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IN THE FIJI COURT OF APPEAL
(AT SUVA)

CIVIL JURISDICTION

CIVIL APPEAL NO.22 OF 1991

BETWEEN:

VENKATAMMA s/o Ram Rattan)
and SATH NARAYAN s/o Shiu Narayan — Appellants

- AND -

BRYAN CHARLES FERRIER WATSON
AND OTHERS — Respondents

Mr. D. Naidu — for the Appellants
Dr. Sahu Khan — for the Respondents

Date of Hearing: 3rd day of November, 1992
Date of Delivery Judgment: 9th day of November, 1992

JUDGMENT OF THE COURT

This is an appeal from the decision of Saunders J. who made an order for possession of land in favour of the Respondents.

The Appellants were in occupation of land (Lot 3 DP.1439 C.T.10842) owned by the Respondents as registered proprietors. In 1988 the Appellants applied to the Agricultural Landlord and Tenant Tribunal to fix or re-assess the rent on the land. A settlement was reached and on 12 July 1988 the Tribunal made orders by consent fixing or re-assessing the rent upon certain conditions. These conditions required the execution of an instrument of tenancy and the payment of stated rent arrears as well as premiums for the extension of tenancies.

The dates within which payment was to be made of the various sums were also specified. The Order then provided:

> *"5. If the rent and/or premium as stipulated and agreed today are not paid within the stipulated time then the Applicant must give vacant possession immediately."*

Within a few days of the making of these orders an instrument of Tenancy, executed by the Respondents, was sent to the Appellant's solicitors. It was apparently not executed by the Appellants until 16 May 1989, and was registered with the Registrar of Deeds on 19 May 1989.

It is undoubted that the amounts of rent and premium required by the order to be paid were not paid within the stipulated times. The Respondents' solicitors gave, by letter of 22 August 1988 to Appellants' solicitors, notice that the Appellants were no longer entitled to be in possession of the land. This notice has been challenged as being ineffective because it was not personally served, and we return to this later.

On 25th August 1989 the Respondents applied to the High Court for an order for possession of the land. In the meantime two payments by cheque were made by the Appellants' solicitors to the Respondent's solicitors. These cheques were sent on behalf of the Appellants and one other client. So far as the Appellants were concerned they totalled $3,799.70 and were claimed to be the full amount of the rent and premiums owing.

Because the payments had not been made within the stipulated times the Respondents' solicitors stated that the amount of the cheques was received "absolutely without prejudice to be applied towards any damages that may be payable to our clients for the time that your clients are using the land as trespassers."

Saunders J. considered the matter on the basis that, if the Appellants had an extension of the tenancy then they were protected by the Agricultural Landlord and Tenant Act Cap.270(ALTA), but if not then they had no right of occupation. In the result he concluded that the defaults made in payment of the amounts specified in the Tribunal's order meant that para.5 of the order applied so as to deprive the Appellants of any right of occupation.

On behalf of the Appellants it was argued that para.5 of the order was ineffective to deprive the Appellants of the right of possession because it was inconsistent with the provisions of ALTA which provided for the procedures to be followed for the termination of a tenancy. It was also argued that as the claim for possession was made under S.169 of the Land Transfer Act Cap.131, and as the amount of the arrears had been paid and accepted, the claim ought to have been dismissed in terms of the second proviso to S.172 of that Act. We will refer to these submissions in due course.

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It is necessary first to consider the provisions of ALTA as they may apply to the present case.

The long title to ALTA describes it as "An Act to provide for the relations between landlords and tenants of agricultural holdings and for matters connected herewith". Clearly it is an act of a specialised nature which is intended to be a code for controlling the dealings affecting agricultural land.

Part III of the Act establishes agricultural tribunals and sets out the powers of such tribunals. Section 22 prescribes the functions of tribunals which include the assessing and fixing of rent. Section 23 gives the power to secure instruments of tenancy defining the terms and conditions of the tenancy which are to include the statutory conditions required by the Act. By S.24 application may be made to the tribunal by the landlord or the tenant for the fixing, asessment and re-assessment of the rent.

