

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 441 OF 1999

BETWEEN:

TARA MATI, MAYA WATI, BIMLA WATI (father's name Suruj Ram Singh) all of Davuilevu, Nausori, Fiji, Domestic Duties respectively, **SUBHAS CHAND RAMRAKHA** (father's name Harish Ramrakha) of Waiyavi, Lautoka and **AMAR RAMRAKHA** (father's name Harish Ramrakha) of Suva, Civil Servant.

PLAINTIFFS

AND:

SARAS WATI (father's name Suruj Ram Singh) of Viria, Nausori, Domestic Duties.

1ST DEFENDANT

RADHE PRASAD (father's name Shiu Ram) of Viria, Nausori, Farmer.

2ND DEFENDANT

SUSHIL PRASAD SHARMA (father's name Radhe Prasad) of Viria, Nausori.

3RD DEFENDANT

REGISTRAR OF TITLES

4TH DEFENDANT

ATTORNEY-GENERAL OF FIJI

5TH DEFENDANT

Counsel:

Mr V. Maharaj, Mr I. Samad for the Plaintiffs

Mr E. Narayan for 1st, 2nd and 3rd Defendants

Ms T. Sharma for 4th and 5th Defendants

Date of Hearing: 14 October 2015

Date of Ruling: 31 August 2018

RULING

(Application to Further Amend Statement of Claim)

1.0 Introduction

1.1 On 3 August 2015, Plaintiffs filed Application by way of Summons for Leave to Further Amend Statement of Claim.

1.2 Plaintiffs sought Leave to further amend the Statement of Claim by addressing following prayers:-

“(h) For an Order for Damages to be paid by the Defendants.

“(i) Interest pursuant to Law Reform (Miscellaneous (Death and Interest) Act Cap 27.”

(“the Application”)

1.3 When the Application to Further Amend the Statement of Claim was called on 13 September 2015, Court gave directions for filing of Affidavits and Submissions and adjourned the Application to 14 October 2015, for hearing.

1.4 On 14 October 2015, Counsel for the parties informed Court that they rely on Affidavits and Submissions filed and do not wish to add anything.

1.5 Following Affidavits were filed:-

For First Plaintiff

Affidavit in Support of Bimla Wati sworn and filed on 3 August 2015, (“**Wati’s Affidavit**”)

For 1st, 2nd, and 3rd Defendants

Affidavit of Sushil Prasad Sharma sworn and filed on 27 August 2015 (“**Sharma’s Affidavit**”)

For 4th, 5th and 6th Defendants

Affidavit of Sangeeta Chand sworn and filed on 27 August 2015 (“**Chand’s Affidavit**”)

1.6 All parties filed Submissions and made Oral Submissions.

2.0 Application to Further Amend Statement of Claim

2.1 Order 20 Rule 5-(1), (2) and (5) and Rule 7(1) of the High Court Rules provide:-

Rule 5(1), (2) and (5)

“5.-(1) Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3)

(4)

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.”

Rule 7(1)

“7.-(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”

2.2 The test to be applied when dealing with Application to amend pleadings was stated by Court of Appeal in **Sundar v. Prasad** [1998] FJCA19 Abu0022u.97s (15 May 1998) as follows:-

“Generally, it is in the best interest of the administration of justice that the pleadings in an action should state fully and accurately the factual basis of each party’s case. For that reason amendment of pleadings which will have that effect are usually allowed, unless the other party will be seriously prejudiced thereby (G.L. Baker Ltd. v. Medway Building and Supplies Ltd [1958] 1 WLR 1231 (C.A.)). The test to be applied is whether the amendment is necessary in order to determine the real controversy between the parties and does not result in injustice to other parties; if that test is met, leave to amend may be given even at a very late stage of the trial (Elders Pastoral Ltd v. Marr (1987) 2 PRNZ 383 (C.A.)). However, the later the amendment the greater is the chance that it will prejudice other parties or cause significant delays, which are

contrary to the interest of the public in the expeditious conduct of trials. When leave to amend is granted, the party seeking the amendment must bear the costs of the other party waster as a result of it.”

- 2.3 In ***Ambaram Narsey Properties Ltd v. Khan*** [2001] FJHC 306; [2001] 1 FLR 283 (16 August 2001) his Lordship Justice Gates (current Chief Justice) adopted with approval the following principles in ***Cropper v. Smith*** (1884) 26 Ch. D. 700 p 710 Bowen L.J. said:-

“Now, I think it is a well established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace.”

and his Lordship added at p 711:

“It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.”

- 2.4 His Lordship further stated that:-

“Amendment may be allowed “at any stage of the proceedings” which includes during a trial The Duke of Buccleuch [1892] P. 201, at p 211 per Lord Esher MR; G. L. Baker Ltd. v. Medway Building & Supplies Ltd. [1958] 1 WLR 1216. With some reluctance the trial judge was prepared to allow the statement of claim to be amendment in Loutfi v. C Czarniow

Ltd. (1952) 2 All ER 823 as late as after close of the case but before judgment.”

