

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 144 of 2022

BETWEEN: SARAS WATI

PLAINTIFF

AND: SARAS CHAND aka SARAS CHANDAR

DEFENDANT

BEFORE : A.M. Mohamed Mackie-J
COUNSEL : Ms. P. Singh with Ms. P. Kumar for the Plaintiff.
: Ms. Kumari. B- For the Defendant.
TRIAL : On 4th November 2024.
W. SUBMISSIONS : Filed by the Plaintiff on 05.12.2024.
: Filed by the Defendant on 23rd January 2025.
JUDGMENT : Delivered on 5th March 2025.

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff on 13th May 2022 , by way of her Writ of Summons and the Statement of Claim ("SOC") , filed this action against the Defendant seeking the following reliefs;

- a. An Order that the Defendant transfer to the Plaintiff all that land being 5.704m² (Five thousand seven hundred and four meter square) as contained in **lot 14** on State Lease No-23331 on land known as part of Rarawai Vunisamatoa – Formerly CT 7822 in the Province of Ba in the district of Ba in Fiji.
- b. Such other reliefs as this Court may deem just and equitable in the circumstances.

B. BACKGROUND FACTS :

2. As per the averments in the SOC, the Plaintiff, *inter alia*, states THAT:

- a. At all times material she was in control of all that land being 5.704 m² (five Thousand Seven Hundred and Four square meters as contained in **Lot 14** on the State Lease No-23331 on land known as P1 of Rarawai Vunisamaloa formerly C.T. 7822b in the province of Ba in Fiji(“the subject Property”).
- b. This State Lease formerly known as Crown Lease No- 6420, on its expiry was renewed as State Lease No-23331.which contains two lots being Lot 14 and 18.
- c. At all material times , the Defendant was the registered proprietor of the State Lease in his capacity as the sole Executive and Trustee of the Estate of **Ram Nath** , who was the Defendant’s Father and Father in Law of the Plaintiff. The Plaintiff had been married to one **Hari Shankar** (now deceased), who was another Son of late **Ram Nath** and a Brother of the Defendant.
- d. The late Ram Nath (father) had permitted his late Son Hari Shankar, who is the Plaintiff’s Husband, his Family, successors and survivors to occupy and or control and own the property by effecting necessary sub- division and registration.
- e. In reliance of family arrangements with the late **Ram Nath** and subsequently with the Defendant, the late Hari Shankar erected a dwelling House on the subject property (Lot 14).
- f. The Plaintiff has since maintained, controlled and improved the property on her own cost on the reliance of the Defendant for an approximate period of 40 years.
- g. The Defendant at all times material was holding out that the Plaintiff, as the Survivor of Late Hari Shankar, would be the registered proprietor of the property (lot-14).
- h. As a result, the Plaintiff was of the mistaken belief that the Defendant would sub- divide and grant registered ownership to her for the lot 14, the subject property.
- i. By Statutory Declaration dated 2nd February 2021, the Defendant accepted the Plaintiff’s right to the land and had agreed to sub-divide the Lease No-23331 in order to give title to the Plaintiff to the subject property Lot 14. She claims equitable interest in the property.
- j. In breach of trust and the Plaintiff’s right to the property, the Defendant is refusing to sub-divide the land and grant her all that land in her control and/ or possession. She alleges what the Defendant at all times willing was to grant title to the land less than that in control and or possession of her.

