

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. 16 of 2020

BETWEEN: **SHAKUNTALA DEVI**

APPELLANT

AND **BALA KRISHNAN**

RESPONDENT

Counsel : **Appellant: In person**
: **Respondent: In person**
Date of Hearing : **29.10.2021**
Date of Judgment : **03.12.2021**

JUDGMENT

INTRODUCTION

1. This is an appeal from decision of Resident Magistrate (RM) delivered on 26.5.2020. Appellant had appealed to Magistrate's Court against a determination by Small Claims Tribunal (SCT). Appellant was ordered to pay \$600 after site visit and obtaining evidence from independent (FCC) authority. The claim before SCT was arrears of rent amounting to \$1500. Appellant was also ordered to vacate premises. Appellant had appealed against orders and RM had dismissed the appeal. Appellant had again appealed against RM's order three grounds.

FACTS

2. Respondent-claimant (the Claimant) made an application to SCT seeking payment of arrears of rents amounting to \$1500. Monthly rental was \$500 and arrears were for three months.
3. Appellant had appeared in SCT and admitted that she had moved to the premises as a tenant, though no tenancy agreement was signed between parties. Appellant had also paid a sum of

\$500 to claimant but after had refused to pay monthly rentals and did not vacate the premises when the matter was taken up in SCT.

4. Referee had visited the premises and had also got a representative from FCCC in order to determine the reasonable rent for the premises.
5. In the Referee' Report filed in terms of Section 34(1) of SCT Act 1991, he had described the condition of the flat. He had also got the assistance of FCCC and made a determination that monthly rental should be \$200.
6. Accordingly the arrears of three months amounted to \$600 and this was ordered the sum to be paid to the Claimant.
7. SCT made an order to Clamant to leave the premises by 9.9.2019.
8. Appellant had appealed against this order to RM and by order dated 26.5.2020 the appeal was dismissed.
9. Appellant had appealed against the decision of RM made on 26.5.2020 on following appeal grounds on 26.6.2020;
 - a. Written ruling was erroneous and flawed.
 - b. RM was wrong in fact and law in finding that the Referee was not unfair or prejudicial.
 - c. RM did not deal legality of SCT in ordering eviction.
 - d. RM had erred in not recognizing that SCT's order was ultra vires.

ANALYSIS

10. Claimant was landlord and Appellant came to the possession of the premises as a tenant. She had also admittedly paid \$500, to claimant.
11. No tenancy agreement was signed between the parties, but claim was for three months arrears amounting \$1,500. SCT had after site visit rejected the claim and determined monthly rental at \$200.
12. Referee had given reasons for such a low value for rental and FCCC representative also assisted in determination of monthly rental.
13. SCT in its discretion may seek evidence from an organization such as FCCC and also investigate matters through site visits in terms of Section 26(2) of SCT Act 1991 which states

“(2) A Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. All evidence and information so received or ascertained shall be disclosed to every party.”

14. Learned RM had not discussed the issue of ultra vires raised by Appellant, in regard to the eviction order made by SCT.

15. Orders of a Referee can make are contained in Section 16 of SCT Act 1991 and it reads;

“16.-(1) A Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders and may include therein such stipulations and conditions (whether as to the time for, or mode of, compliance or otherwise) as it thinks fit:

(a) the Tribunal may order a party to the proceedings **to pay money to any other party;**

(b) the Tribunal may make an order declaring that a person is not liable to another in respect of a claim or demand for money, the delivery of goods or chattels, or that work he performed;

(c) the Tribunal may order **a party to deliver specific goods or chattels to another party** to the proceedings;.....” (emphasis is mine)

16. Accordingly SCT can order a party to pay a specific sum and also to hand over a specific “chattels” which includes a premises.

17. Apart from this Section 8 and 9 of SCT Act 1991 also empowers SCT to order Appellant to vacate or hand over a premises.

18. Section 9 of SCT Act 1991 states;

“Further limitations of jurisdiction

9. A Tribunal shall have **no jurisdiction** in respect of any claim:

(a) for **the recovery of land or any estate or interest therein;**

(b) in which the **title to any land or any estate or interest therein, is in question;**

(c) which **could not be brought** in a Magistrates' Court; **and**

(d) which is required by any law to be brought only before any other specified court.”
(emphasis added)

19. From the above provision it is clear that SCT can exercise jurisdiction to evict the Appellant from premises when there was no dispute as to the title of the property.

20. Section 3(3) of SCT Act 1991 states;

“(3) Each Small Claims Tribunal shall be a division of a Magistrates' Court.”

21. Section 16(1)(b)(ii) of Magistrates' Court Act 1944 states;
- “(ii) in all suits involving trespass to land or for the recovery of lands (**including any building or part thereof**) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof);
22. In terms of Section 3(3) of SCT Act 1991 SCT is a division of Magistrate's Court, hence the argument that SCT cannot order eviction or handing over of premises is without merit. The claim was \$1500 which was within STC's jurisdiction, in terms of Section 8 (1) of SCT Act 1991.
23. Appellant is also estopped from denying tenancy having entered premises as a tenant and also paid a sum of \$500.
24. RM had considered the scope of an appeal from SCT as stated in Section 33(1) of SCT Act which states;
- “33.-(1) Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:
- (a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or
- (b) the Tribunal exceeded its jurisdiction.
25. RM had not considered the appeal ground raised regarding jurisdiction, but as stated above SCT had not exceeded jurisdiction in ordering Appellant to leave the premises by 9.8.2019. Appeal is dismissed and order of RM made on 26.5.2020 affirmed. No order as to cost.

FINAL ORDERS

- a. Appeal is dismissed.
- b. Order of Resident Magistrate made on 26.5.2020 affirmed.
- c. No costs.

Dated at Suva this 3rd day of December, 2021.




Justice Deepthi Amaratunga
High Court, Suva