

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Appeal No. HBA 06 OF 2022

BETWEEN: **SURUJ LAL** of 21178 Ocean View Drive, Hayward California 94541
formerly of 90 Milverton Road, Suva, Fiji, Businessman.

APPELLANT

AND: **NASINU LAND PURCHASE & HOUSING CO-OPERATION**
SOCEITY LTD a duly incorporated Company under the Companies
Act Cap 247 and having its place of business at 68 Suva Street,
Suva.

RESPONDENT

Before: Hon. Mr. Justice Deepthi Amaratunga

Counsel: Mr. N. Lagendra for Appellant (Appellant)
Mr. A. Nadan for Respondent (Respondent)

Date of Hearing: 22, and 23 February, 2024

Date of Judgment: 7th October 2024

JUDGMENT

INTRODUCTION

[1] This is an appeal against Ruling handed down on 2.12.2021 (The Ruling) by then Chief Magistrate granting a permanent injunction which was not sought by parties after judgment. Judgment and assessment of damages were handed down on 4.3.2020 and 24.9.2020 respectively. In the Ruling stated that judgment was sealed .on 7.10.2020 None of the said decisions handed down on 4.3.2020 or 24.9.2020 were appealed and damages awarded was paid by Defendant .

PROCEEDING IN COURT BELOW

- [2] Plaintiff filed the action in court below , seeking injunctive orders restraining sale or transfer of all land described as Lot No 1 at Stage 9 , Phase 1 in DP No 1058 being part of Certificate of Title 12468 (The Land)**until final determination** of this action. Plaintiff also sought specific performance and special damages, exemplary damages, general damages and also for costs.
- [3] Plaintiff did not seek permanent injunctive orders.
- [4] Through an ex parte order injunctive order restraining transfer of the title granted 'until further order of the 'court below. This is an interim order for preservation of status. Hence it had no application after judgment.
- [5] After hearing, and evidence being recorded by both parties, court below discovered that there was no statement of defence filed by Defendant and entered interlocutory judgment for the Plaintiff and special damages claim was dismissed. The court further ordered hearing for determination of quantum of damages for unliquidated portion of the claim. (See page 215 of Record). This Judgment for award of damages was made not made on 4.3.2020, though by that time both parties had led evidence and concluded hearing, but again parties were granted opportunity as hearing of assessment was done separately.
- [6] Thereafter on 24.9.2020 Plaintiff was awarded exemplary damages for the value of \$30,000 and claims for general damages refused and cost of \$3,000 ordered by 'Judgment on Quantum of Damages.' Again neither party appealed against said order.
- [7] According to the Ruling Plaintiff had sealed the judgment on 7.10.2020 and that should be the end of proceeding in court below as regard to the claim.
- [8] It seemed that litigation had ended in court below, as Plaintiff had sealed the final orders on 7.10.2020 but had '*inquired with the court (below) whether the interlocutory order that was in place at the time of the judgment would now be deemed as final order or not*'. (see page 316 the Ruling). Plaintiff state such request was not made, but I cannot find any such formal application to court below.
- [9] Again parties were heard through submissions and then Chief Magistrate delivered a decision stating that court below was not '*functus officio*' and there was an interim injunction that required 'final determination' and made a permanent injunction restraining Lot No 1 Stage 9 Phase 1 in DP No 10581. This is the Ruling handed down on 2.12.2021 against which the present appeal is made by Plaintiff.

APPEAL

- [10] Plaintiff in the written submission state that interim injunction relief sought was only till final judgment and he did not seek to invoke a permanent injunction as it would serve no purpose. Plaintiff in this appeal seeks to set aside the Ruling and to make an order for Defendant to transfer Lot 1 at Stage 9, Phase 1 on DP No 10581 being part of CT12468.
- [11] Defendant in the written submission state that the above lot is no longer available for specific performance.
- [12] Plaintiff appealed against the Ruling of 2.12.2021. Appeal grounds are as follow
- i. That the learned Chief Magistrate erred in law when it did not grant an order that the Defendant do all such acts and execute all such documents as maybe necessary to transfer land described as Lot No 1 at Stage 9, Phase 1 in DP No 10581 being part of Certificate of Title 12468 to the Plaintiff.
 - ii. That the learned Chief Magistrate erred in law and fact when it ruled in its 2 December 2021 Ruling that the Plaintiff inquired with Court whether the interlocutory order that was in place at the time of the judgment would now be deemed as being final order or not.
 - iii. That the Learned Chief Magistrate erred in law and fact when it did not rule in its 2 December 2021 Ruling that the Plaintiff enquired about the prayers that were yet to be on 13 July 2017, these prayers were as follows:
 - a. Specific performance of the agreement ; and
 - b. An order that the Defendant do all such acts and execute all such documents as maybe necessary to transfer the property to the Plaintiff.
 - iv. That Learned Chief Magistrate erred when it impliedly ruled that it was *functus* in relation to the prayers that was not addressed at all in his final judgment.
- [13] If court below did not grant the relief for specific performance there is no provision to inquire from the court below, again, after sealing the judgment .There is no appeal from both judgment made on 4.3.2020 or 24.9.2020 and damages awarded was also paid. It is presumed that judgment that was sealed on 7.10.2020 was served to the Defendant to comply and Defendant had complied.
- [14] Plaintiff admits that the Ruling made on 2.12.2012 was not an order he sought from court and it serve no purpose. Appeal Ground 2 states that then learned Chief Magistrate had erred in law and fact on this. It is not clear under which provision an application made to court for the court to revisit a decision for which it had already

awarded damages and concluded on 24.9.2020 and in the Ruling admitted that it was also sealed on 7.10.2020.