Of considerable importance is S.61 (1) which provides:

> *"61(1). The proceedings, hearing, determination, award, certificates or orders by.....a tribunal shall not be called in question in any court of law nor shall any person appointed as..... a tribunal be sued in respect of any act lawfully done or lawfully ordered to be done in the discharge of his duties under this Act."*

This is an unusual provision and gives to the tribunal very wide powers.

Section 44 provides:

> *"44. Nothing in this Act shall prevent or shall be deemed to prevent a landlord and tenant of an agricultural holding from terminating a contract of tenancy by agreement."*

Section 37 contains provisions for termination of a tenancy by a landlord, and in particular subsection (1)(c)(ii) provides for termination by three month's written notice to quit in the event of any part of the rent being in arrears for three months or more. There is also power in S.22 (1)(g) for the tribunal to grant relief against forfeiture and in S.22(1)(j) for the tribunal to decide any dispute between landlord and tenant.

In the light of these provisions it is necessary now to consider what occurred between the parties in this case.

The Appellants applied to the tribunal to fix or re-assess the rent in respect of the land it was occupying. Upon that application coming before the tribunal agreement was reached as to the orders which should be made and those orders were accordingly made by consent. As previously stated they specified the amount of the arrears of rent, the amount of premiums payable by the Appellants, and the dates by which payment was to be made. There then followed para.5, previously set out, which provided that if the rent and/or premium were not paid within the stipulated time then the Appellants must give vacant possession immediately. This is the order to which the Appellants now

object as having been made in excess of the tribunal's jurisdiction. We are unable to accept that contention. The order was made by consent. Its effect was to terminate the tenancy in the event of non-payment of the stipulated arrears, and, in terms of S.44 set out above was an agreement for termination between the parties.

What then happened was, in effect, automatic. Default was made and the tenancy thereupon terminated. In the correspondence which followed the Respondent's solicitors purported to give notice to quit under S.37(1)(c)(ii). It may be that this notice was defective because it was not personally served, but that did not revive the tenancy. Nor did the fact that the arrears of rent were paid and accepted. That acceptance was expressed to be without prejudice and was never acknowledged as having been intended to create a new tenancy. The question of whether it was open to the Respondents, having received money stipulated as being paid for a particular purpose, to retain and apply it for a different purpose is one upon which we entertain doubts. It is not, however, necessary for us to decide that question in the present case.

We note that at the time of the proceedings before Saunders J. no application for any relief was pending before the Tribunal nor was any application filed seeking to stay the possession order made by him.

It remained for the Respondents to take the necessary steps to secure vacant possession of their land. They could have proceeded by writ of summons to secure an order against persons unlawfully in possession. Instead they chose to apply to the High Court by summons under S.169 of the Land Transfer Act.

That Section, so far as is applicable, provides:

> *"169. The following persons may summon any person in possession of land to.....show* cause why the person summoned should not give up possession to the applicant:-
> .....
> (c) a lessor against a lessee or tenant where.... the term of the lease has expired."

The summons filed by the Respondent sought an order "that the Defendant do give away vacant possession of the land..." The application was stated to be made pursuant to Sections 169 to 172 of the Land Transfer Act, and in reliance upon the affidavit of one of the plaintiffs. That affidavit recited the sequence of events which we have set out and shows that possession was sought not because of there being arrears of rent, but because the tenancy had come to an end in terms of the consent order made by the tribunal.

Unless the Appellants' position was affected by the payment of arrears then the Court was bound to make an order for possession. It was argued that, because of the provisions of

S.172 of the Land Transfer Act, the summons ought to have been dismissed. Section 172 provides:

> *"172. If the person summoned appears he may show cause why he refuses to give possession of such land and, if he provides to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit. Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled.*
> *Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons."*

The Appellants sought to rely on the second proviso to that section, but, because of the termination of the tenancy as previously described, the parties were no longer lessor and lessee and the proviso had no application.

In the result, therefore, we consider the order for possession made by Saunders J. was correctly made and the appeal is dismissed with costs.

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Sir Moti Tikaram
Vice-President

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Sir Peter Quilliam
Judge of Appeal

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Mr. Justice Amet
Judge of Appeal