

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CIVIL JURISDICTION**

Civil Action No. **HBC 11** of 2015

- BETWEEN** : **MANOJ KUMAR** of Buca, Savusavu, in the Republic of Fiji Island.  
**1<sup>ST</sup> PLAINTIFF**
- AND** : **ADI NARAYAN** of Buca, Savusavu, in the Republic of Fiji Island.  
**2<sup>ND</sup> PLAINTIFF**
- AND** : **PREM CHAND** of Buca, Savusavu, in the Republic of Fiji Island.  
**3<sup>RD</sup> PLAINTIFF**
- AND** : **AMAR DEO** of Buca, Savusavu, in the Republic of Fiji Island.  
**4<sup>TH</sup> PLAINTIFF**
- AND** : **JAMUNA PRASAD** of Buca, Savusavu, in the Republic of Fiji Island.  
**5<sup>TH</sup> PLAINTIFF**
- AND** : **PRATAP CHAND** of Buca, Savusavu, in the Republic of Fiji Island.  
**6<sup>TH</sup> PLAINTIFF**
- AND** : **SATYA WATI** as Administratrix in the Estate of Moti Lal, late of Buca, Savusavu.  
**7<sup>TH</sup> PLAINTIFF**
- AND** : **ANAND PRASAD** of Buca, Savusavu, in the Republic of Fiji Island.  
**8<sup>TH</sup> PLAINTIFF**
- AND** : **DINESH CHAND** of Buca, Savusavu, in the Republic of Fiji Island.  
**9<sup>TH</sup> PLAINTIFF**
- AND** : **SUMITRA WATI aka SUMITRA** as the Administratrix in the Estate of Sugrim Singh, late of Buca, Savusavu.  
**10<sup>TH</sup> PLAINTIFF**

**AND** : **BAL RAM** of Buca, Savusavu, in the Republic of Fiji Island.  
**11<sup>TH</sup> PLAINTIFF**

**AND** : **VIMAL CHAND** of Buca, Savusavu, in the Republic of Fiji Island.  
**12<sup>TH</sup> PLAINTIFF**

**AND** : **SANT RAM AND SHIU RAM** as Executor and trustee of the Estate of Ram Baram, late of Savusavu.  
**DEFENDANTS**

**BEFORE** : **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:** **Mr. Sushil Sharma** for the Plaintiffs

**Mr. Bale A.** for the Defendants

**DATE OF JUDGMENT:** 13<sup>th</sup> February, 2024

## **JUDGMENT**

*[Joint Tenancy, Rights of Survivorship, Defendants to execute application for New Certificate of Title, Breach of Contract and Damages for breach of Contract]*

**A. INTRODUCTION**

- (1) The Plaintiff commenced proceedings against the Defendants and filed an amended Writ of Summons coupled with the Statement of Claim on 11<sup>th</sup> day of April, 2016 and sought for the following order:
- (i) An Order that the defendants to execute application for new certificate of title for the lots which has been purchased by the plaintiffs and which the plaintiffs are in occupation and further the defendants be ordered to execute the transfer documents in respect of said lots **OR ALTERNATIVELY** the deputy registrar to execute the documents in place of the documents.
  - (ii) An injunction restraining the Defendants either by them or through their servants or agent from entering into any part of the land occupied by the Plaintiffs as their residential dwelling and any part of the land occupied by the Plaintiffs plantation.
  - (iii) Damages for breach of contract in lieu of or in addition to specific performance.
  - (iv) An injunction restraining the defendants either through their servants, agents or howsoever from transferring, charging or disposing the said Certificate of Title No. 21230.
  - (v) General Damages.
  - (vi) Punitive Damages.
  - (vii) Interests.
  - (viii) Costs of this action on indemnity basis.

(ix) Such further and/or other relief as this Honorable Court may deem just and expedient.

(2) Subsequently, the Defendant's filed an amended statement of Defence on 29<sup>th</sup> April 2016.

(3) The Plaintiff's filed a Reply to the Amended Statement of Defence on 11<sup>th</sup> May 2016.

(4) Both parties to the proceedings furnished Court with their respective written submissions.

## **B. BACKGROUND**

(5) The Registered owners and conveyance of the property comprised in the Certificate of Title No. 21230 ("CT 21230") was to Ram Baran and Ram Jas as '**Joint Tenants**'.

