

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 305 of 2022

BETWEEN: **SHANTA KUMARI** of Momi, Nadroga.

PLAINTIFF

AND: **SANGEETA DEVI** and **SEGRAN MURTI** of Momi, Nadroga.

DEFENDANTS

Appearances: Mr. Naivalu for the Plaintiff
 Ms. S. Devi and Mr. S. Murti - In Person for the Defendants

Date of Ruling: 03 March 2023

R U L I N G

1. Before me is an Amended Summons filed by the Plaintiff seeking the following orders;
 - a) Specific Performance of the Agreement and/or the contract dated 30 May, 2019.
 - b) Restraining and restricting the Defendants whether by themselves, or by their servants and/or agents in whatever manner from interfering, molesting, or abusing and any manner of form the Plaintiff, her family or any other persons residing at the residential property of the Plaintiff's land holding amounting to 1000 square meters as equitable interest situated within Instrument of Tenancy No: 14063/2017 Nagasau (part of) Lot 13 in the tikina of Momi in the Province of Nadroga/Navosa (TLTB Ref 6/11/40794) until further Order of the Court.
 - c) Restraining and restricting the Defendant whether by himself or by his servants, and/or agents in whatever manner from interfering, molesting, entering onto, and occupying the residential property of the Plaintiff's land holding amounting to 1000 square meters as equitable interest situated within Instrument of Tenancy No: 14063/2017 Nagasau (part

of) Lot 13 in the tikina of Momi in the Province of Nadroga/Navosa (TLTB Ref 6/11/40794) until further Order of the Court.

- d) Evicting or attempting to evict the Plaintiff while occupying the residential property of the Plaintiff's land holding amounting to 1000 square meters as equitable interest situated within Instrument of Tenancy No: 14063/2017 Nagasau (part of) Lot 13 in the tikina of Momi in the Province of Nadroga/Navosa (TLTB Ref 6/11/40794) until further Order of the Court.

2. The summons is supported by an Affidavit of Shanta Kumari sworn on 18 January 2023. Kumari deposes as follows:

- (1) That I am the Plaintiff herein.
- (2) That I depose the facts herein as within my knowledge that were or are acquired by me in the course of dealings with the Defendant and her agents or servants, save and except where stated to be on information belief and whereto stated and I verily believe the same to be true.
- (3) That the described subject property is an Instrument of Tenancy Agreement No. 14063/2017 Nagasau (part of) Lot 13 in the tikina of Momi in the Province of Nadroga/Navosa (TLTB Ref 6/11/40794) having an area of approximately 5.9152 hectares (whole) together with benefits of Farm No: 27084 Yako Sector and four bedroom house. That I annex and mark as "Annexure SK-1 a copy of the said Sales and Purchase Agreement dated 30 May 2019".

Further that upon my Counsel's request and enquiries with the TLTB for a registered copy they refused our request on the basis that as a third party we were not entitled to one.

- (4) That initially my late husband, Parandaman Pillay and his sibling, Saga Devan Pillay were the most previous owners of the above Instrument of Tenancy and then my late husband demised on 12 August 2017 wherein I was granted on 1 May, 2008 his probate being Probate No. 47390. That I annex and mark as "Annexure SK-2 a copy of the said probate".

Further that my brother in law Saga Devan Pillay then demised and probate over his estate was granted to my sister in law, Deshamma and then both her and I soon became the legal owners of the above Instrument of Tenancy not by choice until the Instrument of Tenancy expired sometimes in 2016 or 2017.

- (5) That when it came to pass of the said expiry unfortunately I had no funds to my name and because Deshamma lived in Canada and had funds to her name we both agreed that the renewal be applied for and executed in her name alone subject to the fact that I was to have 1000 square meters of that parcel of land to my name.
- (6) That however before that could be satisfied and materialize Deshamma sold the lease off to Sangeeta Devi and Segran Murti by virtue of a Sales and Purchase Agreement dated 30 May 2019.
- (7) That I did ask Deshamma about the 1000 square meters set aside for me and my family to live in and she said that even though the land was being sold off that arrangement was included in the subject Sales and Purchase Agreement and that the new Purchasers were well aware of it.
- (8) That even though she lives in Canada we still maintain our sisterly love.
- (9) That according to my Counsel pursuant to Clause 26 under the rubric "Conditional Agreement & Special Terms" I read at paragraph (d) that "The purchasers shall arrange with TLTB for agreement for lease at their own costs for an area 1000 square meters to be given to Shanta Kumari (i.e. me) within four months from the date of settlement".
- (10) That effectively I took to mean that my 1000 square meters was safe and secure even if the land was sold off to a new purchaser.
- (11) That today even after the land transaction has been long settled the Defendant still has not honored their part of the agreement and three years has since passed with no sign of it ever being brought to its fruition and satisfaction.
- (12) That what is happening right now is that the Defendants and/or their servants, and agents are now harassing us and threatening us to leave the property and go and live somewhere else.
- (13) That the Defendant has also placed their animals wantonly all over my 1000 square meters piece of land to graze and when I ask them to stop they continue with their threatening me and my family that they will remove us from there as they now own all of the subject property.
- (14) That I also have confronted them on more than one occasion after tempers flared between us due to their continuous harassment to me and my family as to why they are not honoring the said Sales and Purchase Agreement and they always reply that they do not know of any such arrangement and that we have just false hopes that will lead to nothing and our eviction from the subject land.

