

In the High Court of Fiji  
At Suva  
Civil Jurisdiction  
Civil Action No. HBC 228 of 2020

Manauwa Paulo Manaseitava  
First plaintiff

Apolo Manaseitava  
Second plaintiff

Tevita Manaseitava  
Third plaintiff

Tima Manaseitava  
Fourth plaintiff

v

Maria Nainoka Manaseitava  
Defendant

Counsel : Mr R. Vananalagi for the plaintiffs  
Mr I. Fa for the defendant  
Date of hearing: 1<sup>st</sup> April, 2021  
Date of Judgment: 16<sup>th</sup> November, 2022

**Judgment**

1. The first plaintiff is the administrator of the estate of his father Josefa Ruku Manaseitava, (the deceased). The defendant is the wife of the first plaintiff's deceased brother. The deceased was owner of CT no. 17590, Lot 3 on DP No. 4209, (the property) in Suva containing 33 perches.

2. The plaintiffs, in their amended originating summons seek:
  - a. An order that the property be sold by tender to the highest acceptable tenderer.
  - b. The advertisement, tender process and sale of the property be conducted by their solicitors.
  - c. The sale price should not be less than the valuation given by their valuer, or, in the alternative, an Order that the defendant obtain an independent valuation within a month.
  - d. The first plaintiff execute all necessary documents including the transfer of the property.
  - e. Costs and other related expenses be paid out of the sale proceeds.
  - f. Arrears of rates in the sum of \$31,265.68 and/or the amount owing on the date of the judgment be paid from the defendant's share in the property.
  - g. The balance of the sale proceeds be divided equally in the following manner;

Payment into the solicitor's Trust Account on behalf of the following:  
Manauwa Paulo Manaseitava, Apolo Manaseitava, Tevita Manaseitava,  
Tima Manaseitava as the administratrix of the Estate of Jone Vakatalai  
Manaseitava and the beneficiaries in the estate of Lui Saladoka  
Manaseitava.
  - h. The parties be at liberty to apply to court for variation of the orders relating to procedure with sufficient reasons.
  
3. The first plaintiff, in his affidavit in support states that the deceased was survived by six sons. Letters of administration was initially granted in his estate to Lui Saladoka Manaseitava, (husband of the defendant). He left the property unadministered. Two other sons of the deceased, Jone Vakatalai Manaseitava and Dominiko Manaseitava also passed on. The defendant and her family had been living in the property since the death of the deceased and paid rates for 2005, 2006 and 2007. On 17<sup>th</sup> July 2020, Suva City Council sent a demand notice for arrears of \$31,255.68. The arrears must be deducted from the defendant's share, as she had been living on the property since 1991. The property has been rented and no other beneficiary has received any share from the defendant. The property is valued at a market value of \$810,000.00. This application is supported by the second, third and fourth plaintiffs, (wife of Jone Vakatalai Manaseitava).

4. The defendant, in her affidavits in opposition states that she has made arrangements to clear the outstanding city rates. Her family have lived on the property for 25 years. She and her husband spent approximately \$40,000.00 on renovations, which must be valued before a sale. The valuation report provided by the plaintiff is defective, as it does not accurately reflect the renovations. The property has not been rented. The defendant states that she and her family do not wish to sell the property, as it the only home they have lived in.

***The determination***

5. The plaintiff makes this application for sale of the property in terms of section 119(2) of the Property Law Act and Or 31.
6. Or 31 provides that where “*in any cause..it is necessary or expedient*”, the Court may order land to be sold and order any party to deliver possession to the purchaser.
7. The manner of carrying out a sale is set out in O.31, r.2. The Court may appoint a party to sell and give directions to effect a sale at the best price, including fixing the manner of sale, whether by tender or other manner and payment of the purchase money into Court.
8. Section 119 of the Property Law Act provides that :
  - 1) *Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly.*
  - 2) *The court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.*

- 3) *The court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale, and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale.*
- 4) *On directing any such sale or valuation to be made, the court may give also all necessary or proper consequential directions.* (emphasis added, underlining mine)

9. The deceased passed away on 28<sup>th</sup> October, 1991. The plaintiffs have not enjoyed the fruits of the property, while the defendant's family have lived on the property for 25 years.
10. In my judgment, it is necessary and expedient that the property be sold.
11. At the hearing, Mr Fa, counsel for the defendant agreed that the property has to be sold. The defendant lives on the property and wishes to purchase same. She has obtained a valuation of \$ 520,000.00 of the property.
12. Mr Vananalagi, counsel for the plaintiffs states that the plaintiffs have obtained a valuation for \$810,000.00.
13. In my view, in the first instance, a valuation has to be obtained from an independent Valuer mutually agreed to by the parties.
14. The defendant states that she is making arrangements for the outstanding rates to be paid. I note that she has been living in the property for 25 years. She has to establish the renovations she states were done.

15. **Orders**

- (i) The property in CT no. 17590, Lot 3 on DP No. 4209 in Suva containing an area of 33 perches shall be sold on a valuation to be obtained mutually by the plaintiffs and the defendant at the cost of the plaintiff.
- (ii) The parties shall appoint a Valuer within 30 days of this Judgment.
- (iii) On receipt of the Valuation Report, the first plaintiff shall advertise the property for sale by written tender in two issues of a newspaper in Fiji. The tender shall be opened in the presence of the defendant. The sale shall be to the highest tenderer.
- (iv) On the tender being accepted, all necessary documents including the document of transfer shall forthwith be prepared by the solicitors for the plaintiffs, who shall forward same to the solicitors for the defendant for execution and hold same until the purchaser of property is in a position to settle.
- (v) The defendant is at liberty to make an offer to purchase the property.
- (vi) On settlement, the plaintiffs' solicitors shall immediately pay into Court the settlement moneys and furnish an account of disbursements and all costs incurred in the sale with documentary evidence of expenses incurred.
- (vii) The outstanding rates as at date of sale shall be paid by the defendant.
- (viii) The parties are at liberty to apply generally regarding the sale.
- (ix) I make no order as to costs.



*A.L.B. Brito-Mutunayagam*

A.L.B. Brito-Mutunayagam  
JUDGE

16<sup>th</sup> November, 2022