(6) Ram Jas took demise on 02<sup>nd</sup> August 2000 whereas Ram Baran died on 29<sup>th</sup> June 2011.

(7) On 26<sup>th</sup> August 1997, both late Ram Baran and late Ram Jas entered into an Agreement whereas they agreed that one half of CT 21230 belongs to late Ram Baran and the other half belongs to Ram Jas.

(8) In terms of the above agreement, the parties than had the said CT 21230 sub-divided into two (2) equal lots and agreed that Lot 1 should belong to late Ram Baran and Lot 2 shall belong to late Ram Jas.

(9) Under the right of survivorship, the Defendants filed a record of death no. 789183 registered on 13<sup>th</sup> November 2013 against CT 21230 to record Ram Jas's death and therefore effective 02<sup>nd</sup> August 2000, Ram Baran was the sole registered proprietor of CT 21230.

(10) The Defendants as Executor and Trustees of the estate of Ram Baran registered a transmission of death on 13<sup>th</sup> November 2013 against the CT 21230.

(11) In their capacity as registered proprietors of CT 21230, the Defendants have undertaken steps to subdivided CT 21230 and deal with CT 21230 as they have seen fit.

- (12) On 30<sup>th</sup> June 2014, Mishri Prasad Jas as executor and trustee of the Estate of Ram Jas instituted a High Court proceedings in Labasa against the Defendants seeking a Declaration that the late Ram Baran and Late Ram Jas has held the freehold Land comprised in CT 21230 as '**Tenants in Common**' and not as '**Joint Tenants**'. However, the Court has refused to grant the declaration sought and the application to sever the '**Joint Tenancy**' was accordingly dismissed on 11<sup>th</sup> March 2015.

### C. EVIDENCE

- (13) At trial of the current proceedings, the Plaintiff called 13 witnesses and the Defence called 2 witnesses, the Defendant (DW1) Sant Ram and (DW2) Sailesh Viren Prasad.
- (14) All witnesses evidence have been audio recorded as well as hand written and can be referred to the same on the Court file rather than reproducing them herein.

### D. ANALYSIS AND DETERMINATION

- (15) The current substantive matter and the nature of the remedies sought, is more or less a duplication of the two (2) earlier actions which means that the Applicant/Plaintiff is a third time, attempting to seek the same remedies that have been considered and determined by the Court twice. Lot 8 which is the subject of this case is where all of the twelve (12) Plaintiffs currently are in occupation and has now become the certificate of title no. 415232 on 13<sup>th</sup> November 2013.
- (16) These actions are:
- (a) HBC 34 of 2014, Mishri Prasad Jas v Sant Ram and Shiu Ram as Executors and Trustee of the Estate of Ram Baran.
  - (b) The Statement of Claim in that action sought the following orders:
    - i. Declaration that the Plaintiff (Applicants) is entitled to 1.0117 hectares of land from Certificate of Title No. 21230,
    - ii. General Damages.

- iii. Punitive Damages.
  - iv. An injunction restraining the Defendants or their servants or agents or howsoever from transferring, charging or disposing the said Certificate of Title No. 21230.
  - v. Order for specific performance directing the Defendants to execute the transfer of 1.0117 hectares of Certificate of Title No. 21230 and to have a title issued to him by virtue of an adverse possession.
  - vi. Interests.
  - vii. Costs.
  - viii. Further orders as the Court deem just.
- (c) The Second Action instituted by the Applicant is **HBC 18 of 2015 Mishri Prasad Jas v Sant Ram and Shiu Ram** as executors and trustees of the Estate of Ram Baran. The Applicant again sought to file an affidavit seeking the same reliefs. However, it was struck out on the grounds of *res judicata*.
- (d) In that action, the Applicant sought the following orders:
- (i) Declaration that the Plaintiff is entitled to 1.0117 hectares of land from Certificate of Title No. 21230,
  - (ii) General Damages.
  - (iii) Punitive Damages.
  - (iv) An injunction restraining the Defendants either through their servants or agent or howsoever from transferring, charging or disposing the said Certificate of Title No. 21230.
  - (v) Order for specific performance directing the Defendants to execute the transfer of 1.0117 hectares of Certificate of Title No. 21230.
  - (vi) Alternatively, a Declaration that the Plaintiff is enlisted to have 1.0117 hectares of land or area contained in Lot 6 as per the approved plan comprised in Certificate of Title No. 21230 by virtue of an adverse possession.
  - (vii) Interests.
  - (viii) Costs.

