

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
REGULAR JURISDICTION

2020-HC-BER-CIV-FDA-172

BETWEEN:

URAJ SURAJBALI of No. 72 Village, Corentyne,
Berbice

Applicant

-and-

ANJANIE ARJUNE of Lot 127 Johanna South, Black
Bush Polder, Corentyne, Berbice

Respondent

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Rodwell Jugmohan for the Applicant

Mr. Murseline Bacchus for the Respondent

Delivered December 15th 2020 via electronic mail

DECISION

BACKGROUND

The Respondent is a tenant of the Applicant of 300 acres of rice lands which are a portion of lands held by the Applicant by Lease No. A22616 from the State of Guyana [Lease No. A 22616 is exhibited as **Exhibit 'A'** to the Applicant's Affidavit in Support of this Application].

In 2019 the Applicant instituted Claim No. 2019-HC-BER-CIV-SOC-12 against the Respondent in the High Court and that Claim was settled by the parties by an agreement in writing which was made an Order of the Court on October 22nd 2019 [The Order of Court and the settlement agreement are exhibited as **Exhibit 'B'** to the Applicant's Affidavit in Support of this Application].

The last clause of the agreement and the Order of Court provides that ‘... *the Claimant undertakes not to sell or dispose of the said lands.*’

The Applicant has herein applied to the Court to vary the Order of Court and by extension the agreement [**Exhibit ‘B’**] by deleting that clause.

The grounds for the Application is that the clause places an unfair and permanent restriction on the Applicant’s ability to deal with his own property.

The Respondent contends that the Order of Court being an Order made by consent cannot be varied except with the consent of the parties and she is not consenting.

RULING

Counsel for the Respondent quite correctly submitted that a Consent Order is a contract between the parties that is made an Order of the Court and in fact a perusal of the agreement between the parties, in the case at bar, that was made the Consent Order, it is clear that the Consent Order was nothing more than the agreement sanctioned by the Court.

The agreement sets up a payment schedule for the Defendant to liquidate a debt, which is made the judgment in the Claim, to the Claimant, however, it is obvious, on the face of the agreement that there is no consideration passing from the Defendant.

In this regard the Court finds that the agreement cannot properly be defined as a contract.

A true Consent Order is based on a contract between the parties in the litigation.

If there is no true contract between the parties then logically the Order of Court entered pursuant to a mere agreement between the parties cannot be regarded as a true Consent Order and such an Order can therefore be varied without the consent of all of the parties provided there is a valid and lawful ground advanced by any party applying for a variation. [**Siebe Gorman and Co. Limited v Pneupac Limited** [1982] 1 WLR 185 considered and applied].

Notwithstanding the foregoing, it is well established that a Consent Order can be set aside in an action commenced for that purpose on any ground that would invalidate a contract.

As Lindley LJ said in **Huddersfield Banking Co. Ltd. v Henry Lister and Son Ltd.** [1895] 2 Ch 273 C. A.:

‘... nor have I the slightest doubt that a consent order can be impeached, not only on the ground of fraud, but upon any grounds which invalidate the agreement it expresses in a more formal way than usual.’

The clause that the Applicant contends is offensive places a **permanent restriction** on the Applicant’s ability to deal with his [own] property and on the face of the agreement there is no apparent reason for the inclusion of the clause in the agreement.

The Court further finds that there is no benefit passing to either the Applicant or the Respondent should the Applicant be restricted in dealing with his property and therefore it is an unjust and unnecessary clause in the agreement and Order of Court.

The Court further finds that the fact that the agreement does not describe or specify the lands not to be disposed of reinforces that this vague clause is not germane to the agreement in any way.

When parties submit an agreement to a Court to be made an Order of the Court settling a Claim or parts thereof the Court is duty bound to ensure that the terms of such agreement practical and necessary and not vague and uncertain before permitting the agreement to be made an Order of the Court.

In this regard it is perplexing that this clause, which seemingly serves no purpose in settling the Claim that was before the Court was allowed to be made an Order of the Court.

The Court finds that the Order of Court is not a true Consent Order and therefore can be varied for good and sufficient cause without the necessity of obtaining the consent of the parties to the Order.

The Court further finds that the Applicant has advanced good and sufficient reason to have the clause removed from the Order of Court and the agreement upon which the Order is based in that it is an unnecessary term of the agreement and Order and it unjustly restrains the Applicant from dealing with his property.

In the circumstances the Court orders that the Terms of Settlement dated October 22nd 2019 in High Court Action 2019-HC-BER-CIV-SOC-12 is amended by the deletion of the last line of the agreement which contains the words '*The Claimant undertakes not to sell or dispose of the said lands.*' and further the the Order of Court dated October 22nd 2019 in High Court Action 2019-HC-BER-CIV-SOC-12

is amended by the deletion of the words '*AND IT IS BY CONSENT FURTHER ORDERED the Claimant undertakes not to sell or dispose of the said lands.*' in the last three lines of the said Order of Court.

The Court awards costs to the Applicant in the sum of \$50,000.00.

Justice N. A. Singh