

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC387 of 2011

BETWEEN

RAJ MATI of Vatuwaqa, Suva, Domestic Duties.

PLAINTIFF

AND

CHANDRA SEN GOVIND of Nakaulevu, Navua, Building Contractor.

DEFENDANT

**Counsel** : Mr. J. Uludole for the Plaintiff  
Mr. M. Nand for the Defendant

**Dates of Hearing** : 11<sup>th</sup> October, 2017 and 12<sup>th</sup> October, 2017

**Date of Judgment** : 22<sup>nd</sup> November, 2017

---

## JUDGMENT

---

- [1] The plaintiff instituted these proceedings by writ of summons which was amended later, against the defendant who is her stepson seeking the following reliefs:
1. A declaration that the purported transfer of Lot 1 on DP 6782 is fraudulent, illegal and a sham document design to defeat the legitimate interest of the plaintiff and the other beneficiaries of the estate of Ram Govind;
  2. A declaration that the purported Dedication of Access Denial Strip was fraudulent and null and void and is of no effect;
  3. Damages;
  4. Interest on the amount of such damages at such rate and for such period as the court shall think just; and
  5. Costs of this action.
- [2] The plaintiff came to court on the basis that the defendant fraudulently and/or deceptively obtained her signature on Dedication of Access Denial Strip and it was fraudulently registered on 10<sup>th</sup> September, 2010 with the Registrar of Titles. She also averred in the statement of claim that the defendant on 27<sup>th</sup> May, 2011 fraudulently wrote to the office of the Registrar of Titles requesting them to complete the transfer of Lot 1 on DP 6782.
- [3] The defendant denied the allegation that he fraudulently and/or deceptively obtained the signature of the plaintiff to the documents. He averred in the statement of defence that the plaintiff voluntarily and willingly signed the documents.
- [4] At the pre-trial conference the parties admitted the following facts:
1. The plaintiff is the widow of Ram Govind, the deceased, who died on 4<sup>th</sup> July, 1980 and also the executrix and trustee of the deceased.
  2. The defendant is a biological son of the plaintiff and also one of the beneficiaries of the estate of the deceased.
  3. The deceased was the registered proprietor of half share of the certificate of title No. 8303 having an area of 11 acres, 3 roods and 3 perches on 12<sup>th</sup> June, 1973.

4. The deceased on 14<sup>th</sup> September, 1978 executed a will devised and bequeathed that all his property to the plaintiff and his six children as beneficiaries in common equal shares.

[5] At the commencement of the trial both counsel informed court that out of the issues raised at the pre-trial conference only one issue need to be determined which is issue No. 11. The said issue reads as follows;

Whether the defendant was entitled as a beneficiary under Will dated 14<sup>th</sup> September, 1978 to a piece of land equivalent to Lot 1 on DP 6782 of which he obtained transfer from the plaintiff.

- [6] However, from the pleadings and the evidence adduced at the trial it appears that the main issue to be determined is whether the defendant obtained the signature of the plaintiff to the transfer document fraudulently and/or deceptively. If the court answers the said issue in the affirmative the plaintiff succeeds and if the said issue is answered in the negative the plaintiff action is liable to be dismissed.
- [8] The plaintiff testified that she was given the front portion of the property and the children can have the balance portion. She said that she does not have money to for the subdivision and if the children give her money the land can be subdivided.
- [9] In cross-examination the plaintiff said that she was in America for twenty years and when she came back she wanted to distribute the property among the beneficiaries but she had come to know that the defendant had taken a portion in excess of his entitlement. When the subdivision plan (D5) was shown to the plaintiff she denied having any knowledge of it and said that the signature found on the plan was not her signature and also that on 15<sup>th</sup> February, 1989 she was in America. When the document "D6", (Transmission by Death) was shown to her the plaintiff said that she did not sign it and during that period she was in America. This is a document by which she applied to become the proprietor of the property as one of the executors of the estate of her husband. The document "D1" is a document signed by the plaintiff and Ram Govind, the testator and this is a document signed on 08<sup>th</sup> July, 1974. The plaintiff denied signing the letter. It is the evidence of the plaintiff that she came from America in 2009 which means she would have gone to America in the year 1989. When the probate was shown to the witness she said it was the defendant who obtained the probate and she

cannot remember when it was obtained. She said that she does not sign but she prints her signature which means that she writes the name as the signature in block letters.

- [10] The defendant stressed that all the documents relevant to the transfer were signed by the plaintiff and that she went to Canada in 1992 for two years. The defendant stated further that in 1997 the plaintiff was in Vatuwaqa and she signed all the documents.
- [11] The defendant called Mr. Suresh Chandra, a solicitor from MC Lawyers. The witness said that the application for Transmission by Death was signed in his office and a lady came to sign the document. It is his evidence that he requested for the relevant documents and the lady who signed the application had them in her possession.
- [12] It is the plaintiff who came to court alleging that the defendant obtained her signature fraudulently and/or deceptively. Since the plaintiff says that her signature was obtained fraudulently or deceptively the court will have to infer that she admits the signing of the documents in question. The fact that her signature was obtained fraudulently and/or deceptively is within the exclusive knowledge of the plaintiff and therefore the burden was on her to prove that fraud was perpetrated on her by the defendant in obtaining her signature. Instead of adducing evidence to establish that her signature was obtained fraudulently she, in her evidence, denied having signed any of the documents. The position taken by the plaintiff in her evidence is totally contradictory to the position taken in the statement of claim.
- [13] Pleadings are filed and served for the purpose giving sufficient notice of the action to the defendant, which he has to defend. The defendant prepares himself to defend the action that is pleaded in the statement of claim. The plaintiff is therefore not entitled in law to deviate from the cause of action pleaded in the statement of claim and proceed to trial on a totally different and contradictory cause of action. If she realised that what had been pleaded in the statement of claim she could have amended it. The plaintiff has amended the statement of claim but without amending her original position that the defendant obtained her signature to the transfer documents by fraudulently and/or deceptively.
- [14] The plaintiff's evidence that she was in America during the relevant period has not been supported by any other evidence. She could have easily established her position by tendering her passport or calling a witness from the Immigration Department. But for reasons best known to the plaintiff she sought not to adduce any evidence other

than her own testimony which is grossly insufficient for any court to arrive at the conclusion that the plaintiff could not have signed the documents because she was abroad. It is more so because she has taken two contradictory positions in the amended statement of claim and in her testimony.


[15] It is also pertinent to note that on behalf of the plaintiff an application was made on 21<sup>st</sup> January, 2015 seeking permission to adduce in evidence a forensic expert report on examination of documents relating to the plaintiff's evidence. The court by its decision dated 26<sup>th</sup> May, 2015 granted leave to tender the said report. There is in fact, a report filed of record but it was not tendered in evidence. The court is not entitled to rely on this report since the plaintiff has not tendered it in evidence.

[16] The court therefore, concludes that the plaintiff has failed to discharge the burden of establishing that her signature was obtained fraudulently to the transfer documents as averred in the statement of claim or that her signature had been forged by the defendant as alleged in her evidence.

[17] For the reasons aforementioned the court makes the following orders:

1. Plaintiff's action is dismissed.
2. There will be no order for costs.



  
Lyone Seneviratne

JUDGE

22<sup>nd</sup> November, 2017