

In the High Court of Fiji

At Labasa

Civil Jurisdiction

Civil Action No. 37 of 2013

Between:	Mahadeo	First plaintiff
	Aruna Lata Patterson	Second plaintiff
And:	Amrit Prasad	Defendant

Appearances: Ms V. Durutalo for the plaintiffs

Mr A.Kohli for the defendant

Date of hearing: 12th and 13th November, 2015

Judgment

1. The first plaintiff is the father of the second plaintiff and the defendant. The first plaintiff was a registered tenant under an instrument of tenancy registered in NLTB No. 4/9/10047 of a land known as "*Dianievo*" in the Tikina of Wailevu in Macuata, comprising of 11.9400 hectares from 1st July, 2005. On 10th February, 2014, he transferred the land to the second plaintiff. The second plaintiff holds a Power of Attorney of the first plaintiff. The statement of claim recites that the defendant has been carrying on sheep farming on the land for his benefit, in breach of the instrument of tenancy and section 12 of the Native Land Trust Board Act, (cap 134). It is alleged that the sheep farming led to a decline in the production of sugarcane. The reliefs sought by the plaintiffs are as follows: damages for loss of cane proceeds to first plaintiff; vacant possession of the land occupied by the defendant to be given to the second defendant; and special damages.

2. The defendant states that the first plaintiff, in the aftermath of his heart attack, requested him to cultivate the land. The production of cane has never fallen below 300 tons. He carried out sheep farming for ten years with the consent of the first plaintiff. He cultivated the land from 2008 until 2013, when he was ordered not to enter the land under a domestic violence restraining order obtained by the plaintiffs. The defendant counter-claims for special damages in a sum of \$ 70,020.57. The claim includes monies the defendant alleges he spent on sheep farming, construction of a dwelling on the land and two-thirds share of the cane proceeds for the years 2008 to 2013, which the first plaintiff promised him for his labour.

The determination

3. The first plaintiff claims damages for loss of cane proceeds for the period 2008 to 2013. It is alleged that the loss was caused, as a result of the defendant's sheep farming.
4. The second plaintiff,(PW1) in evidence in chief said that during the period of time, the first plaintiff was registered tenant, there was a yield of 500 tons of sugarcane each year for the period 1999 to 2007. She said that the yield dropped to approximately 321 tons annually, since 2008, for the reason that the defendant had forcefully carried out sheep farming on the land for his benefit, in breach of the instrument of tenancy and section 12 of the Native Land Trust Board Act.
5. Mr Kohli, counsel for the defendant, elicited in the cross-examination of PW1 that when she migrated to New Zealand in 1998, DW4 was living on the farm with his parents.
6. I would reproduce excerpts of her cross-examination on the work carried out by defendant:.

Mr Kohli *When you moved to New Zealand who was living on the farm, your brother Amrit?*

PW1 *Amrit was living with my parents.*

Mr Kohli *Are you telling this Honourable court that Amrit never helped your father?*

PW1 ***Amrit contributed to some extent My Lord, not entirely...
He was paid too My Lord.***

- PW1 **Yes My Lord he helped my father to arrange the labourers.**
Mr Kohli *So he finally, he helped your father, he helped, finally you've come up with that, that he helped, thank you. Now listen carefully, who used to when the labourers used to come and stay, stay in the farm, tell me **who used to drive the tractor to prepare the farm?***
- PW1 **It was between my father and Amrit My Lord.**
Mr Kohli *Don't worry about your father at the moment, did Amrit used to help drive the tractor or sort of helped or sort of contributed or he didn't do nothing.*
- PW1 *My Lord under the oath I cannot say things which are not true.*
Mr Kohli *My question is that, I've never asked you to lie, all I'm saying is did Amrit used to help drive the tractor on the farm, yes or no.*
- PW1 **He contributed with my father My Lord.** (emphasis added)

7. The defendant,(DW4) admitted that there was a drop in the yield since 2008. He said that it was due to the ill-health of the first plaintiff.
8. In the cross-examination of PW1, Mr Kohli produced a letter dated 2nd April, 2008, given by the first plaintiff:

*I, **Maha Deo.** of Bucalevu, Labasa, hereby handover full authority of my leasehold land to my son, **Amrit Prasad** to extend sheep and cane developments for our family income.
This is due to old age[72 years] and my medical problem[heart disease] that I currently have at this time.*

