

IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 277 OF 2005

BETWEEN:

VEER SASHI MANU SINGH

Plaintiff

AND:

ATTORNEY GENERAL

Counsel: Mr. Sashu Nandan - for the Plaintiff
Mr. Nataraj Karan - for the Defendant

Date of Hearing: 11th September, 2007

Date of Judgment: 31st October, 2007

JUDGMENT

Background

- [1] The plaintiff has a brother-in-law, Karnail Singh. Karnail is the son of Dalbagh Singh who died on the 1st of September 1982. Dalbagh Singh left a Will which in part directed the sole executor and trustee of his estate to maintain support and suitably provide for his widow Dhanraji Singh during her life time. The land which is the subject of this caveat dispute was otherwise left to Karnail. The valuable property is in the Natadola Bay Area in the District of Nadroga more particularly described in Certificate of Title No. 26917.
- [2] Dhanraji Singh is now some 80 years old and lives in Australia outside Brisbane.

- [3] The plaintiff's brother-in-law as executor and trustee was found to be in breach of his trustee duties as he failed to provide his mother any benefit from her life interest in her husband's estate. This finding was initially made by his honour Mr. Justice Scott in his Lordship's Judgment of the 11th of February 2003 where his honour found that Mr. Karnail Singh had persistently failed to provide for his mother as required by the terms of the Will.
- [4] On the 14th of May 2003 to cure this failure the learned Judge made orders for the sale of the property by public tender under directions of the High Court of Fiji.
- [5] On the 13th of June 2003 when the matter was next called the plaintiff's lawyer Dr. Sahu Khan appeared for Karnail and made applications to set aside the learned Judge's decisions of the 11th of February and 14th of May 2003.
- [6] Those applications were heard on the 25th of July 2003 with a written decision being delivered on the 31st of July of that year dismissing all the applications by Karnail Singh.
- [7] Thereafter the same lawyer acting for Karnail Singh applied to the Fiji Court of Appeal for a stay order against Justice Scott's decision. Mr. Justice Smeilie refused that application in a decision dated the 7th of November 2003.
- [8] Subsequently the full Fiji Court of Appeal on the 29th of September 2004 also dismissed the substantive appeal thus clearing the way for sale of this valuable property by tender in accordance with Justice Scott's original order. More importantly the Court of Appeal's decision gave the widow some hope that her remaining years would see her properly supported as envisioned by her late husband in his Will. That hope was short lived.

The Application to the Land Tribunal

- [9] As part of this proceeding I called for the copy records of the Agricultural Tribunal at Lautoka under reference No. WD7 of 2003.

- [10] Those records disclose that shortly after Justice Scott's original finding against the plaintiff's brother-in-law in May of 2003 the plaintiff represented by the same law firm filed an action under the Agricultural Landlord and Tenant Act, Cap. 270 for reference to the Tribunal seeking recognition of an alleged instrument of tenancy over the very land that Scott J. had just made orders for sale.
- [11] I find that fact was never disclosed to the court by Dr. Sahu Khan when acting for Kamail Singh on the 13th of June 2003. That was when the Doctor appeared and made application to set aside the honourable Justice Scott's decisions.
- [12] I find that the same Dr. Sahu Khan did not disclose to the Hon. Justice Scott at hearing on the 25th of July 2003 that his firm had taken an action in the Agricultural Tribunal at Lautoka seeking to declare his brother-in-law a tenant on the subject land.
- [13] I find that at the same Dr. Sahu Khan when he applied to the Fiji Court of Appeal and appeared before Mr. Justice Smellie did not disclose the application his law firm made to declare his client's brother-in-law a tenant of the subject property.
- [14] I find that the same Dr. Sahu Khan did not disclose to the full Fiji Court of Appeal in the subsequent hearing that his firm had supported the application by his client's brother-in-law to be declared a tenant of the subject property.
- [15] Most importantly I find that no where in the records of the Agricultural Tribunal Western Division under Reference No. WD07/03 was it disclosed to the Tribunal that the land in Certificate of Title 26917 was the subject of sale orders by Scott J.
- [16] I find the obligation to make such disclosures under the Agricultural Landlord and Tenant Act, Cap. 270 is described in the application form itself. The respondent (who is this plaintiff's brother-in-law) was obliged to set out any

facts which were incompatible with the contract of tenancy claimed in paragraph 21. And in paragraph 22 any facts which were incompatible with the tenancy claim. And in paragraph 23 any facts relevant to consent which were incompatible with the relief claimed.

This Application

- [17] This then is an application by the Attorney-General to discharge Caveat No. 526538 registered against Certificate of Title 26917. The caveat was raised by the plaintiff in these circumstances it is said to support the plaintiff's Agricultural Tenancy of his brother-in-law's land.
- [18] On the 29th of September 2005 Justice Finnigan of the High Court of Fiji at Lautoka in Civil Action No. 277 of 2005 ordered that this Caveat No. 526538 registered on CT No. 26917 remain in place. This was the caveat registered by the plaintiff days after Scott J's original sale order on the 10th of June 2003 in anticipation of an instrument of tenancy being granted by the Western Agricultural Tribunal.
- [19] It is an irresistible inference that this application before the Western Agricultural Tribunal made as it was by the same firm of solicitors then contesting the orders for sale made by Justice Scott was made with the sole object of frustrating those High Court orders of sale of the subject land.
- [20] I find that when Justice Finnigan extended this caveat in his order of the 29th of September 2005 he was not provided with full disclosure of the material facts concerning the background and history of this matter.

