

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC 294 OF 2019

BETWEEN : **SAIYAD ABDUL GAFFAR SHAH** aka **SAYED GAFFAR HUSSEIN** of 41 Bertha Lane, San Francisco, California, 94124, USA and **SAIYAD MOSESE TALIM HUSSEIN** of 238 Judson Ave, San Francisco, California 94112, USA as the Sole Executors and Trustees **IN THE ESTATE OF FATIMA BIBI HUSSEIN** aka **FATIMA BIBI** late of Namaka Park, Nadi, Domestic Duties, Deceased, Testate

PLAINTIFFS

AND : **SAUNAKA LAND PURCHASE CO-OPERATIVE SOCIETY LIMITED** a limited liability company having its registered office at Saunaka, Nadi

1ST DEFENDANT

AND : **RAVINESH KUMAR** of Saunaka, Nadi

2ND DEFENDANT

AND : **KINICONI RABAKEWA** of Saunaka, Nadi

3RD DEFENDANT

BEFORE : Hon. A.M. Mohamed Mackie J.

COUNSEL : Ms. Swamy A. – for the Plaintiffs.
: Mr. B. Krishna – In Person (Chairman of 1st Defendant)
: Mr. Turuva A. – for the 2nd Defendant.

HEARING : On 30th June 2025.

WRITTEN SUB : Filed by the Plaintiff on 30th June 2025.
: Filed by the 2nd Defendant on 29th August 2025.
: Reply filed by the Plaintiff on 09th September 2025.

JUDGMENT : Delivered on 4th December 2025.

JUDGMENT

A. INTRODUCTION:

1. The Plaintiffs, as the Executors and Trustees of the Estate of deceased **FATIMA BIBI HUSSEIN** aka **FATIMA BIBI**, on 5th November 2019, filed their Originating Summons seeking the following orders against the 1st, 2nd and 3rd Defendants.

- a. *A declaration that the Estate Fatima Bibi Hussein is a member of the 1st Defendant Saunaka Land Purchase Co-operative Society Limited.*

- b. *An order that the First Defendant arrange for sub-division, survey and distribution of holding among members of the land comprised in Certificate of Title Number 1089 and/or in the alternative the First Defendant take all necessary steps, actions and make all relevant representations to subdivide the interest of the Estate of IN THE ESTATE OF FATIMA BIBI HUSSEIN aka FATIMA BIBI from the land comprised in Certificate of Title Number 1089.*
- c. *An order that in the event the First Defendant refuses and fails to comply with the orders of this Honorable Court, The Deputy Registrar of the High Court shall execute such papers, applications, letters as required in place of the First Defendant.*
- d. *An order Second Defendant resides on the land comprised in Certificate of Title 1089 being a portion of land allocated to the Plaintiff.*
- e. *Damages.*
- f. *Costs on client solicitor indemnity basis.*
- g. *Any further or other order as this Honorable Court may deem fit in the circumstances.*

B. GROUNDS:

- 2. The Plaintiffs relied on the following grounds to substantiate their reliefs claimed above, which also reveal the background of this action.
 - 1. **THAT** *the 1st Defendant is a Body Co-operate duly registered under the Co-operative Societies Act 1996.*
 - 2. **THAT** *objectives of the 1st Defendant are that;*
 - 2.1 *To purchase the land comprised in Certificate of Title Number 1089 (herein after referred to as the said land) for the use and benefit of the members of the First Defendant and;*
 - 2.2 *To arrange for sub-division, survey and distribution of holding among members.*
 - 3. **THAT** *the 1st Defendant despite being registered sometime in 1960s and acquiring the said land has failed to subdivide the same and provide each holding to each member in accordance with the objectives of the first Defendant.*
 - 4. **THAT** *by failing as aforesaid the 1st Defendant has failed in its objectives.*
 - 5. **THAT** *at all material times it was incumbent on the first Defendant to arrange for sub-division, survey of the said land and distribution of the holding among members.*
 - 6. **THAT** *Fatima Bibi and now her Estate, the Plaintiff's at material times had and have a legitimate expectation as a member that the first Defendant shall adhere and undertake its objectives as aforesaid.*
 - 7. **THAT** *Fatima Bibi Hussein aka Fatima Bibi was at all material times a member of the First Defendant.*

