

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 122 of 2022

BETWEEN : MEERAMMA NAIDU aka PUSHA NAIDU of Waqadra Subdivision, Nadi.

PLAINTIFF

A N D : NAGAMMA NAIDU of 9912170 Avenue NW Edmonton, Alberta Canada.

FIRST DEFENDANT

A N D : BALRAM NAIDU of 25 Swaffield Road, Papatoetoe, Auckland and New Zealand.

SECOND DEFENDANT

Appearances : Mr. Arun for the Plaintiff
Mr. Dass for the Defendants

Date of Ruling : 01 May 2024

R U L I N G

1. The parties in this case are all close relatives.
2. At the heart of their dispute, is a piece of state land which is all comprised in State Lease No: 13892. This land is legally described as Lot 8 on SO 3991 known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba (“**Lot 8**”). Lot 8 has a total area of 811 square meters. It is currently registered in the name of Ms. Nagamma Naidu (“**Nagamma**”), the first defendant.
3. The plaintiff, Ms. Meeramma Naidu (“**Meeramma**”), is Nagamma’s biological daughter. The second Defendant (“**Balram**”) is Meeramma’s brother and Nagamma’s son.
4. On 29 April 2022, Meeramma filed a writ of summons and statement of claim.
5. The late Mr. Muni Rattan (“**Rattan**”) was Meeramma’s and Balram’s father, and husband of Nagamma. He died in 1993.

6. Rattan was a member of the Waqadra Estate Workers Resettlement Cooperative Society Ltd (“**Cooperative**”). The Cooperative was the registered lessee of a large piece of State Land in Waqadra.
7. Neither counsel bothered to refer to, let alone explain in their submissions, the Cooperative’s By-Laws. However, I deduce as follows from the material in the affidavits filed and from counsel’s submissions.
8. One of the main reasons why the Cooperative was formed was to acquire that large piece of state land in Waqadra. After acquiring the land, the Cooperative was expected to then survey it and formally subdivide it into many little plots. It would then allot each member a sublease over each plot upon certain terms and conditions. Included in these is the payment of some consideration.
9. After acquiring the land, the Cooperative took some years to formally subdivide the land and formally sublease the little plots to its members.
10. It appears that, during the period between acquiring the land and formally subdividing it, the Cooperative would allow its members to enter into occupation of their own respective un-surveyed plots.
11. This informal occupation was allowed for the members’ use and benefit pending subdivision. The intention was that formal subdivision would, later, be carried out as closely as possible along the pre-existing lines of *“occupation, use and benefit for the time being”*.
12. Rattan had invested in the Cooperative at some point well before the Cooperative formally subdivided the land. When he died in 1993, the Cooperative had not completed the subdivision. The Cooperative completed the subdivision in the year 2000.
13. At some point before his death in 1993, Rattan and his family (all the parties in this case) had emigrated to Canada. At some point, while Rattan was still alive, his daughter Meeramma returned to Fiji to settle in Waqadra on the piece of land in question.
14. It is not in dispute that Rattan had urged Meeramma to settle on the land. It is also common ground that Meeramma had settled on the land for many years before it became Lot 8 after formal subdivision in the year 2000.

15. It is also common ground that following subdivision, the Cooperative would allot and lease Lot 8 to Nagamma. Rattan had been deceased for several years at the time.
16. Meeramma did carry out some development work on the land before building a house on it. Rattan was still alive at the time this happened. I caution myself that the question as to which parties actually paid for these developments and improvement on the property may be a triable issue.
17. Mr. Dass asserts that all works in developing the land and building on it was financed from Canada by Rattan, Nagamma and Balram. Mr. Arun says that Meeramma did all these by herself.
18. The house is said to be now worth over \$500,000 according to a valuation attached to Meeramma's affidavit.
19. Meeramma appears to assert an equitable claim on the property based on:
 - (i) the promise allegedly made to her by her father, Rattan, and
 - (ii) relying on that promise, her having spent a considerable amount of money developing the land and building on it (including the payment of levies on the land and outgoings over the years).
20. Because Lot 8 now vests legally in Nagamma, the onus would be on Meeramma to prove her alleged equitable interest.
21. In paragraph 30 of her statement of claim, the Plaintiff seeks the following orders:
 - (i). *An order that the first Defendant transfers Crown Lease Number 13892 legally described as Lot 8 on SO 3991 on land known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba having a total area of 811m² (Eight Hundred Eleven Square Meters) via natural love and affection to the Plaintiff;*
 - (ii). *Alternatively, an order that the First Defendant transfers Crown Lease Number 13892 legally described as Lot 8 on SO 3991 on land known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba having a total area of 811m² (Eight Hundred Eleven Square Meters) for a consideration sum of \$15,000;*

