

IN THE HIGH COURT OF FIJI AT SUVA
IN THE CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 279 of 2023

BETWEEN:

FINELAND INVESTMENTS PTE LIMITED

PLAINTIFF

AND:

RICHARD RATTAN as the sole Executor and
Trustee of the Estate of **BHAN KARAN aka**
BHAN KAREN RATTAN aka BHAN KARAN
and **RICHARD RATTAN.**

DEFENDANT

Date of Hearing : **2 September 2024**
For the Plaintiff : **Mr Singh. V**
Counsel for the Defendants : **Mr Singh. A**
Date of Decision : **28 November 2024**
Before : **Waqainabete-Levaci S.L.T.T, J**

R U L I N G

(APPLICATION FOR LEAVE TO JOIN INTERESTED PARTY)

BACKGROUND

1. There are two interlocutory applications pending before me made by the Plaintiff. They were heard simultaneously and parties had entered into consent orders for one of them.
2. The Applicant/Plaintiff had filed a Summons seeking Specific Discovery for two documents i.e a copy of an Estate Management & Lease Agreement of the Estate of Charlie Ram Rattan and Rajat Chaudhary.
3. At the date of hearing, parties consented to for which the Court entered Consent Orders as follows:
 - (i) Orders for the specific Discovery of the Estate Management and Lease Agreement;
 - (ii) Costs on the Event awarded for \$500 to the Plaintiff for today's proceedings;
 - (iii) The Plaintiff to file a Reply to Statement of Defence within 14 days from today.
4. The second interlocutory application by the Plaintiff was an Application for Leave to Join an Interested Party namely Mahendra Pratap aka Moheandar Pratap filed by way of a Summons and Affidavit.
5. This application is made pursuant to Order 15 Rule 6 (2) (b) (i) and (ii), Order 11 Rule 1 (1) (e), Order 6 Rule 6 (1) of the High Court Rules 1988.

AFFIDAVIT BY THE PARTIES

Interested party's Affidavit

6. In his Affidavit, the Interested Party deposes that he is the son of the late Charlie Ram Rattan who had devised CT 6626 for Lot 1 on DP 1200 in Suva with an area of 29.2 perches to his brothers Bhan Pratap, Ram Bhan Mani, Bhan Karan, Ram Pratap and to him as equal undivided shares.
7. He deposes that as an interested party, he holds 3/5ths of the undivided shares whilst the Defendant holds 1/5th of the share as Sole Executor and Trustee of the Estate of Bhan Karan whilst Suruj Kuar holds 1/5th share as Administratrix of the Estate of Ram Bhan Mani who died intestate.

8. The Claim seeks remedies of specific performance against the Defendant as well as an Order that the Caveat by the Plaintiff against the 1/5th undivided share of the property remain registered until the registered transfer of this interest to the Plaintiff.
9. The Defendant, Richard Rattan, is sued in his capacity as Sole Executor and Trustee of the Estate of Bhan Karan aka Bhan Karen Rattan aka Bhan Karan and also in his personal capacity.
10. The interested party deposes that the Defendant is defending the probate issued by the High Court on 18th February 2021 which was limited by the High Court's Order on 25th October 2019 until the original will or an authenticated copy can be proved in Court. Otherwise, the Defendant has no locus to enter into the Sales Agreement.
11. The Interested party also deposes that the Defendant has no right to sell the property and that the last will and testament dated 19 December 2012 by Bhan Karan's 1/5th share are in benefit to the children of the Defendant and William Rattan.
12. Lastly the Interested party deposes that there were no consent by the benefactors of the property to hold the property under constructive trust for the 2 benefactors under the Last Will and Testament of Bhan Karan.
13. The interested party deposes that the Caveat registered by the Plaintiff has a direct effect on his interests and rights as a majority shareholder and furthermore that the descendants of Charlie Ram Rattan intend to keep the land within the family and not alienate the land to outsiders and thus has an interest in the 1/5th share.

