

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Companies Action No. HBC 23 of 2019

BETWEEN: SITAL DIN of Naqara Taveuni, Farmer.

PLAINTIFF

AND: DAVIKA DEVI aka DEVIKA DEVI of Naqara, Taveuni, Self Employed as an administratrix in the estate of JAG DISH KUMAR AKA JAGDISH KUMAR.

FIRST DEFENDANT

AND: REGISTRAR OF TITLES

SECOND DEFENDANT

BEFORE: Justice Vishwa Datt Sharma

COUNSEL: Mr. A. Sen - for the Plaintiff
Mr. A. Kohli - for First Defendant
Mr. J. Pickering - for 2nd Defendant

DATE OF DECISION: 10th March, 2020

DECISION

[Application to enforce Judgment of 25th August 2008]

APPLICATION

1. This Originating Summons is filed by the Plaintiff seeking the following orders:
 - (i) That the First Defendant to execute within 7 days of notice to her transfer of one undivided half of the land known as Lot 10 contained in the Certificate of Title No. 28088 to the Plaintiff as tenants in common.
 - (ii) That the First Defendant within 14 days of notice to her to deposit to the office of Maqbool & Company or to any other solicitor appointed by the Plaintiff, the original of Certificate of Title No. 28088 to be lodged for registration of transfer as stipulated in the prayer above.
 - (iii) The First Defendant within 14 days of notice to her provide to the Plaintiff Capital Gains Tax Certificate to be lodged with the transfer to the Registrar of Titles for registration of transfer of one half undivided share of Certificate of Title No. 28088.
 - (iv) That the First Defendant be ordered to pay all costs and other statutory disbursements necessary to enable the Plaintiff to register himself as owner of undivided half share of Certificate of Title No. 28088.
 - (v) Alternatively leave be given to the Deputy Registrar of the High Court of Fiji to execute all documents in place of the Plaintiff for compliance of the above prayers.
 - (vi) That the First Defendant pay off costs of these proceedings.
 - (vii) Such other relief as this court may deem just and expedient.
2. In fact the Plaintiff is asking this Court to enforce the judgment delivered by Hon Mr. Justice Jiten Singh in Labasa High Court Civil Action No. HBC 62 of 2006 on 25th August 2008.
3. The application is supported by the Affidavit of Plaintiff Sital Din and is made pursuant to Order 7 Rule 2, Order 45 Rule 7 of the High Court Rules 1988 and the inherent jurisdiction of this Honourable Court.
4. The Plaintiff furnished Court with Written Submissions whilst the parties to the proceedings argued the application orally.

BACKGROUND

5. The Plaintiff and the Deceased Defendant are brothers.
6. The Deceased Defendant's estate has now appointed the wife of the Deceased as the Administratrix of the Estate.
7. The two (2) brothers contested in the Labasa High Court Civil Action No. HBC 62 of 2006 was over a piece of residential freehold land at Naqara, Taveuni, having area of 1 rood and 24 perches.
8. The Title to that land in Civil Action No. HBC 62 of 2006 stood in the name of First Defendant Jagdish Kumar [now deceased].
9. The Plaintiff in Civil Action No. HBC 62 of 2006 claimed that the Defendant [Jagdish Kumar] was holding one undivided half share of the land in trust for him [Plaintiff].

10. The Court after hearing Civil Action No. HBC 62 of 2006 determined the pending issue and delivered a judgment on 25th August 2008 as follows:

"Accordingly, I declare that the Defendant holds Certificate of Title No. 28088 in trust for the Plaintiff and himself in equal shares and in the event of sale both are entitled to share the proceeds of sale equally."

11. Now the Plaintiff by the current Civil Action No. HBC 23 of 2019 is asking Court to enforce the Judgment delivered on 25th August 2008 in terms of the relief sought in his Originating Summons filed herein.

Plaintiff's Submissions

12. The Plaintiff submitted that his Lordship made a determination in Civil Action No. HBC 62 of 2006 that the Certificate of Title No. 28088 was owned by the Plaintiff and the First Defendant.
13. That upon the death of the First Defendant in Civil Action No. HBC 62 of 2006 his estate devolved to the present First Defendant.
14. The Plaintiff had requested that the First Defendant to transfer one undivided half share to him to be registered as tenants in common.
15. The First Defendant opposes this application and in lieu seeks for the sub-division which can only come into place after compliance of relevant statutory provisions of Sub-division of Lands Act and together with the grant approval by relevant governing authorities.
16. He further submitted that the issue of subdivision was neither raised by the Defendant during the Hearing of Civil Action No. HBC 62 of 2006 nor that it was part of Hon. Mr. Justice Singh's order.
17. He further submitted that the Defendants are not opposing for the Plaintiff to be registered and therefore the Plaintiff is entitled to enforce the Judgment of Hon. Mr. Justice Jiten Singh with Summarily assessed costs.

First Defendant's Submissions

18. The First Defendant referred Court to paragraph 6 of the Answering Affidavit of the First Defendant which read -

"I deny paragraph 10 of 'Din Affidavit' and say that he does not have anything to lose as the order states that the Defendant holds the Certificate of Title No. 28088 in trust for the Plaintiff and himself and in equal shares and in the event of sale both are entitled to share the proceeds of sale equally. I have no intention to sell the land."

