

IN THE HIGH COURT OF FIJI AT SUVA

IN THE CENTRAL DIVISION

CIVIL JURISDICTION

Civil Action No. HBC 162 of 2025

BETWEEN: **RAM LAL, AMAR PRASAD AND VIJAY NARAYAN**

FIRST PLAINTIFF

AVINESH DUTT SHARMA

SECOND PLAINTIFF

AND: **B. S. SHANKAR & CO PTE LTD**

FIRST DEFENDANT

AND **RAM CHAND** as Director of B.S. SHANKAR & CO PTE LTD

SECOND DEFENDANT

Date of Hearing : 8 May 2025
For the Applicant: Mr Chand A.
Date of Decision : 8 May 2025
Before : Waqainabete-Levaci, SLTT Puisne Judge

EX-TEMPORE R U L I N G

(EX PARTE APPLICATION FOR INJUNCTIVE ORDERS)

PART A - BACKGROUND

1. The Applicant/Plaintiffs, as Trustees, had entered into a Memorandum of Understanding with the owners of the piece of land (Defendants) in which the mandali (place of hindu worship) stands to practice their cultural and religious requirements of celebrating hindu festivals and Ramayan Sessions every Tuesday at the mandali.
2. When the Second Plaintiff organized a grant from Multi Ethnic Affairs be obtained to maintain the temple buildings and repair fencing with the title under the Defendant's name, the Defendant refused and locked the worshippers and devotees out. The Defendants locked the main gate from 26th 27th of April 2025 refraining the devotees and worshippers from practicing worship.
3. The Applicant/Plaintiffs have filed an application seeking interlocutory orders seeking that:
 - (i) their Ramayan Mandali be open for devotees and worshippers enter for worship;
 - (ii) that the Defendants and their servants or agents be restrained from interfering or disturbing the Applicant/Plaintiff in their operations of the Ramayan Mandali for the weekly programme continue every Tuesday, all hindu festivals continue to be celebrated and cultural programmes be taught and practiced until the final determination of the matter.

PART B: AFFIDAVIT

4. The Applicant/Plaintiff has filed an Affidavit deposing that the Defendants had been registered as the owner of the zoned religious property where the mandali now stands.
5. That the Trustees had dissolved all other committees and allowed the 2nd plaintiff and his team to run the Bhakti Marag at Navua mandali on 27th April 2023
6. Thereafter a prayer was organized by the Defendant on the Mandali premises on 9th November 2023 and during the prayer session (pooja) Ram Chand admitted he would donate the land on which the Mandali stood to the Mandali.

7. The Applicant/Plaintiff deposed that the 2nd plaintiff took over the mandali and carried out upgrading of the temple buildings and the fence and carried up cleaning with his own labourers. When he approached the Defendants to transfer the land or to allow for further upgrading of the buildings and fencing, the Defendant was aggressive, resulting in having locked the gates to the mandali.

PART C : LAW ON EX-PARTE INJUNCTIONS

8. Order 29 Rule 1 (1) of the High Court Rules provides as follows:

‘An application for grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in the party’s writ, originating summons or third party notice, as the case may be.’

9. The application before the Court seeks for restraint being imposed against the Defendant/Respondents from prohibiting the Applicant/Plaintiffs from entering and practicing worship led by the 2nd Plaintiffs.
10. In Sharma -v- Sharma [2024] FJCA 233; ABU0015.2024 (28 November 2024) Premlatika JA, Qetaki JA and Clark JA stated:

“25] An injunction is an equitable remedy granted at the discretion of the court. The power which the court possesses to grant an injunction should be cautiously exercised only on clear and satisfactory grounds. An application for an injunction is according to some an appeal to an extraordinary power of the court and the applicant is bound to make out a case showing clearly a necessity of its exercise: Hubbard & Another v Vosper & Another [1972] 2QB 84 and American Cyanamid Co v Ethicon Ltd (supra) where Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as leading source of the law on interim injunctions. They are:

- (1) Whether there is a serious question to be tried at the hearing of the substantive matter;
- (2) Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and

(3) In whose favour the balance of convenience lies if the injunction is granted or refused.

These principles have been adopted and applied in our courts: Pacific Timber Development Limited v Consolidated Agriculture Fiji Ltd, and Digicel (Fiji) Ltd v Fiji Rugby Union, (supra) are examples and there are numerous other cases.'

11. In the case of Wakaya Ltd -v- Chambers [2012] FJSC 9; CBV 0008.2011 held that the granting of an interim injunction against the Respondents restraining them from prohibiting the petitioner from burying Alexander on the disputed piece of land was an error of law as there was no cause of action which allowed for the court to consider whether an injunctive relief should be granted or otherwise. They stated -

'35. It is the view of this Court that the High Court which had jurisdiction to entertain an application for an interim injunction in terms of Order 29 Rule 1 of the High Court Rules 1988 which permits such an application to be made to the High Court whether or not a claim for an injunction is included in the writ of summons, erred in granting same as the application was not in accordance with the main relief that they had sought as set out in the statement of claim, which relief was for damages. Consequently, the refusal to dissolve same too would be erroneous. This Court is in agreement with the view of the Court of Appeal that the present case did not come within the principles enunciated in the American Cyanamide v Ethicon [1975] UKHL 1; 1975 AC 396 regarding the granting of interim injunctions as there was no question of balance of convenience in the circumstances of the case as there was no infringement of a proprietary or legal right of the Petitioner.'

