

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 115 of 2015

BETWEEN: KISSUN DEO as the Administrator and personal representative of the
ESTATE OF MEHTAAB BANO of Brewster Street, Toranak, Suva.

PLAINTIFF

AND: SOHAN SINGH of NSW, Australia by his lawful Attorney, Deo Prakash Singh
of Lot 51, Sevua Place, Nadera, Nasinu, Businessman under Power of Attorney
No. 55175.

FIRST DEFENDANT

DEO PRAKASH SINGH of Lot 51 Sevua Place, Nadera, Nasinu, Businessman.

SECOND DEFENDANT

THE REGISTRAR OF TITLES

THIRD DEFENDANT

THE ATTORNEY-GENERAL OF FIJI pursuant to the state Proceedings
Acts

FOURTH DEFENDANT

BEFORE: Hon. Mr. Justice Vishwa Datt Sharma

COUNSEL: Mr S. Singh for the Plaintiff
Mr Filipe V for the 1st, 2nd Defendants
Ms Taukei for the 3rd, 4th Defendants

Date of Judgment: Friday 12th May, 2023 @ 9.30 am.

JUDGMENT

*[Fraudulent Transfer of property and whether illegal, null and void and be set
aside General Damages and Execution of Document]*

On the outset, this Civil Action Case was commenced by Mehtaab Bano. Whilst the proceedings was taking its cause, Mehtaab Bano took demise. Subsequently, she was substituted by her husband, Kissun Deo as the executor and personal representative of her *Estate of Mehtaab Bano*.

INTRODUCTION

[1] The Plaintiff, Kissun Deo [substituted] in his capacity as the Administrator and personal representative of the *Estate of Mehtaab Bano* filed a Writ of Summons coupled with a Statement of Claim and sought for the following orders:-

- A. A declaration that Plaintiff was fraudulently induced to transfer the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 to the said Sohan Singh by his undue influence and that the transfer of the said property is null and void.
- B. A declaration that transfer of the property from the first Defendant to the second Defendant being Transfer No. 781113 is illegal, null and void and be set aside.
- C. An Order that Caveat No. 421416 be reinstated.
- D. An Order that the Defendants do execute all such documents and do all such acts and things as may be necessary to re-transfer to the Plaintiff the said property.
- E. An account of all dealings by the Defendants with the said property.
- F. General damages.
- G. Such further and/or other relief as the Honourable Court deems just and equitable.
- H. Costs of this action.

[2] The 1st and 2nd Defendants filed their Statement of Defence on 29th April, 2015

[3] The Plaintiff subsequently filed his Reply to the Statement of Defence on 15th October 2019.

[4] The matter proceeded to trial on 22nd September 2022.

Plaintiff's Case [Summarized]

[5] In or about 18th October 1988, the Plaintiff Mehtaab Bano became the registered proprietor

(by transmission of death as executrix) of property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 at Veisari, Lami.

- [6] In or about 26 April 1990, the 1st Defendant (Mehtaab Bano's solicitor) wrongfully procured and induced the Plaintiff to execute a transfer of the said property by which the Plaintiff Mehtaab Bano conveyed and transferred to the 1st Defendant the said property.
- [7] The Plaintiff Mehtaab Bano was induced to transfer the said property by undue influence of the first defendant [who was her solicitor], but without any separate or independent advice and without due consideration of the reasons for or the effects of what she were doing.
- [8] The First Defendant induced the Plaintiff in signing the transfer document by representing that they need to protect the property from claims by the Plaintiff's other siblings by transferring the said property to him [1st Defendant] and that once the case was complete [HBC 21 of 1988], the First Defendant would transfer the property back to the Plaintiff.
- [9] The Transfer document was not read and explained to the Plaintiff Mehtaab Bano.
- [10] The Plaintiff lodged a Caveat No. 421416 against the said property on 19 March 1997 in order to protect her interest in the said property.
- [11] In or about 7th June 2013, the 1st Defendant in collusion with the 2nd and 3rd Defendants fraudulently transferred the said property to the 2nd Defendant in consideration of the sum of \$20,000.00
- [12] The First and Second Defendants wrongfully applied for a withdrawal of Caveat No. 421416 and without any legal basis. The third Defendant proceeded to register a transfer of the said property being Transfer No. 781113 from the First Defendant to the Second Defendant.
- [13] In the premises, the said conveyance and transfer of the said property became Null and Void and the Plaintiff is and became entitled to the return of the said property.

