

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 56 OF 2019

BETWEEN : **MAHENDRA PRASAD** of Kavuli, Tavua, Farmer.

PLAINTIFF

AND : **SATYA WATI** and **RAJ KUMAR** both of Kavuli, Tavua, Domestic Duties and Retired.

FIRST DEFENDANT

AND : **HARISH KUMAR** and **SANJILA DEVI** both of Kavuli, Tavua, Driver and Domestic Duties respectively.

SECOND DEFENDANTS

Appearances : Ms Joyti Naidu for the plaintiff
 No appearance for the defendants

Date of Hearing : 28 June 2019

Date of Ruling : 28 June 2019

J U D G M E N T

[01] This is an *ex parte* application supported by an affidavit of the plaintiff. It is filed under O 19, R 7 of the High Court Rules 1988, as amended ('HCR'). The defendant filed his acknowledgement of service, although he did not file his statement of defence within the prescribed time.

[02] In the statement of claim, the plaintiff seeks among other things vacant possessions of the land and premises in Certificate of Title No. 17 323 ('the property') and an injunction against the defendants restraining them from interfering with the his (plaintiff) possession of the property and obstructing the access way by dumping rubbish and debris and/or causing damage to the access way.

- [03] Under O 19, R 7, the plaintiff can apply, in respect of other claim, to the court for judgment if the defendant fails to serve a defence on the plaintiff within the period fixed by or under the Rules for service of defence.
- [04] A defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledgement of service of the writ or after the statement of claim is served on him or her, whichever is later (see O 19, R 7).
- [05] The defendant filed an acknowledgement of service of writ on 28 March 2019. To date, the defendant had not filed a statement of defence. As such, the defendant had failed to serve a defence on the plaintiff as required by Rule 7.
- [06] The defendants had failed to serve a defence with the time limited for that purpose. Therefore, the plaintiff is entitled to apply to the Court for judgment.
- [07] On the hearing of the application the Court may give such judgment as the plaintiff appears entitled to on his or her statement of claim.
- [08] I now consider the statement of claim, the affidavit evidence adduced by the plaintiff and the submissions put forward on behalf of the plaintiff.
- [09] The plaintiff seeks the following relief in his statement of claim:
- a) *Judgment that the defendants and/or their servants and/or their agents to give the plaintiff vacant possession of the land and premises in Certificate of Title number 17323.*
 - b) *An injunction restraining the defendants and/or their servants and/or their agents from interfering with the plaintiff and his family's possession and occupation of the Certificate of Titles number 17323 and in any way interfering with the cane farm whether by damaging the access way or by dumping rubbish and debris on the same or otherwise;*
 - c) *Damages for nuisance;*

d) General damages;

e) Pre and post judgment interest and

f) The defendants do pay the plaintiff costs of this action.

[10] In his evidence itself, the plaintiff admits that the defendants are occupying the property solely because of his (plaintiff) father's Will wherein Satya Wati, the first named defendant is given the right to reside on the property.

[11] Since the plaintiff has admitted that the first named defendant has the right to occupy the property, he is not entitled to recover possession of the property from the first defendant.

[12] I now turn to consider other remedy the plaintiff is entitled to on his statement of claim.

[13] Another substantive relief sought by the plaintiff is an injunction against the defendants restraining these from interfering with his possession of the property and from causing nuisance.

[14] In his affidavit, the plaintiff explains how the defendants are causing nuisance to him. His evidence is that the defendants are carrying out illegal activities and causing nuisance, such rubbish, burning the rubbish near the cane field and placing kitchen sink, toilet and bathroom water outlet pipes in the Sugar Cane plantation.

[15] Having considered the plaintiff's unchallenged affidavit evidence, I am satisfied that the plaintiff is entitled to an injunction against the defendant as sought in prayer (b) of the statement of claim with costs.

[16] I accordingly grant the injunctive relief sought in the statement of claim with summarily assessed costs of \$1,000.00.

The result

1. Injunction granted as prayed for in (b) of the statement of claim
2. The defendant will pay summarily assessed costs of \$1,000.00 of the plaintiff.

Hallwongies
28/6/19

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M.H. Mohamed Ajmeer

JUDGE

At Lautoka
28 June 2019

Solicitors:

For the plaintiff: Jyoti Legal, Barristers & Solicitors

