraud and pleaded in the statement of defence that, the late father of the plaintiff and the first named first defendant wanted to transfer the said Crown Lease to the his wife and the plaintiff; however it could not be transferred due to the breach of their late father. Thereafter, the late father of plaintiff and the first named first defendant requested to transfer the said lease to the first named first defendant and the transfer was done accordingly.
04. The matter was finally at discovery stage and the plaintiff filed Ex-Parte Notice of Motion and sought following injunctive orders:
  - a) An order that the Plaintiff being the Administrator of the Estate of Enkataiya be allowed to occupy and utilize the temple from 1<sup>st</sup> May 2022 till 16<sup>th</sup> May 2022 situated on Crown Lease No. 15037 at Navakai, Nadi for the purpose to conduct the Annual Gangamma Mata Prayer.
  - b) An order that the Plaintiff being the Administrator of the Estate of Enkataiya be allowed to occupy and utilize the family home located beside the temple from 1<sup>st</sup> May 2022 till 16<sup>th</sup> May 2022 situated on

Crown Lease No. 15037 at Navakai, Nadi for the purpose to conduct the Annual Gangamma Mata Prayer.

- c) An order that the Plaintiff being the Administrator of the Estate of Enkatoiya be allowed to be accompanied by the children of late Enkatoiya, the siblings of 1<sup>st</sup> named 1<sup>st</sup> Defendant's, to occupy and utilize the temple and family house located beside the temple from 1<sup>st</sup> May 2022 till 16<sup>th</sup> May 2022 situated on Crown Lease No. 15037 at Navakai, Nadi for the purpose to conduct the Annual Gangamma Mata Prayer.
- d) An order that the 1<sup>st</sup> Defendants and/or their servants and/or their agents or otherwise howsoever be restrained from interfering with the Plaintiff's and children of the late Enkatoiya, the siblings of 1<sup>st</sup> named 1<sup>st</sup> Defendant's occupancy and utilization of the temple and family house located beside the temple from 1<sup>st</sup> May 2022 till 16<sup>th</sup> May 2022 situated on Crown Lease No. 15037 at Navakai, Nadi for the purpose to conduct the Annual Gangamma Mata Prayer.
- e) An order that all people present during the Annual Gangamma Mata Prayer from 1<sup>st</sup> May 2022 till 16<sup>th</sup> May 2022 to always maintain peace.
- f) The 1<sup>st</sup> Defendant to pay the Plaintiff the costs of this application.
- g) Such further or other relief as this Honorable Court shall deem just.

05. On perusal of the supporting affidavit sworn by the plaintiff it revealed that, there were some communication between the solicitors of the parties in relation to the „Pooja“ the plaintiff proposed to conduct at the premises comprised in the said Crown Lease No. 15037. Therefore, this court without making any ex-parte orders, made the motion inter-parte.

06. The first defendant's counsel appeared and informed the court that, the plaintiff lives in the same vicinity of the house and the temple situated in the said Crown Lease and there is no necessity for him to occupy the house, but can attend to the „Pooja“ without occupying the said house. The counsel further informed that, the first defendants have no objection for the „Pooja“. The court also found that, the plaintiff does not need to occupy the house situated there as he is living in the same vicinity and he can attend to the

„Pooja“ without occupying the same. The matter was then stood down to allow the counsel for the plaintiff to get further instructions from his client – the plaintiff.

07. However, the plaintiff gave strict instruction to his counsel to go for hearing and get all the orders sought in his motion. This was on Tuesday 26<sup>th</sup> of April and the proposed „Pooja“ was to start on 1<sup>st</sup> May. There were only 4 working days in between including 26<sup>th</sup> for the parties to file the affidavit in opposition and reply, for hearing and the ruling finally.
08. At this point, the counsel for the first defendants agreed to file his affidavit on the same day (26.04.2022), but put the plaintiff on strict notice that, he would seek for the cost in high scale as he suggested a reasonable way for the plaintiff to conduct the „Pooja“ and he not only disagreed, but also wanted the hearing and ruling before today (29<sup>th</sup> April 2022) as 1<sup>st</sup> May – the day scheduled for the proposed „Pooja“ - falls on this Sunday. The courts then directed the first defendants to file and serve the affidavit in opposition on the same day i.e. (26<sup>th</sup> April) and the plaintiff to file and serve the affidavit in reply on 27<sup>th</sup> and the hearing was fixed on 28<sup>th</sup>.
09. The plaintiff filling his affidavit stated that, he now does not want to occupy the house which is situated in the said Crown Lease but wants to conduct the „Pooja“ only on three days from 13<sup>th</sup> to 15<sup>th</sup> of May and not for 16 days as he initially wanted. However, the first defendants objected to this for the reason that, the annual „Pooja“ organized by the first defendants to start from today (Friday 29<sup>th</sup>) and end on Sunday 1<sup>st</sup> May and there can't be another „Pooja“ from 13<sup>th</sup> to 15<sup>th</sup> May. The defendants further stated that, the plaintiff and others can attend and observe the „Pooja“ scheduled to start from today without disturbing it in any manner whatsoever. However, the plaintiff did not agree for this proposal.
10. At hearing, the counsel for the plaintiff submitted that, whole base of this application is that, the Temple and the house situated in the said Crown Lease are “Family Temple” and “Family House” and the first named first defendants fraudulently transferred the same to him. It is the stance of the plaintiff that, he is entitled to conduct the „Pooja“ and occupy the house as they are „Family Temple“ and „Family House“. On the hand, the counsel for the first defendants submitted that, the first named first defendant is the last registered proprietor of the Crown Lease No. 15037 and his title cannot be defeated except in case of actual fraud. Mere allegation of fraud cannot defeat the title of the first named first defendant unless the fraud is established. Therefore, the plaintiff is not entitled to enter and occupy the house and there was no necessity for second „Pooja“ as the first defendants already scheduled the annual „Pooja“ for three days from today (29<sup>th</sup> April).