- [21] The subject land is now under agreement for sale. The Chief Registrar of the High Court acting on my orders sought to remove Caveat No. 526538 from Certificate of Title 26917.
- [22] I accept the submissions of counsel for the Attorney-General that caveats are by their nature and use similar to applications for interim relief. Caveats are often brought upon the basis of an equitable right to an interest in land that would otherwise be unprotected. Caveats are frequently brought and continued on an ex parte basis.
- [23] For those reasons I find that full disclosure of material facts about caveat applications must be made and nothing suppressed. This is for the reason that in such ex parte applications utmost good faith must be observed.
- [24] In this case the close inter-relationship of the plaintiff and his brother-in-law over the land. The representation of these two parties is by the same firm of solicitors. The appearance for the plaintiff in both proceedings is by Dr. Sahu Khan or his firm. The findings of Justice Scott supporting the widow's interests are all facts that placed a duty upon Dr. Sahu Khan to fully disclose all dealings with this property when he appeared in support or had a member of his staff appear in support of the various applications concerned with the subject land over the last four (4) years.
- [25] I find that Dr. Sahu Khan failed in his obligation to disclose material facts about the dealings and applications involved with the land to
- Justice Scott in the High Court Proceedings,
 - The Agricultural Tribunal Western Division Officer Mr. Lomaloma, and
 - The Court of Appeal about these material facts. I find he breached his duty to disclose those material facts.

[26] Section 110 of the Land Transfer Act Cap. 131 provides the power to remove a caveat. The Registrar must remove a caveat after a lapse of 21 days provided no ex-parte court order is obtained for its extension.

[27] Section 168 of the same act relevantly provides:

"In any proceedings respecting any land subject to the provision of this act, or any estate or interest therein, or in respect of any transaction relating thereto, or in respect of any instrument, memorial or other entry or endorsement affecting any such land, estate or interest the court may by decree or order direct the Registrar to cancel, correct, substitute or issue any instrument of title or make any memorial or entry in the register or any endorsement or otherwise to do such acts as may be necessary to give effect to the judgment or decree or order of such court".

[28] I accept the submissions of learned counsel for the Attorney-General that accordingly this court has special powers under this section to give directions to the Registrar to remove caveats to both provide equitable relief and facilitate the implementation of any order of the court.

Relief

[29] Accordingly for the reasons expressed in this judgment to give effect to the subsisting judgments of his honour Justice Scott that were upheld by the full Court of Appeal in Civil Appeal No. ABU0041 of 2003S under Judgment dated Friday the 7th of November 2003, I order that Caveat No. 526538 be removed from Certificate of Title No. 26917 forthwith.

[30] Further, in respect of this action No. 227 of 2005 I exercise my revisionary jurisdiction in respect of the orders of the Agricultural Tribunal at Lautoka under reference No. WD7 of 2003. I am satisfied that had the Tribunal been advised of the full circumstances surrounding the various court orders,

dealings and claims over the Certificate of Title it would not have issued the consent order sought.

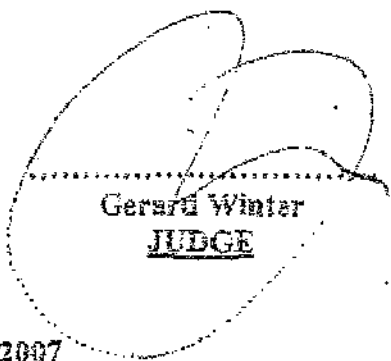
[31] Accordingly the consent order of the Tribunal dated the 14th of October 2003 is quashed.

[32] Further, I direct the Registrar under my powers contained in Section 168 of the Land Transfer Act, Cap. 131 to cancel Caveat No. 526538 registered on CT 26917 and remove it from that Certificate of Title forthwith.

[33] I find there is no valid ground to support the caveat in Civil Action No. 277 of 2005 registered in the High Court of Fiji Western Division at Lautoka. I find for the defendant and I declare that the plaintiff is not entitled to have Caveat No. 526538 remain on Certificate of Title 26917 until the expiry of the tenancy issued under the Instrument of Tenancy.

[34] I refuse to make the other declarations sought.

[35] This is a matter upon which the State is entitled to indemnity costs from the plaintiff. Those costs are to be prepared, certified and taxed by the Master.



Gerard Winter
JUDGE

At Suva
Wednesday 31st October, 2007

Solicitors

Messrs Sahu Khan & Sahu Khan, Barristers & Solicitors, Ba - for the Plaintiff
Office of the Attorney-General, Suva - for the Defendant