

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 298 of 2021

BETWEEN: **TOTA RAM** of Cuvu Sigatoka but currently at East Lakes, New South Wales, Australia, Taxi Driver. **PLAINTIFF**

AND : **RENU KUMARI** of Cuvu Sigatoka, Domestic Duties. **FIRST DEFENDANT**

AND : **THE DIRECTOR OF LANDS** of Nasese, Suva **SECOND DEFENDANT**

AND : **THE ATTORNEY GENERAL OF FIJI** of Suvavou House, Suva. **THIRD DEFENDANT**

AND : **THE REGISTRAR OF TITLES** of Civic Tower House, Suva. **FOURTH DEFENDANT**

Appearances: Mr. U. Koroï for the Plaintiff
 Ms. Mohammed B. from Legal Aid Commission for the first Defendant
 Mr. J. Mainavolau for the second and third Defendants
Date of Hearing: 28.11.22
Date of Ruling: 03.03.23

R U L I N G

1. At the heart of this case, is a Tenancy at Will namely *Tenancy At Will* ML C 28 Tunamati/Nadovi 119/16 in the District of Cuvu in Nadroga (“**TAW**”). This TAW was given by the Director of Lands to the late Sadhu. Sadhu died testate on 06 September 1991.
2. The plaintiff, Tota Ram, and the first defendant, Renu Kumar, are the surviving children of Sadhu.

3. There is, erected on the land covered in the TAW, a three-bedroom house.
4. Tota Ram claims that in 2013, he renovated and extended the house at a cost of \$150,000-00 (one hundred and fifty thousand dollars only). He also alludes in his affidavit that he has been the one paying the land rental on the TAW. He started paying the land rental even whilst Sadhu was still alive.
5. By his Last Will & Testament dated 26 January 1978, Sadhu had bequeathed the house and the house site to Tota Ram. He also makes certain other provisions in the Will for Renu Kumar.
6. The TAW in question actually expired in 1984. Upon its expiration, Renu Kumar applied to the Director of Lands, and was granted a new TAW over the said land.
7. Meanwhile – there stands on the property the three-bedroom house.
8. It appears that both Tota Ram and Renu Kumar had not lived on the property for years. Tota Ram emigrated to Australia in 1986. It appears also that Tota Ram and Renu Kumar have been fighting over the property for many years. Notably, at some point, the Minister of Lands had made some representation that the land would be subdivided. The lots carved out of that subdivision would be leased out – with first preference to the pre-existing sitting “tenants”.
9. Before me is a Motion dated 23 December 2021 pursuant to Order 29 Rule 1 of the High Court Rules 1988 filed by Tota Ram seeking the following Orders:
 - (a) that Renu Kumar and/or her servants and/or her agents be restrained from charging or encumbering or transferring or selling or damaging or modifying the portion/part/piece of land described in *Tenancy At Will* Lot 1 in NDSW 1078 containing an area of 1328 square meters.
 - (b) the Renu Kumar and/or her servants and/or her agents be restrained from in any way proceeding with any act or process whereby they alienate the portion/part/piece of land described in *Tenancy at Will* Lot 1 in NDSW 1079 containing an area of 1328 square meters until final determination of the proceedings.
 - (c) the director of Lands and Registrar of Titles and/or their servants and/or their agents be restrained from surveying or issuing of any registered lease to the first defendant in relation to the *Tenancy At Will* Lot 1 in NDSW 1079 containing an area of 1328 square meters to any party until final determination of the proceedings.
10. The Motion is supported by an affidavit of Tota Ram. An ex-parte interim injunction was granted on 24 December 2021 on the prayers sought.

11. On 08 March 2022, Renu Kumar filed an Affidavit in Opposition through the Legal Aid Commission. Her main contention is that the *Tenancy At Will* in question expired in 1984. On the expiry of the TAW, she applied for a fresh TAW which was granted by the Lands Department to her.
12. Generally, a Tenancy At Will gives a very limited right of occupation only to the “tenant”. There is no proprietary interest given such as would exist in a formal lease. As such, a “tenant” in a Tenancy At Will may not be entitled to sell, transfer, assign, rent out or even offer as security the limited interest there is in the Tenancy At Will.
13. The general rule also at common law is that a tenant who carries out improvements on a property without the consent of the landlord cannot thereby claim compensation from the landlord for the improvement in the value of the property.
14. The Plaintiff’s main concern appears to be centered around the house. While he accepts that there is a TAW now granted in the first defendant’s favour, the house on the land was willed to him by their father, Sadhu.
15. Tota Ram has received some indication that the Director of Lands has recanted on the Department’s earlier position and now wishes to give the land to Tota Ram’s sister, namely, Renu Kumar.
16. He now seeks to injunct the Director of Lands from giving all the land over to Renu Kumar.
17. It appears that, all that the Director of Lands is contemplating on doing is, to subdivide the land and offer it to various peoples including Renu Kumar and Tota Ram.
18. He appears to be concerned that when the land is subdivided, the first defendant will be given a formal lease over the land on which the house sits. This will prejudice his interest – based on the bequests of their father.
19. It is hard to see how the Last Will and Testament of Sadhu can confer on Tota Ram a beneficial entitlement to the property. As I have said, because of the nature of the Tenancy At Will, there is a strong argument that, as a matter of general principle, a Tenancy At Will terminates automatically on the death of either a tenant or a landlord.
20. It is also hard to see how any undertaking by the Government to subdivide the land in question and lease out the carved out lots, can be injuncted by any party in Tota Ram’s position, whose legal claim to the house is based on a rather flimsy legal ground. In any event, I am of the view, in terms of the peculiar circumstances of this case, to continue the injunction would violate the policy concerns under section 15 of the State proceedings Act.
21. During argument in Court, Mr. Koroï struggled a bit when pressed, to explain whether the basis of his client’s interest, and right to seek an injunction, is based on the Last Will and Testament of Sadhu, or whether its based on some equitable claim grounded on the alleged fact that he has spent

over \$150,000-00 renovating the house – or whether it is based on the alleged assurance of the Director of Lands that he (Tota Ram) will be given a share after the land is subdivided.

22. In the final, I am not inclined to extend the interim ex-parte injunction. If, in the event Tota Ram were to win his case, he could seek damages from the State.



.....
Anare Tuilevuka
JUDGE
Lautoka

03 March 2023