

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

HBC No. 38 of 2018

BETWEEN : **AMRIT SEN** Barrister & Solicitor of Wailevu, Labasa.

Plaintiff

AND : **TULSI RAM** of Korovatu, Labasa, Farmer.

1st Defendant

AND : **ROHINI LATA** (Wife of Tulsi Ram) of Korovatu, Labasa, Domestic Duties.

2nd Defendant

Representation:

Plaintiff: In Person

Defendant: Mr. Kunal Singh (KS Law)

Date of Hearing: 26th & 27th May 2025.

Judgment

A. Introduction

- [1] Amrit Sen (Plaintiff) and Tulsi Ram (1st Defendant) owned adjoining property. Rohini Lata (2nd Defendant) is the wife of Tulsi Ram. The Plaintiff's claim is that the defendants were bound by the Fencing Act to repair and keep in repair and contribute to fence between the two properties. Upkeep and repair were required to prevent cattle from escaping the fence. Plaintiff claims that since 2007 he has been repairing the fence until May 2018 when the defendants obstructed him and his servants and agents from attending to repairs, causing the fence to be in state of disrepair and damaged.
- [2] According to the Plaintiff by a notice dated 23rd May 2018 the 1st Defendant was put on notice to contribute towards the repair of the fence and to allow the plaintiff access to such repair. Plaintiff alleges that instead of contributing towards repair the defendants prevented the plaintiff from entering his property to repair the fence and that the defendants and their servants and agents were damaging the fence by cutting the barb wires and allowing the cattle to escape.
- [3] The Plaintiff further alleged that the defendants allowed the Agriculture Department to set up traps after the defendants tied their cows which were on heat to attract plaintiff's bullocks to their field. The Plaintiff further alleged that the defendants actively assisted the staff of the Agriculture Department to trap and impound his cattle. The Plaintiff is

seeking damages, injunction, declaration that 1st Defendant breached the notice dated 23rd May 2018, declaration that the defendants contribute towards the cost of repairing of the fence, special damages, punitive and exemplary damages in the sum of \$100,000.00, costs, interests and such other relief as the court may deem just and expedient.

- [4] The defendants denied the allegations and filed a statement of defence in person. A reply to defence was subsequently filed by the plaintiff. An amended statement of defence and counterclaim was filed by KS Law. A reply to the amended statement of defence and counterclaim was later filed. A reply to defence to counter claim was filed on behalf of the defendants.

B. The Witnesses and Matters in Issue

(a) Witnesses

- [5] The Plaintiff gave evidence. PW-2 was Jitendra Prasad, PW-3 was Chandrika Prasad, and Pw- 4 was Harry Fong. The Defendant's first witness was Avinesh Dayal. DW-2 was Ilaitia Busela. Both the defendants gave evidence.

(b) The Matters in Issue

- [6] The Minutes of the **Pre-Trial Conference** of the Lawyers for the parties was filed on 26th September 2022. The following matters are in issue between the parties:

- “4. **HAS** the plaintiff been repairing the fences since year 2007, until May 2018 did the defendants obstruct the plaintiff and his servants and agents from attending to the necessary repairs thereby allowing the fence to be in a state of disrepair and damaged?
5. **Whether** the defendants were and are bound by the Fencing Act to repair and keep in repair and contribute for repair of the fence between the two lands so as prevent cattle lawfully being in the same respective fields from escaping from and out of the one into the other through defects in the said fence?
6. **WAS** the 1st defendant through a notice dated 23rd May 2018 put on notice to contribute towards the repair of the fence and allow the plaintiff access to such repair?
7. **HAVE** the defendants prevented the plaintiff from entering his property to repair the fence?
8. **DID** the defendants through their servants and agents been damaging the fence by cutting barbed wires and allowing plaintiffs cattle to escape?
9. **DID** the defendants since 13th August 2018, and their servants and agents chase the plaintiff's cattle out of his boundary to open fields and over his land setting the spring board for Agriculture Department to pound and take the cattle?
10. **HAS** the plaintiff since 23rd May 2018 been trying to repair the said fence and identify his cattle to be removed from the defendant's land but has been prevented by the defendants through threats, violence and obstruction?
11. **HAVE** the defendants deliberately failed to repair the said fence and have prevented the plaintiff from doing so and further allowed the said fence to remain damaged contrary to Section 28 of the Fencing Act Cap 16?
12. **HAS** the 1st defendant breached the notice dated 23rd May 2018?

