IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 106 OF 2023
[Lautoka HBC No. 218 of 2022]

BETWEEN	:	**AJAY DEO PRASAD**
		Appellant
AND	:	**ARUNA KUMARI**
		First Respondent
		THE DIRECTOR OF LANDS
		Second Respondent
Coram	:	**Prematilaka, RJA** **Morgan, JA** **Clark, JA**
Counsel	:	**Messrs. D. S. Naidu and K. Chand for the Appellant** **Mr. A. J. Singh for the First Respondent** **Mr. S. Kant for the Second Respondent**
Date of Hearing	:	**10 February, 2026**
Date of Judgment	:	**27 February, 2026**

JUDGMENT

Introduction

[1] This is an appeal against a Judgment of the High Court at Lautoka dated the 18th September 2023 ("the Judgment") wherein the Judge dismissed the Appellant's action for an injunction restraining the First Respondent from transferring a Crown Lease

Property and for orders for specific performance of an agreement relating to that property.

Background

[2] The Appellant, a retired school teacher, was born in Fiji but migrated to Australia in the 1980's and has resided there since. Prior to his migration to Australia the Appellant's father Deo Kumar ("Deo") was the registered proprietor of an agricultural Crown Lease No. 5809; LD 4/3/1026 comprising an area of 6 acres 2 roods 6 perches situated in the Tikina of Rakiraki Province of Ra ("the property").

[3] In February 1987 Deo made an application to the Director of Town and Country Planning for development permission to subdivide the property into two lots one for residential purposes which was to be transferred to the Appellant and the other for agricultural purposes which was to be transferred to the Appellant's brother Rajendra Prasad ("Rajendra").

[4] Due to Deo's deteriorating health at the time a transfer document was executed by Deo dated 28 March 1990 which purported to transfer a lot described as Lot 1 on BDSW 1070 comprising an area of 1012m^2 being part of Crown Lease No. 5809 ("the first lot") to the Appellant for natural love and affection. It appears that the Director of Lands endorsed his consent on that transfer document on the 20th February 1990.

[5] Although copies of the correspondence in the High Court Record are unclear it appears that the Director of Town and Country Planning granted development permission for the subdivision on the 12 February 1987 valid for 2 years and finally approved the subdivision on the 4 September 1990. This transaction however was never completed.

[6] On 25 July 1990 by an instrument of transfer dated 12th July 1990 Deo transferred the whole of the property to Rajendra for a consideration of $1,000.00. This transfer was registered at the Registrar of Titles Office against Crown Lease Title No. 5809 on the 25 July 1990. Rajendra died on the 26th of April 2014 and his wife Aruna Kumari the First Respondent was granted Probate of his estate as sole executrix and trustee on the 30th June 2014.

[7] Crown Lease 5809 expired prior to the death of Rajendra and a new crown lease being Crown Lease No. 19332 was issued to Rajendra in lieu thereof.

[8] The Appellant alleges that he and his wife built a residential house on a portion of the property being Lot 1 on SO 2716 having an area of 1217 square metres ("the second lot") and that Rajendra offered to sell that lot to the Appellant for a consideration of $15,000.00 which the Appellant accepted. The Appellant further alleges that he subsequently paid the said consideration of $15,000.00 to Rajendra but before this transaction could be completed, Rajendra passed away. Although it was not clarified at the High Court or before this Court it is apparent that although there is a difference in the area of the two lots, the first lot and the second lot appear to represent the same portion of land within Crown Lease No. 5809 (now Crown Lease No. 193332) on which the Appellant alleges he has constructed a residence.

[9] It is alleged further that the First Respondent being aware of the arrangement set out above between the Appellant and Rajendra executed a sale note dated 7 January 2015 ("the Sale Note") agreeing to the transfer of the second lot to the Appellant for the consideration of $15,000.00; a letter dated 31 January 2014 to the Divisional Surveyor Western stating that she had no objection to the granting of a lease to the Appellant for the second lot and an undated application to the Director of Lands for consent to transfer the second lot to the Appellant.

