

In the High Court of Fiji at Suva  
Civil Jurisdiction  
Civil Action No. 276 of 2007  
Between  
Vijay Nand Sharma  
Plaintiff  
and  
Suruj Kuar and Raj Mati  
Defendants

COUNSEL: Ms S. Dewan for the plaintiff  
Mr A. Chand for the first defendant  
Date of hearing : 1<sup>st</sup> November, 2017  
Date of Judgment: 7<sup>th</sup> November, 2017

**Ruling**

1. On 22<sup>nd</sup> April, 2014, I delivered judgment in this case. I held that the plaintiff is entitled to specific performance of the sale and purchase agreement of 29<sup>th</sup> April, 2004, upon payment of \$391,500.00 and the first defendant pay the plaintiff costs of \$3,000.00 summarily assessed.
2. By summons filed on 28 August, 2017, the plaintiff has sought the following orders:
  - i. The Master or the Chief Registrar of the High Court of Fiji be appointed to convey to the plaintiff, the property described as Lot 1 and 3 on DP No. 1312 in CT No. 6739 known as Waibola (part a), having an area of 2 acres, 3 roads and 35 perches presently and comprised in the sale and purchase agreement;
  - ii. The plaintiff pay to the credit of this action the balance sum of \$391,500.00;
  - iii. The Registrar of Titles dispense with the requirement of the production of the duplicate instrument of title for CT No. 6739 for the purpose of registering the instrument of transfer in the Register of Titles;
  - iv. The plaintiff's costs of \$3,000.00 be deducted from the balance purchase price of \$391,500.00 and paid to him;
  - v. Any applicable capital gains tax, charges, or outgoings in respect of the land such as outstanding city rates payable by the first defendant as 'Vendor' be deducted from the balance purchase price of \$391,500.00 and paid to the relevant authorities with the balance sum (if any) held by the High Court of Fiji.

3. The plaintiff in his affidavit in support states that his solicitors on 8 May, 2014, wrote to the first defendant informing her of my decision. He requested the first defendant's counsel to execute the transfer. The first defendant is no longer resident in Fiji and is currently residing in USA. It will be difficult to file contempt proceedings against her. A caveat has been registered on CT 6739 by the late Sarab Jeet. The plaintiff states that he will subdivide and obtain a separate title to 640 sq m of land from CT 6739 and transfer it to the deceased caveator's son Nilesh Prasad and wife (joint administrators of the caveator's estate) as per the Deed of Settlement with the joint administrators. The defendants were unsuccessful in obtaining an Order for enlargement of time to appeal my decision.
  
4. The affidavit in response filed on behalf of the first defendant states that the second defendant fraudulently and forcefully obtained Power of Attorney in her name. The first defendant discovered that there was a transfer deal between the plaintiff and the second defendant for CT 6739 without her consent, knowledge and authority. The first defendant does not remember receiving any letters from the plaintiff or its solicitors. Her solicitor passed away and she became aware of the decision when she instructed another solicitor to appeal which was unsuccessful. She is no longer a resident of Fiji. The first defendant is unaware of any Deed of Settlement executed between the plaintiff and her late brother Sarab Jeet. Sarab Jeet by a letter had confirmed that he does not want any shares or have any rights in their father's estate. The Deed of Settlement is null and void. The affidavit states that the first defendant had no intention to sell the land. Her interests were not properly protected by her lawyers.
  
5. The plaintiff, in his affidavit in reply states the matters that the first defendant seeks to raise issues which were not raised in the action. She is persistently defying the High Court Order. He does not agree that the late Sarab Jeet renounced his interest. Sarab Jeet obtained an order for extension of caveat on the basis that he was a beneficiary in the estate of his father, Ram Prasad. A "*mere letter*" has no legal effect. The deponent of the affidavit in response is raising frivolous issues to delay the enforcement of the orders of the Court. The plaintiff concludes that he has the ability to pay the balance purchase price. His office is tasked with

subdividing the land, so that a separate title can be issued to the son of the caveator Sarab Jeet. The process will take 9 to 13 months.

***The determination***

6. At the hearing, Ms S. Dewan counsel for the plaintiff submitted that she relies on Or 45,r 7. Ms Dewan quite correctly submitted further that the affidavit in response filed on behalf of the first defendant takes up matters not raised in the substantive action.
7. Or 45,r 7 reads as follows:

*If ...a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done, may so far as practical, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.*
8. The first defendant is admittedly resident in the US. She has failed to take steps to execute the transfer of the land in terms of my judgment ordering specific performance in terms of the sale and purchase agreement. Her appeal for enlargement of time to appeal my decision was declined by the Court of Appeal on 3<sup>rd</sup> June, 2016.
9. It transpires that Sarab Jeet, the first defendant's son had place caveats on the property in the intestate estate of his father Ram Prasad including CT 6739 in Civil action no 435 of 2004. On 22<sup>nd</sup> September,2014, Runa Devi and Nilesh Jeet Prasad were granted letters of administration in the estate of Sarab Jeet.
10. The plaintiff has attached to his affidavit in support a Deed of Settlement entered into between the plaintiff and Runa Devi and Nilesh Jeet Prasad. The Deed of Settlement provides that the plaintiff will survey and separate 640 square metres of land from CT No. 6739, transfer the land to Nilesh Jeet Prasad and obtain an Order by consent for the dissolution of the Caveat made in High Court Action No. 435 of 2004.

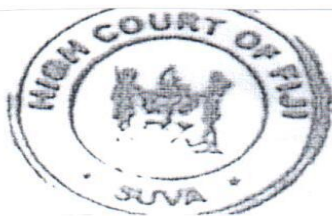
11. At the hearing before me, Mr Vijay Maharaj represented Runa Devi and Nilesh Jeet Prasad and confirmed that the caveat will be removed.

12. The plaintiff is entitled to the reliefs sought.

13. **Orders**

I make order that upon the removal of the caveat in HBC Action 413 of 2004:

- (a) The Chief Registrar of the High Court of Fiji shall convey to the plaintiff, the property described as Lot 1 and 3 on DP No. 1312 in CT No. 6739 known as Waibola (part a), having an area of 2 acres, 3 roads and 35 perches presently and comprised in the sale and purchase agreement, upon the payment by the plaintiff to the credit of this action, the balance sum of \$391,500.00;
- (b) The Registrar of Titles shall dispense with the requirement of the production of the duplicate instrument of title for CT No.6739 for the purpose of registering the instrument of transfer in the Register of Titles;
- (c) The plaintiff's costs of \$3,000.00 shall be deducted from the balance purchase price of \$391,500.00 and paid to him;
- (d) Any applicable capital gains tax, charges, or outgoings in respect of the property such as outstanding city rates payable by the first defendant as 'Vendor' be deducted from the balance purchase price of \$391,500.00 and paid to the relevant authorities with the balance sum (if any) held by the High Court of Fiji.
- (e) Each party shall bear their own costs.



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam**

**Judge**

7<sup>th</sup> November, 2017