

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 260 of 2021

BETWEEN

AMBIKA NAND of Rarawai, Ba, Farmer.

PLAINTIFF

AND

DAYA WATI of Rarawai, Ba, Domestic Duties.

DEFENDANT

Counsel : Mr. Yunus M. with Ms. Ali for the Plaintiff
Ms. Degei M with Ms. Baleilevuka for the Defendant

Date of Hearing : 28th October 2023

Date of Judgment : 17th January 2024

JUDGMENT

- [1] The plaintiff instituted this action seeking the following orders against the defendant:
- A. That the defendant immediately vacate the plaintiff's property being all the land comprised in Crown Lease No. 16169 (part of) Rarawai, Vunisamaloa and Vunivesi in the Island of Viti Levu District of Ba, Lot 1 on Plan No. (d) SO 000205 having an area of 4.3703 hectares;
 - B. Costs on indemnity basis; and
 - C. Any other such orders that this Honourable Court may deem just and expedient.
- [2] As averred in the statement of claim plaintiff's father Gaya Din was the registered proprietor of the Crown Lease No. 9939 and he died on 26th March 1988 leaving a last will. By the last will the deceased devised the property to his five sons and appointed Baram Sen as the Executor and Trustee of his Estate and the probate No. 24627 was granted to him on 14th June 1989 to Baram Sen.
- [3] On 28th October 1992, Transmission by Death No. 329651 was registered on Crown Lease No. 9399 and it was transferred to Baram Sen as the Executor and Trustee of the Estate of Gaya Din.
- [4] On 25th January 1993 all the other beneficiaries of the Estate of Gaya Din renounced their shares for a consideration of \$4500.00 and executed a deed of renunciation and transferred their respective shares to the plaintiff.
- [5] The Crown Lease No. 9399 expired in 2003 and on 06th October 2005, the Crown Lease No. 16169 was issued to the plaintiff.
- [6] The plaintiff avers further that he allowed in good faith for Ragwa Nand and his family to live with them and they lived in harmony but after the demise of

Ragwa Nand the defendant started causing nuisance and inconvenience to the plaintiff and his family.

[7] As averred in the statement of claim the plaintiff's father Gaya Din was the registered proprietor of the Crown Lease No. 9399 which was originally issued for a term of 2 years and 9 months and subsequently extend for 20 years in 1983. Plaintiff's father passed away in 26th March 1988 leaving a last will according to which he devised the property to his five sons, Ram Nand, Raghwa Nand, Bijendra Kumar, Rajendra Kumar and Ambika Nand (the plaintiff). In his last will Gaya Din appointed Baram Sen as the executor and trustee of his estate. The probate No. 24627 was granted too Baram Sen on 14th June 1989.

[8] The beneficiaries of the estate of Gaya Din renounced their rights in the estate and executed deed of renunciation of their shares on to the plaintiff for a consideration of \$4,500.00.

[9] The Crown Lease No. 9399 expired in 2003 and on 06th October 2005 the Crown Lease No. 16169 was granted to the plaintiff by the Director of Lands.

[10] On 19th February 2018 the plaintiff had instituted legal proceedings pursuant to section 169 of the Land Transfer Act which was struck out by the High Court on the ground that the court needed oral evidence to determine the matter, the plaintiff has averred in the statement of claim that the court said that the dismissal would not be a bar for the plaintiff to commence other proceedings against the defendant.

[11] The defendant alleges that the deed of renunciation had been executed fraudulently. The particulars of fraud as averred in the statement of defence are as follows:

- a. With the knowledge that the executor and trustee of the Estate of Gaya Din was Baram Sen and his duties as executor and trustee was

to distribute the shares pursuant to the last will and testament of Gaya Din dated 25th day of February 1984.

- b. The plaintiff was aware that all brothers and beneficiaries had a share in as per the Will and should have been allocated the same.
- c. Willfully, knowingly and intentionally preparing a deed of renunciation for the beneficiaries to sign to have the property transferred to him.
- d. Forging the signature of the late Ragwa Nand on the deed of renunciation when he had no intention of transferring or renouncing his shares in the Estate of Gaya Din.
- e. Misrepresented and failed to properly explain to the beneficiaries of the Estate of Gaya Din that the deed of renunciation for the repayment of the sum \$4500.00 would mean to lose their shares in the Estate Gaya Din including their shares in the will of Gaya Din.

[12] The defendant in the statement of defence seeks the following declarations and orders:

- a) A declaration that the deed of renunciation dated 25th day of January 1993 be deemed null and void.
- b) A declaration that the Crown Lease 16169 registered to the plaintiff is to registered and transferred to the Estate of Gaya Din.
- c) That the executor and trustee of the Estate of Gaya Din distribute his estate in accordance with his last will dated 25th February 1984.
- d) That the plaintiff's action be dismissed.
- e) Interest.
- f) Costs.
- g) Further or any other relief this Honourable Court deems.