- k. In further breach of trust, the Defendant improperly permitted other occupants to build 2 (two) dwelling houses on the Plaintiff's property. As a result of the Defendant's breach, she is suffering and will suffer loss of land and all her improvements thereto.
3. The Defendant as per his Statement of Defence (**SOD**) filed on 8th June 2022 , took up, *inter alia*, the following positions:
- Denied the Plaintiff's claim that she was in control of the subject property (lot-14).
 - Admitted that the State Lease No-23331 was formerly known as Crown Lease No- 6420.
 - Admitted that all material times, he was the registered proprietor of the State Lease in his capacity as the sole Executor and Trustee of the Estate of **Ram Nath**, who was his Father and Plaintiff's Father in Law.
 - Admits that the Late **Ram Nath** had permitted his Son **Hari Shankar** (the husband of the Plaintiff) to occupy a portion of the said lease, but the permission so granted expired with **Hari Shankar**.
 - Denied all the contents averments in paragraphs 5 to 13 of the SOC.
4. By way of further defence , the Defendant , *inter alia*, states **THAT**
- A part of the land claimed by the Plaintiff is occupied and cultivated by him.
 - Late **Ram Nath had** allowed the Plaintiff's husband, Hari Shankar, to occupy the house site *ex gratia* as a part of a family arrangement and not with the intention of creating legal relations.
 - The Plaintiff has deserted the house more than 20 years ago and has illegally let the house on site for rent without his consent as the Trustee and that of the Director of the Land, who is the head Lessor.
 - The Statutory Declaration was in relation to the arrangement for the regularisation of the occupants of the land as required by the Land Department for the renewal of the Lease. The Plaintiff is not an occupant thereof as such she is not entitled to claim any portion of it.
 - Denied all the averments, except for what was admitted as aforesaid, and moved for the dismissal of the Plaintiff's claim, together with a counter claim for an Order for the Plaintiff , all her agents and tenants or employees to vacate the premises and for damages.
5. As per the Pre-Trial Conference (PTC) Minutes, the parties had recorded the following agreed facts and issues, which are reproduced below for easy reference.

(a) AGREED FACTS.

- The Plaintiff is the sister-in-law of the Defendant. The Plaintiff's late husband, Hari Shankar and the Defendant were brothers.*
- The State Lease No. 23331 was formerly known as Crown Lease No. 6420, which on expiry was renewed as State Lease No. 23331.*

3. *The Defendant is the last registered proprietor of the State Lease No. 23331 in his capacity as the sole executor and trustee of the Estate of Ram Nath who was the Defendant's father and Plaintiff's father-in-law.*
4. *The late Ram Nath had permitted his son, the late Hari Shankar to occupy a portion of the lease.*
5. *The Defendant had signed a Statutory Declaration dated 2nd February 2021, had agreed under oath to sub-divide State Lease No.23331 and to regularize the **occupants** of the six houses situated.*
6. *One of the names listed on the statutory **demand**, number 3, is that of the Plaintiff, **Saras Wati**, wife of Hari Shankar. (the word **Demand** here should be read as **declaration**)*
7. *In the event that the Plaintiff is held to be **an occupant**, the Defendant admits that the Plaintiff is entitled to the house site.*

(b) PRELIMINARY ISSUES TO BE DETERMINED

(I) Maintenance & Improvement of the Property

8. *Whether or not the late Ram Nath, the Defendant, the late Hari Shankar erected a dwelling house on the Property?*
9. *Whether or not the late Ram Nath's consent to Hari Shankar to occupy the portion of the land claimed by the Plaintiff extended and was inclusive of Hari Shankar's legal spouse and legal issues of marriage?*
10. *Whether or not the Plaintiff has since moving out of the Property after her husband's death maintained, controlled and improved the Property being all that land being 5,704m² (Five Thousand Seven Hundred- and Four-Meter Square) as contained in Lot 14 on State Lease No. 23331 on land known as Pt. of Rarawai and Vunisamaloa - Formerly C.T.7822 in the Province of Ba in the District of Ba in Fiji, at her own cost on the reliance of the Defendant for a period of approximately 40 (forty) years?*
11. *Whether the Defendant recognized the Plaintiff's right to all that land compromised in 5,704m² Five Thousand Seven Hundred- and Four-Meter Square) as contained in Lot 14 on State Lease No. 23331 on land known as Pt. of Rarawai and Vunisamaloa - Formerly C.T.7822 in the Province of Ba in the District of Ba in Fiji, by allowing the Plaintiff to maintain, control and improve the land at her own costs and expense?*
12. *Whether or not the Defendant improperly permitted other occupants to build 2 (two) dwelling houses on the Plaintiff's Property causing loss and damages to the Plaintiff' portion of the land?*

