

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 34 of 1983

Between:

- 1. MAM RAJ SARUP
- 2. VIMLA
- 3. MANJULA DEVI Appellants

- and -

THE PUBLIC TRUSTEE OF FIJI Respondent

Mr. S.R. Shankar for Appellants
Mr. D.C. Maharaj for Respondent

Date of Hearing: 16th November, 1983

Delivery of Judgment:

JUDGMENT OF THE COURT

Henry, J.A.

This is an appeal against an order for possession made under Section 169 of the Land Transfer Act (Cap. 131). The order was made on summons before the Judge in Chambers. Section 172 provides that, if the person in possession of the land proves to the satisfaction of the Judge a right to the possession of the land, the Judge must dismiss the summons or make any order and impose any terms he may think fit. The summons may be supported, inter alia, by the production of a certificate of title.

The effect of the judgment in the Supreme Court was that appellants, who had been in possession for a long time, had no legal right to remain in occupation and that the Public Trustee had terminated any licence they had to remain in occupation.

In view of the order we are about to make we shall state very shortly the main facts. The Public Trustee is executor of the estate of one Bidesi who died on April 18, 1957. There is a claim that Bidesi before he died made a gift of the land to one Ram Deo. Ram Deo borrowed money from Bidesi or was given credit for materials which he used to build a substantial home on the land said to be worth at the present time in the order of £40,000. Ram Deo lived on the property or treated it as his own from January 1957 until his death in Vancouver in January 31, 1980. There was an abortive proceeding commenced in 1961 but it need not be considered at the present time.

Under his last known will Ram Deo left his estate to his seven children. A son, Surya Munidial Bidesi, was appointed executor and trustee. No order for probate or administration has yet been sought. There is no legal representative of the estate of Ram Deo. The defendant Vimla is the only beneficiary who is a defendant. All defendants have long been in possession without paying rent. There has been possession adverse to Bidesi and his legal representative. Since the alleged gift and the building was erected the defendants have continued in possession down to the present time.

No one has taken steps to prove any right, pursuant to what has been said. The hand of the Public Trustee has been forced, hence the present proceedings. It is argued on his behalf that there was an imperfect gift which conferred no rights. It is clear, now, and, seems to be borne out by the known facts, that the alleged gift was accompanied by possession and the building of substantial premises while the owner stood by. The interested parties have now instructed their Solicitor, Mr. Shankar, to take all steps to bring an action to establish any right the beneficiaries of Ram Deo may consider they have. There has been long delay - also long acquiescence in possession without payment of any kind for such possession.

In the circumstances we consider that a peremptory order for possession ought not to have been made but that a reasonable opportunity be afforded to the beneficiaries of Ram Deo to obtain administration of his estate and initiate and prosecute with due diligence such action as they may be advised to take.

Accordingly the order for immediate possession is set aside, and, in lieu thereof, an order that these proceedings be adjourned for six months from date. The defendants are deemed, by the acceptance of this order, to undertake to take forthwith, the necessary steps to obtain legal representation and to commence an action within that time with liberty to the Public Trustee to apply to a Judge of this Court in respect of that undertaking or otherwise as he may be advised. No costs are allowed in this Court.

Appeal allowed and order as above made accordingly.



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Vice President



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Judge of Appeal



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Judge of Appeal