

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 112 of 2018

IN THE MATTER of Property Law Act
[Cap 130], Section 119

AND

IN THE MATTER of an application for
partition of the property comprised in
Certificate of Title No. 8855

BETWEEN: SANJEEV AMAR SINGH of 64 Ratu Sukuna Road, Nasese, Account Manager.

PLAINTIFF

AND: RAJENDRA SINGH of 4 Lorton Court, Sacramento, CA, 95823, USA, Businessman.

FIRST DEFENDANT

AND: SHIRINIVAS SINGH of 17 Princess Road, Suva, Businessman.

SECOND DEFENDANT

AND: JAWAHAR SINGH of 4740 Paradise Court, Rocklin CA95677, USA, Businessman.

THIRD DEFENDANT

AND: HARINIVAS of 17 Princess Road, Suva, Businessman.

FOURTH DEFENDANT

AND: AJIT SINGH of 11 Radcliffe St, Ingleburn, NSW, Teacher.

FIFTH DEFENDANT

AND: SANJAY YASHWANT SINGH of 17 Princess Road, Suva, Businessman.

SIXTH DEFENDANT

AND: SHIVAS SANTRAJ SINGH of 11 Makita Street, Domain, Suva, Engineer.

SEVENTH DEFENDANT

BEFORE: Justice Vishwa Datt Sharma
COUNSEL: Mr. Vinit Singh for the Plaintiff
No appearance of the Defendants
DATE OF DECISION: 28th January 2020 @ 9.30 am

DECISION

*[Plaintiff's application seeking an order for partition of the Property
comprised in Certificate of Title No. 8855]*

INTRODUCTION

1. The Plaintiff filed this Originating Summons on 07th May 2018 and sought for the following orders:-
 - (a) *THAT the Plaintiff's share in the property comprised in Certificate of Title No. 8855 and the Defendant's share in the Property be partitioned according to the scheme plan annexed to the Affidavit in Support of the Plaintiff, subject to any requirement of statutory and regulatory authorities in Fiji.*
 - (b) *That the Plaintiff be at liberty to engage any consultants to carry out the partition and costs associated with partitioning of the parties interest in the Property be shared among the parties according to their respective interests.*
 - (c) *That the Chief Registrar of the High Court, if required, be appointed to sign all documents and do all such things as may be reasonably required in the name of the parties to complete the partition.*
 - (d) *That the parties be at liberty to apply to the Court for further directions.*
 - (e) *Such further or other relief as seems just and equitable to this Honourable Court.*

ON THE GROUNDS THAT:

- A. The Plaintiff and the Defendants are co-owners of the Property comprised in Certificate of Title No. 8855.
- B. The parties cannot deal with their respective interests in the Property as their interests are not separate and defined but collectively held.
- C. Section 119 of the Property Law Act [Cap 130] allows the Court to partition interests in a Property where the interests in a Property are held collectively.
- D. The Second Defendants conduct in managing the affairs of the First Defendant is oppressive towards the Plaintiffs.

- E. Further grounds as appear in the affidavits filed on behalf of the Plaintiff's in support of the Originating Summons.
2. The application for partition of the property comprises in Certificate of Title No. 8855 is made pursuant to **Section 119 of the Property Law Act 1971 (No. 18 of 1971)**.
 3. All the Defendants herein were served with the substantive application together with the subsequent Supplementary Affidavit and sketch plan which sought for the orders as enumerated in the Plaintiff's Originating Summons filed on 07th May 2018.
 4. The Plaintiff furnished Court with oral and written submissions respectively.

LAW

5. **Section 119 of the Property Law Act 1971 (No.18 of 1971) part XIII** provides for partition of land and division of chattels as follows:

PART XIII - PARTITION OF LAND AND DIVISION OF CHATTELS

In action for partition court may direct land to be sold

119.- (1) *Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly.*

(2) *The court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.*

(3) *The court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale, and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale.*

(4) *On directing any such sale or valuation to be made, the court may give also all necessary or proper consequential directions.*

(5) *Any person may maintain such action as aforesaid against any one or more of the parties interested without serving the other or others, and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause the court may direct such inquiries as to the nature of the land and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further considerations:*

Provided that all persons who, if this Act had not been enacted, would have been necessary parties to the action shall be served with notice of the decree or order on the hearing, and, after that notice, shall be bound by the proceedings as if they had originally been parties to the action, and shall be deemed parties to the action, and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rules of court, apply to the court to add to the decree or

order.

(6) *On any sale under the provisions of this section, the court may allow any of the parties interested in the land to bid at the sale, on such terms as the court deems reasonable as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters.*

6. The word "Partition" in terms of *Halsbury 1st Ed. Vol. 21 at p. 810* is described as-

"The legal term 'partition' is applied to the division of land tenements and hereditaments belonging to co-owners and the allotment among them of the parts so as to put an end to community of ownership between some of all of them."