[15] Plaintiff in the statement of claim only sought an interim restraining order and never sought a permanent injunction. This is understandable as permanent restraining order will not serve any purpose as final relief for Plaintiff. On 25.7.2017 court below made restraining order transferring the Land and this was till final determination of the action.

[16] Final determination of this action in court below concluded with assessment of damages which was assessed at \$30,000 and Plaintiff had sealed said orders according to the Ruling of court below and Defendant had complied with said orders by payment of the said sum.

[17] Plaintiff state that court below had not determined the claim for specific performance. So the failure to grant the relief by court cannot be addressed by making a request to court below, which prompted the Ruling of 2.12.2020 after sealing of the judgment.

[18] Accordingly, the Ruling on 2.12.2020 is set aside.

[19] This appeal is confined to the Ruling which had no legal basis and was set aside fully. The interim injunction was operational only when assessment of damages concluded as it was an interim relief and it cannot revive by the court below.

[20] This appeal should end with setting aside of the Ruling of 2.12.2020, but again Plaintiff is seeking further orders in the appeal, in my mind there is no room for such orders as there was no basis for the Ruling on 2.12.2020 hence there cannot be any orders other than setting it aside.

[21] Even if I am wrong on the above order for specific performance cannot be sought in this appeal as appeal is confined to the Ruling made on 2.12.2020. Without prejudice to the above it is further discussed as additional ground for rejecting such order in this appeal

FURTHER ORDERS – SPECIFIC PERFORMANCE

[22] When this Appeal was argued before this court on 22.2.2023 both parties did not address application of Order 19 rule 6 of High Court Rules 1988 to the claim of Plaintiff in court below. So the court requested both parties to address this issue of application of Order 19 rule 6 of High Court Rules 1988 to the claim in court below in order to seek specific performance in this court.

- [23] This was done to address on the issue if there was an error in said application of Order 19 rule 6 of High Court Rules 1988 to the claim in court below.
- [24] Plaintiff had stated that there was no error on the said application of Order 19 rule 6 of High Court Rules 1988 by court below on its judgment handed down on 4.3.2020.
- [25] If so Plaintiff should point out under which rule specific performance can be ordered in default of pleading in terms of Order 19 rule 6 of High Court Rules 1988.
- [26] This is required as Plaintiff is seeking specific performance in this Appeal, which was not addressed in the Ruling of 2.12.2021.
- [27] Plaintiff in the further submission state that Order 19 rule 6 of High Court Rules 1988 , is applicable to their claim hence court below was correct in the said application. If so specific performance must be an order stated in rule 2 to 5 in Order 19 of High Court Rules 1988.
- [28] There is no issue as to court below using High Court Rules 1988, in the absence of specific provision to deal, but specific performance should be an order that can be granted under said provision for Plaintiff to seek such an order in this appeal.
- [29] Order 19 rule 6 of High Court Rules 1988 states
- ‘6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, **and no other claim then**, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any’(emphasis made)
- [30] Plaintiff’s counsel did not in the further submissions addressed the claim for specific performance which rule of Order 19 rule 6 of High Court Rules 1988 applied. In my mind this was an issue that should have addressed, when opportunity was given to both parties. In order for Plaintiff to seek specific performance this is required.
- [31] Specific performance is an equitable claim and such a remedy to perform a particular act, could not be granted in the appeal against an order made after pronouncement of judgment and sealing of it. Apart from that, Order 19 rule 6 of High Court Rules 1988 confined to certain claims only.
- [32] Plaintiff is unable to show his claim for equitable relief fall to any of the claims stated in the said provision. It can only be applied when there are **only** mixed claims of

liquidated demand (rule 2), unliquidated damages (rule 3), detention of goods (rule 4) and Claim for possession of land (rule 5). Accordingly a claim for specific performance which is an equitable remedy to perform a certain act cannot be ordered in terms Order 19 rule 6 of High Court Rules 1988. Accordingly, the request for such an order in this Appeal is without merit as Plaintiff in the submissions had stated that application of the said provision is correct.

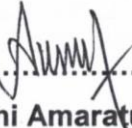
CONCLUSION

[33] The decision of 2.12.2021 is set aside as there was no order sought by Plaintiff for a permanent injunction and the interim orders made ex-parte was only till further orders of the court. No order for specific performance be made in this Appeal for reasons given. No order for costs made considering circumstances.

FINAL ORDERS:

- a. Decision of court below handed down on 2.12.2021 is set aside.
- b. Appeal allowed.
- c. No costs.




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Deepthi Amarātunga
Judge

At Suva this 7th October, 2024.

Solicitors

Lajendra Lawyers
Neel Shivam Lawyers