

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 309 of 2019

BETWEEN: **ABHINESH KUMAR** of 2 Victoria Parade, Darlington 5047, South Australia, Customer Service Supervisor as the Administrator & Trustee of the Estate of PERUMAL aka PERUMAL SWAMY GOUNDER late of 26928 1231st Place, South East, Kent Washington 98030, United States of America, Deceased, Intestate.

PLAINTIFF

AND: **KOKILAMMA GOUNDER** of Waimalika, Sabeto as Executrix & Trustee of the Estate of Muthu Gounder.

FIRST DEFENDANT

AND: **THE *i* – TAUKEI LANDS TRUST BOARD** formerly known as the Native Land Trust Board, a statutory body created under the *i*-Taukei, Land Trust act, Cap 134, having its registered office at 431 Victoria Parade, Suva.

SECOND DEFENDANT

Appearances: Mr. S. Gosai for the Plaintiff
 Ms. Sharma A. for the First Defendant
 Mr. Rasiga M. for the Second Defendant

Date of Hearing: 09 October 2024

Date of Judgement: 22 December 2025

J U D G M E N T

INTRODUCTION

1. The original writ of summons and statement of claim in this matter was filed on 28 November 2019 by Permal Gounder and Abhinesh Kumar as joint plaintiffs. On 30 November 2022, an amended writ of summons was filed pursuant to leave granted by the Master on 25 November 2022. In this amended process, Permal Gounder was removed as a plaintiff on account of his death. The statement of claim was left unamended at this time.
2. However, on 15 March 2024, at some point after the trial had begun, the statement of claim was amended by consent. The amendment was made when it became clear that the plaintiff was pursuing an equitable claim which he had not pleaded. I did grant \$2,000 costs in favor of the Legal Aid Commission and \$300 in favor of

the *i*-TLTB. However, even with the amendment, the claim has areas that would benefit from a clearer and more precise articulation.

THE TRIAL

3. At the trial, the following witnesses gave evidence for the plaintiff in the order stated below:

Mr. Abhinesh Kumar (“ Abhinesh ”)	PW1
Ms. Shashi Lata Rao (“ Lata ”)	PW2

4. The following witnesses gave evidence for the defendant:

Mr. Shalend (“ Shalend ”)	DW1
Ms. Kokilamma Gounder (“ Kokilamma ”) 70 years)	DW2
Mr. Atunaisa Vananalagi	DW3

BACKGROUND

5. The parties are all closely related. Abhinesh, the plaintiff, is the personal representative of the estate of his father, the late Perumal Samy Gounder (“**Perumal**”).

6. The first defendant, Kokilamma, is the surviving spouse of the late Muthusamy Gounder (“**Muthu**”).

7. Perumal and Muthu were brothers. They had two older brothers namely Govindsamy Gounder (“**Govindsamy**” - deceased) and **Jagannath** (also deceased). There are also two sisters in the family namely one Muniratnam and another whose name I do not know.

8. The dispute in this case is over a house. This house is erected on a piece of *i*-TLTB residential land situated in Waimalika, Sabeto, Nadi (“**property**”). On 19 September 1981, the *i*-TLTB granted an *Approval Notice to Lease* (“**Approval Notice**”) over this property to Govindsamy for a term of fifty (50) years.

9. Below I set out the undisputed chronology of events and dealings over the Approval Notice in question:

Date	Event
00.00.1995	Perumal and family emigrated to Canada.

	Sometime after Permal and his family left Fiji, one of Muthu's sons, namely Salend Kumar Gounder (" Salend "), moved into the house with his wife. They occupied it for several years. The house had been left idle with no household contents. It was in a deteriorated condition due to extensive termite infestation. Salend had to do some work at his own expense to restore and repair the house to make it habitable.
14.01.1998	Govindsamy died in Malolo, Nadi.
17.06.1999	Probate No. 36717 was granted to his surviving spouse, Adiamma. Adiamma was also the sole beneficiary over the estate.
07.09.2012	the following two transactions were recorded: (i) the property was transferred to Adiamma through Transmission by Death. Adiamma was already residing in Auckland, New Zealand at the time. (ii) the Approval Notice over the property was transferred from Adiamma to Muthu.
12.02.2017	Muthu died.
15.08.2017	Letters of Administration No. 60669 over Muthu's estate was granted to Kokilamma (his surviving spouse).

