

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

**CIVIL ACTION NO. HBC 71 OF 2019**

**BETWEEN: PRANITESH SINGH** of Sabeto, Nadi, Self Employed as the  
**ADMINISTRATOR OF THE ESTATE OF SAMPURAN SINHA AKA**  
**SAMPURAN SINGH.**

**FIRST APPLICANT / FIRST PLAINTIFF**

**AND: PRANITESH SINGH** of Sabeto, Nadi, Self Employed as the  
**ADMINISTRATOR OF THE ESTATE OF JAGAT SINGH.**

**SECOND APPLICANT / SECOND PLAINTIFF**

**AND: PRANITESH SINGH** of Sabeto, Nadi, Self Employed as the  
**ADMINISTRATOR OF THE ESTATE OF PREM SINGH.**

**THIRD APPLICANT / THIRD PLAINTIFF**

**AND: BIJMA KUMARI A.K.A BIJMA KUMARI SINGH A.K.A BIJAM**  
**KUMARI** of 5 Oliver Street, Bexley, North NSW 22077, Australia, as  
**EXECUTRIX AND TRUSTEE OF THE ESTATE OF BHAGAT SINGH.**

**FIRST RESPONDENT / FIRST DEFENDANT**

**AND: iTAUKEI LAND TRUST BOARD** a body corporate duly constituted  
under the iTaukei Land Trust Board Act Cap 134.

**SECOND RESPONDENT / SECOND DEFENDANT**

**Appearances** : Mr. K. Patel for the applicant/plaintiff  
: Ms. A. Swamy for the first defendant/respondent  
: Mr. J. Cati for the second defendant/respondent  
**Date of Hearing** : 22 June 2020  
**Date of Ruling** : 24 July 2020

# R U L I N G

*[on interim injunction]*

## Introduction

[01] This is an application supported by an affidavit of Pranitesh Singh for an interim injunction.

[02] By the *ex parte* summons dated and filed on 26 March 2019 (“*the application*”), the plaintiffs/applicants (“*the applicants*”) seek the following orders:

1. *An injunction restraining the first defendant as Executor and Trustee and the second defendant either jointly or severally by themselves or by their agents or Attorney or otherwise howsoever from transferring dealing in any manner whatsoever or disposing in any manner howsoever or interfering with any assets of the Estate including Instrument of Tenancy No. 6/10/7618 and Agreement for Lease No. 6/10/7871 in any manner.*
2. *That there be a stay on court proceedings including the interim injunction order dated 22 February 2019 and the pending formal proof ruling in Magistrates Court Action No. 70 of 2018 at the Nadi Magistrates Court until determination of this action. (This prayer was amended to read as “That Pranitesh Singh, the Administrator of the Estates of the Beneficiaries be allowed to reside at his house on the property comprised in Instrument of Tenancy No. 6//10/7618 and Agreement for Lease No. 6/10/7871 until determination of this matter.”*
3. *That the first defendant and/or the tenant occupying the shop and home situated on Instrument of Tenancy No. 6/10/7618 deposit the rental for the tenancy of the shop and the house into court until determination of this action.*
4. *An order that Fiji Sugar Corporation hold all payments of cane proceeds in respect of farm number 28033 Natova Sector and farm number 835 Natova Sector being Estate assets until determination of this action.*
5. *The first defendant and/or its servant, agents be restrained from intimidating, threatening and harassing the families of the beneficiaries residing on the land*

*comprised in Instrument of Tenancy No. 6/10/7618 and Agreement for Lease No. 6/10/7871.*

6. *The Sabeto Police to assist in compliance of the Order 5 herein.*

7. *The defendant do pay the plaintiffs the costs of this application on a solicitor/client indemnity basis.*

[03] The application is made under Order 29 Rule 1 of the High Court Rules 1988, as amended ("*HCR*")

[04] Only the first Defendant/Respondent ("*the respondent*") opposes the application. iTaukei Land Trust Board, the second Defendant/Respondent ("*iTLTB*") did not oppose it. It is to be noted that the first and the second respondent had consented to the granting of orders 1 and 4 of the application.

