

IN THE FIJI COURT OF APPEALCIVIL JURISDICTIONCIVIL APPEAL NO. 18 OF 1992

(High Court Civil Action No. 32 of 1992)

BETWEEN:SURESH CHARANAPPELLANT

-and-

RUP NARAYANSHIU MATIRESPONDENTSDate of Hearing : 19th August, 1993Date of Delivery of Judgment : 20th August, 1993.

Appellant in Person
Mr. H. Nagin for the Respondents

JUDGMENT OF THE COURT

The appellant occupied on an oral monthly tenancy a small house situated on land owned by the respondents. On 14 November 1991 he was given notice to quit.

The tenancy accordingly terminated on 14 December 1991, but the appellant remained in occupation. The respondents then applied to the High Court under s.169 of the Land Transfer Act Cap. 131 for an order for immediate possession of the premises. After two adjournments that application came before Scott J for hearing on 21 April 1992, and on 24 April an order was made for immediate possession.

On 28 August 1992, the appellant gave notice of appeal. There was then apparently an application for a stay of execution, and although this is not included in the Record, a conditional

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stay was ordered by Mr Justice Tikaram, Resident Justice of Appeal. That order expired and the respondents then obtained possession of the house and demolished it shortly after.

The appellant has applied for leave to adduce further evidence but we can see no basis upon which the application should be granted and it is accordingly declined. He has also sought leave to amend and add to his original grounds of appeal. In the result we received his submissions upon all his grounds of appeal, both original and added, and these were also set out in a lengthy written memorandum.

We do not need to deal with these submissions in detail. The short point is that the appellant had the onus, under s.172 of the Land Transfer Act, of showing cause why an order for possession should not be made against him. It is clear that he failed to discharge that obligation and we see no reason for interfering with the judgment of Scott J.

We think we should add that, even if the appellant had been able to show that there was any basis upon which the appeal should be allowed, there was no order this Court could make which could have assisted the appellant. It would not have been possible to restore to him possession of a house which has been demolished. Nor could this Court have remitted the matter to the High Court for assessment of damages as sought by the appellant. The appeal was therefore a fruitless exercise and it is for this

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reason that we have felt able to deal with it as briefly as we have.

The appeal is accordingly dismissed with costs. No costs were awarded in the High Court and we do not think we should order costs in that Court now.

Michael Helsham

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Mr Justice Michael M Helsham
President, Fiji Court of Appeal

Peter Quilliam

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Sir Peter Quilliam
Justice of Appeal

E. S. Williams

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Sir Edward Williams
Justice of Appeal