

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

**HBC No. 116 of 2003**

**BETWEEN** : **NASINU LAND PURCHASE AND HOUSING**  
**COOPERATIVE SOCIETY LIMITED**

**PLAINTIFF**

**AND** : **SATYA NAND**

**DEFENDANT**

**BEFORE** : **Hon. Justice Kamal Kumar**

**COUNSEL** : Ms R. Naidu for the Plaintiff

: Mr A. K. Singh for the Defendant

**DATE OF HEARING** : 14, 15 October 2013

**DATE OF JUDGMENT** : 27 March, 2015

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**JUDGMENT**

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## **1.0 Introduction**

1.1 On 25<sup>th</sup> March 2003, Plaintiff filed Writ of Summon and Statement of Claim seeking vacant possession of property known as Lot 10 on DP 5069 comprised and described in Certificate of Title No. 31375 and costs.

1.2 By Amended Statement of Defence and Counter-claim filed by Defendant on 31 October 2007, Defendant sought following relief:-

*“(a) That the Plaintiff’s claim for Vacant Possession from Lot 10 on DP 5069 contained in Certificate of Title No. 31375 against the Defendant be Dismissed forthwith;*

*(b) An Order that the Plaintiff does convey and complete transfer of Lot 10 on DP 5069 contained in Certificate of Title No. 31375 to Raj Pati absolutely;*

*(c) That the defendant has a right to possession, occupation and usage of the subject property;*

*(d) Costs on an indemnity basis;*

*(e) Any other or such relief that this Honourable Court may deem Just and expedient.”*

1.3 This matter was first set down for trial on 3<sup>rd</sup> and 4<sup>th</sup> August 2009 before his Lordship Justice Inoke (as he then was).

1.4 The trial dates were vacated and this matter was next called on 18 February 2011 before his Lordship Justice Calanchini when this matter was adjourned to 4<sup>th</sup> to 6<sup>th</sup> July 2011 for trial.

1.5 Trial dates were vacated on Defendant’s application.

1.6 Thereafter nothing eventuated and on 10 February 2012, Plaintiff’s Solicitors filed Notice of Intention to Proceed after they were served with Show Cause Notice under Order 25 Rule 9 of High Court Rules.

1.7 There is no file note as to the outcome of Show Cause Notice but on 9 August 2012, Plaintiff filed Order 34 Summons which was called on 21 September

2012 before his Lordship Justice Balapatabendi (as he then was) when this matter was adjourned to 28 September 2012 and then to 8 October 2012 due to non-appearance of Defendant's Counsel on both occasions.

- 1.8 On 8 October 2012, this matter was listed for trial on 27, 28 and 29 May 2013 before his Lordship Justice Balapatabendi (as he then was).
- 1.9 Above trial dates were vacated and on 10 May 2013, this matter was set for trial on 25, 26 September 2013.
- 1.10 This matter was called before me on 8 August 2013 when trial dates of 25 and 26 September 2013 was confirmed.
- 1.11 On 25 September 2013, Mr Ram Chand, Counsel for the Defendant informed Court that he is no longer acting for the Defendant and Mr Anand Singh has taken over the brief for the Defendant.
- 1.12 Mr Singh then informed Court that the Notice of Change of Solicitors is ready for filing and that when he took over the brief he had another criminal matter listed for trial on this day and that he was sick and applied for adjournment. The letter produced from the hospital only stated that he was admitted for tests and check.
- 1.13 I refused Application for adjournment on following grounds:-
  - (i) Mr Singh should not have agreed to appear for the Defendant when he knew that he will not be able to conduct the trial because of prior engagement;
  - (ii) The reason for Mr Singh's admission at the hospital for tests and checks only was not sufficient to grant an adjournment.
- 1.14 This matter was then stood down for an hour for Counsel to get prepared for the trial.
- 1.15 When matter resumed at 11.15am Mr Singh had not filed Notice of Change of Solicitors but handed it to Court.

- 1.16 Mr Singh informed the Court that after perusing the documents he had spoken to Plaintiff's Counsel as he was of the view that this matter should be settled which was confirmed by Plaintiff's Counsel.
- 1.17 This matter was then adjourned to 14 and 15 October 2013 for trial if this matter was not settled by then.
- 1.18 On 14 October 2013, Defendants Counsel again applied for adjournment on the pretext of settlement which application was refused and trial proceeded at 11.30am.
- 1.19 At completion of trial, both parties were directed to file their submissions, which they did.

