

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 328 of 2022

IN THE MATTER of an application for partition
of land and division of chattels pursuant to
section 119 of the Property Law Act 1971

IN THE MATTER of an application for sale of
land by order of court pursuant to order 31 of
the High Court Rules 1988

BETWEEN : CHANDRA WATI aka CHANDRA PRASAD aka
CHANDRA WATI PRASAD

PLAINTIFF

AND : DAREN KUMAR aka DAREN PRANISH KUMAR

1ST DEFENDANT

AND : REGISTRAR OF TITLES

2ND DEFENDANT

AND : THE ATTORNEY GENERAL

3RD DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. V. Kumar for the plaintiff
: Mr. J. Liganivai with Ms. J. Raman for the defendant

Date of Hearing : 22 September 2023

Date of Decision : 4 October 202

DECISION

PROPERTY Originating summons – Sale of property– Whether parties agreed on purchase price – Action to continue as if commenced by writ of summons – Section 119, Property Law Act 1971 – Order 28 rule 9 and Order 31 of the High Court Rules 1988

1. The plaintiff filed originating summons seeking numerous orders including declaratory relief concerning a property in which she has an interest. The main reliefs sought by the plaintiff are orders for sale under section 119 of the Property Law Act 1971 and Order 31 of the High Court Rules 1988. The other orders relate to the obtaining of a valuation, execution of documents, deposit of sales proceeds, payment of taxation and the delivery of vacant possession. The declarations concerned the sharing of rental proceeds and the recovery of damages for not letting the plaintiff to use the property.
2. The plaintiff's interest in the property is an undivided half share from the estate of her husband. She is the administrator of her husband's estate, having received letters of administration on 9 May 2017. The first defendant does not dispute the plaintiff's interest in the property. The second and third defendants did not file affidavits or make submissions.
3. The subject property is described as a state lease bearing No. 866310, No.3796 at Samabula Indian settlement in Suva. It has an extent of 1R 22.4P (0.1578 Ha) in lot 17 section 6 of Plan No. S1183.
4. The plaintiff's supporting affidavit states that the property was owned in equal shares by her husband, Rajendra Prasad, who died on 23 September 2016 and his brother Rupen Prasad aka Upendra Prasad aka Upen Prasad, who is also dead. She stated that she and her husband lived on the property until they went to Australia for his medical treatment. Her husband died in Australia. When she returned to Fiji, she said, the first defendant prevented her from entering the property.
5. The plaintiff said she filed action to gain access to the property, but did not succeed as the property lease had expired by that time. Thereafter, she renewed

the lease at her expense. The new lease was granted to her – as administrator of her husband’s estate – and to the first defendant.

6. The plaintiff states that following settlement discussions, the first defendant agreed to pay \$275,000.00 for her share of the property. The sum was agreed after the property was valued at \$550,000.00. Subsequently, she said, the first defendant refused to pay the agreed price. Later, she agreed to sell her half share at \$245,000.00 on the condition that the first defendant settles Suva city council rates and lease payments. However, he had refused to make those payments.
7. The plaintiff states that the property has three flats and that two flats are rented at a monthly rent of \$350.00 each, while the other flat is rented at \$200.00. She claimed that the flats were rented without her consent, and that rent is taken by the first defendant.
8. The plaintiff states that though she became the registered proprietor, she is compelled to rent another house as her access to the property is restricted. The plaintiff states that in these circumstances it has become necessary to sell her undivided share.
9. The plaintiff’s application was opposed by Daren Kumar, the first defendant. In his affidavit, he says he is the executor and trustee of the estate of Rupen Prasad aka Upendra Prasad aka Upen Prasad. On 23 November 2011, Rupen Prasad died leaving a will by which he left his share of the property to the first defendant and to the first defendant’s aunt, Premila Devi, and brother, Darell Kumar.
10. After Premila Devi died, the first defendant and his brother, Darell, were appointed executors and trustees of her estate. They are the sole beneficiaries of her estate which includes shares in Rupen Prasad’s estate. He said that they are also the only beneficiaries of Rupen Prasad’s estate.
11. The first defendant stated that only one flat was rented, and the income was used to pay for Premila Devi’s medical expenses. He says he has settled the property’s

outstanding council rates and the lease rental. The first defendant admits that the property was valued at \$550,000.00 by Lomara Associates, but does not feel obliged to accept the valuation.

12. The first defendant said that the plaintiff accepted his offer of \$240,000.00 to buy her half share subject to the condition that he would pay the city council rates and lease rental arrears. He said that he settled all arrears.
13. The first defendant said he relied on letter dated 3 November 2022 from the plaintiff's lawyer to his former solicitor accepting his offer. Although he complied with the plaintiff's conditions and engaged solicitors to acquire the plaintiff's share, he said that she declined to proceed with the transaction. He states his willingness to pay \$240,000.00 to purchase the plaintiff's share of the property.
14. When the respective affidavits are considered it appears that there are several matters on which the parties disagree. Unfortunately, the parties could not reach agreement though they seem to have come close to a settlement sum. There are differences in the sums said to have been agreed as the purchase price. Counsel for the first defendant submitted that there is an agreement in place for the purchase of the plaintiff's share. This assertion is denied. The first defendant submitted that the originating procedure adopted by the plaintiff is inappropriate as the parties hold different positions. The disagreements are such that the court is of the view that the matter is not suited to be disposed by way of affidavits in this proceeding.
15. Among the reliefs sought by the plaintiff is for an order to continue the action as if it was commenced by way of writ of summons under Order 28 Rule 9 of the High Court Rules 1988. Such an order would be appropriate in this instance so that oral evidence could be led. The parties are to file pleadings and take other steps so that the matter can be set down for trial.

ORDER

- A. This action is to continue as if commenced by way of writ of summons under Order 28 Rule 9 of the High Court Rules 1988.

- B. The plaintiff is to file a statement of claim within 14 days of this decision. Subsequent pleadings and steps are to be taken in accordance with the rules of court.

- C. Parties will bear their costs.

Delivered at **Suva** on this 4th day of **October, 2023**.



M. Javed Mansoor
Judge