13. ARE the defendants liable to contribute towards the repairs of the fence of all costs incurred by the Plaintiff?
14. HAS the plaintiff suffered special and general damages by reason of the conduct of the defendants?
15. IS the plaintiff entitled for special damages, General damages, Punitive and exemplary damages in the sum of \$100,000.00 and costs?
16. ARE the defendants entitled for damages as per their counter-claim?"

C. Determination

- [7] In order to understand the matter we need to understand the two properties. The Plaintiff is the owner of CT 28734, being Lot 1 on DP 7224 having an area of 36 hectares four thousand one hundred and eighty-one square meters (36.4181Ha). The Defendant on the other hand was the owner of CT 28736, being 3 on DP 7224 with an area of 61 hectares nine thousand two hundred and twenty-nine square meters (61.9229 Ha). The two properties adjoin each other. They share a common boundary along certain parts of the properties.
- [8] This matter commenced following the impounding of the plaintiff's cattle sometimes in August 2018. The Plaintiff alleges that the defendants have prevented him from repairing the fence and that the defendants, their servants and agents have been damaging the fence by cutting the barb wires. This then led to the cattle escaping.
- [9] I find that there is no evidence that the defendants, their servants or agents have been damaging the fence. The evidence of the plaintiff was that the 1st defendant cut the fence and that he had witnesses to that effect. No witness that was called by the plaintiff saw the 1st defendant cut the fence. None of the witnesses saw anyone cut the fence. The plaintiff speculated that the defendants, their servants or agents cut the barb wire fence. Such evidence by the plaintiff does not add credence to his version of events.
- [10] The plaintiff claimed that he has been repairing the fence since 2007 until May 2018 when the defendants obstructed him, his servants and agents from attending to the necessary repairs allowing the fence to be in state of disrepair and damaged.
- [11] The evidence of the plaintiff was that he purchased the property in 2007 and until May 2018 he alone was repairing the fence. The defendants prevented him from repairing the fence. The 2nd defendant called the police. He was sworn at. He did not lodge a complaint about swearing by the 2nd Defendant.
- [12] **The evidence of 1st defendant, Tulsi Ram was that he was the owner of CT 28736. His ownership was from 1994. The next property owners were Jai Lal and Ravin Lal. Ravin Lal sold his property to Amrit Sen in 2007. Tulsi Ram's father had put goat fence when he was small. When it broke, they maintained it. After 2007, Tulsi repaired the fence. Tulsi's evidence was that he repaired with his neighbour and that from 2015 to 2020 he also repaired and maintained the fence. He denied calling the police or stopping them using the road. He denied threatening or causing any violence when the plaintiff's tried to repair. I accept Tulsi Ram's evidence. He was consistent.**