9. The riposte of PW1 was that the letter of 2nd April, 2008, could have been fabricated. I note that the first plaintiff had given a power of attorney to the second plaintiff, which includes the power to commence legal proceedings on his behalf. However, in my view, if the second plaintiff was disputing that document, the first plaintiff should have been called to disprove his signature. It transpired in PW2's evidence that the first plaintiff was in Labasa and could testify.
10. The closing submission filed on behalf of the plaintiffs argues that the letter was not disclosed before the hearing. But Ms Durutalo, counsel for the plaintiffs did not object to that document when it was produced at the hearing.

11. PW1 and PW2,(Raj Kali, the mother of the first plaintiff and the defendant) denied that the first plaintiff was suffering from a heart disease. Mr Kohli then, produced a medical report of Dr Bharathee Balram stating that the first plaintiff had "*left ventricular failure*", since 2004.
12. The defendant,(DW4) said that he used to take the first plaintiff to hospital once a month. It was put to PW2 to hospital that DW4 took her to hospital, when she fell ill on 29th September,2015. PW2 said that she was unaware, as she was unconscious.
13. DW4 said that the first plaintiff authorized him to carry out sheep farming, to generate income for the family. He and the first plaintiff started sheep farming on the hilly side of the land, where it was difficult to cut cane and take it to the mill. Workers were unwilling to harvest cane in that part of the land. It had a lot of stones. Only 50 to 60 tons of cane were produced in that area.
14. PW1 denied that the area used for sheep farming was hilly and rocky land, as asserted by the defendant. PW2 admitted in cross-examination that the land was little bit hilly.
15. PW2 said that the defendant never helped on the farm. The only thing he did was to bring the labourers. The first plaintiff paid for their work. It transpired in PW2's evidence that after all her 5 daughters got married, only DW4 remained in the farm. She said that the first plaintiff transferred the land to the second plaintiff, as DW4 had ill-treated her.
16. DW4's evidence that the first plaintiff asked him to cultivate the land and do sheep farming was corroborated by DW1,(Dalbir Singh, the brother of the first plaintiff and a resident of Bucalevu) and DW2,(Bhawani Prasad, a Sardar of Bucalevu).
17. DW2 said that the defendant farmed the first plaintiff's land. Sheep farming was done on the land for 10 to 12 years.
18. DW3,(Rajesh Prasad, a driver) said that the defendant made the road to cart sugarcane to the mill, at the request of the first plaintiff.

19. Mr Kohli produced an application made by the first plaintiff for consent to mortgage the land, as approved by the iTLTB on 12th December, 2008. It was put to PW1 that the first plaintiff had mortgaged the land to raise money to help DW4, to engage in sheep farming, but subsequently, on 26th February, 2013, she got the first plaintiff to write to the FSC not to release any payments to DW4. Thereafter, on 19th September, 2013, she as attorney for the first plaintiff, requested the FDB to cancel the loan.

20. DW4 produced a letter from the Director, Animal Health & Production, Ministry of Agriculture, Fisheries & Forests commending the defendant as a “reputable sheep farmer in the North”. The letter continues to state:

He started his sheep farm in 1993 with 3 sheep brought from Makogai Island; the sheep breeding centre of the Animal Health & Production (AH&P). To date he has a total of 148 sheep running on 35 acres of his father's lease.

Full approval is given by Maha Doe (father) to utilize the land.

Amrit was assisted with by the Division in 2010 under the Import Substitution Program of the Department to intensify his sheep farm and to supplement the distribution of the Fiji Fastastic breed of sheep. He subsequently has assisted to establish 15 other sheep farms by acquiring breeding stock from him. His effort was recognized by the Department and he was awarded the Northern Sheep Farmer of the Year in 2012.

The AH&P Division continues to rely on Amrit to supplement its sheep breeding program and to intensify sheep breeding in the Northern Division. He has sought to acquire additional land from Taukei Lands Trust Board (TLTB) adjacent on his farm to expand his sheep breeding program. He has already established new pastures on 10 acres for grazing and planted 350 coconuts. This is effectively utilizing the limited land resources at hand.

We fully support Amrit in his venture to intensify sheep production in the North.