1st and 2nd Defendant's Case (Summarised)

- [14] The Defendants admit that the Plaintiff became the registered proprietor (by transmission of death as executrix) of the said property.
- [15] However, the Plaintiff transferred the said property by way of love and affection, by her own will and not under undue influence.
- [16] The transfer was done in faith, trust and confidence and the 1st Defendant Sahan Singh is now the registered proprietor of the said property.

- [17] The 1st and 2nd Defendant, seek striking out of the Plaintiff's claim.
- [18] At the trial proper, only the Plaintiff Kissun Deo husband of Mehtaab Bano gave evidence and did not opt to call any further evidence.
- [19] The Defence [1st and 2nd Defendants] opted not to call the Defence and/or any witnesses and closed their case.

Determination

- [20] It will be noted that this proceedings was commenced by the Plaintiff Mehtaab Bano.
- [21] Subsequently, Mehtaab Bano took demise when the proceedings was still impending hearing and determination.
- [22] By an order of this Court of 28th February 2019, Mehtaab Bano's husband Kissun Deo was substituted in his capacity as the Administrator and personal Representative of his wife Estate of Mehtaab Bano.
- [23] The Substantive Issue for this Court determine is 'whether this Court can set aside the Transfer of the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 dated 20th April 1990 from the Plaintiff Mehtaab Bano to the First Defendant, Sohan Singh?'
- [24] Apart from the aforesaid impending Substantives Issues this Court also needs to determine the following:-
- (i) Was the Plaintiff fraudulently induced to transfer the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 to the said 1st Defendant, Sohan Singh by his undue influence and that he transfer of the said property is null and void?
 - (ii) Whether the transfer of the said property was legally transferred to the 1st Defendant, Sohan Singh by way of love and affection given that the 1st Defendant was the Solicitor for the Plaintiff in Case no. HBC 21 of 1988.
 - (iii) Whether the transfer Document was read and explained to the Plaintiff before signing by the Plaintiff?
 - (iv) Whether the 1st Defendant, Sohan Singh advised the Plaintiff that the said property will be transferred back to Plaintiff once the pending Court

Case HBC No. 21 of 1988 was determined?

- (v) Whether the 1st Defendant Sohan Singh acted in Collusion with the 2nd and 3rd Defendant and fraudulently registered the Transfer of the said property from the 1st Defendant Sohan Singh to the 2nd Defendant Deo Prakash Singh?
- (vi) Whether the Plaintiff is entitled to any Damages?

[25] At the trial, the Plaintiff, Kissun Deo [PWI] gave evidence. [Summarize]. He stated as follows:-

- 'My wife, Mehtaab Bano had a property at Lots 1 & 3 on Certificate of Title No. 6825 on Deposited Plan No. 1366.
- In 1980 Solicitor Sohan Singh [1st Defendant] did a Civil case for my wife HBC 21 of 1988.
- Title now registered in the name of Sohan Singh [Exhibit - P1] refers.
- Sohan Singh was to look after the property and for safekeeping so that no one interfered in the property.
- Property was transferred on the advise of Sohan Singh.
- My wife and I went together to Sohan Singh's Office on each occasion.
- Wife signed transfer Documents to Sohan Singh.
- We trusted Sohan Singh and that he will return the property back to her [exhibit - P2] refers.
- Caveat placed on title by wife Mehtaab Bano because my wife wanted property back but Sohan Singh refused.
- I did not know 2nd Defendant, Deo Prakash Singh.
- Witnesses shown affidavit of Mehtaab Bano and identifies her signatures [Exhibit - P4] refers.
- Unaware of the Contents of the document.
- Witness is taken through paragraph 2, 12 and 13 of the affidavit.
- I was with my wife when she signed the transfer document. At Paragraph 12 - in or about 1990, while my case with siblings was ongoing, they would have got my mother to sign off on a transfer of the said property, and they would be able to sell the property if it remained in my name.
- The 1st Defendant assured me if the property was in 1st Defendant's name, it would be safe and he would safeguard it for me.
- Several years later when the case, HBC 21 of 1988 was over, I tried to search for the 1st Defendant, to get transfer of Land back in my name but could not find the 1st Defendant.
- I came to know of the Sale of Property to the 2nd Defendant when my husband did a title search in November 2014.
- Seek an order for return of land.'

