IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBA 8 of 2013

BETWEEN : **DR SHRI CHAND** as Sole Executor and Trustee of the Estate of Hari Chand of 183 Main Street, Huntly 3740, P.O. Box 203, New Zealand, Medical Practitioner.

Appellant

AND : **SHIU SHARAN RAM** alias **BAL RAM** and occupation not known to the Plaintiff of Nadi in the Republic of Fiji Islands.

Respondent

Appearances : Ram's Law for the Appellant
Nacolawa Lawyers Lautoka for the Respondent

RULING

INTRODUCTION

1. The plaintiff, Dr. Shiri Chand, is the sole executor/trustee over the estate of the late Hari Chand.

2. Up to the time of his passing, Hari Chand was the registered owner of a piece of some agricultural land comprised in Crown Lease No. 6454 being Lot 2 Plan ND 5129 Pt of Nakoke formerly CT 3000 (Farm 2280) in the Tikina of Nadi. The land is 9 acres, 2 roods and 24 perches in size. The defendant came into occupation of a portion of the land pursuant to a sharecropping arrangement he had entered into with the surviving widow of the late Hari Chand who was residing in New Zealand. She is now also deceased.

3. The sharecropping arrangement has seen the defendant cultivating the land since 2006. In his ruling, the Learned Magistrate acknowledged this fact thus:

> ".....wife of the deceased Hari Chand who was the sole beneficiary of the Estate of which Dr. Shiri Chand is the Trustee authorised the Defendant to cultivate the land and part of the agreement to share in the cane proceeds on 50/50 basis".

4. On **07 May 2012**, Dr. Shiri Chand filed a statement of claim at the Nadi Magistrates Court seeking an Order for vacant possession against the defendant.

5. On **29 May 2012**, some three weeks after filing his statement of claim, Dr. Shiri Chand would also file a Motion seeking, *inter alia*, an injunction to restrain the defendant from disturbing, preventing and or otherwise interfering with his cultivation or occupation of the land:

> (a) An injunction restraining the Defendant whether by himself or his agents and or servants of howsoever from in any way disturbing, preventing and or otherwise interfering with the Plaintiff and or his agents from cultivating occupying all that piece and parcel of land comprised in Crown Lease No. 6454 being Lot 2 Plan ND 5129 Pt of Nakoke formerly CT 3000 (farm 2280) in the Tikina of Nadi. The land has a total acreage of 9 acres, 2 roods and 24 perches together with improvements thereon.
> (b) .....
> (c) .....

6. On **03 July 2012**, the defendant would file a reference before the Agricultural Tribunal seeking a declaration of tenancy under the Agricultural Landlord & Tenant Act.

ISSUE BEFORE THE MAGISTRATE COURT

7. In paragraphs 16 and 21, the Learned Magistrate defined the issue as follows:

> 16. The issue to be decided by the court is that whether Magistrates Court has jurisdiction to try this matter while a matter is pending before Agricultural Tribunal between the parties in respect of declaration of tenancy.
> .....
> 21. The issue in this case is whether this court has jurisdiction to grant possession of the land to the Plaintiff despite the pending matter before the Agricultural Tribunal on the issue of tenancy.

MAGISTRATES COURT DECISION

8. The Learned Magistrate reasoned as follows at paragraphs 22 and 23:

> 22. .....The Plaintiff is seeking possession of the land as a substantive relief. At the same time the Plaintiff is also seeking an injunctive order restraining the Defendant from interfering with the Plaintiff from cultivating or occupying the subject land. If the Court grant injunctive relief, one way or the other, that would amount to granting of possession of the subject land to the Plaintiff. When the

restraining is granted the Defendant cannot occupy or cultivate the subject land. Hence, the restraining order has been sought in the nature of substantive relief".

23. The matter before the Court is not whether eviction of a tenant of agricultural land can only be obtained by resort to the provisions of the Agricultural Landlord and Tenant Act (ALTA) or whether an entitled person could claim possession pursuant to the provisions of section 169 of the Land Transfer Act. The issue before the Court is that whether this Court has jurisdiction to hear and determine the claim of the Plaintiff seeking possession of the property while a matter is pending before the Agricultural Tribunal between the parties on the issue of tenancy.

9. And at paragraphs 25, 27 and 28:

25. The Agricultural Tribunal has power and authority to decide on the issue of tenancy whether a tenancy is existing between the parties or not under section 18(2) of ALTA.

26. .....

27. In this case, the subject land is an Agricultural estate and a dispute regarding tenancy is pending before the Agricultural Tribunal. It is a common ground that the Defendant is occupying and cultivating the property since 2006. Mr. Ram argued that the Defendant is not a legal tenant. Whether tenancy is legal or not that would be the matter for the Tribunal to decide. The Tribunal has power and jurisdiction to declare null and void and to grant compensation under section 18(2) of ALTA.

