

**IN THE HIGH COURT AT SUVA**  
**CENTRAL DIVISION**  
**CIVIL JURISDICTION**

**HBC 237 of 2022**

**Between:** **Richard Lal aka Richard Satit Lal**

**APPLICANTS**

**And:** **Balmik Lal, Estate of Bind Mati aka Bindra Mati, Estate of Raj Pati**

**RESPONDENTS**

**Date of Hearing : 20<sup>th</sup> November 2023**  
**For the Plaintiff : Mr Nand R.**  
**For the 1<sup>st</sup> and 2<sup>nd</sup> Defendant: Mr Ram and Ms Pratap**  
**Date of Decision : 18<sup>th</sup> January 2024**  
**Before : Levaci, SLTTW Acting Puisne Judge**

**JUDGEMENT**

**(APPLICATION BY ORIGINATING SUMMONS SEEKING ORDERS DIRECTING REGISTRAR OF TITLES TO ISSUE NEW CERTIFICATE OF TITLE)**

**PART A - BACKGROUND**

1. The Plaintiffs filed an amended Originating Summons seeking the following orders:
  - 1) The An Order to direct the Registrar of Titles to issue a new Certificate of Title for Lot 1 on Deposited Plan No. 10723 to the Plaintiff;
  - 2) An Order to dispense with the written consent of the proprietors namely **BALMIKI LAL, ESTATE OF BIND MATI aka BINDRA MATI, ESTATE OF RAJ PATI** the First Defendants herein; for the issuance of New Certificate of Title for Lot 1 Deposited Plan No 10723;

- 3) An Order that the Registrar of Titles process the Request for new Certificate of title submitted by the Plaintiff's Solicitor on 27 August 2020;
- 4) An Order that the Registrar of Titles issue the new Certificate of Title over Lot 1 Deposited Plan No 10723 containing an area of 11,834 square meters in the name of the Plaintiff on the basis that the Deposited Plan on Lot 1 has already been registered by the Registrar of Titles Office on 8 June 2016;
- 5) An Order directing the Registrar of Titles pursuant to section 168 of the Land Transfer Act to give effect to the Orders made herein;
- 6) Such orders as the Court deems just and equitable and deems fit and proper to regularize the issuance of a new Certificate of title over Lot 1 Deposited Plan No. 10723 containing an area of 11, 834 square meters in the name of the Plaintiff.
- 7) That the earlier Will executed on 31<sup>st</sup> July 2018 be revoked and of no legal effect.
- 8) Any further order or relief which this Court considers fair and just in the circumstances.

## **PART B: AFFIDAVITS**

2. In Affidavit in Support, the Plaintiff deposed as follows –

“3. THAT in the year 1949 the property comprised in Certificate of Title No 7468 was owned by the late Ramdas.

4. THAT this same Certificate of Title No 7468 which was owned by Ramdas was transferred to the following people: -

- (a) My father Indar Jit and
- (b) My paternal uncles namely Kisun Lal, Devi Lal, Moti Lal, Dip Lal an Ajit Lal sometimes in 1949 as to One undivided Sixth Shares who all are named as 1<sup>st</sup> Defendants therein.
- (c) Exhibited hereto and marked as Exhibit B is a certified true Copy of Certificate of Title No 7468 which was obtained from Titles office by the Plaintiffs Solicitor.

5. THAT the Plaintiff had engaged PRO SERVICE and DEVELOPMENT CONSULTANTS to carry out the survey of the subject property at his own cost.

6. THAT on completion of the survey the Deposited Plan was lodged and accepted by the Registrar of Titles. The same Deposited Plan was registered with the Registrar of Title Office and endorsed with Deposited Plan Number.

7. Exhibited and marked as Exhibit C is a certified true copy of Deposited Plan No. 1

All of them stay overseas.

8. THAT the entire Conveyancing transaction was handled by then plaintiff's solicitors namely GP Lala and Associates.

16. THAT I came to know that the New Certificate of Title was never lodged with the Registrar of Titles Office and then I appointed my present law firm Oxford Chambers to complete this long pending conveyance transaction which has already undergone two law firms receivership.

