

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

CIVIL ACTION NO.: HBC 89 of 2018

BETWEEN : NARENDRA PRASAD **PLAINTIFF**

AND : PITA BERA **DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr K Chang [Legal Aid Commission]

DEFENDANT : In Person

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 04 October 2018

JUDGMENT

[Section 169 application for vacant possession]

INTRODUCTION

1. The Plaintiff Narendra Prasad is seeking orders for immediate possession of property comprised in Agricultural Crown Lease Number 721802 on CT Number 31523 being Lot 2 on DP 8038.

Application is made pursuant to Section 169 of the Land Transfer Act.

There is an affidavit filed in support of his application.

2. The Defendant is appearing in person and had written in letters which was received by the registry on 8 May 2018 and 20 June 2018.

In fairness and justice I had for allowed for these to be treated as his opposition and submission respectively as these were filed following orders from Court for him to file opposition and parties to file submissions.

By consent copies were made available to the Counsel for the Plaintiff on the hearing date.

3. Section 169 allows following person to make application for vacant possession:
 - (a) *the last registered proprietor of the land;*

(b) *a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;*

(c) *a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.*

4. The Plaintiff is the sole executor and trustee in the Estate of Alexander Sophis Sahani being the last registered proprietor of the piece of land in question.

He had annexed to his Affidavit Copy Probate confirming the grant to him as Sole Executor and Trustee.

He has also annexed to his Affidavit copy lease number 721802 which has recorded the transmission by Death to Narendra Prasad.

According to the Plaintiff, the Defendant had illegally moved into the building without his consent or approval.

Despite asking him to vacate, the Defendant has wilfully refused to do the same.

The Plaintiff wishes to develop the land and fulfil his duties as the executor and trustee of the Estate of the deceased.

A notice to vacate was served on the Defendant on 30 November 2018. The Defendant has failed to vacate the property.

5. The Defendant submits that Ministry of Land had given him approval to move on the property.

He did so and carried out certain maintenance works totalling up to \$5, 000 which cost includes repairing the water pipe.

He has started farming on the land.

6. Pursuant to Section 172 of the Land Transfer Act, the court shall dismiss the summon with cost if the Defendant can show cause why he refuses to give possession of the land and if he proves to the satisfaction of the Judge a right to the possession of the land.

7. The Defendant claims to have received consent from the Ministry of Lands to occupy the land. However, there is nothing in writing from the Ministry of Lands to substantiate the claim.

8. The Plaintiff on the other hand has consent letters to institute legal proceeding for eviction (Annexure NP2). This only confirms that the Defendant has been occupying the land illegally.

9. The Defendant I find has failed to show any right to the possession of the land.

10. Hence I had find it proper to make orders for possession.
11. Pita Bera is to give possession to the Plaintiff of property comprised in Agricultural Crown Lease Number 721802 on CT Number 31523 being Lot 2 on DP 8038.

Execution of the above order is stayed for 3 months.

12. Given the circumstances I make no orders for cost. Parties to bear own cost.




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Vandhana Lal [Ms]
Acting Master
At Suva.