

IN THE HIGH COURT OF FIJIAT SUVA

CIVIL JURISDICTION

Civil Action No. 198 of 2012

BETWEEN

BIREN CHAND of Calia Back Road, Navua, Forklift Driver.

PLAINTIFF

AND

ESTATE OF RAM KARAN of Calia Back Road, Navua.

FIRST DEFENDANT

AND

ROHIT BELAS SINGH of Calia Back Road, Navua, Driver,

SECOND DEFENDANT

AND

THE REGISTRAR OF TITLES of Civic Tower, Suva.

THIRD DEFENDANT

AND

THE ATTORNEY GENERAL OF THE REPUBLIC OF FIJI of

Suvavou House, Suva.

FOURTH DEFENDANT

Counsel : Mr. J. Reddy & Mr. J. Vulakauvaki for the plaintiff
Ms. S. Narayan for 2nd Defendant
Ms. S. Taukei for 3rd Defendant

Dates of Hearing : 22nd, 23rd and 24th May, 2017

Date of Judgment : 08th August, 2017

JUDGMENT

[1] The plaintiff instituted these proceedings alleging that the transfer of the property comprised in Certificate of Title No. 24281 being Lot 30 on DP 2054 in Calia in the District of Navua containing an area of 6 acres and 17 perches in the name of the 2nd defendant, had been done under undue influence, procurement and fraudulently which the 2nd defendant denied.

[2] The plaintiff sought the following reliefs:

- (i) A declaration that the deceased (Ram Karan) was induced to make over the property to the 2nd defendant by undue influence, procurement and fraud by the said Rohit and that the transfer of the said property are null and void.

- (ii) Alternatively, a declaration that the 2nd defendant holds and have held the said property for and on behalf of the plaintiff.
- (iii) An order that the said Rohit do execute all such documents and do all such acts and things as may be necessary to retransfer the property to the 1st Defendant and that the property be thereafter devised in accordance with the Last Will of the deceased dated 14th November 1995.
- (iv) An injunction to restrain the said Rohit whether by himself, his servants or agents or whosoever or howsoever otherwise from transferring or in any way dealing with the said property.
- (v) An account of all dealings by Rohit with the said property and of all moneys received by Rohit or the 2nd defendant or either of them in respect of the same.
- (vi) For declaration that the plaintiff has the proprietary right over the said property and for further declaration that the 3rd defendant holds property holds property n constructive trust for the plaintiff.
- (vii) A declaration that he plaintiff has an equitable interest in the said property and that his share of the property be transferred to him.
- (viii) For a declaration that the plaintiff is entitled to an equitable share in the said property by virtue of his contributions made towards the purchase and development of the property.
- (ix) In the alternative, the plaintiff be paid out half the fair market value and the proceeds be equally shared between the plaintiff and his deceased brother Prem Chand's estate.
- (x) General Damages.
- (xi) Interests.
- (xii) Costs.

[3] At the pretrial conference the parties admitted certain facts which I reproduce below:

1. The plaintiff is and at all material times was the legitimate son of Ram Karan, deceased of Calia Back Road, Navua, who dies on the 9th day of

July 2009 and is suing the defendants as a beneficiary in the estate of the deceased.

2. The 2nd defendant is sued in his capacity as the current registered proprietor of the property comprised in Certificate of Title No. 24281 being Lot 30 on DP 2054 in Calia in the District of Navua in the Island of Vitui Levu containing an area of 6 acres and 17 perches.
3. The 3rd defendant is sued in the capacity as the Registrar of Titles pursuant to the Land Transfer Act Cap 131 for the Administration of the Said Act and charged for the purposes of registration and keeping the records of all land transitions in the Fiji Islands.
4. The 4th defendant is sued as the nominal defendant under the Crown Proceedings Act Cap 24 and is responsible for the actions of the 3rd defendant.
5. On the 14th day of November 1995, the deceased made a Will appointing his wife and her two legitimate sons Prem Chand and Biren Chand as the executors and Trustees of his said will.
6. By the said will, the deceased devised and bequeathed all his property to his wife Budh Mati for her use, occupation, benefit and enjoyment during her lifetime and upon her death unto his two legitimate sons Prem Chand and Viren Chand and Budh Mati's son Rohit Vilash Singh as tenants in common in equal shares, share and share alike absolutely.
7. The plaintiff constructed a 3 bedroom concrete house with usual amenities spending a total sum of \$45,000.00 for his own family.
8. The deceased suffered a stroke in or around the month of May 2009 and died on the 9th day of July, 2009.

