

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 160 OF 2015

- BETWEEN : AMI CHAND of Votualevu, Nadi in Fiji, Farmer.
1ST PLAINTIFF
- : RITESHNI SHALINI LATA of Votualevu, Nadi in Fiji,
Domestic Duties.
2ND PLAINTIFF
- AND : SUBHAG WATI of Votualevu, Nadi in Fiji, Domestic Duties as
Executrix and Trustee of the Estate of Chandu Lal.
1ST DEFENDANT
- : AVINESH PRASAD & RAGNI DEVI of Votualevu, Nadi.
2ND DEFENDANTS
- : ITAUKEI LAND TRUST BOARD a body incorporated under
the iTaukei Land Trust Act Cap 134 with its registered office at
431 Victoria Parade, Suva.
3RD DEFENDANT

- Appearances** : Mr R. Charan for the second defendants/applicant
Mr E. Maopa for the plaintiff/respondent
- Date of Hearing** : 31 August 2018
- Date of Ruling** : 31 August 2018

R U L I N G

[on stay of execution]

[01] This is an application for stay of execution.

- [02] By his summons filed on 20 August 2018, which is supported by an affidavit of Mr Avinesh Prasad, the first named second defendant/the applicant (*the applicant*) sworn on the same day (*the application*).
- [03] The application states that it is filed under the High Court Rules 1988, as amended (*HCR*), O 45, R 10 and the inherent jurisdiction of the court. It is provided in R 10 that:
- “Matters occurring after judgment, stay of execution, etc (O 45, R 10)*
- 10. Without prejudice to Order 47, Rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order and the Court may by order grant such relief, and on such terms, as it thinks just.”*
- [04] The plaintiff/respondent (*the respondent*) opposes the application. He however did not file an affidavit in opposition.
- [05] The applicant seeks a stay on the execution of the judgment (my judgment) delivered against him on 3 July 2018, where the court made certain declarations including the declaration that the transfer of the property by Subhag Wati, the first defendant was null and void and that the applicant was not a *bona fide* (good faith) purchaser.
- [06] The stay is sought pending appeal. The applicant says that he has lodged an appeal against the judgment in the Fiji Court of Appeal and he believes that he has good grounds of appeal and it is not a delay tactic or vexatious. On affidavit the applicant states that if the judgment is not stayed it will allow the plaintiff to execute the judgment and the transfer registered under his wife and his name will be revoked and cancelled, and that he had spent approximately \$40,000.00 in maintaining and renovating the two farm houses and exhausted a considerable amount of money to improve the property.
- [07] The basic rule is that a litigant is entitled to enjoy the fruits of the judgment. The court may issue a stay on the execution of the judgment or order under appeal, if

the applicant satisfies the court that the appeal will be rendered nugatory if a stay is not granted.

- [08] It is provided in the Court of Appeal Rules ('CAR'), R 25 (1) (a)/ R 34 (1) (a), that except so far as the Court below or the Court of Appeal may otherwise direct, an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below.
- [09] The HCR, O 45, R 10 empowers the High Court to grant a stay of execution of the judgment or order on the ground of matters which have occurred since the date of the judgment or order.
- [10] As regards to the matters that had occurred after the date of judgment, the applicant submits that he has filed and served an appeal and thereafter has applied to the Registrar to fix the amount and nature of the security to be given by him for the prosecution of the appeal.
- [11] In order to obtain a stay, the defendant must establish that they have sufficiently exceptional circumstances as stated in *Ward v Chandra* [2011] FJSC 8; CBV0010 (20 April 2011).
- [12] Mr Charan counsel for the applicant submits that the registration of transfer effected under the applicant's and his wife name will be cancelled if a stay is not granted. He also submits that the plaintiff will not be able to cancel the registration as there is a charge on the property by the BSP.
- [13] In my opinion, even if the registration is cancelled the plaintiff will not be able to transfer the property until such time the property is distributed and transferred to him. There is no risk that the property would be transferred by the plaintiff during the pendency of the appeal. The plaintiffs are only entitled to 6 acres of the land, which is 10 acres.
- [14] In my judgment, the applicant has failed to establish sufficiently circumstances to consider a stay of execution of the judgment, pending appeal. I would, therefore, refuse to grant a stay of execution pending appeal with summarily assessed costs of \$300.00 payable to the respondent by the applicant.

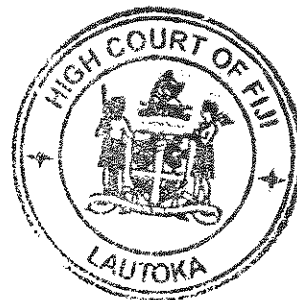
The result

1. Stay of execution of the judgment dated 3 July 2018, pending appeal is refused.
2. Applicant shall pay summarily assessed costs of \$300.00 to respondent.

M. H. Mohamed Ajmeer
31/8/18

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M. H. Mohamed Ajmeer

JUDGE



At Lautoka

31 August 2018

Solicitors:

For the 2nd defendant/applicant; M/s Ravneet Charan Lawyers, Barristers & Solicitors
For the plaintiff/respondent; M/s Babu Singh & Associates, Barristers & Solicitors