## **2.0 Background/Agreed Facts**

- 2.1 Plaintiff is a Co-operative Society.
- 2.2 Plaintiff was the registered proprietor of all that land comprised in Certificate of Title No. 12648.
- 2.3 Land subject to Certificate of Title No. 12648 was subdivided by Plaintiff for the benefit of its members and individual lots were to be transferred to individual members upon payment of their shares.
- 2.4 The subdivided lots was subject to Deposited Plan No. 5069.
- 2.5 Mr Deo Dutt Bidesi was a shareholder and member of the Plaintiff Co-operative Society as at 31<sup>st</sup> day of December 1984 and by virtue of that membership, the said lot 10 was allotted to him. Mr Deo Dutt Bidesi died on the 8<sup>th</sup> day of October 1971.
- 2.6 The Plaintiffs were advised by Messrs Maharaj Chandra & Associates that Mani Ram Bidesi son of Late Deo Dutt Bidesi inherited all the properties of the deceased.

- 2.7 The succession from the late Deo Dutt Bidesi to Sumintra Devi was not established in accordance with the Co-operative Act 1996, the regulations or by the by-laws of the Plaintiff.
- 2.8 Ms Sumintra Devi by virtue of her residence in Canada did not qualify to become a member of the Plaintiff Company.
- 2.9 Defendant was duly appointed Attorney of Raj Pati by virtue of Power of Attorney No. 47723 which lapsed on death of Raj Pati in the year 2011.
- 2.10 Plaintiff was at all material time and still is the registered proprietor of land known as Lot 10 on Deposited Plan No. 5069 comprised and described in Certificate of Title No. 31375.

### **3.0 Issues for Determination**

- 3.1 Even though parties in the Pre-Trial Conference Minutes have identified various issues the only two issues that need to be determined are:-
- (i) Whether Plaintiff is entitled to vacant possession of all that property known as Lot 10 on Deposited Plan No. 5069 comprised and described in Certificate of Title No. 31375 containing one rood four perches and four tenths of perch (hereinafter referred to as the “**subject property**”);
  - (ii) Whether subject property is to be transferred to Raj Pati by the Plaintiff.

### **4.0 Law**

- 4.1 Since the Plaintiff is a co-operative society formed for the purpose of subdivision of land purchased from Nasinu Land Company Limited and transfer of individual Lots to members who paid their shares, it is governed by Co-operatives Act 1996, Regulations and By-Laws.

4.2 The relevant provision of Co-operatives Act 1996 and Plaintiff's by-laws are section 31, 37, Clauses 3(a) (b), 12 and 43 of the by-laws which provides as follows:-

**Section 31 – Co-operatives Act 1996**

*“31.-(1) Every appointment of a nominee by any member of a registered co-operative for the purposes of Section 30 of this Act shall be made in writing signed by the member in the presence of two attesting witnesses.*

*(2) No member of a registered co-operative with the share capital shall be entitled to appoint more than one nominee, unless that member holds more than one share.*

*(3) In any case where more than one nominee is appointed by any member, the number of shares to be transferred or the exact proportion of the amount available that is to be transferred to each of these nominees shall be specified at the time of the appointment.*

*(4) Every appointment of a nominee shall be recorded in the register of members.*

*(5) For the purpose of a transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for the share or interest by the member holding it, unless the by-laws of the registered co-operative otherwise provide.*

*(6) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his or her guardian shall be sufficient discharge to the registered cooperative.”*

**Section 37 – Co-operatives Act 1996**

*“37.-(1) A person other than a co-operative or association shall qualify for membership in a primary co-operative if:-*

*(a) he or she is at least eighteen (18) years of age: Provided that in the case of a school co-operative the minimum age shall be reduced to fourteen (14).*

*(b) is a citizen or resident of Fiji; and*

*(c) he or she satisfies such other requirements with regard to*

*residence, employment, profession or any other matter as may be prescribed in the by-laws of the co-operative.*