18. THAT my Solicitor then decided to do a background check with Registrar of Titles Office and was notified verbally that the Registrar of Titles will require all the written consents from the 1<sup>st</sup> Defendants herein in order to issue new Certificate of title and the Office requested for all particulars from the Plaintiff."

3. The Third Respondent filed an Affidavit as follows:

"6. In response to paragraph 4 of the Plaintiffs Affidavit, I state as follows-

- (a) I agree with the contents of paragraphs 4 (a) and 4(b) of the Plaintiff's Affidavit; and
- (b) The contents of paragraph 4
- (c) of the Plaintiffs Affidavit is duly noted.

8. I agree with the contents of paragraph 6 of the Plaintiffs affidavit and further state that the Registrar of Titles registered the Deposited Plan No. 10723 of 9 June 2016.

11. I deny paragraph 9 of the Plaintiffs Affidavit and state that the Plaintiff will only become the registered proprietor of Lot 1 on Deposited Plan No 10723 upon issuance of a new Certificate of title. I further state that the Plaintiff's application for a new Certificate of Title was lodged on 27 August 2020 was returned for corrections by the Registrar of Titles on the basis that the said application was not executed by all registered proprietors of the property in Certificate of Title No 7468.

18. In response to paragraph 23 of the Plaintiff's affidavit, I state that the Registrar of Titles was not provided with the written consents of all the registered proprietors at the time of the Deposited Plan was lodged and registered. I further reiterate paragraph 11 above.

19. I agree with paragraph 24 of the Plaintiff's affidavit and further state that the transfer of Dip Lal's one undivided sixth share in the property described in Certificate of Title

No 7468 to Kishori Lal, Nand Lal, Brij Lal and Govind Lal was registered on 21 April 1997 via dealing number 422722.

21. In response to paragraphs 26 and 27 of the Plaintiffs affidavit, I state as follows –

- (a) I agree that Devi Lal's one undivided sixth share in the property described in Certificate of Title No. 7468 was transferred to Davendra Lal and further state that the said transfer was registered on 3 April 2018 via dealing number 860032; and
- (b) I note the contents of the consent letter dated 7 May 2022 annexed in the Plaintiffs affidavit as Exhibit K;

26. Save as to admit that Moti Lal's one undivided sixth share in the property described in Certificate of title No 7468 was transferred to Rajpati, Bindmati and Balmiki Lal, I am not aware of the rest of the contents of paragraph 35 of the Plaintiff's affidavit and therefore make no comments as to the same.

27. Save as to admit that the Plaintiff's one undivided sixth share in the property described in Certificate of title No. 7468, I am not aware of the rest of the contents of paragraph 36 of the Plaintiff's affidavit and therefore make no comments on the same.

30. In response to paragraphs 43, 43 and 44 of the Plaintiffs affidavit, I state that the Registrar of Titles refused to process the Plaintiff's application for a new Certificate of Title for Lot 1 on Deposited Plan No. 10723 as the application had not been executed by all registered proprietors and or their estates (if deceased).

31. I agree with the contents of paragraphs 45, 46 and 47 of the Plaintiff's affidavit and reiterate paragraph 11 above. I further state that the Registrar of Titles requires consents of all the registered proprietors of the property for any application for a new certificate of title following subdivision of the property and registration of a new Deposited Plan."

#### **PART C: SUBMISSIONS BY THE PARTIES**

- 4. Plaintiff confirmed all First Defendants did not appear nor filed their responses by affidavit although substituted service was conducted. The property has 1/6<sup>th</sup> interest in CT 871103. The plant was approved and registered with the Registrar of Title. The 1<sup>st</sup> Defendants executors and administrators are not found and whereabouts untraceable. They have agreed. The land was surveyed and costs paid by Plaintiff solely.
- 5. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submitted that the land was transferred to 6 sons which was subdivided by the Plaintiff. After subdivision he seeks a new Certificate of Title for his

portion of the land. The Registrar of Title can only subdivide on consent of all the registered proprietors to avoid contention. Section 14 and 13 of the Land Transfer Act deals with powers of the Registrar of title to divide certificate and issue a new Certificate of Title. Plaintiff failed to obtain consent for other properties – 3 owners left to give their consent.