2.5 Lord Justice Branwell in **Tildesley v. Harper** (1878) 10 Ch. D. 393, stated as follows:-

“My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by this blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise.” “However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs” (per Brent M.R. Clarapede v. Commercial Union Association (1883) 32 WR262, p263.; Weldon v. Neal (1887) 19 QBD394 p.396; Australian Steam Navigation Co. v. Smith (1889) 14 App. Cas. 318 p320; Hunt v. Rice & Sons (1837) 53 TLR931, C.A and see the remarks of Lindley L.J. Indigo Co. v. Ogilvy (1891) 2 Ch. 39; and of Pollock B. Steward v. North Metropolitan Tramways Co. (1886) 16 QBD.178, P. 180, and per Esher M.R. p.558, c.a.). An amendment ought to be allowed if thereby “the real substantial question can be raised between the parties,” and multiplicity of legal proceedings avoided (Kurtz v. Spence (1888) 36 Ch. D. 774; The Alert (1895) 72 L.T. 124). (page 396)”

2.6 The amendments sought by the Plaintiff are stated at paragraph 1.1 of this Ruling.

2.7 Third Defendant submits that:-

- (i) The amendment sought is not supported by evidence and not founded on the pleadings;
- (ii) First to Third Defendants will be prejudiced as stated at paragraphs 11 and 12(i) of Sharma’s Affidavit;

- (iii) Amendment will delay and embarrass the fair trial of this action which has been in the Court system for a long time;
- (iv) Plaintiff's action in Civil Action No. 82 of 1995 was struck out for want of prosecution and as such this action is an abuse of court process.

2.8 Order 18 Rule 11(1)(2) of High Court Rules provide as follows:-

“11.-(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words-

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition, of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.”

2.9 At paragraph 18/12/9 of the Supreme Court Rules (White Book) 1993 Vol. 1 provides as follows:-

“Where the plaintiff claims that he has suffered damage, i.e. injury, of a kind which is not the necessary and immediate consequence of the wrongful act, it is his duty to plead full particulars to show the nature and extent of the damages, i.e. the amount which he claims to be recoverable, irrespective of whether they are general or special damages, so as fairly to inform the defendant of the case he has to meet and to assist him in computing a payment into Court, and the mere statement or prayer that he claims “damages” will not support a claim for such damages.”

- 2.10 In this instance, the Plaintiffs only intend to add “Damages” as a prayer (h) in the Statement of Claim.
- 2.11 In the Amended Statement of Claim filed on 9 July 2012, no particulars of damages are provided which is in breach of Order 18(11-(1) of High Court Rules.
- 2.12 The parties in Minutes of Pre-Trial Conference stated the following as triable issue which of course does not cure the defects in the Statement:-
- “6. If any of (1) to (4) above are in affirmative then what is the quantum of damages payable to the Plaintiffs? OR whether the transfers to First, Second and Third Defendants are null and void?
7. Whether the Fourth Defendant is also liable and the quantum of damages payable to the Plaintiffs?”
- 2.13 Also no claim for damages is made in the Statement of Claim and only adding a prayer for damages is clear abuse of court process.
- 2.14 Court with due respect does not accept First to Third Defendants Submission that just because Civil Action No. 82 of 1195 was struck out for want of prosecution this action is an abuse of court process.
- 2.15 In fact, where any action is struck out for want of prosecution then the Plaintiff is at liberty to file fresh action with liberty for that Defendants to plead limitation if the fresh actin is filed out of limitation period and Plaintiff filed fresh action without Courts leave.
- 2.16 This Court accepts Defendants Submission that any further delay in this proceedings will delay and embarrass fair trial of this action.
- 2.17 It must be noted that most of the parties who were part of the proceeding when it commenced in 1999 have passed away.

2.18 This Court also accepts Fourth and Fifth Defendants Submission that they will be prejudiced and it is in the interest of justice and public policy that Application to Further Amend the Statement of Claim be refused.

3.0 Costs


3.1 Since the Application was made at close of trial and parties only relied on written submissions it is appropriate there be no order as to costs for the Application.

4.0 Orders

4.1 Following Orders are made:-

- (i) Application to Further Amend the Statement of Claim by Inter-Parte Summons filed on 3 August 2015, is dismissed and struck out;
- (ii) Each party bear their own costs of the Application.




K. Kumar
JUDGE

At Suva

31 August 2018

MC LAWYERS AND SAMAD LAW FOR THE PLAINTIFFS

PATEL SHARMA LAWYERS FOR 1ST, 2ND AND 3RD DEFENDANTS

OFFICE OF THE ATTORNEY-GENERAL FOR THE 4TH AND 5TH DEFENDANTS