IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

HBM No.: 02 of 2012

BETWEEN : **RAVENDRA KUMAR** of Wailevu, Labasa, Cultivator.

PLAINTIFF

AND : **ISWAR CHAND** of Wailevu, Labasa, Taxi Driver. As surviving administrator in the **Estate of Munnu** and also in **purpura persona**.

DEFENDANT

Counsel : **Mr. A. Sen for the Plaintiff**
In Person for the Defendant

Dates of Hearing : **9th June, 2014**

Date of Judgment : **24th October, 2014**

JUDGMENT

INTRODUCTION

1. The Defendant was the administrator of the estate of late Manu and the Crown Lease 9714 belonged to the said estate. The Plaintiff had admittedly cultivated about 10 acres of land of the said Crown Lease 9714 with sugar cane. There was no written agreement between the parties. Admittedly the Plaintiff had cultivated the sugar cane in the said land, but the dispute is regarding the payment for the said cultivation. The Plaintiff submitted an estimate of the cost of cultivation from the Sugar Research Institute of Fiji and seeks the amount stated in the said estimate as the amount agreed between the parties.

ANALYSIS

2. The Defendant was the administrator of the estate of late Manu. The Defendant was also a beneficiary of 1/7 share of the estate. At the trial the Defendant was unrepresented by a solicitor. He cross examined the Plaintiff and only the Defendant gave evidence for the Defence.

3. The Plaintiff gave evidence and stated that he knew the Defendant as both of them live in the same village for over 20 years. The Plaintiff said that he had an agricultural Tractor and he was a farmer. The Plaintiff also said that Defendant came to his groceries shop in the village and they had cordial relationship despite this action.

4. The Plaintiff said he knew about the agricultural land of Crown Lease 9714 and it was barren land for some time. The Plaintiff said he already knew that the land belonged to the estate of late Manu who was the father of the Defendant at the time of the disputed 'oral agreement'. The Plaintiff said that Defendant and he had entered in to an 'oral agreement' to cultivate 10 acres of the said Crown Lease with sugar cane.

5. The Plaintiff said that he examined the title to the land before they entered in to the purported oral agreement to cultivate part of agricultural land of the Crown Lease 9714. According to the Plaintiff both parties were happy with the oral agreement to cultivate 10 acres of the said land. This was in July, 2006.

6. The evidence of the Plaintiff up to this moment is not much in disputed, but the dispute is relating to the amount agreed between the parties and payment of that. The Plaintiff's version is that the oral agreement was for $11,445. The amount stated is the estimate he obtained from the Sugar Research Institute in 2007. This estimate was obtained after the Plaintiff failed to obtain the agreed sum from the Defendant.

7. The Defendant admits the purported oral agreement with the Plaintiff to develop about 10 acres of the agricultural lease for an agreed sum of $5,500 and according to him he had fully paid the same.

8. According to him the Plaintiff had requested money while the land was being developed and he had paid whenever asked for money. He said that the Plaintiff requested for money for the fuel for the tractor to plough the land but did not state how many times he had asked and what amounts were paid.

9. At the outset the Plaintiff said he was told by the Defendant that Plaintiff owned the land in issue, but he later at cross-examination said he was aware of the land being part of the estate of late Manu.

10. He also said that before developing the land he had examined the title of the said Crown Lease. The Plaintiff admitted that he examined the title of the land in issue, so it is reasonable to think that Plaintiff was fully aware or had opportunity to be fully aware of the status of the land as the Defendant had given him the title to examine. The interest on the land was only a Crown Lease and this is not uncommon phenomenon and the Plaintiff being a farmer for a considerable period of time should know about the status of such a Crown Lease.

11. The Plaintiff stated that the land was barren for a considerable time, when he commenced development of it. He said that it was overgrown with plants hand he cleared and developed it for cultivation of sugar cane with the help of the labourers. If workers were used they needed to be paid daily or weekly depending on the work. If so Plaintiff should have asked from the Defendant for the money. It is unlikely to spend such an extra cost without requesting from the Defendant. The Plaintiff said that the need for cultivating this land was that he needed money. If so he would not expend $11,500. How many workers were used and how they were paid were not produced in evidence. Instead an estimate was produced from the Sugar Research Institute of Fiji. This is not the number of people worked, but an estimate obtained after the cultivation.

12. The Defendant denied any agreement with the Plaintiff to pay in terms of an estimate obtained from the Sugar Research Institute. According to him he had already paid the amount he agreed between the parties.

13. First it should be noted that the interest on the land was only a Crown Lease, hence the owner of the agricultural land that was developed belonged to the state. Plaintiff should have known it since he had examined the title. Being a reasonable adult farmer for considerable time period he should have known the status of such an interest.

14. In terms of the Section 13 of the Crown Lands Act (Cap 132) any dealing without the consent of the Director of the Land is null and void. In the statement of defence such a position was not taken. A party is not precluded from raising an issue of law merely because it was not pleaded.[1] So a question of law can be dealt in the judgment.

