

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC 289 of 2017

BETWEEN : **CHANDRA PRAKASH SHARMA**
(Substituted for **LILA WATI** aka **LILA WATI SHARMA**)

PLAINTIFF

AND : **HIRDEI WATI SHARMA AND RAJIV SHARMA**

DEFENDANTS

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Ms. I. Sauduadua for the Plaintiff**

: **Mr. S. Singh for the Defendant**

Date of Hearing : **28 July 2023**

Date of Decision : **26 January 2024**

DECISION

PRACTICE & PROCEDURE

Extension of time – Orders granted under

section 169, Land Transfer Act – Claim for possession by occupant – Separate action based on fraud – Land Transfer Act 1971

1. By judgment dated 14 October 2022, this court allowed an appeal against the acting master's decision of 27 June 2019, by which an order for possession under section 169 of the Land Transfer Act 1971 was refused. In allowing the appeal, court directed the defendants to hand over vacant possession of the property to the plaintiff.
2. The defendants filed a summons for leave to appeal out of time on 21 December 2022. This was supported by Hirdei Wati Sharma, the first named defendant. She averred that she and her son live on the property contained in CT No. 17153 being lot 60 on DP No. 4257 ("the property"). The plaintiff was her mother in law, who died sometime in 2020. The property was owned by her father in law, Vijendra Sharma. She states that she and her husband maintained a dwelling on the property. She states that Mr. Vijendra Sharma asked her and her husband to move into the property and gave them the assurance that they would own the property.
3. The defendants state that after Vijendra Sharma's death on 8 March 1992, the plaintiff approached her and her husband, Chandra Shekar Sharma, and asked them to sign a document before a lawyer to sell another property, contained in lot 61. Her husband had ownership rights to lot 61. The plaintiff told her husband that lot 60 would belong to him if he signed away his rights to lot 61. Acting in reliance of that verbal promise, her husband signed the document. He was not explained the nature of the document. She states that her husband signed the document on the understanding that he will be the owner of lot 60. She states that her husband was unemployed and that the two of them worked hard to build a simple dwelling on the property. She states that the High Court decided the appeal from the master's decision without testing the evidence of the parties in cross examination.

4. The applicant proposed the following grounds of appeal:

- i.* "That the Learned Justice erred in law and in fact when he failed to consider that the Deed of renunciation signed by Chandra Shekar Sharma on the 24 November 1992 was filed at the Registry sometime in 2016 after Chandra Shekar Sharma passed away and therefore the Deed of Renunciation was ineffective and void and could not be enforced in law after the death of the maker.
- ii.* That the Learned Justice erred in law and in fact when he failed to consider that the deed of renunciation signed by Chandra Shekar Sharma did not provide a descriptive account of the property being renounced, as supported by the affidavit of the defendant paragraph – he stated that the document he was signing related to the sale of the Lot 61 property.
- iii.* That the Learned Justice erred in law and in fact when he failed to consider that as per paragraph 13 of the Affidavit in Support, the plaintiff has permitted Chandra Shekar Sharma and his family to live on the property, from all the other children of the plaintiff, which they continue to do so till this day.
- iv.* The Learned Justice erred in law and in fact when determining the facts (as stated by both parties in their affidavits) when the issue relating to alleged fraud by deception in obtaining registration of title of the property is a triable issue which should be determined by way of writ which has been filed and is before the Master of the High Court for compliance of pre-trial matters.
- v.* The Learned Justice erred in law and in fact when he did not consider that most of the triable issues were raised in the defendant's writ action and which was still before the Master, and was yet to be determined in court.
- vi.* The Learned Judge erred in law in determining a summary section 169 proceedings on affidavits and on the appeal of the respondent when there were substantial disputed facts which required viva voce evidence and determination by a Court.
- vii.* The Learned Judge erred in law and in fact in disregarding the equities affecting the appellant's occupation of the said property which were sufficient causes for the purposes of a section 169 application. The appellant had shown sufficient cause that they had been encouraged to stay on the said property and make substantial improvements to it and the change in position following the death of Chandra

Shekar Sharma ought not to be permit the respondent or her successors to resile from that position.

viii. The Learned Judge erred in law and in fact in determining the appellant's Suva High Court HBC Civil Action No. 204 of 2018 in the Appeal and disregarding the cause shown by the Appellant in filing that appeal to the summary section 169 eviction proceedings in the within Appeal in in Case No. 289 of 2017".