In Cross Examination

- 'Sohan Singh [1st Defendant] did case for my wife Mehtaab Bano.

- *Paid all his fees. Transfer was signed before Subhash Parshotam. I was present in Sohan Singh's office when transfer was signed. Subhash Parshotam talked to my wife. Wife signed transfer on own free will, no force. Subhash Parshotam explained transfer documents to my wife. It was between my wife and Sohan that transfer to Sohan Singh then back to wife Mehtaab Bano.*

In Re-examination

- *Parshotam, Sohan and Myself present when transfer was signed in Sohan's office. Sohan Singh called Subhash Parshotam. Sohan did not give opportunity for me to call any other lawyer for advice. Wife signed transfer for safe-keeping and I think she told Subhash Parshotam about Safekeeping of the property. Looked for Sohan Singh, could not locate him. Seek an order of Return of property.*

- [26] The Plaintiff also relied on the Affidavit evidence of Mehtaab Bano already filed into Court and tendered into evidence as Exhibit - P4 in support of an earlier application seeking for an order for the extension of the Caveat on the said property filed on 05th May 2015
- [27] This Court has noted the contents of the affidavit therein and in particular paragraphs 24, 25 and 26 wherein she deposed that *'I have a good case against the Defendant. The 1st Defendant being my lawyer and trusted advisor abused my trust and confidence in him and got me to transfer the said property to himself. If Caveat No. 421416 is not extended, I will lose the protection that the Caveat would otherwise provide to me to secure my claim against the property. This is not the first time that the 1st and 2nd defendants have tried to remove the said caveat. Unknown to me, on 25th April 2013, the 1st and 2nd Defendants Lodged a withdrawal of caveat on my behalf and attempted to transfer the property to the 2nd defendant Deo Prakash Singh.*
- [28] However it is also noted that the Plaintiff did not call, nor did it intend or subpoenaed Subhash Parshotam to testify in court in this proceedings since he had witnessed the transfer documents herein. Mr Parshotam would have turned out to be an independent witness and would have given independent evidence for Court to deliberate and determine upon the pending issues in the current proceedings.
- [29] The reason why the Plaintiff thought fit not to subpoena Subhash Parshotam is best known to the Plaintiff/Counsel.
- [30] The 1st and 2nd Defendants were not present in Court at the trial. However, they were represented by Counsel.
- [31] The 3rd and 4th Defendants were also represented by Counsel.
- [32] However, 1st, 2nd, 3rd and 4th Defendants filed their Statement of Defence and the Plaintiff filed his Reply to the Statement of Defence.

[33] The 1st and 2nd Defendants in their Statement of Defence filed into Court stated that -

- (1) In or about 18th October 1988, the Plaintiff became the Registered proprietor (by transmission of death as Executrix) of all the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366.
- (2) The First Defendant acted for the Plaintiff in Court Action No. HBC 21 of 1988.
- (3) The Plaintiff transferred the said Property in Question by way of love and affection and by her own will and was not under undue influence to the 1st Defendant Sohan Singh.
- (4) The transfer was done in good faith, trust and confidence and the 1st Defendant is now the registered proprietor of the said property.
- (5) The 1st and 2nd Defendant seek for the striking out of Plaintiff's Claim with costs.

