

THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. 305/2012

BETWEEN:

Parveen Prakash

Plaintiff

Gyaneshwar Prasad Lala

Defendant

COUNSEL: Mr V.Singh for the plaintiff

The defendant is absent and unrepresented

Date of hearing: 26th January,2015

Date of Judgment: 23rd August,2016

J U D G M E N T

1. The plaintiff moves for leave to appeal an interlocutory decision of the Master.
2. In his affidavit in support, the plaintiff states that he intends to appeal the decision of the Master, on the following grounds:
 - *The Learned Master erred in holding that Sections 104(1) (2)and (3) of the Land Transfer Act does not provide any procedure to execute the sale of the sale in order to enforce the judgment.*
 - *The Learned Master erred in holding that the wording of "pursuant to the judgment" stipulated under Section 104 of the Land Transfer Act, Cap 131 denotes that the execution of the sale of the land could be conducted pursuant to the judgment but not pursuant to Section 104 of the Act.*
 - *The Learned Master erred in holding that an application for sale of land cannot be made under Section 104 of the Land Transfer Act, Cap 131.*
 - *In the circumstances, the Learned Master erred in dismissing the Summons seeking a sale of the land pursuant to the registered judgment.*

3. The plaintiff, in his summons before the Master had moved for an order that :
- i. *There be a sale of the property contained in Certificate of Title no.14869 being Lot 2 on Deposited Plan No.3829(" the property") pursuant to the Default Judgment entered and registered against the said Certificate of Title.*
 - ii. *A call for tender to be made in the Fiji Times by the Plaintiff,*
 - iii. *Tenders be closed within 4 weeks from the date of the advertisement for the call of the Tender.*
 - iv. *The Plaintiff be at liberty to accept the highest Tender received.*
 - v. *That the Chief Registrar of the High Court of Fiji execute a Transfer of the property and every other document incidental to the said Transfer on behalf of the Defendant and the joint owner **Daimon Devi Lala** to enable registration of the Transfer to the successful Tender.*
 - vi. *The monies received from the sale be applied as follows:-*
 - a) *The Home Finance Company Limited as Mortgagee be paid the sums owing to it at the date of the sale.*
 - b) ***Daimon Devi Lala** be paid half of the balance of the sale proceeds after the deductions have been made by Home Finance Company Limited in respect of the sums due to it as Mortgagee have been made.*
 - c) *The Fiji Islands Revenue and Customs Authority the amount due to it on the Charge it has lodged on the property and Daimon Devi Lala*
 - d) *The Plaintiff be paid the balance of the sale proceeds in satisfaction of the judgment registered.*
 - e) *Any balance from the sale proceeds after the deductions to be made from (5) (a)-(d) be paid to the Defendant.*

The determination

4. The question in issue in this leave to appeal application is whether the Land Transfer Act provides a procedure for the sale of land, pursuant to a judgment registered on its title.
5. The Master, having analysed section 104 of the Land Transfer Act, held that the section does not provide any procedure to execute the sale.

6. Section 104(1) and (2) provides that a judgment for the payment of money shall not be bind, charge or affect any interest in land, until it is served on the Registrar and entered in the register. Sub-section (3) requires the Registrar to enter a memorial of the transfer, when the property is sold.
7. Albeit there is no procedure set out in section 104 for the sale of property, I am incline to agree with Mr Singh, counsel for the plaintiff that the Court is required to exercise its discretion in directing how a property is to be sold.
8. On the principles to be applied in an application for leave to appeal from an interlocutory judgment of the Master, Mr Singh has referred to ***Ramesh Patel & Devanesh Prakash Sharma trading as R Patel Lawyers vs Rajni Kant***, (Civil Action No. HBC 16 of 2011) where the Court stated that in hearing an application under Order 59,r 11, for leave to appeal:
 - .the Defendant .. must satisfy the Court that;*
 - a) The decision was wrong, or at least attended with sufficient doubt to justify granting leave; and*
 - b) Substantial injustice would be done if it's not reversed as held in Niemann –vs- Electronic Industries Ltd, 1978 VR 431 and also should satisfy court that there are arguable legal issues and the intended appeal has merit.*
9. I am satisfied that substantial injustice would be done, if the decision of the Master is not reviewed, as otherwise a sale of land cannot be given effect to, consequent to a judgment being registered on its title.
10. I grant the plaintiff leave to appeal the interlocutory decision of the Master.

11. *Orders*

- (a) Leave is granted to the plaintiff to appeal the interlocutory decision of the Master of 1st November, 2013.
- (b) Costs in the cause.



A.L.B. Brito-Mutunayagam
JUDGE
23rd August, 2016