

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No.: HBC 58 of 2017

BETWEEN : **BABITA DEVI** aka **BABITA** as Administratrix to the **ESTATE of**
DHARMENDRA PRASAD
PLAINTIFF

AND : **ESTATE OF BAS DEO** (f/n Ram Brij) late of Daku, Savusavu, together
with his executors, administrators and assigns.
DEFENDANT

Counsel : **Plaintiff: Mr Ramanu I**
Defendant: No appearance

Date of Hearing : 16.07.2019

Date of Judgment : 27.11.2019

JUDGMENT

INTRODUCTION

1. Plaintiff institute this action as an administratrix of her late husband. According to statement of claim vendor, late Bass Deo had not honored a sale and purchase agreement entered between her husband (purchaser) and late Bas Deo (vendor) in 2006 to purchase a land. Plaintiff stated that they had paid \$10,000 upon execution of said agreement, and also paid installments of \$500 in terms of the said agreement. In October, 2007 late Dharmendra Prasad was offered a loan for remaining amount of the purchase price. Plaintiff stated that despite several requests for the vendor to come to bank in order to execute documents to pay the remaining sum he had not come. In 2011, the vendor had transferred the said land to another person. Before that purchaser had lodged a caveat but it was cancelled. Plaintiff in the statement of claim alleging fraud. This action was institute on 20.12.2017. Plaintiff is claiming general damages, financial loss due to renting a premises, reimbursement of paid sum of money \$14,500, transfer of adjacent

lot of land. Statement of claim is not clear as to the causes of action. However claims are based on breach of contract, and fraud. It is clear that Plaintiff cannot institute this action on 20.12.2017 for an agreement that had come to an end in 2007 without proof of fraud. Since Plaintiff had alleged fraud limitation for cause of action will start from the date fraud came to light. Plaintiff in the statement of claim said that fraud was revealed in 2010-2011, without mentioning a date. But at the hearing there was no proof of fraud. So the action is dismissed.

FACTS

2. Plaintiff filed this action by way of writ of summons on 20.12.2017.
3. According to statement of claim her late husband, was the purchaser late Bass Deo was vendor. They had entered in to a sale and purchase agreement to purchase a land described in the said agreement.
4. The Purchaser had paid initial sum of \$10,000 and the remaining amount of \$16,000 was to be paid by monthly installments of \$500.
5. Sale and purchase agreement contained a clause that purchaser could at any time pay remaining balance in order to obtain transfer subject to terms of said agreement.
6. After payment of \$500 installments for nine installments, purchaser was offered a Housing Loan \$13,150 on 1.10.2007.
7. This offer was valid for 30 days. Plaintiff in her evidence said vendor did not come to bank to execute the relevant documents to pay the balance sum, from the loan.
8. This land was transferred to a third party on 27.9.2011.
9. Plaintiff in the statement of claim pleaded fraud and particulars of fraud are as follows;

"THAT when contacted by the Colonial National Bank for the execution of the transfer and mortgage documents, the late Bass Deo always make promises and never really committed himself to its execution.

THAT such lies, fraudulent and deceiving conduct came to light in 2010 and 2011 when firstly, a caveat on 'the property' by the Plaintiff was unknowingly uplifted and, secondly in 2011. "the property" was sold to a Marimuttu without the knowledge of the Plaintiff.

THAT the Plaintiff after having acknowledged of those facts proceeded to lodge an official Police complaint, however, was warned by Police Officers not to interfere in the later sales and purchase agreement between the late Bass Deo and Marimuttu."

ANALYSIS

10. At the hearing counsel for the Defendant did not appear and no evidence was presented on behalf of Defendant.
11. Since Plaintiff's claim is based on fraud Plaintiff needed to prove that at hearing. Only Plaintiff gave evidence and marked documents.
12. Plaintiff had instated this action for a sale and purchase agreement entered on 30.5.2006 regarding a land.
13. In terms of the said agreement purchase price of said land was \$26,000 and out of that \$10,000 was to be paid as down payment and the remaining sum through installments of \$500.
14. The purchaser had the option of paying the balance through one instalment and had obtained a bank loan for \$13,150 after payment of few monthly installments. There was no dispute that this amount was sufficient cover entire remaining sum on the date of the loan offer from bank.
15. This loan offer dated 1.10.2007 for sum of \$13,150 was valid for 30 days and evidence was that vendor did not come to bank to execute necessary documents to finalize payment.
16. Plaintiff in her evidence said that vendor did not refuse to come but postponed coming to bank. According to her vendor had fraudulently sold the land to a third party.
17. Purchaser had attempted to caveat the sale but it was cancelled by registrar of title.
18. According to the particulars of fraud was that vendor was not committed to execution of the transfer and made promises. Since loan offer was made on 1.10.2007 and it was valid for only 30 days Plaintiff needed to act swiftly.
19. Plaintiff also pleaded that caveat lodged by Purchaser was fraudulently removed. Caveat was lodged on the memorials of the title by Purchaser on 4.8.2011 but this was cancelled by registrar of title nearly after two months. There was no evidence as to how vendor was instrumental in cancellation of caveat by registrar of title. It was an official act of

registrar of title and if vendor committed fraud that needs to be particularized and elicited in evidence. There is no such evidence.

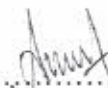
20. Plaintiff had failed to prove fraud. Without proof of fraud action cannot proceed in terms of Section 15 and 4 of Limitation Act, 1971.
21. Plaintiff had paid money in terms of Sale and Purchase agreement entered in 2006. Since the loan offer was made on 1.10.2007 there was no payment of any installment after that breach of contract happened on or around that time. So Plaintiff could not institute an action to recover the money paid in terms of Sales and Purchase Agreement without pleading and also proving fraud.

FINAL ORDERS

- a. Action is dismissed.
- b. No costs granted.



Dated at Suva this 29th day of November, 2019.


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Justice Deepthi Amaratunga
High Court, Suva