

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 266 OF 2018**

**BETWEEN** : **SHANTI DEVI, SHARAS DEVI and SANTI DEVI** all of Bilalevu Settlement, Sigatoka, Malolo Transmitter Road, Nadi, Legalega, Nadi and Naviyago, Lautoka respectively. **PLAINTIFF**

**AND** : **VIJENDRA PRASAD** of Bilalevu, Sigatoka. **DEFENDANT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Mr. P. Chand, for the Plaintiff  
Mr. M. Degei appearing on instructions of Raikanikoda & Associates, for the Defendant

**DATE OF TRIAL** : 24<sup>th</sup> November, 2022.

**W. SUBMISSIONS** : No Written Submission s filed by either of the parties.

**DATE OF DECISION** : 23<sup>rd</sup> March, 2023

**JUDGMENT**

1. The Plaintiff, SANTI DEVI ,in her Affidavit sworn on 5<sup>th</sup> December,2018 in support of her Originating Summons against the Defendant, both filed on 10<sup>th</sup> December, 2018, averred, *inter –alia*, as follows:
  1. *That she and her sisters SHANTI DEVI, SHARAS PATI and SANITA DEVI are the Registered Proprietors of the property described as Certificate of Title Number 28798 , being lot 3 of Deposit plan Number 6889, in the District of Sigatoka in the province of Vitilevu , situated at Bilalevu , Sigatoka “ the said Property”*
  2. *That the Defendant and his and his Family are currently in the said property as per a verbal agreement with her late Father at the monthly rental of \$50.00. However, upon demise of her father, the Defendant stopped paying and to date no rent payment has been made nor has any of her sisters and she received any money.*
  3. *That on 6th March, 2018, she instructed her Solicitors to write to the Defendant requiring him to vacate the said property as per the letter marked “C” annexed to the Affidavit.*

4. *That despite the notices being served upon the Defendant, he continues to reside and occupy a portion of the said property with no color of right.*
      5. *That the Defendant, his Family, Servants and agents reside on the said property without any of their permission or license. Their continuous occupation over the said property has deprived her and her Sisters of their ownership rights.*
2. Accordingly, she moved for Orders in terms of her Originating Summons as follows.
  - a. *The Defendant to show cause why he is not giving up vacant possession to the above-named Plaintiffs over the property described as Certificate of title Number 28798 , being lot 3 of Deposit Plan Number 6898. In the District of in the province of Viti Levu, situated at Bilalevu Sigatoka.*
  - b. *The Costs of the Application be paid by the Defendant ; and*
  - c. *That any other order that this honorable Court deem just and equitable.*
3. The Defendant in his Affidavit in opposition sworn on 10<sup>th</sup> April, 2019 and filed on 11<sup>th</sup> April, 2019 stated, *inter- alia*, as follows.
  1. *THAT he opposes the contents of the paragraph 3 of the Plaintiff's Affidavit, as the plaintiff in the capacity as Administrators of the property unlawfully obtained the title of the property by failing to include other beneficiaries namely, Akashni Artika Devi born 19/07/1997 and Aklesh Ashnil Sami born 05/11/1998, who are the children of their late brother, Muni Dharmend Sami alias Vishwa who passed away on 22nd August 2014. That as the Plaintiffs unlawfully obtained the title of the property; they lack locus standi to institute these proceedings.*
  2. *THAT in response to Paragraph 4 of the Plaintiff's affidavit in support he opposes the contents of the said paragraph as he never paid rent for staying on the property. He further stated that the defendant's late father Mr. Triptaiya alias Sadhu (should read as Plaintiffs') allowed his family to reside on the property in 2003. He then entered into a verbal agreement with the late Mr. Triptaiya in 2010 to purchase and reside on part of the property perpetually. This part of the property is where his house is situated on and the area around it. He further stated that He was supposed to buy a land from Mr. Ram Chandra Rao worth \$2000 but later terminated the agreement with Mr. Rao because he had entered into this agreement with the Mr. Triptaiya and paid him \$2000 cash. He annexed marked 'A' a certified true copy of the letter from Mr. Rao.*
  3. *THAT late Mr. Triptaiya's daughter in law Ms. Dayanti Prasad also confirmed the agreement between Mr. Triptaiya and him. Annexed marked as 'B' a certified true copy of the letter from Ms. Prasad.*
  4. *THAT I state that there are six (6) members of the Bilalevu Community who confirmed the agreement of the said purchase of the part of the property. Annexed here and marked 'C' is a certified true copy of the written confirmation.*

