

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No: HBC 202 of 2014

**BETWEEN:**            **BLUE PROPERTIES LIMITED**

**PLAINTIFF**

**A N D:**                **SANTOK SINGH and NASIV KAUR**

**DEFENDANTS**

**Before:**                Master Thushara Rajasinghe

**Counsel:**             Mr. Nand M for the Plaintiff  
                              Mr. Lajendra N for both defendant s

**Date of Hearing:**     27<sup>th</sup> October 2014

**Date of Ruling:**     30<sup>th</sup> January 2015

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## JUDGMENT

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### A. INTRODUCTION

1. The Plaintiff instituted this action against the two Defendants pursuant to section 169 of the Land Transfer Act, seeking an order to recover immediate possession of land comprised in certificate of title No 41300 being Lot 2 on DP 6866 known as "vulagi" part of in the District of Tailevu on the island of Viti Levu containing an area of 5.6824 in the Republic of Fiji Islands.
2. Mr. Rohit Niresh Chand, the director of Blue Properties Limited filed an affidavit in support of this Summons. Mr. Chand deposed in his affidavit that the Plaintiff's company is the last registered proprietor of the land more fully described in the summons. He stated that the Defendants are presently occupying the said property. The Defendants

were given temporary occupation of the property by the previous owner till such time that the property was sold and the Defendants were aware of it. However they have been occupying the property even after it was sold and did not make any objection or claim against the Plaintiff's ownership.

3. Moreover, Mr. Chand deposed that the solicitors of the Plaintiff issued and served the Defendants a notice to vacate on 23<sup>rd</sup> June 2014. However the Defendants failed to comply with the said notice.
4. Upon being served with this Summons, the Defendants appeared in court on 4<sup>th</sup> of September 2014, where both parties were given directions to file their respective affidavits. The Defendants accordingly filed their affidavit in opposition on 23<sup>rd</sup> of September 2014.
5. The Defendants in their affidavit only contended that the notice to vacate issued by the Plaintiff were defective, wherefore the institution of this proceedings is wrong. The Defendants did not answer or show any cause why they should not be ordered to vacate this property.
6. I now turn to briefly review the laws pertaining to the application under section 169 of the Land Transfer Act (hereinafter mentioned as "the Act").
7. Sections 169 to 172 of the Act have stipulated the procedure for the application in this nature. In view of the section 169 of the Act, the last registered proprietor of the land and/or a lessor with power to re-enter where the lessees or tenant is in arrears for such period and/or a lessor who has issued a legal notice to quit or the term of the lease has expired are allowed to institute proceedings under section 169 of the Act to evict a person who is in possession of the land without a right to the possession.
8. Section 171 and 172 of the Act deal with the scope of the hearing and the burden of prove of the parties. Section 171 states that ;

*“On the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment.”*

9. Section 172 states that

*“If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit;*

10. The scope of the hearing of the application under section 169 constitutes two main limbs. The first is the onus of the Plaintiff to satisfy the court that he is the last registered proprietor or the lessor as described under the section 169 (b) and (c) of the Act. Once the Plaintiff satisfies it, the burden will shift on the Defendant to satisfy the court that he has a right to the possession of the land. The scope of the Defendant’s burden of prove of a right to the possession of the land has discussed in **Morris Hedstrom Limited-v- Liaquat Ali** CA No: 153/87 , where it was held that

*“Under Section 172 the person summonsed may show cause why he refused to give possession of the land and if he proves to the satisfaction of the Judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be*



*adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced."*

Accordingly, the defendant is only required to present some tangible evidence to establish a right to the possession or the existence of an arguable case for such right to defeat the Plaintiff's claim.

**B. ANALYSIS**

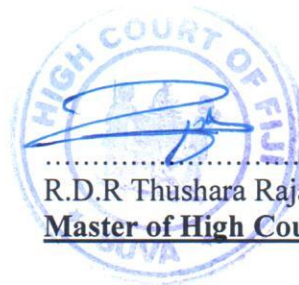
11. Having carefully considered the respective affidavits of the parties, it appears that the Defendants have not disputed that the Plaintiff is the last registered proprietor of the land. The main contention of the Defendants is that the notice to vacate issued by the Plaintiff is defective. The learned counsel of the Defendant submitted in his submissions that the Plaintiff has stated in their affidavit in support that the Defendants were given consent by the previous owner to occupy the property, wherefore it is required to issue proper and valid notice to quit in order to institute proceedings under section 169 of the Act.
12. It appears that the Plaintiff's claim is founded on the ground that that they are the last registered proprietors of the property pursuant to section 169 (a) of the Act. They claim that the Defendants were given conditional consent to occupy the property until such time that it is sold. Accordingly the Plaintiff claims the Defendants are illegal occupiers or trespassers.
13. According to section 172 of the Act, it is the onus of the Defendant to establish that they have a right to the possession of the land and it does not shift on the Plaintiff. In this action the Plaintiff has established that they are the last registered proprietors and the Defendants have been illegally occupying the land. Under such circumstances, it is the onus of the Defendants to satisfy the court the nature of the consent given by the previous owner and then challenge the validity of the notice to vacate. It appears that the Defendants have not provided any affidavit evidence to establish the nature of the consent given by the previous owner and/or the said consent continues against the present

owner. In the absence of such, the mere objection of the validity of the notice to vacate has no merit as the Plaintiff's claim is founded on the ground that the Defendants are illegal occupiers.

14. In conclusion, I find that the Defendants have failed to successfully satisfy the court, that he has a right to the possession of the land, or an arguable case for such right. I accordingly make following orders that;

- i. The Plaintiff is granted immediate vacant possession of the property comprised in certificate of Title No 41300 being Lot 2 on DP 6866 known as "vulagi" part of in the District of Tailevu on the island of Viti Levu containing an area of 5.6824 in the Republic of Fiji Islands.
- ii. The Plaintiff is awarded with cost of \$1000, assessed summarily.

Dated at Suva this 30<sup>th</sup> day of January 2015



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R.D.R Thushara Rajasinghe  
Master of High Court, Suva