[4] The initial issue to be determined in this matter is whether the transfer of the property in question by the deceased Ram Karan in the name of the 2nd defendant is a voluntary act on his part.

- [5] The plaintiff's evidence is that he and his deceased brother also contributed to buy this land and when he asked his father about the property he told him not to worry because the last will is there. When the last will was shown to him the plaintiff identified it as his father's last will (P5). It is the evidence of the plaintiff that the Ram Karan, his father dies of kidney failure and stroke and in 2009 he was sick and could not walk.
- [6] Witness Davendra Sen is a son of Ram Karan's wife's sister. In 2009 the witness was living with Ram Karan. It is his evidence that in 2009 Ram Karan suffered a stroke and on the day the property was transferred to Rohith Belas the witness had been with Ram Karan and he had gone to the solicitor's office with Ram Karan and Rohit Belas. He also stated in his evidence that since Ram Karan could not walk Rohit Belas carried him to the lawyer's office. The witness had stayed outside the office of the lawyer. He said that on that day Ram Karan could not hold a pen and sign. In cross-examination he admitted that there was a previous enmity between him and the 2nd defendant but he stuck to his position that Ram Karan could not sign or hold a pen.
- [7] Witness Mounsiha Wati is a daughter of Ram Karan and his de facto wife Budh Mati and the second defendant is her half-brother. He is a son of Budh Mati and her legally married husband Pahalad Singh.
- [8] The witness testified that in the year 2009 she, her mother, her sister-in-law and Davendra Singh were staying with Ram Karan and he was very sick, he could not walk and the witness and the others at home used to feed him. When the transfer document "P7" was shown to the witness she said that the signature on the document was not her father's signature. The witness also testified that her father Ram Karan used to withdraw money from the post office and it was she and Rohit who accompanied him to the post office and when the Post Master saw his condition released the money without his signature. The witness stated further that In May 2009 Ram Karan suffered a stroke and it was getting worse.
- [9] The 2nd defendant called Mr. Chetanya Lakshman to testify on his behalf. Mr. Lakshman is the solicitor who executed the transfer for Ram Karan. It is his evidence

that he acted as the solicitor of Ram Karan between 2006 and 2009 and that he recall Ram Karan coming twice. Once he had come to give instructions and the second time he had come to sign the transfer document. When the transfer document was shown to the witness he identified it as the document executed by him. He stated further that he prepared the document and explained it to Ram Karan in Hindi language. The witness has not verified the names of the transferor and transferee before executing the transfer. He said that there was no necessity to clarify the names of the parties before executing the transfer. It is also the evidence of Mr. Lakshman that when he inquired from Ram Karan about his other children he had said that it was Belas who was looking after him. According to the witness Ram Karan was old and walked and talked slowly but was in good health to give instructions. In cross-examination when the document "P2", the death certificate of Ram Karan was shown to the witness he admitted that the name of Belas was not in the death certificate as one of the issues by the marriage. The witness also admitted that the signatures in "P6" (the last will) defer from each other.

[10] The 2nd defendant's mother Budh Mati testified at the trial and in the course of cross-examination she fell ill and the matter was stood down. When the proceedings resumed after the lunch break she was still not in a position to testify and the witness was excused till the following day morning. The learned counsel for the 2nd defendant later informed court that Budh Mati was not in a position to testify further in court and moved that her evidence be expunged from the proceedings. Therefore, her evidence will not be considered in my judgment.