[34] The 3rd and 4th Defendants in their Statement of Defence stated -

- (1) That the transmission by death was in the name of the Plaintiff Mehtaab Bano as Executrix and the piece of land is known as Waibua containing 14 acres 2 roods and 26 perches.
- (2) The property comprised in CT 6825 was transferred to Sohan Singh [1st Defendant] on 26th April 1990.
- (3) The Plaintiff placed a Caveat No. 421416 on the Title on 19th March 1997.
- (4) The withdrawal of the Caveat and Transfer of the said property was endorsed in error and rectified accordingly.
- (5) Caveat No 421416 is valid and transfer no. 781113 has been cancelled.

[35] It is not in dispute that the 3rd Defendant reinstated Caveat no. 421416 which was extended by the Court until further orders of this Court on the said Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 and cancelled the Transfer no 781113 to the 2nd Defendant, Deo Prakash Singh accordingly.

[36] Therefore, the said property in Question on the Certificate of Title No. 6825 on Deposited Plan No. 1366 was still registered under the name of the 1st Defendant, Sohan Singh

accordingly.

[37] The Writ of Summons filed on 09th Day of March 2015 seeks various forms of relief against the Defendants but the first relief sought is that the Transfer of Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 to the 1st Defendant Sohan Singh by his undue influence be declared null and void.

[38] The Plaintiff contends -

- That the First Defendant Sohan Singh committed fraud in inducing Mehtaab Bano to transfer the property Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 to him as a gift by promising to return the property to her but has failed to do so.
- The 1st Defendant, Sohan Singh attempted to remove the Caveat of Mehtaab Bano and then transfer the property to the 2nd Defendant, Deo Prakash Singh.
- That the Plaintiff shared no relationship with the 1st Defendant except that of a lawyer and a client relationship and that no relationship of natural love and affection can arise between a lawyer and a client.
- The 1st Defendant paid no monies to acquire the said property Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 and it is in the interests of justice to imply a *resulting trust* in favour of the Plaintiff's Estate so that the property can be returned to Mehtaab Bano.

[39] However, the 1st and 2nd Defendants submitted otherwise that the Plaintiff cannot rely on *resulting trust* or *constructive trust* as it was not pleaded in the statement of claim and any mention of it should be disregarded by the court.

[40] *Constructive Trust* is a duty by one person or company to hold some property for another person or company. The trust holds property for the purpose of remedying a situation when that person or entity may have being wrong.

[41] However, in the current proceedings the Plaintiff had not pleaded *constructive trust* and therefore this court finds that the Plaintiff cannot raise this issue in the current proceedings nor that the Court can in anyway imply a *Resulting Trust* in favour of the Plaintiff's Estate so that the property can be returned to Mehtaab Bano or the Estate.

[42] He further submitted that the Plaintiff has not proven its case on a *Balance of Probabilities* and therefore the claim cannot stand as it contravenes *Section 59 of the Indemnity, Guarantee and Bailment Act 1881*.

- [43] It is apparent from the evidence before this Court that the 1st Defendant Sohan Singh was the Solicitor of the Plaintiff, Mehtaab Bano and acted for the Plaintiff in Civil Action No HBC 21 of 1998.
- [44] It is also apparent from the materials filed herein that the Plaintiff alleges that he was induced to transfer the said property by undue influence of the 1st Defendant under his direction, and pursuant to the faith, trust and confidence, she reposed on him independent advice and without due consideration of the reasons for the effects of what the Plaintiff was doing and accordingly seeks to set aside the transfer that enumerated from it and re-transfer the property to the Plaintiff accordingly.
- [45] The Plaintiff Kissun Deo in his capacity as the Substituted party to the proceedings gave evidence in Court and explained that the First Defendant, Sohan Singh had advised him and his wife Mehtaab Bano to transfer the property Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 in his name for safekeeping so that someone else does not interfere with the said property. At that time his wife's relatives were challenging the property ownership and Sohan Singh [1st Defendant] was his wife's lawyer. Further, he told Court that 1st Defendant, Sohan Singh advised them that he will look after the said property and they trusted that he will return the said property to them once the property case was over.
- [46] He told Court further, that his wife and him would not have agreed to transfer the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 to the 1st Defendant, Sohan Singh if they knew in 1990 that he will not return the said property to them.
- [47] However, the Plaintiff stated that they were betrayed of his trust by the 1st Defendant, Sohan Singh when he failed to return the said property to his wife.
- [48] It will be noted that the transfer documents were signed by the Plaintiff, Mehtaab Bano, and 1st Defendant, Sohan Singh and witnessed by a Senior Lawyer, Subhash Parshotam on 20th April 1990.
- [49] According to the evidence of the Plaintiff, Kissun Deo, when asked in cross examination by the First Defence Counsel, he told court that his wife used to read the Fiji Times and understood the transfer documents and the signature on the document belonged to his wife Mehtaab Bano. When he was questioned further that his wife was angry? His reply was 'why should the wife be angry and sign under pressure? Wife did not complain to Subhash Parshotam and signed the transfer document on her own free will, no force.' Subhash Parshotam explained the document to my wife. I think my wife told Subhash Parshotam about safe keeping of the property.'
- [50] However, the Plaintiff Lodged a Caveat on the said property seven (7) years later on 21st February 1997 forbidding the Registration transfer other instrument affecting the said land absolutely, until this Caveat is removed, withdrawn by her or by order of the Court until same