12. In determining whether or not to grant injunctive reliefs in the interim, the Court must first determine whether there is an infringement of a proprietary or legal right of the Applicant/Plaintiff for which an injunction lies.
13. In this instance, the Applicant/Plaintiffs claim that by virtue of a Memorandum of Understanding, the Applicant/Plaintiff was entitled to practice and conduct worship in the Mandali without interference and prohibition by the Respondent/Defendant. These are issues that can only be determine substantively on trial and not by affidavit alone.

14. The matter above rests at the heart of the claim, which is a cause of action.
15. The Court must therefore consider whether there are:

Serious Question to be Tried

16. The Applicant/Plaintiff's contention is that there is a breach of the Memorandum of Understanding which resulted in the Applicant/Plaintiffs not practicing their worship on the said piece of land in payment of service in kind by way of upkeep, cleaning and the continuous practice of religious ceremonies on the said land.
17. The Applicant/Plaintiff have also sort for transfer of the property as additional reliefs to be granted to them. Given that the property, as deposed in the affidavit, was solely re-zoned for religious purposes and then misleadingly registered under the name of the Defendants, there are reasonable grounds for seeking reliefs of such nature.
18. The Court finds these are serious questions to be tried by the Court

Damages are not an Adequate Remedy

19. In the case of American Cyanamid (Supra) which was cited by the case of Sharma -v- Sharma (Supra) it stated:
20. [33] Lord Diplock, in American Cyanamid Co, on damages and undertaking for damages, stated:

".....the governing principle is that the court should first consider whether if the Plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendants continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, nor interlocutory injunction should normally be granted, however strong the Plaintiffs claim appeared at that stage. If, on the other hand, damages would not provide an adequate remedy for the Plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the

contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the Plaintiffs undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.”

21. The Applicant/Plaintiff is unable to practice worship at that particular mandali after having invested into the upkeep, repairs and upgrading of the buildings as well as practicing cultural traditions at hindu festivals, the very essence of the Memorandum of Understanding.
22. They claim for damages against their rights to practice worship within the ambit of the agreement between the Defendants and the Plaintiffs.
23. However the damages, may not be adequate as the Applicant/Defendants have been restrained from practicing at the location for worship, Hindu customs and practices and for festivals.

On a Balance of Convenience

24. From the submissions as well as Affidavit, no undertaking was offered as to damages by the Applicant/Plaintiff. The Applicant/Plaintiff operates a religious trust organization. In Sharma –v- Sharma (Supra) it was held that:

[36] The 1st, 2nd and 3rd Respondents conceded that no undertaking had been given, however, that fact on its own, does not affect the underlying merits of the case or the serious issues identified that warrant judicial consideration. The “*failure to proffer sufficient evidence of their financial position*” is not in the end determinative of whether or not an injunction should be granted or maintained: **Druma v Nakete** [2008] FJHC 94; HBC214.2007 (14 April 2008). In this case, although no substantive undertaking for damages was given by the Plaintiff, the court took into consideration the circumstances in its entirety and granted the injunction. At paragraph 8.2 of the judgment, the learned judge stated:

“I am persuaded that it is appropriate in the present case to look at the question of damages and that of balance of convenience as interlinked.”


25. The Applicant/Plaintiff has sort for interlocutory reliefs and has not offered any undertaking. Given that they are a Trustee operating under a religious trust with membership charged at \$2 per person, it is clear that there are no adequate properties for which undertakings can be entered into on behalf of the Organization.
26. Hence when considering the question of damages on a balance of convenience, I find that there are reasonable grounds to grant the orders sort for the time being, given that the parties have been restrained from practicing their worship on the basis of an Agreement with the registered proprietor of the property where the mandali is built.
27. However the Court will grant interim injunction and have the application served inter parte with a new returnable date.

ORDERS

28. **The Interim orders be granted as follows:**

- (1) Defendants to open the Shree Sanatan Dharam Shiv Om Kaar Ramayan Mandali premises gate;**
- (2) The Defendants, their agents or servants are restrained from interfering or causing disturbances to the Plaintiffs in operation of the Shree Sanatan Dayaram Shiv Om Kaar Ramayan Mandali and in practice of their weekly Tuesday Ramayan, celebration of hindu festivals and other cultural programs;**
- (3) That orders (1) and (2) continue unless court determines otherwise;**
- (4) No order as to costs.**
- (5) That this application be served inter parte with a returnable date.**




Mrs. Senileba LTT Waqainabete-Levaci
Puisne Judge