10. Kokilamma is the current holder of the *Approval Notice* in question. She acquired it by devolvement from Muthu's the estate. As stated above, Muthu had acquired the property in 2012 by way of a transfer out of love and affection from his sister-in-law, Adiamma, who is the surviving spouse of Govindsamy.
11. The property is over an acre in size.

THE PLAINTIFF'S CASE

12. The present dispute is brought by the estate of Perumal. As stated, Abhinesh is one of Perumal's surviving children and the personal representative of his estate. Below is the account upon which Abhinesh bases his case.
- (i) Perumal and his siblings (being Abhinesh's father, uncles and aunts) were parties to a longstanding family arrangement
 - (ii) that arrangement was grounded in the expressed wishes of their father (Abhinesh's grandfather), the late Munswamy a.k.a Ponsamy Gounder ("**Ponsamy**").

- (iii) at some point in time, Ponsamy held a lease over some 6,000 square meters of land which was all comprised in *i*-TLTB Ref. 6/10/4516.
- (iv) Ponsamy died on 24 September 1950¹. Upon his death, the property devolved in equal shares to his two eldest sons, Govindsamy and Jagannath. Ponsamy's wish was that Govindsamy and Jagannath would thereafter distribute the land among themselves and their siblings.
- (v) Jaganath built his house on his half of the land. His sister, Muniratnam, had already built a house on part of the land for her family. Their descendants continue to live on that land.
- (vi) as for Govindsamy, he did not build a house for himself on his land. Rather, he continued to live on another piece of land which belongs to him. This other property is situated in Malolo in Nadi.
- (vii) however, pursuant to the family arrangement, Govindsamy allowed his two younger brothers namely Perumal and Muthu to build their houses and reside on his land, with their families.
- (viii) Perumal built his house in the 1950s. Muthu built his house some twenty years or so later in the 1970s.
- (ix) Perumal and his family emigrated to Canada in 1995. However, he did not relinquish his interest in the house. Rather, he maintained throughout that the house would be his abode upon each visit to Fiji.
- (x) when Perumal and his family left Fiji, Muthu's son, Salend Kumar Gounder, moved into the house with his wife, **PW2**. They did so only after Muthu had asked and received permission from Perumal.

13. Abhinesh's claim rests on four points.

- (i) the land originally belonged to the family patriarch, Ponsamy, who intended that all his children would share it.
- (ii) to carry out that plan, Ponsamy made provision for the land to pass to his two eldest sons, Govindsamy and Jaganath, who were to hold it equally for the benefit of all siblings.
- (iii) relying on this arrangement, Perumal built a house on that part of the land which went to Govindsamy.
- (iv) Perumal finished the house and raised his children there for many years until they emigrated to Canada.

¹ as per Certificate of Death No. 197696 annexed to the First Defendant's Bundle of Documents.

14. Abhinesh asserts that Perumal's entitlement has now devolved upon the beneficiaries of Perumal's estate. Abhinesh asks this Court to recognize and enforce Perumal's estate's claim in the property.

DEFENDANTS' CASE

15. Kokilamma relies on the following version of events to support her case:
- (i) Ponsamy never held a registered lease over the property.
 - (ii) after Ponsamy died, Govindsamy and Jagannath applied for a lease over their respective lands in their own names.
 - (iii) so, with regards to the land in question, Govindsamy was the original grantee of the Approval Notice.
 - (iv) there was no family arrangement of the kind alleged by Abhinesh.
 - (v) after Govindsamy died, the interest in the land devolved to his surviving widow, Adiamma.
 - (vi) Adiamma then transferred it to Muthu on account of the fact that Muthu *"had always been taking care of the land and paying land rental "even "prior to and after the said land got transferred to [Muthu]"*².
 - (vii) after Muthu died, the interest then devolved to Kokilamma.
 - (viii) Kokilamma continues to pay the rental to this day well after Muthu's demise. Neither Perumal nor his estate has ever contributed towards any rental payment.
16. The *i*-TLTB maintains that the Approval Notice relating to the land was originally issued to Govindsamy in 1981. Its records disclose nothing to indicate that Ponsamy ever held any legal or equitable interest in the land, whether before or after the 1981 Notice.
17. The case of both defendants might be broken down as follows:
- (i) Ponsamy never held any legal or equitable estate in the land, whether before or after the 1981 Approval Notice.
 - (ii) he therefore had no capacity to create or confer any entitlement—whether formal, informal, or familial.
 - (iii) put simply, Ponsamy possessed no proprietary interest in the land which could be distributed, divided, or subjected to a testamentary

² as pleaded in paragraphs 14 and 17 of the First Defendant's Statement of Defence filed on 31 December 2019.

disposition. As such, Ponsamy was in no position to express any intention which could give rise to an enforceable right or claim.

