

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

**Civil Action No. HBC 138 of 2018**

BETWEEN

**SHASHI PRASAD SHARMA** aka **SASHI PRASAD** ( f/n Ambika  
Prasad Sharma aka Ambika Sharma) of Koronivia,  
Nausori c/ Ministry of Education,  
Quality House, Suva.

**1<sup>st</sup> PLAINTIFF**

AND

**ESTATE OF ARUN PRASAD SHARMA** aka **ARUN SHARMA** (deceased)  
through its administrator / personal representative,  
**VINAY SHARMA** of Lot 12 Amber Place,  
Howell Road, Samabula, Suva.

**2<sup>nd</sup> PLAINTIFF**

AND

**ESTATE OF JASODA DEVI SHARMA** aka **JASODA** (deceased) through its  
executrices and trustees (personal representatives **RANJILA DEVI** aka  
**RANJILA DEVI KUMAR** aka **RANJULA DEVI KUMAR** (f/n Ambika  
Prasad aka Ambika Sharma) and **RESHMI DEVI SHARMA**  
(f/n Ambika Prasad aka Ambika Sharma) whose designated

address of service is O'Driscol & Co., 22  
Carnarvon Street, Suva.

**DEFENDANTS**

**Counsel** : 1<sup>st</sup> Plaintiff in person  
2<sup>nd</sup> Plaintiff in person  
Mr. G. O'Driscol for the defendants

**Date of Hearing** : 12<sup>th</sup> September, 2018

**Date of Ruling** : 26<sup>th</sup> September, 2018

**RULING**

[1] The plaintiffs instituted these proceedings seeking inter alia, the following reliefs:

- (i) Judgment in favour of the first and second plaintiffs for 50% joint and equal ownership of all real estate and personal and properties owned by the plaintiff's late father on an institutional constructive trust from the date of the properties were acquired and/or limited to the date 8 February 1992. This order is to exclude ownership in the one bedroom flat on Lot 2 on DP No. 5132, CT 21978 built by Arun Prasad Sharma aka Arun Sharma by his own moneys for his personal use;
- (ii) Judgment in favour of the plaintiffs for equitable compensation for all dispositions / diminishing of institutional constructive trust properties from 8 February 1992 by the late Jasoda Devi Sharma aka Jasoda;

- (iii) An order for the transfer of title and/or registration of title of the one bedroom flat on Lot 2 on DP No. 5132, CT 21978 built by the late Arun Prasad Sharma aka Arun Sharma by his own moneys for his personal use, to the 2<sup>nd</sup> plaintiff as tenants in common;
- (iv) Judgment in favour of the 2<sup>nd</sup> plaintiff for equitable compensation for unjust enrichment of rental income from the one bedroom flat on Lot 2 on DP No. 5132, CT 21978 from 8February 1992 until date of judgment at \$800 per month plus interest of 13.5% per annum on the sum from 8 February 1992 until date of judgment. Alternatively, judgment in favour of the 2<sup>nd</sup> plaintiff for loss of enjoyment of the one bedroom flat on Lot 2 on DP No. 5132, CT 21978 from 8 February 1992 until judgment at \$800 per month plus interest of 13.5% per annum on the total sum from 8 February 1992;
- (v) Judgment in favour of the plaintiffs for equitable compensation for unjust enrichment of 50% of the rental income in the sum of \$1500 per month from the commercial building on Lot 3 on DP No. 5132, CT 21979 from 8n February 1992 until date of judgment plus interest of 13.5% per annum on the sum from 8 February 1992 until the date of judgment. Alternatively, judgment in favour of the 2<sup>nd</sup> plaintiff for loss of enjoyment of the one bedroom flat on Lot 2 on DP No. 5132, CT 21979 from 8 February 1992 until judgment at \$1500 per month plus interest of 13.5% per annum on the total sum from 8 February 1992;
- (vi) Judgment in favour of the plaintiffs for loss of enjoyment of the main building on Lot 2 on DP No. 5132, CT 21978 from 8 February 1992 until judgment at \$1500 per month plus interest of 13.5% per annum on the total sum from 8 February 1992;
- (vii) Judgment for equitable estoppel in favour of the 2<sup>nd</sup> plaintiff for the sum of \$38,500.00 plus interest of 13,5% per annum on the amount from 2008 until date of judgment.

[2] The 1<sup>st</sup> plaintiff by the amended ex-parte notice of motion which was converted into an inter parte notice of motion by the court seeking the following reliefs:

- A. That there be an abridgment of time and the matter be heard ex-parte.
- B. That the defendants and / or their servants and / or their agents refrain from selling, transferring and / or adversely dealing with any properties forming part of the estate of Jasoda Devi Sharma aka Jasoda until the determination of the plaintiff's claims in this action.  
Alternatively, if any of the properties have been sold, then the proceeds of the sale to be kept in an interesting bearing account until the determination of the plaintiff's claim in this action.
- C. That the defendant and / or their servants and / or their agents be injunct and / or restraint from transferring and / or completing the transfer of the property situated on Lot 3 on DP No. 5132, allotment 45 registered in Certificate of Title No. 21979 until the final determination of this matter.