15. The evidence of the Plaintiff was that he cleared an overgrown barren Crown Lease and he cleared a 10 acre of said agricultural land prepared the soil and also cultivated it with sugar cane and also looked after the germination of the sugar cane till it was grown for 5-6 feet tall. This would have taken a considerable time. According to the Plaintiff the 'oral agreement' between the two was to receive money once the sugar cane was 5-6 feet tall. Till then there was no payment and everything was to be done at the expense of the Plaintiff. Such an agreement would be null and void in terms of the Section 13 of the Crown Land Act (Cap 132) without the consent of the Director of Land as it was 'dealing' in land.

16. The Director of Land cannot give consent to the purported 'oral agreement', hence it should also be in writing in terms of the Section 59 Indemnity, Guarantee and Bailment Act (Cap 232).

The Section 59 states as follows

[1] Independent Automatic Sales Ltd v.Knowles & Foster[1962] 3 All ER 27

'59. No action shall be brought-

(a) whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or

(b) whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person; or

(c) to charge any person upon any agreement made upon consideration of marriage; or

(d) upon any contract or sale of lands, tenements or hereditaments or ***any interest in or concerning them; or***

(e) upon any agreement that is not to be performed within the space of one year from the making thereof, ***unless the agreement upon which such action is to be brought or some memorandum or note thereof is in writing and signed by the party to be charged there or some other person thereunto by him lawfully authorised.'*** *(emphasis added)*

17. The 'oral agreement' between the Plaintiff and Defendant was to develop a part of barren land in Crown Lease 9714 and to cultivate it with sugar cane till the sugar cane had grown to 5-6 feet tall. This was an agreement for an interest concerning a land and no action can be instituted without a written agreement.

18. If I am wrong on that, the 'oral agreement' for the cultivation of a part of Crown Lease 9714 was a 'dealing' in terms of the Section 13 of the Crown Lease Act (Cap132) which required consent of the Director of Lands. The Director of Lands cannot give consent to an oral agreement hence the agreement between the parties must be in writing. Any dealing in contravention of the Section 13 of the Crown Land Act (Cap 132) is null and void and the consequence is that no action can be instituted upon a null and void agreement.

19. Without prejudice to what was stated earlier, the burden of proof in a civil action is with the Plaintiff. The Plaintiff's evidence was that he in 2006, entered in to an oral agreement with the Defendant for a sum of $11,500 for development and cultivation of 10 acres of Crown Lease 9714 till the sugar cane was 5-6 feet tall. In the cross examination the Defendant admitted that he lives on government subsidy, hence any reasonable person would inquire how the Defendant would earn $11,500 to pay for such a sum.

20. It is also noteworthy that the alleged sum of $11,500 is the identical estimated cost of the said area developed by the Plaintiff in 2007. The Defendant said that he did not agree for an estimate for the development. So the estimate would give an indication of the development done by the Plaintiff and not the sum agreed between the parties in 2006. How can the Plaintiff seek exact amount of the estimate obtained after the dispute, at the time of the 'oral agreement'. In the analysis of evidence such an event is improbable and needs to be rejected. This has affected the credibility of the Plaintiff's evidence. There were no other witnesses to the agreement, hence it is unreliable to rely on Plaintiff's evidence.

21. From the evidence of the Plaintiff it is evident the Plaintiff had incurred a cost less than what was stated in the estimate. After obtaining an estimate the Plaintiff is attempting to claim the sum contained in the estimate.

22. All this amount to the credibility of the Plaintiff's evidence. He is attempting to obtain the amount in the estimate marked in the court as the amount agreed between the Plaintiff and Defendant in 2006.

23. The Plaintiff accepts the oral agreement, but states that he had paid all the dues. He had mentioned a sum of $5,500 as the sum agreed between the parties. It is not clear how he paid such an amount. When he was confronted he said he obtained the money from his friends /relatives. He was unable to substantiate the receipt of such an amount.

24. In the circumstances even on the analysis of the evidence on the balance of probability the Plaintiff had failed to establish his claim, and needs to strike off.

CONCLUSION

25. The Plaintiff is claiming a sum of $11,500 from the Defendant for cultivating sugar cane till they were grown for 5-6 feet. The land was a part of a Crown Lease 9714 and the agreement to cultivate was an 'oral agreement'. There is no evidence of consent of Director of Lands in terms of Section 13 of the Crown Lands Act (Cap 232). In terms of

Section 59 of the Indemnity, Guarantee and Bailment Act (Cap 232) any assignment of interest on land needs to be in writing in order to be legally valid. There is no written agreement between the parties for the cultivation, hence no action can be instituted for a claim. Alternately the 'oral agreement' for the cultivation of sugar cane was a dealing without the consent of Director of Land in terms of Section 13 of the Crown Lands Act (Cap 132) hence it is null and void and the claim needs to be dismissed. Even if I am wrong on that the evidence before me failed to establish the Plaintiff's claim that he was not paid of an agreed sum on balance of probability. The statement of claim is struck off. Considering the circumstances of the case no cost awarded.

FINAL ORDERS

a. The statement of claim is struck off.

b. No costs.

Dated at **Suva** this **24th** day of **October, 2014**.

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Justice Deepthi Amaratunga
High Court, Suva