

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

CIVIL ACTION NO.: HBC 93 of 2019

**IN THE MATTER** of the property comprised in Certificate of Title No. 9293 being Lot 12 on Deposited Plan No. 2274 on the island of Viti Levu and in the city of Suva having an area of one road and one perch and six tenths of a perch.

**AND**

**IN THE MATTER** of the Land Transfer Act, Section 169.

**BETWEEN** : **SAVITRI aka SAVITRI PRASAD and NAVNEETH  
KAMAL PRASAD** **PLAINTIFFS**

**AND** : **PARAS RAM aka PARSU** **DEFENDANT**

---

**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr. E. Kumar [Parshotam Lawyers]  
**DEFENDANT** : In Person [Not represented]  
**JUDGMENT OF** : Acting Master Ms Vandhana Lal  
**DELIVERED ON** : 27 June 2019

---

**JUDGMENT**

[Section 169 application for vacant possession]

---

1. The Plaintiffs are the Executors and Trustees of the Estate of Narendra Prasad aka Narendra Prasad Ramautar. It is in this capacity that they bring the proceeding under Section 169 of the Land Transfer Act seeking orders for the Defendant, his family and

invitees to give up immediate possession of the property situated at 41 Milverton Road, Suva comprised in Certificate of Title No. 9293 being Lot 2 Deposited Plan No. 2274.

2. By a transmission by death the said property was transferred to the Plaintiffs. Annexure "C" to the Affidavit in Support is the certified copy title. Said registration on title was entered on 9 March 2017.
3. A Notice was served on the Defendant on 4 February 2019 requiring the Defendant to vacate within 28 days of service. The Defendant is said to have acknowledged service and informed he would vacate on or before 3 March 2019.

However the Defendant is said to have vandalised the property by writing on the exterior walls with black paint.

On 4 March 2019 the Plaintiff caused a final notice to vacate to be served on the Defendant requiring him to immediately vacate the property.

The Defendant has failed and refused to vacate.

The Plaintiffs have engaged the services of Prime Stone Realty to sell the property. All beneficiaries of the Estate are agreeable to this cause.

The Defendant is now is said to be in unlawful occupation and does not have any right or interest or license to reside on the property. Any earlier invitation given to the Defendant has been revoked.

The Defendant came onto the property on the invitation of the Deceased in 2014. He was allowed to occupy the small dwelling on the property separate from main structure for free.

He resided there for five (5) years.

4. The Defendant informs that he was promised by the deceased to pay him \$180 per month to look after the property and carry out maintenance work. He was never paid despite him doing the maintenance work.

He had agreed to vacate the property however the Plaintiffs had entered into his apartment and took his money and belongings. He had lodged a Police report.

He was also locked out once and had to seek assistance of Fiji Commerce Commission to gain entry again into the apartment.

Since he has no money he cannot look for a new place to rent. Due to his illness he has difficulty in finding an employment.

5. Section 169 of the Land Transfer Act reads:

*The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-*

- (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.*

6. Under Section 170 *"the summon shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than 16 days after the service of the summon"*.
7. Pursuant to Section 172 if *"the person summoned appears, he or she may show cause why he or she refuses to give possession of such land and if he or she proves to the satisfaction of the Judge a right to the possession of such land, the Judge shall dismiss the summons with cost"*.

Section 172 also empowers court to make any other order and impose any terms he or she may think fit provided that the dismissal of the summons shall not prejudice the right of the Plaintiff to take any other proceedings against the person summon to which he or she may be entitled to.

The Judge is also allowed to dismiss the summon if lessee before the hearing pays or tenders all rental due and all costs incurred.

8. The Plaintiffs have established they have a locus standi to bring the proceedings. Their names are registered on the Title.  
They are also in compliance with section 170 of the Land Transfer Act.
9. The burden now shifts to the Defendant to show to the court reason why he should not give up the possession.
10. The Defendant has failed to satisfy this court a right to possession.

There is not sufficient evidence or any agreement to say the Defendant was procured a lifetime occupation of the property.



The Defendant himself agreed to vacate the property but refuses to do so as he claims money being owed by the Plaintiffs and/or the deceased.

Furthermore there has been no investment made on the property by the Defendant on mistaken belief for Defendant to rely on equitable estoppel.

A notice to vacate was served on the Defendant and he has refused to vacate and has vandalised the property.

11. He is entitle to file separate proceedings for claim of allege service provided in maintaining the property. These claims cannot be dealt with in a summary proceeding under section 169.
12. The Defendant has failed to discharge the burden and hence an order is made on the Plaintiffs' application.
13. The Defendant, his families and invitees to give vacant possession of the property situated at 41 Milverton Road, Suva comprised in certificate of title no. 9293 being Lot 12 on Deposited Plan No. 2274.

Looking at the medical condition of the Defendant, execution is stayed for 60 days to allow him to look for alternative accommodation.

Parties to bear own cost.

  
.....  
**Vandhana Lal [Ms]**  
Acting Master  
At Suva.