*2) In the case of secondary co-operatives, any apex organisation and the National Co-operative Federation any co-operative seeking membership thereof shall have to satisfy all requirements as may be prescribed in the by-laws of such co-operatives.*

*(3) In the case of an association seeking membership of a primary co-operative it will have to satisfy all requirements as may be prescribed in the by-laws of such co-operative.*

*(4) To become a member, a person or a co-operative has to:*

*(a) submit an application for admission to membership to the Board and agree to be bound by the co-operative's by-laws;*

*(b) be admitted following the procedure provided for by the by-laws of the cooperative;*

*(c) pay the minimum share capital necessary to be paid on admission according to the by-laws.*

*(5) The founder members present at the Founders' Meeting shall be exempted from the application and admission procedures set out in subsection (4) of this Section provided that their names appear in the application for registration of the proposed co-operative and they have signed the minutes of the Founders' Meeting and the proposed by-laws of the co-operative and have made the necessary payments to the capital of the co-operative as agreed upon by them.”*

#### **Rules 3(a), (b) of By-Law**

*“(a) to purchase from the Nasinu Land Company Limited part of CT 3213 on DP 2000 on the seaward side of the Suva to Nausori road;*

*(b) to arrange for the for the subdivision, survey and distribution of holdings among the Members so as to provide one holding but not more than one holding for each Member, upon such terms and conditions as the general meeting shall determine, and to enter into an agreement with each Member accordingly in the form annexed as Schedule ‘A’ to these by-laws.”*

#### **Rule 12 of By-Law**

*“All shares shall be fully paid prior to allotment. Share certificates signed by the Chairperson and Secretary shall be issued to shareholders for all shares allotted.”*

**Rule 43 of By-Law**

*“On the death of a Member the Co-operative may transfer the share or interest of the person nominated in accordance; with Section 31 of this Act of if there is no person so nominated, to the person as may appear to the Board to be the heir or personal representative of the deceased Member, or pay to such nominee, heir or personal representative, as the case may be, a sum representing the value of the Member’s share or other interest in the capital of the co-operative as determined in accordance with these By-Laws.”*

**5.0 Plaintiff’s Case**

- 5.1 By consent all documents forming part of Agreed Bundle of Documents dated and filed on 29 May 2008 and Supplementary Plaintiff’s Bundle of Documents dated and filed on 29 July 2009 were marked as Exhibits 1 to 22 and 23 to 29 respectively.
- 5.2 Plaintiff called Muni Deo, Plaintiff’s Secretary as its only witness.
- 5.3 Mr Muni Deo during examination in chief gave evidence that:-
- (i) From 2007 to 13 September 2013, he has been Plaintiff’s Assistant Secretary and from 14 September 2013 to date of trial has been Plaintiff’s Secretary;
  - (ii) He is aware about the subject matter from his dealing with Plaintiff’s Solicitors and records kept by Plaintiff;
  - (iii) Plaintiff was incorporated in 1961 when it had 447 members;
  - (iv) Plaintiff is engaged in the subdivision of 326 acres of land. Subdivision was carried out in stages (stages 1 to 9);



- (v) Part of the lots would be transferred to members who paid their shares and part would be sold in open market;
- (vi) Not all 447 members were allotted lots;
- (vii) Lots are allotted to paid members by ballot system;
- (viii) Membership ceases when a member dies;
- (ix) Also members share are paid in one lump sum or in installments;
- (x) Deo Datt Bidesi ("**Bidesi**") was a member of the Plaintiff and was allotted the subject property;
- (xi) Bidesi was asked by the then Chairman late Sharda Nand to obtain title for the subject property;
- (xii) Bidesi did not obtain title to the subject property;
- (xiii) Bidesi died on 8 October 1971 and until his death he stayed on the subject property and thereafter his son Mani Ram and his wife Sumintra occupied the subject property;
- (xiv) Bidesi was asked to obtain title to the subject property because he was staying on the land;
- (xv) After Mani Ram died Mrs Sumintra was staying on the subject property and when she decided to migrate to Canada she sold the subject property to Plaintiff;
- (xvi) In referring to exchange of letters between Messrs Maharaj Chandra & Associates and Plaintiff; he stated that Mani Ram was never registered as a member of Plaintiff and Bidesi's membership was never transferred to Mani Ram;
- (xvii) Whilst Sumintra took charge of Lot 10 she was never registered as a member;
- (xviii) Plaintiff paid Sumintra \$21,000.00 for subject property as follows:-

- (a) \$6,000.00 was taken towards arrears;
- (b) \$15,000.00 was paid to Sumintra;
- (xix) After Plaintiff obtained Title over the subject property Plaintiff issued notice to vacate on Defendant who was in occupation of the subject property.

