

IN THE HIGH COURT OF THE REPUBLIC OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 103 OF 2014

BETWEEN : **RAJ DATT** of Navakai, Nadi, Fiji, retired.

Plaintiff

AND : **SUNIL DATT** of Navakai Nadi, Fiji Supervisor in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** fathers name Angu Prasad of Navakai, Nadi, Domestic Duties.

1st Defendant

AND : **RAM DATT** of Navakai Nadi, Fiji carpenter in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji, Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** father's name Angu Prasad of Navakai, Nadi, Domestic Duties.

2nd Defendant

AND : **ANIL DATT** of Navakai, Nadi, Fiji Driver in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji, Cultivator and as one of the Executor and Trustee in the **ESTATE SHEELA** father's name Angu Prasad of Navakai, Domestic Duties.

3rd Defendant

AND : **MANJULA WATI** of Navakai, Nadi, Fiji Domestic Duties in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** father's name Angu Prasad of Navakai, Nadi, Domestic Duties.

4th Defendant

AND : **DIRECTOR OF LANDS**

5th Defendant

Before the Master of the High Court Mr M.H. Mohamed Ajmeer

Appearances:

Plaintiff in person

Mr Vakacakau for the 1st defendant

2nd, 3rd & 4th defendant in person

Mr Pickering for the 5th defendant

Date of Hearing : 05/08/14

Date of Order : 05/08/14

R U L I N G

[1] This ruling concerns an application for summary judgment filed by plaintiff against 5th defendant, the Director Lands.

[2] On 22 July 2014 the Plaintiffs filed in person the application for Summary Judgment against the 5th defendant. The application is supported by an affidavit of Raj Datt (plaintiff) sworn on 21 July and filed on 22 July 2014. In that application the plaintiff seeks the following relief:

a) A declaration that the transfer of Leases issued to the Defendants be declared Null and Void.

b) That the defendants by themselves, their servants, agents, nominees, whosoever and whatsoever be restrained from entering the said property.

c) An order that 1st to 5th defendants do pay costs for loss of all income with interest of 12.5% per annum of loss of life of my wife, costs for pain and

suffering, costs for staying in tent for one month(on road) and all the costs from 2004 till to date for going to Magistrates Court, High Court, Fiji, Fiji Court of Appeal and now back to High Court costs for all the fees for court filing documents, searches, all expenses that incurred while travelling from Nadi to Lautoka and Suva to attend Court to attend Court in the sum of \$100,000.00.

- d) AN Order that 5th defendant, Lands Department together with 1st to 4th defendants as equally the parties pay to the Plaintiff the sum of F\$650,000.00 with interest.
- e) An order for the Lands Department to execute proper Residential Title of Quarter area from the 2.442 hectares with proper road consent to water and electricity.
- f) Such further and/or other relief that may seem just and proper to this Honourable Court.

[3] The application is made pursuant to Order 86 rule 1 of the High Court Rules 1988, which provides:

'1.-(1) In any action begun by writ indorsed with a claim –

(a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or

(b) for rescission of such an agreement, or

(c) for the forfeiture or return of any deposit made under such an agreement, the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ.'

[4] The plaintiff's application in combination seeks specific performance (a declaration that the Transfer of Leases issued to the defendants is null and void) and summary judgment.

[5] Upon service of the writ of summons, the 5th defendant only filed acknowledgement of service, but he did not file his statement of defence within the prescribed time.

[6] Pursuant to Order 86. r.1 of the High Court Rules, in any action begun by writ indorsed with claims stated in that rule a plaintiff is entitled to apply for summary judgment against a defendant. That

application may be made against a defendant whether or not he has acknowledged service of writ, see Order 86 (2).

[7] In this case the plaintiff filed writ of summons and seeks certain declaration and damages against the defendant. In the circumstance the question would arise whether the plaintiff is entitled to apply for summary judgment for specific performance under Order 86.