[13] At the pre-trial conference the parties admitted the following facts:

1. The plaintiff is the last registered proprietor of the land comprised in and described in the Crown Lease Number 16169 (part of) Rarawai, Vunisamaloa and Vunivesi in the Island of Viti Levu District of Ba, Lot 1 on Plan No. (d) SO 000205 having an area of 4.3703 hectares (hereinafter referred to as the property).
2. The defendant is the plaintiff's sister-in-law and the wife of the plaintiff's deceased brother Raghwan Nand.
3. The plaintiff's father, Gaya Din was the registered proprietor of Crown Lease No. 9399. This lease was issued for a term of 2 years and nine months and was further extended for 20 years in 1983.
4. Gaya Din passed away on 26th March 1988. According to his Last Will and testament, he devised the property to his 5 sons namely, Ram Nand, Raghwa Nand, Bijendra Kumar, Rajendra Kumar and Ambika Nand.
5. According to the Last Will and Testament of Gaya Din, he appointed Baram Sen as the Executor and Trustee.
6. The Probate No. 24627 was granted by the High Court, Probate Jurisdiction on 14th June 1989 to Baram Sen to administer the Estate of Gaya Din.
7. On 28th October 1992, Transmission by Death No. 329651 was registered on the Crown Lease No. 9399. The property was transferred to Baram Sen as Executor and Trustee in the Estate of Gaya Din.
8. The property is an agricultural lease and is used for agricultural purposes and contain two dwelling houses. The plaintiff resides in one house and the defendant resides in another.
9. On 1st June 2017, Messrs. MYLAW issued and served a Notice to the defendant which demanded vacant possession of the property

however, the defendant has failed or neglected to vacate the property and remained in occupation.

10. The plaintiff instituted legal proceedings and filed summons and affidavit in support pursuant to section 169 of the Land Transfer Act on 19th February 2018. The Ruling was delivered by the Lautoka High Court whereby the summons was dismissed and it was held that evidence was adduced which required open court hearing and that the dismissal of the summons did not bar the plaintiff to commence other proceedings against the defendant.
11. The defendant applied for caveat and on 15th October 2021 caveat was registered by the Registrar of Titles. The Plaintiff has sought for removal of caveat.

[14] It is a fact admitted by the parties that the plaintiff is the last registered proprietor of the property.

[15] The plaintiff testified at the trial and stated that before him his father was the lessee of this property and it was under a mortgage with Vinod Patel. After his father passed away the plaintiff paid the loan by taking another loan from Fiji Development Bank. He said further that his brothers did not help him to settle the loan.

[16] The plaintiff's father died leaving a last will and in his last will he had devised the property which is the subject matter of this action to 5 sons in equal shares. When the plaintiff paid their father's loan other brothers have renounced their rights in the father's Estate in favour of the plaintiff. The deeds of renunciation were tendered in evidence marked as P2, P3, P4 and P5. In cross examination the plaintiff said that he could not exactly remember whether the Justice of the Peace was there when they signed the deed of renunciation but all his brothers signed.

[17] The defendant alleges fraud and forgery in that the signature of Raghwa Nand was forged on the deed of renunciation. Raghwa Nand was the husband of the defendant. The defendant failed to adduce any evidence of forgery. The defendant's husband had passed away in 2009 and the deeds of renunciation had been executed in 1993 about 16 years before his demise. For all those years none of the brothers had raised any issue about the transfer in favour of the plaintiff until the defendant challenged it in these proceedings.

[18] It is the defendant who alleges forgery and therefore, the burden of proving forgery is on the defendant. However, as I stated in the previous paragraph the defendant failed to adduce any evidence of forgery and therefore, her defence must necessarily fail.

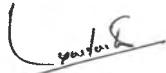
[19] The deeds of renunciation had been executed on 25th January 1993 and the testator had passed away on 26th March 1988. For all these years the plaintiff and her husband who is now deceased had not shown any interest to obtain their share, if any, of the Estate.

[20] The defendant called a witness from the Lands Department. She explained the procedure followed by the Lands Department in transferring the title of a particular property after the demise of the original registered proprietor. She also explained the document required to be tendered to process the application for transfer. The witness also said that Baram Sen originally provided copies of the Last Will and the probate with his application for consent for the transfer and there was no deed of renunciation tendered with the application but subsequently the letters of renunciation were provided.

[21] For the reasons set out above the court makes the following orders.

ORDERS

1. It is ordered that the defendant immediately vacate the plaintiff's property being all the land comprised in Crown Lease No. 16169 (part of) Rarawai, Vunisamaloa and Vunivesi in the Island of Viti Levu District of Ba, Lot 1 on Plan No. (d) SO 000205 having an area of 4.3703 hectares;
2. The defendant is also order to pay the plaintiff \$2,000.00 as costs.


Lyone Seneviratne



JUDGE

17th January 2024