

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 310 of 2015

BETWEEN : **DIVINDRA CHAND BHAGAT** **Plaintiff**

A N D : **ROHINI DEVI BHAGAT** **Defendant**

COUNSEL : Mr. A. Singh for the Plaintiff
No appearance for the Defendant

Date of hearing : **6th October, 2015**

Date of Ruling : **29th October, 2015**

RULING

- [1] The plaintiff instituted these proceedings by way of writ of summons seeking the reliefs prayed for in the statement of claim.
- [2] On 23rd September 2015 he filed an ex-parte summons seeking permission to serve summons out of the jurisdiction of this Court and for the grant of injunctions.
- [3] When the application for service of summons out of the jurisdiction of this Court was supported the question also arose whether the plaintiff is entitled to institute these proceedings in this jurisdiction.
- [4] According to the writ of summons filed by the plaintiff, he and the defendant who is his wife are residents of New South Wales in Australia.
- [5] The defendant obtained a loan of \$ 385,000.00 on interest at the rate of 7% per annum. The defendant, as the security for the loan executed a mortgage bond over the property situated at No. 64A, Hill End Road, Doonside NSW 2767. It is the position of the plaintiff that the defendant also undertook and made

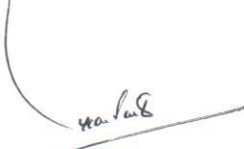
representation to him that she would execute a proper mortgage over the property situated at No. 204, Princess Road, Suva and gave him copy of Certificate of Title No. 11044.

- [6] The defendant defaulted payments and threatened the plaintiff to transfer the Suva property to a third party. According to the terms of the loan agreement it is governed by the laws of New South Wales and the parties have submitted to the non-exclusive jurisdiction of the Courts of New South Wales and Australia.
- [7] In this case the plaintiff is praying inter alia, for an injunction restraining the defendant from selling or disposing of or transferring her Suva property and/or dealing with the property by way of a mortgage or a sale and purchase agreement or by way of a gift to any person or persons until further order of this Court.
- [8] Order 11 Rule 1(b) provides that if a writ is not a writ to which paragraph 2 of this Rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ-
- (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not the damages are also claimed in respect of a failure to do or the doing of that thing).
- [9] In view of the above provision the plaintiff is entitled to institute these proceedings for the purpose of obtaining the injunctions prayed for in the summons.
- [10] Therefore, I make the following orders.

ORDERS.

1. The plaintiff is entitled to file this action in this jurisdiction for the purpose of obtaining an injunction.
2. Permission to serve summons outside the jurisdiction in the application for injunctions is granted.




Lyone Seneviratne

JUDGE