

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action No. **HBC 319 of 2022**

BETWEEN: **SANJESH KUMAR CARTHARN** also known as **SANJESH KUMAR** of
17 Manchester Way, Currans Hill, New South Wales, 2567, Australia.

PLAINTIFF

AND: **ROSHNI LATA** of 721 South 304th Street, Federal Way, WA, 98003, United
States of America.

1st DEFENDANT

AND: **KIRAN LATA** of 20A Wills Road, Papakura, Auckland, New Zealand.

2nd DEFENDANT

Representation

Plaintiff: Mr. K. Singh (K S Law).

Defendants: Mr. P. Niubalavu (Oceanica IP).

Date of Hearing: 12th 13th & 15th August 2024.

Judgment

A. Introduction

- [1] This matter relates to a property located in Labasa Town. The parties are siblings. Their father previously owned the property. The Plaintiff filed a claim seeking declaration that the Defendants induced and unduly influenced him into buying their father's property. He further seeks a declaration that a joint endeavor constructive trust was created by the Defendants in his favor. He claims that he has 99.43% ownership of the property by virtue of his financial contribution, that the 1st Defendants contribution was 0.57% and 0% by the 2nd Defendant.
- [2] The other declaration sought by the Plaintiff is that the Defendants engaged in unconscionable conduct towards the joint endeavor agreement. He further claims that the Defendants enriched themselves at his expenses. The Plaintiff seeks to retain all the rental incomes derived from the property. He seeks that the Defendants sell their shares to him. He is seeking punitive damages, legal costs and pre and post judgment interest.

B. Agreed Facts

- [3] The parties agreed:
- (a) That currently, the Plaintiff resides in Australia, the 1st Defendant in USA and the 2nd Defendant in New Zealand.
 - (b) The parties are siblings, Plaintiff is the brother of the 2 Defendants.

- (c) The all initially resided in Fiji before migrating.
- (d) Plaintiff's lawyers wrote a letter dated 29th March 2022 proposing to settle out of court and enter into a Deed of Co-ownership arrangement or alternatively for Plaintiff to buy out the shares of the Defendants.

[4] They further agreed that:

The Defendants responded through a letter dated 12th August 2022 where they proposed:

- (i) To subdivide property into 2 lots.
- (ii) Lot 3 to be transferred to the Plaintiff.
- (iii) Lot 5 to the 2 Defendants.
- (iv) That Plaintiff pay \$153,333.00 to the Defendants the balance of the current market value of the property.
- (v) Equal distribution of all rent collected from July 2022 till the completion of the Subdivision among the parties.

[5] That a valuation report dated 7th June 2022 was prepared by Northern Property Valuation & Consultant PTE Limited showing total market valuation of the property at **\$1,058,000.00**. It is as follows:

Land Details	Land Value	Improvement Value	Total
Lot 3 M 2064	\$440,000.00	\$66,000.00	\$506,000.00
Lot 5 M 2064	\$397,000.00	\$155,000.00	\$552,000.00
TOTAL	\$837,000.00	\$221,000.00	\$1,058,000.00

C. Issues for determination

[6] The parties sought that the Court determine a number of issues. For ease of reference, I have grouped them and given them appropriate headings.

(i) Joint endeavour/constructive trust

[7] Whether the parties entered into a joint endeavour agreement to purchase the Labasa town property from their father.

[8] Whether in agreement with the above, the parties sometime in July 2004 the parties obtained a loan and purchase the Labasa town property. Whether the parties were personally liable to repay their loans from Home Finance Company Ltd.

[9] Whether constructive trust was raised in favour of the Plaintiff as a result of failure by the Defendants joint venture endeavour agreement with the Plaintiff.

(ii) Inducement/influence and misrepresentation

[10] Whether the Defendants induced and influenced the Plaintiff as siblings to purchase the property collectively.

[11] Whether due to the inducement and undue influence of the Defendants, the Plaintiff entered into an oral joint endeavour agreement to purchase the property as Tenants in Common with the Defendants.

[12] Whether shortly after purchasing the property the Defendants engaged in unconscionable conduct. That is lack of effort to work and contribute towards joint endeavour. That the Defendants deceived the plaintiff and sought to benefit from his contributions and unjustly enriched themselves.

[13] Whether the Defendants made fraudulent misrepresentations.

