

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBM 118 of 2013

BETWEEN : NITYA NAND SUNDAR
Plaintiff

AND : REGISTRAR OF TITLES
1st Defendant

AND : ATTORNEY-GENERAL OF FIJI
2nd Defendant

Counsel : Mr. S. Chandra for the Plaintiff
Mr. T Sharma & Mr. J Ditoka for the Defendants

Date of Hearing : 27th March, 2014

Date of Judgment : 06th March, 2015

JUDGMENT

[1] The plaintiff filed this originating summons seeking the following reliefs:

- (a) *That the preparation, execution and registration of Transfer on 17th day of September 2010 in the names of Shyam Vinod Chandra, Subhas Chandra and Jitendra Nand was registered by mistake;*
- (b) *An Order that the names of Shyam Vinod Chandra, Subhas Chandra and Jitendra Nand be extinguished from the registered memorial of*

Transfer No. 736416 dated 17th September 2010 from the Lease No. 133719 being Lot 15 on DP 3922;

- (c) *An Order that Nitya Nand Sundar be recorded as the sole registered proprietor of Lease No. 133719 being Lot 15 on DP 3922;*
- (d) *Further or other relief in the premises as the Court shall deem proper.*

Plaintiff's Affidavit

[2] In the affidavit in support of the summons the plaintiff has deposed among other things:-

- *That the plaintiff father was the registered owner of the property in lease 133719 being Lot 15 in DP 3922 and upon his death the plaintiff was made the sole executor and trustee.*
- *That as per the Will the beneficiaries of the property were the plaintiff and the three brothers namely Shyam Vinod Chandra, Subhas Chandra and Jitendra Nand.*
- *The three brothers had given a deed of renunciation in the favour of the plaintiff.*
- *That the plaintiff had given the documents to his then solicitor with instructions to convey the estate property in plaintiff's sole name.*
- *That deponent later realised instead of transferring it to him it has been transferred to all four beneficiaries of the Will.*
- *The Solicitor had not taken any step to rectify the mistake.*

- *That the deponent is looking after the property but as the deponent also is in New Zealand the property is now deteriorating.*
- *That the deponent in 2012 had written three letters to the three brothers seeking permission to sell the property but it had not been replied.*
- *The deponent had sent three reminders to the said letters but it too has not been replied.*
- *That the three brothers seem to be not interested in the property and the deponent is seeking a court order to remove their names from the estate property and to deal with the estate property alone and personally.*

[3] The defendants filed an affidavit in reply to the submissions. The defendant submitted that they are not objecting to the application in the originating summons but they are also not consenting to the application.

[4] The learned counsel who appeared for the defendant submitted that the reason being that there is a registered transfer of lease instrument executed and registered in the memorial whereby four owners' names have been registered in 2010.

Determination

[5] In arriving at the determination court will go through the sequence of events as it has happened.

[6] As submitted the plaintiff's father had nominated the plaintiff as the trustee of his will and among other things bequeathed his property among his four sons, namely Nitya Nand Sundar who is the plaintiff and his three brothers Shyam Vinod Chandra, Subhas Chandra and Jitendra Nand.

- [7] At this stage it is not clear as to when the plaintiff had taken Probate but as per the Memorial transmission by death had been entered in favour of the plaintiff on 13.3.96. This is reflected in annexure A.
- [8] On 2007.02.22, 5.5.07 and 22.2.07 the three brothers of the plaintiff had executed Deeds of Renunciation in favour of the plaintiff. The Plaintiff submitted that the three Deeds of Renunciation were not registered and that there was no necessity to register them. When the court queried as to whether the three deeds fell within the interpretation of the "instrument" under the Land Transfer Act and especially when the transferor of the said deeds renounced their rights in the property in question, the plaintiff informed court there was no need to register the said deed.
- [9] The plaintiff submitted a document marked as "F" which is a Transfer of a lease whereby the plaintiff as the trustee of the Will has transferred the property pursuant to the Will to his three brothers and himself. The said transfer had been executed on 16.10.09 and registered on 17.9.10. All three brothers have subscribed their signature in accepting the said transfer. This has been executed subsequent to the three brothers renouncing their rights in favour of the plaintiff.
- [10] The plaintiff argued that this transfer of lease has been executed wrongly by the Solicitor.
- [11] However, perusing the said document court finds that it has been executed by the plaintiff in favour of all beneficiaries of the Will and it has been executed pursuant to the Will. Also as per the attestation clause, Contents of the Will have been read and explained to the executor transferor who was the plaintiff and the beneficiaries have all accepted their shares. The plaintiff did not challenge the validity of this transfer of lease document nor its attestation. The plaintiff has failed to annex an affidavit from his solicitor to substantiate his argument that this document had been executed contrary to the instructions given.

