

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA

Civil Action NO. 12 of 2012

BETWEEN : **SATYA NAND SHARMA** of Maqere, Tavua, Fiji, Cultivator

PLAINTIFF

A N D : **SANJEETA MISHA** of Maqere, Tavua, Fiji, Technician

FIRST DEFENDANT

A N D : **TOTA RAM** formerly of Maqere, Tavua, Fiji, Fiji now of Mangere, Auckland, New Zealand, Retired

SECOND DEFENDANT

Appearances

Mr R Charan for Plaintiff
Mr R. Singh for Defendant

Date of Hearing : 15.7.2016

Date of Ruling : 15.7.2016

R U L I N G

1. This is an application filed by the plaintiff to have the trial dates of 20th & 21st of July vacated. The application is supported by an affidavit of Satya Nand Sharma, the plaintiff.
2. The first defendant opposes the application.
3. Mr R Singh, counsel for the first defendant submits that the action has been filed by the plaintiff and as he has obtained an interim injunction against the defendant, he needs to speed up the matter. He further submits that the defendant has subpoenaed the witnesses and the first defendant is specially travelling for the trial from New Zealand.

4. Mr Charan, counsel for the plaintiff submits that an application is pending before Agricultural Land Tribunal. Therefore this case may be stayed until determination of ALTA application.
5. In regard to ALTA matter Mr Singh submits that the plaintiff filed the ALTA application before bringing this action. That application was struck out for default of appearance and the plaintiff has filed a fresh application in 2014, which has been adjourned sine die by the tribunal pending final determination of the High Court case (this case).
6. The action has been brought by the plaintiff in 2012. The plaintiff has filed a fresh application before ALT in 2014 following dismissal of his original application filed in 2012. The Tribunal has adjourned the hearing of the second application filed by the plaintiff sine die until final determination of this cause.
7. I do not find any cogent ground to vacate the trial dates of 20 and 21 of July. The plaintiff should prosecute the case with due diligence as he has obtained an interim injunction against the defendant not to deal with the subject property.
8. The defendant under section 15 (3) of the 2013 Constitution has the right to have the case determined within a reasonable time. Any adjournment without sufficient reasons would amount to denial of this right.
9. The defendant has summoned his witnesses. He has made travel arrangement to travel to Fiji from New Zealand to attend to the case with the hope that the trial will proceed as scheduled.

10. Under Order 35, rule 3 of the High Court Rule, the court has discretion to adjourn a trial if it is in the interest of justice. In this case I do not find it expedient in the interest of justice to adjourn the trial fixed some three months before.
11. I therefore refuse the application to vacate the trial dates. The plaintiff will pay summarily assessed costs of \$400.00 to the first defendant.

Final outcome

- 1) Plaintiff's application to vacate the trial is refused.
- 2) Plaintiff will pay summarily assessed costs of \$400.00 to the 1st defendant.



Hajkrijet
15/7/16

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M H Mohamed Ajmeer

JUDGE

**At Lautoka
15th July 2016**