

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 05 of 2015

BETWEEN : **ASHOK KUMAR** of Naodamu Labasa, Parking Meter Supervisor in the Republic of Fiji Islands.

PLAINTIFF

A N D : **KISHOR KUMAR** of Australia, full address not known.

1st DEFENDANT

A N D : **REGISTRAR OF TITLES**

2nd DEFENDANT

A N D : **THE ATTORNEY GENERAL OF THE REPUBLIC OF FIJI ISLANDS** for and on behalf of Registrar of Titles.

3rd DEFENDANT

BEFORE : Justice Riyaz Hamza

COUNSEL : Mr. S. Sharma for the Plaintiff
Mr. J. Mainavolau for the 2nd & 3rd Defendants

JUDGMENT

[1] This is an application made by the Plaintiff, by way of an Amended Writ of Summons.

[2] In the Amended Statement of Claim attached thereto the Plaintiff submits as follows:

- (1) The Plaintiff and the 1st Defendant are the lawful sons of the late Chandrika Prasad and the beneficiaries in the estate of the said Chandrika Prasad, who died intestate.
- (2) The late Chandrika Prasad was co-owner with Jagdish Chand (another son of the late Chandrika Prasad and as such a beneficiary in his estate) in Housing Authority sub lease no. 270266, described as Lot 26 on DP 4882 in the Province of Macuata and District of Labasa, as tenancy in common.
- (3) The Letters of Administration in the estate of Chandrika Prasad was granted by the High Court to the Plaintiff's mother, Dukrani.
- (4) The Plaintiff, his elderly mother Dukrani and Jagdish are said to be currently occupying the said estate property.
- (5) Sometime in 2014 the Plaintiff found out from the Registrar of Titles Office that the estate property had been transferred to the 1st Defendant, who is said to be residing in Australia.
- (6) The Plaintiff alleges that he did not sign any documents renouncing his rights, shares or interest in the estate property in favour of the 1st Defendant. Thus the 1st Defendant had fraudulently transferred the estate property in his name.
- (7) The 1st Defendant colluded with the agents, servants and employees of the 2nd Defendant and fraudulently transferred the estate property under his name.
- (8) The 2nd Defendant negligently proceeded to the registration of the transfer of the estate property onto the 1st Defendant.
- (9) As such, the Plaintiff and his mother Dukrani lodged a caveat on the estate property (caveat no. 804803), in late 2014 (on 30 October 2014), to protect their interest as beneficiaries of the estate of Chandrika Prasad.
- (10) The Plaintiff had been informed by the employees of the Bank of South Pacific (BSP) that they are carrying out a mortgagee sale of the estate property as the 1st Defendant had borrowed approximately \$80000.00 as a loan from the BSP and has defaulted in the payment.

- (11) The 1st Defendant had without any notification to any of the beneficiaries obtained a large amount of finance from the BSP and mortgaged the estate property. Thereby the 1st Defendant had deceived the Plaintiff and betrayed the trust placed in him.
- (12) On 25 February 2015, the Plaintiff received a Notice of Removal of Caveat issued by the 2nd Defendant.
- (13) On 17 March 2015, the Plaintiff through his Solicitors obtained an order from Court for the extension of the caveat for three months.
- (14) However, the 2nd Defendant had negligently proceeded to the registration of the transfer under mortgagee sale.
- (15) Due to the actions of the Defendants the Plaintiff had suffered substantial losses and damages.

[3] Wherefore the Plaintiff claims the following reliefs:

1. A declaration that the transfer registered under the name of the 1st Defendant on Housing Authority sub lease no. 270266, land known as Lot 26 on DP 4882 in the Province of Macuata and District of Labasa be de-registered by the 2nd Defendant on grounds of fraud and the property to be reverted to the estate of Chandrika Prasad.
2. An order that registration of the transfer by mortgagee sale be de-registered.
3. A declaration that the decision by the 2nd Defendant in holding that registration of transfer takes precedents over a Court Order for extending the caveat is unlawful and error of law and procedures.
4. General Damages
5. Special Damages
6. Exemplary Damages
7. Punitive Damages
8. All costs occurred in this action
9. Any other or such relief as this Honourable Court may deem just and expedient.

[4] On 2 November 2015, the Counsel for the Plaintiff had submitted to Court that he has instructions to discontinue action against the 1st Defendant and to proceed only

against the 2nd and 3rd Defendants. Accordingly, a Notice of Discontinuance had been filed on 5 November 2015, to wholly discontinue the action against the 1st Defendant.