21. On a review of the evidence as a whole, I am of the view that the defendant was requested by the first plaintiff to carry out sheep farming.
22. In support of the claim that the production of sugarcane dropped since 2008, due to the defendant's sheep farming, PW1 relied on a document issued by the FSC of 9th October, 2013. That document depicts that the total tonnage of sugar produced by the first plaintiff gradually dropped from 441.18 tons in 2007 onwards and finally to 378.09 tons in 2013.
23. In my judgment, the plaintiffs claim does not arise for consideration, in the light of my finding that the defendant was requested by the first plaintiff to carry out sheep farming.
24. The claim for damages for loss of cane proceeds fails.
25. Before I leave this part of my judgment, I would deal with the contention of the plaintiffs that the defendant did not obtain the consent of the iTLTB, to engage in sheep farming.
26. The answer to that contention is contained in the Agricultural Landlord and Tenant Act. The Act defines "*agricultural land*" to mean "*land.. used or proposed to be used predominantly for the growing of crops, dairy farming ..rearing or keeping of livestock*". The instrument of tenancy was granted under that Act
27. The second plaintiff is now the registered proprietor. She is entitled to vacant possession of the land occupied by the defendant.
28. The plaintiffs claim that the defendant has removed livestock and farming equipment from the land valued at \$4,000.00. No evidence in support was adduced. I decline the plaintiffs claim.

The counter-claim

29. The defendant counter-claims for special damages in a sum of \$70,020.57. The claim comprises the following:
- (i) Two-thirds share of the cane proceeds for the years 2008 to 2013.
 - (ii) The following sums of money which the defendant alleges he expended: \$10,000.00, on sheep farming ;\$5365.57 on harvesting the crop and feeding the labourers from 2009 to 2013 ; \$6610.00 on constructing a garage and kitchen; and \$ 45,450.00 on constructing a dwelling on the land.
30. PW1 and PW2 testified that the defendant was paid for his work on the farm.
31. In cross-examination DW4 admitted that he was paid “ *backwards*” for his labour up to 2008. Next, Ms Durutalo asked him why he continued to work, if he was not paid. His riposte was that his father promised him two-thirds share of the cane proceeds for the years 2008 to 2013, 15 acres of the land and after his demise, the entire land.
32. I find it difficult to believe that the first plaintiff paid DW4 for his labour for the period prior to 2008, but not for the five years that followed. To my mind, that does not accord with reason.
33. I do not accept DW4’s assertion that the first plaintiff promised to give him two-thirds share of the cane proceeds for the years 2008 to 2013 and 15 acres of the land, in lieu of payment for his labour for those years.
34. I accept the evidence of PW1 and PW2 that the first plaintiff paid DW4 as well as the labourers for their entire period of their work
35. That disposes of the claims by the defendant for share of the cane proceeds for the years 2008 to 2013 and for \$5,365.57, to harvest the crop and feed the labourers.
36. The defendant claims \$10,000.00 he spent to set up sheep farming. He had expended monies on sheep farming and obtained a loan in that regard. It emerged in his cross-examination that he had earned from sheep farming.

37. The defendant has not established the loss he alleges he suffered, as a result of being ordered to remove his sheep.
38. The claim for \$ 10,000.00 is declined.
39. The first plaintiff's house got burnt in 2009. The defendant said that he hired a carpenter Mukesh,(DW5) to build the house. It took 6 months to build the house. The house was worth \$ 45,000. The first plaintiff did not help in that regard. He was driving his taxi. DW5 said that all payments were made by DW4 for the construction.
40. The role played by DW4 in helping DW5 to build the house is not disputed. What is in issue is his financial contribution for the construction.
41. DW1 and DW2 confirmed that DW4 engaged DW5 to build the house. PW1 and PW2 said that DW4 helped to build the house with DW5. PW1 and PW2 said that the other children contributed \$ 23,000, while PW2 spent \$5000 of her money.
42. DW4 said that he slept in his Pajero, when the house was built. His parents stayed with his sister in Wailevu.
43. Mr Kohli produced a copy of a letter of 4th January,2015, written by DW5 with several alterations, which I have reproduced:

To whom it may Concern

MAHDEO

I Mukesh Kumar, the carpenter who constructed Mr Amrit Prasad's house in Bocalevy Labasa would like to clarify on the dealings and payment.

