

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 6 of 2019
High Court Civil Action No. HBC 103 of 2014

BETWEEN : **RAJ DATT**

Appellant

AND : **1. SUNIL DATT**
2. RAM DATT
3. ANIL DATT
4. MANJULA DATT
5. DIRECTOR OF LANDS

Respondents

Coram : **Lecamwasam, JA**
Almeida Guneratne, JA
Jameel, JA

Counsel : **Appellant (through his Power of Attorney holder)**
1st to 3rd Respondents in person
4th Respondent Absent and Unrepresented
Mr V Chauhan for 5th Respondent

Date of Hearing : **1 February, 2020**

Date of Judgment : **28 February, 2020**

JUDGMENT

Lecamwasam, JA

[1] I agree with the reasons and conclusion of Almeida Guneratne, JA.

Almeida Guneratne, JA

[2] This is an appeal against the Judgment dated 14 December, 2018 of the High Court of Lautoka. By that Judgment the High Court dismissed the Appellant's (Plaintiff's) action in which he sought a declaration that the transfer of certain leases issued to the 1st to 4th Respondents by the 5th Respondent was done fraudulently and in bad faith and that therefore the same be declared null and void. The Appellant also prayed that the 1st to 2nd Respondents be restrained from entering the subject matter of the said leases which he claimed to have been in occupation from the year 1990 in consequence of a deed of (family) settlement in which context he pleaded also a constructive trust. Issue of false representation in the context of certain testamentary proceedings had also been raised by the Appellant. The Court also dismissed the 1st Respondents counter-claim for loss and damages flowing from the Appellant's intrusion on the land from 1990. Appellant's Statement of Claim is at pages 45 – 50, the 1st Respondent's Statement of Defence and Counter-Claim at pages 181-186, Appellant's Affidavit in Opposition thereto at pages 176-179 and the 5th Respondent's Statement of Defence at pages 111-115 of the Copy Record.

[3] The facts and circumstances as well as the legal issues contained in the pleadings referred to above have been crystallised at the Pre-Trial Conference (vide pages 494 – 496 of the Copy Record.

“PRE TRIAL CONFERENCE MINUTES

AGREED FACTS

1. *That the Plaintiff's father the late Mr Badal had the following children namely:*
 - i. *Shiu Dulari*
 - ii. *Shiu Kumari*

- iii. *Suruj Kumari*
- iv. *Chandar Kumari*
- v. *Rattan Kumari*
- vi. *Deo Kumari*
- vii. *Rudra Datt*
- viii. *Prem Datt*
- ix. *Raj Datt*
- x. *Muni Datt*
- xi. *Rishi Datt*
- xii. *Rajend Datt*

- 2. *That the 1st, 2nd, 3rd and 4th Defendants' father Rudra Datt is the brother of the Plaintiff.*
- 3. *That Rudra Datt was the registered lessee of the Crown Lease ref no. 4/10/1500 situated at Wailoaloa, Nadi and crown lease no. 10093 [L/D REF 4/10/1926] situated at Navakai, Nadi.*
- 4. *That Rudra Datt vacated and sold the Crown Lease ref no 4/10/1500 situated at Wailoaloa, Nadi to Club (Fiji) Limited in the sum of \$90,000.00.*
- 5. *That Sheela Wati wife of Rudra Datt became the administratrix of the Estate of Rudra Datt.*
- 6. *That the First Defendant is the registered lessee of al that piece and parcel of land comprised in Crown Lease No. 14796.*
- 7. *That the First Defendant issued a Notice to Vacate and instituted High Court Action No. 189 of 2004 against the Plaintiff and his families.*
- 8. *That the Court ordered Writ of Possession in favour of the 1st Defendant on the 10th day of November 2005 in High Court Action No. 189 of 2004.*
- 9. *That the First Defendant sought permission from the 5th Defendant to evict the plaintiff and his families*
- 10. *That the 5th Defendant's servants and agents did give consent for subdivision and eviction.*
- 11. *That the 5th Defendant's servants and agents did give consent on the new lease.*