(II) Statutory Declaration to Subdivide

13. *Whether the Defendant had declared in his Statutory Declaration dated 2nd February 2021 that the Plaintiff is one of the owners of the six houses situated on the Property?*
14. *Whether the Defendant has applied for and completed the subdivision process in order to regularize the occupants of the six houses situated on the Property?*
15. *Whether the Defendant fulfilled his undertaking in the Statutory Declaration dated 2nd February 2021?*
16. *Whether by failing to fulfil his undertaking in the Statutory Declaration dated 2nd February 2021, did the Defendant make a false Statutory Declaration?*

17. *Whether or not the Defendant caused the Plaintiff to be under the mistaken belief that the Defendant would sub-divide the state Lease and grant registered ownership of the all that Land compromised in 5,704m² (Five Thousand Seven Hundred- and Four-Meter Square) as Contained in Lot 14 on State Lease No. 23331 on land known as Pt. of Rarawai and Vunisamaloa - Formerly C.T.7822 in the Province of Ba in the District of Ba in Fiji to the Plaintiff?*

(c) **MAIN ISSUE TO BE DETERMINED**

18. *Whether the Plaintiff has equitable interest and right to all that land being 5,704m² (Five Thousand Seven Hundred- and Four-Meter Square) as contained in Lot 14 on State Lease No. 23331 on land known as Pt. of Rarawai and Vunisamaloa - Formerly C.T.7822 in the Province of Ba in the District of Ba in Fiji?*

C. THE TRIAL:

6. At the trial held before me on 4th November 2024, the Plaintiff gave evidence on her behalf by marking 2 documents from agreed bundle of documents, namely, an aerial Photograph of the subject land depicting 6 residential constructions therein, and a copy of the Statutory Declaration dated 2nd day of February 2021 executed by the Defendant, which were marked as “Pex-1” and “Pex-2” respectively.
7. The Defendant gave evidence for and on his behalf by producing 2 documents from the agreed bundle of documents, namely, the State Lease No-23331, and a copy of the Probate issued in relation to the Estate of Ram Nath, the Defendant’s Father and Father in Law of the Plaintiff, which were marked as “Dex-1” and “Dex-2” respectively.
8. As directed by the Court at the end of the trial, both parties have filed their respective written submissions as stated above, for which I am thankful to both the learned Counsel.
9. I shall not endeavour to reproduce here the evidence of both the parties, except for referring to the material part/s of it, if and when needed. I find that most of the facts pleaded in the SOC and majority of the issues raised on them are not in serious dispute as those facts are directly or tacitly admitted through the agreed facts and on the own evidence of the Defendant.
10. Particularly, I observe that what can be deduced from the contents of the statutory declaration, marked as “Pex-2” on behalf of the Plaintiff, also would throw some light in resolving the matter in hand without going into deep scrutiny of the evidence adduced.

D. ANALYSIS:

11. The Plaintiff has given clear and convincing evidence substantiating the contents of her averments in the SOC and those of the annexures marked by her, particularly those of the Defendant’s statutory declaration marked as “Pex-1”. Though, she was subjected to lengthy cross examination, her evidence in chief remained unassailed and she further substantiated her position through her re-examination.