[11] The 2nd defendant produced in evidence his birth certificate marked as "2D1" where his name is given as "Belas Rohit Singh" and his father's name is given as Pahalad Singh. Although the 2nd defendant said on many occasions in the course of his evidence that Ram Karan is his father his own evidence shows that his biological father is Pahalad Singh and not Ram Karan. The 2nd defendant testified that Ram Karan gave the property to him because he stayed with him and looked after him. On the day the transfer was done he had taken him to Mr. Lakshman but he had not gone inside the office. Only Ram Karan had gone to the office of the lawyer. When

the witness was questioned about his father he said that he had two fathers but later admitted that he is not a legitimate son of Ram Karan. He testified further that on the day the transfer of the property was done his father (Ram Karan) was 77 years old, he was in good health and he could walk and run. It was his position that Ram Karan never suffered a stroke but he was bedridden for two weeks before his death. When the 2nd defendant was confronted with paragraph 13 of his statement of claim he said that he never told his solicitor that Ram Karan suffered a stroke. It is to be noted that the observations of the solicitor who executed the transfer, about the movements of Ram Karan that he walked and talked slowly and the evidence of the 2nd defendant that Ram Karan could walk and run are contradictory.

[12] The 2nd defendant called his wife to testify who also said that Ram Karan did not suffer a stroke. She is unaware how the transfer was done because on that day she had been at work. According to her two weeks before he passed away Ram Karan was bedridden and it was she and her husband who looked after him. She also testified that on the day the transfer was done the witness Davendra was not at home.

[13] The plaintiff sought the cancellation of the transfer in question on three different ground namely, inducement, procurement and fraud. If Ram Karan was not in a position to understand his acts at the time the transfer was executed there cannot be inducement or procurement. Inducement is a thing that persuades or leads someone to do something. If Ram Karan was not in a position to understand what he was doing it could not have been possible for the 2nd defendant or any other person to persuade him to transfer the property in the name of the 2nd defendant.

[14] However, if the plaintiff is successful in establishing that the transfer was not an act and deed of Ram Karan then it would be reasonable to hold that a fraud had been perpetrated in executing the transfer.

[15] Paragraph 15 of the statement of claim reads as follows;

Sometimes in or around the month of May 2009, after suffering from stroke, the deceased became of unsound mind and could not understand his actions and anything that happened in or around him.

[16] Paragraph 13 of the statement of defence of the 2nd defendant reads as follows;

THAT in response to paragraph 15 of the claim the 2nd Defendant admits that the deceased suffered a stroke and denies the rest of the contents and further states that the deceased was aware of all his actions and went to his solicitors himself to execute the transfer.

[17] At the pretrial conference also the 2nd defendant has admitted that the deceased Ram Karan suffered a stroke. The eighth admitted fact reads as follows;

The deceased suffered a stroke in or around the month of May 2009 and died on the 9th day of July, 2009.

[18] The transfer in question was executed on 28th May, 2009.

[19] When the 2nd defendant was questioned on this admission his answer was that he did not tell the solicitor that Ram Karan suffered a stroke. The solicitors act on the instructions of the clients in preparing the pleadings. The solicitor could not have known that Ram Karan suffered a stroke unless the 2nd defendant told him. Therefore, a bare denial by the 2nd defendant that he did not tell the solicitor that Ram Karan suffered a stroke is not sufficient for the court to disregard his admission which corroborates the plaintiff's and his witness's evidence. In the circumstances the only reasonable conclusion the court can arrive at is that Ram Karan suffered a stroke in May, 2009.

[20] The evidence of Davendra Sen who accompanied the 2nd defendant and Ram Karan to the solicitor's house has not been contradicted or effectively challenged by the 2nd defendant. When it was suggested to him that he had an animosity with the 2nd defendant he admitted it. But that ground alone is not sufficient for the court to disregard his evidence. The 2nd defendant's wife said that Davendra Sen was not living with Ram Karan but used to come and go. It was not a fact within her

knowledge whether the Davendra Sen accompanied Ram Karan and the 2nd defendant to the solicitor's office because her own evidence is that on the day the transfer was executed she was at work. The court therefore, has no reason to reject the evidence of Davendra Sen.