[10] The Appellant further alleges that he incurred surveyor's and solicitor's fees in order to complete the preliminary documentation required to process a lease for the second lot. The First Respondent's solicitors wrote to the Divisional Lands Manager Western on the 31st April 2016 stating that the Respondent opposed the transfer of the second lot to the Appellant and that it was the Respondent's belief that any documents she may have signed regarding the transfer of that lot to the Appellant were obtained in suspicious circumstances without her proper understanding.

[11] The Appellant's Solicitors then wrote to the Lands Manager West on the 19th April 2018 claiming that the first lot was transferred to the Appellant in 1990 by Deo. The letter stated that the transfer had been consented to by the Department of Lands and Survey and that all that remained was for the First Respondent to sign a surrender and other documents.

[12] The Appellant alleged further that based on the consent the Appellant built a substantial dwelling on the first lot at his expense. The letter noted that substantial time had expired without progress in the agreement of a lease and that the granting of a residential lease to the Appellant should be a "mere formality."

[13] The Director of Lands responded by letter dated 17 May 2018 stating that they were not able to intervene and suggested that the Appellant seek redress through the Court. Following receipt of this letter the Appellant issued a Writ of Summons and Statement of Claim against the First and Second Respondents which pleaded the matters set out above and sought inter alia an injunction restraining the First Respondent from transferring the property or further encumbering the same and specific performance of "the agreement." The Writ of Summons named the Second Respondent as a nominal defendant.

[14] The Statement of Claim alleged that the consideration of $15,000.00 referred to above had been paid to Rajendra and also that the first lot had been transferred to the Appellant by Deo in 1990.

[15] The Appellant in conjunction with the filing of the Writ of Summons also filed an Exparte Notice of Motion supported by an Affidavit of the Appellant seeking orders that the First Respondent be restrained from dealing with the property; from interfering with the Appellant's residential house on the second lot; from encumbering or transferring the second lot and from proceeding with any act or process whereby the First Respondent gives the second lot to any third party.

[16] On the hearing of the Exparte Notice of Motion the Court granted an interim injunction in respect of the orders sought and ordered that all relevant documents be served on the other parties.

[17] On service of the documents the First Respondent filed a Statement of Defence and an Amended Statement of Defence (which Statement of Defence and Amended Statement of Defence are hereafter referred to as "the Statement of Defence"). The First Respondent also filed an Affidavit in Reply to the Appellants affidavit in support of the application for injunction.

[18] The Statement of Defence pleaded inter alia that:-

1) Deo had withdrawn his intended gift to the Appellant and had passed the property to Rajendra for a consideration.

2) The Appellant after migrating to Australia and the passing of the property to Rajendra did not take any action for 22 years therefore any claim he may have in this respect was statute barred.

3) Crown Lease No. 5809 for the property had expired on 1st January 1996 and that any interest, consent and dealings previously obtained also expired.

4) New Crown Lease No. 19332 was issued to Rajendra on expiry of Crown Lease No. 5809 free of all encumbrances.

5) The First Respondent's title to the property was indefeasible.

6) The Sale Note was obtained by misrepresentations and that it was unlawful *ab initio* as it was not consented to by the Director of Land nor stamped. It was never explained to her and was obtained by fraud and that:-

7) The alleged consideration of $15,000.00 was never paid by the Appellant to Rajendra.

[19] The First Respondent prayed in the Statement of Defence for the following relief:-

a) the Interim injunction be dissolved and dismissed;

b) a declaration that the Appellant was not in possession of the lot;

c) a declaration that the Sale Note was fraudulently executed and that the Appellant's claim be dismissed with costs.

[20] The parties attended to the usual pre-trial matters and the action proceeded to hearing on 1st August 2023. The Appellant and the First Respondent gave evidence at the hearing and at the conclusion of the hearing the Judge delivered his judgment on the 18th September 2023.

The Appeal to this Court

[21] The Appellant filed a timely appeal against the Judgment to this Court.

[22] In his Notice of Appeal the Appellant seeks an order that the Judgment be wholly set aside, varied or revoked; a declaration that the Appellant is entitled to Lot 1 on BDSW 1070 (LD ref 4/13/1026) having an area of 1012m^2 and that the First and Second Respondents transfer this lot to the Appellant; and finally that the Respondents bear the costs of this Appeal on the following grounds:-

1. THAT the Learned trial Judge erred in law and in fact in holding that the Appellant was not entitled to the land being Lot 1 on plan BDSW 1070 (LD 4/13/1026) having an area of 1012m^2 when the transfer from the than Registered Proprietor Deo Kumar to his son the Appellant was out of natural Love and Affection was consented to by the 2nd Respondent.