12. Her evidence to the effect that she married the Defendant's Brother , Hari Shankar , lived with him after marriage at the family house, together with the members (Father in Law, Mother in Law and Brother in Law & others), situated in the State Lease in Korovutu, Ba , that she married him 57 years ago and by the said Marriage they had 3 Sons and 1 Daughter, is not disputed at all.
13. Further, the Plaintiff's evidence that her Father in Law Ram Nath had told her and her Husband Hari Shankar to live there, in the presence of everyone including the Defendant, and no one can evict them, has not been challenged. By the above unchallenged evidence and the admission on the part of the Defendant through his oral and documentary evidence, I find that the main issue in relation to Plaintiff's entitlement to lot 14, the subject matter of this action, stand answered in favour of the Plaintiff.
14. The Plaintiff confirmed that the Defendant has permitted two (2) outsiders, namely **Ritesh Sharma, Ranit Deo** to build their houses within the Lot 14 claimed by her and another person called Jamuni to build her House elsewhere in the State Lease . This is evidenced by the "Pex-1" photograph and the statutory declaration, marked as "Pex 2" is not disputed by the Defendant at all.
15. I find that by the agreed fact No- 5, the Defendant has admitted that he signed the statutory declaration in order to regularise the occupant of the subject land. In agreed fact No-6 he admits that the Plaintiff's name is mentioned as the 3rd one therein. Further, by agreed fact No-7 he has admitted to the effect "***In the event that the Plaintiff is held to be an occupant, the Defendant admits that the Plaintiff is entitled to the house site.***
16. When the Defendant himself, in his statutory declaration and through the said agreed issues 5 and 6 has admitted that the Plaintiff is an occupant in the subject Land, no necessity would arise for the Court to engage in ascertaining whether the Plaintiff is an occupant of the subject Land as proposed in the agreed issue No-07. However, it is in unchallenged evidence that the Plaintiff is maintaining her possession and occupation through her tenants occupying her house in the subject land.
17. The reason adduced by the Defendant to justify allowing the outsiders into the land was that his Father, Ram Nath, had requested him to give them some portion of the Land since they had worked in the farm. If deceased Ram Nath was so generous to give land plots to outsiders in this manner, the question arises as to why his own Son Hari Shankar and his family, who lived with Ram Nath and others in the Family house, should be deprived of such a benefit out of the deceased Ram Nath's Estate property.
18. The learned Defendant's Counsel, when cross examined the Plaintiff did not at least suggest any reason as to why the late Ram Nath should not have given the subject land and the house to the Plaintiff's husband Hari Shankar. Even the Defendant in his evidence did not utter a word as to why the Plaintiff's late husband Hari Shankar and/or the Plaintiff should have been deprived of such a benefit out of the Estate.
19. Learned Counsel for both Parties have filed extensive submissions mainly touching on topics such as "propriety estoppel", breach trust, absence of consent and on the alleged breach of statutory provisions. However, I find such arguments are redundant and the matter in hand does not warrant any deep scrutiny as to the entitlement of the Plaintiff in the light of the contents of the statutory declaration marked as "Pex-1" and the admission of the Plaintiff's right to the land by the Defendant in his evidence.

20. Under cross examination in page 32 of the transcript, the Defendant admitted that it was he who executed the statutory declaration and it was for the sub-division of the land. While the Plaintiff's name is there in the statutory declaration under number 3 as an occupant, and same had been recorded as an agreed fact in the PTC Minutes, the Defendant, in page 32 of the transcript has stated that the Plaintiff's name is not there in the statutory declaration. I have observed that the Defendant is lying and in an attempt to suppress the right of the Plaintiff.

21. Answering the last question in page 32 of the transcript, he admitted the Plaintiff's right and had the following to say;

"...My Lord I gave her name in the statutory declaration My Lord. And told her to pursue with the sub-division herself. But she didn't. And she filed the civil suit against me"

22. Further in page 33 on being questioned by Court whether he agreed for sub-division by the statutory declaration, his answers to my questions were as follows;

"I told him My Lord that she can do the sub-division on her-self, but she doesn't want to do it My Lord."

"Yes my Lord even today I agree with that"

"For a long time My Lord I am telling them to do the sub-division, pay the sum My Lord and they are not perusing with that. And I am very sickly person. I don't do it".

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23. On my short analysis above, and largely on the unequivocal admission on the part of the Defendant, this Court stands fully convinced that the Plaintiff was entitled to the subject matter land (lot-14), being the part of the State Lease No-23331 (consists of lot 14 & 18), which formed part of the Estate of deceased Ram Nath, under whom the Plaintiff's late Husband Hari Shankar became entitled as pleaded by the Plaintiff in her SOC.

Who should Move for Sub- Division:

24. With the above finding of the Plaintiff's entitlement, the next question that arises for consideration is who has to move for Sub-division, Registration of separate Lease and connected matters thereto. It is the Defendant, who holds the Probate of the deceased Ram Nath and has become the Executor and the Trustee of the Estate. He already said to have attended the subdivision for Ritesh Sharma and Ranit Deo, who are said to be already occupying the parts of Lot 14 being disposed by the Defendant.

25. It is the Defendant, in his capacity as the Executor and Trustee, who should attend to all formalities and no others will be recognised and allowed to engage in those activities. The Defendant cannot simply shift the responsibility to the Plaintiff or others, unless he relinquishes his position as the Executor and Trustee and get someone appointed thereto, if he is unable to perform his duties and responsibilities due to his sickness and/or any other valid reason.