## **Background**

[05] I have gathered the background facts from the applicants' affidavit in support and the statement of claim.

[06] Sampuran Singh, Jagat Singh, Prem Singh and Bhagat Singh ("*the first defendant/respondent*" or "*the deceased*") are/were sons of Barma Nand Singh.

[07] Barma Nand Singh died in October 1987.

[08] On 14 April 1988, the deceased and Jagat Singh as executors and trustees of Barma Nand Singh obtained a probate in April 1988.

[09] The estate of Barma Nand Singh ("*the estate*") comprised of State Lease No. 21135'A' and Native Lease No. 13677 ("*estate property*").

[10] The Estate had 4 beneficiaries namely Sampuran Singh, Bhagat Singh (the deceased), Jagat Singh and Prem Singh, all of them were the sons of Barma Nand Singh, pursuant to his Will. All the beneficiaries are now deceased. Now the entitled beneficiaries of the Estate are family of the deceased beneficiaries.

[11] The estate property consists of a sugar cane farm and a farmland with residential dwelling of Sampuran Singh, Jagat Singh and Prem Singh's respective families.

- [12] Pranitesh Singh, the first plaintiff/applicant, Jagat Singh and Sampuran Singh's families are residing on the estate property.
- [13] The deceased (Bhagat Singh) with his family migrated to Australia sometime in 1997.
- [14] The estate property is farmed by the families of Sampuran Singh, Jagat Singh and Prem Singh.
- [15] Jagat Singh passed away in 2000 whilst Sampuran Singh in 2002.
- [16] Bhagat Singh was the sole surviving trustee of the estate until he passed away in June 2019, after issuance of these proceedings.
- [17] It is alleged the deceased (Bhagat Singh) had never shown the Will of Barma Nand Singh to the other beneficiaries or their family members until 2014.
- [18] The applicants allege fraud on the part of the deceased (Bhagat Singh) as follows:
- 18.1 In 2006, he as the trustee of the Estate without the consent of the beneficiaries' families surrendered Native Lease No. 13677 (*"Surrendered Lease"*) to iTLTB in exchange for two separate leases to be carved out of the surrendered lease and to be issued to him. There was a balance term of 7 years before the surrendered lease expired.
- 18.2 The deceased approached the Mataqali Matekosoro the land-owning unit of Native Lease No. 13677 for their consent on renewal of the existing lease into two separate leases, a commercial and an agricultural lease. The deceased concealed from the Mataqali that he would take the leases on his name instead of the Estate. The deceased also promised to pay \$15,000.00 as goodwill for the renewal to the Mataqali which he failed to honour.
- 18.3 On 10 February 2009, the deceased applied for a loan in the sum of \$6,665.55 from Sugar Cane Growers Fund (*"SCGF"*) to pay for the two new leases. SCGF secured the funding by way of crop lien over the estate property. This was done without the knowledge and consent of the beneficiaries' families.

- 18.4 On 8 January 2010, the deceased called a meeting between the families of the beneficiaries. The deceased at the meeting promised to the beneficiaries' families that he will open separate bank accounts for each family to deposit share farming proceeds in 4 equal shares in their respective bank accounts.
- 18.5 The deceased also informed the families of the beneficiaries that Native Lease No. 13677 needed renewal. The deceased further informed the families of the beneficiaries that the Estate was in a bad financial condition and did not have funds to pay for the renewal of lease.
- 18.6 The deceased then proposed to personally pay and renew Native Lease No. 13677 of his name and on reimbursement by the Estate, he would transfer the renewed lease back to the Estate.
- 18.7 The deceased deceived the families of the beneficiaries to agree and sign a letter containing his proposal. The deceased concealed from the families of the beneficiaries that in 2009 he had already taken a loan from SCGF for the issue of 2 leases on his name instead of renewal of the lease on Estate's name.
- 18.8 On 3 November 2011, the deceased was issued with 2 leases from TLTB being Instrument of Tenancy No. 6/10/7618 ("*Agricultural Lease*") and Agreement for Lease No. 6/10/7871 ("*Commercial Lease*") both carved out of the surrendered lease.
- 18.10 The Commercial Lease consists of the 3 beneficiaries' house and Sampuran Singh's shop. The Agricultural Lease contains Sujata Singh's (Barma Nand Singh's daughter) house and farmland.
- 18.11 On or about 2012, the deceased had provided as strip of land forming part of the Estate Property as access road to One Kasturi who had bought a house on the neighbouring land which belonged to the deceased.