28. In the present case, a matter is pending before the Agricultural Tribunal between the parties and the value of the property was not provided by the Plaintiff. **In the circumstances, I decide the proper forum to decide the issue that has arisen between the parties would be the Agricultural Tribunal.**

(my emphasis)

10. The Learned Magistrate then proceeded to dismiss the Plaintiff's claim for want of jurisdiction and awarded costs in favour of the defendant.

11. At the Magistrates Court hearing, the defendant would highlight the pendency of his reference before the Agricultural Tribunal, and, flowing from that, whether the Magistrates Court did not have jurisdiction over the entire matter.

12. In his decision which was handed down on 20 November 2012, the Learned Magistrate would decline jurisdiction on the basis of the pendency of the reference before the Agricultural Tribunal. Moreover, in the same decision, the Learned Magistrate did dismiss the Plaintiff's substantive claim.

13. In dismissing both the interlocutory and the originating processes, the Learned Magistrate had relied on the same affidavit and point raised by the Defendant/Respondent.

APPEAL

14. This is an appeal from the said decision of the Magistrates Court.

15. The main issue on appeal is whether or not the Learned Magistrate was correct to have dismissed the Appellant's substantive claim in the Magistrates Court based on an issue raised by the defendant in response to an interlocutory application of the plaintiff.

16. The plaintiff has filed ten grounds of appeal[1]. The answer to the above question will determine all ten grounds of appeal.

COMMENTS

17. I start by the general position that "a party who has properly invoked the jurisdiction of the Magistrates court is *prima facie* entitled to have his case heard and determined by that court".

18. In Fiji, section 15 (2) of the 2013 Constitution tells us that any civil matter may be determined in any court of law with the relevant jurisdiction or if appropriate by an independent tribunal.

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[1] The ten grounds of appeal are:

(i) in finding that a matter was pending before the Agricultural Tribunal when in fact the Plaintiff's Statement of Claim was filed on the 7th day of May 2012 and the Plaintiff's Notice of Motion was made on the 29th day of May 2012 whereas the Defendant filed his application to the Agricultural Tribunal on the 3rd day of July 2012.
(ii) in dismissing the Plaintiff's Statement of Claim in dealing with an interlocutory application of the Plaintiff.
(iii) in dismissing the Plaintiff's Statement of Claim on the ground that the Magistrates Court does not hear such an application.
(iv) in concluding that the Magistrates Court lacks jurisdiction to hear and determine a claim for vacant possession of land whenever an application for tenancy is filed in the Agricultural Tribunal.
(v) in distinguishing the facts of the present case to the facts in Wadavellu Reddy v Gopal Krishna, Civil Appeal No. ABU 0012 of 2010.
(vi) in determining that the Agricultural Tribunal has power and authority to decide on the issue of tenancy whether a tenancy is existing between the parties or not under section 18(2) of the ALTA.
(vii) in holding that the Agricultural Tribunal has the jurisdiction to declare tenancy when in fact there is no relationship of landlord and tenant between the parties.
(viii) in holding that the plaintiff did not provide the value of the property in issue when in fact the value of the property in issue has been deposed in paragraph 22 of the Affidavit of Dr. Shiri Chand sworn on 14 May 2012 and agreed upon by the Defendant in paragraph 17 of the Affidavit of Shiu Sharan Ram sworn on 03rd day of July 2012.
(ix) in taking into consideration irrelevant factors and in failing to take into account relevant considerations in his ruling dated 20 November 2012.

(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.

19. Who decides *"or if appropriate by an independent tribunal"* in any given case?

20. The Magistrates Court's jurisdiction under section 16(1)(b)(ii) of the Magistrates Court Act extends to suits involving recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof).

21. There was no landlord/tenant relationship in this case so the Plaintiff had properly invoked the Magistrates Court's jurisdiction under section 16(1)(b) and is *prima facie* entitled to have that issue heard and determined by the Magistrates Court.

22. However, in this case, the defendant has filed a reference before the Agricultural Tribunal for a declaration of tenancy. The said Tribunal has statutory powers under the Agricultural Landlord & Tennant Act to make such a declaration if certain criteria are met.

23. Where there is in existence a Tribunal set up by statute to deal specifically with any claim of the kind that is already before the Magistrates Court or the High Court, and there is a parallel proceeding afoot in that Tribunal relating to the same issues, the Magistrates Court is perfectly entitled to terminate the proceedings before him so that the Tribunal may decide the issues in the parallel proceedings.

24. In **Wilkinson v Barking Corp** [1948] 1 All ER 564 at 567; [1948] 1 KB 721 at 724 Asquith L.J said that where statute creates a right and appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort this remedy to this tribunal and not to others (see also Mr. Justice Inoke's Ruling in **Varo v Varo** [2010] FJHC 408; HBC234.2008L (5 August 2010).