What Extent of the Land to be given to the Plaintiff?

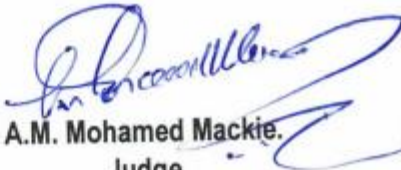
26. The Plaintiff through her pleadings and evidence has demonstrated that she was and is entitled for lot 14. The Defendant has claimed that he is in possession of Lot 18 thereof, though he made a claim that the remaining part of lot 14 also under his control and cultivation. The fact remains that there are two other persons, namely, **Ritesh Sharma** and **Ranit Deo**, in occupation of the Lot 14.
27. The Plaintiff and/or her Solicitors for the reason best-known to them did not make the said **Ritesh Sharma** and **Ranit Deo**, as parties to this action. Had they been made parties, probably the entire dispute could have been adjudicated once and for all. In the absence of those parties, this Court cannot make any orders that might adversely affect them. Had the Plaintiff acted with due diligence and well in time, the alleged disposition of a part of her land to outsiders by the Defendant could have been avoided.
28. The Plaintiff's admitted absence in the land for over 20 years (though she had her tenants there) seems to have allowed the Defendant to dispose the land to outsiders, disregarding his fiduciary duty towards the Plaintiff. As a result, the Plaintiff's entitlement to the entirety of lot 14 has been deprived by the Defendant. However, the Plaintiff' physical absence in the land need not have been necessarily detrimental to her claim as she has held the possession of the remaining land of lot 14 through her tenants. The fact that the premises is on rent by the Plaintiff is not disputed by the Defendant.
29. Undoubtedly, the Defendant may have disposed the said two portions out of lot 14 for a valuable consideration. No valid reason has been adduced to justify such disposal on any other ground. When the Plaintiff has lost her entitlement to the entirety of the lot 14 and the Defendant appears to have capitalized at the expenses of the Plaintiff, it is improper to compel the Plaintiff to spend for the sub-division and related works. Thus, in my judgment, it is justifiable to order the Defendant to attend the sub-division works and other connected matters on his own expenses, unless the Plaintiff is prepared to bear the total costs or part of it for the said purposes.
30. Further, since the Defendant has deprived the Plaintiff's entitlement for the entirety of lot 14 in the State Lease No- 23331, in my view, the Plaintiff is at liberty, if she is so minded, to take appropriate proceedings against the Defendant for any loss and/or damages she may have suffered on account of such deprivation.
31. The Defendant should be ordered to take appropriate steps to have the balance land in lot 14 duly surveyed, and a separate title to be issued thereto and have the same registered in favour of the Plaintiff. In ascertaining the remaining portion of the lot 14, care should be taken to deduct only the actual extent that has already been disposed by the Defendant unto two outsiders (Ritesh Sharma & Ranit Deo) from and out of lot 14.
32. The Plaintiff has not moved for costs in her SOC. Although, the conduct of the Defendant warrants the imposition of costs in a higher scale, considering the expenses that the Defendant may have to incur in the sub-division works on behalf of the Plaintiff, I decide not to order costs in respect of this action.

E. FINAL ORDERS:

- a. The Plaintiff's action partially succeeds.
- b. The Plaintiff is entitled to have a separate Lease issued for the balance portion of Lot No-14 in State Lease No-23331, which is the subject matter of this action.
- c. The Defendant shall have a Survey done and a separate Lease issued for the remaining portion of lot 14 in favour of the Plaintiff within 6 months from the date of this Judgment.
- d. All the expenses for the Survey, Sub-division, and Issual of new Lease shall be borne by the Defendant.
- e. No costs ordered and the parties shall bear their own costs.
- f. Parties are at liberty to move for further orders.

On this 5th Day of March 2025 at the High Court of Lautoka.




A.M. Mohamed Mackie.
Judge
High Court (Civil)
Lautoka.

SOLICITORS:

Messrs Lal Patel Bale Lawyers- Barristers & Solicitors – For the Plaintiff.

Legal Aid Commission- For the Defendant.