2. THAT the Learned Judge erred in law and in fact by misinterpreting the Last Will and Testament of Rajendra Prasad dated 20th March 2014 as to deny the Appellant his entitlement.

3. THAT the Appellant residential area was already extracted from State Lease No. 5809 prior to transfer of the same to the deceased Rajendra by his late father Deo Kumar on 25th day of July 1990.

4. THAT the Learned Judge erred in law and in fact in taking account of the place of residence of the Appellant as Australia when the same was not relevant or of any consequence to the Appellants right to the property.

5. THAT the Learned Judge erred in law and in fact in taking into account the last Will and Testament of the deceased Rajendra Prasad when the same did not impact on the Appellant's entitlement to Lot 1 [LD 4/13/1026] having an area of 1217m^2.

Issues on Appeal

[23] The grounds of appeal raise two issues. The first and principal issue is did the Judge err in not holding that the Appellant was entitled to the first lot when there was a transfer for natural love and affection which had been consented to by the Second Respondent and when that lot had already been extracted from the property prior to the transfer of the property to Rajendra. This issue relates to grounds one and three

above although we note that ground three is not properly framed as a ground of appeal but is more in the nature of a submission.

[24] The second issue is did the Judge err in taking into account Rajendra's Will. This issue relates to grounds two and five above.

[25] We will now consider these issues.

Did the Judge err in not holding that the Appellant was entitled to the first lot when there was a transfer for natural love and affection which had been consented to by the Second Respondent and when that lot had already been extracted from the property prior to the transfer of the property to Rajendra.

[26] The Appellant submits that the first lot had been "transferred", "extracted" and "set aside" to the Appellant prior to the transfer of the property to Rajendra. It is further submitted that the said transfer was "effected" out of natural love and affection and that the transfer was "done" with the knowledge and consent of the Second Respondent.

[27] The Appellant submits that the Judge erred in law and fact in holding that the Appellant was not entitled to the first lot notwithstanding clear and uncontroverted evidence that the transfer from Deo to the Appellant was "effected" out of natural love and affection and with the knowledge and consent of the Second Respondent.

[28] The Appellant further submits that the evidence established that the Appellant's entitlement arose from a "completed" family transfer consented to by the relevant statutory authority. The existence of such consent was not peripheral or incidental but went directly to the validity, legitimacy and enforceability of the transfer. Once consent was established on the evidence, it is submitted, the Judge was required to consider the legal consequences flowing from that consent and the "completed" transfer. His failure to do so undermined the Appellant's proprietary rights. The Appellant submits further that there was no evidence that his transfer was withdrawn, cancelled or rendered inoperative.

[29] The Appellant refers to the Supreme Court case of **Pati v Wati**[1] and submits that this case is authority for the principle that once a legal interest has been transferred prior

[1] [2023] FJSC 31; CBV0020.2019 (31 August 2023)

to death it does not form part of the estate and cannot be affected by a later Will. It is submitted that the Judge failed to apply this principle.

[30] The Appellant also submits that the Judge wrongly gave weight to the Appellant's place of residence when it was wholly irrelevant to the determination of proprietary rights arising from a completed transfer that had been consented to.

[31] The Appellant submits that the Court was not entitled to disregard a valid family transfer merely because of subsequent events including the death of a party or the later execution of a Will.

[32] In conclusion the Appellant submits that his entitlement "crystallised" at the time of the transfer and was not contingent upon, nor capable of being displaced by events occurring thereafter.

[33] The First Respondent on the other hand submits that the appeal is misconceived. The trial in the High Court was run on an allegation that the Appellant had purchased the second lot from Rajendra for $15,000.00 under a sale and purchase agreement and that the Sale Note was in respect of that agreement.

[34] The Appeal before this Court however is about another matter not raised before the High Court ie that the first lot had been "extracted" or transferred to the Appellant prior to the transfer of the property by Deo to Rajendra.

