

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

Civil Action # **HBC 360 of 2015**

**BETWEEN:**            **INDAR SEN** of Buiduna, Nausori, Businessman.

**Plaintiff**

**RASHMI DEVI** aka **RESHMI DEVI** of Duilomaloma Road, Fiji,  
occupation unknown as Executrix and Trustee of the **ESTATE of**  
**SATISH PRAKASH.**

**First Defendant**

**RASHMI DEVI** of 16 Sawani, Nausori, Occupation unknown.

**Second Defendant**

**NIKHIL PRAKASH SHARMA** of Duilomaloma Road, Nausori, Fiji.

**Third Defendant**

**THE REGISTRAR OF TITLES** of Level 1, Civic House, Victoria  
Parade, Suva.

**Fourth Defendant**

**THE ATTORNEY GENERAL OF FIJI** of Level 7, Suvavou House,  
Victoria Parade, Suva.

**Fifth Defendant**

**Representation:**

**Plaintiff:** Mr Vulakouvaki JD (Torah Law).

**For 1<sup>st</sup> to 3<sup>rd</sup> Defendants:** Mr Chand A (Amrit Chand Lawyers).

**For 4<sup>th</sup> & 5<sup>th</sup> Defendants:** Ram V (AG's Office).

**Date of Trial:** 26<sup>th</sup> and 27<sup>th</sup> August 2024.

**Judgment**

[1] The Plaintiff's claim is that he had entered into an agreement with Satish Prakash to purchase CT 37386, being Lot 7 on DP 8639 (Land known as "Laulau" having an area of 4 hectares 240 square metres). Satish Prakash passed away in 2022. The 2<sup>nd</sup> Defendant is

his daughter and executor and trustee of his estate. The property was transferred in the name of the 3<sup>rd</sup> Defendant through a trust deed. The Plaintiff is alleging that the property was transferred by fraud to the 2<sup>nd</sup> Defendant and then to the 3<sup>rd</sup> Defendant. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants position is that the Plaintiff has wrongfully initiated action against them. The 4<sup>th</sup> and 5<sup>th</sup> Defendants are nominal defendants. They all filed a statement of defence.

[2] The parties convened a PTC where the parties disputed the following facts:

- (a) Whether the deceased had entered into an agreement with the Plaintiff to sell the land for \$30,000.00
- (b) Whether deposit of \$10,000.00 was paid over to the deceased?
- (c) Whether the Plaintiff and the deceased had instructed Tirath Sharma lawyers to act for them and prepare all legal documents pertaining to the sale?
- (d) Whether the deceased had legally terminated the agreement?
- (e) Whether the second and third defendant were made aware of the deceased dealing?
- (f) Whether Trust Deed to transfer the land was lawful?
- (g) What was the intention behind the transfer?
- (h) Whether the deceased transferred the land to his daughter sometimes in 2016 on trust for Nikhil Prakash Sharma?

[3] We shall not go over each issue in dispute. The First, Second and Third Defendants pleaded that they were totally unaware of any agreement or any deal between the Plaintiff and the deceased in respect of the said land. A Sale and Purchase Agreement was entered into between the Plaintiff and Satish Prakash dated 28<sup>th</sup> October 2012. It was prepared and witnessed by Mr. Tirath Sharma. Mr. Sharma gave evidence in court and confirmed that he prepared and witnessed the said agreement. In contrast to the pleadings the evidence in Court of the first and second defendant was that she knew that her father signed a sale and purchase agreement to sell the land to the Plaintiff. The evidence of the Third Defendant was that he was not aware of the dealing between the Plaintiff and Satish Prakash. The first question whether the deceased had entered into an agreement with the Plaintiff to sell the land for \$30,000.00 is answered in the affirmative. Yes, they had entered into a sale and purchase agreement. A deposit of \$10,000.00 was paid to Satish Prakash and Mr. Sharma had acted for both the parties.

[4] An important issue in this matter is whether the agreement was lawfully terminated by Satish Prakash. To determine this we have to look at the agreement and the evidence given and the documents tendered in court. Our starting point is the Sale and Purchase Agreement.

[5] At the time of the trial, Satish Prakash is deceased. He passed away in mid-2022. The Sale and Purchase Agreement was entered into on 28<sup>th</sup> October 2012. On the date of execution of the agreement, the Plaintiff paid Satish Prakash \$10,000.00. This was the deposit. The balance sum of \$20,000.00 was to be paid within 3 years from 28<sup>th</sup> October 2012. This would take it to 28<sup>th</sup> October 2015. The evidence of the Plaintiff is that he took loan from FDB to pay for the land. The loan was approved by FDB and communicated to the

Plaintiff via letter dated 19<sup>th</sup> June 2015. The total loan approved by FDB was \$21,500.00.

