

IN THE COURT OF APPEAL, FIJI
[ON APPEAL FROM HIGH COURT]

Civil Appeal No. ABU 082 of 2018

High Court Civil Action No. HBC 046 of 2017

BETWEEN : RAJENDRA PRASAD

Appellant

AND : DEO SAGAYAM

Respondent

Coram : Almeida Guneratne, AP
: Basnayake, JA
: Lecamwasam, JA

Counsel : Mr. J. Reddy for the Appellant
: Mr. K. Maisamoa for the Respondent (via Skype)

Date of Hearing : 11 May 2021

Date of Judgment : 28 May 2021

JUDGMENT

Guneratne, AP

[1] I agree with the reasons, conclusions and Orders contained in Justice Lecamwasam's Judgment

Basnayake, JA

[2] I agree with the reasoning and the conclusions of Lecamwasam, JA.

Lecamwasam, JA

- [3] This is an appeal filed by the Appellant against the judgment of the Lautoka High Court dated 20th August 2018. The facts of the case in brief are clearly stated by the Learned High Court Judge which reads as follows:-

“[i] On 10 March 2017, Rajendra Prasad, the plaintiff/respondent (‘the respondent’ in this appeal proceedings), as the sole executor and trustee of the estate of late Nokaiya, brought proceedings under the HCR, O 113, against Deo Sagayam, the defendant/appellant (‘the appellant’) in this appeal proceedings, seeking vacant possession of the property contained within Crown Lease Reference No. 4/7/2015, more particularly described as Lot 2, Plan LDSW 448 proposed S/D Lot 4 ND 5014 situated at Vuda (‘the land’).

[ii] The appellant filed his affidavit in response and stated that he is occupying the land by reason of his marriage with Nirmala Devi, a.k.a Maya Wati daughter of Vengtesu, the respondent’s brother and one of the beneficiaries to the estate of Nokaiya. The appellant specifically stated that he has been living on the land since 2008, when his father-in-law got sick. The appellant was unrepresented at the hearing before the Master. Having found the appellant is a trespasser, the Master ordered the appellant to deliver up vacant possession of the property to the respondent. The appellant, being dissatisfied with the order, appeals to this Court”.

- [4] Against the above background, the learned High Court Judge having heard the case, made the following Orders:-

- 1. Appeal allowed.*
- 2. Master’s order for possession dated 13 October 2017 be set aside.*
- 3. The appellant shall be entitled to be put into occupation of the land if he was evicted from the land following the Master’s order dated 13 October 2017.*
- 4. The respondent shall pay the summarily assessed costs of \$2,500.00 to the appellant.*

- [5] Being dissatisfied with the above order of the High Court, the Respondent in the above case, who is the Appellant in the instant case, namely Rajendra Prasad (hereinafter referred to as Rajendra Prasad), filed this appeal on the following grounds:-

1. *That His Lordship erred in law and in fact in deliberating whether the terms and conditions on the appellant's approval notice was complied with when the same was not an issue in anyway whatsoever in the matter before the Learned Master.*
2. *His Lordship erred in law and in fact in deliberating on Crown Lease Number CL5303 when the same was not in issue in the application before the Learned Master and neither was the same pleaded in any way by the Respondent in his Affidavits before the learned Master.*
3. *That His Lordship erred in law and in fact in holding that the Appellant was not entitled to possession of all the piece of property within Lands Department Reference No. 4/7/2015 when the same was not in issue and in fact admitted to by the Respondent in his answer to the Appellant's application before the Master.*
4. *That His Lordship erred in law and in fact in failing to recognize that the Lease under Lands Department Ref. No. 4/7/2015 was extant and very much under the administration of the Appellant by virtue of the fact that the Lands Department's consent to institute proceedings will only be given if there are no breaches of the terms and conditions of the lease.*
5. *That His Lordship erred in law and in fact in holding that the Respondent was married to the daughter of one Vengtesu when there was no such evidence before the Learned Master.*
6. *That His Lordship erred in law and in fact in holding that the Respondent had permission from one of the beneficiaries to the subject Estate to occupy the subject lease.*
7. *That His Lordship erred in law and in fact in holding that the Respondent derived some form of occupational interest over the subject lease by virtue of being*

married to Vengtesu's daughter when there was no evidence put before the Learned Master to support such contention.

8. *That His Lordship erred in law and in fact in holding that Vengtesu may have had a possible proprietary interest over the subject lease in the event of an inter-state demise.*
9. *That His Lordship erred in law and fact in failing to recognize that the respondent may have perjured himself by claiming to live on the subject lease with Nirmal Devi since his alleged marriage to her in the face of there being no assertions and/or confirmation of the same by Nirmal Devi when there was direct challenge by the Appellant that Nirmal Devi had never lived on the subject lease with the respondent.*
10. *That His Lordship erred in law and in fact in failing to consider that the learned Master had rejected the respondent's contention that he had the right to occupy the subject property through his alleged wife.*

[6] On perusal of the facts of this case, it is evident that the Respondent Deo Sagayam's alleged father-in-law, Basaiya (Vengtesu) was granted only a life interest in the property by the Will of late Nokaiya, which was also a limited right. He was not entitled to cultivate any part of the land or to occupy more than is necessary for a residence. This is demonstrative of the fact that the testator's intention had been to grant only a life interest over the property to Basaiya (Vengtesu) as well as to Ram Krishna. Hence, upon the death of Basaiya (Vengtesu) his life interest in the property came to an end.

