

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

**CIVIL ACTION NO. HBC 70 of 2019**

**BETWEEN** : **URMILA** formerly of Vusavusa , Ba but now residing in Pittsburg, California, Domestic Duties as Administratrix and Trustee of Ram Sundar, and **SUNDAR DEI** formerly of Vusavusa , Ba now residing in Ednonton , Canada, Domestic Duties as Administratrix and Trustee of Keshwa Prasad also known as Kesho Prasad, and **SNEH LATA** and **YATENDRA ROY PRASAD**, both of Vusavusa, Ba as Executrix / Executor and Trustees.

**FIRST-PLAINTIFFS**

**AND** : **LALTA PRASAD**, Formerly of Vusavusa, Ba now residing at 16, Avenue South West, Edmonton, Alberta, Canada.

**SECOND PLAINTIFF**

**AND** : **SARDHA MANI**, as the sole executrix and Trustee of the Estate of **VIVEK PRASAD** late of Busabusa, Veisaru, Ba, Cultivator, and Deceased Trustee.

**BEFORE** : Hon. A.M. Mohamed Mackie- J.

**COUNSEL** : Mr. R. Charan, for the Plaintiffs.  
Ms. S. Singh, for the Defendant.

**HEARING** : On 12<sup>th</sup> November 2025, parties agreed to dispose by way of written submissions.

**W. SUBMISSIONS** : No Written Submissions filed by both parties.

**DATE OF RULING** : 09<sup>th</sup> February 2026.

**RULING**

**A. Defendant's Summons**

1. Before me is one Summons filed by the substituted Defendants on 26<sup>th</sup> August 2025, seeking the following Orders against the Plaintiffs

1. *That the plaintiffs be restrained from accepting any rental proceeds of the Certificate of Title No- 13068.*
2. *That the Plaintiffs be ordered to disclose the rent proceeds from September 2021 to the Defendant.*
3. *That the plaintiffs to be ordered to provide Bank Statement and Annual return documents lodged with the Fiji Revenue and Customs Services for the said property situated on CT-13068.*
4. *That the Plaintiff to provide tenancy agreement for all tenants from September 2021 till to date.*

5. *That the plaintiff to also amend the Tenancy agreement to include defendant's name and the tenancy agreement to be executed by the defendant.*
  6. *That the Plaintiff to furnish any improvement undertaken on the Certificate of Title No- 13068 with receipts and payments.*
  7. *That the Plaintiff's solicitor provides accountability for rents deposited in their Trust Account and under whose authority and/ or orders of the court the deposit was released and to whom.*
  8. *That the Plaintiff be ordered to provide audited account for property CT 13068 from September 2021 till to date.*
  9. *That all the future rental proceeds for the said property CT 13068 to be deposited in **Dayal Lawyers Trust Account** pending outcome of this proceedings.*
  10. *That the Plaintiff be ordered to pay the defendant share of rent from January 2020 until further orders granted by this court or in the alternative or until the order granted under prayer 9 herein.*
  11. *The service of this summons be abridged to one day.*
  12. *That the cost of this application be costs in the cause.*
  13. *Any other orders that the court deems just and equitable.*
2. The Summons is supported by an Affidavit sworn by the 1<sup>st</sup> named substituted Defendant – **SHARDA MANI** on 13<sup>th</sup> August 2025 and filed on 26<sup>th</sup> August 2025, together with annexures marked as “**SM-1**” & “**SM-2**”.
  3. The Summons states that it is made pursuant to Order 29 Rule 1 and Order 32 Rules 2 and 3 of the High Court's Rules 1988.
  4. Though, directions were given to file Affidavit in opposition by the Plaintiff and thereafter Affidavit in reply thereto by the Defendants, no Affidavit in opposition was filed by the Plaintiff, resulting no requirement for Affidavit in reply by the Defendants.
  5. As the Court had decided the hearing to be disposed by way of written submissions, though direction was also given to parties file written submissions, none of them have filed their respective written submissions.

**B. Plaintiffs' Summons**

6. Another Summons pending is also a similar one preferred by the **Plaintiffs** on **02<sup>nd</sup> December 2020** against the then Defendant – **VIVEK PRASAD** (now deceased) pursuant to order 29 Rule (1) of the High Court Rules 1988.
7. The reliefs sought by the Plaintiff in the above Summons were as follows;
  1. *An injunction restraining the Defendant whether by themselves or their agents or servants or otherwise howsoever from dealing with the property situated on Certificate of Title No-13068 being land formerly known as NANUKUDRALA ( part of) and being lot 10 on deposit plan No- 3196 and located in the District of Ba on the island of Viti Levu without the consent and authority from the Plaintiffs until the determination of the substantive proceedings or until such time as the Honorable Court deems and/or considers as appropriate.*
  2. *An Order that the Defendant do pay four-fifth on the monthly rental income from January 2021 onwards derived from the building situated on Certificate of Title No- 13068 being land formerly known as NANUKUDRALA ( part of) and being lot 10 on deposit plan No- 3196 and located in the District of Ba on the island of Viti Levu into the trust account of **Ravneet Charan Lawyers** until the determination of the substantive proceedings or until such time as the Honorable Court deems and/or considers as appropriate.*