7. "One Moiety" is defined in the case of *Sokimi Atu v Emily Atu (1983) 29 FLR 100* to mean "a half".

Therefore, no action for partition of land and subsequent sale can be brought about by any applicant when the interest in the property is below one-half of the total interest in land.

8. In the current case, the Plaintiff owns a one-half share and is therefore entitled and has locus to make this application for partition of the property comprised in **Certificate of Title No. 8855**.

ANALYSIS AND DETERMINATION

9. The pending issue for Court's determination herein is 'whether on the facts and circumstances of this case together with the submissions made to this court by the Plaintiff would prompt court to accede to the Plaintiff's application for the Plaintiff's share in the property comprised in Certificate Title No. 8855 and the Defendant's share in the property be partitioned in terms of the scheme plan bearing annexure marked 'B' to the Affidavit of Sanjeev Amar Singh?'
10. The Plaintiff at paragraphs 3, 4 and 5 of his Affidavit in Support deposed on 17th April 2018 explains the ownership of the current property comprised in Certificate Tile No. 8855 for which an order for partition is sought as follows: -
- (a) The Plaintiff owns a half interest in the Property;
 - (b) The First Defendant owns a quarter interest in the Property; and
 - (c) The Second to Seventh Defendants together own a quarter interest in the Property.
11. The Plaintiff further explains in paragraph 7 of his Affidavit that if the Plaintiff were to have a title for the area representing his interest in the property it would allow him to deal with his interest in the Property. It further states that the proposed sub-division allows for three separate titles to be issued. One title will be issued to the Plaintiff, One title to be issued to the First Defendant and One Title will be issued to the Second to Seventh Defendants.
12. All the Defendants were properly served with the Plaintiff's Partition Application together with the Scheme plan. None of the Defendant 1-7 appeared in Court nor represented by any Counsel.

13. **Second, Third, Fourth, Fifth, Sixth and Seventh Defendant's** Acknowledgment of Service was filed stating that these Defendants did not intend to contest the current proceedings seeking for an order for partition of Property comprised in Certificate Title No. 8855.
14. The counsel representing the Plaintiff submitted to Court the following:

At paragraph 10 - *The current matter involves a substantial piece of land and the Plaintiff is seeking an order for partition of the Property. The size of the Property allows for it to be partitioned.*

At paragraph 11 - *The partition Order will enable the Plaintiff to use his half interest in the Property while the Defendants would also be at liberty to do what they want with their share.*

At paragraph 12 - *The Plaintiff further submits that there are no issues or disputes raised by the Defendants. The Second to Seventh Defendants in the said proceedings in their Acknowledgment of Service stated that they do not intend to contest the proceedings.*
15. The Plaintiff's application is seeking for partition of the Plaintiff's share in the Property comprised in the Certificate of Title No. 8855. The Plaintiff owns a half share interest in the Property whilst the First Defendant own a quarter interest in the Property and the Second to Seventh Defendants own a quarter interest in the Property.
16. In order for the Plaintiff to succeed with his current partitioning application, reference is made to the case authority of *Sokimi Atu v Emily Atu (1983) 29 FLR 100* wherein Pathik J stated as follows -

"The word 'Moiety' is defined to mean 'a half'. Therefore, no action for partition of land and subsequent sale can be brought by an applicant where the interest in the property is below one-half of the total interest in land. "
17. In the current case, the Plaintiff owns a half share interest in the Property and therefore falls within the ambit of this case. Thus, the Plaintiff is entitled to make this application for partition and seek orders as enumerated in the Originating Summons filed before this court.
18. The Plaintiff's affidavit evidence together with the Oral, Written Submissions and the Scheme Plan has been taken into consideration in order to determine the Plaintiff's application for partition of the property comprised in the Title No. 8855. Further, there has been no opposition to the Plaintiff's application by any of the Seven Defendants.
19. In the outcome, for the aforesaid rational, I grant the following orders:
 - (a) That the Plaintiff's share in the property comprised in Certificate of Title No. 8855 and the Defendant's share in the Property is hereby partitioned in terms of the Scheme Plan annexed to the Affidavit in Support of the Plaintiff, subject to any requirement of statutory and regulatory authorities in Fiji.

- (b) That the Plaintiff is at liberty to engage any consultants to carry out the partition and costs associated with partitioning of the parties interest in the Property to be shared among the parties according to their respective interests.
- (c) That the Chief Registrar of the High Court, if required, is appointed to sign all documents and do all such things as may be reasonably required in the name of the parties to complete the partition.
- (d) That the parties are at liberty to apply to the Court for further directions.
- (e) There will be no order as to costs.
- (f) Orders accordingly.

Dated at Suva this 28th Day of January, 2020



Vishwa Datt Sharma
Judge