[7] As Basaiya's (Vengtesu) rights to the property had perished upon his death, no right devolved on Nirmala Devi or any other person through succession. Therefore, the respondent, who claims his rights through Nirmala Devi as the successor of Basaiya, (Vengtesu) cannot sustain a right over the land in question.

[8] Although the Respondent claims to be in occupation since 2008, no cogent evidence in support of this claim is produced before this court, to prove his occupation. Under the circumstances, he could have / should have produced at least an affidavit from Nirmala Devi which he failed to do.

[9] At this juncture, it is pertinent to mention that the Appellant, Rajendra Prasad filed an originating summons moving for eviction of Deo Sagayam on the basis of being the sole survivor and trustee of the Estate of Nokaiya as well as on the basis of a crown lease bearing reference No. 4/7/2015 and more particularly described as Lot 2 in Plan LDSW 448, a proposed S/D of Lot 4, ND 5014.

[10] Dealing with this aspect, the Learned High Court Judge had embarked on a voyage of discovery in coming to the conclusion that the above application for a lease had come to an end since Rajendra Prasad had failed to comply with the conditions embodied in the above document. As per the Lease, those conditions are:-

1. *To pay the estimated survey fee, together with rent assessed on the estimated area of the land;*
2. ***Not to occupy the land approved for lease until the aforesaid rent be estimated [and] balance of survey fee have been paid;***
3. *If the rent and the estimated balance of survey fee is not paid within [...] (not clear) months from the date of this notice, the approval of the lease will be cancelled without further notice.*
4. ***In the event of it being shown by survey that the land approved for form part of any land the subject of an existing freehold or leasehold this notice of approval of lease shall be deemed to be cancelled.***
5. *C. L. 5303 to be surrendered.*

[11] The position of the Learned High Court Judge is that, as Rajendra Prasad had failed to fulfill the conditions under which the approval was granted, the approval of the lease must be considered cancelled, disentitling the respondent's interest in the land. Based on this finding, he had rushed to the conclusion that, at the time of bringing summary proceedings under Or.113, the respondent i.e. Rajendra Prasad did not possess any interest in the land which was occupied by the Appellant i.e. Deo Sagayam. The learned High Court Judge further comments that the Master had overlooked the fact that the approval of the lease was given subject to certain conditions and that such conditions

were not fulfilled by Rajendra Prasad which disentitled him to claim possession of the land.

- [12] The Learned High Court Judge had ruled on an issue which had never been raised in any of the affidavits nor contested by Deo Sagayam. He had referred to the relevant lease document only as file number and not a lease. However, it is pertinent to mention as pointed out by the Counsel for Rajendra Prasad, that the Director of Lands would not have given him approval to take steps for eviction under Or.113 if Rajendra Prasad had breached the conditions of the lease. I hold the view that had there been any breach, it fell within the ambit of the Director of Lands to take cognizance of such breach and take appropriate action.
- [13] The Learned High Court Judge had set aside the order of the Master mainly on the wrong premise that Rajendra Prasad had not complied with the five conditions enumerated in paragraph 10 (supra) above of this judgment. Granting of approval for the institution of proceedings for eviction itself is ample proof that Rajendra Prasad was not in breach of the conditions of the lease. As this issue was never raised in the course of the proceedings before the learned High Court Judge, I find that he had misdirected himself by adverting to this fact and holding that Rajendra Prasad is not entitled to possess the land.
- [14] I cannot agree with that position of the learned High Court Judge since I find that Rajendra Prasad had not committed any breach envisaged in the above approval. Hence the judgment of the Learned High Court Judge cannot be allowed to stand. Accordingly, I set aside the judgment of the Learned High Court Judge dated 20th August 2018, in effect resurrecting the Order of the learned Master dated 13th October 2017. Taken cumulatively, I answer the grounds of appeal urged by Rajendra Prasad, the Appellant in the instant matter, in his favour. The Appeal is allowed.

Orders of Court:

1. Appeal Allowed.
2. Judgment of the High Court dated 20th August 2018 is set aside.
3. Respondent to pay \$5000.00 as costs of this Court.
4. The Appellant is also entitled to tax costs in the High Court.



Almeida Guneratne

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Hon. Almeida Guneratne
ACTING PRESIDENT,
COURT OF APPEAL

E. L. Basnayake

.....
Hon. E. L. Basnayake
JUSTICE OF APPEAL

D. S. Lecamwasam

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Hon. D. S. Lecamwasam
JUSTICE OF APPEAL