(15) That my Counsel did write a Demand Notice to them dated 6 September, 2023 giving them just 14 days to comply with Clause 26 (a), (d) and (e) of the said Sales and Purchase agreement. That I annex and mark as “Annexure SK-3 a copy of the said Demand Notice”.

3. The Defendants have jointly sworn an affidavit in opposition on 23 February 2023. They depose as follows:

We, Sangeeta Devi and Segran Murti of Lot 13, Nagasau, Nadroga, Farmer and Domestic Duties respectively states as follows:

- (1) That Plaintiff demands is baseless and not properly documented according to the Sales and Purchases clause 26 paragraph (e) clearly states that if the purchaser intends to sell the property, only then the (Vendor and Purchaser) agrees to subdivide 1000 square meters of land only and transfer it under the Plaintiff.
- (2) That the Plaintiff argument is based on sales and purchases agreement, hereby I would like the Court and Plaintiff to understand that in the same clause of 26 of the Sales and Purchases paragraph (e) holds the Purchasers (Sangeeta Devi and Segran Murti) not to proceed any transfer or subdividing 1000 square meters land until the said Purchasers intent to sell the property.
 - a) It is very clear that the Plaintiff is misinterpreting and intentionally created a invalid deed with the Vendor in her favour to claim 1000 square meters of land.
 - b) The deed made by the Vendor and the Plaintiff can clearly identifies, that the Plaintiff is intensely trying to interpret the clause 26 in her favour. As the Plaintiff ignores to consider that the paragraph (e) of clause 26 is against the Plaintiff's claim of 1000 square meters before fulfilment.
- (3) What the Plaintiff fail to understand that she is the very reason of the failure and breach of agreement, by not giving the Defendant or the Purchasers of the said property, fail to give total vacant possession which is a breach itself of the agreement paragraph 8 (page 4).
 - a) That the Plaintiff did state in her Affidavit that from 3 years she is residing at the Defendant property by failing to vacant the property.
 - b) That the Plaintiff should demand what so ever she is claiming from the said Vendor (Deshamma) as she did fail to abide by the agreement she made with the Purchasers (Sangeeta Devi and Segran Murti), by breaching the clause 8 of the Sales and Purchases Agreement.

- (4) Again the Plaintiff failed by deliberately made an agreement of deed with the said Vendor Deshamma on 18th of November 2019, as the purchasing agreement was made on the 30th May, 2019 is itself the breach of agreement with the Defendant (Sangeeta Devi and Segran Murti).
- a) That a very strict encumbrances was made and the Sales and Purchases Agreement paragraph 9 (line 9.1) clearly states that the Vendor, is not to create any tenancy or other interest in the said Property, the Plaintiff deliberately and intentionally made the deed with the Vendor is itself a fraud.
 - b) That the Vendor and the Plaintiff again deliberately fail and breach the agreement and they both desire us as Defendants to abide by the agreement, (which is not fair).
 - c) That the Plaintiff is misleading even this Court of Justice with invalid deed documents and that the Plaintiff is taking advantage of the whole situation which the Court can witness now.
 - d) That the Plaintiff should pay rent (\$300) from now, as her inhumane and harassment has crossed its limit as we were being very merciful.
- (5) That the Plaintiff should vacate the property within 30 days, which is not in any agreement for her to stay in the said property as the notice for eviction is served to the Plaintiff.
- a) That the Plaintiff stop harassing my wife and children, when she or they are tying the animals for grass in the farm and stop abusing verbally, which is proven in this Court of law by providing evidence.
 - b) That we would like to challenge the breach of Sales and Purchases Agreement by the Vendor Deshamma and Plaintiff Shanta Kumari.
- (6) That in this above matter we wish and humbly request this honorable Court for fairness and justice, and the matter to be struck out of the Summons and claim made by the Plaintiff.

4. I cannot grant the order seeking specific performance at this interlocutory stage as that will settle the matter finally. However, for the sake of keeping the peace between the parties, I am prepared to grant order in terms of the rest pf the prayers, and I do so now - namely:

- (i) That the defendants/their servants/their agents are hereby restrained from interfering, molesting, or abusing and any manner of form the Plaintiff, her family or any other persons residing at the residential property currently occupied by the Plaintiff amounting to 1000

square meters situated within Instrument of Tenancy No: 14063/2017 Nagasau (part of Lot 13 in the tikina of Momi in the Province of Nadroga/Navosa (TLTB Ref 6/11/40794) until further Orders of the Court.

- (ii) That the defendants/their servants/their agents are hereby restrained from evicting or attempting to evict the plaintiff until further Order of the Court.
- (iii) The plaintiff her servants/her agents, on the other hand, are hereby restrained from committing any act so as to interfere with the defendants' quiet and peaceful enjoyment of, and access to, the part of the property which the defendants occupy.



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Anare Tuilevuka
JUDGE
Lautoka

03 March 2023