

**IN THE HIGH COURT OF FIJI AT LABASA**

**CIVIL ORIGINAL JURISDICTION**

**CASE NUMBER:** **HBC 61 of 2019**

**BETWEEN:** **RAMESH CHAND SHARMA AND RAJENDRA SHARMA**

**PLAINTIFFS**

**AND:** **RAJESH RISHI RAM**

**DEFENDANT**

**Appearances:** *Mr. D. Nair for the Plaintiff.*

*No Appearance for the Defendant*

**Date/Place of Judgment:** *Tuesday 25 April 2023 at Suva.*

**Coram:** *The Hon. Madam Justice Anjale Wati.*

**JUDGMENT**

**A. Catchwords:**

***CIVIL LAW – Section 169 Application for Vacant Possession – defendant is alleging that the father of the registered proprietors had not acquired the subject property properly but through fraud and his one half undivided share which was later inherited by the first named plaintiff does not give the plaintiff's an indefeasible title to claim vacant possession against him – the defendant being a tenant in the property does not have any locus to raise the issue of fraud against a previous owner of the property and even if there is fraud that does not give the defendant a right to stay on the land as his tenancy has expired some time back and he has been properly asked to vacate the same.***

**B. Legislation:**

1. *Land Transfer Act 1971: s. 169.*

**Cause and Background**

1. The plaintiffs are seeking an order for vacant possession of the property in Labasa Town for which they are the registered proprietors. The application is made under s. 169 of the Land Transfer Act 1971.
2. The defendant has been occupying the property contained in CT 3807 being Lot 1 on Plan M. 2277 former Nanhu Street Reserve in Macuata Labasa containing 11. 7 perches as a tenant since 1972. His tenancy has come to an end and he has been given notices to vacate the premises which he refused to comply with.
3. The second named plaintiff was the owner of the property since 1994 and the first named plaintiff became the registered proprietor of the same in 2018 as a beneficiary in the estate of his father. Both the registered proprietors hold one half undivided share in the property.
4. Initially, the property was held as tenants in common by Rajesh Prasad Sharma and the second named plaintiff. Mr. Rajesh Prasad Sharma died and his father Mr. Shiu Narayan Sharma acquired his one half undivided share pursuant to a will. Mr. Shiu Narayan Sharma acquired the interest in the property in 2015.
5. When Mr. Shiu Narayan Sharma died, the first named plaintiff inherited his interest and became the registered proprietor of his one half undivided share in 2018. The new owners of the property, the plaintiff's, then served the defendant with two notices to vacate the property.
6. The defendant challenged the action for vacant possession since 2019 before the Master of the High Court. I finally heard this matter because there was an appeal from the decision of the Master against an order for vacant possession granted by her in favour of the same landlords but a different tenant. Since I heard the appeal in that matter, I considered it prudent to hear the application for vacant possession in this case as it concerned the same landlord and the nature of the proceedings was similar. The parties had agreed to this course of action.

Defendant's Position

7. The defendant's only basis to stay on the property is outlined in the affidavit in opposition. He is arguing that the plaintiff's do not hold an indefeasible title to seek an order for vacant possession from him.
8. He states that he has made numerous discoveries regarding the proprietorship of Crown Lease No. 3807 (the subject property). He says that on 22 July 1994, the said property was transferred to Rajesh Prasad Sharma and Rajendra Sharma. Both are sons of Shiu Narayan Sharma. Rajesh Prasad Sharma died on 4 June 2014 in California.
9. The defendant says that he had conducted a search at the Probate Registry. He discovered that Rajesh Prasad Sharma, in his purported will, had appointed his father Shiu Narayan Sharma as the executor and trustee and had bequeathed the said lease to his father. A copy of the probate and the will was annexed.
10. The defendant says that Rajesh Prasad Sharma was married to Mala Sharma. He says that the signature appearing in the said will is not that of Rajesh Prasad Sharma. It is contended by the defendant that although the purported will bears the name of Rajesh Prasad Sharma, he is advised and verily believes that Shiu Narayan Sharma brought a person to the lawyer Mr. Mohammed Sadiq who impersonated himself as Rajesh Prasad Sharma.
11. The defendant says that he has also spoken to Mr. Mohammed Sadiq and shown him the photograph of Rajesh Prasad Sharma. The defendant says that Mr. Saqid confirmed to him that he was not the person who had executed the purported will.
12. The defendant contends that in 2006, there was no requirement of identification to be produced and accordingly Mr. Sadiq had not sensed the impersonation that the purported will was null and void. Mr. Shiu Narayan Sharma had committed fraud to defeat the rights and entitlement of Mala Sharma the lawful widow of the deceased Rajesh Prasad Sharma.
13. The defendant says that the first named plaintiff Mr. Ramesh Chand Sharma has acquired the interest of Shiu Narayan Sharma. His interest is defeasible and he has no locus to bring any kind of proceedings against him.