Plaintiff's Affidavit in Opposition

14. In the Plaintiffs Affidavit in reply they depose that the last will and testament of the Estate of Charlie Ram Rattan had no restrictions on his heirs from dealing with their shares in the property with third parties outside of the Family such as the Plaintiff.
15. That contrary to the interested party's deposition, the Estate Management and Lease Agreement executed by the Estate of Charlie Ram Rattan and Rajjat Chaudhary in itself granted a lease of the property to Rajjat Chaudhary for a term of 25 years with a right of renewal for 25 years in perpetuity.

16. The Plaintiffs requests that the interested party's application to be joined as a party be struck off.

SUBMISSIONS BY PARTIES

17. The Counsel for the interested party seeks orders in terms of Order 15 Rule 6 (2)(b) of the High Court Rule regarding the joining of a party necessary to ensure that all matters in dispute may be effectually and completely adjudicated. The pleadings seek for specific performance of the sale of 1/5th of the undivided share. The issue is connected to and arises from the remedy.

18. There are number of issues connected to and directly affected by the proceedings. Firstly, the interested party holds 3/5ths undivided share in the property and makes him a majority holder of his entitlement to the property.

19. Therefore pursuant to section 119 (3) of the Property Law Act, land sort to be sold containing 1/5th share can affect the legal rights to sell of the other shareholders. Accordingly the intervenor has a right to purchase the shares of 1/5th.

20. Secondly, the Counsel submits that in accordance with plaintiff's Writ of Summons, the Plaintiff admits to intending to extend Flagstaff Plaza to this land. Since all the lands are undivided shares, the expansion will affect the interested party's 3/5th share and so the interested party should be given the liberty to respond and be a party to the proceedings.

21. Lastly in the Statement of Defence the Defendant has entered into an Estate Management and Lease Agreement for the property for 25 years in perpetuity. This document is not in possession of the interested party and has no information regarding the Agreement. The issues can be dealt with at trial so as to confirm the intentions of the Testator regarding the 1/5th undivided shares, which the interested party argues is contrary to the instructions he obtained regarding the property.

22. In response, Counsel for the Plaintiff submitted that the partial Caveat registered against the title was imposed only for the 1/5th undivided share of the land and does not affect the interested party's shares.

23. The interested party's affidavit is very meagre and only contains the deposition that they are the majority shareholder and thus are entitled to be joined. What the interested party has submitted in Court was never deposed in the Affidavit.
24. The interested party's position is different from that of the Defendants in the Defendant's Statement of Defence,
25. Even if Plaintiff is successful to acquire the lands, the interested party can make a separate application under section 119 of the Property Law Act at any stage as the interested party has majority shareholding.
26. He denied that there were orders sort in the Writ of Summons for extension of the plaza or demolition of the plaza nor for orders affecting the interested party directly. The only orders sort were for specific performance.
27. The Counsel submitted Order 15 R 6 (2) (b) of the High Court Rules applies for matters in dispute regarding the relief of specific performance of the Sale and Purchase Agreement. Hence the Counsel submitted the interested party has not established their grounds to be joined as they are not a party to the Agreement.
28. In their written submissions the Plaintiff submitted the cases of Singh -v- Singh [2024] HBC 14 of 2022 which was held that the order to join a party is necessary where the party's presence before Court is necessary to ensure all matters in dispute in the cause or matter are dealt with effectively and completely. Reference was made to Varo -v- Itaukei Land Trust Board HBJ 5.2017 (24 June 2019) where it was held by Ajmeer J that interested person must be directly affected by the claim in order to be joined as a party and this include those that were affected 'without intervention of any immediate agency'.
29. The Counsel for the Defendants, in their submissions, consent to the application.
30. In reply, Counsel for the interested parties argued that the application by the interested party to be joined allows him to file his Statement of Defence and that all matters pertaining to the undivided shares can be dealt with at trial. She argued that even if the interested party filed a separate application under section 119 of the Property Law Act, the matter will still require to be consolidated with this matter.

31. Furthermore the Plaintiff is seeking a relief of specific performance for the primary purpose of expanding the Flagstaff Plaza which will encroach on the interested party's land.

