

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. **HBC 78 of 2004L**

BETWEEN : **SHEELA WATI**
Plaintiff

AND : **KRISHNA DALIP LIMAR**
1st Defendant

AND : **FIJI SUGAR CORPORATION LIMITED**
2nd Defendant

INTERLOCUTORY JUDGMENT

Of: Inoke J.

Counsel Appearing: **Mr. M K Sahu Khan for the Plaintiff**
Mr. D Gordon for the Defendant
No appearance.

Solicitors: **M K Sahu Khan & Co. for the Plaintiff**
Messrs Gordon & Co. for the 1st Defendant

Date of Hearing: **13 July 2006**
Date of Judgment: **19 August 2009**

INTRODUCTION

[1] This is a claim arising out of a contract for the purchase of a sugar cane farm. The Plaintiff was the purchaser and the 1st Defendant (hereinafter the "Defendant") was the Executor and Trustee of the estate of the vendor, Pratap Singh, who died in 1991 before the issue of these proceedings.

- [2] The Defendant vendor did not transfer the cane farm to the Plaintiff after she had paid almost the whole of the purchase price and she now sues for repayment of the monies she had paid.

THE BRIEF FACTS

- [3] The cane farm was originally leased by the Defendant as tenant from the estate of Mr A D Patel (deceased) vide an instrument of tenancy issued under the provisions of the **Agricultural Landlord and Tenant Act** in **July 1992**. Clause 15 of the instrument prevented the tenant from transferring or assigning or parting with possession of the land without the consent of the landlord in writing being first had and obtained, such consent not to be unreasonably withheld or refused.
- [4] The Plaintiff was the sister-in-law of the Defendant, Pratap Singh, having married the Defendant's brother. In **1994**, due to ill health, the Defendant was not able to work the cane farm so he asked the Plaintiff and his brother to move onto the farm and work it. The Defendant left the farm and went to live in Lautoka. The Plaintiff and the Defendant Pratap Singh also entered into a contract for the sale and purchase of the farm on **3 June 1994** subject to the consent of the Defendant's landlord. The Plaintiff and her husband continued living and working the farm whilst awaiting the landlord's consent. The landlord did not give consent but instead evicted the Plaintiff and her husband from the farm in **1999**.
- [5] Cane payments from the farm were to be paid to the Defendant towards repayment of the purchase price of the farm. A total of **\$29,500** was paid to the Defendant out of the purchase price of **\$30,000**.
- [6] Under the agreement the total purchase price was to be paid by **31 December 2003** but the Plaintiff paid essentially the full amount by

the end of **1998**. On **1 December 1998** solicitors for the Plaintiff wrote to the executor and trustee of the estate of the Defendant's landlord seeking his consent to the transfer of the farm from the Defendant to the Plaintiff. Consent was never given.

- [7] The Plaintiff started these proceedings on **24 March 2004** by way of Originating Summons seeking orders that cane proceeds from the farm in question be paid by the Fiji Sugar Corporation Ltd (**FSC**) to her.

INTERIM ORDER

- [8] An interim order was made after a short hearing on **2 December 2005**, when Connors J ordered that any monies then held by FSC on account of the cane farm was to be retained by them until further order but any moneys already paid to the Defendant be retained by him.
- [9] In that Ruling, Connors J indicated that His Lordship was of the opinion that the Defendant had been **unjustly enriched** but since the Originating Summons as it then stood did not enable appropriate orders to be made, His Lordship proposed to grant leave to the Plaintiff to file an amended summons seeking relief against the Defendant and/or FSC to facilitate the sum of at least \$29,500 being paid to the Plaintiff.

THE AMENDED ORIGINATING SUMMONS

- [10] The Plaintiff filed her **Amended** Originating Summons on **10 January 2006**. The Amended Originating Summons joins the FSC as the Second Defendant and seeks the following orders:

(a) That the Fiji Sugar Corporation Limited, Lautoka (2nd Defendant) be ordered to pay the Plaintiff forthwith all sugar cane payments now held under Farm Number 6046 Lomowai Sector;

- (b) That the Estate of Pratap Singh be ordered to refund the Plaintiff the sum of \$29,5000.00 being moneys already paid by the Plaintiff for the purchase of part of Certificate of Title No. 6221 comprising of an area of 20 acres known as "Tuvuriki" situated at Savusavu, Nadroga together with all the improvements thereon including Sugar Cane Registration Number 6046 Lomowai Sector for the sum of \$30,000.00 due to fundamental breach on the part of the late Pratap Singh;*
- (f) In the alternative there be judgment in favour of the Plaintiff for the sum of \$29,500.00 against the Estate of Pratap Singh;*
- (g) Such other and further relief as seems just to this Honourable Court;*
- (h) That the 1st Defendant be ordered to pay costs on full indemnity basis."*

[11] The parties filed their affidavit material and the Amended Originating Summons was heard on **13 July 2006**. This is one of those matters that the learned trial Judge was not able to deliver judgment so with the consent of both Counsel I was asked to deliver judgment based on the trial Judge's notes and Counsel's submissions. This judgment is delivered under those circumstances

FINDINGS OF FACT

[12] In an interim Ruling on **2 December 2005**, Connors J made the following findings of fact:

- 1. Pratap Singh agreed to sell the property known as Farm No 6046 Lomowai Sector to the Plaintiff for the sum of \$30,000 pursuant to a n agreement made on 3 June 1994.**
- 2. Pratap Singh also bequeathed by his Will the property to the Plaintiff's husband subject to the payment of \$30,000.**

- 3. The sum of \$29,500 has been paid by the Plaintiff to Pratap Singh.**
- 4. The Plaintiff and her husband remained in occupation and operated the farm as employees of the Defendant.**
- 5. The Plaintiff has been evicted from the property by the trustees of the estate of the Defendant's landlord.**
- 6. The consent of the Defendant's landlord was not obtained for the transfer of the cane farm to the Plaintiff making it impossible to transfer it.**

THE PLAINTIFF'S CASE

[13] The Plaintiff seeks orders in terms of the Amended Originating Summons relying essentially on the findings of fact by Connors J.