(ix) Such further orders as the Court deem just.

(e) The Master found in the second application HBC 18 of 2015 at paragraph 35 that:

'it appears clear to the Court that the party's legal rights, that is, the Plaintiff's from its assertions that the Agreement is sufficient to sever the joint Tenancy and the Defendant's right, that is, its right to the property through survivorship of land held as joint tenants has been determined and could not be determined any further.'

(17) Further, at paragraph 39, the Learned Master added:

'I am therefore of the view that the issue of severance of the joint tenancy lies at the base of the issue to be determined in both the matters, for without the severance of the joint tenancy, the remedies sought could not be obtained. The issue has already been determined in **Civil Action No. 34 of 2014.**'

(f) Paragraph 40 and 41 of the Master's Ruling confirms that the law requires a formal registration of any investment that will 'create, vary, extinguish or pass any estate or interest or encumbrances in on or over any land subject to this act...' Section 37 of Land Transfer Act Refers.

(g) The current substantive matter filed by the Plaintiff's therefore hinges around the same instrument referred to in paragraph 19 of the Statement of Claim (That the Defendant's father Ram Baran also entered into agreements with various purchasers 'whereby Ram Baran has sold his share of land to various purchasers and the Defendants have obtained separate titles for the respective purchased) and paragraph 41 of the Masters Ruling [The purpose of the agreement entered between the parties and to which the Plaintiff relies in both actions was an attempt to create, vary or

pass any estate or interest over the land in Certificate of Title No. 21230, and this could only be achieved by the registration of the instrument which shows the intention of the parties to the severance of the Joint Tenancy. The Plaintiff is therefore estopped from raising the same issues again in another action] in HBC No. 18 of 2015.

(18) The Plaintiff's argued that:

- The Plaintiff's case is based on Constructive Trust.
- The Agreement date 26<sup>th</sup> August 1997 between the late Ram Jas and Ram Baran was an Agreement to partition Certificate of Title No. 21230 into two different lots and both will have one lot each.
- The Agreement dated 26<sup>th</sup> August 1997 between Ram Jas and Ram Baran was a Mutual Agreement to sever joint tenancy.
- The Defendants are holding the Lots 1, 2, 3, 4, 5, 6 and 7 for the benefit of the Plaintiff's by virtue of **Constructive trust** or **alternatively** the Plaintiffs are the beneficial owners of the separate lots which are occupied by them.
- The Defendants therefore to execute/transfer the application for **new Certificate of Titles** for the Lots.
- That Sant Ram and Shiu Ram by their conduct, common intentions and understanding of Ram Jas and the Plaintiffs created the Constructive Trust and is binding to the new legal owners Sant Ram and Shiu Ram of Certificate of Title No. 21230.

(19) The Defence argued that:

- The Agreement dated 26<sup>th</sup> August 1997 between the late Ram Jas and Ram Baran was a temporary Agreement between both joint tenants of Certificate of Title No. 21230, Lot 2, DP No.5321. The Agreement is titled '**Provisional**'.
- There was no survey or scheme plan approved, it will follow that there was no registered title that could be obtained over the said proposed



subdivision and could not be completed by Messrs. Inoke Consultants Surveyor.

- The whole portion of the land, Certificate of Title No. 21230 which from the time of the Agreement 26<sup>th</sup> August 1997 till 02<sup>nd</sup> August 2000 [Demise of Ram Jas] was still to be surveyed, no scheme plan approved, and therefore no registration of the survey plan by the Registrar of Titles automatically reverted the land to Ram Baran upon Ram Jas's death by right of survivorship.
- It meant that at the time of Ram Jas death, on 2<sup>nd</sup> August 2000, Certificate of title no. 21230 still remained as one lot namely Lot 2. Therefore, all Agreement made by Ram Jas between the period 05<sup>th</sup> September 1997 to 22<sup>nd</sup> March 2000 are all Null and Void as Ram Jas did not have the sole authority to sign over the proposed Lots on his own accord as the land was still being owned as '**joint tenants**' in **equal share**.
- Intended purchasers of Ram Jas land did not do anything about having the land surveyed at own expense, Registrar Survey Plan, execution by vendor if a Registrable title free of the encumbrances, and/or obtaining approval of the subdivision by town and country planning and authorities. Neither did Ram Jas do anything before his demise.
- When Ram Jas died on 02<sup>nd</sup> August 2000, the intended purchasers (plaintiff's) despite the agreements clearly stating that '**they had to have the said land survey at their own expenses**' did nothing about it either when Ram Baran (other joint tenant) was alive up until his death on 25<sup>th</sup> December 2010.
- By 02<sup>nd</sup> August 2000, Ram Baran had automatically become the owner of Certificate of Title No. 21230 by virtue of being the survivor of the joint tenancy.
- Upon Ram Baran's death on 2<sup>nd</sup> December 2010, transmission of record of death was registered onto the Certificate of Title No. 21230, on 13<sup>th</sup> November 2013, and registered to **Sant Ram and Shiu Ram as executor/trustee of the Estate of Ram Baran** and according to the memorial/folio reads:

*"Transfer pursuant to a will no. 852741 registered on 05<sup>th</sup> November 2017 to Sant Ram and Shiu Ram."*

- Here is not a situation of **Constructive Trust** as the in defeasibility of Title to Sant Ram and Shiu Ram's title cannot be defeated.
- Sant Ram and Shiu Ram inherited Certificate of Title No. 21230 upon the death of their father Ram Baran on 29<sup>th</sup> December 2022 and upon their inheritance by his Will dated 22<sup>nd</sup> July, 2000.
- The Appellants [Plaintiffs] were not in adverse possession of the property until the death of Ram Jas.

(20) Ownership or proprietorship of land in Fiji in the absence of any contrary intention is held as tenancy in common, to **preserve survivorship of the right to the land in the event of death on one party**; *Section 34 (a) of the Land Transfer Act*. Hence, the key aspect of this kind of tenancy is the right of survivorship, sub-section (b) ensures that this right is held in equal shares.

(21) Joint Tenancy in the other hand is characterized by what is termed '**the four unities**':

- (a) Unity of title,
- (b) Unity of time,
- (c) Unity of possession and
- (d) Unity of Interest.

*Unity of title* means that co-ownership must be created by the same deed or instrument whilst *Unity of time* depicts the simultaneous vesting of interest on the land. In a similar way, the *Unity of Possession* means that each tenant has equal right to possession (similar to Tenants in Common) and lastly, *Unity of Interest* means that each party must have the same type of interest, that is, one party cannot have a life interest whilst the other an estate in fee simple.

(22) The two (2) basic difference which distinguishes '**Joint Tenancy**' and secondly neither is there a **Right of Survivorship**. It is the second feature which is, the most striking feature of '**Joint Tenancy**', that is, the **right of survivorship** or "*ius accrescendi*".

What this means is that '*one of the joint tenant dies, the whole of the land held remains in the hands of the surviving joint tenant and is wholly seized (or possessed) by the surviving tenant.*' Hence, '*ius accrescendi*' may appear to give an unfair advantage to the accident of a longer life which could only be defeated by deposition by one of the parties. **In Fiji as in most common law jurisdictions, for this disposition to be lawful, it must be a registered instrument.**

(23) Registration is the key to legal disposition of the right to the property held as Joint Tenants **to successfully dispose of this right it must be done by an Instrument registered with the Registrar of Titles.**

(24) Section 37 of the Land Transfer Act states that:

*Instrument not effectual until registered*

"37. No instrument until registered in accordance with the provisions of this Act shall be effectual to create, vary, extinguish or pass any estate or interest or encumbrance in, on or over any land subject to the provisions of this Act, but upon registration the estate or interest or encumbrance shall be created, varied, extinguished or passed in the manner and subject to the covenants and conditions expressed or implied in the instrument."

(25) Upon my perusal of the provisions of the Land Transfer Act, I find that none of the provisions provide that '**not registering agreement to sever joint tenancy makes that Agreement Void or invalid.**'

(26) The purpose of registering instruments like **Agreement to sever Joint Tenancy, or mortgage under Torrens System is to notify third parties who intend to deal with that property, its ownership or interest registered against the Title/Lease.**

(27) If for example, **the Agreement to sever Joint Tenancy was not recorded on the Title** [as in the Current Case], and the third party deals with the survivor in good faith and without fraud on the third party's', then the third party's title would be indefeasible against the word.

(28) In the Current Case, the Certificate of Title No. 21230 on Lot No. 2 on DP No. 5321, shows no evidence to ascertain that Agreement of the owners Ram Jas and Ram Baran were

registered in order to show that there was any '**severance of joint tenancy**' which existed between them at anytime.