[8] Order 86, r.1-(1) provides:

‘1.-(1) In any action begun by writ indorsed with a claim –

(a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or

(b) for rescission of such an agreement, or

(c) for the forfeiture or return of any deposit made under such an agreement, the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.’

[9] It will be noted that the plaintiff’s claim does not include any of the purposes stated in Order 86. The plaintiff does not seek specific performance of an agreement or for rescission of such an agreement or for the forfeiture or return of any deposit made under such an agreement. The plaintiff does not even allege that there was an agreement with the 5th defendant. The plaintiff seeks that the Transfer of Lease to the defendant minus 5th defendant be declared null and void and damages against the defendants. In my view summary judgment for specific performance would not be available to the plaintiff, for it is not sought for any of the purposes stated in Order 86 of the High Court Rules.

[10] It will not end there. There is another point to be decided. That is, whether the plaintiff can seek summary judgment for specific performance against the state.

[11] Mr Pickering, counsel for the 5th defendant submits that the plaintiff cannot obtain summary judgment against the state. He relied on Order 76, r.5 (1) of the High Court Rules. That rule provides:

'5.(1) no application against the State shall be made under Order 14, Rule 5, or rule 1, in any proceedings against the State nor under Order 14, rule 5, in any proceedings by the State.'

[12] The plaintiff seeks summary judgment against the Director of Lands, the 5th defendant. The Director of Lands exercises the powers and authority vested on him by the law for and on behalf of the state. The Director of Lands derives his/her power to lease crown land, from section 11 of the State (Crown) Lands Act Cap.132. That section provides:

"Any lease or licence in respect of land under the provisions of this Act shall be made out from and in the name of the Director of Lands for and on behalf of the Crown, and such lease or licence shall be executed by the person then holding the office of Director of Lands as lessor or licensor, and the person for the time being holding the office of Director of Lands shall, while he holds such office, be deemed the lessor or licensor of such lease or licence."

[13] It is seen that the Director of Lands functions as an agent of the state.

[14] Pathic, J in **Rajesh Prakash Sharma v Registrar of Titles, Attorney General & Shiu Narayan & Agrawala Development Limited** [2003] HBC 351/01S Decision 31 October 2003 noted that:

'O.77 r. 5 (1) – read with O.13 r.6 and O.14 r.12 where State defendant has filed acknowledgment of service, plaintiff's application a disguised form of a summary judgment fails and plaintiff may not seek summary judgment against the State. Defendant [was] given leave to amend defence.'

[15] It is true that the 5th defendant failed to file statement of defence, the filed acknowledgement of service. In the circumstance, the plaintiff would have taken judgment in default with the leave of the court pursuant to Order 77, r.6 of the High Court Rules. That rule provides:

'6.-(1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered, against the State in civil proceedings against the State or in third party proceedings against the State.'

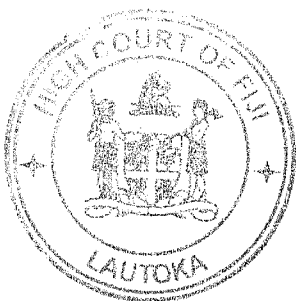
[16] However, the plaintiff opted not to obtain judgment in default against the 5th defendant under Order 77, r.6 for one reason or the other.

[17] The court will not give summary judgment if the defendant satisfies the court there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action.

[18] The 5th Defendant submits that there must be a trial of the action, for the plaintiff seeking declaration that the Transfer of Lease to the defendants (1st -4th defendants) be null and void.

[19] Obviously, the plaintiff seeks to give summary judgement against the agent of the state. He filed this application for summary judgment against the 5th defendant in violation of O. 77, r.5 of the High Court Rules.

[20] For all these reasons, I dismiss and struck out the application for summary judgment filed on 22 July 2014 against the 5th defendant. I would make no order as to costs. Order accordingly.



M H Mohamed Ajmeer

.....
M H Mohamed Ajmeer
Master of the High Court

At Lautoka

05/08/14

Solicitors:

Plaintiff in persons

Office of the Attorney General for the 5th defendant.