- (iii). *An order that the Plaintiff, her family members, agents, servants, tenants, licensees, successors and assigns have uninterrupted access and occupation of the Property until final determination of this matter;*
- (iv). *An order restraining the First Defendant and Second Defendant from interfering with the Plaintiff's her family members, agents, servants, tenants, licensees, successors and assigns use and enjoyment in whatsoever manner of Crown Lease number 13892 legally described as Lot 8 on SO 3991 on land known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba having a total area of 811m² (Eight Hundred Eleven Square Meters).*
- (v). *General Damages.*
- (vi). *Punitive Damages.*
- (vii). *Costs on Solicitor/Client indemnity basis; and*
- (viii). *Such other relief as seems just to this Honorable Court.*

22. I do note that nowhere in the remedies pleaded does the word “constructive trust” appear.

23. A constructive trust is one in which a court determines that, although there was no written document to formally create a trust, the parties' conduct and actions demonstrated that a trust was intended, that is, an intent that the property would be transferred from the legal owner to another.

24. Where such a finding is made, it is open to the Court then to impose a constructive trust on a defendant. Constructive trust, thus, is imposed as an equitable remedy to prevent or to remedy an unjust result. To succeed, a plaintiff must establish (i) common intention and (ii) detrimental reliance (see **Kumar v Wati** [2017] FJCA 126; ABU0011.2014 (14 September 2017)).

25. On 21 April 2022, a week or so before she filed her writ of summons and statement of claim, Meeramma had obtained an *ex parte* injunction to restrain Nagamma from charging or encumbering or damaging or from alienating the property or from interfering with the Meeramma's peaceful enjoyment of the land until the final determination of this case.

26. On 08 September 2022, the following consent orders were entered pursuant to a Notice of Motion filed by Meeramma on 17 June 2022:

1. That the First and/or Second Defendants shall deposit forthwith all rentals received from June 2021 to date and all future rentals derived from the property comprised in Crown Lease Number 13892 legally described as Lot 8 on SO 3991 on land known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba having a total area of 811m² into the Parshotam Lawyers Trust Account;
2. That an injunction shall be placed on the account limiting the use of the money except for payments for land rent and town rates of the property;
3. That the First and Second Defendants, their servants and/or agents and/or assigns use of the front flat currently occupied by Arsha Akansha Devi and common areas of the property is limited to residential use only;
4. That the First and Second Defendants, their servants and/or agents and/or assigns are to apply forthwith for separate utility meters (Energy Fiji Limited and Water Authority of Fiji) for the Flat occupied by Arsha Akansha Devi;
5. That the Plaintiff shall pay for the cost of the application for the utility meters – if the parties are cannot agree to share the costs;
6. That there shall be no orders as to cost of this application.
7. That the Defendants shall file and serve the Reply to Defence to counter claim within 21 days; and
8. That the matter is adjourned to 29th September 2022 for mention at 10.30am to check on pleadings and make directions on summons for directions if need be.

27. Meanwhile, this case has progressed rather quickly. The pleadings have closed and, a set of pre-trial conference minutes duly executed by both parties was filed on 04 October 2023. The parties have also both filed their affidavit verifying list of documents. The only thing left to be filed is the copy pleadings, followed by the Order 34 Summons to Enter the Action for Trial.

28. However, on 07 July 2023 the defendants filed a Notice of Motion seeking the following orders:

1. *Interim injunctive orders granted Ex-Parte on the 21st day of April, 2022 be dissolved as follows:*
 - a) *That the Interim order in terms of Ex-Parte Notice of Motion granted on the condition that the Plaintiff shall deposit the sum of \$65,000.00 (Sixty Five Thousand Canadian Dollars) into the Trust Account of Millbrook Hills Law Partners be dissolved forthwith.*
 - b) *That the interim injunction granted restraining the first Defendant, her servants and/or agents from charging or encumbering or damaging the property comprised in Crown Lease Number 13892 legally described as Lot 8 on SO 3991 on land known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba having a total area of 811m² until the final determination of the proceedings be dissolved forthwith.*
 - c) *That the restraining order granted against the first Defendant, her servants and/or agents from any way proceeding with any act or process whereby they alienate the property to any third party until the final determination of the proceedings be dissolved forthwith.*
 - d) *That the injunction granted against the first and second Defendant, their agents and/or agents restraining them from interfering with the Plaintiff, her assigns,*

servants and/or agents from peaceful enjoyment, benefit and access to the property any way or form until final determination of the proceedings be dissolved forthwith.

