

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 290 of 2022

IN THE MATTER of the Property Law Act
[Cap 130], Section 119.

AND

IN THE MATTER of an application for sale
and transfer of the property comprised in
Certificate of Title Nos. 34041, 34042 and
34043.

AND

IN THE MATTER of an application pursuant
to Order 31 of the High Court Rules.

BETWEEN: DIVESH ROHITENDRA NARAYAN and JASWIN LATA NARAYAN both
of 53 Milsop Street, Bexley, New South Wales, Australia.

PLAINTIFFS

AND : BASIST LAL and REENA LAL both of 17 Cummings Avenue, Pemulwuy, NSW
2145, Australia.

DEFENDANTS

BEFORE : Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Sharma D for the Plaintiff

No appearance of 1st and 2nd Defendants

DATE OF DECISION: 16th October, 2023 @ 9,30am

DECISION

*[Registrar of Titles to endorse names of Plaintiffs' as undivided half share
owners as Tenants in Common]*

Introduction

- (1) This Plaintiff filed an Originating Summons on 04th October 2022 seeking for the following relief:-
 - (a) An Order that the Registrar of Titles endorse names of the Plaintiffs as undivided half share owner as Tenants in Common on the following titles:
 - (i) Certificate of Title No. 34041 being Lot 1 on DP 7731.
 - (ii) Certificate of Title No. 34042 being Lot 2 on DP 7731
 - (iii) Certificate of Title No. 34043 being Lot 3 on DP 7731.
 - (b) That Leave be granted to the Plaintiff's to serve Originating Summons, Affidavit in Support, Acknowledgment of Service and all other documents filed in this matter on the Defendants via registered post on the following address:

17 Cummings Avenue, Pemulwuy, NSW 2145, Australia.
 - (c) That the costs of this action be paid by the Defendant on an indemnity basis.
 - (d) Such further or other relief as seems just and equitable to this Honourable Court
- (2) The Plaintiffs intends to rely upon the Affidavit of Divesh Rohitendra Narayan which sets out the background facts of the application in support of their application.
- (3) Subsequently, the Plaintiff's made an Ex-Parte application and sought for substitute service by means of Registered post.
- (4) This court granted leave to the Plaintiff's to serve the Originating Summons by way of Registered Post on 28th November 2022 and an affidavit of Service was filed into Court.

Determination

- (5) The parties had entered into a Terms of Settlement on 05th November 2019 and the orders were made into **Consent Order**.
- (6) Subject to clauses 3A and 3B and 3C below, the Defendants will transfer an undivided 50% share as tenants in common to the Plaintiffs in the three Certificate of Titles. i.e.

- (a) Certificates of Title No. 34041 being Lot 1 on DP 7751.
- (b) Certificates of Title No. 34042 being Lot 2 on DP 7751.
- (c) Certificates of Title No. 34043 being Lot 3 on DP 7751.

3A. All costs and taxes applicable for such transfer contemplated in (3) above shall be borne by the Plaintiffs, however each party shall bear their own legal costs for this process.

3B. The Plaintiffs shall also reimburse sufficient monies to the Defendants so as to pay their portions of the initial taxes and fees incurred by the Defendants at time of acquiring the property.

3C. The Plaintiffs shall immediately remove and/or withdraw any caveat(s) lodged upon any of the titles stated above.

- (7) According to the Plaintiff, the Defendants have subsequently failed to adhere to the aforesaid Court Orders and have still not transferred the undivided half share to the Plaintiffs. The Plaintiffs have written letters and tried to communicate with the Defendants numerous times but to no avail.

- (8) The Court by **Order 19** also allowed either party of the proceeding to **enforce the terms of settlement**:

Covenant not to sue

Order 19.

19. The parties covenant not to sue or make any claim against each other with respect to these Terms of Settlement save for claims directly arising from and only relating to the enforcement of the terms of these Terms of Settlement.

- (9) The Substantive Originating Summons was served onto the Defendants by Registered post on 28th November 2022 and an affidavit of Service filed into Court to show prove of service of the application effected onto the Defendants.
- (10) The Defendants to date have failed to file and serve any response to the substantive originating summons and/or appear and show cause for failing to comply with the orders already made by the court.
- (11) In absence of any Acknowledgment being filed by the Defendants, the Plaintiff is entitled to file a Summons to appoint a hearing date of the Application in terms of Order 28 rule 4 (1) [O.28 r.4 (1)] of High Court Rules 1988.
- (12) The application now before court seeks an order to **enforce the Consent Orders** herein.
- (13) The Registrar of Titles is empowered under **Section 168 of the Land Transfer Act** as follows:

Power of court to direct Registrar

168. In any proceedings respecting any land subject to the provisions of this Act, or any estate or interest therein, or in respect of any transaction relating thereto, or in respect of any instrument, memorial or other entry or endorsement affecting any such land, estate or interest, the court may by decree or order direct the Registrar to cancel, correct, substitute or issue any instrument of title or make any memorial or entry in the register or any endorsement or otherwise to do such acts as may be necessary to give effect to the judgment or decree or order of such court

- (14) Taking into consideration above coupled with the fact that the parties to the proceedings had entered into a **terms of settlement** on 05th November 2019 and accordingly subsequent **Consent Orders** made, it is only appropriate, just and fair that I now **grant the subsequent Orders sought by the Plaintiff** herein in their substantive originating summons as follows:

- (1) That the Registrar of Titles endorse names of the Plaintiffs as undivided half share owner as Tenants in Common on the following titles:
 - (i) Certificate of Title No. 34041 being Lot 1 on DP 7731.
 - (ii) Certificate of Title No. 34042 being Lot 2 on DP 7731
 - (iii) Certificate of Title No. 34043 being Lot 3 on DP 7731

Costs

- (15) Both Defendants were appropriately served by Registered Posts. None of the Defendants either appeared in Court and/ or filed Responses to the Plaintiff's substantive originating summons.
- (16) The application proceeded to hearing in absence of both the Defendants.
- (17) The Plaintiff filed its Written Submissions into the Court and argued the application grant of orders orally.
- (18) It is only fair, that the Plaintiff is entitled to costs, summarily assessed at \$1,500 to be paid by both Defendants within 21 days timeframe.

Orders

1. That the Registrar of Titles endorse names of the Plaintiffs as undivided half share owner as Tenants in Common on the following titles:
 - (i) Certificate of Title No. 34041 being Lot 1 on DP 7731.
 - (ii) Certificate of Title No. 34042 being Lot 2 on DP 7731
 - (iii) Certificate of Title No. 34043 being Lot 3 on DP 7731.
2. Both Defendants to pay summarily assessed costs of \$1,500 to the Plaintiff within 21 days timeframe.

Dated at Suva this 16th day of October, 2023.


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Vishwa Datt Sharma
JUDGE



CC: R. PATEL LAWYERS, SUVA