(29) It is not disputed by the parties to the proceedings that an agreement was entered between Ram Jas and Ram Baran on 26<sup>th</sup> August 1997. The Agreement is headed as Provisional Boundary Agreement for subdivision of Certificate of Title No. 21230.

(30) However, the question that arises for determination is '**whether the Agreement entered into between Ram Jas and Ram Baran on 26<sup>th</sup> August 1997 should be considered an effective or actual alienation, sufficient to enable the 'Severance of the Jointure?'**

(31) PW4 Mohd Sadiq in his capacity as the Barrister and Solicitor gave evidence that:

- In 1997 Late Ram Jas and Ram Baran came to his office and presented the 'Provisional Boundary Agreement' to him and confirmed their signatures on the Agreement.
- That both intended to own Lot 1 and Lot 2 and they have agreed to sell their individual lots.
- He formed an opinion that the joint tenancy was severed.
- Based on the Agreement date 26<sup>th</sup> August 1997, he drafted and prepared some Sales and Purchase Agreements with Ram Jas and the Plaintiff whereby the Plaintiffs agreed to purchase individual lots from Ram Jas.
- Inoke Surveying Consultant was hired to peg marks separating Lot 1 and Lot 2 as per the Agreement dated 27<sup>th</sup> August 1997.

(32) The Counsel in carriage of the Plaintiff's Case submits that the Common understanding and common intentions of Ram Jas and the Plaintiff's became imminent when Inoke surveyor was hired and the Plaintiff's paid the surveyor's fees. This survey was done so that the Legal Owner Ram Jas and Ram Baran could transfer the lots to the Individual Plaintiffs. He added further that the PW4, Mr. Sadiq confirmed that the signature of Ram Jas on the Sale and Purchase Agreement is sufficient and binding to both Ram Jas and Ram Baran and the Agreement between Ram Jas and the individual Plaintiffs is not Null and Void.

- (33) Prima Facie, it is clear from the Title to the Agreement that this Agreement of 26<sup>th</sup> August 1997 is merely an **Agreement to sub-divide Certificate of Title No. 21230**. The usage of the word '**Provisional**' means Temporary, conditional and/or providing or serving for the time being only. It is conditional until the sub-division of Certificate of Title No. 21230 has been completed by Messrs. Inoke Consultant Surveyors.
- (34) That both parties agree to the sub-division and are bound by the Sub-division and agree to have separate lots as Lot 1 and Lot 2 respectively.
- (35) However, upon a careful read of the Agreement, it cannot be ascertained that there is a clear intention to separate the lots into different titles. Paragraph 5 of an Agreement reads '**Any party that seek to obtain Registered Title over his share shall pay for relevant expenses to obtain such.**' This paragraph is not clear enough to form a basis that there was a '**Mutual understanding and/or Intention of the parties, Ram Jas and Ram Baran to create and/or sever the existence of the Joint Tenancy between them.**' It is left to each party to determine whether to obtain a Registered Title over his share, and that neither Ram Jas nor Ram Baran can compel either of them to sever the jointure. This Agreement does not have any enforcement provisions in order to enforce the Agreement. This Agreement merely temporary with no clear intentions to sever the joint tenancy and is not an effective alienation of the parties' rights under the joint tenancy.
- (36) In any Agreement the intention must be clear and straight to ensure that it is binding upon the parties and is legally binding and enforceable in law.
- (37) In this Agreement, although both Ram Jas and Ram Baran agreed to sub-divide their respective portion of the land into Lot 1 and Lot 2, the very aspect of the survivorship remains and was not addressed in this Agreement. Further, the Agreement was never registered with the Registrar of Titles to be endorsed onto the Certificate of Title No. 21230 according to law. **Alternatively**, since the sub-division, the parties did not make any effort and/or application to sever the joint tenancy.
- (38) The conclusion that can only be drawn herein is that '**the surviving joint tenant becomes entitled to an estate or interest in land upon the death of the other Tenant and that**