ISSUES TO BE DETERMINED

1. *Whether the purported Deed of Settlement dated 16th October, 1990 was consented or required the consent of the 5th Defendant?*
2. *Whether the purported Deed of Settlement is enforceable in law or whether it is void ab initio?*
3. *Whether the eviction of the Plaintiff from Crown Lease No. 14796 was unlawful and if so, is the Plaintiff entitled to damages.*
4. *Whether the Administratrix of the Estate of Rudra Datt, the late Ms. Sheela Wati, made false representations to the Director of Lands to acquire the subdivision of Crown Lease No. 10093 [L/D Ref 4/10/1926] as particularised in paragraph 16 of the Statement of Claim?*
5. *Whether the Administratrix of the Estate of Rudra Datt, the late Ms. Sheela Wati, acted fraudulently in obtaining Crown Lease No.14796 [L/D Ref 4/10/4158] in the First Defendant's name as particularised in paragraph 17 of the Statement of Claim?*
6. *Whether the Plaintiff is entitled to a share of one quarter area residential site on Crown Lease No 10093 [L/D Ref 4/10/1926] situated at Navakai, Nadi pursuant to the Deed of Family Settlement dated 16th October, 1990?*
7. *Whether there should be a declaration that the transfer of the lease issued to the First Defendant is null and void?*
8. *Whether the Plaintiff is entitled to damages for harassment, intimidation and pain and suffering against the First and Fifth Defendant if the Court finds that the transfers were done so fraudulently?*
9. *Whether the Plaintiff is entitled to interest on the award of damages, if any?*
10. *Whether the Plaintiff is entitled to general damages, punitive and aggravated damages against the First and Fifth Defendants?*
11. *Whether the First Defendant has suffered loss and damages as particularised in paragraph 44 of the First Defendant's Statement of Counterclaim.*

12. *Whether the First Defendant is entitled to compensatory damages and general damages and if so, at what quantum?*

13. *Whether the Plaintiff ought to pay costs to the First and Fifth Defendant on a solicitor/client indemnity basis.*

PRODUCTION OF DOCUMENTS

It will be open for parties to tender documents discovered but not admitted by consent at the trial proper in the normal manner.”

[4] I shall now proceed to set out the grounds of appeal urged and look at the judgment of the High Court (pages 10 to 42 of the Copy Record) in relation thereto, in order to see whether it passes muster and then make my determination in this appeal.

The Grounds of Appeal (pages 5 - 7 of the Copy Record)

“Grounds of Appeal

1. *That the Learned Judge erred in fact and law in not considering the Submissions or the Appellant case in totality.*
2. *That the Learned Judge erred in fact and law by implementing Section (13)(1) of the State Lands Act as this section only applies when dealing such as sale, transfer, mortgages. In common sense it would only apply in this deed when someone applied for subdivision that is the time when the consent is needed. Consent is not needed for a family to make a Deed of Family unless is enforced. The dealing in this would have been subdivided and transfer lots to the Appellant. This was when the consent was needed to refer page 13 of the Judgment in paragraph 26.*
3. *That the Learned Judge erred in fact and law by unclearly stating the case altogether that as from 1990 the Appellant resided on the master lease up till 2005 but did not do any subdivide or transfer without the consent of the 5th Respondent. On page 13(v) of the Judgment the Judge says himself that consent is not needed for the Deed and on page 15 in the bottom says that 5th Respondent has not consented the Deed but failed to acknowledge at page 36 of the Appellants Supplementary Bundles of Documents that they also said once the application for subdivision is made the subdivision will be caused out accordingly to DEED OF FAMILY SETTLEMENT same applies on page 18 in paragraph (x).*

4. *That the Learned Judge erred in fact and law on page 17 of the Judgment of the Court below by not emphasising the Appellants questions to the 5th Respondent witness and noting the name in Judgment.*
5. *That the Learned Judge erred in fact and law by not considering the efforts made by the Appellants to seek consents. The 5th Respondent on numerous occasions to give consent. One is when the Appellant solicitors seek consent to Caveat in 1991 and it was denied. Why? The appellant did have interest in the land then why wasn't the consent granted. The Appellant Son used the same Deed of Family Settlement and the Director of Lands gives him consent to put Caveats on all the lots so why not back then. Is it because back then lot of corruption and frauds and fraudulent acts were taking place. The 5th Respondent is trying to cover their mistakes.*
6. *That the Learned Judge erred in fact and law by not considering the reports of the Lands Officials at the minute from their head file 04/10/1926 which was before him and was included in the bundles of documents during the hearing.*
7. *That the Learned Judge erred in fact and law by not considering that Rudra Datt and Sheela Wati both in their lifetime did agree to allocate the Appellant his share of ¼ area of the crown lease 10093 with the area of 2.2442 hectares. Sheela Wati even stated that the Appellant Raj Datt name on the application when applying for consent for subdivision of CLI0093.*
8. *That the Learned Judge erred in fact and law in finding that if the consent to deed was not given when the application was made then it would have been given automatically and subdivision would have been carried out according to Deed of family settlement as noted on the minutes of page 36 of the Plaintiff's supplementary bundles of documents.*
9. *That the Learned Judge erred in fact and law by not adducing Appellant witnesses evidence in the Judgment on how the process of eviction and fraud took place at the Lands Department. The Learned Judge did not consider fraud in totality in his Judgment.*
10. *That the Learned Judge erred in fact and law by not supporting the evidence adduced during the trial by the Appellant in particular that there was no evidence to suggest or support the finding that the Appellant would not get his ¼ area of his as per the Deed.*
11. *That the Learned Judge erred in fact and law by not looking into the background of the matter.*

