

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

CIVIL ACTION NO.: HBC 350 of 2017

BETWEEN : ANAND PRIYA MAHARAJ
PLAINTIFF

AND : CHAVI LAL
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr F Haniff with Mr C Yee [Haniff Tuitoga]
DEFENDANT : Mr P Kumar [Nands Law]
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 05 December 2018

JUDGMENT

[Section 169 application for vacant possession]

APPLICATION

1. This is a summary application under section 169 of the Land Transfer Act seeking orders for vacant possession of all freehold properties vested in the Estate of Sadanand Maharaj being land comprised and described in Certificate of Title being Lot 1 on DPN 7601 situated at Wairuku, Rakiraki.

The Plaintiff has filed an Affidavit in Support of his application.

2. The Defendant is opposing the application and has filed his Affidavit in Opposition to which the Plaintiff has responded to.
3. In addition, both Counsels have filed their respective legal submission.

PLAINTIFF'S CLAIM

4. Anand Priya Maharaj [the Plaintiff] is the Sole Executor and Trustee of the Estate of Sadanand Maharaj.
5. The Estate owns certain freehold properties at Wairuku, Rakiraki.
6. The Defendant Chavi Lal is illegally occupying one of the properties on CT 32670 being Lot 1 on DP 7601.

7. By a letter dated 22 September 2017, Haniff Tuitoga had asked the Defendant to quit and deliver up vacant possession of the property no later than 31 October 2017. Said Notice was served on 26 September 2017.

Despite this, the Defendant has neglected and/or failed to vacate the property.

8. As the sole executor and trustee of the Estate, he is duly bound to complete the administration of the Estate of the deceased.
9. In his Affidavit in Reply the Plaintiff states that Mr Pankaj Bamola had resigned as a Co-Trustee in 1991 and since then the Plaintiff has acted as a Sole Trustee for the Estate.

According to him, his family is not aware of any assurance given by his father to the Defendant's father.

He denies making promise to the Defendant to transfer one acre of the property but informs that the Defendant on few occasions since 2014 has offered to buy the piece of land he has been occupying.

There is no agreement between beneficiaries to sell the piece of land to the Defendant.

DEFENCE

10. According to the Defendant, he is in Australia for medical treatment.
11. The Plaintiff is not the Sole Executor and Trustee of the Estate. The other Executor and Trustee is one Pankaj Kumar Bamola.
12. The Defendant denies he is the illegally occupying the property on CT No. 32670 being Lot 1 on DP 7601.

This has been his principal place of residence where 4 generation of his family have lived and brought up there.

The deceased Sadanand Maharaj had sometimes in 1960 make representation to his father Dhani Lal that the deceased is the owner of the property and is not utilising the whole property.

The deceased was agreeable to give a portion of the property to his father (Dhani Lal).

Dhani Lal was informed that there is no registered title to the property but once issued and registered under deceased name by Wairuku Land Purchase Cooperative the deceased will have the land subdivided and transfer a portion around 1 acre to Dhani Lal.

Relying on this representation Dhani Lal moved on the property and constructed a 3 bedroom wood/iron house with concrete floor and a mechanical garage.

Sadanand Maharaj passed away in 1962. The Defendant's family continued to reside on the property after his demise.

In 1962, Dhani Lal made application to Ra Rural Local Authority for approval to extend the existing house by 2 more bedrooms. Approval was granted in 1983 and additional 2 bedrooms were constructed.

After the demise of Dhani Lal, the Defendant and 10 other siblings continued to reside there. The Defendant is the ultimate beneficiary of Estate of Dhani Lal.

The Defendant claims to have had discussion about the representation made by the Deceased about subdivision and transfer of a portion of 1 acre of land.

The Plaintiff assured and promised that as soon as the property is transferred to him as a Trustee of the Estate of Sadanand Maharaj, the Plaintiff will organise a surveyor to subdivide the land. The Defendant will pay the cost.

Relying on this assurance and promise, the Defendant continued to develop the property and renovate the house.

The Defendant was shocked to receive a notice to vacate and had written to the Plaintiff's Counsel. He did not receive any response.

However, after a few days the originating summons was served.

The Defendant denies being an illegal occupant.

DETERMINATION

13. The Plaintiff is the registered as the Sole Executor and Trustee of the Estate of the Deceased on the memorial to the Certificate Title.

There was a Notice to Quit issued and served.

14. It is for the Defendant to show cause why he refuses to give possession of the land.

He relies on the representation made by the deceased to his father. Based on which representation he and his family have been in occupation of the property since 1960s. The Defendant's father had constructed a house which over the years has been extended and / or renovated.

15. Affidavit evidence does show that after the demise of Sadanand Maharaj, the Defendant's family continued to be in occupation of the land and no action was taken by the Plaintiff until 2014 when he started evicting the Defendant.
16. This is not a case of mere occupation of the property on yearly tenancy where this court can on the affidavit evidence hold that there is no form of estoppel.
17. I do not find this is a matter where court should make an order on affidavit evidence.
18. Hence I would dismiss the summons. That this dismissed is not a bar for the Plaintiff to institute any other proceedings to evict the Defendants from the property.

19. Plaintiff is ordered to pay cost to the Defendant summarily at \$1,000 to be paid in 14 days.



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Vandhana Lal [Ms]
Acting Master
At Suva.