

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 102 of 2021

Vijay Nand

Plaintiff

v

Chandar Deo

Gyan Deo

Raj Deo Sharma

Raj Kumar

First defendants

Registrar of Titles

Second defendant

The Attorney General of Fiji

Third defendant

Counsel: Mr V. Maharaj for the plaintiff
Mr P. Kumar for the first defendants
Ms N. Ali for the second and third defendants

Date of hearing: 21st February, 2022

Date of Judgment: 9th May, 2023

Judgment

1. The plaintiff, in his originating summons filed on 26th March,2021, seeks specific performance of a Sale and Purchase Agreement,(SPA) and a statutory declaration made by the first named defendant to sell him land. He also seeks that the second defendant cancel the Dedication endorsed on the land by the first defendants.

2. The plaintiff in his supporting affidavit states that:
 - a. On 4th April,2006, the first defendants, as vendors agreed to survey a part of CT 12805 for one quarter acre within a reasonable time and sell that Lot to him for \$12,000.00.
 - b. On 2nd September, 2020, the first defendants obtained a separate lot CT 44684.
 - c. On 10th February,2020, the first defendants, in breach of the SPA transferred that lot to the first-named first defendant. The dealing was registered by the second defendant on 10th February,2020.
 - d. On 10 February,2020, the first defendants lodged Dedication No. 894755 on head CT 12805 to the State for “*Access Denial Strip*”, which has been wrongly endorsed by the second defendant by way of a memorial on CT No. 44684.
 - e. In May 2015, he entered into another agreement with the first defendant to purchase a land adjacent to CT 44684 at \$2,500.00, as contained in the Statutory Declaration made by the first named defendant.
 - f. The plaintiff states that he took possession of the land. He built a concrete and wooden house with the written consent of the first defendants. The first defendants are estopped from denying his right to the land.

3. The first named defendant states that there was a delay to obtain CT No. 44684, due to the survey and approval process. The plaintiff paid him \$11,000.00. The estimated value of the property in 2006 was 15,000.00. The current valuation is \$40,000.00. A period of 16 years has lapsed since 2006. The plaintiff took possession of the land in 2007 and has benefitted without paying any rent for 14 years, by carrying on BBQ business and planting fruits and vegetable. The SPA is unenforceable. It lacks the basic elements of a legal agreement. It is ambiguous and uncertain on the obligations of the parties and description of the property.

4. The affidavit in response of the second and third defendants states that CT No. 44684 is registered in the name of the first-named first defendant. Lot 10 on DP 11319 was an Access Denial Strip endorsed correctly and dedicated to the State on titles affected by DP 11319.

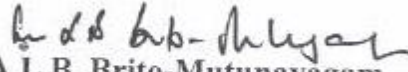
The determination

5. The following facts are not disputed:
 - a. On 4th April,2006, the plaintiff entered into a SPA with the first defendants to purchase a part of CT 12805(CT No. 44684) for \$12,000.00.
 - b. The SPA provides that the “*Vendors (Chandar Deo) will at their cost, survey and acquire the Title for the said property within a reasonable time*”.
 - c. The plaintiff paid an advance of \$ 11,000.00, as confirmed in the affidavit in response.
 - d. On 18th February,2015, the first named defendant in his Statutory Declaration stated that he sold the adjoining piece of land for \$2500.00 to the plaintiff.
 - e. The Statutory Declaration states that the balance of \$3500.00 will be paid by the plaintiff “*As soon as (the first defendant) gets the title and hands*” it to the plaintiff..
6. The SPA does not specify the date of settlement and transfer of the land. It provides that time shall be of the essence.
7. The affidavit in response states that CT no. 44684 took 14 years to be issued
8. CT no. 44684 was issued by the second defendant on 2nd September,2020.
9. I would note that on 1st May,2006, the first defendant authorized the plaintiff to upgrade the land.

10. The plaintiff's solicitors by letters of 24th November,2020, 13th and 21st January,2021, issued final notices for settlement to the solicitors for the defendant .
11. The solicitors for the defendant in their response of 19th January,2021, stated that they received instructions in January,2020, from the first defendants on the issue of new titles of head CT 12805, but have not received instructions on settlement of Lot 1 on DP 11319.
12. The plaintiff brings this action on 26th March,2021.
13. In my judgment, the plaintiff is within the six year limitation period to seek specific performance of the SPA and Statutory Declaration.
14. The first defendants contends that the land must be sold at the current market value, as 14 years has lapsed since the SPA was entered.
15. It was clearly the first defendants' obligation to acquire the new title, as noted above.
16. Next, the plaintiff seeks that the second defendant cancels the Dedication endorsed on the land by the first defendants.
17. Section 159 of the Land Transfer Act states that a proprietor of a land may create an easement over land.
18. It is not dispute that the first defendant created a Dedication to the State for "*Access Denial Strip*" on head title CT 12805.
19. In my judgment, the plaintiff's remedy (if any) is against the first defendants, not the second defendant. The relief sought is declined.

20. ***Final Orders***

- a. I order the first defendants to specifically perform the Sale and Purchase Agreement of 4th April,2006, and transfer CT 44684 to the plaintiff on or before 30th June,2023.
- b. I order the first defendant to specifically perform and transfer the land referred to in the Statutory Declaration of May 2015, on or before 30th June,2023.
- c. The plaintiff shall pay the first defendants the balance sum of \$ 3500.00 on transfer of the lands referred to in a) and b).
- d. The relief sought by the plaintiff against the second and third defendants is declined.
- e. The first defendants shall pay costs summarily assessed in a sum of \$1500.00 to the plaintiff.


A.L.B. Brito-Mutunayagam
JUDGE
9th May, 2023

