

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

HBC Civil Action No. 160 of 2023

IN THE MATTER of an Application
For Partition Proceedings under Section
119 (2) of the Property Law Act 1971.

BETWEEN: **AJIT SINGH** of Dilo Street, Samabula, Sign Writer.

PLAINTIFF

AND: **RANJIT SINGH** of Lot 44, Lagakali Place, Kalabu, Sign Writer.

DEFENDANT

Representation : Mr A. Nand (Kohli & Singh Suva) for the Plaintiff.
 : Mr B. Ram (Benjamin Ram Lawyers).

JUDGMENT

[1] The Plaintiff filed Originating Summons on 30th May 2023 seeking the following Orders:

- “1. **THAT** the property comprised in Housing Authority Sub- Lease No. 181170 being on Lot 44 on Deposit Plan No. 4706 comprising an area of 11.7 perch be sold.
2. **THAT** the Plaintiff to appoint a reputable valuer, to carry out valuations of the property.
3. **THAT** first opportunity to purchase the property be given to the Defendant.
4. **THAT** if neither party is in position to purchase, the property is sold to best price obtained by either party, to sell to an outsider, the lowest price should be valuation price.
5. **THAT** the Applicant and/or the Defendant to execute all the documents pertaining to the sale and purchase of the said property.
6. **THAT** in the event if the Applicant and/or Defendant fails to execute any and or all the documents pertaining to the sale and transfer of the Property than the Deputy Registrar of the High Court to sign all the documents accordingly.
7. **THAT** proceeds received from the sale of the said property be used to clear the arrears of land rental with Housing Authority and City/Town rates (if applicable) and utility bills and costs associated with the sale of the said property including legal fees of transfer after which proceeds are to be shared.
8. **THAT** the proceeds of sale be shared as follows:
 - a) ½ share of the proceeds be given to the Plaintiff.
 - b) ½ share of the proceeds be given to the Defendant.
9. **THAT** costs of this action to be paid by the Defendant.”

The Summons is supported by an Affidavit of the Plaintiff. The Defendant filed an affidavit in opposition. An affidavit in reply was filed by the Plaintiff.

[2] Section 119 (2) of the Property Law Act provides that “*the court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.*”

[3] The parties met and tried to settle the matter. They could not agree on the sum. The parties agree on a partition. Each party is entitled to ½ share in the property. A valuation of the property was carried out and the value is \$225,000.00. Half of which is \$112,500.00. The Plaintiff is seeking \$85,000.00. The Defendant offers to pay \$65,000.00. The Defendant has not provided any evidence of extra contribution by him towards the property or any construction as claimed by him to entitle him to pay \$65,000.00. The property is owned in equal undivided share between the parties. The Defendant is not at a loss if he pays the Plaintiff \$85,000.00 as ½ share in the property which is valued at \$225,000.00.

[4] **Court Orders**

- (a) *The Defendant is to pay the Plaintiff a sum of \$85,000.00 as the Plaintiff's ½ share in Housing Authority Sub- Lease No. 181170 being on Lot 44 on Deposit Plan No. 4706 comprising an area of 11.7 perch.*
- (b) *The Plaintiff upon payment by the Defendant is to execute all the necessary documents to transfer his ½ share in the property to the Defendant.*
- (c) *If the Defendant fails to pay the \$85,000.00 within 6 months of this order to the Plaintiff, the property is to be sold any other person. The reserve price being the valuation price of \$225,000.00.*
- (d) *If the Plaintiff and or the Defendant fail to execute any and or all documents pertaining to the sale and transfer of the property than the Deputy Registrar of the High Court shall sign all the documents.*
- (e) *From the proceeds of the sale of the property the monies will be first used to clear any arrears of land rental, town rates, utility bills and any other costs associated with the sale of the said property including legal fees of transfer and then the proceeds will be shared equally between the parties.*
- (f) *No orders as to costs.*

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Chaitanya S.C.A Lakshman

Puisne Judge

20th June 2024