**entitlement is a precondition to registration [Case of Tirikula vs Tirikula 2012 FJHC 1034].**

- (39) In the Current case, Ram Jas took demise on 02<sup>nd</sup> August 2000 and therefore Ram Baran as the surviving tenant became entitled to the entire piece of land. Subsequently, Ram Baran died on 25<sup>th</sup> December 2010, left a will and his sons Sant Ram and Shiu Ram became the Executor and Trustees of Ram Baran's estate. It can be ascertained from the affidavits herein that both late Ram Jas and Ram Baran had plans to sub-divide the land (as per the Provisional Agreement) as far back as 1997 and the sub division had proceeded as could be ascertained from the affidavits. It is also true that during then attempt to sub-divide the land, the land was still held by both as joint tenants. However, there is no evidence to establish that there was any attempt to sever the joint tenancy and/or was lodged for registration during this period.
- (40) I find that the conveyance of the property comprised in Certificate of Title No. 21230, Ram Baran and Ram Jas was as '**Joint Tenants**'.
- (41) Under the Right of Survivorship, the Defendants Sant Ram and Shiu Ram as Executors/Trustees of the estate of Ram Baran filed a Record of death no. 789183 registered on 13<sup>th</sup> November 2013 against Certificate of Title No. 21230 to record Ram Jas's death and therefore effective 02<sup>nd</sup> August 2000, Ram Baran (survivor) was the sole registered proprietor of Certificate of Title No. 21230.
- (42) The Defendants have taken steps after the death of Ram Baran, registered a transmission of death on 13<sup>th</sup> November, 2013.
- (43) In their capacity as Executor/Trustees and subsequently as registered proprietors of Certificate of Title No. 21230, the Defendants have taken steps to sub-divide Certificate of Title No. 21230 and dealt with it as they had seen fit.
- (44) It will be noted that on 30<sup>th</sup> June, 2014, Mishri Prasad Jas as executor/trustee of the estate of Ram Jas instituted High Court Civil Action No. 34 of 2014 against the Defendants, SANT Ram and Shiu Ram where the court disallowed the application to sever the joint tenancy by its Ruling delivered on 11<sup>th</sup> March 2015.

**E. CONSTRUCTIVE TRUST**

- (45) A Constructive Trust that arises by operation of law where it would be unconscionable for a person (A) who holds an asset to deny the beneficial interest of another person in the asset.
- (46) In the current case, the Plaintiff's Contention and argument is that the Certificate of Title No. 21230 is held in trust by the two Defendants, Sant Ram and Shiu Ram for the Plaintiffs' benefit and that their beneficial interest is now being denied by the two Defendants, Sant Ram and Shiu Ram.
- (47) The Plaintiff Contention that by virtue of Joint Tenancy after the death of Ram Jas and Ram Baran, the property was transferred to the Defendants, Sant Ram and Shiu Ram. The Defendants are new legal owners of Certificate of Title No. 21230. This completely changed the Defendant's position and acted to the detriment of the Plaintiff's rights and interest. The Defendants engaged the surveyors to sub-divide the Lots after the death of Ram Baran in 2010 which was completed in 2012 by Wood and Jepsen.
- (48) The Defendants Sant Ram and Shiu Ram are the new owners, of Certificate of Title No. 21230. The conduct, common intentions and understanding of Ram Jas and the Plaintiff's which created the Constructive Trust is binding to the new legal owners Sant Ram and Shiu Ram. Sant Ram is a trustee by virtue of a creation of a Constructive Trust created between the last registered owner, Ram Jas and the Plaintiffs. The change of the legal owner of title from Ram Baran to Sant Ram does not defeat the Plaintiff's claim to be declared as beneficial owners of the lots. The Defendants contention is misconceived in relation to constructive trust and change of ownership. The Provisional Boundary Agreement of 26<sup>th</sup> August 1997, clearly states that the intention of Ram Jas and Ram Baran and subsequently surveying by Inoke Surveyors demonstrate the conduct and understanding of Ram Jas and Ram Baran to sub-divide the individual lots and allocate to the individual Plaintiffs. There was severance of joint tenancy to tenancy in common.
- (49) The Defence contended otherwise that:

- The Defendants inherited Certificate of Title No. 21230 on Lot 2 on DP No.5321 from their father Ram Baran pursuant to his Will of 22<sup>nd</sup> July 2002.
- Defendants Sant Ram and Shiu Ram's registered Title would have been defeated by the Constructive Trust in favour of the Plaintiff's by '**Rights in Personam**' , which is the exception to indefeasibility to the title.
- The Registered proprietor know of the facts which gave rise to someone else having an equitable interest in the land; and
- He proceeded to register his Title to the land despite that in circumstances in which it would have seen unconscionable for him to retain his registered interest in the land.
- *Section 39 of Land Transfer Act 1985 did not defeat the creation of a beneficial interest.*

