

IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL APPEAL JURISDICTION

BETWEEN:

ZAIROON NESHA LEKHRAJ in
her capacity as the sole executrix
named in the last will and testament
of RAHIMAN LEKHRAJ, deceased.

Appellant

-and-

LINDA LEKHRAJ individually and
in her capacity as the executrix of the
estate of COMPTON LEKHRAJ
also known as LAKHRAJ, deceased,
probate whereof was granted to her
by the High Court of the Supreme
Court of Judicature on 26th
November, 2008 and numbered 981
of 2008.

Respondent

The Honourable Justices James Bovell-Drakes and Navindra A. Singh, Puisne
Judges

Mr. Rajendra Poonai representing the Appellant

Mr. Bernard DeSantos S.C. representing the Respondent

Heard November 12th and December 3rd 2013

DECISION

Civil Action No. 569/ W of 2009 was instituted by the Appellant on December 10th 2009 by way of a generally indorsed writ claiming *inter alia* a Declaration that the estate of Rahiman Lekhraj is entitled to one half share of six (6) acres of rice lands situated at Plot 21 North La Bon Pere, Cane Grove, ECD being part of the land owned by Lekhraj, deceased and devised to the late Rahiman Lekhraj and the late Rahiman Lekhraj.

On the said December 10th 2009, the Appellant filed an ex-parte application by way of affidavit for injunctive relief restraining the Respondent by herself, her servants and or agents or any of them from continuing to cultivate three (3) acres of the six (6) acres of the said land. The said affidavit was sworn to on December 9th 2009.

The application was made inter partes and following a hearing before a Judge in Chambers, the learned Judge refused to grant the injunctive relief prayed for on January 31st 2012 and consequently this Appeal was instituted on February 7th 2012 seeking a reversal of the Learned Trial Judge's refusal and further that this Court grant the injunctive relief prayed for in the afore mentioned application.

At the hearing of the Appeal on November 12th 2013, the Court was informed that Zairoon Nesha Lekhraj had passed away, however, Mr. Poonai exhibited an Order of the Honourable Chief Justice Chang dated October 9th 2013, whereby Sarojini Shamid was appointed Administratrix Ad-litem of the estate of Zairoon Nesha Lekhraj and substituted in place of Zairoon Nesha Lekhraj in action No. 569/W of 2009 and this appeal.

It is regrettable that this application for injunctive relief has occupied the Court's calendar for all of this time and in fact made its way to the Appellate Division of the High Court since it is clear from the record that the application for injunctive relief was supported by an affidavit which was sworn to on December 9th 2009, one day before the writ was filed. The rules are very clear. An affidavit can only be sworn in matters of this kind after the writ of summons has been duly issued because, as required by **Order 34, rule 34, of the Rules of the Supreme Court**, every affidavit must be intituled in the cause or matter in which it is sworn, and it cannot be so intituled unless and until there is a cause or matter. The affidavit having been prematurely sworn to, the learned judge should never have acted upon it unless it was re-sworn and re-filed. See also **Adanac Industries Ltd. v Black** [1962] 5 WIR 233; **Mohamed v Home Construction Ltd.** [1988] 43 WIR 380.

Notwithstanding this, in any event, the writ disclosed no right of which the injunction was being prayed in aid, nor did it disclose any wrong threatened or committed by the Respondent which the injunction was intended to prevent from happening or continuing.

At its highest, the affidavit evidence of the Appellant reveals that there has never been any objection to Compton Lekhraj's, the estate of Compton Lekhraj and/ or Linda Lekhraj's occupation and cultivation of the disputed lands. It is the claim of the Appellant that Compton Lekhraj made payments to Rahiman Lekhraj and Zairoon Nesha Lekhraj up to and including the year 2007, which payments purportedly represented Rahiman Lekhraj's share of the profits realized from the cultivation of the lands.

This may give rise to action/s in breach of contract, but in no event, can this give rise to injunctive relief removing a party using and occupying the lands for many years prior to this application.

In fact the subject matter land are leased State lands, leased to a third party, for which the only document exhibited is an application for a transfer to Lekhraj, the father of Compton Lekhraj and husband of Rahiman Lekhraj.

In addition, the Learned Judge erred when she ordered that the proceedings be stayed until the Plaintiff obtained probate of the will of Rahiman Lekhraj, deceased, since the Plaintiff had in fact obtained such probate on January 25th 2010, which said probate was attached as an exhibit to the affidavit of reply sworn to on February 19th 2010 and filed by the Appellant and therefore a part of the record. That order is therefore vacated.

In the circumstances and for the reasons stated above the appeal is dismissed and it is ordered that the Appellant pay the Respondent's costs here and below in the sum of \$150,000.00.

Justice N. A. Singh