

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 133 of 2017

BETWEEN

FARIYAD ALI of Olosara, Sigatoka, Farmer.

PLAINTIFF

AND

HABIB ALI, MAYA WATI, SANJAY KUMAR and PARVEZ AKTAR all of

Saunaka, Nadi.

DEFENDANTS

Counsel

Mr. Maopa E. for the Plaintiff

Mr. Koya S. (Snr) & Mr. Koya S. (Jnr) for the Defendants

Dates of Hearing

16th & 17th October 2023

Date of Judgment

28th November 2023

JUDGMENT

[1] The plaintiff filed the originating summons pursuant to Order 113 of the High Court Rules 1988 which was continued as it was begun by a writ seeking the following orders:

1. An order that the defendants namely Maya Wati and Parvez give immediate vacant possession of the parcel of land they occupy describe in Certificate of Title No. 42427 Lot 1 DP No. 10818 having an area of 911 square meters in the District of Nadi within one month from the date of the order for vacant possession.
2. An order that the defendants namely Sanjay Kumar and Habib Ali give immediate vacant possession of the parcel of land they occupy describe in Certificate of Title No. 42430 Lot 1 DP No. 10818 having an area of 1000 square meters in the District of Nadi within one month from the date of the order for vacant possession.
3. An order for cost against the defendants on solicitor/client indemnity basis.
4. Any other orders the court deems just in all circumstances.

[2] Order 113 rule 1 of the High Court Rules 1988 provides:

Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

- [3] The 2nd named defendant in her evidence said that her correct name is Zabeen Ali and Maya Wati is her nickname.
- [4] The plaintiff testified that one of his family members told him that the subject land was for sale and he talked to Mahrul Nisha and bought it from her. The land described in Certificate of Title No. 40094 Lot 1 on DP No. 10130 land known as Waqadra (part of) having an area of 4009m², was originally owned by Saunaka Land Purchase Cooperative Society Limited and on 08th September 2010 by a partial transfer (P1) it was transferred to Mahrul Nisha on 30th July 2010 which was registered on 08th September 2010. Mahrul Nisha on 22nd August 2013 transferred the said land to the plaintiff for \$70,000.00 (P2).
- [5] After purchasing the land the plaintiff subdivided it into four allotments and obtained different Certificates of Tile and this action is in respect of Lots 1 and 4 on DP 10818. Certificates of Title No. 42427 and 42430 of Lots 1 and 4 were tendered in evidence marked as "P3" and "P4". The defendants are occupying Lots 1 and 4 and Lots 2 and 3 are vacant.
- [6] The Plaintiff had served notices on the defendants to vacate the property. The copies of notices to vacate were tendered in evidence marked as P5, P6, P7 and P8.
- [7] The 2nd named defendant in her evidence said she has been living on this property for the last 46 years. She tendered copies of some photographs (D1 D6) of her family and the house they live in. The fact that the 2nd named defendant was living on this land has not been denied by the plaintiff and that is the very reason why he instituted these proceedings to evict her and other occupants. She stated further that Mahrul Nisha attempted to evict them but the judgment was in their favour. From the judgment of the learned Master it is clear that the application for eviction had been dismissed on the ground that the defendants had an arguable case to remain in possession.

- [8] The 2nd named plaintiff in her evidence relied on a letter issued by the Saunaka Land Purchase Co-operative Society Limited issued on 19th April 2002. In the said letter it is stated that the 2nd named defendant was in occupation of the land and she was running a canteen to supplement income after the demise of her husband. Saunaka Land Purchase Co-operative Society Limited in that letter recommended that the 2nd named defendant should be given licence to operate the canteen.
- [9] The 2nd named plaintiff in her evidence referred to two letters (D9 & D10) and in the letter dated 12th May 2011 the Saunaka Land Purchase Co-operative Society Limited has advised the Director of Town and Country Planning not to act on any further applications for separate titles without first consulting them. In this letter Saunaka Land Purchase Co-operative Society Limited referring specially to Mehrul Nisha and Sakur Ali states that they and other member owed to the Co-operative Society unpaid town rates.
- [10] All these letters have been written after the partial transfer in the name of Mehrul Nisha was registered.
- [11] The 2nd named defendant testified further that the land was transferred by the Society to Mehrul Nisha and she did not give them authority to stay there.
- [12] The defendants called one Anil Kumar Nandan who was the former secretary of Saunaka Land Purchase Co-operative Society Limited. His evidence is that this society was formed to buy and hold lands for its members. Each member had one share of \$2,600.00. He testified further that the court held that the shareholders were entitled to their portions of land. In cross-examination he said when the partial transfer was done Mehrul Nisha was entitled to transfer her share.

[13] From the evidence it appears that the defendants have failed to show any ground to satisfy the court that they have a right to be in possession of these properties. The court accordingly makes the following orders.

ORDERS

1. The orders 1 and 2 sought in the Originating summons are granted.
2. The defendants are ordered to pay the plaintiff \$4,000.00 (\$1,000.00 each) as costs.


Lyone Seneviratne



JUDGE

28th November 2023