- (iv) therefore, Perumal had no arguable equitable claim in the land in question.

ISSUE

18. The threshold issue is, whether or not Ponsamy did possess a proprietary interest in the 6,000 square meters of land described above (see paragraph 12 (iii)). The onus lies squarely on Abhinesh to establish that he did.
19. Once he establishes that, Abhinesh must then demonstrate that Govindsamy and Jagannath obtained title either by way of devolvement from Ponsamy's estate, or, in the alternative, that their acquisition was secured solely through Ponsamy's assistance, influence, or patronage.
20. Finally, Abhinesh must satisfy the Court that Ponsamy gave the land or facilitated its acquisition upon the clear expectation and mutual understanding that Govindsamy and Jagannath would hold the property not for their sole benefit, but on trust all his children.

WAS PONSAMY EVER THE HOLDER OF ANY PRIOR INTEREST IN THE LAND?

21. There is no documentary evidence available to establish that Ponsamy was the first member of the family to enter into any formal arrangement with the *i*-TLTB over the 6,000 square meters of land in question.
22. Relying on *i*-TLTB records, **DW3** testified in chief and under cross-examination that the earliest Approval Notices were issued to Govindsamy in respect of his land, and to Jaganath in respect of his. He said that a Provisional Approval Notice for a Residential B type lease was issued to Govindsamy for fifty years with effect from 01 April 1981. This is subject to survey. **DW3** said that to the best of his knowledge, an Agreement for Lease is being prepared over the same land in favor of Kokilamma. The size of the land is 0.4047 hectares which is just a little over an acre.
23. In cross-examination, **DW3** said he was not aware if a lease or an Approval Notice ever existed over the same piece of land prior to the Approval Notice issued on 01 April 1981 in favor of Govindsamy.
24. Abhinesh concedes.
25. Having said that, it is common ground that there are two dwelling houses standing on the property. One of these was occupied by Permal before he

emigrated to Canada. This is the house over which his estate claims an equitable interest in this case.

26. The second house was occupied by Muthu. It is the current residence of Kokilamma.
27. Abhinesh's evidence is that Permal constructed his dwelling house in or about the 1950s and that some twenty-years or so thereafter, in or about the 1970s, Muthu built his.
28. The evidence of **DW1** in chief is as follows:

Q. When you got married, how many houses were already on the property?

A. Two my Lord.

Q. These houses belong to who?

A. My Lord, it (sic) was constructed by my father-in-law, and it (sic) didn't belong to anyone my Lord.

DID GOVINDSAMY & JAGANNATH OBTAIN TITLE EITHER BY WAY OF DEVOLVEMENT FROM PONSAMY'S ESTATE OR, IN THE ALTERNATIVE, THAT THEIR ACQUISITION WAS SECURED SOLELY THROUGH PONSAMY'S ASSISTANCE, INFLUENCE, OR PATRONAGE.

29. Again, there is no evidence that Ponsamy once held the legal title to the land. Therefore, he could not have passed it to Govindsamy and Jaganath, for *nemo dat quod non habet*, no one can transfer what they do not possess. That said, Abhinesh may nonetheless contend that Ponsamy acted as the principal figure in facilitating Govindsamy's and Jaganath's respective acquisitions.
30. For example, Abhinesh could establish that Ponsamy actually bore the whole or a substantial part of the financial burden of securing the Approval Notices, and that Ponsamy did so in contemplation of a family arrangement under which all his children would share in the land.
31. Such a case theory would furnish a sound basis for an equitable claim. However, no direct evidence was adduced to establish this.

DID PONSAMY GIVE THE LAND OR FACILITATE ITS ACQUISITION ON THE MUTUAL UNDERSTANDING THAT GOVINDSAMY AND JAGANNATH WOULD THEREAFTER HOLD THE PROPERTY ON TRUST FOR THE BENEFIT OF ALL SIBLINGS ENTITLED TO THE ESTATE?

32. While there is no direct evidence that Ponsamy was the predecessor in interest to the land in question, or that he conveyed it to Govindsamy and Jaganath in equal

shares to hold on trust for the benefit of all his heirs, there is only a marginal indication that he may have had some interest in the land. In saying this, I refer to the following.