LAW ON JOINDER OF PARTIES

32. In Order 15 Rule (6) of the High Court Rules:

4.- (1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where –

(a) If separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all of the actions; and

(b) All rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the Plaintiff in any action claims any relief to which another person is entitled jointly with him, all persons so entitled must, subject to the provisions of this Act and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to be joining as a plaintiff, must subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.”

33. In the Supreme Court Practice (1988, Sweet and Maxwell, London, Vol 1) page 172 para 15/4/1:

“Under this rule, joinder of parties is allowed as of right, subject to the discretionary power of the Court under r. 5, where the conditions mentioned in sub-paras (a) and (b) exists and may be allowed with leave in all other cases. The joinder of parties, whether as plaintiff or as defendants is subject to two conditions:

(i) The right to relief must in each case be in respect of or arise out of the series of transactions; and

(ii) There must be some common question of fact and law.

The whole of a transaction or series of transactions need not be implicated in the relief sort by each plaintiff ‘where the investigation would to a great extent be identical’ (see per

Fletcher Moulton L.J in Marki & Co -v- Knight Steamship [1910] 2 K.B 1021 and see Stroud -v- Lawson [1898] 2 Q.B 54)

The 'relief 'in respect of which parties may be joined must be relief arising out of the same set of circumstances (see per Swinfen Eady M.R in Re Beck) or circumstances involving common question of law or fact (see Thomas -v- Moore); see also Green -v- Berliner [1936] 2 K.B 477 claimed by common informer).

The rule should be construed in a liberal sense (see per Swinfen Eady M.R in Re Beck (1918) 87 L.J Ch 335; Payne -v- British Time Recorder Co [1921] 2 KB, 1)

34. In Bubble Up Investment Company Limited -v- National MBF Finance Limited [1999] FJCA 38; ABU 0021d.98s(5 August 1999) Where Justice Byrnes on Appeal held that:

"The scope of this rule and its predecessor has been considered in numerous cases, the earliest of which appears to be Attorney-General v. Corporation of Birmingham [1880] UKLawRpCh 219; 15 Ch.D 423 and in later cases such as Amon v. Raphael Tuck & Sons Ltd. (1956) 1 Q.B. 357, The Result (1958) P. 174 and Re Vandervell Trusts (1969) 3 All E.R. 496 which was over-ruled by the House of Lords in Vandervell Trustees Ltd. v. White And Others (1971) A.C. 912.

Order 15 Rule 6 was amended in England by R.S.C. (Amendment No. 4 of 1971) and R.S.C. (Amendment 1981) after the decision of the House of Lords in Vandervell Trustees Ltd. v. White. In that case the House of Lords disagreed with the interpretation of the then rule given by Lord Denning in the Court of Appeal where at (1963) 3 All E.R. 499, quoting Rule 6(2) as it then stood he said these words should be given a liberal construction. He cited with approval the remarks of Lord Esher, M.R. in Byrne v. Brown (1889) Q.B.D. 657 at p.666 who said:

"One of the chief objects of the Judicature Acts was to secure that, wherever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new

parties being brought in should be exactly the same; it is sufficient if the main evidence, and the main inquiry, will be the same, and the Court then has power to bring in the new parties, and to adjudicate in one proceeding upon the rights of all the parties before it."

According to the Supreme Court Practice 1993 at p.202, Para. 2(b)(ii) confers on the Court the wider jurisdiction which it was thought the Court had under the former para. 2(b) but which the House of Lords in Vandervell's case held that it did not. It is clear to me that the amendment was intended to give effect to the remarks of Lord Denning in the Court of Appeal. The White Book at p.203 remarks that in the latter case of Tetra Molectric Ltd. v. Japan Imports Ltd. (1976) R.P.C. the English Court of Appeal expressly held that para 2(b)(ii) widened the Court's power consequent upon the decision in Re Vandervell and that the Court has power to add a party between whom and one of the parties to the action there is an issue. The question before me is whether there is such an issue in the present case."