## The Law

[19] The HCR, Order 29, Rule 1 provided:

*“Application for injunction (O 29, R 1)*

*1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be.*

*(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice of motion or summons.*

*(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.”*

## The governing principles

[20] The governing principles to be applied in an application for interim injunction as explained in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER are as follows:

- (a) Is there a serious question to be tried?
- (b) Are damages an adequate remedy?
- (c) Where does the balance of convenience lie?
- (d) Are there any special factors?

## The Evidence

[21] For the purpose of this application, the applicants rely on their affidavit in support filed on 26 March 2019, and their affidavit in reply filed on 22 June 2020,

while the first respondent relies on the affidavit in opposition filed on 1 May 2020 (affidavit of Bhagat Singh).

## Discussion

- [22] The applicants apply for an interim injunction after filing the statement of claim against the respondents. The claim against the first respondent is based on the allegation of fraud among other things.
- [23] An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ or originating summons, counterclaim or the third party notice as the case may be (*see O 29, R 1(1), HCR*).
- [24] Pending this application, the original first defendant, Bhagat Singh passed away. This resulted in the filing of amended statement of claim. The applicants filed their amended statement of claim substituting Bijma Kumari, as the Executrix and Trustee of the Estate of Bhagat Singh in place of Bhagat Singh, the deceased.

### *Amendment of prayer 2*

- [25] During the course of the hearing, Mr. Patel of counsel for the applicants orally made application to amend the prayer 2 on the ground that the ruling in the Magistrates Court has rendered prayer 2 nugatory.
- [26] The applicants sought to amend their prayer 2 in the following terms:

*"That Pranitesh Singh, the administrator of the Estates of the Beneficiaries be allowed to reside at his house on the property comprised in Instrument of Tenancy No. 6/10/7618 and Agreement for Lease No. 6/10/7871 until determination of this matter."*

- [27] Ms Swamy of counsel for the first respondent countered that the court cannot accept the oral application for amendment without a formal application.
- [28] The court has the discretion to allow the plaintiff to amend his or her writ, or any party to amend his or her pleading at any stage of the proceedings (*see HCR, O 20, R 5(1)*).
- [29] 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 the other parties (See *Sundar & Amor v Prasad* [1997] AB 22/97 (apt HBC 233/93)).
- [30] On my part, I would say the amendment arises out of pleadings, it is necessary to determine the real issues between the parties and the first respondent will not be prejudiced by the amendment in prayer 2. Therefore, in exercising my discretion, I would allow the applicants to amend the prayer 2 in the way they proposed, albeit without a formal application for such amendment.
- [31] Returning to the application for an interim injunction. In determining the application, I intend to apply *American Cyanamid* principles

*Is there a serious issue to be tried?*

- [32] The substantive claim is stemmed from an allegation of fraud on the part of Bhagat Singh, the deceased ("*the deceased*"). It is alleged that the deceased has fraudulently surrendered the estate properly comprised in Native Lease No. 13677 to ITLTB prior to expiry and acquired 2 new leases from iTLTB being Instrument of Tenancy No. 6/10/7618 and Agreement for Lease No. 6/10/7871.
- [33] The applicants, on affidavit (affidavit in support) stated that Barma Nand Singh passed away in 1987. The estate of Barma Nand Singh ("*Estate*") had 4 beneficiaries, his sons namely Sampuran Singh, Bhagat Singh (deceased) and Prem Singh pursuant to his Will (PS-2). All the beneficiaries are deceased. The families of the deceased beneficiaries are now entitled beneficiaries of the estate.



