

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 264 of 2020

BETWEEN: **PETER WESELMANN** of Sabeto Nadi, Fiji, Retired.

PLAINTIFF

AND: **ROSHNI LATA** formerly of Nadi, Fiji, but currently residing at 310 Woodville
Road Guildford NSW 2161 Australia, Domestic Duties

DEFENDANT

Appearances: Ms. Naidu for the Plaintiff
Date of Hearing: 24 November 2022
Date of Ruling: 25 May 2023

R U L I N G

1. Peter Weselmann is originally from Brisbane, Australia. He is retiree. At some point in time, he met and fell in love with a Fijian lady, Roshni Lata. Weselmann sold his house in Brisbane, and moved to Fiji to be with Roshni. They got married at some point, and made the decision to purchase a property in which to live.
2. The property they bought is compromised in Crown Lease No: 13786, Lot 12 on ND5080, Nakorokoro, formerly CT 1175, L.D. Ref 4/7/2107 with an area of 1290m².
3. This property was bought with Weselmann's money. He said he used part of his savings in Australia and also part of the proceeds from the sale of his Brisbane house towards the purchase price. The total purchase price was FJD\$185,000.00.
4. For one reason or another, Weselmann and Lata entered into an arrangement which they documented in a Trust Deed dated 24 July 2015. The said Deed was prepared by Siddiq Koya Lawyers. It (the Deed) records the following:
 - (a) that it was Weselmann who actually bought C.L 13786 for \$185,000.00 from the vendor.
 - (b) that Weselmann had nominated Lata as the transferee, so that, the property was actually transferred to Lata's name from the vendor at the completion of the sale
 - (c) that Lata would then hold one undivided half interest in the property for Weselmann.

- (d) that Lata would at some point in time, transfer the said one undivided half interest to Weselmann or to Weselmann's nominees.
5. As it happened, the couple lived on the property for a number of years with two young children of Lata's from a previous relationship. At some point, Lata went to Australia. She has since remained there but has visited Fiji on some occasions.
 6. Weselmann and Lata have since gone their separate ways. They are now divorced.
 7. Weselmann now wants the whole property transferred back to him and not just the undivided half shares which Lata holds on trust for him in terms of the Deed.
 8. Wesselman's Writ of Summons and Statement of Claim have been served on Lata in Australia after leave was obtained. Lata has not bothered to file any defence.
 9. Weselmann is not a Fiji citizen but he has resided in Fiji for many years now. The land in question is barely a quarter acre in size so there is no Land Sales Act issue.
 10. While I have no hesitation in granting Order in Terms of the half interest in the property which Lata holds on Trust for Wesselman according to the Deed – the question is whether I can Order that Roshni's half share be also transferred to Wesselman.
 11. According to the Deed, Roshni is the legal owner of one undivided half interest – but holds the other undivided half interest on trust for Weselmann. Is Weselmann then entitled to Roshni's half interest on the basis that he did contribute to the full purchase price including all the improvements on the property thereafter?
 12. Based on the fact that Wesselman had purchased the property solely from his money, and that he has been solely responsible for financing all the improvements on the property over the years, there is also an equity in his favour over Lata's half share.
 13. Accordingly, I Order that the entire property in question be transferred to Wesselman – on the condition that Wesselman obtains the relevant consent from the Director of Lands.
 14. I also Order costs against Lata which I summarily assess at \$1,000 – 00 (one thousand dollars only)



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Anare Tuilevuka
JUDGE
Lautoka

25 May 2023