5.4 During cross-examination Mr Deo stated:-

- (i) He was not sure whether advise received by Plaintiff and as mentioned in letter of 13 April 1984 from C. Zaman the then Acting Secretary to the Plaintiff (Exhibit 20) had been acted upon by the Plaintiff;
- (ii) A member can nominate a person to be a member in his/her place and if member dies without nominating anyone his/her membership ceases;
- (iii) Bidesi's membership was never transferred to Mani Ram during Bidesi's lifetime and as such Mani Ram was not a member;
- (iv) Since Mani Ram was Bidesi's son and was staying on the subject property the property was to be transferred to Mani Ram and upon Mani Ram's death to his wife Sumintra;
- (v) Plaintiff dealt with Mani Ram and his wife Sumintra because Mani Ram was Bidesi's son and always resided on the subject property;
- (vi) He was not aware about Letter of Administration granted in respect to Bidesi's estate in favour of Raj Pati but saw Letter of Administration on the Plaintiff's file;
- (vii) Because Sumintra was living on the property with her husband Mani Ram, she was considered to be the owner of the subject property.

## **6.0 Defendant's Case**

6.1 Defendant gave evidence himself and did not call any other witness.

6.2 During examination in chief Defendant stated that:-

- (i) He is son of Raj Pati;
- (ii) Raj Pati made a will which is subject to challenge in High Court action commenced by his brother Bipin Rishi Shankar;
- (iii) He entered into Sale and Purchase Agreement with Sumintra Devi (Exhibit 3) but the Agreement was not recognized by Plaintiff;
- (iv) He spent almost \$120,000.00 on the subject property;
- (v) He did not protest to Sumintra about Deed of Settlement because he only became aware about the Deed when he was served with eviction notice;
- (vi) His brother is challenging his mother's will in respect to another property at Lot 9, Ratu Dovi Road;
- (vii) He is residing on the subject property because he purchased it from Sumintra and alternatively because his mother had obtained Letter of Administration in respect to Bidesi's estate.

6.3 During cross-examination Defendant stated that:-

- (i) He has been residing on the subject property since 13 December 1993;
- (ii) When he entered into Sale and Purchase Agreement he had been misled by Sumintra Devi by showing Probate in respect to estate of Mani Ram and telling him that she is the beneficiary of Bidesi's estate;
- (iii) Sumintra Devi told him that she would give him a clear title from Plaintiff;
- (iv) When he enquired with Plaintiff he was informed that there was no Probate in respect to Bidesi's estate and that he should obtain one;
- (v) Letters of Administration was granted to his mother Raj Pati in respect to Bidesi's estate;
- (vi) Title to the property was transferred to Plaintiff;

- (vii) In response to question if he had made any enquiries prior to entering into Sale and Purchase Agreement with Sumintra as to whether she had title in her name he said that Sumintra showed him Probate;
- (viii) He did not check with Plaintiff as to whether Sumintra had title to the land;
- (ix) He did not attempt to enforce Agreement with Sumintra because Sumintra left without any proper address or phone contact;
- (x) He did not pay the consideration sum under the Agreement to Sumintra once;
- (xi) When asked how he managed to pay Sumintra when he did not have her address or phone contract he stated that he paid her Attorney Rajendra Prasad.

