

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

**Civil Action No. HBC 218 of 2018**

**BETWEEN**

**AJAY DEO PRASAD** formally of Naqoro, Rakiraki but now of  
16 Tabletop Circuit Horningsea Park, 2171 NSW,  
Australia, Retired Teacher.

**PLAINTIFF**

**AND**

**ARUNA KUMARI** of Naqoro, Rakiraki as the sole Executrix and Trustee of the  
**ESTATE OF RAJENDRA PRASAD** late of Naqoro, Rakiraki, Fiji,  
Farmer, Deceased.

**1<sup>ST</sup> DEFEDANT**

**AND**

**THE DIRECTOR OF LANDS** of Suva, Fiji.

**2<sup>ND</sup> DEFENDANT**

**Counsel** : Mr. Charan R. for the Plaintiff  
Mr. Singh A.J. with Ms. Prasad P. for the 1<sup>st</sup> Defendant

**Date of Hearing** : 01<sup>st</sup> August 2023

**Date of Judgment** : 18<sup>th</sup> September 2023

**JUDGMENT**

[1] The plaintiff filed this action against the defendants seeking the following reliefs:

- (a) An injunction restraining the 1<sup>st</sup> defendant from transferring the Crown Lease No. 19332 to a third party or further encumbering the same in any way;
- (b) An order that the 1<sup>st</sup> defendant do specifically perform the agreement between the parties;
- (c) A declaration that the 1<sup>st</sup> defendant do attend to subdivision of Crown Lease No. 19332 LD Ref: 4/13/1026 as per agreement dated 07<sup>th</sup> January 2015 forthwith;
- (d) An order that the plaintiff and defendants do have a period of two months to sign all necessary documents to facilitate the same;
- (e) An order that the date for settlement be thirty days after the plaintiff's receipt in writing of consent from the Director of Lands to said sale,

and that the defendant do all that is necessary and required to effect and carry out settlement, including signing of necessary documents;

- (f) Further and/or in the alternative, an order that if the 1<sup>st</sup> defendant refuses and or neglects to execute the transfer documents then the Deputy Registrar of the High Court to transfer and convey in the name of the plaintiff;
- (g) He 1<sup>st</sup> defendant do pay the plaintiff damages; and
- (h) The 1<sup>st</sup> defendant do pay to the plaintiff the costs of this action.

[2] The plaintiff's case is that his late father Deo Kumar applied for the subdivision of the land and the Director of Town and Country Planning approved the subdivision. The proposed occupants were the plaintiff and Rajend Prasad (Deceased) in Lot 1 and Lot 2 respectively. He then advised the solicitors to draft a transfer of the land known as LD 4/13/1026 being Lot 1 on plan BDSW 1070. The plaintiff's father intended to transfer 1012m<sup>2</sup> to the plaintiff by way of natural love and affection in 1990 and the 2<sup>nd</sup> defendant consented to the said transfer. However, the plaintiff's father passed away before the completion of the transfer.

[3] The late Rajendra Prasad was the Registered Proprietor of Crown Lease No. 19332, Lot 1 SO 2716 and Lot 14 RR 1112 comprising total area of 4.1393 hectares. The plaintiff's position is that he and his wife built a residential house on Lot 1 SO 2716 having an area of 1217 Square meters (the property). Plaintiff states further in the statement of claim that Rajendra Prasad made an offer of \$15,000.00 for the property which he accepted and the plaintiff obtained compliance certificate from Ra Rural Authority for subdivision development. However, before sub-division of the property Rajendra Prasad passed away and the 1<sup>st</sup> defendant who is the Executrix and Trustee refused to complete the transaction.

[4] The defendant's position is that before the death of plaintiff's father he withdrew the intended gift to the plaintiff with the plaintiff's consent as the plaintiff had

migrated to Australia and decided to transfer the property to Rajendra Prasad and passed the property to Rajendra Prasad. Rajendra Prasad passed away on 26<sup>th</sup> April 2014 whilst the transfer was in process.

[5] The defendant takes up the position this action is barred by the statute since the plaintiff failed to take any action for 22 years since the death of the father.

[6] The 2<sup>nd</sup> defendant, the Director of Lands had granted a fresh Lease No. 19332 to the 1<sup>st</sup> defendant's husband and the said lease had been issued free of all encumbrances.

[7] In the amended statement of defendant the defendant sought the following reliefs:

1. That the interim injunction granted ex-parte 2<sup>nd</sup> October 2018 be dissolved and dismissed.
2. A declaration that the plaintiff is not in possession of a residential house on a portion of the subject land being Crown Lease No. 19322 Lot 1 SO 2716 having an area of 1217m<sup>2</sup>.
3. A declaration that sale note was fraudulently executed on the 7<sup>th</sup> of January 2015 and the same does not have consent of the Director of Lands as required by law.
4. The plaintiff's claim be dismissed.
5. Cost on indemnity basis.
6. Such other relief as the court deem fit.