19. The First Defendant at page 7 further submitted that paragraph 31 at page 7 of Hon. Mr. Justice Jiten Singh's judgment states the final order which needs to be registered as the First Defendant is holding the property in trust for the Plaintiff.

Second Defendant's Submissions

20. The Second Defendant submitted that he has filed an Affidavit.
21. That he confirms the Judgment and that the registration of the order has been done.

ANALYSIS AND DETERMINATION

22. The issue for this Court to determine is whether the relief sought by the Plaintiff in his Originating Summons should be granted?
23. Reference is made to paragraphs 30 and 31 of Hon. Mr. Justice Jiten Singh's judgment delivered on 25th August 2008 wherein he stated this:

Paragraph 30 - *"The Plaintiff is claiming a beneficial interest. I am of the view that the word 'interest' is confined to disposition of a legal interest in land and not to claim for equitable interest. Hence, I conclude that Section 59 does not apply and it does not affect the equity in favor of the Plaintiff."*

- Paragraph 31 - *"Accordingly, I declare that the Defendant holds Certificate of Title No. 28088 in trust for the Plaintiff and himself in equal shares and in the event of sale both are entitled to share the proceeds of sale equally."*

24. The final determination accordingly reached herein by the Court in Civil Action No. HBC 62 of 2006 were in two folds:

Firstly - "The Defendant holds Certificate of Title No. 28088 in Trust for the plaintiff and himself for equal shares."

Secondly - "In the event of sale both are entitled to share the proceeds for sale equally."

25. Above is a Declaratory Judgment and/or final orders of the Court since the Plaintiff had sought for declaratory relief to that effect at paragraph 14 of his prayer within the earlier Writ of Summons proceedings in Civil Action No. 62 of 2006.
26. Declaratory judgments have the same effect and force as the Final Judgments and are legally binding. Thus is the same herein.
27. The Hon. Judge did not order for any specific action to be taken by the First Defendant wherein he held that the Certificate of Title No. 28088 was to be held by the Defendant in trust for the Plaintiff and himself in equal shares.

However, the Honourable Judge ordered that only in the event of sale that both parties to the proceedings were then entitled to share the proceeds of sale equally.

28. Further, I note that the declaratory orders made in Civil Action No. HBC 62 of 2006 was registered on the Certificate of Title No. 28088 dealing No. 844822 on 28th June 2017 bearing the heading: "Court Order".

The Court Order on the folio of the Certificate of Title No. 28088 which confirms and protects this interest of the Plaintiff within the Certificate of Title No. 28088 as per the order of the Court of 25th August 2008 accordingly.

29. This registration in itself confirms that the Court Order has been appropriately executed and accordingly enforced to safeguard the interest of both parties.
30. The various orders and or relief now sought herein by the Plaintiff in his Originating Summons for the First Defendant to execute within 7 days of Notice to her transfer of one undivided half share of the land known as Lot 10 contained in the Certificate of Title No. 28088 to the Plaintiff as tenants in common together with other relief as enumerated at paragraph 1 (i) to (vii) hereinabove cannot be exceeded to and/or granted since these relief and or orders are not any part of the Relief and or Orders granted in the Judgment of 25th August 2008 in the High Court Civil Action No. HBC 62 of 2006.
31. The Declaratory Judgment of 25th August 2008 did not order any specific action and or specific performances to be carried out by the First Defendant.
32. The Declaratory Judgment and or Final Orders made on 25th August 2008 are the Final Orders of this Court as it stands therein intact.
33. For the aforesaid rational the Plaintiffs relief and orders sought in his Originating Summons dated 22nd May 2019 is hereby dismissed accordingly.
34. Likewise, the orders sought by the First Defendant in his Answering Affidavit for the sub-division of the property is hereby dismissed on the grounds that the sub-division is not a part of the declaratory or final Orders of the Court in the High Court Civil Action No. HBC 62 of 2006.
35. Both parties to this proceedings are well aware of the proper cause of action to be taken in terms of the judgment of the court of 25th August 2008 in order to appropriately deal with therein respective equal share entitlement in the Certificate of Title No. 28088.
36. Parties are at liberty to take a proper cause of action in terms of the judgment of the Court in the High Court Civil Action No. 62 of 2006 delivered on 25th August 2008.
37. This matter proceeded to Hearing and therefore bearing in mind my finding of the dismissal of this application entitles the First and Second Defendants costs of the proceedings.
38. The Plaintiff is hereby ordered in the circumstances to pay to the First and Second Defendants summarily assessed costs of \$500.00 each within 14 days' time frame.

FINAL ORDERS

- (i) The Plaintiff's Originating Summons dated 22nd May 2019 seeking orders therein as enumerated herein above in my judgment at paragraph 1 (i) to (vii) inclusive are accordingly dismissed.

- (ii) The Plaintiff to pay summarily assessed costs of \$500.00 each to the First and Second Defendants within 14 days' time frame.
- (iii) Order sought by the First Defendant in his Answering Affidavit for sub-division also stands dismissed.
- (iv) Orders accordingly.

Dated at Suva this 10th Day of March, 2020



Vishwa Datt Sharma
Judge