12. *That the Learned Judge erred in fact and in law by not considering the Appellants (Plaintiff's) Bundles of Documents and Appellant (Plaintiff's) Supplementary Bundles of Document in full as the whole case was based on the Deed of Family Settlement.*
13. *That the Learned Judge erred in fact and in law in paragraph 21, paragraph 8 of the High Court Judgment that the Appellant brothers Rudra Datt owned the land which does not make the Appellants entry and occupation of the land illegal. As Rudra Datt passed away on 01/02/91 and Sheela again applied for consent on 21/2/91 but denied. At page 44 of Appellant's Bundles of Document, why was the consent denied. On page 24 Part (e) of the High Court Judgment, does it mean that parties make a Deed of Family Settlement and have to be witnessed and Registered and after all this if the Director of Lands does not give consent so it means the Deed is null and void and illegal, is this not part of the Bundles on the Lands Department to prove why they did not give consent.*
14. *That the Learned Judge erred in fact and law that the house materials and other items did not belong to the 1st Respondent or any other Respondent. It was all hard earned by the Appellants, as how come can the 1st Respondent take them all. The learned Judge erred in fact and law in not considering the loss, pain and suffering and living of the Appellant in the Court below. The Appellant has suffered a great loss and if one looks at the Court of Appeal Record and will realise the pain and loss.*
15. *That the Learned Judge erred in fact and law that the 5th Respondent acted fraudulently with 1st Respondent by giving the consent for transfer and subdivision and where as a senior officer of the Lands Department was involved in the subdivision. Refer to the Inspection Report on page 15 and 16 of the Appellant's Bundles of documents.*
16. *That the Learned Judge erred in fact and law in not putting the reasons or looking at the Court of Appeal Judgment of the Full Court whereby the appeal was allowed and then Appellant then filed this High Court Action to get the portion of land back and ask for cost and again this was denied by the High Court.*
17. *That the Learned Judge erred in fact and in law by not demanding from the 5th Respondent the original copies of the consent of transfer of crown lease 10093 from Ramzan to Rudra Dutt in dealing no. 294415, instead the learned Judge considered 5th Respondent evidence and supported their version of evidence and dismiss the High Court action.*
18. *That the Learned Judge erred in fact and in law by not considering any other cases from the Fiji Court of Appeal where cases came up between parties who did not have any agreements and were not even related.*

19. *That the Learned Judge erred in fact and in law by not considering that the (Plaintiff) Appellant in this present matter came with his brother Rudra Dutt to live on the master lease CL 10093 in 1990. How can this be illegal. The first Respondent only acquired his lease from the master lease in 2002.*

Constructive Trust

Further Grounds of Appeal

20. *That the Learned Judge erred in fact and law by not considering Deed of Family Settlement that the Appellant and Respondents acquired an equitable interest pursuant to what became a constructive trust with Rudra Datt (Deceased) upon being registered as proprietor of Crown Lease 10093, as trustee. As in 23 of the Judgment in paragraph (d) the learned Judge erred in the court below was alleging that Sheela Wati made false representation to Director of Lands.”*

[5] Having re-capped the background history of facts which had involved protracted litigation and the evidence pertaining thereto, the learned Judge addressed the matters for consideration and made his determination thereon to which I shall now give my own mind and consideration.

Re : the Deed of (Family) Settlement dated 16 October, 1990

[6] In that regard, the learned Judge acknowledged that, the said deed recognized a contractual obligation between the parties. (as per clause 5 of the said deed (vide: page 20 of the High Court Judgment). But, indisputably, the land in question was Crown (State) Land (as reflected in that very Clause 5). Although there was no impediment for parties to have entered into such an agreement, in order to deal with the property for purposes of alienating, selling or mortgaging etc. the Consent of the Director of Lands was mandatorily required. Section 13(1) of the Crown (State) Land Act leaves no room for any doubt in that regard. Consequently on account of the fact that there was an absence of consent by the Director in respect of the deed of family settlement in question, the same was rendered unenforceable.

