

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 017 OF 2024

BETWEEN : **NELI MATADOLE SENIVATALALA MAY**
Plaintiff

AND : **SALLY LOUISE SENIVATALALA**
Defendant

Counsel : **Mr S Raikanikoda for the Plaintiff**
Mr S Fatiaki for the Defendant

Hearing : **17 May 2024**

Judgment : **7 June 2024**

JUDGMENT

[1] The Plaintiff seeks an order restraining the Defendant from selling a property situated in Suva, legally described as CT 17893, Lot 52, DP NO 4209 Raiwai (the Suva property).

[2] The issue in this proceeding is whether there is a legal basis for the Plaintiff to be granted this order.

Background

[3] I issued an interlocutory judgement on 15 February 2024 granting interim relief for the Plaintiff, restraining the Defendant from executing an existing Sale and Purchase Agreement as well as restraining the Defendant from selling the Suva property until the substantive claim could be determined.

[4] Since those orders were made, the Defendant has filed a comprehensive affidavit in opposition, some 18 pages in length, dated 4 April 2024. The Plaintiff has filed an affidavit in reply dated 30 April 2024. Both parties have filed written submissions.

[5] The material facts are set out, briefly, as follows:

- i. The Plaintiff is a daughter of the late Mr Alisio Samu Senivatalala. She claims that she has brought this proceeding on behalf of her and her siblings. The Defendant is the wife, now widow, of Mr Senivatalala.
- ii. The Defendant married Mr Senivatalala on 26 January 2002.¹ This was Mr Senivatalala's third marriage. His previous two marriages had been dissolved and he had children from the previous marriages.
- iii. The Defendant and Mr Senivatalala had a daughter in 2004. That same year, Mr Senivatalala travelled to Fiji to arrange for the construction of a family house in his village in Kadavu.
- iv. In February 2010, the Defendant and Mr Senivatalala purchased a property in Suva to be their holiday house when they were in Fiji. They were recorded on the Certificate of Title as joint tenants. The Suva property was used by Mr Senivatalala on his regular trips to Fiji. Mr Senivatalala's relatives also stayed in the house from time to time. The Defendant deposes that the Suva property was rarely used by Mr Senivatalala's children from his previous marriages.
- v. In 2017, Mr Senivatalala and the Defendant considered selling the Suva property but decided against this and instead decided to do so after their daughter turned 18.
- vi. Sadly, Mr Senivatalala passed away on 31 December 2022. At or about this time, the Plaintiff appears to have moved into the Suva property. The Defendant deposes that in early 2023 the Plaintiff asked permission to stay in the Suva property whilst she renovated her own property. The Defendant agreed to this.
- vii. In April 2023, the Plaintiff lodged a caveat on the property.

¹ Mr Senivatalala and the Defendant resided in Australia.

viii. Between June and August 2023, the Defendant placed the Suva property up for sale. A Sale & Purchase Agreement was later executed. The Defendant arranged for the Plaintiff's caveat to be removed and on 30 January 2024 the Defendant, through her solicitor, sent an Eviction Notice to the Plaintiff. The Notice appears to have been the trigger for the current proceeding which were filed on 2 February 2024.

[6] These proceedings were commenced by way of an Originating Summons and supporting affidavit from the Plaintiff. The Plaintiff seeks an order that the '*Defendant do show cause why they should be refrained and restricted from executing the sale and purchase of the Family property*'. The Plaintiff relies on s 6 and 7 of the Land Sales Act, and s 11 of the Land Transfer Act.

[7] At the same time, the Plaintiff sought interim injunctive relief until determination of this proceeding. As stated, I granted the interim injunction on 15 February.

Parties Positions

[8] The Plaintiff's position is as follows:

- i. The Plaintiff says that she and her siblings have an interest in the Suva property by virtue of their contribution to its maintenance and/or having resided at the property and/or it being their late father's wish that the Suva property remain as a family home.
- ii. The joint tenancy between the Defendant and Mr Senivatalala has been severed.
- iii. Sections 6 and 7 of the Land Sales Act and s 11 of the Land Transfer Act restricts the Defendant's ability to sell the Suva property.
- iv. The Defendant was required to obtain letters of administration for Mr Senivatalala's Estate before being entitled to sell the Suva property.
- v. The Defendant has restrictions in respect to transferring any proceeds of the sale outside of Fiji.

[9] The Defendant's position is as follows:

- i. The Plaintiff has no right to institute the proceedings.
- ii. Sections 6 and 7 of the Land Sales Act and s 11 of the Land Transfer Act do not apply to the Defendant.
- iii. The orders as framed by the Plaintiff are inaccurate as the property has already been sold.
- iv. The Plaintiff is in breach of O.6, r.6 of the High Court Rules in that the Plaintiff has not sought leave of the Court to serve the Defendant out of jurisdiction as is required.
- v. There is no basis for the Plaintiff to be granted the orders sought.

Decision

[10] The Plaintiff accepts that the Defendant is entitled to ownership of the Suva property as joint tenant on the death of Mr Senivatalala, being the other joint tenant. The effect of this is that the property was not part of Mr Senivatalala's Estate. The Defendant was not required to obtain letters of administration over the Estate before selling the Suva property.

[11] The Plaintiff suggests that the joint tenancy was severed. However, the Plaintiff has failed to identify any credible basis for the severance or cite any authority to support a severance on the facts of the present case. Indeed, having considered the information contained in the affidavits from both parties, I struggle to see how the Plaintiff and her siblings can show any legal or equitable interest in the Suva property. They did not grow up in the property. It was not owned by Mr Senivatalala before he married the Defendant. There is no evidence of any compelling sentimental or familial connection by the Plaintiff and her siblings to the Suva property.

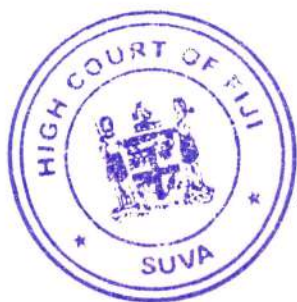
[12] The Defendant is entitled to dispose of the property so long as she complies with the statutory requirements in Fiji. There is no basis for the Plaintiff's contention that the Defendant runs afoul of the stated provisions in the Land Sales Act or Land Transfer Act. I agree with Mr Fatiaki that s 6 of the Land Sales Act does not apply here as the provision pertains to the purchase of a property. Section 7 does apply but only where the Defendant is selling the Suva property to a


non-resident. The Plaintiff has produced no evidence to demonstrate that the prospective purchaser is a non-resident. Notwithstanding, it is difficult to see how the Plaintiff has any locus standi to challenge the sale under this provision. This is a matter for the satisfaction of the Minister. The same applies with respect to the transfer of the sale proceeds overseas.

- [13] In conclusion, I am satisfied that the Plaintiff's claim has no merit. Neither she nor her siblings have demonstrated any right or interest in the Suva property. It is abundantly clear from the Defendant's affidavit that on the passing of her late husband, she obtained sole ownership of the Suva property with an unfettered right to sell the property.

Orders

- [14] The interim orders made by the Court on 15 February 2024 are dissolved.
- [15] The Plaintiff's originating summons is dismissed.
- [16] The Defendant is entitled to costs summarily assessed in the amount of \$3,000 to be paid by the Plaintiff within one (1) calendar month.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Raikanikoda & Associates for the Plaintiff

Lateef & Lateef Lawyers for the Defendant