

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 208 of 2020

BETWEEN: **MUMTAZ IRAKH ALI** of Lot 14, Bau Street, Nakasi, Nausori,
Barber.

PLAINTIFF

A N D : **DINESH LAL** of Lokia, Nausori, Businessman.

DEFENDANT

Counsel : **Plaintiff: Mr. Kumar M.P**

: **Defendant: Mr. Fatiaki S.**

Date of Hearing : **28th, 29th September, 2023**

Date of Judgment : **26th October, 2023**

JUDGMENT

INTRODUCTION

1. The Plaintiff instituted this action against the Defendant seeking recovery of monies amounting to \$80,000 owed by the Defendant and costs. The alleged debt arose from remaining amount for the sale of two vehicles with route permits. According to Plaintiff agreed sum was \$ 225,000 and Defendant had paid \$175,000 through installments.
2. According to Defendant the agreed sum was for \$150,000 and it was fully settled.

FACTS

3. During the Pre-Trial Conference, the following facts were agreed upon by the Plaintiff and the Defendant:
 - (a) The Plaintiff was at all material times the lawful owner of the following motor vehicles together with the relevant permits:
 - (i) Mini bus Permit No. LM41.

(ii) Mini Bus Permit No. LM49.

(b) The Plaintiff sold the above two vehicles to the Defendant.

4. The Plaintiff and his son Mubashir Istiak Ali gave evidence for Plaintiff. According to Plaintiff and his son parties had negotiated the price to be \$255,000 and from this \$50,000 was paid as a deposit on 5.8.2019 and a sum of \$165,000 to be paid after approval of permit transfer of the said two vehicles and further sum of \$40,000 after transfer of the vehicles and permits relating to them. For this a hand written agreement was made and this was marked as P1.
5. The sale was "As is where is" basis.
6. Plaintiff produced documents for the receipt of payments totaling to a sum of \$170,000 and further stated that another \$5,000 was also paid by Defendant without a receipt.
7. Defendant deny payment of \$5,000 and also copy of the receipt marked P 9 for a sum of \$20,000.
8. Defendant admits payments upto \$150,000 and according to him P1 was a forgery and the agreement for sale was entered before a solicitor on 23.7.2019 and this was marked as D1. Plaintiff admits signing of another agreement after initial hand written document marked P1, but state that was the document marked P12.
9. P12 and D1 are the same except P12 lacks attestation of a solicitor and also stamp of commissioner of stamp duties.
10. The Defendant gave evidence and a solicitor Natasha Begg - Lawyer who witnessed the Permit Transfer Agreement.
11. The Plaintiff owned two minibuses bearing registration Nos. LM41 and LM49 along with their route permits. He desired to sell them and this was communicated to Defendant's son who was a customer of Plaintiff.
12. Defendant came to Plaintiff's house with his family and negotiated the price for two vehicles along with two permits for a total sum of \$255,000. The main dispute is regarding the agreed sum.
13. According to Plaintiff, a handwritten agreement made on 5. 8.2019 for the transfer of the said minibuses and the respective permits to the Defendant for the sum of \$255,000.00. The dispute is on the amount and the said agreement marked P1 dated 5.8.2019.
14. According to Defendant the agreement for the sale of two mini buses and permits

were for \$ 150,000 and it was fully paid. They rely on P13 which is attested by a solicitor.

15. According to Plaintiff Defendant and his family members came to their house and after the price was negotiated it was agreed at \$225,000 and he paid a deposit of \$50,000 and this was in accordance with hand written an agreement by his son who gave evidence.
16. Though there were some contradictions between the Plaintiff and his son these contradictions are not material to the main disputed facts, namely the sum agreed as total price and hand written agreement regarding that. Contradictions which are not material, shows that the witnesses are genuine and had not prepared to give false evidence.
17. Plaintiff's son could not confirm whether P1 was made on 4th or 5th of August initially but later stated that he had made an error. This is not material dispute in this action. The dispute is whether P1 was a forgery.
18. Plaintiff's son who wrote and explained P1 to signatories gave evidence and his credibility is not shaken. Both Plaintiff and his son are credible witnesses.
19. Plaintiff had admitted even payment of \$5000 by Defendant despite not having a receipt. This shows truthfulness of the Plaintiff.
20. P1 document allows total sum of \$225,000 to be paid in three installments. There is no dispute that Defendant made payments for \$50,000 on 5.8.2019 and another sum of \$100,000 nearly after two months from initial payment on 1.10.2019.
21. The receipt issued by Plaintiff on 1.10.2019 for \$100,000 marked P 10 stated there was another \$50,000 due on that day. P10 is not disputed.
22. Plaintiff admitted that he went to solicitor's office and signed the document that he marked as P12. In that document sale price of the two vehicles and permits relating that was \$150,000. According to Plaintiff he obtained a copy of the document after he signed it.
23. The statutory declarations regarding transfer of the vehicles and the permits marked shows the total transaction price as \$150,000.
24. The dispute is regarding the total price two parties agreed and unpaid sum.
25. Defendant do not admit P1 and state it was a forgery. Plaintiff and the person who made the hand written agreement P1 gave evidence and proved on balance of probability that the agreement P1 is genuine, hence the price agreed between the two parties was \$225,000.

26. Document marked D1 is dated prior to P1 on 23.7.2019. There was no evidence to show that Plaintiff and Defendant had negotiated prior and agreed to sale prior to 5.8.2019.
27. Defendant's evidence cannot be accepted in the analysis of the evidence. Defendant could not explain payment of \$50,000 on 5.8.2019. If D1 is accepted, it required total sum to be paid after seven days of permit transfer.
28. D1 document does not allow payments from installments, but it is not disputed that Plaintiff paid \$50,000 on 5.8.2019 and \$100,000 on 1.10.2019.
29. Document P1 allows for payment of \$50,000 as a deposit initially and rest to be paid by \$165,000 and \$40,000. This shows that parties had agreed to a sum of \$225,000 in terms of P1.
30. On the balance of probability it is proved that Plaintiff and Defendant had entered P1 on 5.8.2019 for the sale of two vehicles for \$225,000 and from this Defendant had paid through installments a sum of \$175,000. Accordingly the sum remaining is \$80,000 to be paid by the Defendant.

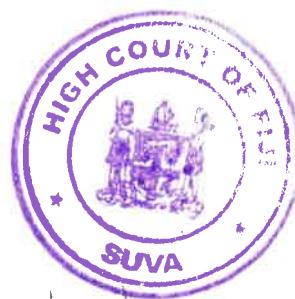
CONCLUSION

31. Plaintiff proved that the agreed sum for transfer of the two vehicles and the permits was \$225,000. Plaintiff had admitted payment for a sum of \$175,000. All the payments were issued with a receipt except for a sum of \$5,000. Accordingly, Defendant owed \$80,000 to Plaintiff. Plaintiff had not sought for interest on the said sum in the statement of claim. Cost of this action is summarily assessed at \$3,000 to be paid within 28 days.

FINAL ORDERS

- a. Defendant is ordered to pay Plaintiff a sum of \$80,000.
- b. Cost of this action is summarily assessed at \$3,000.

Dated at Suva this 26th day of October, 2023.



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Justice Deepthi Amaratunga
High Court, Suva