

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 253 of 2016

BETWEEN : ASHOK PRASAD
PLAINTIFF
AND : VIKASH RAJ
FIRST DEFENDANT
AND : ASHWANT SINGH
SECOND DEFENDANT
AND : VIREN SINGH
THIRD DEFENDANT
AND : AJAY BAHADUR SINGH
FOURTH DEFENDANT
AND : RAJENDRA PRASAD
FIFTH DEFENDANT
AND : RAM ROOP
SIXTH DEFENDANT
AND : ATTORNEY GENERAL OF FIJI
SEVENTH DEFENDANT
Coram : The Hon. Mr Justice David Alfred
Counsel : Mr S. Kumar for the Plaintiff
Mr S. Singh for the First, Second, Third and Fifth Defendants.
Mr A Prakash for the Seventh Defendant
Date of Hearing : 28 August 2018
Date of Judgment : 23 November 2018

JUDGMENT

1. This is the Plaintiff's Originating Summons (OS) seeking the following:
 - (1) An injunction restraining the 6 Defendants by their servants and agents from appointing another President until determination of the matter.
 - (2) An injunction restraining the 6 Defendants by their servants and agents from making any other decisions against the President and his role as President and Trustee of the Mandir and Mandali.
 - (3) An injunction restraining the 6 Defendants by their servants and agents from registering new Trustees of the Mandir and the Mandali.
 - (4) A declaration that the decision of the 6 Defendants by their servants and agents to suspend the Plaintiff was made in breach of natural justice and therefore null and void.
 - (5) The Defendants by their servants and agents be ordered to return to the Plaintiff all the properties of the Mandir and the Mandali.
 - (6) A declaration that the meeting of 22 May 2016 is unconstitutional as per their constitution and subsequent meetings and activities arising from that meeting null and void.
 - (7) An injunction restraining the 6 Defendants operating the bank account of the Mandir and the Mandali until the determination of this action.
 - (8) An order that the Defendants by their servants and agents complains (sic, complaints) against the Plaintiff be heard and determined at the annual general meeting or by an independent arbitrator or this Court hears the allegation.

2. The O.S. is supported by the affidavit of the Plaintiff who deposed as follows:
 - (1) He felt the Second Defendant had no proper record of the account of money received by the Mandir and the Mandali and was purposely delaying the calling of the AGM.
 - (2) That was the reason he tendered his resignation as President on 16 October 2015 to the Secretary. On the following day 10 members wrote to him requesting him to continue as President.

(3) The Defendants without conducting any lawful executive meeting decided to suspend him as President.

(4) The conduct of meetings was conducted in breach of provisions of the constitutions of the Mandir and the Mandali and the decisions made there were unconstitutional.

3. The affidavit in opposition is deposed by the Second Defendant (Aswant) who says as follows:

(1) He is the present President of the Mandali and authorized by its members, in particular the First, Third and Fifth Defendants to make this affidavit on their behalf.

(2) The Plaintiff is not the President nor the trustee of the mandala, but only an interim president.

(3) A proper election was conducted in July 2006 and new executive members elected. There was nothing illegal about calling an AGM by the members and having new members appointed.

(4) The interim appointments including that of the Plaintiff were only for one year and an AGM was to be conducted by June 2014.

(5) The Mandali is not registered under the Religious Bodies Registration Act and Mr Ram Roop continues to be the sole trustee.

(6) The members wanted the Plaintiff to return only so that he could get all accounts updated and conduct an AGM as required by the constitution.

4. The affidavit in answer is deposed by Deo Narayan who says as follows:

(1) He was appointed interim chairperson to conduct the election of office bearers which he did and those appointed possessed full authority to run the Mandali and continue in office for 3 years.

(2) All the office bearers were elected by member (sic). It was agreed that whoever was appointed as President will also be trustee. The Plaintiff was elected President with popular vote as there was no other nominations made.

5. Before the hearing commenced both Counsel confirmed there would only be affidavits evidence.
6. Mr Kumar now submitted the First, Second, Third and Fourth Defendants (Defendants) have usurped the powers and appointed office bearers who are not within the constitution of the Mandali and not entitled to membership under it, and so cannot be elected. The Plaintiff was suspended on 22 May 2016. He was not given an opportunity to be heard. Only the trustee can suspend the president. The Defendants have to show they are in control and legitimate members. The failure to give the Plaintiff audience meant the decision was unfair.
7. Mr Singh then submitted the OS. was defective for a number of reasons. The Plaintiff did not take the opportunity to be heard and only sued 6 out of the 17 members who signed the letter out of the 22 members. Mr Singh said there was an implied term in section 11(g) for the executive committee to call for the President to be suspended. There was no factual foundation to say the defendants do not live within territorial bounds. An injunction was redundant as the Mandali had been having AGMs for the past 3 years. It is functioning properly with a new President. An injunction is an equitable relief and the Plaintiff slept on his rights. There was no factual foundation for any of the Plaintiff's rights.
8. Mr Prakash finally submitted. He said the Registrar of Titles (ROT) requires the constitution of a religious body to be produced to the ROT, with the trustee documents and details of the trustees and Police clearance. Then the ROT will register it under the Religious Bodies Registration Act 1881. The ROT is only concerned with the trustee and is not required to regulate office bearers. The ROT only requires information regarding office bearers when they are also trustees. The ROT requires the minutes of the AGM that appoints the trustees. The ROT cannot recognize the Second Defendant (Ashwant Singh) the current president as the trustee unless the (Mandali) submit his name as