- [13] The plaintiff did not provide credible evidence that he was the only one repairing the fences since year 2007, until May 2018. Two invoices from the plaintiff for barbed wire and staples in September 2016, and one invoice for nails in July 2013 is not evidence enough for fixing the common fence from 2007 to May 2018. The plaintiff could have utilized the materials anywhere on his farm. In the absence of conclusive evidence of repairs by the Plaintiff towards the common fence the court does not find that the plaintiff repaired the fence. I also note that the plaintiff in the purported letter to the 1st defendant cited that the costs of reconstruction and repairing the fence was in the sum of \$80,000.00. The 1st defendant's contribution being \$40,000.00. No evidence was given of any quote for the materials and labour to cover the \$80,000,00 repair cost.
- [14] I also find that there is no credible evidence that the defendants obstructed the plaintiff, his servants and agents from attending to the necessary repairs thereby allowing the fence to be in a state of disrepair and damaged. The plaintiff is well versed with the law. He did not back up his evidence of being threatened, any form of violence or intimidation by the defendants towards him or his servants and agents. If the access was blocked, which according to them was a public access, the police should have been notified. According to the Plaintiff he made reports to the police. No police report was tendered to substantiate the reports. The plaintiff had other ways to access the fence through his property. I do not find that the defendants obstructed the plaintiff, his servants, agents from attending to the necessary repairs. The Plaintiff had ample access to the fences that needed to be repaired.
- [15] The evidence of Rohini Lata (2nd Defendant) was that she did not stop the plaintiff from accessing his farm. She had no interaction with him. She never talked to him. She also gave evidence that she did not stop anyone. I accept her evidence. She was consistent.
- [16] Jitendra Prasad's (PW-2) evidence was that he did not know if Tulsi Ram stopped anyone from fixing the fence. Chandrika Prasad's (PW-3) evidence was that 1st defendant stopped Hari. He was with Hari. Tulsi's wife was at home. She said not to use the road. They could go other way. He later gave evidence that if Tulsi allowed them to fix the fence the cattle would not escape. In cross-examination Chandrika agreed that the fence can be accessed from both sides. In 2018 Tulsi stopped him. Tulsi's wife said to him not to use the land. Jai Raj was another neighbour of the plaintiff. They could go through his property. He did not want them to use his property. In addition to finding that the defendants did not stop the plaintiff and his workers. I find that the plaintiff and his workers had alternative routes to access and fix the fence.
- [17] Plaintiff's 4th witness was Harry Fong. He used to be the Plaintiff's caretaker. According to him before incident they used the access freely. They were later not allowed to access the road. As the Agriculture Department came, they completely stopped him from accessing the road. In cross-examination he once again stated that when Agriculture Department came Tulsi stopped him accessing the fence.
- [18] The Fencing Act 1955 relates to the erection and repair of dividing fences. Section 5 of the Fencing Act 1955 provides that "*...the occupiers of adjoining land not divided by a sufficient fence are liable to contribute in equal proportions to the erection of a fence between such lands, notwithstanding that such fence may not extend along the whole boundary-line.*" **The Fencing Act 1955 is relevant. It affects the properties in question.**

- [19] The procedure to compel contribution to the repair of fences is set out in Section 16 of the Fences Act 1955, subsection 1 provides that “*where either of the adjoining occupiers desires to repair any fence dividing lands he or she may serve a notice upon the other requiring him or her to assist in repairing such fence, and may, if such other occupier refuses or neglects so to do for the space of 7 days after service of such notice, himself or herself repair the fence and recover half the cost thereof from such other occupier.*” Furthermore, Section 24 (1) (a) of the Act provides that service may be personal or by leaving the same or posting the same in a registered letter addressed to the last known place of abode or business, or by an advertisement in the newspaper. Section 24 (2) of the Fencing Act 1955 states that “*it shall not be necessary to prove the actual receipt of such notice by the person to whom it is addressed.*”
- [20] The purported notice to repair by the Plaintiff to the 1st defendant is dated 23rd May 2018. The plaintiff’s evidence was that he gave the defendant notice to repair. The 1st defendant denied ever being served the said notices. By virtue of Section 24 (2) it is not necessary to prove the actual receipt of the notice by the 1st defendant. However, I find that it would have helped if the plaintiff gave evidence when the 1st defendant was served. It is not good enough to state that you served someone. You need to provide details of service. I need to know when and where the person was served. A person has to be properly served in order for the person to respond and act accordingly. On the information before me I do not find that the 1st defendant was served a notice to repair. In the absence of the notice there is no breach of the notice by the 1st defendant. The defendants are neither liable to contribute towards any costs of the fence.
- [21] I do not find that the defendants, their agents and servants chased the cattle of the plaintiff to open fields and over the plaintiff land to lead the Agriculture Department to impound and take the plaintiffs cattle.
- [22] The Defendants counter claim was not pursued. No evidence was tendered to support the counterclaim. They are dismissed.
- [23] The Plaintiff’s claim is dismissed for the reasons I have given. The Plaintiff is to pay the defendants \$5000.00 as costs. The costs have been summarily assessed. These are to paid within 21 days.

E. Court Orders

- (a) The Defendants counter claim is dismissed.
(b) The Plaintiff’s claim is dismissed.
(c) The Plaintiff is to pay the defendants \$5000.00 as costs. The costs have been summarily assessed. These are to paid within 21 days.



[Handwritten signature in blue ink]

Chaitanya S.C.A Lakshman
Puisne Judge
29th July 2025