IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 328 of 2022

BETWEEN:	**CHANDRA WATI aka CHANDRA PRASAD aka CHANDRA WATI PRASAD** **Plaintiff**
AND:	**DAREN KUMAR aka DAREN PRANISH KUMAR as the surviving Executor and Trustee in the ESTATE OF RUPEN PRASAD aka UPENDRA PRASAD aka UPEN PRASAD** **First Defendant**
AND:	**REGISTRAR OF TITLES** **Second Defendant**
AND:	**THE ATTORNEY-GENERAL OF FIJI** **Third Defendant**

Counsel:	**Mr. V Kumar for the Plaintiff** **Mr. R Singh & Mr. T Liganivai for the 1st Defendant** **Ms. P Harikishan for the 2nd & 3rd Defendants**
Date of Trial:	**11 September 2025**
Closing Submissions:	**27 October 2025**
Date of Judgment:	**28 September 2026**

JUDGMENT

[1] The plaintiff holds a half share in a property described as State Lease No. 866310, No. 3796, Samabula Indian Settlement in the Province of Rewa, District of Suva, area of 1 r22, 4p (0.1578 ha), in Lot 17, Section 6 on Plan No. S1183 - otherwise known as 46 Belo Street, Samabula **(the Samabula property)**. The first defendant holds the other half share in the Samabula property in his capacity as the surviving executor of the estate of Rupen Prasad, also known as Rupendra Prasad.

[2] The plaintiff has brought these proceedings to obtain orders under section 119 of the Property Law Act 1971 to sell the Samabula property.

[3] The first defendant claims that he has a binding agreement with the plaintiff to purchase the plaintiff's half share in the amount of $240,000. By way of a counterclaim, the first defendant seeks orders of specific performance compelling the plaintiff to comply with the agreement.

Background

[4] A Crown Lease was issued over 46 Belo Street in March 1964 for a 46-year term. In 1981, the lease was transferred to Rajend Prasad and Rupen Prasad.

[5] The Crown Lease expired on 14 March 2010. Rupen passed away on 23 November 2011. As per his will, letters of administration were granted to his wife, Premila Devi, and his nephew, Daren Kumar (the first defendant). The beneficiaries of his estate are his wife (Premila Devi) and his two nephews (the first defendant and Darrel Kumar).

[6] The plaintiff is the wife of Rajend Prasad. The plaintiff's evidence is that she and her husband lived in the Samabula property up until the time they left to Australia in order

for Rajend Prasad to receive medical treatment.[1] The plaintiff states that she and her husband paid rates and rental on the property up to the time they left for Australia and continued making payments (as well as maintaining the property) while they were in Australia through the plaintiff's brother who held a power of attorney for Rajend Prasad.[2]

[7] Steps were taken after the expiry of the Crown Lease to renew the same. On 3 October 2014, the Director of Lands approved the renewal of the lease subject to several conditions being met. The renewal was arranged by Parshotam Lawyers.

[8] On 23 September 2016, Rajendra Prasad passed away, leaving his estate to the plaintiff. The plaintiff returned to Fiji on 14 January 2017 and obtained letters of administration on 9 May 2017.

[9] The new lease, being State Lease No. 866310, was finally issued on 28 August 2018 for a 99-year period effective from 1 July 2010. The lessees recorded therein were the plaintiff (as administratix of the estate of Rajend Prasad) along with Premila Devi and the first defendant as administrators of the estate of Rupen Prasad.

[10] As stated, the plaintiff returned to Fiji in 2017 after her husband passed away. The plaintiff's evidence is that on her return she endeavoured to enter the Samabula property but was prevented from doing so by occupants on the property which the plaintiff claims were tenants organised by the first defendant and Premila Devi. It is the plaintiff's evidence that Pemila Devi told the plaintiff that the flats and houses on the Samabula property had all been tenanted.

[1] The date they left Fiji was not provided in evidence.
[2] A copy of the Power of Attorney dated 27/2/2012 is produced by the plaintiff in her Bundle of Documents along with invoices for expenses paid in Fiji and remittances sent to the plaintiff's brother.

[11] In 2017, the plaintiff filed an originating summons in the High Court seeking orders allowing her access to and entry of the Samabula property. In a ruling issued on 5 May 2020, the High Court dismissed the application on the basis that the lease had not been renewed as at the time the 2017 proceedings were filed.