[5] The 2nd and 3rd Defendants in their Statement of Defence totally deny all the allegations levelled against them by the Plaintiff, including all allegations of fraud and negligence on the part of the 2nd Defendant. They contend that as per the Court Order the caveat no. 804803 was extended for three months from the date of the Order, which was 17 March 2015. As there was no further Court Order extending the caveat, the caveat lapsed on 17 June 2015.

[6] The Minutes of the Pre-Trial Conference record the following:

Agreed Facts

1. That the Plaintiff was the lawful son of the late Chandrika Prasad and the beneficiary in the estate of Chandrika Prasad who died intestate.
2. That the 1st Defendant is also the lawful son of the deceased.
3. That the 2nd Defendant is empowered under the Land Transport Act to register all forms of instruments, transfers, and caveat under the Land Transfer Act.
4. That the 3rd Defendant is joined pursuant to the Crown Proceedings Act.
5. That the late Chandrika Prasad was co-owner with one Jagdish Chand in the property described as Housing Authority sub lease no. 270266, described as Lot 26 on DP no. 4882 in the Province of Macuata and District of Labasa as tenancy in common.
6. That the following are the surviving beneficiaries and children of the late Chandrika Prasad
 - i. Sashikal
 - ii. Jagdish (Chand)(Jagdish Kumar)
 - iii. Aruna Devi
 - iv. Karan Singh
 - v. Ashok Kumar (Plaintiff)
 - vi. Kishor Kumar (1st Defendant)
7. That on or about sometime last year (2014) the Plaintiff gathered from the Registrar of Titles Office that the estate property was transferred to the 1st Defendant Kishor Kumar who is residing in Australia.

8. That Plaintiff lodged a caveat on the property described as Housing Authority sub lease no. 270266, described as Lot 26 on DP No. 4882 in the Province of Macuata and District of Labasa as tenants in common.
9. That the Bank of the South Pacific has made an application for withdrawal of the said caveat, and the Registrar of Titles posted a Notice of removal of caveat to the Plaintiff.
10. That the Plaintiff through his Solicitors Messrs Samusamuvodre Sharma Law obtained an order for the extension of the caveat on 17 March 2015.
11. That on the same even date the Solicitor faxed the copy of the order to the Registrar of Titles office for endorsement on the subject property.
12. That the 2nd Defendant employees admitted receiving the faxed copy of the Order.

Issues

13. Did the Plaintiff sign any deed of renunciation renouncing his rights, shares and interest as one of the beneficiaries in favour of the 1st Defendant?
14. Is the 2nd Defendant under a duty of care to obtain executed deed of renunciation of all the beneficiaries of the estate of Chandrika Prasad?
15. Is the 2nd Defendant under a duty to obtain the Plaintiff's deed of renunciation before recording the registration of the transfer of the property to the 1st Defendant?
16. Has the 2nd Defendant fraudulently transferred the property to the 1st Defendant?
17. Did the 2nd Defendant negligently proceed to the registration of the transfer of the estate property onto the 1st Defendant?
18. Did the 2nd Defendant receive the faxed copy of the Court Order, which extended caveat lodged by the Plaintiff for three (3) months?
19. Did the 2nd Defendant have the knowledge that the Honourable Court has extended the caveat for three (3) months?

20. Was the 2nd Defendant negligent in not extending the caveat for a period of three (3) months as per the order of the Court?
21. Did the 2nd Defendant properly calculate the twenty one (21) days period as provided under the Land Transfer Act before removing the Caveat?
22. Was the 2nd Defendant under a duty to follow the process of removal of caveat and registration of transfer in accordance with the Land Transfer Act?
23. Did the Plaintiff suffer losses and damages due to the action of the 2nd Defendant?
24. Is the Plaintiff entitled to an order that the registration of transfer which was completed by mortgaged sale (be de-registered)?

[7] The hearing in this case commenced with the Plaintiff Ashok Kumar giving evidence. He was the sole witness in his case. In his evidence, he re-stated what was submitted by him in his Amended Statement of Claim and all what was recorded by way of the agreed facts in the minutes of the Pre-Trial Conference.

[8] Sometime in the year 2014 the Plaintiff had found out from the Registrar of Titles Office that the estate property had been transferred to the 1st Defendant, who is said to be residing in Australia. He reiterated that neither he nor any of the other beneficiaries had signed any documents renouncing their rights, shares or interest in the estate property in favour of the 1st Defendant.

[9] During the course of his evidence the following exhibits were tendered to Court:

P1-The Notice of removal of caveat No. 807862, dated 13 February 2015.

P2-Copies of the postal receipt from Fiji Post (indicating the date of receipt of the correspondence as 25 February 2015).

P3-Letter written by the Plaintiff and his mother, Dukrani, to the Registrar of Titles, Suva, dated 7 April 2015, seeking clarification regarding the Notice of Removal of Caveat.