8. **THAT** by list of membership issued by the First Defendant as at 1976 confirmed that the deceased Fatima Bibi was a bona fide member of the First Defendant.
9. **THAT** the membership of the deceased Fatima Bibi was reconfirmed by a list of members issued in 1986 and 1996.
10. **THAT** by letter in writing dated the 7th of October 2014 the First Defendant has confirmed that the deceased Fatima Bibi was at all times a member of the First Defendant.
11. **THAT** Fatima Bibi Hussein aka Fatima Bibi passed away on the 1st of January 2016, and Probate in her Estate was issued by the High Court of Fiji by way of Probate grant Number 58615.
12. **THAT** the Plaintiffs, were appointed as the Said Executors and Trustees in the Estate of Fatima Bibi Hussein aka Fatima Bibi.
13. **THAT** the 1st Defendant despite confirming that the deceased was a member of the 1st Defendant, has refused and/or neglected to confirm that the Estate of the deceased shall now be registered with it as a member.
14. **THAT** during the life time of Fatima Bibi, she occupied an acre of the said land prior to the purchase of the same by the 1st Defendant and had constructed her dwelling house on the same.
15. **THAT** the 2nd Defendant now occupies the deceased's holding on the same land without any authority or approval of the deceased or the Plaintiffs.
16. **THAT** the 2nd Defendant has no right either equitable or proprietary to occupy the Plaintiff's holding on the said land.
17. **THAT** despite raising an issue with the 1st Defendant, the 2nd Defendant still is permitted by the 1st Defendant to reside on the deceased's holding on the said land.

C. CHRONOLOGY OF EVENTS:

3. This Court has already, on 4th April 2025, delivered a Ruling in ***Shah v Saunaka Land Purchase Co-operative Society Ltd [2025] FJHC 180; HBC294.2019 (4 April 2025)*** in relation to two (2) separate interlocutory applications, namely, for **Setting Aside Default Judgment and Striking Out the action**, both preferred by the 2nd Defendant in this action, wherein this Court has given the chronology of events and the background to this action in detail. Thus, in order to avoid the verbosity, I shall not repeat the same.

D. DOCUMENTS RELIED ON: (Pleadings)

4. For the purpose of this Judgment, this Court will rely on the Originating summon, the contents of the followings Affidavits cum the annexures thereto, those of the aforesaid Ruling and the written submissions filed by both the parties.
 - a. The Affidavit in Support sworn by the Plaintiffs and filed on 5th November 2019, together with annexures marked as "A" to "G".

- b. The Affidavit in Response sworn by the 2nd Defendant and filed on 23rd January 2020, together with annexures marked as “RK-1” to “RK-3”.
- c. The Affidavit in Reply sworn by the Plaintiffs and filed on 22nd April 2022, together with a further annexure marked as “A”.
- d. The Affidavit filed by the 1st Defendant Society sworn by its current Chairman Bal Krishna, some averments of which are found to be supportive of the Plaintiffs’ claim.

E. HEARING:

5. In terms of the Ruling pronounced by me on 4th April 2025 pursuant to the hearing of the Striking Out and Setting Aside Applications preferred by the 2nd defendant, this Court on 30th June 2025 re-heard the Originating Summons, wherein both the Counsel for the Plaintiff and the 2nd Defendant made their oral submissions and filed respective written submission as aforesaid.
6. The 1st defendant, through its Chairman Mr. BAL KRISHNA, who appeared in person, in his Affidavit filed in opposition to 2nd Defendant’s Striking out and Setting Aside Applications, have dedicated some averments in support of the Plaintiffs’ substantive claim in the Originating Summons.
7. In the meantime, the Plaintiffs’ Solicitors on 13th February 2020 filed the **Notice of Discontinuance** of the action against the 3rd Defendant. Hence, this judgment will not deal with the 3rd Defendant.
8. As the substantive relief (a) in the Originating summons granted by my predecessor on 20th August 2020 in favor of the Plaintiff to the effect “*THAT it is declared that the Estate of Fatima Bibi Hussain is the member of the 1st Defendant Saunaka Land Purchase Cooperative Society Limited*” has now been set aside by my Ruling dated 4th April 2025, in this Judgment, I will be considering all the reliefs sought by the Plaintiff in their Originating Summons since it has now been heard inter-parte.
9. At the end of the inter-parte hearing, counsel for the 2nd Defendant by indicating a possibility of settlement, informed the court that the 2nd Defendant is prepared to buy the property in dispute from the Plaintiffs and accordingly this Court left the parties at liberty to consider the settlement. But no such a settlement was materialized.

F. DISCUSSION:

The Substantive Matter (The Originating Summons)

10. By the Originating Summons pending before this Court, being filed on 5th November 2019, the Plaintiff moves for several key reliefs against both the 1st and the 2nd defendants. Vide paragraph 1 (a), (b) (c), (d) (e) & (f) above.
11. Making the task for the Plaintiff an easy one, the 1st defendant by its Affidavit sworn and filed on 19th September 2022 through its current Chairman BAL KRISHNA in no uncertain terms, has expressed its support to the Plaintiff. The 1st Defendant has

confirmed that the 2nd Defendant is currently occupying the lot allocated to the deceased FATIMA BIBI and moved that the 2nd Defendant's Applications for setting aside and strike out be struck out. This relief has already been granted by my previous Ruling. The 1st Defendant has also stated that it intends to sub-divide and transfer the land to the members.