[12] Between 2019 and 2022, the plaintiff and the first defendant were in communication (through their respective solicitors) for the sale of the plaintiff's half share to the first defendant. Initially, the plaintiff was represented by MIQ Lawyers while the first defendant was represented by Parshotam Lawyers. On 26 October 2020, Parshotam Lawyers increased the first defendant's offer to $240,000. MIQ Lawyers responded on 3 November 2020 accepting the offer '*on the condition that your client clears all SCC [Suva City Council] and Land rental arrears'*. MIQ provided copies of the outstanding arrears and requested, '*Please advise us within a week'*.

[13] No response was received from the first defendant's representatives to MIQ Lawyer's letter of 3 November 2020 or to subsequent follow-up communications from MIQ Lawyers dated 4 December 2020 and 10 February 2021.

[14] The plaintiff's current solicitors were instructed in about 2022. They communicated with the first defendant's previous solicitors to ascertain whether the parties could agree on terms for the sale of the plaintiff's share to the first defendant. As the parties could not reach agreement, the plaintiff brought the present proceedings.

Present proceedings

[15] The proceedings were commenced by the plaintiff on 19 December 2022 by way of an originating summons and a supporting affidavit. The plaintiff brought the proceedings in her capacity as the registered owner of a half share of the Samabula property, the same being transferred to her on 19 July 2022. The proceedings were brought against the first defendant in his capacity as the sole surviving executor of the

estate of Rupen Prasad – Premila Devi passed away on 26 February 2019. The plaintiff sought orders under section 119 of the Property Law Act for the sale of the Samabula property.

[16] In a ruling dated 4 October 2023, Mansoor J directed that the proceedings be converted into a writ of summons in light of the factual disputes between the parties. The parties have since filed pleadings and completed discovery and inspection. The plaintiff seeks orders for the sale of the Samabula property but also special and general damages. The first defendant has filed a counterclaim on the basis that he has a binding agreement with the plaintiff for the purchase of the plaintiff's share of the Samabula property. He seeks specific performance compelling the plaintiff to sell her share in line with the agreement.

[17] An Order 34 Summons was filed on 18 February 2025. On 19 February 2025, the trial was set down for 11 and 12 September 2025.

Trial

[18] On 4 September 2025, the first defendant filed a summons seeking to provide his evidence by video link. The application was opposed and heard on 11 September, immediately before the commencement of the trial.

[19] The first defendant has been residing in the United States of America for many years. He was residing overseas when the proceedings were commenced. In his affidavit in support of the application to provide evidence by video link, the first defendant indicated that his employment circumstances had recently changed which did not permit him to travel to Fiji to provide evidence. I found the evidence contained in the affidavit regarding the first defendant's employment circumstances to be underwhelming (there was a lack of detail regarding the new employment as well as no independent documentary evidence of the same) and the application was brought

late having regard to the trial having been set down some 7 months earlier. In light of the same, the first defendant's application was declined.

[20] The trial proceeded on 11 September 2025. Counsel for the first defendant made a number of preliminary objections – the objections are considered in the body of this judgment. Only one witness was called at trial, being the plaintiff.

[21] The plaintiff provided evidence and was cross-examined. She produced a Bundle of Documents.[3] The plaintiff is 66 years old. She provided evidence regarding the ownership of the Samabula property and the dispute over its use. The plaintiff stated that she has been prevented access to the Samabula property since 2017 and has had to rent elsewhere. The cost of doing so being $14,190 – receipts for her rent were produced for the period from May 2018 to September 2023.

Decision

[22] There are two broad questions for the court to consider, namely:

1. Whether the plaintiff is entitled to orders under section 119 of the Property Law Act 1971 for the sale of the Samabula property.

2. Whether there is a binding legal agreement between the plaintiff and first defendant to sell the plaintiff's share of the Samabula property to the first defendant.

[3] The first defendant objected to the admission of the documents at Tab 11 and 12 but subsequently withdrew the objection in respect to a number of the documents at Tab 11. The documents at Tab 11 are the communications between the solicitors for the plaintiff and first defendant from 2019 to 2022 regarding negotiations to sell the plaintiff's half share of the Samabula property to the first defendant. Some of the communications were made on a 'without prejudice' basis.