[6] According to the Plaintiff he was ready to settle, however, Satish Prakash did not appear for settlement. FDB was to mortgage the property. Furthermore, according to the Plaintiff, Satish Prakash told them at the bank (FDB) he did not want to sell the property. There was nothing in writing. Later, Satish Prakash wrote a letter dated 29<sup>th</sup> October 2015 to Tirath Sharma cancelling the agreement. In cross-examination the Plaintiff denied that he failed to pay within 3 years. His position and evidence was that he took loan from FDB before the end of the 3 year period and wanted to settle the balance sum of \$20,000.00 to Satish Prakash. It was Satish Prakash who refused to settle. The evidence of Tirath Sharma was that the vendor, Satish Prakash did not want to proceed with the sale. From the evidence of Rashmi Devi I note that she and her father, Satish Prakash had gone to FDB to sign some papers and they were chased away. She was not clear and neither was her evidence tested what they had actually gone for. What did Satish Prakash go to FDB to sign? We know it was the Plaintiff who took the loan from FDB. Ms Devi's other evidence was that her father felt cheated that he signed the transfer and did not receive the \$20,000.00. On the evidence before me I find that the Plaintiff took steps to settle the \$20,000.00 within the 3 year period. His loan was approved in June 2015.

[7] The Sale and Purchase Agreement in Clause 2 sets out the price and deposit. The full purchase price is \$30,000.00. A deposit of \$10,000.00 was payable upon execution and the evidence is that it was paid upon execution. The balance of \$20,000.00 was payable within 3 years from 28<sup>th</sup> October 2012. The settlement was to take place upon completion of the full payment (Clause 3). The Plaintiff's default, being the purchaser is covered under Clause 12 of the agreement. It provides in 12. 1 as follows:

*“If the purchaser shall make default in payment of any moneys when due or in the performance or observance of any other stipulations or agreement on the Purchaser's part herein contained and if such default shall continue for the space of fourteen (14) days from the due date then and in any such case the Vendor without prejudice to any other remedies available to him may at his option exercise all or any of the following remedies namely: ...”*

[8] What Clause 12.1 of the Sale and Purchase Agreement does is provide remedies and options which the vendor (Satish Prakash) could exercise in the event of default in payment of monies when due under the terms of the Agreement. If the default on the part of the Plaintiff (Purchaser) shall continue for the space of 14 days from the due date. 14 days from the due date of the 3 year period would mean 14 days from 28<sup>th</sup> October 2015, which would come to 11<sup>th</sup> November 2015. Satish Prakash could exercise the options available to him in clause 12 of the Sale and Purchase Agreement from 11<sup>th</sup> November 2015. Satish Prakash exercised the option before that period by giving a letter dated 29<sup>th</sup> October 2015. This was 2 days after full payment of twenty thousand was due. Mr. Prakash could not have lawfully exercised the options according to the terms of agreement before the 14 day period. The letter of 29<sup>th</sup> October 2015 has no legal basis. Which means that the Agreement as not lawfully terminated. Mr. Prakash did not comply with clause 12.1 of the Agreement.

[9] Clause 18 of the agreement contains special conditions as follows:

- “ • *The purchaser shall be given uninterrupted use of the property upon execution hereof.*
- *That in the event the purchaser is unable to make the payments in terms of this agreement than the vendor shall hand back the possession of the property to the vendor and the deposit shall be forfeited.*

Clause 18 must be read with clause 12.1 of the agreement. Clause 12.1 provides that in the event default by the Purchaser continues for 14 days from the due date the Vendor could exercise the options available to him under Clause 12.1. The relevant special conditions come into effect upon default by the Purchaser and upon it continuing for 14 days from which the monies were due.