ANALYSIS

35. The Court when considering the application, must determine whether to grant the joinder of the interested party.

36. In Wakaya Ltd -v- Nausbaum [2017] FJHC 828; HBC 256.2010 (31 October 2017) where it was held that since the Defendant had entered into a Sale and Purchase Agreement with the Plaintiff and had transferred his share of interest in the property CT 2767 as a matrimonial property registered with a number of Easements, he could only file separate proceedings on the matter if he was aggrieved that his lots would be affected.

37. Master Udit in the case of Prasad -v- Saheed [2008] FJHC 364; HBC50.2003 (29 August 2008) stated:

"[26] The intent and purpose behind Order 15, Rule 6 is to give a very wide power to the court to allow joinder of a party to ensure the determination of all the issues in a proceedings pending before it In Lucy -v- W. T. Henleys Telegraph Works Co. Ltd Imperial Chemical Industries Ltd [1970] 1 QB393 at 404 p Lord Denning said; "It gives the court power to add a person as a defendant if his presence is necessary to ensure all matters in dispute are effectively and completely determine;"". This rule operates in congeniality with the

general proposition of law that multiplicity of actions arising out of the same fact amounts to abuse of the process of the Court.

[27] The Counsels in this matter are in agreement that Order 15, Rule 6 (5) when read in conjunction with Section 23 of the Limitation Act must give effect to Order 15, Rule 6 (1) and 2.”

38. In Land Transport Authority -v- Begg [2019] FJSC 7; CBV0004.2018 (26 April 2019) Gates, Priyasath and Stock, JA stated:

“What emerges from this is that Order 15 rule 6 (2)(b)(ii) is not appropriate as a vehicle for joinder, at the behest of a defendant, of a person he or she could have joined as a third party but chose not to. The rule tends, it would seem, to be commonly the machinery by which a non- party who is likely to be affected by an order made in the proceedings will seek to intervene[3]

39. I have perused the Estate and Lease Agreement entered into on 8th of March 2023 relied upon by the parties which was filed by the Defendant in compliance with Orders for Specific Discovery.

40. The interested party is a signatory to the Agreement and in the Agreement is referred to as a sole administrator of the Estate of Charlie Ram Rattan and as the administrator to all the other shares including the 1/5th interest of Richard Rattan who is the sole Executor and Trustee of the Estate of Bhan Karan. In the Agreement he was the representative of the landlord.

41. However, the Sale and Purchase Agreement of the 1/5th undivided share for which the Defendant seeks relief thereof, is between the Defendant and the Plaintiff.

42. The Court considers whether there are issues common to all parties in dispute that can be completely dealt with if the interested party is joined.

43. The Claim stems from a Sale and Purchase Agreement entered between the Plaintiff and Defendant on 8 March 2023. The Defendant owns 1/5th undivided share for which the interested party owns 3/5th thereof.

44. The interested party was never a party to the Agreement. However he argues, that by virtue of the 1/5th undivided share being sold, the potential purchase will have an impact on his shares as majority shareholder.

45. His argument relies upon section 119 (1) and (2) of the Property Law Act which reads:

119. (1) Where an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly.

(2) 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 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 court may also, if it thinks fit, on the request of any party interested, direct the land be sold, unless the parties interested, or some of them, undertake to purchase the share of the party requesting a sale, and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale.

(4) on directing such sale or valuation to be made, the Court may give also all necessary or proper consequential directions.

46. Section 119 of the Property Law Act comprises of two distinct actions, the action seeking to partition the property and the action to seek the sale of the property by the co-owners.

47. Under this action, the Court's paramount consideration is whether the sale is for the benefit of the parties concerned.

48. In the application for joinder of party, the interested party seeks to rely on the discretionary powers of the Court in light of their claim to right of first option to purchase the property.

49. That is not what the current claim before me is about. The current application is against the Defendant seeking specific performance of the Sale and Purchase Agreement.

50. No corresponding application under section 119 of the Property Law Act had been filed by the interested party in order to show to this Court its intentions to offer for purchase of the 1/5th share.