25. The Court has power to restrain litigation on foot when similar proceedings based on the same facts, cause of action, and parties is also afoot in another court (see **Commonwealth of Australia v Cockatoo Dockyard Pty Ltd**[2003] NSWCA 192 (14 July 2003), where the New South Wales Court of Appeal reviewed various case authorities in England and in Australia on the source of the courts power to do so).

26. I observe that **Cockatoo Dockyard Pty** and all those other cases it refers to deal with situations where a plaintiff has filed concurrent proceedings in two courts against the same defendants and on the same issues. The courts in those decisions felt they were duty bound to restrain litigation in favour of the continuation of proceedings in the other court in order to prevent a defendant being improperly vexed or and/or oppressed and to stop the perversion of the administration of justice for an unjust end.

27. It is vexatious and oppressive to bring two concurrent actions when one will do or if a plaintiff brings an action *"under colour of asking for justice"* but is really *"harassing others"*.

28. Hence, because the existence of two concurrent proceedings in two courts is *prima facie* vexatious and oppressive, generally, the court will put the plaintiff to his election to stay one of the proceedings. However, that is not a hard and fast rule because the Court itself has powers to stay the proceeding before it if it considers it oppressive and vexatious to maintain it on account of the pendency of the other in another court or even before the same court.

29. The rationale is that the *prima facie* vexation and/or oppression can be eliminated simply by the stay or discontinuance of one of the two matters. In this regard, ordinarily the second proceedings would be regarded as an abuse of process and therefore stayed. However, there is no reason in principle why the first should not be capable of being considered an abuse of process.

30. However, to strike out or stay both proceedings – may amount to a denial of the right guaranteed under section 15(2) of Fiji's 2013 Constitution.

31. The decision to strike out or grant a stay is a matter of discretion. From the cases discussed in **Commonwealth of Australia v Cockatoo**, it would

appear that the practical effect of making or declining a stay order is paramount and which must involve a balancing between the advantage to the plaintiff compared to the disadvantage to the defendant taking account of various factors[2].

32. I accept that, unlike the High Court, the Magistrates Court has no jurisdiction to strike out a pleading or dismiss a claim without having tried it. I also accept that the Magistrates Court's jurisdiction is a statutory jurisdiction and is limited by what the statute prescribes.

33. However, a Magistrate who acts to dismiss a civil claim in order that a lawfully constituted Tribunal with an appropriate statutorily defined jurisdiction sitting in a parallel proceeding may determine the same issues, in my view, is guided by a different policy consideration and does not offend any principle in law.

COMMENTS

34. The Learned Magistrate's Ruling is very clear.

35. The only point I would reiterate (rather than correct) is that he did have jurisdiction under section 16(1)(b)(ii) of the Magistrates Court Act to deal with suits involving recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof).

36. However, this must be read subject to the principle in **Wilkinson v Barking Corp** [1948] 1 All ER 564.

[2] These are: (a) circumstances relating to witnesses; (b) the possibility that preparation done for the second case might be wholly or partly thrown away or wasted due to the creation of an issue estoppel arising from the earlier proceedings; (c) principles against double recovery of damages; (d) which proceeding was commenced first; (e) whether the termination of one proceeding is likely to have a material effect on the other; (f) public interest; (g) the undesirability of two courts competing to see which of them determines common facts first; (h) the undesirability of substantial waste of time and effort if it becomes a common practice to bring actions in two courts involving substantially the same issues; (i) how far advanced the proceedings are in each court; (j) the law should strive against multiplicity of proceedings in relation to similar issues.

37. In my view, the learned Magistrate had a discretion as to whether to dismiss the claim or stay it pending the determination of the matter at the Agricultural Tribunal.

38. There is nothing wrong in principle by that decision to dismiss the claim. Had the Learned Magistrate decided to press on with entertaining the Plaintiff's claim and made an eviction order whilst the defendant's reference was pending at the Magistrates Court, which would have been clearly wrong.

39. In addition to the above, I observe that the plaintiff has been trying to evict the defendant for quite some time. He had even begun proceedings in the High Court which was later terminated. The Plaintiff must have been aware that the defendant would file a reference before the Agricultural Tribunal.

40. It would appear to me that in anticipation of that, he had filed the application at the Magistrates Court in the hope that it would circumvent any steps being contemplated by the defendant. In that regard, both proceedings (substantive and interlocutory) filed by the Appellant at the Magistrates Court were *prima facie* vexatious and oppressive. Based on the authorities I have cited above (paragraphs 24 to 29), these proceedings are still an abuse of process, even if they preceded the respondent's reference at the Agricultural Tribunal.

41. I dismiss the appeal. Parties to bear their own costs.

HIGH COURT OF FIJI LAUTOKA

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Anare Tuilevuka
JUDGE

28 May 2018