

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

**Civil Action No. 182 of 2013**

**BETWEEN** : **RAM DEO** of Nabitu, Subdivision, Sigatoka Valley, Farmer and **SHOBNA**  
**SANJANI DEO** of Valelevu Nasinu, Police Officer.

**PLAINTIFFS**

**AND** : **J. P BAYLY TRUST** a charitable organization having its office at 193 Rodwell  
Road, GPO Box 15042, Suva, Fiji.

**FIRST DEFENDANT**

**AND** : **REGISTRAR OF TITLES**

**SECOND DEFENDANT**

**AND** : **UDAY NATH** and **RAKESH CHAND** of Nabitu, Subdivision, Sigatoka Valley.  
: **UDAY CHAND** of Nabitu, Subdivision, Sigatoka Valley.  
: **PRABHA WATI** of Nabitu, Subdivision, Sigatoka Valley.  
: **AMAR PRASAD** and **AWADH PRASAD** of Nabitu, Subdivision, Sigatoka  
Valley.  
: **NEERAJ NISHCHAL MAHARAJ** and **KRITISHNA NANDANI CHANG** of  
Nabitu, Subdivision, Sigatoka Valley.

**INTERESTED PARTIES**

Appearances: Ms. Swamy for the Plaintiffs  
Mr. Diven Prasad for the first Defendant  
Mr. J. Mainavolau for the second Defendant  
Ms. Singh for Uday Chand  
Date of Hearing: 02.11.2021  
Date of Ruling: 02.11.2021

# RULING

## INTRODUCTION

1. The full background to this case is set out in my interlocutory ruling in Deo v J.P Bayly Trust [2016] FJHC 793; HBC182.2013 (6 September 2016).
2. This case is marked for trial today. The plaintiffs and the defendant (JP Bayly Trust) have executed a Terms of Settlement which was placed before me in Court this morning.
3. There are three interested parties in this case. They were joined by Order of this Court pursuant to Order 15 Rule 6(2) (b). Two of the interested parties have also signed the Terms of Settlement.
4. The other interested party, a Mr. Uday Chand, who is represented by the Legal Aid Commission, has not executed the Terms of Settlement. He has not been turning up to Court. If Order in Terms is granted, it will result in a re-definition of the parties boundary lines. This will affect Mr. Uday Chand as well.
5. The plaintiffs, the defendant, and the interested parties have been trying to settle this case for over a year now. The terms of settlement was in fact drawn up around this time last year. At that time, all parties except Mr. Uday Chand, were willing to execute the Terms of Settlement. They all even appeared before me on a special court sitting in Sigatoka in October 2020 with the Terms of Settlement already drawn up and ready for execution. But for Uday Chand's recalcitrance, the Terms of Settlement was not executed and the case took its normal course.
6. Ms. Swamy and Mr. Prasad urge this Court to grant Order in Terms of the Terms of Settlement even without Mr. Uday Chand.
7. Ms. Singh, Counsel of the Legal Aid Commission, informs the Court that Mr. Chand has not been in contact with her for sometime and she needs his instructions on the Terms of Settlement.
8. Ms. Swamy argues that the Terms of Settlement is not something that she and Mr. Prasad have just sprung up so to speak on the day of trial. The same Terms of Settlement has been with Legal Aid Commission since October 2020 when all Counsel appeared at the special sitting of this Court in Sigatoka. On that occasion, Ms. Singh advised that her client, Uday Chand, did not want to share in the survey and associated costs of redefining the boundaries.

9. Mindful that this is the day marked for trial, and that Ms. Swamy, Mr. Prasad and Mr. Mainavolau have all come to Court, and noticing that all the interested parties (except Uday Chand) including their relatives and supporters are in Court, and observing that Mr. Uday Chand is not in attendance, and has not bothered to attend Court in most call over dates, and mindful also that the Terms of Settlement affects Mr. Uday Chand, I decided that I would proceed with trial rather than just grant Order in Terms of the Terms of Settlement.
10. I gather that Mr. Uday Chand's reluctance to execute the Terms of Settlement stems from his unwillingness to bear part of the costs of re-definition of the boundaries.
11. The evidence of Ram Deo is that he has been living on the land all his life and so has Mr. Uday Chand, who is his immediate neighbour to one side and who shares a common boundary with him. He said a part of the land which he had cultivated pre-subdivision is now allotted to Mr. Uday Chand following the formal subdivision. He has cultivated the same land uninterrupted to this day from pre-subdivision days, as did brothers and father before him.
12. After hearing Ram Deo's evidence, and considering all the legal issues raised but not addressed in my interlocutory ruling in Deo v J.P Bayly Trust [2016] FJHC 793; HBC182.2013 (6 September 2016), I grant Order in Terms of the Terms of Settlement which I reproduce in full below.
  - (1) That the parties have agreed to settle the within matter on the following terms and conditions;
    - a) That Plaintiffs and the Interested Parties namely Prabha Wati, Amar Prasad and Jotika Sanjani Sharma, shall engage a registered Surveyor to redefine the boundaries of the land comprised in Certificate of Title Number 38349, Certificate of Title Number 37709 and Certificate of Title Number 37714 in terms of the lines of occupation and cultivation by the Plaintiffs and the Interested Parties namely Prabha Wati, Amar Prasad and Jotika Sanjani Sharma being shown on the plan prepared by Cadastral Solution Limited, a firm of Surveyors and Project Managers.
    - b) That the redefine subdivision plan for the land comprised in Certificate of Title Number 38349, Certificate of Title Number 37709 and Certificate of Title Number 37714 shall be lodged with the second Defendant.
    - c) That the second Defendant subject to its discretion, shall issue a new Certificate of Titles containing the new subdivision plan and boundaries of the lands for the Plaintiffs and Interested Parties namely Prabha Wati, Amar Prasad and Jotika Sanjani Sharma.

- d) That the cost of survey to redefinition of boundaries and obtaining new Certificate of Titles shall be borne by Plaintiffs and the Interested Parties namely Prabha Wati, Amar Prasad and Jotika Sanjani Sharma for their respective Certificate of Titles.
  - e) That the parties to bear own legal cost.
  - f) That the parties shall agree that the terms of settlement be made into an order of this Court.
  - g) That the parties shall be at liberty to apply for further orders.
- (2) That upon full compliance with these terms of settlement, the Plaintiff and the Defendants shall have no further claims or actions against each other and the parties acknowledge that the terms of settlement may be pleaded in bar to any action, suit or other proceedings now pending or hereafter to be commenced by either party.

13. For the avoidance doubt, Mr. Uday Chand is to bear his own fair share of the costs of redefinition.



Anare Tuilevuka  
**JUDGE**

**2<sup>nd</sup> November 2021**