



Fiji Law Reports

You are here: [PacLII](#) >> [Databases](#) >> [Fiji Law Reports](#) >> [2000](#) >> [2000] FJLawRp 22

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

Prasad v Devi [2000] FJLawRp 22; [2000] 1 FLR 34 (25 February 2000)

[\[2000\] 1 FLR 34](#)

IN THE HIGH COURT OF FIJI

RAJENDRA PRASAD

v

LILA PREMILA DEVI,
REGISTRAR OF TITLES & ATTORNEY-GENERAL

High Court Civil Jurisdiction
Shameem, J
25 February, 2000
HBC 277/96

Resulting trust - circumstances in which a constructive trust can be declared - [Land Transfer Act](#) (Cap 131) s168

Plaintiff sought to purchase relative's land in first defendant - wife's name. Initially, one-third purchase price paid and plaintiff continued to pay for property until transfer to first defendant. Subsequently, the plaintiff and first defendant divorced and plaintiff paid \$3,000 towards purchase price and property transferred on instructions of first defendant from vendor to first defendant. Plaintiff then registered a caveat. The plaintiff filed a Writ of Summons and sought an order that the Registrar of Titles register plaintiff's interest in the land.

Held - (1) There was a common intention that the house be jointly owned and common intention that first defendant hold property on trust for the plaintiff.

(2) This case is an exception to the rule that the power under [Land Transfer Act](#) s168 should be exercised in the most exceptional circumstances because of the need to protect indefeasibility of title upon registration.

Order that Registrar of Titles alter title to show property as jointly owned by plaintiff and first defendant.

Cases referred to in judgment

cons *Sheila Maharaj v Jai Chand* (1986) 1 AC 898
cons *Hussey v Palmer* (1972) 1 WLR 1286
cons *Doohan v Nelson* (1973) 3 NSWLR 320
dist *Baumgartner v Baumgartner* [\(1988\) 62 ALR 29](#)

25 February 2000.

JUDGMENT

Shameem, J.

In June 1996, the Plaintiff issued a writ of summons seeking a declaration that property at CT 24345 at Wailoku, Suva was held on trust by the 1st Defendant for the Plaintiff, and an order that the Registrar of Titles (the 2nd Defendant) register the Plaintiff's interest under the [Land Transfer Act](#) Cap. 131.

The facts as laid out in the statement of claim, are that the Plaintiff and the 1st Defendant were married on 12th January 1976, and divorced on 27th September 1989. The 1st Defendant now resides abroad.

On 1st March 1987 the Plaintiff decided to buy the property CT24345 from his relatives Shiu Charan and Chandra Wati, for \$12,000.

The Plaintiff paid \$500.00 as deposit, and agreed to pay the balance in monthly instalments. The sale was in the name of the 1st Defendant who was unemployed.

On 15th February 1993, the vendor Chandra Wati apparently at the request of the 1st Defendant transferred the property to the 1st Defendant. The registered owner of the property is the 1st Defendant.

Service of the writ was acknowledged by the 1st Defendant. However no Defence was filed. No action was taken by the Plaintiff, until 23rd June 1998 when a Notice of Intention to Proceed was filed. Leave to serve the 1st Defendant out of jurisdiction was granted on 13th January 1999. Summons for Directions were filed on 16th March 1999. On 12th April 1999, Messrs. A.K. Narayan and Company withdrew as solicitors for the 1st Defendant on the ground that attempts to contact the 1st Defendant had been futile, and that no instructions had been received from her.

The Plaintiff then made an application for Judgment to be entered in default of Defence. It was then acknowledged that Judgment could not be entered in default in the case of a declaration.

The matter was finally set down for hearing on 15th February 2000.

The Plaintiff called two witnesses. PW1 Rajendra Prasad gave evidence of his marriage to and divorce from the 1st Defendant. He said that the property had been bought under his wife's name because he suffered from ill-health and wanted to ensure the security of his wife and daughter after his death.

He tendered a Sale Note (Exhibit P6) which shows the 1st Defendant as the sole purchaser.

Rajendra Prasad said that he paid the \$500 deposit, and then paid the balance by monthly payments. He said his wife did not work, and that he worked as a taxi-driver. He said he continued to pay for the property after the divorce, and on 2nd February 1993 the owners transferred the property to the 1st Defendant's name.

The Plaintiff then registered a caveat in respect of the property on 30th September 1993. He agreed that he had no receipts for any of the payments.

The second witness (PW2) was Chandra Wati Charan, the former owner of the property. She gave evidence that payments for the property were made by both the Plaintiff and the 1st Defendant. She said that the Plaintiff only made payments after his wife left the country. She said she issued receipts and that the reason why the property was in the 1st Defendant's name was because the Plaintiff trusted her. She said she had lost the receipts but that the 1st Defendant had paid around \$3000 towards the purchase price.

There were no further witnesses and counsel made written submissions. It was agreed by both counsel that Section 168 of the [Land Transfer Act](#) Cap. 131 gave the court powers to order registration of title or substitution of title, to give effect to a judgment of the court.