[35] If this were the case, it is submitted, why would the Appellant enter into a purported agreement with Rajendra to purchase the second lot for $15,000.00? There was no evidence adduced however by the Appellant, it is submitted, that he had paid the consideration of $15,000.00.

[36] The First Respondent further submits that the Appellant was told by his father Deo in 1990 that the property had been transferred to Rajendra. He acknowledged in cross-examination that his father had told him of this at the time. The Appellant later, it is submitted, alleged that Rajendra had agreed to transfer the second lot to him for $15,000.00 but could not produce an agreement in writing confirming this and relied on the Sale Note which it is contended was a "sham" to make a claim to the lot. This is how, it is submitted, he ran his case in the High Court.

[37] The Appellant now comes before this Court however on an entirely different basis, it is submitted, namely that the first lot had been extracted and set aside prior to the transfer of the property to Rajendra.

[38] The First Respondent refers to the registered transfer of the property to Rajendra in 1990 and notes that it was for the whole of the land comprised in the property.

[39] The First Respondent then submits that the transfer document to the Appellant signed by Deo in 1990 was never completed. It was not registered at the Registrar of Titles Office. The transfer to Rajendra on the other hand was registered at the Registrar of Titles Office on the 25th July 1990. The First Respondent refers to Sections 23 and 39 of the Land Transfer Act and submits that a registered proprietor's title is paramount and his title is indefeasible in the absence of fraud. There was no allegation of fraud in respect of the registered transfer to Rajendra. This it is submitted is the crux of the matter and the First Respondent relies on the registered transfer document of the property to Rajendra.

Discussion

[40] The Appellant did not provide any authority in support of his contention that the first lot had been "extracted" and "set aside" from Crown Lease No. 5809, prior to the transfer of the property by Deo to Rajendra by virtue of the unregistered transfer in 1990 with the Director of Lands consent indorsed thereon.

[41] As noted above the Appellant relied on the case of **Pati v Wati** (supra) in support of his proposition that once a legal interest has been transferred prior to death, it does not form part of the estate and cannot be effected by a later Will. This case has no relevance to the first issue above and has been quoted completely out of context.

[42] It is not in dispute that the property had been transferred to Rajendra by Deo prior to Deo's death. This Court recognises that the system of land ownership and dealings in land in Fiji is founded on the Torrens System which is a land registration regime that provides secure indefeasible title by making registration the definitive proof of ownership. This system is entrenched in the Land Transfer Act 1971 ("the Act") which governs land ownership and dealings in Fiji. Crown Leases (now known as

State Leases) are subject to the provisions of the Act by virtue of Section 5 (c) of the Act which provides:-

> *"5. The following freehold and leasehold land shall be subject to the provisions of this Act:*
> *……*
> *(c) all leases of State land granted pursuant to the provisions of the State Lands Act 1945 ……"*

[43] Sections 37 and 39 of the Act are relevant to this appeal which provide:-

> *"**[LT 37] Instrument not effectual until registered***
>
> *37 No instrument until registered in accordance with the provisions of this Act shall be effectual to create, vary, extinguish or pass any estate or interest or encumbrance in, on or over any land subject to the provisions of this Act, but upon registration the estate or interest or encumbrance shall be created, varied, extinguished or passed in the manner and subject to the covenants and conditions expressed or implied in the instrument."*
>
> *"**[LT 39] Estate of registered proprietor paramount, and his or her title guaranteed***
>
> *39 (1) Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, the registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, shall, except in case of fraud, hold the same subject to such encumbrances as may be notified on the folium of the register, constituted by the instrument of title thereto, but absolutely free from all other encumbrances whatsoever……"*
>
> (The underlining is ours.)

[44] The Appellant's contentions in respect of this issue cannot be sustained and are ill - conceived.

[45] The Appellant acknowledges in his pleadings that the proposed 1990 transfer was never completed. The transfer document dated 28 March 1990 on which the Appellant relies was never registered at the Registrar of Titles Office. It could not therefore have had the effect, applying Section 37 of the Act above, of "transferring", "extracting" or "setting aside" the first lot to the Appellant prior to the transfer of the property to Rajendra as submitted by the Appellant.