P4-Communication sent by the Registrar of Titles to the Plaintiff and his mother, Dukrani, dated 26 May 2015.

[10] With that the Plaintiff closed his case.

[11] The 2nd and 3rd Defendants too relied on the evidence of one witness, namely Ms. Torica Goneca, the Acting Deputy Registrar of Titles. She has over 21 years of service at the Registrar of Titles Office. She explained in detail the processes involved in the lodgement, endorsement and registration of caveats and also the processes involved for removal of caveats.

[12] During the course of her evidence the following exhibits were tendered to Court:

D1-Letter dated 15 April 2015, sent by the 2nd Defendant to the Plaintiff and Dukrani.

D2- A copy of the Housing Authority sub lease no. 270266.

D3-The Mortgage Instrument (showing the 1st Defendant as the mortgagor and the BSP as the mortgagee).

D4-The Notice of caveat forbidding any dealing in the property, dated 25 November 2014.

D5-The caveat no. 804803, dated 16 October 2014 and registered on 30 October 2014.

D6-The application for the removal of caveat, dated 12 January 2015.

D6a- A copy of the Notice of removal of caveat No. 807862, dated 13 February 2015.

[This document has also been marked as Exhibit **P1**].

D7-The Order of the High Court, dated 17 March 2015, extending the caveat by a further three months.

[13] Ms. Goneca confirmed that, on 30 October 2014, the Plaintiff and Dukrani (his mother) had lodged a caveat on the property described as Housing Authority sub lease no. 270266, described as Lot 26 on DP No. 4882 in the Province of Macuata and District of Labasa (caveat no. 804803). On 12 January 2015, Messrs Sherani & Company had lodged an application for removal of the caveat on behalf of BSP, the mortgagee.

- [14] As per her records, the Notice was posted to the caveators on 19 February 2015. It is set out in the Notice of removal of caveat that after the lapse of 21 days from the date of service of the Notice the said caveat will be removed, unless there is an order from the High Court to the contrary. As such, according to her evidence the said Notice would have expired on 14 March 2015 (adding a grace period of three additional days as well). Since 14 March was a weekend the caveat had been cancelled on 16 March 2015.
- [15] On 17 March 2015, the BSP lodged the transfer by mortgagee sale and the mortgage, and the transfer was formally lodged in the system.
- [16] On the same day Messrs Samusamuvodre Sharma Law faxed a copy of the High Court order extending the caveat by three months. The Lawyers formally lodged the Court order on 19 March 2015 for registration.
- [17] Although it had been stated in Exhibit D1 that since the transfer was lodged prior to the Court order that the transfer takes precedence, this position had later been retracted by letter which is marked as Exhibit P4. Therein it is stated that the 2nd Defendant will comply with the Court order and endorse the extension of the caveat. Accordingly, the caveat had been extended for a further three months from 17 March 2015.
- [18] Since there was no order from Court received by her Office extending the caveat beyond 17 June 2015, the BSP had re-lodged the transfer by mortgagee sale and the mortgage. The said instruments were registered on 30 June 2015.
- [19] In cross examination the witness stated that Chandrika Prasad had passed away on 26 May 2001. The transfer of the estate property in the name of the 1st Defendant had been executed on 9 October 2008. The transfer had been registered at the Office of the Registrar of Titles on 21 January 2009 (this position is confirmed in Exhibit D2). This transfer had taken place for a monetary value. The co-owner of the

property Jagdish and the administrator of the estate, Dukrani, had transferred the property to the 1st Defendant for a monetary consideration of FJ\$55,371.21.

[20] The position of the witness was that where there is a transfer for monetary value, as in this case, the 2nd Defendant will not ask for the consent of the beneficiaries. The consent of the beneficiaries and letters of renunciation will be sought where there is a transfer by way of administration.

[21] During the cross examination a further Exhibit P5 was tendered to Court. P5 is a letter, dated 13 March 2015, sent by Messrs Samusamuvodre Sharma Law to the 2nd Defendant, informing that an Ex-Parte Notice of Motion seeking the extension of the caveat is listed for 16 March 2015 and therefore requesting the 2nd Defendant to sustain the caveat.

[22] With that the 2nd and 3rd Defendants rested their case.

[23] At the conclusion of the hearing both Counsel for the Plaintiff and Counsel for the 2nd and 3rd Defendants were granted time to file written submissions. Accordingly, the parties filed detailed written submissions, which I have had the benefit of perusing.

ANALYSIS AND DETERMINATION

[24] From the facts of this case the primary issues for determination can be summarized as follows:

- (1) Was the 2nd Defendant fraudulent and negligent in proceeding to the registration of the transfer of the estate property in the name of the 1st Defendant?
- (2) Was the 2nd Defendant negligent in not extending the caveat for a period of three (3) months as per the Order of Court?