THE DEFENDANT'S CASE

[14] The Defendant's main argument is that because the sale and purchase agreement was entered into without the landlord's prior consent and the consent had not subsequently been given, the agreement was void ab initio and unenforceable. The Defendant argues that in that case, the Plaintiff cannot recover the money she had already paid to the Defendant.

CONSIDERATION OF THE ARGUMENTS

IS THE PLAINTIFF ENTITLED TO RECOVER HER MONEY?

[15] The Defendant's argument that the agreement is void ab initio so the moneys paid by the Plaintiff is not recoverable is easily disposed of by considering the basis of claim as not being pursuant to the agreement but rather as a quantum meruit claim as Connors J adverted to in His Lordship's interim Ruling or as monies paid on account of the purchase

price as in **Sakashita v Concave Investment Ltd [1999] FJHC 3; Hbc0121j.1998s (5 February 1999).**

- [16] **Section 9(1)(e)(ii) of the Agricultural Landlord and Tenant Act [Cap 270] provides that the tenant shall “not part with the possession of, mortgage, assign, sublet or otherwise alienate the holding or any part thereof without the consent in writing of the landlord previously obtained, which consent shall not be unreasonably withheld, and then, only in accordance with the provisions of this Act”.**
- [17] Having found as a matter of fact that the Plaintiff and her husband remained in occupation as employees of the Defendant meant that the Defendant did not at law part with possession of the farm. Further, the intention of the Act is to ensure that farming land is used productively. The Plaintiff and her husband worked the farm planting sugar cane and therefore in my view neither they nor the Defendant have breached s 9(1)(e)(ii) of the Act in so far as parting with possession is concerned.
- [18] This provision does not in my opinion prohibit the making of a contract to assign or transfer agricultural land that is subject to the consent of the landlord.
- [19] It is a different provision altogether from sections **6(1)** and **7(1)** of the **Land Sales Act [Cap 137]**. Those provisions prohibit the “making” of any contract. See **Gonzalez v Akhtar [2004] FJSC 2; CBV00011.2002S (21 May 2004), Covec (Fiji) Ltd v Singh [2008] FJCA 81; ABU0083.2007S (7 November 2008); Sakashita v Concave Investment Ltd [1999] FJHC 3; Hbc0121j.1998s (5 February 1999).**

- [20] Neither is this a case of the type considered in **Latchman v Prasad [1960] FJCA; 7 FLR 90** where the contract was for an illegal purpose and therefore unenforceable.
- [21] The agreement in this case is not a void contract but a voidable one. The consent of the landlord not having been obtained, the Plaintiff has sought to avoid the agreement by seeking repayment of the money she has already paid.
- [22] Thus, the monies paid by the Plaintiff is repayable because of the unjust enrichment of the Defendant and hence recoverable on a quantum meruit basis or on the basis of moneys paid on account of the purchase price in accordance with the principle in **Sakashita v Concave Investment Ltd [1999] FJHC 3; Hbc0121j.1998s (5 February 1999)**, as the agreement in this case is not one unenforceable according to the principle in **Latchman v Prasad [1960] FJCA; 7 FLR 90**.

SHOULD THE MATTER CONTINUE AS A WRIT ACTION?

- [23] I am of the view that this matter does not need to proceed by way of Writ of Summons. The relevant facts have been considered by Connors J on **2 December 2005**. They were not in serious dispute. The further affidavit material added nothing to these findings other than to raise the illegality point which I have dealt with above without the need to consider further evidence. Justice will not be served by prolonging a claim that has languished in the Court for 5 years and 10 years since the cause of action arose.
- [24] I therefore grant the orders sought by the Plaintiff's Amended Originating Summons.

INTEREST

[25] The Plaintiff has been deprived of both her money and the farm for close to 11 years from 1998 when she paid all but \$500 of the purchase price and from 1999 when the Defendant's landlord evicted her and her husband.

[26] I have discretion to award interest under the **Law Reform (Miscellaneous Provisions)(Death and Interest) Act**. The facts in this case justify such an award so I award interest accordingly at the yearly rate of 6% from 1998 to date calculated as follows: \$29,500 x 6% x 11years = **\$19,470**.

[27] The total award for the Plaintiff is therefore \$29,500 plus \$19,470 giving a total of **\$48,970**.

COSTS

[28] The Plaintiff has won so I award costs in the sum of \$700.

FINAL ORDERS

[29] The **Orders** that I make are as follows:

1. Judgment is entered for the Plaintiff in the Judgment sum of **\$48,970** against the estate of Pratap Singh (deceased), son of Sukha Singh, being the refund of the **\$29,500** paid on account of the purchase price and interest thereon of **\$19,470**.
2. The Second Defendant shall forthwith pay to the Plaintiff all sugar cane payments now held under Farm Number 6046

Lomowai Sector pursuant to the Court order of Connors J made on 2 December 2005.

3. If such payments do not exceed the Judgment sum then the said estate shall pay the balance.
4. The Defendant pays the Plaintiff's costs of **\$700** within 21 days.

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Sosefo Inoke
Judge