12. The membership of the deceased FATIMA BIBI during her lifetime has been substantiated by the Plaintiffs through the Affidavit evidence and the annexures thereto marked as "B" to "F". This has not been controverted by the 1st and 2nd Defendants. Instead, the 1st Defendant in its said Affidavit has confirmed the entitlement of the deceased Fatima Bibi. It is where the said Bibi was residing, now the 2nd Defendant is said to be, admittedly, residing. Thus, non-resident status of the Fatima Bibi or her heirs /executors / beneficiaries, need not necessarily be a hurdle for the Plaintiffs to pursue the claim as the Trustees and Executors of the Estate of deceased Fatima Bibi.
13. It is also to be noted that the 1st Defendant has neither filed any Affidavit in opposition to the Plaintiffs' claim in the Originating Summons nor expressed at least his opposition thereto orally when its current Chairman BAL KRISHNA appeared in Court on being noticed by the Court.
14. The Court has heard the 2nd Defendant through his counsel at the hearing before me in relation to all reliefs prayed for by the Plaintiff against him (2nd Defendant) as per the Originating Summons.
15. Final hearing into the Originating Summons was held on 30th June 2025. Both Counsel made the oral submissions. As the 2nd Defendant indicated the possibility of a settlement for him to buy the disputed property from the Plaintiff, matter was fixed to be mentioned on 08th August 2025 to see the outcome of it.
16. Accordingly, when the matter came up on 08th August 2025, as no settlement had been arrived at, the matter was fixed for judgment. The Plaintiff relied on the substantive written submissions filed at the hearing on 30th June 2025. The 2nd Defendant filed his written submissions on 29th August 2025, which was replied by the Plaintiff on 09th September 2025.
17. Though, the settlement proposed by the 2nd Defendant to buy the property in dispute from the Plaintiffs did not materialize, I observe that the said proposal itself by the 2nd Defendant can be construed as the admission on the part of the 2nd Defendant that the Deceased FATIMA BIBI HUSSAIN aka FATIMA BIBI was a member of the 1st defendant society, now her Estate bears the member-ship in the First Defendant Society and the Estate is the rightful owner thereto. On this admission itself, the 1st relief sought by the Plaintiffs, as per paragraph (a) of the Originating Summons, can be granted.
18. As far as the prayers (a), (b), (c) & (d) to the Originating summons are concerned, the first Defendant, being the Society in charge of all affairs of the entire land in the scheme, including the land in dispute in this action, has admitted the Plaintiffs' claim and confirmed that it will be attending to the sub-division and transfer the relevant

portion of the land to the Plaintiffs. The 2nd defendant has not adduced any valid reason through evidence for the Court to disallow these reliefs sought by the Plaintiffs.

19. The 1st Defendant Society has also confirmed that the 2nd Defendant is neither a member of the 1st Defendant nor he has been authorized by the 1st Defendant to occupy the Land and premises therein. The 1st Defendant's position that the 2nd Defendant is in unlawful possession of the subject land and premises has not been controverted by the 2nd Defendant.
20. The 2nd Defendant's stance in his affidavit in reply filed on 23rd January 2020 that his occupation is with the consent, knowledge and permission of the 1st Defendant and he has applied for membership remains unsubstantiated. No evidence whatsoever was produced that he is a member. Further, the 2nd Defendant could not have resorted to the relevant provisions of the Co-operative Act of 1996 as he is not a member of the 1st Defendant society. Thus, any argument advanced on behalf of the 2nd Defendant basing on the provisions of the said Act will not assist the 2nd Defendant.
21. In the decided case of *Sitamma Naidu v Saunaka Land Purchase Co-operative Limited Civil Action No-115 of 2022*, the court, while deciding on a similar application on 16th August 2022, had already directed the 1st Defendant to survey, subdivide and distribute the relevant land out of CT 10896 to the parties thereof. The 2nd Defendant has not provided any evidence to warrant a judgment in his favour.
22. The 2nd Defendant's position in his written submission is that he is in occupation of the subject property since the year 2006 when he did the construction works for the late Fatima Bibi. He further states that since she could not afford to pay them, the late Fatima Bibi told him that they could occupy the current dwelling that they are in. He also says that since the previous structure was destroyed due to cyclone, floods made it uninhabitable and the present structure was put up by him. This again is the admission of the Deceased Fatima Bibi's entitlement to the subject land. No evidence adduced to prove the position taken up by him.
23. The above is a very weak and vague excuse which remains unsubstantiated. Paying the Town-Rates alone will not entitle him to legally occupy and to construct, without being a member of the 1st Defendant Society and in the absence of its approval.
24. The question whether a part of the land occupied by the 2nd Defendant falls within the iTaukei Reserves, as per the purported correspondence from the village head marked and annexed to his affidavit in reply, is not an issue that can be adjudicated through these proceedings. If there is an issue of this nature, the survey which has to be carried out by the 1st Defendant, as a part of its obligation, will reveal it and could possibly resolve the issue, if any, in a proceedings where the relevant Mataqali will be a party. This will not assist the 2nd Defendant to justify his unlawful occupation.
25. As alluded to in a foregoing paragraph, the 2nd Defendant, not being a member of the 1st defendant society, and while being an unlawful occupant of the land and premises that had been allocated to the late Fatima Bibi, cannot claim under any provisions of the Co-operative Act.