Bhagat Singh and Jagat Singh were executors and trustees of the estate. The estate property comprised of State Lease No. 21135A and Native Lease No. 13677 ("PS-3" and "PS-4"). PS -3 is a sugarcane farm whilst PS-4 a farmland and also contains residential dwelling of Sampuran Singh, Jagat Singh and Prem Singh's respective families. The first respondent did not dispute this evidence.

[34] It is not in dispute that Sampuran Singh, Bhagat Singh, Jagat Singh and Prem Singh were all the sons of Barma Nand Singh and were beneficiaries pursuant to his Will. All the beneficiaries are now deceased. Now the entitled beneficiaries of the estate are families of the deceased beneficiaries. The families of the beneficiaries, except the family of Bhagat Singh (deceased), are residing on the estate property. Bhagat Singh's family resides in Australia.

[35] The deceased (Bhagat Singh) stated: *only he had been cultivating the estate farm from the time he had been appointed as trustee in the estate of Barma Nand Singh. He had used his personal savings to get the new lease on his name. He had never fraud with anyone in obtaining the leases. The loan in the sum of \$6,665.55 was obtained from SCGF for the purposes of obtaining the new leases. The beneficiaries' families failed to cultivate the land to pay off the loan. The access road had to be provided by law as it is an easement. Despite the complaints no charges were laid against the illegal tenant. He had never threatened the applicant's mother.*

[36] At this stage of the litigation, it is not part of court's function to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor decide difficult question of law which calls for detailed argument and mature consideration (see 407H, *American Cyanamid*).

[37] The substantive action has been instituted on behalf of the families of the beneficiaries on the basis that they are entitled to their shares and/or interest in the estate through the estates of the beneficiaries.

[38] The deceased (Bhagat Singh), as one of the trustees and executors of the Will of Barma Nand Singh, obtained the probate in respect of the Will in April 1988. Yet, he did not distribute the estate properties among the beneficiaries in accordance with the Will until he died in June 2019. It appears that the deceased had delayed

in distribution of the estate properties. It was his duty to distribute the estate properties among the beneficiaries in terms of the Will. Instead, it seems, he had transferred the estate properties on his name.

- [39] There has been allegation of fraud on the part of the deceased (Bhagat Singh). For the present purpose, I am satisfied that there is a serious question to be tried at trial as to whether the deceased fraudulently registered the estate properties on his name with the view to defeat the interest of the beneficiaries. Further, on the incomplete untested evidence, I evaluate the chances of the applicants' ultimate success at more than 50 per cent.

*Inadequacy of damages (to either party)*

- [40] The court will not grant an interim injunction if damages would be an adequate remedy in lieu of interim relief. The ultimate issue to be decided at the trial would be the applicants' entitlement over the estate property, breach of the fiduciary duty on the part of the deceased and his alleged fraudulent registration of the estate properties on his name.

- [41] Lord Diplock in *American Cyanamid* said:

*"The court should go on to consider whether ... if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages ... would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appear to be at that stage" (at 408B-C).*

- [42] In *Morning Star Co-operative Society Ltd v Express Newspapers Ltd* [1979] FSR 113, it was held:

*"If on the other hand, damages would not adequately compensate the plaintiff for the temporary damages, and he is in a financial position to give a satisfactory undertaking as to damages, and an award of damages pursuant to that undertaking*

*would adequately compensate the defendant in the event of the defendant succeeding at trial, an interlocutory injunction may be granted. If the plaintiff is not in a position to honour his undertaking as to damages, and appreciable damage to the defendant is likely, an injunction will usually be refused.”*

[43] In my opinion, damages would not adequately compensate the applicants in the instant case. The applicants have been interested in asserting and getting their shares under the Will of Barma Nand Singh. The estate properties were not distributed among the beneficiaries. There has been culpable delay in the distribution of the estate properties by Bhagat Singh (deceased). He obtained the probate in 1988. The deceased had registered the estate properties on his name, and he is facing the allegation of fraud. The applicants (beneficiaries' families) are residing on the estate properties. The deceased was not only the trustee and executor of the Will but also one of the four beneficiaries under the Will. He was entitled to  $\frac{1}{4}$  of the estate property. The applicants are expecting to get their shares under the Will since the death of the testator in 1987. In the circumstances, an award of compensation would not adequately compensate the applicants in the event of the applicants succeeding at trial.