(iii) **Contributions**

[14] Whether the 1st Defendant paid a total sum of \$323.86 out of the total purchase price of \$58330 and made no other contributions. Whether the 2nd Defendant made financial contribution towards acquisition of the property and the purchase price of \$58330. Whether the Plaintiff made a total contribution of \$54042.07 out of \$58330. whether the Plaintiff's total contribution towards the acquisition of the property was over 95%. Whether the contribution of the 1st and 2nd Defendant was 0.57% and 0% respectively.

[15] Whether the Plaintiff was led to believe that the 2nd Defendant was making contributions (until finding that mortgage was in arrears). Whether the Plaintiff solely made financial and non-financial contributions in relation to the maintenance, rates, arrears and upkeep of the property.

[16] Whether Plaintiff solely made financial and non-financial contributions convert property from residential to commercial and develop it for commercial use. Whether Plaintiff solely is making repayments on the loan.

[17] Whether Plaintiff solely made improvements on the said property to derive rental income. Whether Plaintiff invested in the property and the rental business (financial and non-financial).

(iv) **Valuation**

[18] Whether the valuation of \$153,333.00 is a fair valuation. Whether the current valuation of the property is due to the work of the Plaintiff's investment in the property.

(v) **Rental**

[19] Whether the Defendants are to be provided a statement of account or rent from January 2018 by the Plaintiff. Whether the Defendants are entitled to 2/3rd share of the rent.

(vi) **Partition**

[20] Whether the parties share in Crown Lease # 3368 is to be partitioned in terms of Plan No. M2064 into 2 lots. Whether Lot 3 is to be transferred to Plaintiff and Lot 5 to the Defendants.

[21] Whether the parties be liberty to engage any consultants or Surveyor to carry out the partition and costs associated with the partitioning of the parties' interest in the property to be shared among the parties according to their respective interests.

(vii) **Other issues**

[22] Whether Nilesh Kumar and late Sanmogam were employed as Plaintiffs property managers. Whether Plaintiff is to pay a sum of \$153,333 to the Defendants as the

balance value of the shares. Whether Chief Registrar is to sign the documents. Entitlement of costs.

D. The Evidence

[23] Mr. Cartharn gave evidence and called Mr. Nilesh Kumar.

[24] Ms. Roshni Lata and Ms. Kiran Lata gave evidence. Mr. Gesagran Kumar and Ms. Praveen Lata were the other witnesses for the Defendants.

[25] Both parties tendered numerous documents. All the evidence and the documents have been scrutinized and considered.

Credit of witnesses

[26] Credit of witnesses is important. They all gave sworn evidence. Mr. Cartharn claims inducement and undue influence, a joint endeavour agreement, constructive trust, unconscionable conduct by Defendants, fraudulent misrepresentation, improvements, and unjust enrichment.

[27] Mr. Cartharn was not an objective witness. His evidence was colored, consciously or unconsciously, by his desire to advance his case. He feels a sense of entitlement over the property. In assessing credibility, I warn myself about prejudice and sympathy. I decided based on the evidence that is before me. I have seen and heard the witnesses. I am not guessing or speculating. I found Mr. Cartharn to be evasive in answering questions at times. I made notes of that in my minute sheet. One instance was when he was asked about his dad transferring the property due to some financial difficulties.

[28] The other instance I found Mr. Cartharn evasive was when questioned about a communication on a phone in messenger. It was a message between him and his 2nd eldest sister, Praveen Prasad. He agreed deleting one message. I have made other notes of his evasiveness in answering questions.

[29] I accept the evidence of the other witnesses. They were credible. I did not find them evasive during questioning. They did not answer to suit their need or advance their agenda. Where there is a conflict between the evidence of the Plaintiff and other witnesses, I believe the other witnesses, unless I state otherwise.

E. Determination

[30] I would first deal with the contributions towards the property.

Contribution towards the property

[31] Mr. Cartharn claims to have contributed a total of \$54,654.61 towards the purchase of the property out of the purchase price of \$57,531.17. He claims to have solely made financial and non-financial contribution in relation to the maintenance, rates, arrears and upkeep of the property. He also claims to have solely made financial and non-financial contribution to convert the property from residential to commercial zoning. He further claims to have solely developed the property for commercial use.

[32] Mr. Cartharn also claims to solely making repayments on the loan amount, the balance of the purchase price remaining as at June 2022 being \$2,552.69.