11. The sole question that to be decided in order to determine the summons filed by the plaintiff is whether he is entitled to occupy the house and to use the temple both situated in Crown Lease No. 15037 as of right, when the first named first defendant is the last registered proprietor of the said Crown Lease?
12. The Land Transfer Act (Cap 131) was enacted in 1971 and it repealed the Land (Transfer and Registration) Ordinance (see: section 178 of the Land Transfer Act). However, the other two legislations, namely Crown Lands Act (now known as State Lands Act), Native Land Act (now known as iTaukei Land Act) continue to govern the lands fall under their purview. Both legislations were amended to bring them in line with the Land Transfer Act (Cap 131). All leases of Crown land granted pursuant to the provisions of the Crown Lands Act and all leases of native land granted pursuant to the provisions of the Native Land Trust Act are subject to the Land Transfer Act (see: section 5 of the Land Transfer Act). The Land Transfer Act is based on the well-known Torrens System of Registration.
13. The effect and application of the said Torrens system of registration, that was generally applied in certain countries in Pacific, was explained in **Breskvar v. Wall** (1971-72) 126 CLR 376 and Barwick C.J stated at page 385 that:

*The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor. (Emphasis added).*

14. In that same case Windeyer J. concurring with the Chief Justice stated at pages 399 and 400 that:

*I cannot usefully add anything to the reasons that he and my brothers McTiernan and Walsh have given for dismissing this appeal. I would only observe that the Chief Justice's aphorism, that the Torrens system is not a system of registration of title but a system of title by registration, accords with the way in which Torrens himself stated the basic idea of his scheme as it became law in South Australia in 1857. In 1862 he, as Registrar-General, published his booklet, *A Handy book on the real Property Act of South Australia*. It contains the statement, repeated from the *South Australian Handbook*, that:*

*".....any system to be effective for the reform of the law of real property must commence by removing the past accumulations, and then*

establish a method under which future dealings will not induce fresh accumulations.

This is effectuated in South Australia by substituting „Title by Registration“ for „Title by Deed“ ...”

Later, using language which has become familiar, he spoke of “indefeasibility of title”. He noted, as an important benefit of the new system, “cutting off the retrospective or derivative character of the title upon each transfer or transmission, so as that each freeholder is in the same position as a grantee direct from the Crown”: “This is an assertion that the title of each registered proprietor comes from the fact of registration, that it is made the source of the title, rather than a retrospective approbation of it as a derivative right. (Emphasis added).

15. It was equally held in **Fels and another v Knowles and another** (1907) 26 NZLR 604 by Stout C.J at page 620 as follows:

*„The cardinal principle of the statute is that the register is everything, and that, except in case of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world. Nothing can be registered the registration of which is not expressly authorized by the statute.“*

16. Accordingly, the registration is everything and it is the registration that confers the title to a person so registered. It is the title by registration and not registration of title. This system of registration cuts off the retrospective or derivative character of the title upon each transfer or transmission, so as that each freeholder or proprietor is in the same position as a grantee direct from the Crown/state. The registration is made the source of the title, rather than a retrospective approbation of it as a derivative right. The entire philosophy underlying the land transfer system (Torrens System) is to establish certainty of title based on registration, which can be taken as notice to the world of the identity and extent of interest of the person who is certified to be the owner (**Attorney General v Kumar** [1985] 31 FLR 23).
17. The only exception is the actual fraud, and in absence of such fraud as provided in sections 39 to 41 of the Land Transfer Act, the registered proprietor shall have an indefeasible title. This was established by the Fiji Court of Appeal in **Subaramani v Sheela** [1982] 28 FLR 82 (2 April 1982) where the court held that:

*The indefeasibility of title under the [Land Transfer Act](#) is well recognised; and the principles clearly set out in a judgment of the New Zealand Court of Appeal dealing with provisions of the New Zealand [Land Transfer Act](#) which on that point is substantially the same as the [Land Transfer Act](#) of Fiji. The case is *Fels v. Knowles* 26 N.Z.L.R. 608. At page 620 it is said:*

*"The cardinal principle of the statute is that the register is everything, and that, except in case of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."*

18. The first named first defendant is the last registered proprietor of the Crown Lease No. 15037 which consists of the said residential dwelling and the temple. He is in the same position as direct grantee from the Crown or state. The first named defendant is the sole proprietor of the said Crown Lease No. 15037. The house and the temple are no longer a family house and family temple. They became private after the first named first defendant became the last registered proprietor. Accordingly, the plaintiff's claim, that they are family house and temple, fails and he cannot claim any right over the said house and temple.
19. The plaintiff made some bare allegation of fraud on part of the defendants. Both the provisions of the Land Transfer Act and the decisions on the Torrens System clearly set the exception of fraud to defeat the title of a registered proprietor. The Privy Council ruled in **Frazer v Walker** (1967) 1 AC 569 that, Torrens System of registration is of immediate indefeasibility. This concept confers on any bona fide registered proprietor or registered mortgagee all the benefits, rights and interests consequent upon registration, irrespective of any irregularity or error leading to the registration of the instrument, falling short of fraud on the part of the person seeking registration. Mere allegations of the fraud are insufficient for this purpose, however strong the words may be in which they are stated. In **Wallingford v Mutual Society** [1880] 5 AC 685 Lord Selbourne LC said at p.697:

"With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice.
20. The allegation of fraud stated by the plaintiff in his statement of claim seems to be implausible given the defence taken by the defendants in this matter. In any event, these

bare allegations need to be proved at trial and they cannot at this stage make the plaintiff entitled to occupy the house and use the temple situated in the said Crown Lease belongs to the first named first defendant. As a result, the contention of the plaintiff, that he made the current application on basis of alleged fraud, has no merit and ought to be dismissed. Unless and until the first named first defendant consents for the plaintiff to occupy the said house and use the temple, the plaintiff is not entitled for the same even for a shorter period.

21. As mentioned above, the counsel for the first defendants sought the cost of \$ 2500 for this application. It seems from the affidavits filed in this matter that, the first defendants initially consented for the „Pooja“ to be conducted by the plaintiff. However, he withdrew his consent when the plaintiff wanted to occupy the house and filed the current summons seeking various orders in this regard. In fact, the plaintiff initially sought the orders to allow him to conduct the „Pooja“ for sixteen days from 1<sup>st</sup> May to 16<sup>th</sup> May and to occupy the house during those days. The concerns were raised by the first defendants and even by the court as to why the plaintiff wanted to occupy the said house, when the plaintiff himself resides in close vicinity of said house and there is a direct access to the temple. If he really wanted to conduct the „Pooja“ he could have done it without occupying the house.
22. Further concerns were raised as to why the plaintiff wanted to conduct another „Pooja“ for 16 days when the first defendant already organized and scheduled an annual prayer for three days. It was informed that, the practice of the Hindus is to conduct only one annual „Pooja“ in the name of their forefathers. There was no justification by the plaintiff for his wish to occupy the house and to conduct the second „Pooja“ for sixteen days. The plaintiff instead withdrew his intention to occupy of the house and also limited his proposed „Pooja“ for only for three days from 13<sup>th</sup> to 15<sup>th</sup> May. This seems to me that, the plaintiff somehow wanted to enter the Crown Lease belongs the first defendant under the disguise of religious rites. If he really wanted to conduct the „Pooja“ he could have talked to first named first defendant who is his elder brother, without this application because he was amicable for the „Pooja“ by the plaintiff as it is evident from the affidavits filed in this application. For these reasons I am of the view that, the first defendants must be awarded cost for this hurried application which is based on meritless contention.
23. In result, I make the following orders:
  - (a) The Notice of Motion filed by the plaintiff is dismissed,
  - (b) The amended prayer of the plaintiff to conduct the second „Pooja“ from 13<sup>th</sup> to 15<sup>th</sup> of May is also refused,



- (c) The plaintiff, his dependents, invitees and agents are allowed to observe the „Pooja“ organized and to be conducted by the first defendants from today (Friday 29<sup>th</sup>) till Sunday 1<sup>st</sup> May,
- (d) The plaintiff and or his dependents and or his invitees and or his agents should cooperate for peaceful conduct of „Pooja“, and other religious observance at the Temple or in close vicinity, and
- (e) The plaintiff should pay a summarily assessed cost for this application in the sum of \$ 1500 to the first defendants within 14 days from today.

**At Lautoka  
29.04.2022**

**U.L Mohamed Azhar  
Master of the High Court**