Mr. N. Shivam for the Plaintiff submitted that the facts of the case disclosed the existence of a resulting trust, and asked for order in terms of the Writ of Summons.

Mr. S. Sharma for the 2nd and 3rd Defendants, agreed that there was evidence of a common intention that the property should be the matrimonial home, and as such a common intention that the Plaintiff has a beneficial interest in the property. Counsel submitted that although the 1st Defendant did not work outside the home while she lived in the matrimonial home "the court is invited to consider whether she is entitled to any interest in the property on the basis of her performing domestic duties during the short duration when the family stayed on the premises."

There is no doubt at all that the Plaintiff and the 1st Defendant lived on the property together with their daughter. In *Sheila Maharaj v. Jai Chand* (1986) 1 AC 898 the Privy Council in a case involving a couple who lived on property for twelve years in a de facto relationship said at p.1205:

"In such cases a contract or an express trust as at the time of the acquisition may not be established, because of lack of certainty or consideration or non-compliance with statutory requirements of writing; but a constructive trust may be established by an inferred common intention subsequently acted upon by the making of contributions or either action to the detriment of the claimant party. And it has been held that, in the absence of evidence of the contrary, the right inference is that the claimant acted in the belief that she (or he) would have an interest in the house and not merely out of love and affection."

In *Hussey v. Palmer* (1972) 1 WLR 1286, the plaintiff had paid for an extension to the defendant's home on the basis of a promise by the defendant that she could live there as long as she liked. She left, and claimed reimbursement of the value of her contributions. Lord Denning M.R. and Philimore L.J. held that the defendant held the property upon a constructive trust for the plaintiff in respect of a beneficial interest proportionate to the amount of her contributions.

A common intention to create a trust can be construed where both persons contributed to the property in money, work, and labour (*Doohan v. Nelson* (1973) 3 NSWLR 320.) No such common intention was found by the High Court of Australia in *Baumgartner v. Baumgartner* (1988) 62 ALR 29 where a woman gave her partner her earnings to meet household expenses thus allowing the loan amount on the house to be more rapidly reduced than would otherwise be the case. However, it was held that a constructive trust existed to prevent one partner from unconscionably retaining the benefit of the other's contributions (Mason CJ Wilson and Deane JJ).

It is clear from the evidence that it was the intention of the parties that the property should be for the benefit of husband and wife. It is also clear that both the Plaintiff and the 1st Defendant made contributions to the purchase price. Although the Plaintiff says that all the contributions were made by him because his wife was unemployed, this does not explain the payments made after their separation and divorce. The vendor herself said that the 1st Defendant made contributions of around \$3000. Furthermore, in his affidavit sworn on 27th September 1999, the Plaintiff stated that the property was transferred to his wife's name on 15th February 1993 after the divorce. In the statement of claim, the Plaintiff claimed at paragraph 10, that the 1st Defendant had made payments to the total of \$300.00 from Australia, in 1992. In his evidence, he said he did not live on the property, that the house was rented out, and that he did not know who received the rent. Finally, his statement of claim seeks an order that the Plaintiff is the beneficial owner "of such proportion as the court may think just."

Given the evidence in this case, it appears that the parties had a common intention that the house should be jointly owned. It is on this basis that both parties made contributions to the purchase-price. I cannot draw the inference that the Plaintiff asks me to, that because the 1st Defendant was a housewife, she had no other source of income other than the Plaintiff. I accept therefore that both parties made contributions and that there was a common intention that the 1st Defendant should hold the property on trust for both the Plaintiff and the 1st Defendant.

Section 168 of the [Land Transfer Act](#) allows the Court to direct the Registrar to alter title. The section provides:

"In any proceedings respecting any land subject to the provisions of the Act, or any estate or interest therein, or in respect of any transaction relating thereto, or in respect of any instrument, memorial, or other entry or endorsement affecting any such land, estate or interest, the court may by decree or order direct the Registrar to cancel, correct, substitute or issue any instrument or title or make any memorial or entry in the register or any endorsement or otherwise to do any acts as may be necessary to give effect to the judgment or decree or order of the court."

The 2nd and 3rd Defendants submit that the power under section 168 should be exercised in the most exceptional circumstances because of the need to protect indefeasibility of title upon registration. I agree.

I am of the view that this is one of those exceptional cases. The Plaintiff who has contributed substantially to the purchase of the property can get no benefit from it because he holds no registered interest. His interest for many years has been frustrated by the 1st Defendant's absence from the country, and her lack of response to this action.

In the circumstances I consider an order under section 168 of the [Land Transfer Act](#), to be appropriate. I therefore order the Registrar of Titles to alter the title on CT 24345 to show that the property is jointly owned by the Plaintiff and the 1st Defendant.

Given the nominal (but helpful) appearance of the 2nd and 3rd Defendants in this case, and the disappearance of the 1st Defendant I make no order for costs.

Application allowed.

Marie Chan