

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Action No. HBC 60 of 2006

BETWEEN: **MAHENDRA SHARMA** father's name Ram Lakhan Sharma of
Naikabula, Lautoka, Businessman.

1ST PLAINTIFF

AND: **RAJENDRA SHARMA** father's name Ram Lakhan formerly of
Naikabula, Lautoka but now of 153 Triangle Road, Auckland, New
Zealand, Businessman.

2ND PLAINTIFF
(Deceased)

[1st Plaintiff substituted in his place]

AND: **NATIVE LAND TRUST BOARD** a body corporate, duly constituted
under the Native Land Trust Act Cap. 134.

DEFENDANT

Before:

Priyantha Nāwāna J.

Counsel:

For 1st & 2nd Plaintiffs : Mr H Ram
For Defendant : Ms L Macedru

Date of Order : 09 October 2012

ORDER

1. The plaintiffs in this case are seeking the substantive relief of specific performance in respect of purported contracts contained in documents marked MS19 and MS20 and annexed to the affidavit dated 19 September 2011 of the 1st plaintiff-Mahendra Sharma.

2. The 1st plaintiff-Mahendra Sharma, having deposed the said affidavit, also relied on the same as part of his evidence in the course of his oral testimony on 21 November 2011 and 09 October 2012.
3. Mr Ram, appearing on behalf of the plaintiffs, submitted in response to a question by court that he was relying on documents marked MS19 and MS20 to seek specific performance against the defendant – Native Land Trust Board (NLTB). Ms Macedru, appearing on behalf of NLTB, responded by saying that the aforesaid documents did not form valid contracts.
4. This court, having had the opportunity of hearing the evidence of the 1st plaintiff with reference to the documents he relied on in the face of MS19 and MS20, observes that a preliminary issue arises as to whether MS19 and MS20, in fact, have validly formed legally enforceable contracts. This preliminary issue is so fundamental that it will have a direct bearing on the whole case and it may perhaps dispose of the matter before court.
5. I, therefore, order in terms of Order 33 rule 3 and rule 7 of the High Court Rules of 1988 that the above question be tried at this stage as a preliminary issue.

Priyantha Nāwāna
Judge
High Court
Lautoka

09 October 2012