

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 76 OF 1991
(High Court Action No. 9 of 1991)

BETWEEN:

MORARBHAI PARBHU

APPELLANT

-and-

RATTAN LAL

RESPONDENT

Mr. H. M. Patel for the Appellant
Mr. J. N. Singh for the Respondent

Date of Hearing : 24th August, 1993
Date of Delivery of Judgment : 24th August, 1993

JUDGMENT OF THE COURT

This is an appeal from a judgment of Scott J given in the High Court on 7th November 1991. It was drawn up and entered on 20th November 1991. His Lordship in effect ordered the respondent to this appeal to pay to the appellant the sum of \$3,150.00 being in respect of arrears of rental; including one amount of \$450 for mesne profit, and made no order as to costs.

The relevant facts are sufficiently set out in his Lordship's judgment, as well as his reasons for reaching them. Seeing that this Court agrees with his findings upon them and upon the law which his Lordship applied to reach the conclusion that he did, there is really no reason for re-iterating either facts or reasons here. However, they can be dealt with so shortly that they will be set out here.

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At all material times the respondent was the tenant of the appellant of certain premises pursuant to an oral tenancy from month to month at a monthly rental of \$450.00. The appellant attempted to bring it to an end by a notice to quit dated 2nd October 1989. He failed. There is a decision of the High Court of 9th October 1990 which decided this. There was no appeal from that decision. The matter is res judicate, and in spite of efforts by the appellant here, it cannot be gone behind.

The respondent therefore remained as tenant of the appellant upon the original basis. Subsequent actions by the appellant make it perfectly clear that this situation was accepted by the appellant.

By letter dated 28th February 1990 the appellant attempted to increase the rent to \$1,200.00 per month. Indeed by proceedings commenced in the Magistrate's Court on 23rd November 1990 he sought recovery of an amount based upon this increase to the time that the respondent eventually vacated the premises. This would have confirmed beyond question the continuance of the tenancy, leaving completely on one side the acceptance of rent at \$450.00 per month up to January 1990.

Eventually the respondent vacated in response to a notice to quit given in July. The Magistrate gave judgment in the appellant's favour for the amount owing for rent calculated at the increased rental. The respondent appealed. Quite rightly Scott J upheld the appeal. However, the appellant had refused to

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accept tender of the rental at \$450.00 per month from January 1990 to the date of vacation, and the arrears to the date of vacation were \$3,150.00. The Judge, no doubt without exception from the respondent, gave judgment for the appellant for this sum. This appeal has been brought from his Lordship's decision.

As the Judge rightly said a landlord cannot just unilaterally increase the rent in respect of a lease that, as one of its conditions, gives him the right to do so. If he wishes to increase it in a case such as the present and the tenant does not agree to pay it, he must terminate the monthly tenancy by a notice to quit, then negotiate a new lease with the increased amount for rent. This might be called trite law, and his Lordship treated it as such. That did not happen here.

The appellant claims that the action before the Magistrate was a claim for damages and for vacant possession. That has not the slightest relevance. The tenancy at an increased rental was what had to be established, and it could not be.

The appellant sought to rely on what is called Legal Notice No. 52 given under the provisions of the Counter-Inflation (Notification of Proposed Increases in the Rent) Order 1981 (Variation) Order 1989. It has no bearing on the outcome of this

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appeal. It gives no licence to a landlord in the position of the appellant to attempt to impose an increase of rent unilaterally whilst the original tenancy is still in force.

It is quite clear from the evidence that a miscalculation of the months during which the appellant received no rent and was entitled to mesne profits resulted in a deficiency of \$450 in the amount owing to the appellant.

The judgment of this Court is therefore:

Appeal allowed by substituting the amount of \$3600 for the sum of \$3150, otherwise appeal dismissed. Order the appellant to pay 75% of the respondent's cost of the appeal.

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

Moti Tikaram
.....
Sir Moti Tikaram
Resident Justice of Appeal

E. Williams
.....
Sir Edward Williams
Resident Justice of Appeal