2. *That consent orders granted on the 8th day of September, 2022 be dissolved and set aside forthwith.*

3. *That the Defendants seek further orders as follows:*

- a) *That Caveat Number 907087 registered on Crown Lease Number 13892 legally described as Lot 8 on SO 3991 on land known as Waqadra (Pt of) in the District of Nadi, in the Province of Ba having a total area of 811m² be removed forthwith.*
- b) *That any further restraining order or orders imposed against the Defendants be dissolved forthwith.*

4. *Costs on solicitor client indemnity basis.*

29. That Motion is supported by an affidavit of Bal Ram Naidu sworn on 04 July, 2023. The Plaintiff has filed an Affidavit of Kailash Munendra Naidu sworn on 01 September 2023 in opposition. An Affidavit in Reply of Bal Ram Naidu sworn on 06 October 2023, was filed on 17 October 2023.

30. The main question in this application is whether or not the injunctive orders granted on 21 April 2023 and 08 September 2023 ought to be dissolved forthwith.

31. Mr. Arun argues that, in this case, the injunction was obtained by consent. The party seeking to set aside an injunctive order obtained by consent must comply with the law and procedure for setting aside consent orders, namely:

- (i). that the Applicant must file a fresh action to set aside the orders.
- (ii). that the Applicant must establish in that fresh action a valid ground to set aside the consent injunction (i.e. either mistake, duress, undue influence, misrepresentation, fraud, or illegality).

32. While this argument may apply only to the 08 September Orders, they do not apply to the 21 April Orders.

33. Mr. Dass argues that the injunctive orders in question ought to be set aside because Meeramma's claim is founded on a dealing or an arrangement which was not consented to by the Director of Lands. Meeramma's interest stems from a promise by Rattan that she would be given the land if she went and occupied it. The promise amounted to a pledge which is forbidden by section 13 if made without the prior consent of the Director of Lands. The land

in question is all comprised in a protected State Lease. Section 13 of the State Lands Act provides:

- (1) Whenever in any lease under this Act there has been inserted the following clause:-

"This lease is a protected lease under the provisions of the Crown Lands Act"

(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.

(2)

(3)

(4)

- (5) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee.

34. Mr. Arun responds that this case is distinguishable and that the principle which Mr. Dass relies on do not apply in this case. The remedy sought in the statement of claim that Nagamma be directed to transfer the property back to Meeramma on natural love and affection appears to be premised on the "family arrangement" which Meeramma had with Rattan. The alternative remedy sought in seeking the transfer of the property from Nagamma to Meeramma for the consideration of \$15,000 appears to be premised on the assertion that Lot 8 in any event ought to have been allotted by the Cooperative to Meeramma.

35. I agree with the position that - where a person has expended money on land in the expectation, induced and encouraged by the owner, that he would acquire some interest in the land, an equity may be created. I also acknowledge that there is a clear body of case law supporting the position that equity may not arise to defeat the requirement for compliance with statutory regulatory consents before any dealing in land may be entered into.

36. However, this case is, arguably - rather peculiar and distinguishable - given the history of how ownership had vested in the Cooperative and how Meeramma came to be in possession and occupation before a formal leasehold was created in favour of Nagamma.

37. The pleaded “family arrangement” between Meeramma and Rattan happened when the Cooperative was still the owner of the undivided Waqadra land. When that arrangement happened, the Cooperative had started to allow informal settlement on the land.
38. Considering that Rattan had passed on at the time, it is arguable that when subdivision occurred, there was every expectation that the Cooperative would allot Lot 8 to Meeramma based on occupation lines.
39. Instead, the Cooperative allotted Lot 8 to Nagamma personally and not even in her capacity as administratrix of Rattan’s estate. In other words, the case does not involve a dealing in land between Rattan and Meeramma. The case involves the question – to whom should the Cooperative have allotted Lot 8?
40. Flowing from the above, although not clearly stated in the pleadings, the claim also alludes to an arguable claim based on a priorities dispute, that is, whether Nagamma took the legal interest in Lot 8 subsequent and subject to, and with notice of, Meeramma’s prior equitable claim. If she did, then a declaration should follow that Nagamma is actually holding Lot 8 on constructive trust for Meeramma. Arguably, this circumvents the requirement of consent under section 13 of the State Lands Act.
41. An interesting case indeed. Both counsel should have thrashed out the full background regarding the Cooperative’s arrangement with its members.
42. I dismiss the application to dissolve the injunctions. The injunctions are continue until further orders.
43. This case is ready for trial. I would suggest that, before filing the Order 34 Summons, both counsel, especially the plaintiff, revisit their respective pleadings. The uncontroverted facts appear to be able to support a lot more causes of action than those that are already pleaded. Parties to bear their own costs.



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Anare Tuilevuka
JUDGE

01 May 2024