

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 80 of 1978

000008

Between

Z O H R A
d/o Sukhai

Plaintiff

- and -

INTAJ ALI
s/o Razak Ali Shah

Defendant

Messrs. M. T. Khan & Co.
Messrs. S. C. Verma & Co.

Solicitors for the Plaintiff
Solicitors for the Defendant

R U L I N G

The defendant seeks an interim injunction to restrain Fiji Sugar Corporation from paying out cane proceeds, in respect of Farm No. 3293 Tagi tagi Sector to the plaintiffs pending hearing and determination of the principal action.

The Fiji Sugar Corporation has not been made a party to the application, though no doubt it would honour any order by the Court.

The action concerns land of which the first plaintiff was at the material time the registered lessee. On 24/8/78, with the consent of the Native Land Trust Board the land was transferred into the name of the second plaintiff.

The defendant alleges that in 1977 the first plaintiff entered into an agreement with him whereby the defendant was to purchase the land for \$20,000, and that of this amount \$4,000 has already been paid to the first plaintiff. Apparently the defendant has occupied the land since about 1974 and has cultivated it. No consent of the Native Land Trust Board has ever been obtained in respect of the defendant's occupation of the land or in respect of any transfer of the land to the defendant.

According to the first plaintiff the defendant never made any or any satisfactory arrangements to complete the financing of the purchase and so the first plaintiff gave notice of termination and sold the land to the second plaintiff.

Both the defendant and the second plaintiff claim to be cultivating the land, or part of it, at the present time, and clearly there are issues to be resolved here. One thing that complicates the matter is the fact that the Bank of New Zealand has a duly registered crop lien executed by the second

000009

(2)

plaintiff in respect of the land, and the Bank would be very much affected by the interim injunction as sought.

One reason the defendant gives for seeking the injunction is that his counterclaim if successful will be defeated unless the injunction is granted. It is probable that the defendant's only cause of action is to seek damages from the 1st plaintiff, and possibly the second plaintiff. It is possible also that his only cause of action remaining is in accordance with the terms of the settlement reached between the parties which were not made part of a court order. Although this was stated to have fallen through that is not quite correct. The position is that the defendant failed to make satisfactory arrangements to get finance to purchase the plot in time, but that is not an end of the matter. The terms of the settlement in fact provided for this contingency. It may well be that the defendant's pleadings will have to be substantially amended.

I am by no means satisfied that the defendant's claim will be rendered nugatory unless the injunction is granted and in view of the unsatisfactory nature of the pleadings and the course the action has taken I decline to issue the injunction applied for.

LAUTOKA,
12th September, 1980

(sgd.)
G. O. L. Dyke
JUDGE