[33] The evidence before me of **direct financial contribution** is as follows:

Mr. Cartharn – \$20,000.00 (being his and Kiran's contribution)

Ms. Roshni Lata – **\$3795.00** (direct deduction from her salary for period November 2004 to July 2006)

Ms. Praveen Lata – **FJD \$20,000.00** (being her and Roshni's contribution).'

- [34] The other payments for the property were from rental that was collected from the tenants on the property. Up to the time of his demise the property was managed by their father. He dealt with the bank and the tenants. Following his demise (2018) Nilesh got involved. Nilesh also assisted their dad since 2013.
- [35] The land was jointly owned by the parties. The payments that were made for the repayment of the loan have not been shown to me to be made by the Plaintiff. What is before me is that payment of the loan was made through the rental that was received from the properties. I wish to clarify that the evidence that is part of PE-12 being deposit slips of payments to HFC showing account name bearing the Plaintiffs name does not account for the fact that he made the payments. These were monies received from the rental of the property.
- [36] Ms Roshni Lata made direct contribution from November 2004 to July 2006. The time she migrated. The total she paid was \$3795.00. During this period the Plaintiff did not show me what his contribution was. His evidence was that the rent from the buildings in the property was his contribution. He claimed that he paid \$54,654.61 towards the property. He did not provide evidence for paying this sum. The Plaintiff did not contribute 95% or \$54,654.61 towards the acquisition of the property.
- [37] The evidence that I accept is that \$20,000.00 was contributed by Praveen Lata Prasad. This was Praveen's and Roshni's contribution. This has also been counted by the Plaintiff as his contribution. I have already explained that I believe the evidence of those others which contradict the evidence of the Plaintiff. The Plaintiff was not truthful. His evidence was self-serving.
- [38] The evidence of Kiran was clear that she did not have the ability to contribute towards the property. She did not earn that much. She did not contribute anything. I have no evidence before me that Kiran, Roshni and Sanjesh agreed that the entitlement of a party to the property would be based on their contributions. Most of the repayments of the loan was made from rental income from the properties. The property was undivided and owned jointly by the parties.
- [39] The Plaintiff left Fiji in December 2004. The property was transferred to the parties in July 2004. The rent that was collected from the tenants was used to pay the loans. This was not the Plaintiff's personal contribution. Roshni made payments from her salary by way of direct deductions towards the loan. This was agreed by the Plaintiff. She paid regularly a sum of \$115 per fortnight. She started in November 2004 until July 2006. The Plaintiff for that period did not show any payments that he made.
- [40] The payments that were made for the repayment of the loan have not been shown to me to be made by the Plaintiff. What is before me is that payment of the loan was made through the rental that was received from the properties. The Plaintiff was selective in giving a page of a bank statement (PE-8) showing joint account with his dad. This is for period 6th December 2016 to 24th January 2017. This shows nothing to advance his position that he made payments towards the property.
- [41] The property after the parties left Fiji, which is after 2004 was being managed and maintained by their dad. He dealt with everything on their behalf after their left Fiji.

He dealt with HFC. He was in charge of the repayments to the HFC. He dealt with maintenance, rates, arrears and upkeep of the property until his death. The Plaintiff knew this. The Plaintiff knew how the mortgage was being serviced. The Plaintiff knew that the 2nd Defendant was not contributing after she left Fiji.

- [42] The work on the conversion of the property was done by their late dad. There is no evidence before me that the Plaintiff utilized his funds to convert the property from residential to commercial. The rezoning commenced in 2012 and was finalized in 2015. It was under their dad's tenure. The evidence shows that the Plaintiff did not solely make financial and non-financial contribution towards the conversion of the property from residential to commercial. Similarly, the Plaintiff did not solely make improvements to derive rental income. In cross-examination the Plaintiff's evidence was that he sent money in 2011. He did not send any money from 2004 to 2011. He did not contribute towards the property apart from the 2011 contribution.