6.4 After careful analysis of both documentary and oral evidence I make following findings:-

- (i) Plaintiff is a registered co-operative society governed by the provision of Co-operative Act 1996, Regulations and Plaintiff's By-Laws;
- (ii) Bidesi was a registered member of the Society and was allotted the subject property;
- (iii) Bidesi failed to pay his shares fully and obtain title to the subject property;
- (iv) After Bidesi's death subject property was occupied by his son Mani Ram and Mani Ram's wife Sumintra Devi;
- (v) After Mani Ram's death subject property was occupied by Sumintra Devi;
- (vi) When Sumintra Devi migrated to Canada, Defendant moved onto the subject property with his mother;
- (vii) The Sale and Purchase Agreement was signed by Sumintra Devi's Attorney;

(viii) In letter dated 19 July 1996 to Defendants Solicitors Tevita Fa & Associates (Exhibit 12), Plaintiff informed the Solicitors as follows:-

- “8. *On April 1996, Sumintra Devi who lives in Canada visited Fiji and called to see us. She thanked the undersigned for not allowing Satya Nand to defraud her and pleaded with us not to transfer the Lot 10 to anyone else.*
9. *She further claimed that the house which stood on the land belonged to her husband the late Mani Ram and, therefore, to her as his beneficiary under the Last Will and Testament of the deceased.*
10. *Sumintra Devi further confirmed that the agreement signed by her Attorney was not authorized by her and she had received no consideration from Satya Nand or from anyone else. She further complained that Satya Nand had threatened her with witchcraft through one witch-doctor called ‘Muni Ratnam’ if she visited her property on Lot 10.*
11. *In the meantime, because of Satya Nand’s conduct in trying to forcibly acquire the said Lot 10, we gave him notice on the 13 May 1996. A copy of our letter of the 13 May, a copy of the Notice and a copy of his handwritten reply are enclosed herewith. In his scribbled note, apparently with a view to stop his employer (VAT Unit) from finding out about his conduct, he directed us to refer all letters or notices to his Solicitors, Messrs Maharaj & Associates. We obliged. We have no notice of change of Solicitors and assume that you are duly aware of this change.*
12. *Through Maharaj & Associates, Sumintra Devi made it clear to us that she had not parted with her interests to anyone and certainly not to your client Satya Nand. She abandoned any claim to Lot 10 on DP 5069, and requested that we pay her something for the house which belonged to the Estate to which she was entitled.*

13. *After protracted negotiations, the Society reduced its claim of arrears to \$6,000 and the parties agreed to the value of \$21,000 for the residential premises which stands on Lot 10.*
14. *Under the Deed of Settlement executed between Sumintra Devi and the Society on the 11 July 1996, we paid her \$15,000 for the house and wrote off the \$6,000 owing to the Society (Total consideration: \$21,000).*
15. *The Society which has always been and still is the owner of the Lot 10 in question now also owns the house.”*

- (ix) Defendant and/or his Solicitors did not respond to the above letter;
- (x) No evidence has been provided to show that Defendant had paid any monies to Sumintra Devi pursuant to the Sale of Purchase Agreement;
- (xi) Since Bidesi did not pay his shares in full he was not entitled to obtain title to the subject property;
- (xii) Plaintiff rightly dealt with Sumintra, the occupier to the subject property after Bidesi and Mani Ram’s death in respect to compensation paid for the building;
- (xiii) Plaintiffs title the subject property is indefeasible as no evidence of fraud was provided and/or proven against Plaintiff in obtaining title to the subject property;
- (xiv) I agree with Plaintiffs Counsel’s submission that Defendant has no color of right over the subject property.

## **7.0 Costs**

- 7.1 In respect to costs I have taken into consideration that the trial lasted for two days and parties have filed their Submissions.

## 9.0 **Conclusion**

9.1 I make following Orders:-

- (i) Defendant do deliver vacant possession of all the property known as Lot 10 on Deposited Plan No. 5069 comprised and described in Certificate of Title No. 31375 and situated at Lot 10 Maqbool Road, Nadera, Nasinu to the Plaintiff within sixty (60) days of this Judgment;
- (ii) Defendant's counter claim is dismissed;
- (iii) Defendant do pay Plaintiff's cost assessed in the sum of \$3,000.00.



The image shows the official seal of the High Court of Fiji on the left, which is circular and contains the text "HIGH COURT OF FIJI" and "SUVA" with a central emblem. To the right of the seal is a handwritten signature in blue ink. Below the signature, the name "K. Kumar" is printed, followed by the word "JUDGE" in bold, underlined capital letters.

**At Suva**

Messrs Sherani & Co. for the Plaintiff  
Singh & Singh Lawyers for the Defendant