5. *THAT I further aver that I paid \$500 to the late Mr. Triptaiya for the same to be given to Mr. Robinson the lawyer of Sigatoka for the title of the said property to be released. Annexed here and marked 'D' is a certified true copy of the letter from Mr. Triptaiya.*
  6. *THAT in response to Paragraph 5, 6 and 7 of the Plaintiff's affidavit in support, he stated that he is lawfully entitled to be on the part of the property that his family and he live on.*
  7. *THAT he seek for the application to be dismissed with costs.*
4. The Plaintiff on 10<sup>th</sup> May, 2019 filed her Reply Affidavit sworn on the same date.
  5. However, on 12<sup>th</sup> October, 2020 both the parties before the Master agreed to have the matter converted as a writ action and accordingly, the action was converted. Thereafter, the pre-trial steps being finalized , with the filing of PTC minutes on 3<sup>rd</sup> March , 2022 and the filing of Summons to enter for Trial on 10<sup>th</sup> March,2022 and the orders in terms being granted on the Summons , the matter was allocated for trial before me.
  6. **Agreed facts:**
    1. *The Plaintiffs are the registered proprietors of the property described as Certificate of Title 28798, being Lot 3 on Deposited Plan number 6889 as described above.*
    2. *That the property initially belonged to the Plaintiff's' Father, now deceased, the late Tripataiya also known as Sadhu and the Plaintiffs are the biological children.*
  7. **Agreed Issues:**
    - i. *Whether there was a valid Agreement executed between the Plaintiffs' late Father Tripataiya, also known as Sadhu and the Defendant for the sale of the said Property?*
    - ii. *Whether the Defendant had purchased the property from the Plaintiffs' late Father Tripataiya also known as Sadu for a sum of \$2,000.00 and paid \$500.00 and till date remained on the property?*
    - iii. *Whether the property was transferred without securing the interest of the Defendant?*
    - iv. *Whether the Plaintiff is entitled to the following relief?*
      - a. *An order for vacant possession against the Defendant.*

**TRIAL:**

8. The trial commenced with the Plaintiff (PW1) giving her evidence. She said that as per her instruction, the Legal Aid Commission filed the action in 2018 by filing an originating summons, for which she signed the Supporting Affidavit and annexed documents as well. She identified her signature in the Affidavit. She said that currently she and her sisters own the property in question, of which her late Father Riptaiya, aka Sadhu was

the previous owner and after the death of the Father she obtained the Letter of Administration.

9. She also gave evidence, about the death of her only brother in 2014, obtaining letters of Administration in the year 2015 and subsequently the remaining 4 sisters including her became the owners of the Land in question. She recognized the letters of Administration as well during her evidence. This part of the evidence of PW-1 was not challenged at all failing in line with the Agreed issue on the ownership.
10. I observe that since the plaintiffs' registered ownership was recorded as an admitted fact, the Court was absolved from the duty of examining the title of the Plaintiffs. It was also revealed by the PW-1 that she has already obtained the title in her name by filing transmission by death. .
11. She went on saying that the Defendant is her brother's de-facto wife's Brother and he came into the Land in the year 2007 on the permission granted by her Father for him to stay only for few days. She vehemently denied any written Agreement with her late Father to occupy the property or the sale and purchase of it. She said that in addition to the verbal notice for the Defendant to vacate, she also gave 30 days written notice, which is annexed as "C" to her Affidavit in support.
12. Under cross examination, she admitted, as averred in her Affidavit in support, that there was a verbal Agreement between her late Father and the Defendant for the Defendant to pay monthly rental of \$50.00 for his occupation, and stressed, there was no such a written Agreement for the sale and purchase. She also said that her father had never told about such an Agreement.
13. A notable point during the cross examination is that the suggestion by the Defence Counsel to the PW-1 that the Defendant had paid \$2,000.00 to her Father , was aptly responded by the Plaintiff by saying , if there was such a payment there should be a receipt for that. No such a receipt was produced by the Defendant. It is also contrary to the issue number (ii) raised wherein the amount paid is stated only as \$500, 00.
14. The Defendant through his evidence did not produce any receipt to confirm that any payment was made for the purchasing of the land in question. The evidence of the witness namely, Subramani, called by the Defendant to the effect that \$2000, 00 was given to Plaintiff's Father is unsubstantiated and contrary to issue number (ii). He had not specifically stated that he saw \$2,000.00 being given. This evidence is unsubstantiated The Letter, purportedly, signed by the Plaintiff's Father and annexed as "D" to the Defendant's Affidavit in opposition also state the payment of only \$500, 00. However, this letter does not specifically state that the \$500, 00 was received for the sale of a portion of the land. All what that letter suggests is the payment of \$500, 00 without stating the specific purpose for what it is being paid.
15. There is no tangible evidence to prove that there was an Agreement for the sale and purchase between the Plaintiff's Father and the Defendant.