33. Firstly, Abhinesh asserts that the house was built by his father, Perumal, in the 1950s. Kokilamma, by contrast, contends that Ponsamy erected it at an earlier period.
34. Under cross-examination by Mr. Gosai, Kokilamma appears to confirm that Ponsamy had settled on the land first before the land was acquired by his children:

Q: *Now...you have stated earlier that when you got married, you moved onto the property that you are staying now. Is that correct?*

A: *Yes*

Q: *Was Perumal Gounder already resident on that property?*

A: *Yes*

Q: *Was he married then?*

A: *Yes*

Q: *..the dwelling in which Perumal Gounder was staying, who built that house?*

A: *My father-in-law and mother-in-law*

35. Asked if she actually saw the father-in-law build the house, Kokilamma said:

A: *...I was not married that time, and I was also not born that time...*

36. Whether one accepts Abhinesh's or Kokilamma's account, both recognize an entitlement antecedent to the Approval Notices.

37. Secondly, Perumal's occupation of the house in question was never an issue for Govindsamy or Muthu. Taken together with the fact that Jaganath also allowed certain siblings to build on his land, it seems plausible that there was in fact a family arrangement of the sort alleged.

38. Thirdly, it appears that Govindsamy never demanded any rental payment Perumal or Muthu. All he required was that Perumal and Muthu settle the *i*-TLTB annual levies.

39. Fourthly, it appears that the family had occupied the land for decades before Govindsamy and Jaganath acquired their respective Approval Notices in 1981. On this note, it is common ground that all the siblings were born on the land. Abhinesh maintains that his father, Perumal, was born on the land, and that he himself was also born there. I have no reason to doubt this, and I accept it as fact. According to Ponsamy's Death Certificate³, Perumal was born on 22 December

³ see First Defendant's Bundle of Documents.

1935 and Govindsamy was born on 25 February 1930 while Jagannathan was born on 01 June 1934.

Comments

40. Given the paucity of evidence, the issue is whether the Court may properly infer and find that Ponsamy did hold an interest in the land which he conveyed to Govindsamy and Jaganath to hold on trust for all his heirs. It is tempting to speculate that certain material evidence is, for one reason or another, absent from the *i*-TLTB files upon which DW3 based his testimony. Mr. Gosai did not press the point in his cross-examination. As this is a matter concerning land, I must decline to proceed on conjecture. I am reluctant to “supply” an equitable entitlement in the circumstances of this case.

GENERAL

41. Abhinesh confines his claim to the house. He claims that Perumal built the house in the 1950s. He may advance an alternative equitable claim on the basis that Perumal expended his own funds to construct the house in reliance upon an assurance given by Govindsamy. There is no clear evidence to establish that Perumal actually built the house out of his own funds.
42. Notably, as stated above, Ponsamy died in 1950 at the age of 42. With that in mind, I do note that there is a factual tension in Abhinesh’s account.
43. According to Abhinesh, Perumal constructed the first house in the 1950s. Perumal would have been in his early twenties at the time. Yet , he also maintains that Perumal and all his siblings, both elder and younger, were born on the land.
44. This inconsistency raises the question:
- If Perumal himself built the first house, in which dwelling were the siblings raised?*
45. The inconsistency strengthens Kokilamma’s version that the house was built by Ponsamy. While that may imply that Ponsamy did hold an equitable interest in the land during his lifetime, in the absence of official records to confirm the nature of that interest, I cannot conclude that Ponsamy did convey to Govindsamy and Jaganath any estate upon which Perumal might hinge an equitable claim.
46. In my view, Govindsamy and Jaganath were, in their own right, the first to hold Approval Notices over their land.
47. Flowing from that, I accept Kokilamma’s evidence that Adiamma’s act to transfer the Approval Notice to Muthu on 07 September 2012 was occasioned by the fact

that Muthu had, alone, personally shouldered the *i*-TLTB rental burden for many years.

48. In addition, I accept Kokilamma's evidence that the estate of Perumal has never contributed towards the payment of land rentals to the *i*-TLTB. When Perumal emigrated to Canada, he left behind a house infested with termites, requiring Shalen to spend money to repair it before it could be made habitable.

CONCLUSION

49. For all the reasons stated above, I find that the plaintiff has failed to prove his claim on the balance of probabilities. Accordingly, I dismiss the claim with costs to the first and second defendants which I summarily assess at \$1,000 – 00 each (one thousand dollars only).



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Anare Tuilevuka
JUDGE

22 December 2025