**Whether the Defendants are holding the Lots 1-8 in Certificate of Title Nos. from 41516 to 41523 for the benefit of the Plaintiff by virtue of a Constructive Trust or alternatively the Plaintiff's are the beneficial owners of the separate lot which are occupied by them?**

- (50) Initially on 06<sup>th</sup> April 1982, Ram Baran and Ram Jas held the proprietorship in Joint Tenancy in Certificate of Title No. 21230, Lot 2 on DP No. 5321.
- (51) Both entered into a Provisional Boundary Agreement for the sub-division of Certificate of Title No. 21230 on 26<sup>th</sup> August 1997 as per the condition and terms enumerated in the Agreement.
- (52) Based on this Agreement, PW4 Mohd Sadiq drafted and prepared Sales and Purchase Agreement with Ram Jas and the Plaintiffs whereby the Plaintiff's agreed to purchase individual lots from Ram Jas.
- (53) However, Ram Jas took demise on 2<sup>nd</sup> August 2000. The Certificate of Title No. 21230 was subsequently on 13<sup>th</sup> November 2013 by transmission of death was automatically passed onto Ram Baran as the surviving joint tenant.



- (54) Upon Ram Baran's death on 25<sup>th</sup> December 2010, Transmission of death was registered onto the Certificate of Title No. 21230 on 13<sup>th</sup> November 2013 to Sant Ram and Shiu Ram as the executors and trustees of the estate of Ram Baran.
- (55) Lot 8 which is the subject of this case as it is where all the twelve (12) Plaintiffs currently occupy has now become Certificate of Title No. 415232 on 13<sup>th</sup> November 2013 and which according to the memorial on the said title reads:
- 'Transfer pursuant to Will no. 852741 registered on 05<sup>th</sup> November 2017 to Sant Ram and Shiu Ram.'*
- (56) Above means that the Defendants are no longer holding the said properties as Executors/Trustees of the Estate of Ram Baran but as joint tenants of the Certificate of Title No. 41523 as at 05<sup>th</sup> October 2017.
- (57) The Defendants in fact inherited Certificate of Title No. 21230 on Lot 2, DP no. 5321 in equal shares absolutely.
- (58) The situation is not where Constructive Trust arises since the indefeasibility of title to beneficiaries Sant Ram and Shiu Ram cannot be defeated. Transfer pursuant to a Will to Lot 8 in Certificate of Title No. 41523 registered on 05<sup>th</sup> October 2017 no. 852741, cannot be defeated by the Constructive Trust in favor of the Plaintiffs' unless any of the exceptions by rights in personam will apply to indefeasibility.
- (59) Therefore, Section 39 of the Land Transfer Act 1985 would not defeat the creation of a beneficial interest in equity.
- (60) There is absolutely no circumstances that would arise herein where it would be unconscionable for them to retain their registered interest in Certificate of Title No. 21230 as per the rights in personam.
- (61) The registration to the Certificate of Title No. 21230 by Defendants Sant Ram and Shiu Ram was acquired through inheritance of the Will of their father Ram Baran dated 22<sup>nd</sup> July 2022. There is no evidence to suggest that the registration to the Certificate of Title No. 21230 was obtained by fraud.

(62) Having said above, I find that there is no existence of any Constructive Trust in the circumstances and that the Defendants, Sant Ram and Shiu Ram are the registered proprietors of Certificate of Title No. 21230 accordingly.

**F. COSTS**

(63) The case proceeded to full 4-5 days Trial with a number of witnesses testifying in Court.

(64) Taking into consideration of the length of the Hearing and filing of Written Submission, it is only appropriate, just and fair that the losing party; the Plaintiffs to pay the Defendants a summarily assessed costs of \$3,000 within 14 days timeframe.

**G. ORDERS**

- (i) The Plaintiff's amended Writ of Summons and the Statement of Claim filed on 11<sup>th</sup> April 2016 is hereby Dismissed in its entirety accordingly.
- (ii) The Plaintiff's are hereby ordered to pay the Defendants a total sum of \$3,000 as summarily assessed costs within 14 days timeframe.
- (iii) The File is closed with above orders intact.

Dated at Suva this 13<sup>th</sup> day of February, 2024.



  
Vishwa Datt Sharma  
JUDGE

**CC:** Samusamvodre Sharma Lawyers, Labasa  
Lal/Patel/Bale Lawyers, Labasa