- [7] I could not find any error in the learned Judge's findings and determination on that.
- [8] Thus, the laments of the Appellant based on the creation of a Constructive Trust and false representations in the context of the testamentary proceedings. (vide: the Agreed Facts and the issues framed for determination) were rendered irrelevant given the fact that the same flow from the Deed of (Family) Settlement. The edifice on which the Appellant's case being the said deed, with the breaking down of that, those laments or grievances could not have been sustained.
- [9] It does not require an exercise in semantics to say that, nothing can be placed on nothing for which reason, the learned Judge was not required to consider those laments or grievances of the Appellant.
- [10] However, the only basis on which a different complexion could have been put on the matter is the Appellant's allegation of "fraud and bad faith" against the Director of Lands (the 5th Respondent) in issuing leases to the 1st to 3rd Respondents for the land in question which had led to the Appellant being eventually evicted from that portion of the said land which the Appellant demonstrably (on the evidence) had been occupying on the strength of the deed of (family) settlement.
- [11] The learned Judge gave his mind to Sections 38 and 39 of the Land Transfer Act (Cap. 131) based as they are on the concept of "indefeasibility of title" (the *Torrens* principle). He considered the factual context where the 1st to 3rd Respondents had applied and acquired the said leases (in which regard the learned Judge adverted to Section 16 of the Crown Lands Act (Cap. 132) (and the Regulations made thereunder). Then having given his mind to Section 28 of the said Act, the learned Judge found, as a question of fact that there was not "*a scintilla of evidence which would suggest that the 1st to 3rd Respondents obtained the (said) leases ... through material non-disclosure and fraud*" (at pages 38 of the Judgment in the Copy Record).

[12] I endorse that finding. Some link had to be established between the conduct of the 1st to 3rd Respondents and the 5th Respondent.

[13] In my endeavour in searching for such a link, I could not find any. In that regard I derived assistance from a judgment of this Court penned by me (Calanchini, P and Prematilaka, JA agreeing), though different to the facts of this Case, but, in so far as the principles enunciated therein are concerned as to what constitutes “fraud”, (vide: **Rajendra Singh & Anor. -v- Pradeep Singh**, Civil Appeal No. ABU 26 of 2012, Judgment dated 2 October, 2015).

Some resulting matters that needed to be addressed

[14] The learned Judge dismissed the Appellant’s (Plaintiff’s) claim and also dismissed the Respondent’s claim (the parties to the family settlement) for damages. There is no Cross-Appeal by them. At page 40 of his Judgment, the learned Judge said,

“I have sympathy with the plaintiff (Appellant) ...” though arriving at his conclusion that *“the plaintiff’s claim wholly fails”*, which prompted the learned Judge to order that *“As Claim and Counter- Claim both have failed, each party will bear their own costs”*.

(vide: at page 42 of the Judgment in the Copy Record).

[15] I looked at the learned Judge’s order in dismissing the 1st Respondent’s said counter-claim (vide: at pages 40-42 of the Copy Record).

[16] I could not find any error of law/fact or a misdirection/non-direction therein.

[17] Only the 5th Respondent was represented by Counsel (Mr Chauhan). He did not pursue some matters urged in his written submissions dated 13 December, 2019. He seemed to be content with a determination by this Court (should it dismiss the appeal). I also perused the written submissions filed by the Appellant and the 1st to 2nd Respondents.

[18] The Appellant has been evicted from the land in question. The learned High Court Judge saw nothing illegal in the eviction process (vide: pages 38-40 of the Copy Record). I am in agreement with the reasons the learned Judge gave in that regard too.

Conclusion

[19] For the aforesaid reasons, I did not see any reason to interfere with the judgment of the learned High Court Judge and accordingly, taking into consideration the background facts and circumstances of this case, I proceed to propose the following Orders.

1. That the Judgment of the High Court dated 14 December, 2018 to stand affirmed and the appeal to stand dismissed.
2. That, shall be no costs.

Jameel, JA

[20] I agree with the reasons and orders proposed by Almeida Guneratne, JA.

Orders of Court

1. *The Appeal is dismissed.*
2. *There shall be no costs.*




.....
Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL


.....
Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL


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Hon. Justice F. Jameel
JUSTICE OF APPEAL