

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Probate Action No: HPP 108 of 2020

BETWEEN : **PRARTHANA DEO** of 35 Kula Street, Samabula, Suva. Domestic Duties

Plaintiff

AND : **ARYANDRA SHEKHAR GAJI** of 16 Wade Street, Campsie NSW 2134, Australia, Retired Foreman as sole Executor and Trustees of the Estate of Narendra Singh Gaji

Defendant

Counsels : Mr. Singh, Ravikash for the Plaintiff
Ms. Narayan, Prem for the Defendant

Date of Ruling: 5 February, 2026

RULING

(Application for Dissolution of an Interim Injunction Order)

INTRODUCTION

[01]. This is an application filed by the defendant for the Injunction Order made on 23 December, 2020 and varied on 7 July 2023 to be dissolved in its entirety.

[02]. The Defendant seeks the following orders: -

- (a) The Injunction Order made on 23 December, 2020 restraining the Defendant from dealing with the Estate property on Certificate of Title Number 13796 which was varied by Consent dated 7 July 2023 be dissolved entirely.

[03]. The Defendant also filed his supporting affidavit sworn 20 November, 2024.

[04]. The Motion and supporting affidavit of the Defendant was personally served to the Plaintiff's solicitors, Parshotam Lawyers Barristers and Solicitors on 3 February 2025. The affidavit of service was filed with the Court on 11 February, 2025.

[05]. The Plaintiff has not filed an affidavit in response.

BACKGROUND

- [06]. This case relates to Certificate of Title (CT) Number 13796 belonging to the Plaintiff and Defendant respectively.
- [07]. The parties late father Narendra Gaji passed on, on 9 June 2010, posthumously he became the registered owner of the property comprised in CT 13976 pursuant to a judgment rendered in Civil Case Number 110 of 1969.
- [08]. The property situated on CT 13976 has been occupied by the Plaintiff since 9 June 2010 and at present the Plaintiff and her family still resides there.
- [09]. On 23 December 2020, the Plaintiff's Solicitors filed an Expedited Originating Summons for an Interim Injunction against the Defendant restraining him from disposing the property. The Order was varied by consent on 7 July 2023 and sealed on 19 July, 2023 to enable the registration of transfer of CT 13796 to the Plaintiff, Defendant and their three other siblings.

AFFIDAVITS

- [10]. The Defendant in his affidavit dated 20 November 2024 states that the Plaintiff had sued him in his capacity as Executor and Trustee of the Estate of Narendra Gaji.
- [11]. It was sometimes on 23 December 2020 that the Plaintiff obtained an Ex-parte Injunction restraining him as the Executor and Trustee of the Estate of Narendra Gaji from disposing the property comprised in Certificate of Title Number 13796.
- [12]. During the course of the proceedings the Order of 23 December 2020 was varied by consent on 7 July 2023 to allow the transfer to be registered on the Certificate of Title Number 13796 whereby the property was transferred from him as the Executor and Trustee of the Estate to the five beneficiaries of the Estate being Pratima Rohan, Purnima Gaji, the Plaintiff, himself and Ashutosh Gaji each owing one fifth share of the property on Certificate of Title Number 13796 being Lot 3 on Deposited Plan Number 3468 and located at 35 Kula Street, Samabula.
- [13]. The Plaintiff does not have any greater interest against any of the other co-owners of the property and therefore the injunction has outlived its purpose.
- [14]. The injunction restraining the sale of the property currently gives the Plaintiff a legal tool over the other four co-owners in that:-
- (a) The Plaintiff continues to have possession of the whole of the property; and

- (b) The Plaintiff controls whether the property is sold or not as she holds the other four co-owners right of ownership as hostage due to the injunction over their legal entitlements.

[15]. The Plaintiff's application was to remove him as the Trustee of the Estate of Narendra Gaji is still pending together with his application for the Plaintiff to release bank statements and monies that she was holding in trust at his request for the Estate of Narendra Gaji.

[16]. The issue of the Plaintiff's right as a beneficiary over Certificate of Title Number 13796 is over as the beneficiaries of Narendra Gaji are now owners of the property. This includes the Plaintiff.

[17]. The restraining injunction means the Plaintiff continues proprietary rights whilst the other four co-owners are deprived of their rights.

SUBMISSIONS

Applicant/Defendant

[18]. The applicant's submissions is that the injunction is no longer necessary, fair or justifiable. It serves no purpose other than to deprive the other beneficiaries of their entitlement to the property on Certificate of Title Number 13796.

Respondent/Plaintiff

[19]. The Respondent/Plaintiff has not filed a reply or submissions with the court.

ISSUES TO BE DEALT WITH BY THE THIS COURT

[20]. The two primary issues for determination are:-

- (i). Whether the injunction imposed on the Defendants extends to third-party co-owners, thereby depriving them of their rights?
- (ii). Whether the continuance of the injunction still serves a purpose?