Section 119 of the Property Law Act 1971

[23] Section 119(1) to (4) of the Property Law Act 1971 reads:

> *(1) Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly.*
>
> *(2) The court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.*
>
> *(3) The court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale, and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale.*
>
> *(4) On directing any such sale or valuation to be made, the court may give also all necessary or proper consequential directions.*

[24] A co-owner of a property may apply to the court for orders selling the property. The co-owner must have at least a **moiety** in the property; ie a half share. As Kermode J stated in *Atu v Atu* (1983) 29 FLR 100, at 102:

> *The plaintiff is entitled to an order for sale of the property unless the Court considers there are good reasons to the contrary.*

[25] In *Thomas v The Estate of Eliza Miller* [1996] FJHC 168 (12 December 1996), the co-owners were not on good terms - a claim was before the Magistrates Court over distribution of rents. The plaintiff sought an order for the sale of the property to her. Pathik J granted the order, stating:

> *On the evidence I find that the defendants have not advanced any good reason why an order for sale of the flat should not be made.*
>
> *The most practical solution to the problem which has plagued the parties for some time is to sell the property to the Plaintiff after valuation on terms and conditions hereafter appearing.*

[26] The above principles were applied by the High Court in *Khanum v Kumar* [2022] FJHC 108 (4 March 2022). Mansoor J offered some salient observations on the court's exercise of its power under section 119. His Lordship stated:

> *11. As with any matter on which court is called upon to exercise discretion, each case must rest on its own facts. The decision as to whether or not court should exercise its discretion must be made judicially. In making that decision, an overall consideration of the evidence is necessary. Court must have regard to all the circumstances of the case. In applications such as this, the evidence is by way of affidavits.*
>
> *12. As registered proprietors, the parties in this case have an interest in the property. Neither party is prevented from purchasing the share of the other party. Section 119 (3) makes provision where a party undertakes to purchase the share of an interested person. In this case, the parties have not shown an interest in purchasing the share of the other.*
>
> *13. Joint ownership of property leaves open the possibility that one or several owners may wish to put an end to co-ownership. There is nothing unusual in that. If a sale is ordered, both parties would have to forego*

their joint rights. A party or the parties may suffer some hardship as a result of ending their joint ownership. Hardship is what the defendant claims will visit him and his wife if the plaintiff is granted the reliefs prayed for in the originating summons.

[27] A co-owner with at least a half share in a property will be entitled to orders from the court selling the property unless the other owner(s) can demonstrate that there are good reasons not to make the order. In the present case, the plaintiff holds a half share. The only basis raised by the first defendant against making the order is that he claims he already has a binding agreement with the plaintiff to purchase her half share. If the first defendant does have a binding agreement, then I accept that the agreement should be enforced.

[28] However, if there is no binding agreement between the two parties then the plaintiff is entitled to orders under section 119. The parties remain unable to agree on the use of the property and a sharing of rental income received (if any). The plaintiff has not been able to access her interest in the property since about 2017.

[29] Before considering the key question in this proceeding, as to whether there exists a binding agreement between the plaintiff and first defendant, it is timely to address the first defendant's objection regarding the parties to this proceeding. The first defendant argues that the plaintiff should have joined Darrel Kumar, who is the other beneficiary in the estate of Rupen Prasad.[4] Failure to do so, according to the first defendant, is fatal to the plaintiff's claim. I disagree. The first defendant is registered on the title as holding a half share in the Samabula property. He holds this interest as the sole surviving executor of the estate of Rupen Prasad and is the correct party to the claim brought by the plaintiff for an order under section 119. It is the first defendant's responsibility as administrator of the estate to apprise the beneficiaries of the circumstances of the case.

[4] Darrel Kumar and the first defendant are also the beneficiaries in the estate of Premila Devi – see paras 5 and 6 of the affidavit of Daren Kumar dated 2 September 2025.

Does the first defendant have a binding legal agreement with the plaintiff?

[30] The first defendant claims that he has a legally binding agreement with the plaintiff to purchase her half share for $240,000. The first defendant relies on communications between the two party's solicitors contained at Tab 11 of the plaintiff's Bundle of Documents – in particular, two letters between the solicitors dated 26 October 2020 and 3 November 2020 wherein an offer was made (by the first defendant) and, according to the first defendant, the offer was accepted (by the plaintiff).

[31] There are two matters to consider. Firstly, whether the communications are admissible. Secondly, if they are admissible whether the communications establish a binding legal agreement.

[32] The communications at Tab 11 between the solicitors run from January 2019 to October 2022. The dispute between the plaintiff and the first defendant is over whether the communications from January 2019 to February 2021 are admissible – there appears to be agreement that the communications from June 2022 to October 2022 are privileged and not admissible. I have, therefore, confined my consideration on admissibility to the earlier communications up to February 2021.

[33] Despite providing these communications in her Bundle, the plaintiff argues that they are not admissible because they were made on a without prejudice basis. The first defendant claims that the communications up to November 2020, when the offer was allegedly accepted, are admissible but not the communications thereafter. The reason being, that settlement was reached by the parties. The first defendant argues that the communications after November 2020 are not admissible because they were made on

a without prejudice basis and no further settlement was reached after November 2020.[5]

[34] The first defendant cannot succeed with his counterclaim unless the solicitor's correspondence dated 26 October 2020 and 3 November 2020 is admitted in evidence.