[8] At the pre-trial conference the parties admitted the following facts:

- 1.1 The 1<sup>st</sup> defendant is the sole Executrix and Trustee of the Estate of Rajendra Prasad.
- 1.2 The plaintiff and the late Rajendra Prasad are brothers.

1.3 The 2<sup>nd</sup> defendant is a Nominal Defendant and the Head Lessor of the State Lease.

1.4 Rajendra Prasad passed away on 26<sup>th</sup> April 2014.

[9] From the prayers in the statement of claim it is absolutely clear that his claim is based on a sale and purchase agreement entered into between him and late Rajendra Prasad, admittedly the husband of the 1<sup>st</sup> defendant. Rajendra Prasad was the administrator of the estate of the father of both the plaintiff and Rajendra Prasad. From the evidence it appears that there had not been a sale and purchase agreement between Rajendra Prasad and the plaintiff. The plaintiff's evidence is that the plaintiff and the 1<sup>st</sup> defendant signed a Sale Note.

[10] The 1<sup>st</sup> defendant admits signing the Sale Note but she said contents of the document was explained to her and also the solicitor who witness the document was not present at the time of signing it.

[11] Whether the Sale Note was executed properly or not cannot be an issue since a Sale Note cannot be considered as a legally executable sale and purchase agreement. It is a written memorandum of a sale delivered to the buyer by the broker responsible for the sale. It outlines the terms of the sale and is given to both the buyer and seller.

[12] The plaintiff's position is that to purchase the property he paid \$15,000.00 to Rajendra Prasad which fact was denied by the defendant. The 1<sup>st</sup> defendant in her evidence tendered the bank books of Rajendra Prasad showing entries from 23<sup>rd</sup> May 2012 to 30<sup>th</sup> May 2014. As admitted by the parties Rajendra Prasad died on 26<sup>th</sup> April 2014. These bank books do not show that he received \$15,000.00. The plaintiff left Fiji in the year 1983 after the coup. He also said that there was a mortgage on the property and he sent money to redeem the mortgage. However, there is no iota of evidence to show that he sent money to Rajendra Prasad.

- [13] Assuming but not conceding that there was an agreement between plaintiff and the 1<sup>st</sup> defendant to sell the property, the court has to consider whether the 1<sup>st</sup> defendant has the power and authority to enter into such an agreement and dispose of the property.
- [14] In this regard it is important to consider the last will of Rajendra Prasad. In Clause 3(iii) of the last will it is stated;
- To give my wife **ARUNA KUMARI** remaining portion of the said property (Crown Lease) with 3 bedroom dwelling house now occupied by me, the household furniture and my other personal chattels contained therein together with the 1 bedroom tin house currently on rent for her own use and benefit until her lifetime and thereafter her death, the residuary to my son RITESH PRASAD for his own use and benefit absolutely.
- [15] The 1<sup>st</sup> defendant is the Executrix and Trustee of the Estate of the husband Rajendra Prasad. In her evidence she said that nobody objected to the probate being granted to her. As the executrix and Trustee of her husband's Estate she is duty bound to give effect to the intentions of the testator. By the last will of the 1<sup>st</sup> defendant's husband she has only been given life interest in the property. Therefore, she has no power or authority to enter into any agreement in respect of the estate property.
- [16] The 1<sup>st</sup> defendant has sought a declaration that the plaintiff is not in possession of a residential house on a portion of the subject land being Crown Lease No. 19322 Lot 1 SO 2716 having an area of 1217m<sup>2</sup>. The plaintiff in his evidence admitted that he is a citizen of Australia and lives in Australia. There is no dispute that the plaintiff is not possession of the property.
- [17] The 1<sup>st</sup> defendant has also sought a declaration that sale note was fraudulently executed on the 7<sup>th</sup> of January 2015 and the same does not have consent of the

Director of Lands as required by law. The burden of proving fraud is on the party who alleges fraud. In this matter no such evidence was adduced by the 1<sup>st</sup> defendant. However, as I have stated in earlier in this judgment the Sale Note has not been properly executed. There is unchallenged evidence that when it was signed by the plaintiff and the defendant the solicitor who signed as the witness had not been present. Therefore, it is not a properly executed document.

[18] The defendant sought an order to set aside the injunctive orders granted on 02<sup>nd</sup> October 2018. The orders granted by the court are interim injunctions. Interim injunctions are automatically vacated with the pronouncement of the judgment in the substantive matter.

#### ORDERS

1. Plaintiff's action is dismissed.
2. The plaintiff is ordered to pay \$3,000.00 to the 1<sup>st</sup> defendant.
3. Orders 2 and 3 sought in the amended statement of defence are also granted.

  
Lyone Seneviratne



**JUDGE**

18<sup>th</sup> September 2023