5. An affidavit opposing the defendants' application was filed by Chandra Prakash Sharma, the executor and trustee of the estate of Lila Wati, his deceased mother and original plaintiff. Mr. Sharma is the substituted plaintiff. He states *inter alia* that the dwelling on lot 60 – the disputed land – was originally developed by his late father Vijendra, and another brother. The maintenance of the property, he states, was carried out by Vijendra Sharma. He says there is no evidence that the defendants contributed to the maintenance of the property. After signing the deed of renunciation, he says, the first named defendant's husband, Shekar, never questioned the deed of renunciation, which was signed on 24 November 1992. Shekar died on 10 June 2014. He denied the claims made in Hirdei Wati Sharma's affidavit in support.
6. Hirdei Wati Sharma filed an affidavit in reply denying the contents in the affidavit in opposition. She asserted a right to possession of the property. She states that the property should not be a part of Lila Wati's estate. She contended that she has raised an issue of alleged fraud in the way the plaintiff obtained registration of title, and that this is an issue that must be tried in the High Court action of HBC 204 of 2018.
7. The defendants submitted that rule 27 of the Court of Appeal rules allows the period for serving a notice of appeal or an application for leave to appeal under rule 16 to be extended by the High Court or the Court of Appeal. The defendants referred to the decision in *Native Land Trust Board v Khan & another*¹, which discusses the factors to be considered in the granting of an extension of time. The defendants submit that the delay in filing the application was only 26 days. The

¹ [2013] FJSC 1; CBV 0002.2013 (15 March 2013)

reason for the delay is given as the defendants' inability in raising funds to lodge a timely appeal, as the first named defendant is unemployed.

8. The defendants submit that one of the primary grounds of appeal relates to the illegality of the scope of the deed of renunciation signed by Shekar. They say that the deed of renunciation signed by Shekar did not provide a descriptive account of the property being renounced. They submit that the first named defendant and her husband were unaware that the document he was signing was for the renunciation of his rights to lot 60. The defendants say that the court erred by not adequately assessing the validity and enforceability of the renunciation and in determining the rights and obligations of the parties based on that document. The defendants submit that the renunciation raises important legal questions requiring further examination.
9. The defendants submit that the deed of renunciation was signed in 1993, but was registered in 2016 after Shekar's death. The defendants submit that the renunciation was framed in the form of a gift, but was not perfected during Shekar's lifetime. The defendants contend that the renunciation is invalid, as the instrument was lodged for registration in 2016 in order to convey title of the property to the original plaintiff.
10. The defendants submit that this case is related to civil action, HBC 204 of 2008, based on fraud committed by the plaintiff in transferring title to lot 60. The defendants are seeking a declaration of title in that action. The defendants submit that there is no prejudice to the plaintiff as the original plaintiff has died, and the beneficiaries are resident overseas.
11. The defendants submit that they were encouraged by the defendants to stay at the property and to make substantial improvements, and that these have resulted in significant financial and personal consequences. The defendants submit that the court's oversight of these matters require review by an appellate court.

Conclusion

12. In regards to the merits of the case, the court has dealt with the arguments raised by the defendants in its judgment of 14 October 2022. These need not be traversed again. The affidavit in support by the first named defendant does not provide any grounds to satisfy the court that the defendants have an arguable case. The application for extension of time is refused.

ORDER

- A. The defendants' summons filed on 21 December 2022 is dismissed.
- B. The parties will bear their respective costs.

Delivered at Suva on this 26th day of January, 2024.



M. Javed Mansoor
Judge