

IN THE SUPREME COURT OF FIJI

000182

Civil Jurisdiction

Action No. 65 of 1980

Between:

SUMITRA GOKAL
d/o Ranjit Singh

Plaintiff

and

MAGANLAL GOKAL
s/o Lallu Gokal

Defendant

Mr. K.C. Ramrakha for the Plaintiff
Mr. N.S. Arjun for the Defendant

D E C I S I O N

This is an application by the plaintiff against the defendant for an order of committal for contempt of Court pursuant to Order 52 rule 1 of the Rules of the Supreme Court, 1968.

The parties are husband and wife whose marriage has sadly gone sour.

This application arose in this way.

On 11th February, 1980 this Court granted the plaintiff an interim injunction in these terms :

"That the defendant be restrained for a period of six weeks from the date hereof or until further order from doing in the meantime whether by himself or his servants or agents or any of them or otherwise howsoever the following acts or any of them, that is to say -

(a) molesting the plaintiff in any manner;

- (b) allowing the plaintiff to enjoy the quiet use and enjoyment of the matrimonial home at 201 Queen Elizabeth Drive or from entering and residing in same;
- (c) attempting to eject the plaintiff whether by direct force or otherwise from the matrimonial home; and
- (d) attempting to dispose of the matrimonial home in any manner whatsoever."

On 13th March, 1980 the plaintiff filed this application by way of motion on the grounds that the defendant had not complied with and indeed had breached the terms of the injunction made against him by this Court on 11th February.

Affidavit in support of the motion were sworn to by Anand Kumar Singh, solicitor, and Sumitra Gokal, the plaintiff, in which they describe events which allegedly took place on 12th February.

In paragraph 3 of his affidavit which is relevant here Anand Kumar Singh deposes as follows :

- "3. On the same day at a little before one o'clock in the afternoon, I and my employer Karam Chand Ramrakha f/n Odin Ramrakha of 10 Helsen Street, Suva, Barrister and Solicitor, called upon the offices of the defendant at Pier Street, Suva. In my presence, the said Karam Chand Ramrakha (hereinafter referred to as Ramrakha) duly served the defendant personally with a copy of this Order. Immediately he did so, the defendant got up and said 'what is this? I have to call my solicitor before I accept anything.' The defendant then abruptly left the office, and went to another room, and I heard him talking to someone. He then returned, and said that he would accept service. In my presence Mr. Ramrakha asked when his wife Sumitra Gokal could go into the premises. The defendant said I do not care for orders like these. My wife is not going to come into my house under any circumstances. Mr. Ramrakha then said that

there was an Order of the Court, and he should comply with the same. He then said I do not care for such orders. The house is mine. Under no circumstances can my wife go in the house."

Paragraphs 2 to 8 of plaintiff's affidavit which are also relevant read :

- "2. During the early part of the afternoon, I went to my house at 201 Queen Elizabeth Drive, Suva, Fiji. I was accompanied by two Police Officers. One of them had a copy of the Injunction.
3. I arrived at my home, and there was met by my husband, the defendant, who greeted us at the doorway. The Officer then handed to him a copy of the Injunction Order, and explained to him that this meant that I should be allowed to live in the house without any interference. The Officers then left.
4. In the house were approximately eight (8) Fijians, who I believed are bouncers employed in Suva Peninsula Hotel. The defendant then told me to sit in one place and not to move. Whenever I tried to get up and move, the defendant would instruct one of the Fijians to follow me. This Fijian obstructed me in every possible manner. I had not had any lunch that day, and when I went to the kitchen to try and do some cooking, the defendant stopped me cooking. When I pointed out to the defendant that he should abide by the Order of the Court, the defendant replied 'I do not care for such Orders.'
5. I tried to find my belongings. My shoes and clothings had all been removed. I then tried to protect a statue of Buddha which I prized greatly, and which had cost me \$300.00. The defendant, assisted by the Fijians, took this away from me. Two of my Oil Paintings were missing.
6. The defendant and the Fijians continued to mock me, and in the end I was literally thrown out from the premises.

7. I am unable to live in the house, to follow my usual occupation of housewife, and Yoga Teacher, and am now being forced to live in Orchard House, a Boarding House in McGregor Road, Suva.
8. I have now reason to believe that all the furniture and effects from the house have been removed making the house uninhabitable, as the defendant usually stays in Room 8 in Suva Peninsula Hotel, as he looks after the Hotel."