- [12] The said document had been duly registered in the memorial annexed as "A". It is registered in 2010. With the registration of this instrument the plaintiff's counsel conceded that the beneficiaries get indefeasible Title as per S38 of the Land Transfer Act Cap 131.
- [13] The plaintiff has not averred fraud nor challenged the validity of this deed.
- [14] The plaintiff also conceded that the deeds of renunciation executed in 2009 had never been registered.
- [15] Subsequent to the registration of the transfer lease marked "F" in 2010, the plaintiff has sent three letters to his brothers in 2012 which are marked as G, H and I, which seeks permission to dispose the property and to pay the net shares in the lease to the three brothers.
- [16] As there was no response plaintiff has submitted three further letters marked J, K and L to the three brothers reminding them to reply or to send any objection if the three brothers disagree, with the prepared plan.
- [17] By this subsequent conduct of sending letters the court is of the view that by conduct the plaintiff has accepted the co-ownership of the three brothers. However, strangely the plaintiff has failed to name the three brothers who are the registered owners of the property and who will be directly affected by the order sought, as defendants to this action.
- [18] It is also pertinent to note that the plaintiff filed this action only against the Attorney General and the Registrar of Titles.

Conclusion

- [19] The plaintiff by his summons dated 13.8.13 among other things has sought for orders to state that by preparation execution and registration of transfer on 17.9.10 in the names of his brothers was registered by mistake.
- [20] As stated in the said deed, transferor had been the plaintiff himself. Further the plaintiff has failed neither to challenge the attestation clause of the deed nor to submit an affidavit by the solicitor/notary public to say that the deed was executed by a mistake. The plaintiff tried to rely on three deeds of renunciation executed in 2007 & 2009 to show that the three brothers had renounced their rights in the deed. However, it is pertinent to note that after the Deeds of Renunciation were executed in favour of the plaintiff in 2010, the plaintiff himself has transferred the rights to the three brothers. In the impugned transfer of lease all three brothers had placed their signatures in acceptance. Accordingly I am of the view that the plaintiff has validly transferred the shares of the property to the three brothers as per the Will, despite the plaintiff submitting that the three brothers who are beneficiaries have renounced their rights in favour of the plaintiff.
- [21] The said transfer was registered in 2010 and upon registration the beneficiaries get indefeasible title. As per the subsequent conduct by sending letters seeking permission to sell and by undertaking to submit the value for the shares, the plaintiff by conduct has accepted the title of his three brothers.
- [22] The plaintiff has further sought the views of the brothers who are the co-owners of the property as to whether they are in agreement to sell. This conduct of the plaintiff clearly demonstrates that despite the unregistered three deeds of renunciation, once the plaintiff transferred the shares to the three brothers he has accepted the title of the brothers.

- [23] The plaintiff has failed to take up any valid objection to the title of the brothers who has got indefeasible title and no allegation of fraud was pleaded to void the transfer lease. In the given circumstances the reliefs sought in the originating summons has to fail.
- [24] The plaintiff has failed to name the brothers who are the other co-owners of the property and whose rights would be affected by the reliefs sought. Accordingly for the reasons set out in this judgment I refuse to grant the orders sought by the originating summons dated 13.08.13 and dismiss the said summons.
- [25] There was no application for costs by the defendants. Accordingly I make no order as to costs.



Mayadunne Corea

Mayadunne Corea

JUDGE

06.03.2015