[3] 1<sup>st</sup> plaintiff appeared in person at the hearing of his application. The only submission made by the 1<sup>st</sup> plaintiff, who is the applicant of this application, was that since the defendants have not filed an affidavit in opposition, the court can grant the orders sought by him. This is a misconception. Injunction is an equitable remedy granted at the discretion of the court. The power, which the Court possesses to grant injunctions, should be very cautiously exercised only on clear and satisfactory grounds. An application for an injunction is an appeal to an extraordinary power of the Court and the applicant is bound to make out a case showing clearly a necessity for its exercise.

[4] In **Hubbard & Another v Vosper & Another** [1972] 2 Q.B. 84 Lord Denning in that case made the following observations:

In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the

defendant but leave him free to go ahead. .... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

In the case of **American Cyanamid Co v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396 Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) Whether there is a serious question to be tried at the hearing of the substantive matter;
- (ii) Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and
- (iii) In whose favour the balance of convenience lie if the injunction is granted or refused.

Lord Diplock in his speech also made the following observations;

I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

- [5] Jasoda Devi Sharma died leaving last will. In the said last will devised and bequeathed the property comprised in Certificate of Title No. 21978 being Lot 2 on DP No. 5132 to her grandson Niraj Sharma and she also directed the trustees to sell the property comprised in Certificate of Title No. 21979 upon he death and to divide the proceeds of sale as stated in the last will. The 1<sup>st</sup> plaintiff has not tendered any evidence setting aside this last will.
- [6] I will now consider whether the 1<sup>st</sup> plaintiff has disclosed a serious question to be tried at the hearing of the substantive matter.

- [7] The plaintiffs came to court on the basis that the 1<sup>st</sup> plaintiff and the late Arun Prasad Sharma whose estate is represented by the 2<sup>nd</sup> plaintiff, personally contributed to the development and accumulation of properties which are the subject matter of this action and therefore, they are jointly entitled to 50% of the properties of Arun Prasad Sharma's properties on an institutional constructive trust. It is also averred in the amended statement of claim that Arun Prasad Sharma promised to give them a commercial building at Toorak, Lot 3 on DP No. 5132, CT 21979 and a house for all their contributions.
- [8] In the amended statement of claim it is not averred that there was any monetary contribution to purchase these properties. The plaintiffs has explained in paragraphs 7(a) to (f) of the amended statement of claim the nature of Arun Prasad Sharma's contribution. The plaintiff do not claim that Ariun Prasad Sharma financially contributed to the development of or in acquisition of the properties which are the subject matter of these proceedings. Mere assisting the father in his day to day business is no sufficient to create a constructive trust in favour of Arun Prasad Sharma or the 1<sup>st</sup> plaintiff.
- [9] The learned counsel for the defendants submitted that this matter has already been adjudicated upon by the court. Civil action No. 24 of 2000 was instituted by the defendants of this action against the 1<sup>st</sup> plaintiff and Arun Prasad Sharma seeking to have the two caveats filed by them restraining the Registry from granting probate in the estate of Jasoda Devi Sharma, removed. The court by its decision dated 28<sup>th</sup> October, 2011 made order removing the two caveats. In that case the court observed that the caveators have not established an interest to that part of the estate (clause 6 of the last will) contrary to the interest of the applicants' (the defendants in this action) interest.
- [11] The late Arun Prasad Sharma filed civil action No. 29 of 2011 against trustees of his mother's estate who are also the defendants in this action seeking *inter alia*, a declaration that he has personal interest in the estate for his personal contribution. The properties in respect of which the said action was instituted are the same as in the present action. The claim of

\$38,500.00 with interest at the rate of 13.5% was also claimed in that action but the court refused to grant both claims.

[12] The question for determination in these proceedings is whether the plaintiffs have any interest in the subject matter of this action. I have already decided above that they cannot claim right to these properties on the basis of a constructive trust. Further the High Court has held on two occasions that the plaintiffs do not have any interest in estate of Jasoda Devi Sharma.

[13] For the reasons set out above I hold that the plaintiffs are not entitled to the orders as sought in the amended ex-parte notice of motion filed on 20<sup>th</sup> June 2018.

### **ORDERS**

1. The notice of motion filed on 20<sup>th</sup> June, 2018 is struck out and the orders sought in the said notice of motion are refused.
2. The 1<sup>st</sup> plaintiff is ordered to pay \$1000.00 as costs of this application within 30 days from the date of the ruling.



  
Lyone Seneviratne

**JUDGE**

26<sup>th</sup> September, 2018.