

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 79 OF 2018

BETWEEN : RAJ MATI
PLAINTIFF

AND : VIRENDRA PRASAD
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms Seduadua [Lal/Patel/Bale Lawyers]

DEFENDANT : Mr Chand [Amrit Chand Lawyers]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : **05 March 2020**

INTERLOCUTORY RULING

[Setting Aside Judgment By Default]

Application

1. This is the Defendant's application dated 27th July 2018 seeking orders for the judgment by default sealed on 17th May 2018 be set aside and he be given leave to file his statement of defence and defend the claim.

An affidavit of Vijendra Prasad was filed in support of the application.

2. The application is opposed by the Plaintiff who filed her affidavit on 25th September 2018.
3. A reply to the Plaintiff's affidavit was filed on 4th October 2018.

Chronology of file until default judgment was entered.

4. A writ of summon was filed on or about 23rd March 2018.

The claim was for breach of a contract of sale dated 28th May 1998. According to the Defendant, the Plaintiff has failed to deliver to the Plaintiff a new Certificate of Title for her portion of the land which the Plaintiff claims to have paid monies for to the Defendant [a total sum of \$2,000]. Further breach is that he Defendant sold the land to a Third Party.

The Plaintiff claims from the Defendant value of the properly being \$50,000 from the Defendant.

5. An affidavit of service was filed on 19th April 2018 according to which the server attempted service on the Defendant on 29th March at MH Superfresh Navua.

The Defendant refused to accept service.

6. On or about 23 April 2018, the Defendant via his solicitor filed an acknowledgement of service.

7. The Plaintiff on or about 14th May 2018 filed praecipe; search and judgment by default.

The judgment by default was sealed on 17th May 2018.

Determination


8. The Plaintiff has stated in her claim that she paid \$2,000 for the land. She is now claiming \$50,000.
9. I find the claim for damages of \$50,000 being the value of the land as claimed by the Plaintiff to be an un-liquidated claim.

10. I find it was only prudent that the matter should be tried for Plaintiff to submit evidence how she came up with the figure of \$50,000: Is this the current market value of the land? Was there any proper valuation done? Or is this the amount she has spent on the land since she started residing on it?
11. As such the judgment so entered is irregular and ought to be set aside.

Final Orders

12. On the Defendants application dated 27th July 2018 the judgment by default sealed on 17th May 2018 is set aside with liberty to the Defendant to file/serve his statement of defence within 7days.
13. Parties to hear own cost for this application.




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Vandhana Lal [Ms]
Acting Master
At Suva.