

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 04 of 2021

**BETWEEN : CHANDRA SEN GOVIND
PLAINTIFF**

**AND : RAJ MATI as Executor and Trustee of the Estate of
Ram Govind
FIRST DEFENDANT**

**: RAJESH KUMAR
SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. S. Nand [Nands Law]
DEFENDANTS : Ms. S. Dutt [Jiten Reddy Lawyers]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 20 January 2023

RULING

1. The Plaintiff has made this application pursuant to Order 18 Rule 18 of the High Court Rules seeking orders that the statement of defence filed on 16 February 2021 be struck out on the following grounds:
 - a. *Discloses no cause of defence;*
 - b. *Allegation are barred by doctrine of res-judicata and doctrine of collateral estoppel;*
 - c. *Is an abuse of process of Court.*

2. The Plaintiff claim that he is the registered proprietor of area under the CT 40311 Lot 1 on DP 6782.

The Plaintiff in 2020 decided to sub-divide his property and engaged services of registered Surveyors who informed him that there were existing structures encroaching on to the Plaintiff's land.

The house in question is occupied by the Defendants.

The Plaintiff seeks orders for the Defendants to dismantle, remove and relocate the dwelling. He is also asking for mesne profit incurred by the Plaintiff with damages to be assessed.

3. The Defendants claim the Plaintiff obtained the property by fraud and deception and the First Defendant being executor and trustee of Estate of Ram Govind did not give her consent or signed transfer of the shares to Plaintiff. The Defendants claim that the Plaintiff had forged the signatures of the First Defendant.

The Defendants claim that the proceeding that the First Defendant had instituted against the Plaintiff for issuance of the separate title, was flawed as issues of fraud was never addressed nor the intentions of the Will dated 14 September 1978.

4. In reply the Plaintiff states that issues relating to fraud and deception was dealt with and dismissed in High Court Civil Action 387 of 2011 and hence issues raised by the Defendants in the statement of defence is an abuse of process.

The Plaintiff maintains that, the allegation against him is barred by the doctrine of res judicata and doctrine of collateral estoppel.

5. In High Court Civil Action 387 of 2011, Raj Mati instituted proceedings seeking following reliefs:

- i. *Declaration that the purported transfer of Lot 1 on DP 6782 is fraudulent, illegal and a sham document design to defeat the legitimate interest of the Plaintiff and the other beneficiaries of the Estate of Ram Govind.*
- ii. *A declaration that the purported dedication of Access denial strip was fraudulent and null and void and is of no effect;*

The main issue for determination was “*whether the Defendant obtained the signature of the Plaintiff to the transfer document fraudulently and/or deceptively*”.

Seneviratne J. made a finding that Raj Mati had failed to discharge the burden of establishing that her signature was obtained fraudulently to the transfer documents or that her signature has been forged and had accordingly dismissed the action. This finding was made only after hearing evidence under oath.

6. Hence I find that any issues concerning the transfer of Lot 1 on DP 6782 is an abuse of court process.
7. Accordingly exercising my discretion under Order 18 Rule 18 (1) I direct the Defendants to amend their statement of defence by deleting following paragraphs or sentences:
 - i. Paragraphs 3 and 4 of the statement of defence to be deleted; and
 - ii. Second sentence in paragraph 8 of the defence is to be deleted.
8. The Defendants deny there being encroachment to the Plaintiff’s property and with no evidence in support of the Plaintiff’s claim and it will be best to make a finding after hearing evidence.

Orders

9. On an application to strike out defence dated 24th May 2022 following orders are made:

- a. The Defendant to file and serve their amended Statement of Defence by 12 noon on 03 February 2023.

Paragraphs 3 and 4 and the second sentence in paragraph 8 of the defence is to be deleted.

- b. The Plaintiff to file and serve a reply to defence by 12 noon on 17 February 2023.
- c. The Defendants shall pay the Plaintiff cost of this application summarily assessed at \$800 and this cost is to be paid by 12 noon on 03 February 2023.
- d. Upon compliance of these Orders, the court will proceed to deal with the summons for directions filed on 21 April 2021.



A handwritten signature in blue ink, appearing to be 'Vandhana Lal'.

Vandhana Lal [Ms]
Acting Master
At Suva.

20 January 2022

TO:

1. Suva High Court Civil Action No. HBC 04 of 2021;
2. Nands Law, Solicitors for the Plaintiff;
3. Jiten Reddy Lawyers, Solicitors for the Defendants.