

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Civil Appeal No. HBA 03 of 2021**

**Magistrate's Court Civil Action Nos. 593 of 2014**

**BETWEEN**

**SAROJ SHARMA** of Auckland, New Zealand.

**PLAINTIFF / APPELLANT**

**AND**

**ROHIT SHARMA** of Legalega, Nadi.

**DEFENDANT / RESPONDENT (In 593 of 2014)**

**AND**

**SUSHIL SHARMA** of Legalega, Nadi.

**DEFENDANT / RESPONDENT (In 594 of 2014)**

**Counsel** : Ms. A. Swamy for Plaintiff /Appellant  
Mr. E. Maopa for Defendants / Respondents

**Date of Hearing** : 04<sup>th</sup> October 2022

**Date of Judgment** : 28<sup>th</sup> October 2022

## JUDGMENT

[1] The plaintiff/appellant (the Appellant) filed these two actions against the defendants / Respondents (the Respondents) seeking the following orders:

1. For an order that the defendant forthwith vacate the land comprised In Native Land Trust Board Approval Notice NLTB Ref 4/10/4413.
2. Costs of Client/Solicitor indemnity basis.
3. Any further or other orders as this Honourable Court may deem fit.

[2] Subject matter of both these matters is the same property referred to above and the learned Magistrate heard both matters together and had delivered one judgment.

[3] On 07<sup>th</sup> December 2020, the learned Magistrate dismissed the Appellant's claim. The Appellant being aggrieved by the judgment of the learned Magistrate appealed to this court on the following grounds:

1. That the learned Magistrate erred in law and in fact in fact in dismissing the Appellant's claim seeking vacant possession of the land comprised in iTaukei Land Trust Board Approval Notice iTLTB Reference Number 4/10/4413 from the respondent.
2. That the learned Magistrate erred in law and in fact in fact in finding that the Respondent has beneficial interest in the land comprised in iTaukei Land Trust Board Approval Notice iTLTB Reference Number 4/10/4413 from the respondent.

3. That the learned Magistrate erred in law and in fact in fact in applying section 172 of the Land Transfer Act whilst considering the plaintiff's cause of action.
4. That the learned Magistrate erred in law and in fact in fact in not considering that the occupation and possession by the Respondent of the land comprised in iTaukei Land Trust Board Approval Notice iTLTB Reference Number 4/10/4413 in breach of section 12 of the iTaukei Lands Trusts Act and hence the Respondent could not have any equitable or beneficial interest in the said land.
5. That the learned Magistrate erred in law and in fact in fact in deciding that the Respondent had beneficial interest in the land comprised in iTaukei Land Trust Board Approval Notice iTLTB Reference Number 4/10/4413, when the Magistrate's Court under section 2 of the Magistrate's Court Act (Amended)(Promulgation) Act 2007 amending section 16 of the Magistrate's Court Act had no jurisdiction to consider and decide on equitable or beneficial interest.

[5] The original registered proprietor of the property was Raj Pati, who is the mother of the Appellant and the grandmother of the Respondents. Raj Pati executed a Last Will and appointed the Appellant as the executor and the trustee of her estate and also the appellant was the sole beneficiary of her estate.

[6] It is common ground that the parents of the respondents lived in the premises and after their demise the Respondents continued to live on the land.

[7] The learned Magistrate decided in favour of the Respondents on the basis of proprietary estoppel.

[8] **Kumar v Wati** [2017] FJCA 126; ABU0011.2014 (14 September 2017)

[60] Beneficial interest could be described as an interest in the economic benefit of property or generally it could be any interest of value, worth, or use in property one does not own. Black's Law Dictionary defines beneficial interest as profit, benefit or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control and it defines an equitable interest as an interest held by virtue of an equitable title (a title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title) or claimed on

equitable grounds, such as the interest held by a trust beneficiary. Therefore a beneficial interest in property is an equitable interest. Thus, persons having such beneficial or equitable interests are called beneficial or equitable owners of the trust property.

[61] The legal ownership is separate from the beneficial ownership and the legal owner will not necessarily or need to be the same as the beneficial owner. The legal owner is said to hold the beneficial or equitable interest in the property on trust for the beneficial owner.