removed under *Section 110 (1) of Land Transfer Act*.

- [51] The Question that comes to mind is why did the Plaintiff, Mehtaab Bano lodged the Caveat 7 years later after signing the transfer documents of the said property to the 1st Defendant Sohan Singh?
- [52] Was it an afterthought by Mehtaab Bano that she did this for the reasons best known to her?
- [53] The transfer of the property to Sohan Singh [1st Defendant] was signed onto the Certificate of Title on 26th April 1990 whereas the Caveat was registered on to the Title 7 year later on 19th March 1997. The purpose of the Caveat thus registered some 7 years after was defeated.
- [54] The allegation by the Plaintiff that the 1st Defendant, Sohan Singh acted in collusion with the 2nd and 3rd Defendants and fraudulently transferred the property to the 2nd Defendant, Deo Prakash Singh in consideration sum of \$20,000 has not been established and proved by the Plaintiff in terms of the evidence before this court, since the 3rd Defendant, The Registrar of Titles in its Statement of Defence had stated that the withdrawal of the Caveat No. 421416 and Transfer of the said property was endorsed onto the Certificate of Title in error and that the same has now been rectified and Transfer No. 781113 has been accordingly cancelled.
- [55] The allegation of undue influence by the 1st Defendant, Sohan Singh as was raised by the Plaintiff in his Statement of Claim has not been established and/or proved by the Plaintiff in terms of the evidence given before this Court. Kissun Deo the husband of Mehtaab Bano, in his evidence confirmed to the Court that Mehtaab Bano signed the Transfer Document on her own free will and not forced into signing in the presence of Subhash Parshotam, Sohan Singh and him.
- [56] The Plaintiff Kissun Deo whilst giving evidence told Court in Cross Examination that the 1st Defendant, Sohan Singh advised the Plaintiff that the said property will be transferred back to the Plaintiff upon the disposition of the pending High Court Civil Case HBC No. 21 of 1988.
- [57] However, I find there is insufficiency of evidence and that these fact have not been either established in Court and/or proved in evidence.
- [58] No doubt the said property changed hands from the 1st Defendant, Sohan Singh to the 2nd Defendant Deo Prakash Singh.
- [59] However, the Registrar of Titles in its Statement of Defence has explained that the Transfer Registration No. 781113 was endorsed on the Certificate of Title in error on their part and that the same was cancelled and rectified accordingly.
- [60] Prima Facie, upon perusal of the transfer documents [Exhibit P2], it establishes that Mehtaab Bano had transferred the property on the Certificate of Title No. 6825 being Lots 1 & 3 on

Deposited Plan No. 1366 to the 1st Defendant Sohan Singh for love and affection in the consideration sum of \$10.00.

[61] I have taken into consideration the following in order to arrive at my determination of the matters in terms of the issue "whether this Court can set aside the Transfer dated 20th April 1990 from the Plaintiff Mehtaab Bano to the 1st Defendant Sohan Singh together with the other issues as enumerated at paragraph 23 [i] - [iv] of my Judgement hereinabove.