3. *An order that the rental income paid into the trust account of Ravneet Charan Lawyers shall not be disbursed or paid to the plaintiffs until the determination of the substantive proceedings or until such time as the Honorable Court deems and/or considers as appropriate.*
4. *An Order authorizing Ravneet Charan Lawyers to pay on account of the Plaintiffs from his trust account four-fifth of the town rates to Ba Town Council and all other expenses in maintaining the subject property with the written consent and authority from the Plaintiffs.*
5. *The plaintiffs whether by themselves or their agents or servants or otherwise be authorized to have access and inspect the subject building without any interference from the Defendant.*
6. *The plaintiffs whether by themselves or their agents or servants or otherwise be permitted to renovate and perform maintenance work (if any required) on the second and top floor of the subject for the purpose of renting out it.*
7. *That service of this summons be abridged to one day.*
8. *That the costs of this application be costs in the cause.*
9. *That each party be at liberty to apply generally.*
8. The above Summons was supported by a joint Affidavit sworn by two first Plaintiffs, namely, **SNEH LATA** and **YATENDRA ROY PRASAD** on 2<sup>nd</sup> December 2020 and filed together with annexures marked as “SN-1” to “SN-7”.
9. While the Affidavit in opposition in relation to Plaintiff’s Affidavit was pending, as the then Defendant- **VIVEK PRASAD**, had passed away, despite the substitution of the present Defendants in place of the said original Defendant, no Affidavit in opposition was filed. As such this Summons by the Plaintiff was not proceeded with.
10. In the meantime, a Summons for Strike out the Plaintiffs’ Writ of Summons and the Statement of Claim was filed by the substituted Defendants on 07<sup>th</sup> July 2023 and the same was withdrawn on 1<sup>st</sup> day of September 2023. However, by an Amended Writ of summons and Statement of claim filed on 06<sup>th</sup> February 2023, the Second Plaintiff **LALTA PRASAD** was brought into the action by consent.
11. As the above application for injunction by the Plaintiffs was not proceeded with, after attending all PTC formalities, the substantive action now stands fixed for trial from 14<sup>th</sup> to 16<sup>th</sup> April 2026.
12. When the Defendants’ aforesaid Summons for injunction and other orders came up for hearing on 12<sup>th</sup> November 2025, as no affidavit in opposition had been filed by the Plaintiffs, while giving directions to file the same and to file reply thereto, the Court also directed the parties to file their respective written submissions and fixed the matter for ruling today.
13. However, neither Affidavit in opposition by the Plaintiff nor the written submissions by both parties have so far been filed till this morning of 9<sup>th</sup> February 2026. Accordingly, I proceed to prepare my Ruling on both the applications, by considering the contents of the papers filed and the law that governs the subject of injunction.

**C. Writ of Summons & Statement of Claim:**

14. Before proceeding further, it is pertinent to have a look at the substantive reliefs prayed for by the Plaintiffs as per their Amended Statement of claim filed on 06<sup>th</sup> February 2023, which are enumerated as follows;
- a. *A declaration that the Plaintiffs are entitled to one sixth undivided shares in Certificate of Title No-13068;*
  - b. *Loss of rental income from 1991 (to be assessed on the date of trial);*
  - c. *A declaration that the first and second Plaintiffs are entitled to receive one-sixth share of all future rental income received from leasing the concrete building erected on Certificate of Title No-13068;*
  - d. *An order against the Defendant to hand over Certificate of Title No- 13068 to the first Plaintiffs For registration of transmission by death and the transfer of one fifth share;*
  - e. ***An order restraining the Defendant and/or his agents and/or representatives from continuing to collect all future rental income generated from the leasing out of concrete building erected on Certificate of Title No-13068 until the determination of the current proceedings; (emphasis mine)***
  - f. *All necessary and consequential accounts, inquiries and directions;*
  - g. *An order that all the future rental income received from the leasing out of the concrete building erected on the Certificate of Title.*
  - h. *Further order or other reliefs.*

**D. Law on Injunction:**

15. Order 29 Rule 1 of the High Court Rules 1988 ;

**ORDER 29 — INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY,  
INTERIM PAYMENTS ETC**

***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.*

16. Injunction is an equitable remedy granted at the discretion of the court. The power which the court possesses to grant injunctions should be cautiously exercised only on clear and

satisfactory grounds. An application for injunction is an appeal to an extraordinary power of the court and the applicant is bound to make out a case showing clearly a necessity of its exercise.

17. It is also important to bear in mind that injunctive relief being a discretionary remedy the party who seeks the court to exercise its discretion in his favour must come to court with clean hands and full facts. Suppression of material facts will disentitle the party seeking an injunction to such relief.

