

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 156 of 2020

Manormani aka Manor Mani
Plaintiff

v

Ami Chand
Defendant

Counsel: Ms A. Sharma for the plaintiff

Mr R. Nand for the defendant

Date of hearing: 7th April,2022

Date of Judgment: 13th February,2023

Judgment

1. The plaintiff, in her originating summons filed on 1st June,2020, seeks declarations that: she is a beneficiary and has an interest in the Sale and Purchase Agreement,(SPA) entered into between the defendant and Vishal Lakshmi,(Vishal); and, the defendant is bound by the sale price. She also seeks an order that the defendant issues a new tittle to her and costs.

2. The supporting affidavit states that on 24th July,2007, her Aunt, Vishal had entered into the SPA with the defendant to purchase Lot 4 NS 119, Tokotoko Indian Subdivision, Navua,(the land) for \$10,000.00. She paid \$5,000.00. The balance was to be paid on issue of title to the plaintiff. Vishal died on 9th February,2009. There is no record of her Will registered at the High Court. The plaintiff states that she has built a house and lived on the land since 2008. She is willing to pay \$5,000.00. The defendant has not performed his obligation under the SPA and instead issued notices to her stipulating a higher price than that agreed and partly paid.
3. The defendant, in his affidavit in response states that he is the registered proprietor of State Lease No. 856723 on DP 9560. The plaintiff was not a party to the SPA and does not have any capacity to make this application or representations on behalf of Vishal. No consent was obtained from the Director of Lands for the dealing. The defendant states that he never agreed to issue title to the plaintiff. The plaintiff never approached him for consent to build on the land and constructed a structure without consent from the Director of Lands. She has no building permit. Since Vishal breached the agreement, he instructed his solicitors to issue notice to the plaintiff to ask whether she would purchase the land at a revised consideration due to the lapse of thirteen years and taking into account the survey costs, ground rent and taxes. She did not respond. She does not have an equitable interest or beneficial interest in the land. He has to dispose the land at market value to recover his costs.
4. The plaintiff, in her affidavit in reply states that the SPA was made for her benefit. The defendant knew that Vishal purchased the land for her. She has equitable interest in the land.

The determination

5. On 24th July,2007, the defendant had entered into a SPA with Vishal to purchase the land for \$10,000.00. She paid \$5,000.00. The SPA provides further that she could proceed to work on the land and title would be issued in the plaintiff's name on payment of the balance and completion of the project. Vishal died on 9th February,2009.

6. The plaintiff claims that she is a beneficiary and has an interest in the SPA on the ground that she has been living in the land and the defendant recognized her interest by issuing notices to her.
7. The land in question is a State Lease granted to the defendant.
8. The defendant states that no consent was obtained from the Director of Lands for the dealing.
9. There is no evidence of any consent from the Director of Lands.
10. Section 13 (1) of the State Lands Act provides that any dealing with a State lease requires the consent of the Director of Lands.
11. In *Reddy v Kumar* [2012] FJCA 38; ABU0011.11 (8 June 2012) Chitrasiri JA said:

The above section of the Crown Lands Act, clearly stipulates that it is unlawful to alienate or deal with a land comprising a lease unless the written consent of the Director of Lands first had and obtained. It is further stated that any sale or transfer or other alienation or any dealing effected in respect of such land without the consent of the Director of Lands shall be null and void. Accordingly, a statutory bar is being imposed for the transactions or dealings affecting Government land or part thereof which is subjected to a protected lease unless and until the consent for such a transaction is obtained from the Director of Lands beforehand. Therefore, if any dealing in respect of a Government land is effected without the consent referred to above, such a transaction shall be considered ab intio void and has no effect or force in the eyes of the law.

12. The plaintiff contends that equity arises from the construction of her house on the land.
13. On that point, I would refer to the case of *Mani Lal and Others v Satya Nand*, (1994) 40 FLR 94 at pg 100 where Byrne J said:

I am satisfied that the Defendant must have known that no consent of the Director of Lands had been obtained to his occupation. Before taking possession of the land he was under a duty to make all relevant enquiries as to the Plaintiff's title and since the land in question obviously was not freehold in my judgment one of the first steps he should have taken was to enquire whether the Director of Lands had given his consent to the transaction. If the Defendant proceeded to erect a building on the land either knowing that the Director of Lands had not given his consent or oblivious to the lack of such consent he cannot hold this against the Plaintiff.

14. Gates J (as he then was) in *Indar Prasad and BidyaWati v Pusup Chand*, (2001) 1 FLR 164 stated:

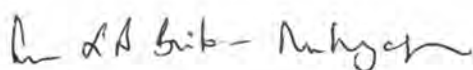
Section 13 of the State Lands Act would appear to be a complete bar to any equitable estoppel arising in the Defendant's favour.

15. In my judgment, the plaintiff cannot claim proprietary estoppel. She has no equitable or interest in the land as consent of the Director of Lands was not obtained.

16. The plaintiff's summons fails.

17. **Orders**

- a. The plaintiff's originating summons is declined.
- b. The plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 1500.



A.L.B. Brito-Mutunayagam

JUDGE

13th February, 2023