- (1) *The Evidence of the Plaintiff, Kissun Deo*
- (2) *The affidavit Evidence of the Plaintiff, Mehtaab Bano [Deceased]*
- (3) *The Pleadings filed herein by parties to the proceedings.*
- (4) *The Exhibits tendered into evidence; and*
- (5) *The written and oral Submissions furnished to Court.*

[62] I find that there is insufficiency of evidence to establish the Plaintiff's allegation as to the issue that the 1st Defendant Sohan Singh influenced, induced and advised the Plaintiff to transfer Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 to his name for the Plaintiff's protection of the interest and entitlement and the same Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 will be transferred back to the Plaintiff after the disposition and determination of the Civil Action HBC No 21 of 1988.

[63] If the transfer in fact as alleged by the Plaintiff was to take effect as pleaded herein, then the Plaintiff, Mehtaab Bano and the 1st Defendant Sohan Singh should have also entered into an agreement as well and/or entered into a Sale and Purchase Agreement accordingly. The Agreement definitely would have clearly spelt out what would happen to the Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 after the determination and disposition of Civil Action HBC No. 21 of 1988.

[64] However, I do note that the transfer was signed by the Plaintiff Mehtaab Bano to be transferred to the 1st Defendant Sohan Singh in the consideration sum of \$10 for love and affection.

[65] The transfer document [Exhibit P2] was signed by the Plaintiff Mehtaab Bano to the 1st Defendant Sohan Singh, and further witnessed by a Senior Counsel, Mr Subhash Parshotam.

[66] According to Kissun Deo's evidence, he told and confirmed to this court that the transfer Document was signed in the 1st Defendant's office at Cumming Street in Suva, in his presence, together with his wife Mehtaab Bano, Sohan Singh and Subhash Parshotam accordingly. The

witness Kissun Deo further confirmed that Subhash Parshotam spoke to his wife Mehtaab Bano before endorsing his signature on the Transfer Document. What Subhash Parshotam spoke about to Mehtaab Bano was not ascertained by any of the Counsels from the witness Kissun Deo at the hearing.

- [67] Therefore, with above in mind it can thus be ascertained clearly that the Plaintiff was spoken to by the Lawyer Subhash Parshotam who had in fact explained the Transfer Documents before having the signatures endorsed on the Transfer Document.
- [68] The Plaintiff failed to Subpoena and/or call the witnessing officer to the transfer Document, Mr Subhash Parshotam to give evidence in Court as to what transpired on the day in Question when the transfer Document was being witnessed by him.
- [69] His evidence would have definitely established the fact whether the Plaintiff Mehtaab Bano was induced, influenced and advised by the 1st Defendant Sohan Singh to transfer the said Certificate of title to the 1st Defendant's name for safekeeping and protection and would be transferred back to the Plaintiff once Civil Action no. 21 of 1988 was determined by Court.
- [70] Mr Subhash Parshotam in his capacity as a witness to the Transfer Document may have given Independent advice to the Plaintiff Mehtaab Bano before she endorsed and /or signed the transfer.
- [71] The dispute as to whether an independent advice and/or Counsel was sought by Mehtaab Bano could have been ascertained, confirmed and substantiated by Mr Subhash Parshotam if he was subpoenaed and called into court to give evidence in the matter.
- [72] Kissun Deo in his evidence told Court that Subhash Parshotam explained the transfer document to Mehtaab Bano. However, in Re-Examination the witness told the Court that Sohan Singh did not give an opportunity to him to call any other lawyer for advice.
- [73] It was for the Plaintiff/Counsel to Establish and prove his case in terms of evidence on the Balance of Probabilities to the Court. Further, the reason as to why the Plaintiff and /or Counsel failed and opted not to subpoena and/or call Mr Subhash Parshotam to give evidence into Court as to what transpired on the day of the signing of the transfer documents. Mr Subhash Parshotam would have appeared to be the best witness since he was physically present and carried out his duties in his capacity as a very senior counsel at the Bar Table witnessing the Transfer Document. What better evidence did the Plaintiff and/or the Counsel representing desired?
- [74] If Mr Subhash Parshotam was subpoenaed by the Plaintiff then definitely he would have cleared the doubt and the allegations raised herein whether :-

Any Independent legal advice was sought and given to Mehtaab Bano or not?