Joint Endeavour and Constructive Trust

- [43] The Plaintiff contended that under the joint endeavour agreement between the parties it was a verbal agreement between them that they would own the property in proportion to their contribution. They had taken a bank loan to facilitate the purchase. Each party was responsible for timely repayments and other associated costs.
- [44] The Plaintiff's contention is denied by the Defendants. They state that no such agreement was in place. Their position is that they assisted their dad who was facing financial difficulties. The option they exercised was to take over the property and get a lower repayment.
- [45] From the evidence that is before me I find that the agreement between the parties was that they would jointly own the property. No agreement was in place as what is being now suggested by the Plaintiff. The Plaintiff and Roshni (1st Defendant) were civil servants. They were in employment with had the ability to make payment to the bank. Both were better placed than Kiran who was employed at Hot Bread as a clerk in 2003. She was married with 3 children.
- [46] For the reasons given I do not find any form of constructive trust is raised in favour of the Plaintiff as there was no joint endeavour agreement between the parties as is claimed by the Plaintiff. There was never an agreement between the parties that the parties will be entitled to the share on the property based on their contributions.
- [47] I find that there is no express or implied agreement between the parties that they should hold their legal interests upon trust for themselves in shares corresponding to their respective contributions. To the contrary, the evidence leads inexorably to the conclusion that it was their shared intention that from time of purchase each should have a full one-third beneficial, as well as legal interest in the property.

Inducement/influence and misrepresentation

- [48] The Defendants did not induce or influence the Plaintiff as siblings to purchase the property. I accept the evidence that the parties assisted their dad when he faced financial difficulties. They pitched in. They took over the property. Their dad was involved in managing the property even after he transferred it to his children. He did that up to the time of his death. Nilesh Kumar was involved from 2018, which is after their dad's death.

[49] I also do not find any fraudulent misrepresentation on the part of the Defendants. I have dealt with joint endeavour in the preceding part. The Defendants did not deceive the Plaintiff and benefit his contribution and neither did they unjustly enrich themselves. The property apart from what I found was contributed by the Plaintiff, Roshni Lata and Praveen Lata was funded by the rental income that was generated from the dwellings on the property.

Valuation

[50] Both the parties have relied upon the valuation. No one has challenged it. Neither has any party come with another valuation apart from the one that is before me. The valuation that is before me is accepted is the valuation of the property.

Rental

[51] Following the demise of their dad, the rental was being dealt with by Nilesh Kumar on behalf of the Plaintiff. Nilesh Kumar collected the rental since 2018. The Defendants are to be provided a statement of account of rent from January 2018 by the Plaintiff. The property remained jointly owned by all 3 of them. If the monies are to be apportioned it has to be apportioned equally between them. If it was paid to clear the mortgage an account of the payment for the mortgage payment is to be prepared and provided to the parties.

Partition

[52] The parties were desirous of entering into a co-ownership agreement with Lot 3 to the Plaintiff and Lot 5 to the Defendants. This did not eventuate. Lot 3 consists of a timber and iron building partly concrete floor measuring 20.75 x 6.6 inclusive of open shed in front measuring 9.15m x 6.1m shed is also constructed on the property being rented by Merchant Finance. The property is fully fenced. Lot 3 is 1 rood 35perches.

[53] Lot 5 on the other hand consists of a single storey timber and iron building with concrete floor measuring 18.8m x 15.9 and open shed measuring 3.9m x 15.9m. The property is rented to Farmers club, Nitas Hardware and has a residential flat. This property is also fully fenced. Lot 5 is 31.4 perches

[54] Lot 3 and Lot 5 had a combined area of 1 Rood 34.9 perches (1894.43 square meters). Upon partition Lot 3 would have an area of 794 square meters, while Lot 5 would have an area of 1100 square meters. Lot 5 is bigger than Lot 3. Lot 3 was alone being suggested for the Plaintiff. Lot 5 between the two Defendants. It seemed a good deal.

[55] The total value of Lot 3 is \$506,000.00. The total value of Lot 5 on the other hand is \$552,000.00. Giving a total value of the property of \$1,058,000.00. which equally divided between the 3 of them would entitle each to \$352,666.66. The valuations are not being challenged. Therefore, the entitlement of each of the Defendant from the Plaintiff is \$76,666.66. Being a total sum \$153,333.00.

[56] The parties in the absence of any agreement between them are entitled to 1/3 share in the property, nothing more. If they intend to take the lots as they intended under the co-ownership agreement the Plaintiff is to pay each Defendant a sum of \$76,666.66. If such payment is made the Plaintiff can have Lot 3 and the Defendants Lot 5. Plaintiff

is having one lot to himself. The 2 Defendants will jointly be having Lot 3. They intend to share it with their other siblings. It is up to them.

