

In the High Court of Fiji
At Suva
HPP 23 of 2017

In the estate of Naveen Chandra Pillay
Deobrah Anne Pillay
Plaintiff

v

Mereseini Rokosuka aka Mereseini Tamoku
Defendant

COUNSEL : Mr S. Fa for the plaintiff
Mr. J. Lanyon for the defendant
Date of hearing : 28th July, 2017
Date of Ruling : 4th August, 2017

Ruling

1. This is the plaintiff's application to restrain the defendant from entering the properties belonging to the estate of her late husband(the deceased). The defendant is a caretaker of the properties.
2. The plaintiff's ex-parte summons made inter partes prays for the following orders:
 - a) *The Defendant by herself, her servants and or agents be restrained from entering the family house on Lot 2 Deposited Plan No. 4881 commonly described under Certificate of Title No. 24116 until the final determination of the Resealing of Probate Application currently before the High Court.*
 - b) *The Defendant by herself, her servants and or agents be restrained from interfering with the tenant in Lot 2 Deposited Plan No. 4881 commonly described under Certificate of Title No. 24116 until the final determination of the Resealing of Probate Application currently before the High Court.*
 - c) *The Defendant by herself, her servants and or agents be restrained from entering the premises located on Lot 5 Deposited Plan No. 2585 commonly described under Certificate of Title No. 11836 until the final determination of the Resealing of Probate Application currently before the High Court.*

3. The plaintiff, in her affidavit in support states that she is the widow of the late Naveen Pillay. Naveen Pillay died in Australia on 17th February, 2011. The High Court of Western Australia granted her probate and appointed her executrix and trustee of his estate comprising of three freehold properties: CT no. 24115, [Lot 1], CT no. 24116, [Lot 2] and one-third of CT no. 11836, [Lot 5] all located at Taunovo, Deuba, and estates in Australia. She applied to reseal probate in the High Court of Fiji. After advertisement, the respondent placed a caveat on the issue of the resealed probate claiming she had legal rights to the properties, as she has lived on it since 1991. She was asked to come on to the property by Mrs Theresa Falvey, a co-owner of CT no. 11836. The applicant states that her understanding was that the lands were purchased from the McFarlane family.

4. The affidavit continues to state that plaintiff filed section 169 proceedings against the defendant. The Master struck out the application at hearing on the basis that the plaintiff did not have *locus standi* to bring the action, as the probate was still in the process of being sealed. The plaintiff states that since then, she has been advised "*from sources that live near the properties in Taunovo*" that the defendant had started to :
 - a) *Opened up the house on Lot 5 and had put up letting signs all over Pacific Harbor advertising the property for lease;*
 - b) *Used weed killer on the lawns burning the once manicured lawns.*
 - c) *Moved herself and her partner into the family house on Certificate of Title No. 24116.*
 - d) *Threatened and chased all personnel sent and paid for by the Estate not to enter or step foot on to the lands in any of the three properties.*

5. The defendant, in her affidavit in response states that the ownership of Lot 1 of CT 24115 and Lot 2 under CT 24116 is still to be determined. In 1991, Mr. and Mrs. Falvey had invited her to be the caretaker of their three properties. In 1991, she moved into the caretaker's home. In 2010, after Mr. Falvey passed away, Mrs Theresa Falvey instructed her to act as caretaker for Lots 2 and 5. The plaintiff's application before the Master for interim relief against her on basically the same basis was dismissed with costs. The summons for ejectment was dismissed. The defendant states that in 2010, she was informed by Mrs Theresa Falvey that "*Raveen*" would be living in their building and paying rentals to her. He did not provide any welfare assistance to her family. The plaintiffs are not bona fide owners of the properties.

6. The plaintiff filed affidavit in reply.

The determination

7. The plaintiff moves for interim relief to restrain the defendant from entering the house on Lot 2 in CT 24116 and the premises in Lot 5 in CT 11836, the properties belonging to the estate of her late husband, until the final determination of the resealing of the probate application. The certificates of title provide that the deceased owned Lots 1 and 2 on DP no.4881 of CT 24116 and one third of Lot 5 of CT 11836. Michael Falvey also owned one third of Lot 5 of CT 11836. The plaintiff states that the defendant was an employee of Michael Falvey and living on one of the two houses on Lot 2 as “*she had nowhere else to go*”. Michael Falvey and the deceased gave her financial assistance. The plaintiff’s grievance is that the defendant has now moved to the family house on Lot 2 from the “*back cottage*” also on Lot 2 and the premises in Lot 5.

8. The defendant states that the ownership of Lot 1 under CT24115 and Lot 2 under CT 24116 is still to be determined. In 1991, Mr. and Mrs. Falvey had invited her to be the caretaker of their properties and she moved into the caretaker’s home. In 2010, after Mr. Falvey passed away, Mrs Theresa Falvey instructed her to act as caretaker for Lots 2 and 5. The defendant, states that she did not receive a “*single cent from the Falveys*” for her work as caretaker from 1992 to 2002, but they assisted her family with monthly allowances up to \$900 per month.

9. Mr Fa, counsel for the plaintiff submitted that the defendant was a caretaker living at the house at the back in Lot 2, since 1992.

10. The principles governing the grant or refusal of an interlocutory injunction are laid down in the ***American Cyanamid***.

11. On a reading of the affidavit evidence, I am satisfied that there are disputes of fact. However, as Lord Diplock said in the ***American Cyanamid*** case:

It is no part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claim of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.

12. The plaintiff states that she has been advised “*from sources that live near the properties in Taunovo*” that the defendant had started to :

Opened up the house on Lot 5 and had put up letting signs all over Pacific Harbor advertising the property for lease;
Used weed killer on the lawns burning the once manicured lawns.
Moved herself and her partner into the family house on Certificate of Title No. 24116.
Threatened and chased all personnel sent and paid for by the Estate not to enter or step foot on to the lands in any of the three properties.

13. Mr Lanyon, counsel for the defendant submitted that the sources are not disclosed contrary to r 41,r5. There is no evidence in the form of a witness statement or Police Report

14. In my view, the principles in the *American Cyanamid* applies if the plaintiff shows an imminent threat of the infringement of his proprietary rights. In the instant case, the plaintiff has not substantiated the allegations she has made. There is no evidence before Court of the threatened breach other than the assertions of the plaintiff, as quite correctly pointed out by Mr Lanyon.

15. I would also note that the plaintiff has not disclosed her assets, and merely states that she “*undertakes to pay any cost that may arise as a result of this action*”.

16. In *Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Limited*,(Civil Appeal No. ABU 0011 of 2004),the FCA stated: :

Applicants for interim injunctions who offer an undertaking as to damages should always proffer sufficient evidence of their financial position. The Court needs this information in order to assess the balance of convenience and whether damages would be an adequate remedy.

17. In my judgment, there is no basis for the grant of interim relief for the reasons stated.

18. In the result, the application is declined.

19. *Orders*

- (a) The application for an interim injunction is declined.
- (b) The plaintiff shall pay the defendants costs summarily assessed in a sum of \$ 1500 within 14 days of this Ruling.



A.L.B. Brito-Mutunayagam
A.L.B. Brito-Mutunayagam
JUDGE
4th August, 2017