

IN THE FIJI COURT OF APPEAL
(AT SUVA)

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CIVIL JURISDICTION

CIVIL APPEAL NO. 16 OF 1991
(Civil Action No. 261 of 1989)

BETWEEN:

BRYAN CHARLES FERRIER-WATSON
DENNIS ALLAN MCELRATH
DAVID WILLIAM ZUNDEL

APPELLANTS

-and-

MOHAMMED TAHIR

RESPONDENT

Dr. Sahu Khan for the Appellants
Mr. A. Khan for the Respondent

Date of Hearing : 10th August, 1992 and
25th November, 1992
Date of Delivery of Judgment : 27th November, 1992

JUDGMENT OF THE COURT

This is an appeal from a decision of a Judge of the High Court given on 15th February 1991. It was given in relation to an application under s.169 of the Land Transfer Act (Cap. 131). That section provides a summary procedure for obtaining possession of land by, inter alia, a lessor from a lessee for non - payment of rent or following the giving of a notice to quit. Here, the plaintiffs' summons claimed that the tenancy (if any) of the defendant was lawfully terminated. The affidavit in support alleged certain breaches of the tenancy (if any) and the giving of a valid notice to quit. The question of whether this summary procedure is available if the plaintiff's succeed in

establishing, as they allege, that there was no tenancy has yet to be determined.

The defendant in an affidavit in reply denied that any breaches had occurred. He did not specifically deny that the notice which the plaintiffs allege had been served was not a valid notice to quit, but he did deny that "the facts as deposed by the plaintiff is true and correct". This may well have put in issue the validity of the notice to quit. We are not surprised by a desire to do so.

The Judge ordered written submissions, heard argument and gave judgment as follows:

"After considering the submissions I think Mr. A. Khan has presented a situation where evidence is necessary to establish the truth of allegations made in the affidavits of the parties.

It is ordered that the proceedings be heard in Court and that the affidavits as filed serve as pleadings."

The plaintiffs appealed. The first ground of appeal was that the Judge should have proceeded to determine the matter there and then because "there was no triable issues". The second ground is this:

"2. THAT the Learned Trial Judge erred in Law and in fact in taking irrelevant matters into account and in not taking relevant matters into account in coming to his decision."

It seems a somewhat peculiar ground in the circumstances.

The only matter to be determined on appeal is whether the Judge was in error in deciding that the matter should go to trial. On what we have already said, it is quite clear that he made no error in doing so.

We dismissed the appeal with costs. We now publish our reasons. The matter can now proceed to obtain a hearing date as ordered by the Judge.

We feel that it is appropriate to mention that depending on the findings of fact made by the trial Judge, he may be called upon to consider the following matters of law:

- (i) were rights that had accrued to the respondent in 1970 pursuant to s.13 of the Agricultural Landlord and Tenant Act abrogated by the coming into force of reg.4 of the (Exemption) Regulations;
- (ii) if the answer to (i) is yes, was the respondent as from 1979 a tenant at will holding over on the same terms as the original lease;
- (iii) was any occupancy of the respondent validly terminated in the event that
 - (a) the Tribunal had jurisdiction to grant an extention;

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- (b) that it did not, so that the conditions which the Tribunal imposed were not applicable;
- (iv) if the Tribunal had jurisdiction was the respondent entitled to withhold payment of rent and not to take other steps if the plaintiffs failed to prepare and send an instrument of tenancy;
- (v) whether the Tribunal had jurisdiction or not was any failure to pay a premium or rates a breach of any term of the lease;
- (vi) if the respondent was holding over what were the terms on which he was doing so and was there any breach of them.

We do not wish to suggest that these are the only questions which might arise for determination.

Michael M. Helsham

 Mr. Justice Michael M. Helsham
President Fiji Court of Appeal

Moti Tikaram

 Sir Moti Tikaram
Resident Justice of Appeal

Mari Kapi

 Sir Mari Kapi
Judge of Appeal