#### **PART D: LAW ON ISSUANCE OF CERTIFICATE OF TITLE**

6. Under section 13 of the Land Transfer Act provides –

##### *Power to divide certificates*

**13.** Upon the application in writing of the proprietor of any land the subject of a grant or certificate of title and upon such proprietor delivering up the duplicate of such grant or certificate, the Registrar may in accordance with the application issue in place thereof, either-

(a) separate certificates of title in favour of such proprietor for each portion of such land, and upon the issue of such new certificate shall-

(i) endorse on each such certificate all memorials to which the land included therein may, at that time, be subject; and

(ii) cancel the previous grant or certificate endorsing thereon a memorandum of the reasons for such cancellation and a reference to the new certificate of title issued in place thereof; or

(b) a separate certificate of title in favour of such proprietor for any portion of such land, and upon the issue of such new certificate shall-

(i) endorse thereon all memorials to which the land included therein may, at that time, be subject;

(ii) endorse on the certificate of title relating to the land from which such part is taken, a memorandum partially cancelling such grant or certificate; and

(iii) either retain the duplicate of such partially cancelled grant or certificate or return the same to the proprietor, and shall when so required by the proprietor of the land the subject of such partially cancelled grant or certificate, issue a new certificate of title in favour of such proprietor for the balance of the land the subject of such partially cancelled grant or certificate, and complete the cancellation of such partially cancelled grant or certificate endorsing thereon a memorandum of the reasons for such cancellation and a reference to the new certificate of title issued in place thereof.”

7. Section 34 deals with co-ownership under the Land Transfer Act and states –

### “Co-ownership

34.-(1) Subject to the provisions of any law for the time being in force relating to trusts and to the provisions of Part XV, unless the contrary intention is expressed in the instrument of title, where two or more persons are registered as proprietors of any estate or interest in land subject to the provisions of this Act, they shall be deemed to be entitled to the same as tenants in common, and on the death of any one of such proprietors there shall be no right of survivorship in the other or others and the share of such deceased proprietor shall pass to his personal representative.

(2) Where two or more person are entitled as tenants in common to any estate or interest in land subject to the provisions of this Act, they shall unless the contrary intention is expressed in the instrument of title, be deemed to hold the same in undivided equal shares.”

8. I am also mindful of the Courts powers under section 168 of the Land Transfer Act which stipulates:

#### **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.”

9. In Lanyon -v- Lanyon [2023] FJHC 475; HPP 99.2021(20 July 2023) Liyanage J referred to the following case and determining that section 168 applies only where there is an order or judgment to be given effect to. He stated as follows-

“[13] In Sharma v Prasad [2020] HBC 47 of 2019 Hon. Justice Amaratunga discussed the scope of section 168. It was held that “the scope of Section 168 of Land Transfer Act 1971 is wide and it allows a court to make any ancillary orders to give effect to a judgment or orders of the court...So when there is pending proceeding or concluded proceeding where additional orders are needed to give directions to Registrar Section 168 of Land Transfer Act 1971 can be invoked. This provision is meant to give effect to judgment or orders as human ingenuity

can take various forms in order to delay or frustrate fruits of a judgment.

[14] Section 168 of the Land Transfer Act comes under Part 24 of the Act where the heading states 'Special Jurisdiction of the High Court'. It does not appear as general jurisdiction entrusted upon courts by the legislature. The main prerequisite for the Court to consider whether to issue a directive order to the Registrar of Titles, is that there must be a prior judgment, decree or an order by the Court. The purpose of such directive would be to give effect to the said judgment, decree or the order."