[80] Proprietary estoppel is the name given to a set of principles whereby an owner of land may be held to have conferred some right or privilege connected with the land on another person, despite the absence of a deed, registered disposition, written contract or valid will. Thus, the doctrine of 'proprietary estoppel' provides another means by which a person may become entitled to a proprietary right despite the absence of express intention and appropriate formalities. In summary, proprietary estoppel is another remedy developed by equity and, like a common intention constructive trust, applies where someone has acted to his detriment upon the belief, encouraged by the actions or representations of the owner of land, that he has (or will have) some right in that land. A claim by way of proprietary estoppel is not in itself a remedy. However, where a claimant can demonstrate an entitlement by way of estoppel, an appropriate remedy will be awarded by court. The classic statement of the doctrine of proprietary estoppel is found in Lord Kingsdown's dissenting speech in **Ramsden v. Dyson** [1866] LR 1 HL 129 at 170

*"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of the land, with the knowledge of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the land lord to give effect too such promise or expectation."*

[9] In paragraph 4 of the Last Will of Raj Pati it is stated:

I DIRECT my Trustee to allow my three sons namely DEO SHARMA, VIJENDRA SHARMA, VISHNU DEO SHARMA all sons of Ram Narayan Sharma of Lega Lega, Nadi, Labourers and also my grandson SHASHI SHARMA father's name Deo Sharma to live where they are living at present till my Trustee shall think fit.

[10] The above clause in the Last will only permits the people who are named in it to continue to occupy the land with the consent of the plaintiff. There had been no indication by the plaintiff that the defendant had any right to be in occupation of the land after the death of their respective fathers. In paragraph 23 of the judgment the learned Magistrate has said;

The plaintiff did allow the brothers to live on the land and she never exercised the latter part of directives of "*till my trustee shall thinks fit*" for her brothers has since moved on.

[11] Section 16(2)(b) of the Magistrate's Court Act 1944 provides;

A Magistrates Court shall not exercise the following jurisdiction –

in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question.

[12] It is therefore, clear that the Magistrates Court does not have jurisdiction to interpret a last will. Be that as it may, the interpretation of the learned Magistrate of paragraph 4 of the will is not correct. If the testator intended to extend that clause to the children of her brothers she could has specially stated it in the will. There is no such clause in the last will.

[13] When the eviction notice was served on the Respondents they replied through their solicitors. In paragraph 2 of the said letter it is stated;

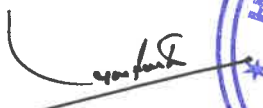
Our clients acknowledge the said Notice and are requesting that they be given at least 12 months to vacate the said property as they have made arrangements to move to another piece of land

[14] In cross-examination the Respondent Rohit Sharma had clearly admitted that he had to vacate the land. In this case there is no evidence that there was an understanding or oral agreement to divide the land among the brothers of the plaintiff.

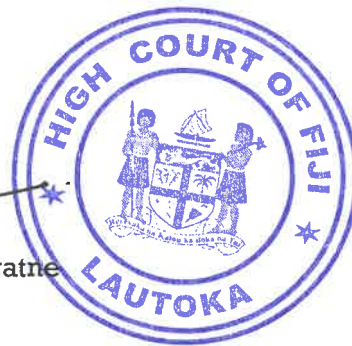
- [15] All the improvements done on the property by the Respondents was with the consent of the plaintiff. This is evidence by the letter dated 05<sup>th</sup> October 2005 (Exhibit 11- part of) by which the Appellant has given her consent to survey the land and fence it.
- [16] From the above it is clear that the Respondents could not have any equitable or beneficial interest in the property.

**ORDERS**

- (1) The appeal of the Appellant is allowed.
- (2) The judgment of the learned Magistrate is set aside.
- (3) The respondents are ordered to vacate the land immediately.
- (4) The respondents are also ordered to pay \$2500.00 as costs of this appeal to the Appellant.

  
Lyone Seneviratne

**JUDGE**



28<sup>th</sup> October 2022