- [57] The partition will only work if the joint ownership to date is equally distributed. Each party is equal owner in the property. No agreement existed based on determination of share on the property based on contribution towards the property. If that were the case Kiran Lata would have no entitlement on the property as she did not contribute towards the property. This was never the intention of the parties when the property was transferred in their names.

Other Issues

- [58] The parties, dad was not employed as the Plaintiff's property manager. Their dad assisted his children. He did not do it specifically for the Plaintiff. He continued to assist his children with the property up to the time of his demise. Nilesh for his part gets instructions from Sanjesh about the property. He looks after the property. In 2018 he entered into a contract with the Plaintiff to be the caretaker of the property. He was paid \$100 per month.
- [59] The Defendants did not appoint Nilesh. The Plaintiff did not seek the approval of the Defendants in appointing Nilesh to be the caretaker. The Defendants looked up to the Plaintiff as their brother to do certain things. They did not give away their land to him. They expected their brother to assist their dad and them based on his education and knowledge. He assisted his dad and his sister with the agreement. However it does not mean that it was only for him. The property was co-owned and at no stage the sisters forfeited or entered into any agreement to give the property to him. All along they held equal shares,

Findings

- [60] I find that the parties equally own the land. They are the registered proprietors of Crown Lease No. 3368 described as Lots 3 & 5 on Plan No. M2064 situated in Labasa Town. The Plaintiff as one-third share, while the Defendants have two-third.
- [61] The Plaintiff through Nilesh has been handling all the rental income from the tenants since January 2018. The Plaintiff is to account for all the income. If the rental income has not been utilized to pay off the property. They must be shared equally between the parties, less any expenses that may have incurred for the maintenance and up-keep of the property.
- [62] The parties share in Crown Lease No. 3368 is to be partitioned in terms of the Plan No. M2064 into 2 lots as per the existing boundary pegs, subject to any statutory and regulatory requirements.
- [62] Lot 3 on Crown Lease No. 3368 be transferred to the Plaintiff and Lot 5 be transferred to the Defendants.
- [63] The Plaintiff is to pay a sum of \$\$76,666.66 to each Defendant. Being a total sum \$153,333.00 as the balance value of their shares.

- [64] The Plaintiff or the Defendants are at liberty to engage any surveyor to carry out the partition and costs associated with partitioning of the parties interest in the property is to be shared among the parties according to the respective interests.
- [65] If the Parties do not sign the documents, the Chief Registrar is appointed to sign all documents, and do all such things as may be reasonably necessary in the names of the parties to complete the partition.
- [66] The parties are at liberty to seek further directions from the Court.
- [67] The Plaintiff is to pay the Defendants \$8,000.00 as costs. The costs have been summarily assessed. This is to be paid within 30 days.

F. Court Orders

- (a) **The Plaintiff is to provide the Defendants an account of all the rental collected by him or on his behalf for the property.**
- (b) **The rental if not utilized to pay off the mortgage is to be equally shared between the parties, less any expenses that may have been incurred for the property.**
- (c) **The parties share in Crown Lease No. 3368 is to be partitioned in terms of the Plan No. M2064 into 2 lots as per the existing boundary pegs, subject to any statutory and regulatory requirements.**
- (d) **Lot 3 on Crown Lease No. 3368 be transferred to the Plaintiff and Lot 5 be transferred to the Defendants.**
- (e) **The Plaintiff is to pay a sum of \$76,666.66 to each Defendant as their value of share. Being a total sum \$153,333.00 as the balance value of their shares.**
- (f) **The Plaintiff or the Defendants are at liberty to engage any surveyor to carry out the partition and costs associated with partitioning of the parties interest in the property is to be shared among the parties according to the respective interests.**
- (g) **If the Parties fail to or refuse to sign the relevant documents, the Chief Registrar is appointed and authorized to sign the relevant documents, and do all such things as may be reasonably necessary in the names of the parties to complete the partition.**
- (h) **The parties are at liberty to seek further directions from the Court.**
- (i) **The Plaintiff is to pay the Defendants \$8,000.00 as costs. The costs have been summarily assessed. This is to be paid within 30 days.**

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Chaitanya S.C.A, Lakshman

Puisne Judge
27th February 2025

