

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

CIVIL JURISDICTION

Civil Action No. HBC 201 OF 2019

BETWEEN : **ROSHINI LATA NAND** of 1013 Herman Street, San Bruno,
CA 94066, United States of America. **PLAINTIFF**

AND : **JAI PRAKASH** of 161318-56 Street, Edmonton, Alberta,
Canada. **DEFENDANT**

Appearance : **Mr. Subanjai Nair with (Ms) Nayna Kasturi for the
plaintiff.**
: **The defendant is absent and unrepresented.**

Ex- parte hearing : **Tuesday, 10th November 2020 at 2.30 pm**

Judgment : **Friday, 04th December, 2020 at 9.00 am.**

J U D G M E N T

- (01) In the statement of claim filed on 02.08.2019, the plaintiff seeks an order from this court to subdivide the land comprised in Native Lease No:- 27653 into two lots. The land contains an area of 15A.3R.13P.
- (02) The plaintiff and the defendant are brother and sister who are the registered proprietors of one undivided half share in Native Lease No:- 27653.
- (03) The plaintiff's share in the property is bequeathed by her mother (deceased) by a Will dated 07.07.2015 to which the plaintiff upon the death of Bhan Mati became the executive and trustee and sole beneficiary of the estate of the deceased.
- (04) Apart from filing acknowledgment of service of writ of summons, the defendant has not filed a statement of defence in the pre-trial stage. The defendant did not appear in court and was not present when the case was set down for hearing. The plaintiff alone

gave evidence. The plaintiff gave evidence by video-link from U.S.A. The plaintiff said that the defendant is her step brother. She has made numerous requests to her brother for the subdivision of the property. The defendant has failed to respond. The defendant is not co-operating with the subdivision. This led to the filing of this claim.

- (05) The plaintiff said that there is a dwelling house on the land and it belongs to her. The plaintiff further said that with the consent of her step brother, one Mohammed Zahid Khan occupied that house and later he vacated. She said due to the illegal occupation of Mohammed Zahid Khan, she suffered loss of rental income, loss of cane proceeds and enjoyment of the property.

I fail to see how a dwelling house could be erected for a residential purpose on an agricultural lease. Quite clearly, the covenant 2(c) of the agricultural lease has been breached. In that context, the court is unable to fathom any reason to award damages for the loss of rental income and enjoyment of the house.

Furthermore, no evidence is presented to the court as to the loss of income from cane proceeds.

- (06) On a perusal of Native Lease No:- 27653, two points appear quite clear to me; (1) the land cannot be used for any purpose other than agriculture (2) the plaintiff and the defendant are registered as to one undivided half share in the land comprised in Native Lease No:- 27653.
- (07) The defendant has not consented to the subdivision. The plaintiff has received no assistance from the defendant on subdivision.

ORDERS

- (01) The whole of land contained in Native Lease No:- 27653 be divided into two (02) equal lots.
- (02) The subdivision and valuation of the said two lots is to be done by a registered surveyor and registered valuer to be court appointed in the first instance and such appointment to be made within 14 days from the date of this judgment.
- (03) The costs of subdivision and valuation are to be borne out by the parties.
- (04) The parties herein to do all things necessary to effect complete subdivision/valuation and the subdivision/valuation is to be completed within six months (06) from the date of this judgment.

- (05) All parties are to do all things necessary to effect issuance of separate lease to each party herein over their chosen lot.
- (06) There will be no order as to costs of these proceedings.




..... 04/12/2020
Jude Nanayakkara
[Judge]

High Court - Lautoka
Friday, 04th December 2020.