(3) Was the 2nd Defendant negligent in proceeding to the registration of the transfer under mortgagee sale?

[25] Ms. Torica Goneca, the Acting Deputy Registrar of Titles has given clear testimony as to the basis on which the registration of the transfer of the estate property in the name of the 1st Defendant took place. She points out that this transfer had taken place for a monetary value. The co-owner of the property Jagdish and the administrator of the estate, Dukrani, had transferred the property to the 1st Defendant for a monetary consideration of FJ\$55,371.21. Therefore, it was her evidence that there was no necessity, in these circumstances, for the 2nd Defendant to ask for the consent of the beneficiaries of the estate property prior to transferring the property in the name of the 1st Defendant.

[26] The Plaintiff alleges that the 1st Defendant colluded with the agents, servants and employees of the 2nd Defendant and fraudulently transferred the estate property under his name. However, the Plaintiff has not led any evidence whatsoever to prove this very serious allegation against the 2nd Defendant.

[27] It is the view of this Court, that the Plaintiff is unjustly and unfairly hurling baseless accusations against the 2nd Defendant. This is further compounded by the fact that the Plaintiff had decided to discontinue the action against the 1st Defendant (who is his own brother) and to proceed only against the 2nd and 3rd Defendants.

[28] Furthermore, the co-owner of the estate property Jagdish and the administrator of the estate, Dukrani, are the persons who are alleged to have transferred the property to the 1st Defendant, without the knowledge of the Plaintiff. It is the evidence of the Plaintiff that he, Dukrani (his mother) and Jagdish (his brother) are currently occupying the said estate property. However, the Plaintiff failed to call either Jagdish or Dukrani as witnesses to clarify any of these issues.

- [29] In the circumstances, I am of the opinion that the Plaintiff has failed to establish that the 2nd Defendant was fraudulent or negligent in proceeding to the registration of the transfer of the estate property in the name of the 1st Defendant.
- [30] The next issue that I wish to deal with is whether the 2nd Defendant was negligent in not extending the caveat for a period of three (3) months as per the Order of Court. As to this issue, there is ample evidence on record that the 2nd Defendant did in fact extend the caveat for a further period of three months, with effect from 17 March 2015. The Court Order had been registered by the 2nd Defendant on the 19 March 2015.
- [31] Ms. Goneca has clearly testified that although it had been stated in the letter, dated 15 April 2015, sent by the 2nd Defendant to the Plaintiff and Dukrani (Exhibit D1), that since the transfer by mortgagee sale was lodged prior to the Court order that the transfer takes precedence, this position had later been retracted. This had been done by way of a communication, dated 26 May 2015, sent by the Registrar of Titles to the Plaintiff and his mother, Dukrani (Exhibit P4). In the said communication it is stated that the 2nd Defendant will comply with the Court Order and endorse the extension of the caveat, which was accordingly done.
- [32] It must be admitted that there has been some delay on the part of the 2nd Defendant in communicating this fact to the Plaintiff. Be that as it may, the fact remains that the caveat on the estate property was extended for a further period of three months, with effect from 17 March 2015.
- [33] The final issue for determination is whether the 2nd Defendant was negligent in proceeding to the registration of the transfer under mortgagee sale. In respect of this issue too Ms. Goneca has explained that there was no Order from Court received by her Office extending the caveat on the estate property beyond 17 June 2015. As such, the BSP had re-lodged the transfer by mortgagee sale and the

mortgage. In the absence of any Order from Court extending the caveat the said instruments were subsequently registered on 30 June 2015.

[34] In the circumstances, I hold that the Plaintiff has failed to establish that the 2nd Defendant was negligent in proceeding to the registration of the transfer under mortgagee sale.

[35] For the above reasons, I dismiss all the Plaintiff's claims made against the 2nd and 3rd Defendants.

[36] During the course of the hearing, the Counsel appearing on behalf of the 2nd and 3rd Defendants took up the position that it was clear from the pleadings that the Plaintiff's action was based on private law cause of action for breach of statutory obligations and a cause of action for ordinary common law negligence in the exercise of statutory duties. The Office of the Registrar of Titles is a government entity and as such any decision made by the Registrar of Titles must be challenged by way of judicial review. Thus he submitted that the entire proceedings were wrong in law.

[37] Since I have already decided this matter on its merits and determined that the action should be dismissed, I find it inexpedient to delve on the above issue.

FINAL ORDERS

1. This action is dismissed.
2. Considering all the facts and circumstances of this case, I make no order for costs.

Dated this 9th day of May 2017, at Suva.


Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