10. In Sharma -v- Prasad (Supra) the judgment of the Court had been issued for specific performance of CT 6739. On the basis of this judgment did the Applicant seek for orders under section 168 of the Land Transfer Act as there was no compliance. Amratunga J stated –

"So the present application was filed by way of originating summons in terms of Section 168 of Land Transfer Act 1971 for removal of caveat. It should be noted that Section 168 can be invoked in order to obtain directions to third Defendant in order to give effect to judgment. This is what this originating summons seeks from court.

The scope of Section 168 of Land Transfer Act 1971 is wide and it allows a court to make any ancillary orders to give effect to a judgment or orders of the court. There is no dispute that this court had already made judgment against registered proprietor of the Property in issue for transfer of Property in issue. These orders were quoted previously. In order to transfer the Property in issue removal of caveat is essential. So removal of caveats lodged by Defendant is necessary to give effect to the judgment and or orders made by this court previously.

So when there is pending proceeding or concluded proceeding where additional orders are needed to give directions to Registrar Section 168 of Land Transfer Act 1971 can be invoked. This provision is meant to give effect to judgment or orders as human ingenuity can take various forms in order to delay or frustrate fruits of a judgment.

Since there is impediment to execute said judgment and orders due to lodgment of caveat by Defendants on 21.5.2018 again Section 168 of Land Transfer Act 1971 is used. This can be made in the same proceedings or in a separate proceeding as all the Defendants in this proceedings were not parties to previous action HBC 276 of 2007."

## **PART E: ANALYSIS**

11. The Applicant seeks for the issuance of a new certificate of title for the 1/6<sup>th</sup> share for Lot 1 on DP 10723. The owner Ramlu had divided the shares to the property equally between his 6 sons.
12. The Applicant has obtained consent from majority of the Executors and Trustees for the Estate of the registered owners. However he has failed to obtain consent from one of the Executors and Trustee of Estate of Raj Pati which was transferred to Balmiki Lal and Bind Mati. Their whereabouts and official records are unknown and confirmation is given from Registrar of Births and Deaths which the court accepts.
13. He now seeks orders from the Court to direct the Registrar of Titles to issue a new title to the Applicant as 1/6<sup>th</sup> share of the property. The property has been subdivided at the expense of the Applicant as a beneficiary with an undivided one sixth share. He has borne all costs associated with the subdivision of land.
14. He has shown to court grounds for which the court can issue orders. There are a number of consents that have been obtained from the Executors and Trustees as registered joint owners of the property. The last beneficiary shares, which is Bimiliki Lal, Estate of Bind Mati aka Bindra Mati and Estate of Raj Pati is difficult to obtain to the extent that there are no official records of the Executors and Trustees whereabouts and whether they are still alive.
15. On this basis the Court will grant orders for the issuance of a Certificate of Title against the Applicants one sixth share over the said Certificate of Title from the Registrar of Title thereby dispensing with consent of the Bimlika Lal, Estate of Bind Mati aka Bindra Mati and Estate of Raj Pati.
16. Pursuant to section 168 of the Land Transfer Act, the Court will direct the Registrar of Title to give effect to these orders.
17. The parties will bear their own costs.

### **Orders of the Court:**

18. **The Court orders as follows:**

*(a) An order to dispense with the written consent of proprietors Balmiki Lal, Estate of Bind Mati aka Bindra Mati, Estate of Raj Pati;*



- (b) An Order that the Registrar of Titles process the request for New Certificate of Title submitted on 27 August 2020 and issue a new Certificate of Title over Lot 1 on DP 10723 containing an area of 11,834 square meters in the name of the Plaintiff;*
- (c) An order to give effect to by cancelling or correcting or substituting or issuing instrument title and making a memorial or entry in the register or any endorsement necessary to give effect to the orders in (a) and (b) of this Court;*
- (d) Parties bear their own costs.*



*Mrs Senileba LWTT Levaci*

Acting Puisne Judge