

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 165 of 2021

Mohammed Aiyub Khan
Plaintiff

v.

Mrs Uday Narayan
Mithlesh Narayan
Defendants

Counsel: Mr D. Kumar for the plaintiff
Mr V. Maharaj for the defendants

Date of hearing: 5th April,2022

Date of Judgment: 11th May,2023

Judgment

1. The plaintiff, in his originating summons seeks an order under section 169 of the Land Transfer Act, (LTA) for vacant possession of the land and premises comprised in State Lease No. 23093 Lot 1 on SO 4843 Lakena/Manoca (pt of) formerly Lot 2 on SO 2176 District of Bau with an area of 2.7246 ha, (the property) occupied by the defendant.

2. The plaintiff, the registered proprietor of the property states that the defendants have been occupying his property illegally. On 25th November,2020, notice of eviction was issued to the defendants.
3. The second defendant, in his affidavit in opposition states that the first defendant and he have lived on property for 13 years. The previous lessee Shyam Dutt invited them to the property. On 25 October, 2007, his father Uday Narayan and Shyam Dutt entered into an agreement permitting his father to reside and cultivate the property. On 30 April,2008, the Director of Lands consented to the agreement. He and his mother continue to occupy and cultivate the land for the last 5 years. On 27th October,2021, they applied for a Declaration of Tenancy under sections 4 and 5 of the Agriculture Landlord and Tenant Act,(ALTA). They have constructed a wood and iron permanent structure which is worth no less than \$10,000.00.
4. The plaintiff, in his reply states that the Director of Lands consented to Uday Narayan become a legitimate tenant for a period of five years .The Director of Lands endorsed the 5 year agreement. The Director of Lands had given one months' notice to Uday Narayan to vacate the property and remove all crops. The Director of Lands consented for the lease to be transferred to his (the plaintiff's) name.

The determination

5. The plaintiff seeks to evict the defendants.
6. The defendants contend that their occupation and cultivation of the land entitles them to apply for a declaration of tenancy under ALTA.
7. The defendant relies on an agreement of 25 October, 2007, between his father, Uday Narayan and Shyam Dutt. The agreement provided that the land was to be utilized for agricultural farming by Uday Narayan “*for 5 years as at from 25th of October, 2007 to 25th October, 2012*”.

8. The Director of Lands “*endorsed this agreement on 30/04/2008 and offered only 50% share of the land to Uday Narayan*”.
9. The lease relied on by the defendants came to an end on 25th October,2012.
10. Moreover, the Director of Lands on 30th August,2012, reminded Uday Narayan that the lease was effective from 25th October, 2007 to 25th October,2012, and he has only one month to vacate the land .
11. The written submissions of the defendant refers to the case of ***Subadra v Kumar***, (Civil Action No HBC 04 of 2015) which held that the defendant’s application for a declaration of tenancy under ALTA acted as a stay of proceedings for vacant possession.
12. In that case, the defendant was let into possession as a caretaker by the plaintiff and verbal consent was given to occupy and cultivate the land. In the present case, the defendants are in occupation of the property without the plaintiff’s consent.
13. ***Subadra v Kumar***,(*supra*) cites the decision of the Court of Appeal in ***Soma Raju v BhajanLal***, (1976) 22 FLR 163 which held that the rights to occupation of agricultural land under ALTA prevail against the indefeasibility provisions of the LTA where there is a contract of tenancy in place.
14. I would also note that the defendants applied for a declaration under ALTA only on 27th October,2021, after these proceedings were filed on 19th August,2021.
15. In my judgment, the defendants have failed to show any right to remain in possession of the property under section 172 of the Land Transfer Act.

16. ***Final Orders***

- a. I order the first and second defendants to give vacant possession of the land and premises comprised in State Lease No. 23093 Lot 1 on SO 4843 Lakena/Manoca (pt of) formerly Lot 2 on SO 2176 District of Bau on or before 31st July ,2023.
- b. I make no order as to costs.

A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
11th May, 2023