[21] Evidence of Mounsiha Wati has not been contradicted or challenged by the 2nd defendant. She very clearly said that her father Ram Karan could not sign to withdraw money from the post office and the Post Master gave the money without his signature.

[22] It was also brought to the attention of the court that the signature of the testator Ram Karan found in his last will (P6) and the signature in the transfer document (P7) are clearly different. I must say that judges are not handwriting experts and the court is not entitled to arrive at a conclusive finding on the issue whether the signatures found on the last will and the transfer document are of Ram Karan. However, it is important to note that two signatures of Ram Karan in the transfer document are also different from each other and those signatures are different from the signature in the last will. When the learned counsel for the plaintiff questioned Mr. Lakshman he admitted that two signatures appear on the transfer document are deferent from each other. If Ram Karan was in good health and could walk and run without the assistance of others as testified by the witnesses for the 2nd defendant there was no reason why he placed two different signatures on the transfer document. It is also important to note that if Ram Karan was in his proper senses there was no reason to give his name as the father of the 2nd defendant knowing very well that he was not the father of the 2nd defendant. What he transferred to the 2nd defendant was his own property and he had no reason to make a false declaration that the 2nd defendant is his son.

[23] With this evidence the court is not in a position to say that Ram Karan was totally bed ridden but the evidence adduced by the plaintiff and the admission of the defendant that in or about May 2009 Ram Karan suffered a stroke is sufficient for the court to arrive at the conclusion the Ram Karan had not been in a health condition to understand what he was doing. Therefore, the act of transferring the property which

is the subject matter of this action to the 2nd defendant is not a voluntary act of Ram Karan.

[24] Someone who obtains a signature to have a property of a person who is not in a proper mental status to understand the gravity of his acts, transferred in his name acts fraudulently.

[25] The plaintiff also claims that since he and his brother have also contributed to buy this property the 2nd defendant holds a share of the property in trust for them and that they are entitled to an equitable share of the property. Constructive trust or implied trust is an equitable remedy resembling a trust imposed by a court to benefit a party that has been wrongfully deprived of its rights due to either a person obtaining or holding a legal property right which they should not possess due to unjust enrichment or interference.

[26] It is the evidence of the plaintiff that he and his brother paid \$2500.00 each to purchase this property and the balance was paid by their father. In cross-examination the plaintiff said that he had no evidence of payment. The only evidence available on record of the payment which is claimed to have been paid by the plaintiff and his brother is the testimony of the plaintiff which in my view is insufficient for the court to conclude that the plaintiff and his brother had contributed to the purchase price of the property. Therefore, the claim of the plaintiff that the 2nd defendant is holding a share of the property in trust for him must necessarily fail.

[27] The plaintiff, paragraph (vi) of the prayer, has prayed for a declaration that the 3rd defendant is holding the property in trust for him. The 3rd defendant is the Registrar of Titles. The Registrar of Titles has no interest in the property. It is averred in paragraph 3 of the statement of claim that the 3rd defendant is sued in the capacity as the Registrar of titles pursuant to Land Transfer Act and no cause of action has been disclosed against the 3rd and 4th defendants.

[28] The plaintiff has also sought an injunction restraining the 2nd defendant from transferring this property. Since the court by this judgment decides the matter finally there is no necessity to grant an injunction.

[29] For the reasons aforementioned the court makes the following orders.

ORDERS

- (1) It is declared that the signature of Ram Karan had been obtained fraudulently to transfer the property, which is the subject matter of this action, to the 2nd defendant and therefore the said transfer is null and void.
- (2) The 2nd defendant is ordered to execute all such documents and do all such acts that may be necessary to transfer this property to the estate of Ram Karan (1st defendant) for it to be devised in accordance with his last will dated 14th November, 1995.
- (3) The 2nd defendant is ordered to pay the plaintiff \$3000.00 as costs of this action.




Lyone Seneviratne

JUDGE

08th August, 2017