

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 206 of 1980

183
000186

Between

J A M A L U D D I N
s/o Khuda Buksh

Plaintiff

- and -

M U N I A M M A
f/n unknown

Defendant

Messrs. M. T. Khan & Co.
Messrs. R. D. Patel & Co.

Solicitors for the Plaintiff
Solicitors for the Defendant

R U L I N G

The plaintiff and defendant have adjoining cane farms, each farm being itself divided into three or four lots. Between the two farms, but on the defendant's land, was a disputed access-way, which was used by the plaintiff to transport cane onto the main King's Road.

In April the defendant, after surveyors from the Lands Department had surveyed the various plots, ploughed up the access way and planted cane thereon effectively depriving the plaintiff of its use and benefit. The plaintiff has commenced proceedings asking for a declaration that the access-way was for the joint use and benefit of the plaintiff and defendant, and an order that the Director of Lands should carry out a survey of the two farms making provision for the access-way.

In the meantime the plaintiff seeks an injunction to stop the defendant from interfering with the plaintiff's use and benefit of the access-way pending determination of the action. Since the access-way was closed in April there does not seem to have been any urgency in bringing the motion for an injunction.

The plaintiff's affidavit claims that the right of way was urgently required to enable him to transport his sugar cane from his farm to the railway, and further claims that he had no other way to take his cane to the railway.

The defendant in his affidavit has challenged this assertion and has indicated other ways in which the plaintiff can take his cane, and I must say that I am much more impressed with the statements made by the defendant than by those made by the plaintiff. I cannot believe that the plaintiff has no

other way to take his cane, and I am quite sure that if such had been the case he would not have delayed as much as he has done in bringing the motion for an injunction. It may be that the plaintiff would prefer to use part of the defendant's land as an access-way, rather than create his own access-way on his own land, but I see no reason to grant the interim injunction sought and the motion is dismissed with costs to be taxed if not agreed.

LAUTOKA,
8th August, 1980

(sgd.) G. O. L. Dyke
JUDGE