14. According to the defendant, the first named plaintiff Mr. Ramesh Chand Sharma is aware of the fraud and that the defendant in his endeavours also intends to inform Mala Sharma the lawful wife of Rajesh Prasad Sharma of the fraud.

Law and Analysis

15. The plaintiffs are the current registered proprietors of the property. There is no action on challenging their proprietorship except for allegations made in this case. The defendant is challenging that one of the plaintiff's title (first named plaintiff) is not indefeasible. He is alleging fraud against the father of the first named plaintiff. I must identify the reasons why the defendant cannot clutch on his allegations to remain on the property.
16. Firstly, the defendant does not have the locus to challenge the question of defeasibility of the title of the plaintiff's. If there is anyone who could raise this issue, it ought to be the persons entitled to the benefits in the estate of the deceased Mr. Rajesh Prasad Sharma.
17. The defendant is not in any way entitled to any benefits in the estate of the deceased Mr. Rajesh Prasad Sharma. He has not claimed any right in the estate. His only right to stay in the property was pursuant to a tenancy agreement which is no longer in place. The tenancy agreement has expired in May 2019. The defendant's concerns of fraud does not give him the right to stay on the property.
18. Secondly, the allegations of fraud is not against the plaintiff's but their father and the allegations are not even made by anyone who is affected by the fraud. It is not made by anyone who is entitled to any permanent or realizable interest in the land. Why is the defendant interested in fighting someone else's battle which is not going to give him any reason or cause to stay on the property?
19. Further, the father of the plaintiff's, Mr. Shiu Narayan Sharma, had acquired the property in 2015 as a beneficiary in the estate of Mr. Rajesh Prasad Sharma. Since 2015, no one challenged the will of the deceased Mr. Rajesh Prasad Sharma which gave Mr. Shiu Narayan Sharma the right to become one of the co-owners of the property. Till now, there is no action to challenge that will. It is almost 8 years now.

20. Even if there was a challenge to the ownership of the property held by Mr. Shiu Narayan Sharma that does not give the defendant any colour of right to continue to stay in the property as a tenant.
21. The defendant has not appeared in Court to show cause why an order for vacant possession should not be made against him. His affidavit also does not show any cause. He must therefore vacate the property.
22. I now turn to the issue of costs. The defendant does not have any basis to continue to occupy the said property. He has brought the allegations which will not in any event give him the right to stay in the property.
23. It is clearly discernible that he does not wish to vacate the property as he is occupying the same without paying the rent and wishes to continue to gain benefit in the same way. His actions are designed to prolong the matter and cause more expense to the plaintiff's. The bringing of this action could have been avoided if the defendant had vacated the premises earlier. The plaintiff has incurred costs from 2019 till date to have this matter finalized.
24. The defendant should be liable for all costs in the proceedings and for putting the plaintiff to costs by delaying the matter. The plaintiff had to appear before the Master and then before two Judges of the High Court for the matter to be finalized.
25. Master Bull had clearly indicated in her interlocutory ruling of 31 August 2020 that s. 169 application proceedings was not the forum to challenge the validity of the will pursuant to which Mr. Shiu Narayan Sharma became the registered proprietor of the one half undivided share in the estate of his son.
26. Justice Amaratunga found the same in his ruling on leave to appeal Master Bull's interlocutory ruling in the matter delivered on 10 November 2020. He stated as follows:

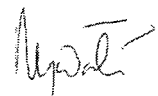
*"I have perused the supplementary affidavit where Defendant is alleging fraud against a third party by a previous 1/2 share owner who had transferred his rights to the first named plaintiff.... Such an allegation of fraud cannot create any right for the Defendants to possession or prolong their possession. This type of fraud regarding previous proprietor cannot deprive indefeasibility of title of the Plaintiffs".*

27. Two judicial officers had already indicated to the defendant that the issue of fraud does not create any right for him to stay on the property but the defendant still pursued the matter. When the matter was set for hearing, he failed to appear and show cause. He has by his conduct put the plaintiffs to a lot of legal expense for which he should be liable.

Final Orders

28. I therefore make the following orders:

- (i) *The defendant is to give vacant possession of the property to the plaintiff's within 14 days of the date of the judgment.*
- (ii) *There shall be costs against the defendant in the sum of \$6,500 which sum shall be paid to the plaintiff's within 14 days.*

  
Anjala Wati  
Judge – High Court  
25. 04. 2023



To:

1. *Sairav Law for the Plaintiff's.*
2. *A. K. Singh Lawyers for the Defendant.*
3. *Labasa HBC 61 of 2019.*