

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 04 of 2020

BETWEEN : **DURGA PRASAD GAUTAM** **PLAINTIFF**

AND : **BHAN PRATAP CHAND** **DEFENDANT**

Appearances : Maqbool & Co. for the Plaintiff
Sushil Sharma Law for the Defendant

Judgment : 03 June 2020

JUDGMENT

Background

1. The Plaintiff has summoned the Defendant to show cause why he and/or any other persons who may be in occupation should not give to the Plaintiff immediate vacant possession of the Plaintiff's land and premises on Crown Lease No. 512285, LD 4/9/5054, Lot 3 on Plan No. M 1750, Section 6 Bulileka Settlement in Labasa, Vanualevu.
2. The Defendant did not file an answering affidavit though he was given an opportunity to do so. His counsel however appeared at the hearing and made some oral submissions.
3. The application is made pursuant to section 169 of the Land Transfer Act (the Act) which allows the following persons to bring an application for vacant possession:

- a) the last registered proprietor;
 - b) a lessor who has power of re-entry where the lessee is in arrears for a period stated in the lease, or,
 - c) where there is no such provision in the lease, a lessor against a lessee who is in arrears for one month, regardless of whether there is sufficient distress on the land to countervail the rent, and whether or not a demand has been made for the rent;
 - d) a lessor against a lessee or tenant in a case where a legal notice to quit has been served, or the term of the lease has expired.
4. To have standing under section 169 of the Act therefore, the applicant must belong to at least one of the categories of persons described in (a) to (d) above.
 5. In this case, the Plaintiff says he is the registered proprietor of the land described in the summons. He deposes that the Defendant had asked for temporary shelter and is occupying the house constructed on the said lease or property. He now wants the Defendant evicted.
 6. According to the Plaintiff, the Defendant had earlier instituted Tribunal proceedings for an Agricultural Tenancy over the said lease. On 17 October 2019, the Central Agricultural Tribunal quashed an earlier decision of the ALTA Tribunal. He says the Defendant has no lawful right to continue in occupation of the said lease.
 7. Following the proceedings before the Central Agricultural Tribunal, a notice was issued to the Defendant to give to the Plaintiff vacant possession of the said property but he continues in occupation.
 8. The issue for the Court to decide is whether an order for vacant possession ought to be made against the Defendant.
 9. The Plaintiff has annexed to his affidavit a copy of Crown Lease No. 512285, LD 4/9/5054, Lot 3 on Plan M 1750, Sec 6 Bulileka Settlement, as evidence of his ownership. The lease is for a term of 30 years commencing on 1 August 2001 and is therefore still current.

10. On the undisputed material before the Court, I hold that the Plaintiff is the last registered proprietor of the property in question and has standing under section 169 (a) of the Act to summon the Defendant to show cause.

11. I note that the lease is protected under section 13 (1) of the State Lands Act which provides:

Whenever in any lease under this Act there has been inserted the following clause:-

"This lease is a protected lease under the provisions of the Crown Lands Act"

(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.

12. Section 171 of the Act states:

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.

13. Of the statutory provisions above, Gates J (as then was) in *Prasad v Chand* [2001] FJHC 289; [2001] 1 FLR 164 (30 April 2001) stated:

At first sight, both sections would seem to suggest that an Applicant should first obtain the Director's written consent prior to the commencement of section 169 proceedings and exhibit it to his affidavit in support. However I favour Lyons J.'s approach in *Parvati Narayan v Suresh Prasad* (unreported) Lautoka High Court Civil Action No. HBC0275 of 1996L 15th August 1997 at p 4 insofar as his Lordship found that consent was not needed at all since the:

"section 169 application (which is the ridding off the land of a trespasser) is not a dealing of such a nature as requires the Director's consent."

This must be correct for the Director's sanction is concerned with who is to be allowed a State lease or powers over it, and not with the riddance of those who have never applied for his consent.

14. For the reasons given in *Prasad* (supra) I hold that the Director's consent is not necessary for the bringing of the Plaintiff's application in this case.
15. It being established that the Plaintiff is the last registered proprietor and therefore has *locus standi* to bring these proceedings, the onus now shifts to the Defendant to show cause.
16. Section 172 of the Act requires the defendant to prove to the satisfaction of the judge that he has a right to possession. The Court of Appeal in (*Muthusami v Nausori Town Council* F.C.A. 23/86) stated that that must be done by way of affidavit evidence. In the oft cited case of *Morris Hedstrom Ltd v Liaquat Ali* (Action No. 153 of 1987), the Court stated that the Defendant need not prove conclusively a right to possession, and that it is sufficient if it proves that there is some tangible evidence establishing the existence of a right.
17. As stated above, the Defendant failed to file an affidavit to show cause though time had been given for him to do so. His counsel did appear at the hearing but nothing was said in defence to the summons before the Court. I hold that the Defendant has failed to show cause or prove to the satisfaction of the Court that he has any right to possession and the application being uncontradicted, ought to be granted.

Costs

18. The Plaintiff filed summons, affidavit in support and made both written and oral submissions at the hearing. The Defendant neither filed an answering affidavit nor made any meaningful submissions.
19. The orders of the Court therefore will be:
 1. The Defendant is to give to the Plaintiff immediate vacant possession of the land and premises occupied by the Defendant on Crown Lease No. 512285, LD 4/9/5054, Lot 3 on Plan No. M 1750, Sec 6 Bulileka Settlement, in Labasa, Vanualevu.
 2. Costs for the Plaintiff summarily assessed in the sum of \$800, to be paid within 21 days of this Judgment.




S.F. Bull
MASTER