MAHDEO

I was approached by Amrit Prasad, Son of Mr. H. Prasad to construct Mr. Prasad's house I made all dealings with Amrit Prasad about the house and my charges. However, all the payments were made to me by Mr. Prasad but the

MAHDEO

invoices were made in Amrit Prasad's name.
Yours faithfully,
Mukesh Kumar

44. DW5, in evidence in chief said that he had signed the original of that letter, but there have been alterations in the copy shown to him. He said that the name of the first plaintiff Mahadeo after the words “ *the payments were made to me*” in the ultimate sentence was not contained in the original document he signed.
45. DW5 said that he was approached by PW2 to give another letter stating all dealings were with the first plaintiff, but he declined as all dealings and payments were made by DW4.
46. In answer to Mr Kohli, PW1 denied that DW5 had refused her request to write in that the first plaintiff gave him the money for the construction.
47. On the defendant’s claim for constructing the dwelling, Ms Durutalo in her closing submissions refers to the decision in *Chalmers v Pardoe*, [1963] 3 All ER 552 which held that the erection of a building without the consent of the iTLTB constitutes a dealing in terms of section 12 of the Native Lands Trust Board Act.
48. In that case, Chalmers had built a house on native land leased by Pardoe, in the expectation that Pardoe would obtain the required approval of the NLTB. Pardoe declined to make the application for approval. It was held that Chalmers would have been entitled to an equitable charge on the land, but for the lack of prior consent of the NLTB, making the transaction illegal.
49. That facts of that case are distinguishable from the present case. In the present case, the defendant did not expend monies on the understanding that he would be entitled to the house. The evidence revealed that he expended monies towards building a house for his parents. His claim is in that regard.
50. In my view, the defendant is entitled to claim for the monies he had spent. As Sir Terence Donovan stated in *Chalmers v Pardoe*, at page 555:

There can be no doubt on the authorities that where an owner of land has invited or expressly encouraged another to expend money on part of his land on the faith of an assurance or promise that part of the land will be made over to the person so expending his money a court of equity will prima facie require the owner by appropriate conveyance to fulfil his obligation; and when, for example for reasons of title, no such conveyance can effectively be made, a court of equity may declare that the person who has expended the money is entitled to an equitable charge or lien for the amount so expended. (emphasis added)

51. DW5 did not testify as to the monies spent by DW4. It transpired that the timber was donated to the first plaintiff.

52. DW4 produced the following invoices in support of his claim viz.:

(a) MEDINA TRANSPORT CO.LTD of 5/9/2009 for	\$ 1200
(b) Receipts dated 24/9/10 and 17/2/10 from Mukesh for sums of) \$ 2000 and \$ 2500 received from DW4.	\$ 4500
(c) Kavinesh Chand of 3/2/10	\$ 2350
(d) NORTHERN ELECTRICAL & HARDWARE LTD. of 27/01/12	\$ 800
(e) SUGAR CANE GROWERS COUNCIL OF 11/01/12 and 28/03/12	
(f) A. HUSSAIN & CO.LTD of 11/4 /12	\$ 120
(g) SUGAR CANE GROWERS COUNCIL OF 19/12/12	

53. I note that the invoice referred to (d) *et seq* were issued in 2012. DW4 said that the house was burnt in 2009 and built in 6 months.

54. The defendant has not established that he incurred a sum of \$45450.00, in constructing the dwelling on the land. I would allow the defendant's claim in a sum of \$ 8,050.00 in respect of the invoices referred to in (a), (b) and (c) above.

55. There is no evidence before me on the defendant's claim of \$ 6610.00 for constructing a garage and kitchen That claim is denied.

56. Orders

- (i) The defendant shall give the second plaintiff vacant possession of the land occupied by him within a period of one month of this judgment.
- (ii) The plaintiffs' claim for damages for loss of cane proceeds and special damages is declined.
- (iii) The second plaintiff shall pay the defendant a sum of \$ 8050.00
- (iv) The defendant's claims for (i) \$5,365.57 (ii)\$10,000.00 and (iii) \$ 6600 are declined.
- (v) Each party shall bear their own costs.



A.L.B. Brito-Mutunayagam
A.L.B. Brito-Mutunayagam
Judge

5th April, 2016