trustee which will supersede the form dated 24 September 2016 and registered on 5 October 2016.

9. Mr Kumar replied the registration of the trustees was improper.
10. At the conclusion, of the arguments I said I would take time for consideration. Having done so I shall now deliver my decision.
11. The pivotal issue here is whether decision of the Defendants to suspend the Plaintiff was in breach of the rules of natural justice and therefore null and void. So I turn to the constitution of the Mandali. S.4(a) states the executive shall comprise one President and 10 other specified office bearers and 7 committee members. However, there is no provision anywhere regarding the appointment/election of the President and his suspension/removal.
12. The Plaintiff by his letter dated 16 October 2015 addressed to the Secretary of the Mandir resigned as President effective the date the letter was handed to the secretary (16/10/15).
13. This apparently was not accepted because by letter dated 22 May 2016, 17 executive members of the Mandali suspended the Plaintiff "from participating in any executive meeting; special meetings, AGM and restricts you from signing any legal documents.....That on the request of the executive members you are to present yourself to clear further claims which maybe against you in the past 3 years".
14. It should have been clear to the Plaintiff that what these 17 members were purporting to do was something they had no powers or right to do. This is because any power to suspend under the constitution was vested only in the President by s.5(d) which states "The President shall be empowered to suspend any member executive or otherwise for misconduct but expulsion shall be determined by the executive".

15. The Plaintiff by his letter dated 26 May 2016 to the Mandali correctly stated he did not accept the suspension, incorrectly said only the trustees could suspend the President and correctly asserted he would be remaining President till the next AGM.
16. The Plaintiff should then have given effect to his assertion by exercising his right under s.11(g), which provides in the event of any dispute or disharmony in the executive the President shall call a Special General Meeting for clarification of such matter. The Plaintiff failed to do this.
17. Be that as it may the proper course of action should have been for the Plaintiff to move the Court for a declaration that he still remained the President. This he should have done expeditiously after the 22nd May 2016. But he did not. Instead, he only filed the O.S. on 6 October 2016, more than 4 months later. His claims in the O.S. have therefore been defeated by laches. The Oxford Dictionary of Law, 9th edn, defines "laches" as "Neglect and unreasonable delay in enforcing an equitable right. If a claimant with full knowledge of the facts takes an unnecessarily long time to bring an action.....the court will not assist him".
18. Any grievances that the Plaintiff felt he legitimately possessed should have been ventilated at the ensuing AGMs but this he again failed to do.
19. At the end of the day there is nothing for the Plaintiff to now claim in the O.S. The record in these proceedings show that events have overtaken the Plaintiff. Moreover, the Court does nothing to which effect cannot be given or in plain English the Court does not engage in an exercise in futility. It is not for the Plaintiff to stop the appointment of another President, by the AGM (prayer (A)), nor to restrain the members from making any decisions (prayer (B)), nor to restrain the members from registering new Trustees (prayer (C)) which anyway is a fait accompli as witness the memorial of trustees registered on 5 October 2016 with the ROT, nor to have returned to him the properties of the Mandir and the Mandali (prayer E)), nor a declaration that the meeting of 22 May 2016 was unconstitutional because of his own laches (prayer (F)), nor an

injunction restraining the 6 Defendants operating the bank accounts because that comes within the purview of the Treasurer under s.7 of the constitution (prayer (G)), nor an order that the complaints against the Plaintiff be determined at the AGM because the ensuring AGMs have already taken place (prayer (H)).

20. In the result the Plaintiff is not entitled to any of the reliefs he has sought in the O.S. They have become in any event moot or academic because as stated by the Plaintiff in para 49 of his affidavit in support "...on or before 13th June 2016 when my term as president expires.....". The Court therefore dismisses the Originating Summons filed on 6 October 2016. However in the particular circumstances of this matter, the Court orders each party to bear his own costs.

Delivered at Suva this 23rd day of November 2018.



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David Alfred

JUDGE

High Court of Fiji