[35] I have some difficulty accepting that any of the communications between the solicitors from January 2019 to February 2021 are privileged in this proceeding. By and large, the communications simply involved negotiations by the parties (through their solicitors) to sell the plaintiff's share to the first defendant. This was expressly conveyed in the original correspondence from MIQ Lawyers to Parshotam Lawyers on 22 January 2019. This correspondence was not made on a without prejudice basis nor was the response from Parshotam Lawyers dated 28 January 2019. The central focus of the communications was over the value of the Samabula property and, accordingly, the plaintiff's half share. The plaintiff and first defendant obtained their own valuations which were significantly apart. An initial offer was made by the first defendant in March 2019 but not accepted by the plaintiff. The initial offer was not made on a without prejudice basis. Indeed, from January 2019 to 6 August 2020, none of the communications were made on a without prejudice basis.

[36] The next offer by the first defendant was on 7 August 2020, this being the first communication made by either party on a without prejudice basis. The first defendant offered to purchase the plaintiff's share for $200,000. MIQ Lawyers responded on 22 September 2020 (not on a without prejudice basis) with a counteroffer that the plaintiff would accept the amount of $260,000. On 26 October 2020, Parshotam Lawyers made a further offer (again without prejudice) of $240,000. MIQ Lawyers responded on 3 November 2020 accepting the offer on condition that the first defendant clears rates and rental arrears (this was not made on a without prejudice basis). The first defendant instructed new solicitors in about December 2020. MIQ Lawyers wrote to the new solicitors on 4 December 2020 and 10 February 2021

[5] Paras 31 and 36 of the first defendant's closing submissions.

(following up on the letter of 3 November 2020) but the new solicitors did not respond.

[37] Accordingly, between January 2019 and February 2021, only two letters were sent on a without prejudice basis, both by the first defendant's solicitors and conveying the second and third offers. The first defendant contends that it was his third offer which was accepted and constituted a binding legal agreement. None of the plaintiff's solicitor's communications were made on a without prejudice basis. Nor were the responses to the first defendant's offers made on a without prejudice basis. The result is that the plaintiff did not treat any of its communications as being privileged. The first defendant only treated two communications as being privileged but is now prepared to waive that privilege. As the first defendant is prepared to waive privilege on the only two communications made on a without prejudice basis between January 2019 and February 2021, there is no basis for any of the communications from January 2019 to February 2021 to be precluded. Accordingly, I am satisfied that the communications at Tab11 from 22 January 2019 to 10 February 2021 are admissible.

[38] Can it be said, as the first defendant contends, that the parties entered into a binding legal agreement on 3 November 2020 for the sale of the plaintiff's half share in the Samabula property to the first defendant? The short answer is no. The communications over that period, and specifically the two letters of 26 October and 3 November 2020, fall well short of establishing a binding legal agreement. The reasons are twofold:

i. There was no binding acceptance of any offer by either of the parties over the two-year period. There were offers and counteroffers by both parties but no unconditional acceptance of any particular offer. The offer made by the first defendant on 26 October 2020 followed earlier offers in March 2019 and August 2020 as well as a counteroffer from the plaintiff on 22 September 2020.

In the plaintiff's counteroffer on 22 September 2020, she sought the amount of $260,000 for her half share and also that she '*pays half the current city and land rates due at the time of settlement'*. The very brief response on 26 October 2020 from the first defendant's solicitors to the plaintiff's counteroffer was an increase to the first defendant's earlier offer (from $200,000) to $240,000. There was no discussion by the first defendant in the letter of 26 October 2020 to the city and land rates mentioned in the plaintiff's counteroffer.

MIQ Lawyers responded on 3 November 2020, advising, '*Please be advised that our client accepts your client's offer of $240,000,* ***albeit on the condition that your client clears all SCC and Land rental arrears'***.[6] The plaintiff did not unconditionally accept the first defendant's offer contained in the correspondence of 26 October 2020. MIQ Lawyers' letter of 3 November 2020 constituted a counteroffer not an acceptance of the first defendant's offer of 26 October.