26. The 2nd Defendant has admitted the fact that he came into the land premises with the, purported, permission and consent of the late Fatima Bibi. Further, by admitting her and her Estate's entitlement to the land in dispute, he has made a proposal to buy the same from the deceased's Estate. Now he cannot be heard to say that late Fatima Bibi's Estate is not entitled to the land and premises in question.
27. The 1st Defendant, who has confirmed that the land had been allocated to Fatima Bibi, and now recognizes the Plaintiffs' claim and supports it without any reservation or condition, should perform its obligations towards the late Fatima Bibi and her Estate which is now duly represented by the Plaintiff.
28. The argument taken up by the 2nd Defendant's counsel in the last paragraph of his written submission to the effect that this Court has no jurisdiction to hear matters pursuant to the Co-operative Act 1996, will not hold water. Because, the application of the said provisions of the Act will not arise here for the reasons stated above.
29. Moreover, the 2nd Defendant cannot take up such a position now to say that this Court has no jurisdiction, while the 2nd Defendant has already submitted himself to the jurisdiction of this Court by causing this Court to hear his two interlocutory applications, out of which the decision of one was in his favor.
30. The occupation of the 2nd Defendant is without any approval of the Plaintiffs and that of the 1st Defendant. The 1st defendant has not objected to the Plaintiff's claim. Section 115 & 116 of the Co-operative Act will come into play and assist the 2nd Defendant only if he proves that he is a member of the 1st Defendant society. The decided authority in ***Saunaka Land Purchase Co-operative Society v Mohammed & Ors – Civil Action No- HBC 157 of 2010*** supports the Plaintiffs' stance that the said Act does not assist the 2nd Defendant.
31. Foregoing evidence, leave me with no alternative, other than dismissing the 2nd Defendant's defence and allowing the Plaintiffs' claim.
32. Considering the circumstances and the nature of the frivolous defence advanced by the 2nd Defendant, in my view, ordering a cost in a sum of \$6,000.00 will do justice to the Plaintiffs.
33. The 1st Defendant should take all the steps to divide and transfer the land in question unto the Estate of the deceased Fatima Bibi, with no further delay and ensure they are restored to the possession of the land and premises in dispute at the earliest possible opportunity.

G. FINAL ORDERS:

- a. The Plaintiffs' Originating Summons filed on 05th November 2019 succeeds.
- b. It is hereby declared ***"THAT the Estate of Fatima Bibi Hussain, is a member of the 1st Defendant Saunaka Land Purchase Cooperative Society Limited"*** as prayed for in paragraph (a) of the Originating Summons.

- c. Reliefs prayed for in terms of paragraphs (b), (c) and (d) of the Originating Summons are also granted in favor of the Plaintiffs.
- d. The 2nd Defendant shall pay the Plaintiff, within 28 days from today, a sum of \$6,000.00 (Six Thousand Fijian Dollars), being the summarily assessed costs of this action.
- e. The 1st Defendant shall discharge its duties and obligations towards the Plaintiffs, and fulfill its objectives in relation to subject land, with no further delay.
- f. This judgment shall be sealed and served on the 1st and 2nd Defendants forthwith.



A.M. Mohamed Mackie
 A.M. Mohamed Mackie
 Judge

At the High Court of Lautoka on this 4th day of December 2025.

SOLICITORS:

For the Plaintiff

For the 1st Defendant
 Krishna

For the 2nd Defendant

Messrs. Patel & Sharma Lawyers- Barristers & Solicitors

The first Defendant appeared through its chairman – Bal

(In person)

Messrs. Turuva Legal I- Barristers & Solicitors