

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

Civil Action No. HBC 11 of 2011

BETWEEN : **CHANDRA LOK** (fathers name Ballaiya) of 7 Royal Palm Road, Navutu, Lautoka and Retired Businessman.

PLAINTIFF

AND : **KUMAR SAMI NAIDU** fathers name unknown to the Plaintiff of Toko, Tavua, Fiji.

FIRST DEFENDANT

AND : **KRISHNA RAJU** fathers name unknown to the Plaintiff of Toko, Tavua, Fiji.

SECOND DEFENDANT

R U L I N G

INTRODUCTION

1. Before me is a Summons for Ejectment filed on 03 February 2011 by Chandra Lok pursuant to section 169 of the Land Transfer Act (Cap 131). In this case before me, Lok is seeking an Order that the defendants do forthwith vacate the land in question which is described as Lot 1 on Plan No. 1700 "Toko" (part of) in the District of Tavua in the island of Viti Levu ("**Lot 1**"). The land contains an area of 25 acres 2 Rods 08 perches and is described in Lease No. 44656. It is an NLTB lease.
2. At the time the summary application was filed, and heard before me, Lok was the last registered proprietor of the land in question. Accordingly, there was no issue then as to his locus to institute the section 169 summary proceedings.
3. However, there was also a separate proceeding afoot before Mr. Justice Nawana. In that case, Lok was the defendant. The plaintiff was one Bal Ram, who is one of four of Lok's younger brothers. Ram was seeking *inter-alia* some declaratory relief which, if granted, would impugn Lok's title to Lot 1.
4. On 09 December 2011, whilst Ruling on Lok's application was pending before me, Mr. Justice Priyantha Nawana did deliver a rather impressive ruling in **Ram v Lok** [2011] FJHC 798; HBC320.2007 (9 December 2011).

NAWANA J's RULING

5. In Ram v Lok, Nawana J made the following observations and conclusions on the evidence before him:
- (i) the immediate predecessor in title to the land in question, before Lok, was one Ballaiya. Ballaiya, now deceased, was the father of Ram and also of Lok.
 - (ii) at some point in time, whilst Ballaiya was still alive, he did give a Power of Attorney to Lok.
 - (iii) using that Power of Attorney, Lok then executed and managed to register a transfer of the land in question from Ballaiya to himself (Lok)
 - (iv) the transfer, was not consented to by the then NLTB (now iTLTB). Therefore, it was null and void in law – and should not have been registered by the Registrar of Titles.
 - (v) the power of attorney, also, did not authorise Lok to carry out that transaction to transfer the land to himself.
 - (vi) in addition, Ballaiya was totally unaware of the transfer. Ballaiya, in fact, had designs to allocate the land in equal shares to his five sons. In this regard, he had executed a last will and testament which recorded his wishes as such and had also orchestrated a Deed of Family Settlement which recorded the same wishes.
 - (vii) the transfer of lease No. 360347 dated 25 March 1994 was invalid and unlawful because it was not consented to by the Native Lands Trust Board and also because it was a fraudulent transfer.
6. Notably, Nawana J's findings and conclusion were upheld by the Fiji Court of Appeal on 30 November 2012 (Lok v Ram [2012] FJCA 92; ABU0005.2012 (30November 2012)).

CASE BEFORE ME

7. In the case now before me, Lok was trying to evict the defendants who have been occupying a certain section of Lot 1. In showing cause, the defendants have pointed to a sale and purchase agreement between them and Ram.
8. Ram is not a party to the case before me now. However, he did appear in Court on the day of the hearing and, with the leave of this court, did give *viva voce* evidence to support the defendant's case. Ram's evidence was consistent with the evidence he gave before Nawana J and which is recorded in the Ruling (**Ram v Lok** [2011] FJHC 798; HBC320.2007 (9 December 2011)).
9. In Naidu's examination in chief of Balram, the following evidence emerged:
 - (i) Naidu bought the land in question from Balram after Balram had represented to Naidu that he (Balram) was the owner of the land.
 - (ii) according to Balram, the plaintiff (Chandra Lok) is his brother.
 - (iii) Balram says that he had an interest over the said land pursuant to a Deed of Family Settlement.
 - (iv) under the said Deed, Balram was to be given a certain portion of land. It was that portion of land that he sold to Naidu. The said portion of land was to be carved out following survey and subdivision.
 - (v) under the same Deed, other members of the family were also allocated certain other portions of the land.
 - (vi) according to Balram, in 1999, Chandra Lok called a family meeting at his place following their father's death. In that meeting, Chandra Lok had allowed Balram to sell off his share of the land.
 - (vii) Balram said after that meeting, he then sold off his share of the land "to these people" (referring to the defendants).
 - (viii) Balram said that Chandra Lok would come to his house regularly at least once a month. At that time, he Balram was a Social Welfare Recipient.
 - (ix) Balram said the family including Chandra Lok were all involved in pegging out the boundaries.
 - (x) Balram said he has paid some \$500 in Surveyor fees.

COMMENTS

10. In light of the findings and the ruling of Nawana J and the Fiji Court of Appeal, it is clear that Lok's title was impugned on account of his having transferred the land to himself without the consent of the NLTB and also on account of his fraud in having transferred the title to himself without the knowledge of Ballaiya.
11. Accordingly, it stands to reason that Lok, in light of the above findings, cannot enjoy the benefit of a ruling which would accord to one who is the last registered proprietor of Lot 1 – which means that I must dismiss his application.
12. At this juncture though, I will make the observation that, because the agreement between Ram and the defendants were not consented to by the Native Lands Trust Board, the agreement is null and void *ab initio* and, accordingly, no equitable interest could arise therefrom to vest in the defendant.
13. As such, the defendants would not be entitled to assert any such purported right if called upon to show cause on the application of one who has proper locus under section 169 of the Land Transfer Act. Lok of course is not such a person with locus,
14. However, having said that, the common law has always respected possession – which is the principle that automatically comes into play once Lok fails under section 169. It is said that possession of land is prima facie evidence of *seisin* in fee or some kind of interest in the land. That interest is good against the whole world except one who can show a better title – which – in this case, Lok has failed to do by virtue of the Ruling of Nawana J and the Fiji Court of Appeal.
15. It is my view – accordingly – that anyone who wishes to displace the defendants from possession, must do so on the strength of their own title or interest over Lot 1, rather than on the weakness of the defendant's interest. Having said that, I must say that this is distinguishable from the situation where, for example, a defendant, in showing cause, is relying on an agreement with a plaintiff who is without doubt the last registered proprietor, but which agreement was concluded without the proper statutory/regulatory consent (see for example Chand v Prakash [2011] FJHC 640; HBC169.2010 (7 October 2011)).

16. Accordingly, I dismiss the application. Costs against the plaintiff in favour of the defendants which I summarily assess at \$500-00 (five hundred dollars) each.



A handwritten signature in blue ink, consisting of stylized initials and a long horizontal flourish.

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Anare Tuilevuka
JUDGE
15 July 2015.