- ii. *Whether she signed the Transfer Documents on her own free will without any inducement and/or undue influence to transfer her property to the 1st Defendant Sohan Singh?*
- iii. *Whether the property was for safe keeping and protection and would be returned to Mehtaab Bano upon disposition of Civil Action No 21 of 1988 by Sohan Singh?*

[75] I reiterate that there is insufficiency of evidence before this court and on the balance of probability the Plaintiff's case fails.

[76] In the circumstances, the Transfer of the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposited Plan No. 1366 dated 20th April 1990 from the Plaintiff Mehtaab Bano to the First Defendant, Sohan Singh cannot be set aside as sought for by the Plaintiff herein for the rational hereinabove.

[77] Caveat No. 421416 placed on the said Certificate of Title with the Registrar of Titles in the like is removed and accordingly Dismissed.

In Conclusion.

[78] I find that the Plaintiff has failed to establish and prove on Balance of Probabilities that Mehtaab Bano was fraudulently induced to transfer the property comprised in Certificate of Title No. 6825 being Lots 1 & 3 on Deposit Plan No. 1366 to the 1st Defendant Sohan Singh by his undue influence and that the Transfer of the said property is null and void. Therefore, this allegation fails and is dismissed accordingly.

[79] The Transfer of the property from the 1st Defendant, Sohan Singh to the 2nd Defendant being Transfer No. 781113 is neither illegal nor null and void and cannot be set aside since the withdrawal of the said Transfer of the property was endorsed in error by the 3rd Defendant, Registrar of Titles and that the same has now been rectified and reverted to Sohan Singh and the parties have been accordingly informed by the 3rd Defendant, The Registrar of Titles.

[80] The transfer of the said property was legally transferred to the 1st Defendant, Sohan Singh by way of love and affection given that the 1st Defendant was the Solicitor for the Plaintiff in Case no. HBC 21 of 1988.

[81] I find that the transfer documents was read and explained to the Plaintiff Mehtaab Bano by the witnessing officer and lawyer Mr Subhash Parshotam before the Plaintiff actually endorsed her signature on the transfer document.

[82] This Court also finds that there is no concrete evidence that the 1st Defendant, Sohan Singh advise the Plaintiff, Mehtaab Bano that the said property will be transferred back to the Plaintiff once the pending court case HBC No. 21 of 1988 was determined and disposed by this Court.

[83] Finally, there is no concrete evidence also before Court to establish the allegation of collusion by the 1st Defendant that he had acted in collusion with the 2nd and 3rd Defendants and fraudulently registered the transfer of the said property from the said Defendant, Sohan Singh to the 2nd Defendant, Deo Prakash Singh accordingly.

[84] The Plaintiff is not entitled to any damages as set for in his Statement of Claim in the circumstances accordingly.

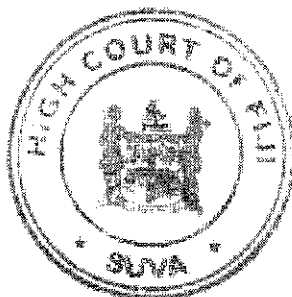
[85] That Caveat No. 421416 is reinstated and valid and Transfer no. 781113 has been accordingly cancelled.

[86] The Certificate of Title No 6825 being Lots 1 & 3 on Deposit Plan No. 1366 is currently endorsed in the name of the 1st Defendant, Sohan Singh as the proprietor accordingly.

ORDERS

- i. The Plaintiff's Writ of Summons Coupled with the Statement of Claim filed on 09th March 2015 is in its entirety Dismissed.
- ii. Caveat No. 421416 in the like is removed and Dismissed.
- iii. There will be no order for costs granted at the discretion of this court.

Dated at Suva this 12th day of May 2023.



VISHWA DATT SHARMA
JUDGE.

Cc. Shelyin Singh Lawyers, Suva
Redwood Law, Suva.