*Balance of convenience*

[44] *American Cyanamid [at 408E]* states:

*“It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises.”*

[45] In this matter, I have found that damages would not be adequate remedy to the applicants. Even if I consider the balance of convenience, it is in favour of granting an interim injunction given the fact that the applicants are residing on the estate properties with their families. The granting of the interim injunction would simply maintain the *status quo* until the trial of the matter, and serious mischief will not be caused to the respondent by the grant of the interim injunction allowing the applicants to continue to reside on the estate properties.

*Special factors (illegal tenancy)*

[46] The applicants on affidavit state that the deceased (Bhagat Singh) had illegally rented out the estate property to a Rakesh Chand. iTLTB had issued a breach notice dated 22 May 2018 against the deceased for illegal subletting and failure to keep land clear of rubbish. The tenants had admitted that he had a tenancy agreement with the deceased. In the police statement, the tenant had admitted that he is a tenant of the deceased and is paying rent to him. The relevant police statement (PS-3 in the third affidavit) reads:

*"I am residing at the above address for about one year now with my family and my mother running a shop on rent to Bagat Singh of Waimalika."*

[47] The Magistrates Court Ruling (an action brought by the deceased against Pranitesh Singh) at para. 9 states:

*"In respect of damages, the Court does not agree that it should be awarded damages because the plaintiff himself has involved in illegal activity by illegally subletting the said properties to tenants without consent of the iTaukei Land Trust Board. It is a requirement of the law that consent must be first had and obtained. Equity demands that 'he who comes to Court must come with clean hands.'"*

[48] At this stage of the proceedings, it is clear that the deceased had given the estate properties on rent illegally.

[49] I reject the submission advanced by counsel for the first respondent that they are not tenants but the appointed caretakers of the properties as, it appears, it is an attempt to avoid payment of rent of \$500.00 to the estate.

*Harassment*

[50] As to the harassment complaint, iTLTB had issued a letter of 18 May 2019 addressed to the deceased (Bhagat Singh) (PS-19) states that: "... it has come to our attention that you have been creating problems to the beneficiaries of the Estate of Barma Nand Singh. We have received complaints from the children of the beneficiaries that you have tried to vacate them from the land and to dismantle their house..."

[51] It also appears that the deceased had been harassing the applicants and threatened to demolish their houses and to evict them from the estate properties.

### Conclusion

[52] For the reasons which I have given and in the exercise of my discretion, in accordance with the principles laid down by *American Cyanamid*, I have decided that I should grant an interim injunction. I accordingly grant an interim injunction against the first respondent/ first defendant as sought in prayers 1, 2 (as amended), 3, 4, 5 and 6. I would also make an order that the first respondent/first defendant must pay costs of \$1,000.00, which is summarily assessed to the applicants within 21 days from the date of this ruling.

### The result

1. Interim injunction granted as sought.
2. The first respondent/first defendant shall pay summarily assessed costs of \$1000.00 to the applicants/plaintiffs within 21 days from the date of this ruling.
3. The substantive matter is returned to the registry for taking its normal course.



*Mohamed Ajmeer*  
24/7/20

.....  
M.H. Mohamed Ajmeer

JUDGE

At Lautoka  
24 July 2020

### Solicitors:

For the plaintiffs/applicants: Krishnil Patel Lawyers, Barristers & Solicitors

For the first defendant/first respondent: Patel & Sharma, Barristers & Solicitors