

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 127 OF 2014

BETWEEN : **RAM KISHORE as the ADMINISTRATOR** of the Estate
of **BADRI PRASAD** of Tavarau, Ba.

Plaintiff

AND : **ATISH PRASAD** of Tavarau, Ba

Defendant

Before : Master H Robinson

Appearances:

Mr. Dayal of Samuel K Ram Solicitors for the plaintiff;

Defendant in person.

Date of Hearing : **2 October 2014**

Date of Ruling : **9 October 2014**

R U L I N G

Introduction

[1] By an application dated the 6 August 2014 the plaintiff summoned the defendant to appear before the Master and to show cause why he should not give up vacant possession of that piece of land described on Crown Lease No. 15774 as that piece of land known as Part of Raviravi and Tavarau on Lot 18,19 and 21 on Deposited Plan No. BA 2448, BA 2449 and BA 2552 in the district of Vuda with an area of 7.5898 hectares. The plaintiff further seeks an order for costs.

[2] The summons was issued on 6 August 2014 served on the same date and was returnable on the 6 September 2014 and is well within the time frame stipulated under Section 170 of the Land Transfer Act.

The Application

[3] The application was supported by an affidavit deposed by the plaintiff which states briefly that he the Administrator of the Estate of Badri Prasad and is the registered proprietor of Crown Lease described in the application. Attached to the affidavit is a certified true copy of the Crown Lease No. 15774 registered on 9 March 2005 which shows the plaintiff as the last registered proprietor. That one of the beneficiaries of the Estate of Badri Prasad, a Mr. Rakeshwar Kant, obtained consent from the Director of Lands to build a house on the land. The defendant was allowed to rent the said house but that he had not paid any rent for a few months. This arrangement though was made without the consent of the Director of Lands.

[4] The defendant through his affidavit admits that he had been renting the house since 8 January 2011 and that initially rent was for \$80:00 per month and the was increased to \$100:00 per month. The body of his affidavit did not show that he had cause to remain on the property sufficient for the Court to consider the application in his favour but seeks time to vacate.

Determination

[5] He plaintiff has by his affidavit evidence proved that he is the last registered proprietor of the subject land and therefore has the right to seek an order for vacant possession from the Court to remove the defendant from the land pursuant to section 169 of the Land Transfer Act. The defendant although was requested to rent the house on the land, had become an illegal tenant by virtue of the plaintiff or the other beneficiaries of the estate not obtaining consent from the Director of Lands prior to renting the house to the defendant.

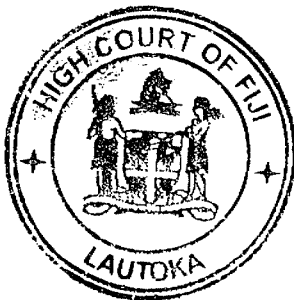
[6] At the hearing of the matter the defendant concedes that he is to vacate the land in fact paragraph 21 of his affidavit states that “I intend to vacate the rented premises at the end of December 2014 after the school closes”. The defendant’s main concern is not to disturb his children’s education by moving them to another school mid-term. The plaintiff has agreed to that proposal. The Court need not proceed further given the concession.

[7] In respect of the plaintiff’s application for costs, the application is denied simply because it was the plaintiff and/or one of the beneficiaries of the estate of Badri Prasad which brought the defendant and his family to the property. They did so, in my view with the full knowledge that consent was required from the Director of Lands. This could be inferred from the fact that consent was previously obtained from the Director of Lands prior to the building of the house rented to the defendant.

Orders

Under the above circumstances I make the following orders:-

- (1) The plaintiff’s summons for vacant possession is granted but is stayed until 12 December 2014 that is two weeks after the school ends on 28 November 2014; and
- (2) There will be no order as to costs.



At Lautoka

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Harry Robinson
Master of the High Court

09/10/14