16. Since the Plaintiffs' title is admitted, the Defendant has to satisfy the Court under what basis he occupies the Land in question. A mere statement that there is a Verbal Agreement to buy the Land in question will not assist the Defendant. The Defendant does not even agree that there was a verbal Agreement with the Plaintiffs' Father to occupy the land in question on monthly rental. The Plaintiff was ready to allow the Defendant to continue to occupy by payment of annual rental of \$1,000.00, which offer was rejected by the Defendant.
17. The Defendant should have adduced some good ground to satisfy the Court that he has some form of legal right to continue to occupy. His claim that he put up the House therein on his expenses is not substantiated. No evidence to show that the improvement/ constructions were done with the consent of the Plaintiffs.
18. The Plaintiffs' title is admitted. Though the Plaintiff offered to allow the Defendant to continue as a tenant subject to payment of enhanced annual rental of \$1,000.00, the Defendant was not prepared to accept the offer. The Court cannot compel the Defendant to pay the enhanced rental and continue to occupy, unless the parties agree on it.
19. The Defendant had not provided credible and sufficient evidence to prove his position that there was an Agreement with Plaintiff's father, which binds the Plaintiffs, for the sale of the land unto the Defendant. If there was such an Agreement for the sale and purchase, much would have been done by both the parties or at least by the Defendant in some formal manner, to safe-guard his interest and have it materialized.
20. I now turn to Section 59(d) of the Indemnity Guarantee Bond Act, which states;
 

"59. No action shall be brought –  
 (d) Upon any contract or sale of lands.....  
 unless the agreement upon which such action is to be brought or some memorandum or note thereof is in writing and signed by the party to be charged therewith....."
21. I am fortified in the conclusion I am reaching, by the decision of the Court of Appeal in Latchman Bala ....Appellant AND Wasu Dewan....Respondent [1998] FJCA 54 Civil Appeal No. ABU 0007 of 1998S (27 November 1998). The Court of Appeal dismissed an appeal against a decision of Lyons J, who, although "found there was an oral agreement between the parties for the sale and purchase of the house....." had dismissed the claim, because the agreement for the sale and purchase of the house, which was in writing and signed by the appellant was not signed by the respondent.
22. Here the Plaintiff in her evidence denied any form of Agreement for the sale of the land in question to the Defendant, except for admitting that the Defendant was permitted by her Father to occupy for a short period. The Defendant denied such permission for temporary occupation and the existence of unwritten Tenancy. Instead, he argued that there is an Agreement for sale and purchase, which stands unproved. It must follow as

the night follows the day that the claim of the Defendant must fail. The Plaintiff's action must succeed. I shall therefore enter judgment against the Defendant for the delivery of vacant possession.

**FINAL ORDERS:**

1. The Plaintiffs' action succeeds.
2. The Defendant shall deliver the vacant possession of the subject matter land and premises unto the Plaintiffs in 3 months' time from the date of this judgment.
3. Considering the circumstances, no order for costs made.



  
A.M. Mohamed Mackie  
Judge

At High Court Lautoka this 23<sup>rd</sup> day of March, 2023.

**SOLICITORS:**

For the Plaintiff: Legal Aid Commission, Lautoka  
For the Defendant: Raikanikoda & Associates