51. In addition the interested party as well as the Defendants are co-owners of the Lot, each according to their undivided share.

52. Together they have a unity of possession. This was quoted by Justice Bisson in the case of Taunton Syndicate -v- The Commissioner of inland Revenue Commissioner [1981] NZHC 242/81 (delivered on 3 February 1982) where he said:

In Hinde, McMorland, Sim, "*Land Law*" Vol 1. 2 pa 929, para 9.048 the definition and attributes of tenancy in common stated to be as follows:

"the only factor which makes tenants in common co-owners is their unity of possession. A tenant in common is, as to his own undivided share, precisely in the position of an owner of an entire and separate estate.

As co-owners they were entitled concurrently to use and enjoy the properties or if not in occupation of themselves to receive the rents and profits in their respective shares."

53. As was said by Basnayake, Guneratne and Alfred JJA in the case of Wati -v- Registrar of Titles [2017] FJCA 99; ABU0006.2016 (14 September 2017) that:

"[35] If a co-owner occupies the land with the consent of the other co-owners, such co-owner can never claim ownership to the exclusion of the other co-owners.

54. In this application, the co-owner, the Defendant had entered into a Sale and Purchase of his undivided share to the Plaintiff. The interested party argues that he occupies the other 3/5 undivided shares where his tenants run their businesses. From the interested party's contention, their concern is that as a result of the Sale and Purchase arrangement with the Plaintiff, they would eventually be ousted from their enjoyment of the privileges of co-ownership. This was discussed in great deal in the case of Nausori Meats Co Ltd -v- Fiji Meats Co Ltd [1983] Fjlawrp 7; [1983] 29 FLR 49 (28 July 1983) where Speight, Mishra and Quiliam JJA held that:

"The position between co-owners where there is no agreement is discussed in the work *Land Law* by Hinde MacMorland and Sim in Vol. 2 p. 909 the author says:

"Difficulties sometimes arise when one co-owner is in sole occupation of the land. Each co-owner has a right to the possession and enjoyment of the whole of the concurrently-owned property, and it has been said: "Considerations of justice and convenience have led to the recognition of the general principle that one co-owner cannot by failing to exercise his right of use and occupation establish a claim for compensation against another co-owner for the lawful exercise of his own equal right". Therefore no co-owner who has failed to exercise his right of possession is entitled to claim rent from another co-owner even though that other occupies the whole of the land."

That proposition is supported by two most erudite expositions viz by Salmond J. in McCormick v. McCormick 1921 NZLR 384 particularly at 386 and by Lord Denning M.R. in Jones v. Jones 1977 2 All ER 231 particularly at 235. It is otherwise however in certain exceptional cases referred to by the authors *Hinde* and others on the same page. One of these is unlawful ouster which was the basis of Mr Nagin's argument and that also was recognized in McCormick v. McCormick and Jones v. Jones. A similar situation arose in the very recent case referred to us by Mr Knight Dennis v. MacDonald 1982 FAM 63 where compensation was allowed in respect of an absentee wife but on the ground that she had been forced from the home by the continuing violence on the part of the husband - held to be expulsion ouster - but even then the Court of Appeal held that the correct measure was to be assessed as the equivalent of a rental charge.

In Bull v. Bull 1955 1 All ER 253 Lord Denning had also said in respect of co-owners:

"Neither can turn the other out but if one of them should take more than his appropriate share the injured party can bring an action for an account if one of them should go so far as to oust the other he is guilty of trespass."

55. It is on this basis, having considered the legal principles and the application made by the interested party, that the Court finds that there are no common issues of fact or law in dispute that requires the interested party to be joined.

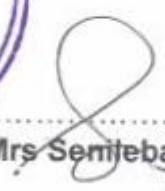
56. I will therefore not grant the application.

COURT ORDERS

57. Court will therefore Order that:

- (i) That the application for joinder of interested party be dismissed;**
- (ii) Costs to the Plaintiff for \$1000.**




.....
Mrs Semjeba LTT Waqainabete-Levaci
Puisne Judge