LAW

[21]. The principles applicable when granting an interim injunction were considered in the case of **American Cyanamid Co. v Ethicon Ltd [1975] A.C 396** where the Courts to consider in deciding whether to grant or refuse an interim injunction. These are still considered as leading source of the law on interim injunction. These are:-

- (1) *Whether there is a serious question to be tried at the hearing of the substantive matter;*
- (2) *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*
- (3) *In whose favour the balance of convenience lies if the injunction is granted or refused.*

SERIOUS ISSUE TO BE TRIED

[22]. In consideration of motion to dissolve the injunction, the court in *London City Agents (LCD) and Another v. Lee and Others* (1969) 3 All ER 1376 (although the present application is interparte):

“Just as a court will grant an interlocutory injunction on ex parte application if a case of sufficient cogency is made so also will the court on an ex parte application made on sufficient cogent grounds discharge or vary an injunction granted ex parte.”

[23]. The question posed here is for the court to determine as to whether the interim injunction ought to continue on the facts is the discretion of the court or whether the plaintiff’s should be left to their remedy in damages.

ADEQUACY OF REMEDY

[24]. The principles to be followed in considering the granting of injunctive relief are set out in the leading case of *American Cyanamid Co. v. Ethicon Ltd.* (1975) A.C. 396. The House of Lords there decided that in all the cases, the court must determine the matter on the balance of convenience, there being no rule that an applicant must establish a prima facie case. It is the court’s duty in considering an interlocutory injunction is to be satisfied that the claim is “*not frivolous or, vexatious*”, in other words, “*that there is a serious question to be tried.*”

[25]. **Lord Diplock** in *Cyanamid* (supra) at 406 relevant on the object of interlocutory injunction:

“...to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff’s need for such protection must be weighed against the corresponding need of the

defendant to be protected against injury resulting from his having from prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies”.

[26]. In this case, the Plaintiff is the party that sought injunction. The Plaintiff having grievance about her interest in the property, damages would be an adequate remedy. If there is order for sale on the property, as she will be entitled to her one fifth share of the said property. The continued injunction unjustly prevents the other co-owners from exercising their rights over the property.

BALANCE OF CONVENIENCE

[27]. The third principle that is to be considered when granting interim injunction is that the balance of convenience.

[28]. In considering all the circumstances of this case the Defendant and the other beneficiaries stand to lose much more than the Plaintiff. The “*balance of convenience*” lies in favour of the Defendant.

[29]. This is not a case where the interlocutory injunction should continue as the Plaintiff should not use an injunction as a tool for oppression or to secure an unfair advantage depriving the Defendant and the other three co-owners of their legal right over the property.

[30]. In **Hubbard v Vosper** (1972) 2 WLR 389, Lord Denning M.R in His Lordship's judgment with regards to guidance on the principles of granting an injunction states;

“In considering whether to grant an 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 to 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, it is 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 to go ahead. For instance in Frank v. Evans [1969] 1 QB 349, although the plaintiff owed the copyright, we did not grant an injunction because the defendant might have a defence or fair dealing. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It should not be made the subject of strict rules.”

[31]. In this case the balance for convenience is in favour of the Defendant because the property comprised in Certificate of Title Number 13796 has been transferred to all the five beneficiaries of the Estate of Narendra Gaji on 12 February 2024 at 8.38am. The

issue of the Plaintiff's right as beneficiary over CT 13796 is over as all the beneficiaries namely Aryendra Shekhar Gaji, Ashutosh Himanshu Gaji, Pratima a.k.a Pratima Rohan, Purnima Nita Gaji and Prarthana a.k.a Prarthana Deo are registered proprietors of the property. Therefore, the defendant and other beneficiaries would be at loss with the continuance of this injunction.

CONCLUSION

[32]. I, for all the aforesaid reasons, dissolve the interim injunction granted to the Plaintiff on 23 December 2020 and the Order varied by consent on 7 July 2023 and sealed on 19 July, 2023 in its entirety.


[33]. The applicant did not push for an order for costs and I would, therefore, refrain from making an order for costs.

FINAL ORDERS

[34]. I hereby order as follows;

- (i). That the injunction ordered on 23 December 2020 and varied by consent on 7 July 2023 is dissolved forthwith in its entirety.
- (ii). That all co-owners, including the Plaintiff and the Defendant are at liberty to exercise their legal rights over the property comprised in Certificate of Title Number 13796.
- (iii). That there is no order as to cost.




Waleen M George
Acting Puisne Judge

Dated at Suva this 5th February, 2026.

Solicitors: Parshotam Lawyers Barristers and Solicitors, Suva for the Plaintiff
Prem Narayan Lawyers, Suva for the Defendant