[46] The Transfer to Rajendra on the other hand was registered at the Registrar of Titles Office and he therefore acquired guaranteed title free on any purported prior interests of the Appellant pursuant to Section 39(1) of the Act.

[47] Further, a copy of the Crown Lease Title for the property (Crown Lease No 5809) was produced by the First Respondent at the hearing in the High Court duly certified as a true copy by the Registrar of Titles with the memorial of the Transfer of the Crown Lease to Rajendra dated 25 July 1990 duly indorsed thereon.

[48] Section 18 of the Act provides:

> *"Every duplicate instrument of title duly authenticated under the hand and seal of the Registrar shall be received in all courts as evidence of the particulars contained in or enclosed upon such instrument and of such particular being entered in the register and shall…… be conclusive evidence that the person named in such instrument or in any entity thereon as seized of or as taking an estate on interest in the land described in such instrument……"*

[49] The Appellant conceded in cross-examination that he was told by Deo about the transfer of the property to Rajendra in 1990 at the time the transfer was effected. If the Appellant considered that he had an interest in the property by virtue of his 1990 Transfer he should have made a claim to that effect at the time.

[50] The first proceedings the Appellant undertook regarding the property was when he issued his Writ of Summons on the 16th October 2018, 28 years later. His purported claim based on his 1990 Transfer is obviously statute barred.

[51] In any event his Statement of Claim seeks specific performance of the purported agreement to purchase the second lot from Rajendra for $15,000.00.

Conclusion

[52] In answer to the first and principal issue in this matter we are not persuaded for the reasons stated above that the Judge erred in not holding that the Appellant was entitled to the first lot. The first lot had not been extracted and set aside prior to the transfer of the property to Rajendra. Grounds one and three are ill-conceived and without merit and must fail.

Did the Judge err in taking into account and misinterpreting Rajendra's last will and testament.

[53] The Appellant contended following his arguments above that the Will could not have disposed of the first lot when it was not part of Rajendra's estate. The Judge it is

submitted should have first enquired whether the lot formed part of Rajendra's estate and by not doing so erred in law.

[54] The First Respondent on the other hand contended that the Will of Rajendra was a relevant document in terms of the Appellant's claim.

[55] The Appellant, it is submitted, based his claim in his Statement of Claim on the purported agreement to purchase the second lot and the Sale Note relating thereto. The Will was therefore entirely relevant to determine whether the First Respondent had the authority to execute the Sale Note as Executrix and Trustee under the Will.

[56] As it turned out, it is submitted, the Appellant was not able to establish an agreement had been entered into or that the Sale Note had been properly executed. Indeed the Appellant stated in examination in chief and cross-examination that he was not even aware of its existence.

Discussion

[57] The Appellant's contentions above are also ill-conceived and without merit. The Appellant's claim was based on the Sale Note. The Judge found that the Sale Note could not be considered a legally enforceable Sale and Purchase Agreement. He also found that the alleged purchase price for the lot had not been paid.

[58] The Judge then went on to consider "assuming but not conceding" that there was an agreement between the parties to sell the lot whether or not the First Respondent had the authority under the Will to enter into any such agreement. The Judge did not err by doing so. He had already decided that there was no valid agreement and his decision did not turn on his consideration of the Will.

Conclusion

[59] In answer to the second issue we find that the Judge did not err in taking into account Rajendra's Will.

[60] For the reasons stated above Grounds two and five of the grounds of appeal fail.

[61] In view of our findings above it is not necessary to consider Ground 4.

Outcome

[62] Having considered the grounds of appeal and the submissions thereon this Court has concluded that:-

a) The appeal should be dismissed and;

b) Costs be awarded in favour of the First Respondent. The Second Respondent was a nominal party. Although the Second Respondent appeared at the hearing of this appeal they did not file written submissions and did not ask for costs at the hearing. We consider therefore in the circumstances that there should be no order for costs in this appeal in favour of the Second Respondent.

Orders of the Court

1. *The appeal is dismissed.*

2. *The Appellant is ordered to pay costs to the First Respondent summarily assessed in the sum of $5,000.00 within 21 days.*

Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

Hon. Mr. Justice Walton Morgan
JUSTICE OF APPEAL

Hon. Madam. Justice Karen Clark
JUSTICE OF APPEAL

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