- [10] On the evidence before I do not find that the Plaintiff (Purchaser) breached the agreement. He was ready to pay the Vendor. The Vendor did not receive the monies, being the balance sum of \$20,000.00. The vendor acted in an untimely manner by rescinding the agreement before the end of the 14 day period under clause 12.1.
- [11] The Plaintiff commenced court action on 24<sup>th</sup> November 2015. The property was transferred to Rashmi Devi in trust for Nikhil Prakash Sharma on 27<sup>th</sup> July 2016. The case was before Justice Kumar (as he was then). On 5<sup>th</sup> July 2019 the property was transferred to Nikhil Prakash Sharma. It is clear from the evidence and the court records that nothing stopped the transfer to take place. There was no stay or injunction in place preventing such transfer. However, the matter was pending in court. Satish Prakash and the others knew that a determination on the issue of the property was pending and the Court decision was pending.
- [12] The Trust Deed dated 24<sup>th</sup> October 2015 is a peculiar document. It is a unilateral deed of Rashmi Devi. Rashmi Devi is a sole party in the deed and she declares that she holds the land for Nikhil Prakash Sharma on trust until he attains 21 years. Satish Prakash is not a party to the deed. Under section 4 (1) of the Property Law Act 1971 a party that signs the deed is bound by the deed. The Transfer document number 831457, registered on 27<sup>th</sup> July 2016 in a clause refers to as follows “**PURSUANT** to a written Declaration of Trust dated 24/10/15, the Transferor **had declared** that the above land will at all times held by RASHMI DEVI in trust for NIKHIL PRAKASH SHARMA of Dui Lomolomo Road, Student [the beneficiary]” (my emphasis and underlining). Having perused the Trust Deed I do not find any such declaration by Satish Prakash, the Transferor. In fact Satish Prakash is not even a party or signatory to the Trust Deed. It is incorrect to state in the Transfer and refer that Transferor (Satish Prakash) had declared that the above land will at all times be held by Rashmi Devi in trust for Nikhil Prakash Sharma. There is no such declaration by Satish Prakash. He is not even a party to the Trust Deed.
- [13] The Trust Deed is a unilateral deed of Rashmi Devi declaring that she holds the said land for Nikhil Prakash Sharma. Satish Prakash was not a Party to the deed. Section 4 (1) of the Property Law Act 1971 which is relevant in this matter states that “every deed, whether or not affecting property, shall be signed by the party to be bound thereby, ...” The deed dated 24<sup>th</sup> October 2015 did not bind Satish Prakash. He was not a party to the deed. He did not sign that deed. The deed was about the property belonging to Satish Prakash to be held in trust by Rashmi Devi for Nikhil Prakash. Rashmi Devi had no

power or authority over the property to declare that she will hold the said property in trust for Nikhil. What was required was for Satish Prakash to be a party to the deed. He could declare that he was giving the property to Rashmi Devi to hold on trust until Nikhil turned 21. In the absence of Satish Prakash's declaration, it is a unilateral declaration by Rashmi Devi that she is holding the land on trust for Nikhil. That declaration is unlawful. Rashmi Devi had at that time no legal authority over the land to make such a declaration.

- [14] The Transfer from Satish Prakash to Rashmi Devi pursuant to the trust deed is unlawful as the Trust Deed which is referred to in the Transfer no. 831457 does not declare that Satish Prakash (the Transferor) declared in the Trust Deed that Rashmi Devi hold the land for Nikhil Prakash Sharma until he turns 21. Satish Prakash was neither a party nor a signatory to the Trust Deed of 24<sup>th</sup> October 2015. The letter cancelling the agreement by Satish Prakash was dated 29<sup>th</sup> October 2015. This letter I have found to have no legal basis. The intention of Satish Prakash and Rashmi Devi from the letter and the Trust Deed shows their unwillingness to carry into effect the sale of the said property with the Plaintiff. The preparatory work started with a unilateral deed by Rashmi Devi. They then got the property transferred in the name of Rashmi Devi to hold in trust for Nikhil Prakash Sharma until he turned 21. The Deed did not include Satish Prakash. Later the transfer that was made pursuant to the Deed incorrectly references to Satish Prakash as declaring in the deed that Rashmi Devi hold the land for Nikhil. The documents speak for themselves. They are the evidence in this matter. The intention of the parties and the manner in which they worked things out are shown in the documents. The dates are clear. The deed and the transfer when read together do not correspond with each other. The Transfer of the land through the Trust Deed was improper and unlawful. The subsequent transfer is unlawful. The parties were well aware that the matter was pending in court. The manner in which they acted clearly shows their intentions.
- [15] The Plaintiff has pleaded fraud on the part of Satish Prakash and Rashmi Devi. Did the actions of Satish Prakash and Rashmi Devi in transferring the property to Nikhil Prakash Sharma amount to fraud. Section 41 of the Land Transfer Act 1971 states that "*any instrument of title or entry, alteration, removal or cancellation in the register procured or made by fraud shall be void as against any person defrauded or sought to be defrauded thereby and no party or privy to the fraud shall take benefit therefrom.*" The Land Transfer Act 1971 does not define fraud. In **Assets Company Limited v Mere Roihi and Others (Consolidated Appeals)**, [1904-07] All ER Rep Ext 1599, [1905] AC 176 the Privy Council in dealing with fraud stated "*...fraud in these Acts is meant actual fraud--ie, dishonesty of some sort; not what is called constructive or equitable fraud, an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud...*" In **Waimiha Sawmilling Co. Ltd. v. Waione Timber Milling Co. Ltd.** (1926) AC 101, the Privy Council stated that fraud implies some act of dishonesty. It stated at p. 106 that "*if the designed object of a transfer is to cheat a man of a known existing right, that is fraudulent*".
- [16] I note Justice Jiten Singh's commentary in **Narayan v Sigamani** [2008] FJHC 204; HBC059.2004 (5 September 2008) where he stated:

*"Section 40 of the Act provides:*

***"Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any estate or interest in land subject to the provisions of this Act shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or in any previous proprietor of such estate or interest is or was registered, or to see to the application of the purchase money or any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."***

*[15] Fraud is not defined in the Act itself except in a rather negative way as shown by the underlined words above. Absent a statutory definition of fraud, the concept of fraud is left to the courts to explain and develop.*

*[16] Despite what the section says, knowledge still remains an essential ingredient of fraud because without being aware of an interest or estate, how can one be fraudulent. However, cases suggest that in addition to knowledge, there must be dishonesty that is dishonest intent to defeat an equitable estate or interest in land. The words "moral turpitude" also have been used. Thirdly fraud must be brought home to the registered proprietor whose interest it is sought to be impeached. The onus therefore on the defendants was to show knowledge, dishonest intent and thirdly that it was the plaintiffs who were fraudulent."*

[17] In this matter the property did not exchange hands by sale or by payment of monetary consideration from Satish Prakash to Nikhil Prakash Sharma. The mode was by formulating a deed in the name of Rashmi Devi. The deed was poorly drafted. It did not include Satish Prakash as the owner, vendor or transferor of the land. Neither was Satish Prakash a party to the Trust Deed. Rashmi Devi solely entered into the trust deed. Later that trust deed was used to execute the transfer. These all were part of the scheme to transfer the property from Satish Prakash to Nikhil Prakash Sharma. Satish and Rashmi were aware that this matter was pending in Court. They proceeded to transfer the property, rather than wait for the court to make a determination. The knowledge of the parties and the dishonest intent of Satish Prakash and Rashmi Devi stands out. I find that they acted fraudulently to transfer the property while the court proceedings were on foot. They could simply have waited for the matter to have been determined. The manner in which they acted clearly showed their intention to deprive the Plaintiff of the property.

[18] I now move on to the counterclaim by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. They are claiming legal costs and damages. The counter claim by the Three Defendants is misconceived. The Plaintiff has succeeded in his claim against them. He has proven his claim. It is clear in this case that Satish Prakash entered into an agreement with Indar Sen for the sale of his property. Satish Prakash knew of Indar Sen's legal interest, who had paid a deposit for the property. The Court had yet to determine various aspects between them. Satish Prakash and Rashmi Devi procured a trust deed and cheated Indar Sen of his legal or equitable interest.

Satish Prakash and Rashmi Devi are guilty of fraud. Therefore the title can be impeached. I find it odd for the lawyers of the 3 Defendants to submit in their written closing submissions claiming damages for defamation. There is no issue of defamation. The Plaintiff had a genuine claim against Satish Prakash. Following his demise he was replaced in the action by Rashmi Devi his executor/trustee. Nilesh Prakash was involved as the land was transferred to him. There is no defamation in this matter. None has been pleaded nor proven in court. The 3 Defendant's counter claim is dismissed.

[19] For the reasons I have given I now make the following declarations and grant the following reliefs:

- (a) **The notice of termination dated 29<sup>th</sup> October 2015, given by Satish Prakash to Indar Sen terminating the Sale and Purchase Agreement is unlawful.**
- (b) **The Deed of Trust dated 24<sup>th</sup> October 2015 entered into solely by Rashmi Devi is null and void.**
- (c) **The transfer of the property from Satish Prakash to Rashmi Devi (Pursuant to the Deed) to hold in trust for Nikhil Prakash Sharma until he turned 21 and later from Rashmi Devi to Nikhil Prakash Sharma are fraudulent and unlawful. The transfers are declared null and void and have no legal effect. The Registrar of Titles is directed to cancel these transfers.**
- (d) **Rashmi Devi as Executor and Trustee of the Estate of Satish Prakash is directed to lodge the Transmission by Death for the said property.**
- (e) **Indar Sen and Rashmi Devi as Executor and Trustee of the Estate of Satish Prakash are to attend to settlement within 60 days of this Judgment at the Registrar of Titles Office on a date and time to be determined by Indar Sen.**
- (f) **The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are to pay the Plaintiff, Three thousand Dollars (\$3000.00) as costs. The costs have been summarily assessed.**



.....  
Chaitanya S.C.A. Lakshman  
Puisne Judge

18<sup>th</sup> October 2024