18. In **Hubbard & Another v Vosper & Another [1972] 2 Q.B. 84** Lord Denning said:

“In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. .... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules”.

19. Interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief. A party who has not sought any substantive relief has no right in law to seek an interim injunction, as it cannot be a relief by itself but is only a mechanism to assist and protect final relief.

20. In **American Cyanamid Co. v Ethicon Ltd [1975] UKHL 1; [1975] 2 W.L.R. 316, [1975] A.C. 396**, Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction, which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) Whether there is a serious question to be tried at the hearing of the substantive matter;
- (ii) Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and
- (iii) In whose favour the balance of convenience lie if the injunction is granted or refused.

21. **Kerr L. J in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534** said:

*“It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket .... The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial”.*

22. In the case of **Series 5 Software Ltd v Clerk and others [1996] 1 All ER 853**, the court after considering the decision in American Cyanamid (Supra) and various other authorities on the subject, held that;

“In deciding whether to grant interlocutory relief, the court should bear the following matters in mind:

- (1) *The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.*
- (2) *There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible.*
- (3) *Because of the practice adopted on the hearing of applications for interlocutory relief, the court should rarely attempt resolve complex issues of disputed facts or law.*
- (4) *Major factors the court can bear in mind are **(a)** the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, **(b)** the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties’ cases.*

**E. Analysis**

23. Careful perusal of the interim reliefs sought by the Defendants in their aforesaid Summons shows that those reliefs are contrary to the substantive relief that the Plaintiffs have prayed for in their prayers to the amended Statement of claim, particularly, to the paragraph (e) thereof, which reads as follows;

***e. An order restraining the Defendant and/or his agents and/or representatives from continuing to collect all future rental income generated from the leasing out of concrete building erected on Certificate of Title No-13068 until the determination of the current proceedings;***

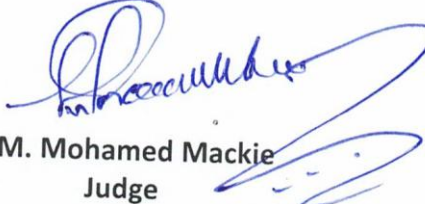
24. The Plaintiffs’ substantive reliefs sought in the amended Statement of Claim, including the relief (e) above, appear to be suggesting that the Defendants at the time material were managing the subject property and in the process of accepting, receiving or collecting the rents from the subject property. Then, the question arises as to how the Court can make interim reliefs as prayed for by the Defendants in their aforesaid summons restraining the Plaintiffs from accepting, collecting and receiving the rents, when they appear to be not doing so.
25. Further, the rest of the orders sought as per paragraphs from 2 to 9 of the Defendants’ aforesaid summons are in the nature of final orders, which can be considered, if entitled to, only at the end of the substantive trial. However, the Defendants do not rely on Order 29 (2) of the High Court Rules 1988 for those reliefs sought in paragraphs from 2 to 9 of their Summons. Thus, the Defendants’ Summons filed on 28<sup>th</sup> August 2025 has to necessarily fail.
26. As far as the Plaintiffs’ aforesaid Summons filed on 02<sup>nd</sup> December 2020 is concerned, I find that the Orders sought therein were against the Original Defendant **VIVEK PRASAD**, who is now dead. The Plaintiffs have not proceeded with the said summons against the substituted Defendants.
27. However, I find that the majority of the Orders sought by the Plaintiff in their Summons are in the nature of final orders, which are appropriate to be considered at the end of the substantive action. The Plaintiffs also have not moved under Order 29 Rule 2 of the High court Rules 1988. Thus, those orders are reserved for consideration at the end of the trial.

28. Both parties, in relation to their respective applications, have not satisfied this Court that the outcome of the relevant tests formulated in the ***American Cyanamid*** (supra) favor them.
29. Considering the nature of the proceedings and the relationship among the parties, I decide not to order any cost and the parties are to bear their own costs.

**F. Orders:**

1. The injunction and other orders sought by the Defendant, in their Summons filed on 28<sup>th</sup> August 2025, are declined.
2. The Defendants' Summons filed on 28<sup>th</sup> August 2025 is hereby dismissed.
3. The injunction and other orders sought by the Plaintiffs, in their Summons filed on 02<sup>nd</sup> December 2020, are declined.
4. The plaintiffs' Summons filed on 02<sup>nd</sup> December 2020 is hereby dismissed.
5. There will be no order for costs and the parties shall bear their own costs.
6. The substantive matter will proceed for trial as already fixed.



  
A.M. Mohamed Mackie  
Judge

**At the High Court of Lautoka on this 9<sup>th</sup> day of February, 2026.**

**SOLICITORS:**

**For the Plaintiff**  
**For the Defendant**

**Messrs. RAVNEET CHARAN LAWYERS - Barristers & Solicitors**  
**Messrs. DAYAL LAWYERS - Barristers & Solicitors**