

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 43 of 2018

BETWEEN

VIJENDRA PRASAD of Suva Retired.

PLAINTIFF

AND

- (1) **KISHORE CHANDRA** of Suva Retired.
- (2) **KIRAN CHANDRA** of Suva Retired.
- (3) **POOJA PRANITA PRASAD** aka **POOJA CHANDRA** of Los Angeles,
California USA as the Administratrix of the estate of
Kalyan Chandra.
- (4) **AMIKA DEVI CHAND** of Los Angeles, California USA, Domestic duties as the
Executrix and Trustee of the estate of Dev Chand.
- (5) **VINAY CHANDRA** of 1700 Lampman Road, Gold Hill OR7525, USA,
Retired as the sole Executor of the estate of Ram Chandra.

FIRST DEFENDANTS

AND

REGISTRAR OF TITLES

SECOND DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI

THIRD DEFENDANT

Counsel : Mr. S. Chandra for the plaintiff
Mr. A. Nand for the 1st Defendants
Ms. M. Motufaga for the 2nd Defendant
Ms. K. Singh for the intended 4th Defendant

Date of Hearing : 06th July 2020

Date of Ruling : 31st July 2020

RULING

(On the application to add a party)

[1] The plaintiff filed the writ of summons on 21st February, 2018 seeking the following reliefs:

1. An order for extension of Caveat No. **833892** beyond 21 days;
2. An order under section 168 of Land Transfer Act 1971 directing the second defendant to accept an application by plaintiff for adverse possession under section 79.
3. In the alternative an order that the plaintiff be granted an adverse possession of the part of the land i.e. 5 acres or an order that a fair and equitable compensation is to be assessed and paid to the plaintiff by the defendants before the vacation of the land.
4. Costs of the action.

[2] On 18th February 2020 the plaintiff filed summons to add "**Realeader Company Pte Ltd**" as to party to these proceedings on the basis that after the amended statement of claim was filed and served the property in question (CT 5075) has been transferred by the 1st defendant to the party sought to be added.

[3] Order 15 rule 6(6) of the High Court Rules 1988 provides:

The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5) (a) if, and only if, the Court is satisfied that-

- (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or
- (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or

- (c) the new party is the Attorney-General and the proceedings should have been brought by relator proceedings in his name, or
- (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company, or
- (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

[4] The plaintiff in the writ of summons sought the following orders against the defendants:

1. An order for extension of Caveat No. 833892 beyond 21 days;
2. An order under section 168 of the Land transfer Act directing the 2nd defendant to accept an application by plaintiff for adverse possession under section 79.
3. Alternatively; an order that the plaintiff be granted an adverse possession of the part of the land i.e. 5 acres or an order that a fair and equitable compensation to be assessed and paid to the plaintiff by the defendant before vacation of the land.
4. Costs of the action.

[5] On the question of adding a party to an action both parties relied on the decision in **Lucy v W.T. Henleys Telegraph Works Co Ltd Imperial Chemical Industries Ltd** [1970] 1 QB 393 where Lord Denning said:

It gives the court power to add a person as a defendant if his presence is necessary to ensure all matters in dispute are effectively and completely determined. This rule operates in congeniality with the general proposition of law that multiplicity of actions arising out of the same fact amounts to abuse of the process of the court.

[6] The 1st, 2nd and 3rd defendants did not object to this application and they only sought costs. The learned counsel for the party sought to be added (the intended 4th defendant) that he

is not answerable to the plaintiff as he is a bona fide purchaser of the property and not in a position to determine any purported arrangements and questions arising out of the claims that the plaintiff has in relation to the land and/or any relief sought by the plaintiff.

[7] The question here is, if the plaintiff obtains a judgment in his favour will he be able to reap the fruits of the judgment since the party sought to be added will not be bound by the decision of the court if he is not added. Only the parties to a proceeding before court are bound by its decisions. If the party sought to be added is not added as a party the plaintiff, if successful, will have to file another action against him which will be resulted in multiplicity of actions.

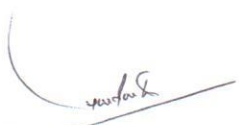
[8] The plaintiff instituted this action on 21st February 2018 and the property was transferred to the party sought to be added on 10th September 2020. The plaintiff made the present application to add the current owner of the property on 18th February 2020 after almost 18 months after the property was transferred.

ORDERS

1. It is ordered that the intended 4th defendant be joined as a party to the action.
2. There will be no order for costs.



31st July 2020


Lyone Seneviratne

JUDGE