The first defendant did not respond to the plaintiff's counteroffer. In the absence of which, there was no agreement reached between the parties. The first defendant claims that he, nevertheless, paid the city and land rental arrears and that this constitutes acceptance (by his conduct) of the plaintiff's counteroffer. I am unable to accept this. There is no evidence before this court as to when the city and land arrears were paid by the first defendant. Moreover, it was incumbent on the first defendant to communicate with MIQ Lawyers to expressly accept the plaintiff's offer of 3 November 2020. The plaintiff's solicitors sought a response on 3 November 2020, 4 December 2020 and 10 February 2021 but received none. In the absence of which the plaintiff was entitled to believe that there was no agreement reached – this is reinforced by the fact that the first defendant took no steps from November 2020 to the end of 2022 to pay the amount of $240,000 or arrange for the transfer of the plaintiff's half share.

[6] My emphasis.

ii. Even if the communications in October and November 2020 could be construed as the parties having reached agreement, there were still other critical terms for the parties to discuss and agree. For example, when settlement would occur, the date the first defendant was to pay the amount agreed, who would be liable for the costs of effecting the transfer and obtaining the consent of the Director of Lands. Also, if there were delays over the payment and/or transfer, what remedies were available to the parties and who was to have control over the Samabula property in the meantime (this, in particular, was a subject of contention for the plaintiff who felt that she was suffering a financial loss having to rent elsewhere while the first defendant was (allegedly) receiving income from renting out the Samabula property to tenants).

Damages

[39] The plaintiff seeks special and general damages for being deprived of access to her legal interest in the Samabula property. She claims that she has been out of pocket the rental income received by the first defendant for about a decade. She seeks reimbursement for expenses incurred up to 2018 paying rates and land rentals for the Samabula property as well as paying the costs for renewal of the lease.

[40] There is insufficient evidence for the court to make any findings on whether the Samabula has been rented by the first defendant, the periods of the rental and the alleged amounts collected by the first defendant. As for the rates and land rentals paid by the plaintiff this will have been offset by the payments made by the first defendant for these expenses from about 2018/19 to the present.

[41] That said, I accept that the plaintiff has been improperly precluded from use and access of the Samabula property from 2017 and has incurred the cost of renting accommodation elsewhere. The plaintiff would not have incurred these costs had she

been permitted to reside at the Samabula property (as was her right having a half share in the Samabula property). She is entitled to reimbursement of these costs, being $14,190.

Orders

[42] I make the following orders:

1. The plaintiff succeeds with her claim.

2. The first defendant's counterclaim is dismissed.

3. The plaintiff is entitled to special damages in the amount of $14,190.00 which are to be paid by the first defendant within one (1) calendar month of the date of this judgment.

4. The property comprised in State Lease No. 866310, No. 3796, Samabula Indian Settlement in the Province of Rewa, District of Suva, area of 1 r22, 4p (0.1578 ha), in Lot 17, Section 6 on Plan No. S1183 (the Samabula property) is to be sold to the highest bidder/tender. The parties are required to follow the directions given below:

    a. The sale of the Samabula property and the tender process is to be conducted by Messrs Sunil Kumar Esquire, solicitors for the Plaintiff.

    b. Within one calendar month from the date of this judgment the Plaintiff is to arrange for a valuer to undertake a valuation of the Samabula property. The valuer is to be acceptable to the First Defendant.

    c. Upon receipt of the Valuation Report the parties are to agree to a selling price which is not to be below the valuation amount. The Plaintiff and the First Defendant is to have first option to purchase the others share.

    d. If the Plaintiff and First Defendant do not avail themselves of the first option, the Plaintiff's solicitors are to sell the Samabula property. They must obtain the necessary approvals for sale.

e. The property is to be advertised by the Plaintiff's solicitors in two newspapers in consultation with the First Defendant. Bids are to be opened in the presence of the solicitors for the Plaintiff and the First Defendant.

f. The Chief Registrar is to execute the conveyance if the First Defendant is uncooperative in transferring his share to the purchaser.

g. The Plaintiff's solicitors must deposit settlement monies in court together with an account of sale related expenses.

h. Sale related expenses must be agreed between the respective parties and be evidenced by documentation. The cost of the valuation is to be considered a sale related expense.

i. Within two weeks after payment of settlement monies into court, each party shall be paid their share of the settlement sum (in accordance with their share of the ownership of the Samabula property) after deducting all expenses related to the sale.

j. Leave is given to the parties to apply for further directions.

5. Having succeeded with her claim, the plaintiff is entitled to costs summarily assessed in the amount of $6,500 to be paid by the first defendant within one (1) calendar month of the date of this judgment.

HIGH COURT OF FIJI
SUVA

.....
D. K. L. Tuiqereqere
JUDGE

Solicitors:

Sunil Kumar Esquire for the Plaintiff

Munro Leys for the First Defendant

Attorney-General's Chambers for the Second and Third Defendants