The defendant filed an affidavit in reply to which reference to paragraphs 2, 4, 5, 6, 7, 9 and 11 which are relevant must be made :

- "2. I admit paragraph 3 and state that I greeted the Plaintiff and the Police Officer in her company and then the Police Officer handed over a copy of Interim Injunction and explained to me that SUMITRA GOKAL is allowed to live in the house without any interference. I did not protest or object to comply to interim injunction Order on the grounds that I claim myself to be a God fearing and a law abiding citizen and have not committed any breach of law and as such I was obliged in any event to comply with an Order of this Honourable Court.
4. As to paragraph 5 of the Affidavit I deny having removed the Plaintiff's shoes and belongings as I am not aware of the present existence of such items, for the house is not always under my direct supervision. The plaintiff removed Statue of Budha from my prayer room after kicking and scattering my holy books. I objected to the statue being removed from the matrimonial home as I use it in my prayer room, and further more I have contributed financially in purchasing the same.
5. As to paragraph 6 of the Affidavit I say at no time the Fijians employed by me have attempted to throw out the Plaintiff from the premises, or have interfered in any way. I further say that I have always abided by the order of the Court and by the letter dated 14th February, 1980, through my Solicitors I made known to the Plaintiff that I was quite prepared to

abide by the Order of the Court, however, I did indicate that I was not going to let the Plaintiff remove my property. A copy of the said letter is attached hereto and marked 'A'. I further say that the Plaintiff came to the matrimonial home only once after the interim injunction was granted to remove the articles and had no intention of staying. The Plaintiff had made no attempt to come to the matrimonial home since she left voluntarily on 12th February, 1980. With reference to paragraph 6 of the allegation that she had contributed financially in purchasing house furniture, paintings and artifacts. I say that these are not correct and I deny them, I further say that the allegation contained in the Affidavit stating that in 1979 she extended the house at 201 Queen Elizabeth Drive by building a Yoga Studio 20' x 20' and a garage are all untrue and I deny such claim.

6. As to paragraph 7 of the Affidavit I repeat that after the grant of injunction order the plaintiff came to the matrimonial home on 12th February, 1980 and left after 15 to 20 minutes and ever since then have not returned.
7. As to allegations in paragraph 8 of the Affidavit I deny that all the furniture and assets from the house have been removed making the house uninhabitable and at no stage I have left the matrimonial home as and from 5th February, 1980.
9. That I refer to the Affidavit sworn by MR. ANAND KUMAR SINGH dated 3rd March, 1980 and admit paragraph 3 of the Affidavit except that I do not recall saying that 'I do not care for such Orders'. I wish to state that MR. K.C. RAMRAKHA and MR. ANAND KUMAR SINGH stormed into my office in presence of other employees and by their act and behaviour embarrassed and humiliated me in the presence of others. MR. K.C. RAMRAKHA made me to understand that the Plaintiff was going to return to the matrimonial home to which I objected. As I thought I should not be forced to take her back in view of her adultery. I said words to the effect that I was not going to have her back and if ever I said

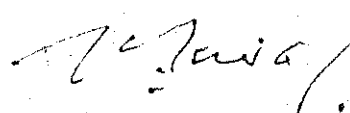
I don't care for such order it most certainly was directed to MR. K.C. RAMRAKHA and MR. ANAND KUMAR SINGH and was never intended as discourtesy to Court. However, if I had said it and thereby conveyed the impression that I was being disrespectful to Court then I wish to apologise most humbly for the said remark.

11. That I have neither committed nor have meant to commit breach of the Court Order and should there be any breach unwittingly committed on my part I sincerely regret and most humbly do apologise for the same."

I have carefully considered the arguments presented by counsel on either side in the light of the supporting affidavits filed. It is quite apparent to me that it is not possible without oral evidence being heard to resolve the issues of fact in this case. The two differing versions of events that allegedly took place after I made the order for interim injunction are in my view fairly evenly balanced so much so that I feel unable to make a positive finding even on the test of probabilities. On the other hand I do not think it necessary for me to consider the point as to whether this might not be a fit and proper case to try the issues of fact in open Court. I have reached this conclusion because the defendant has unreservedly expressed his sincere apologies to the Court if this Court should hold him in contempt of Court. Defendant has made it very clear and I accept his assurances on the matter that at no time did he intend to be discourteous to the Court or disobey its order.

In these circumstances I think the proper order would be to dismiss the plaintiff's motion with no order as to costs.

I order accordingly.


(T.U. Tuivaga)
Chief Justice

Suva,

16th May, 1980