

**IN THE HIGH COURT OF FIJI**

**WESTERN DIVISION**

**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**CIVIL ACTION NO. HBC 200 OF 2022**

**BETWEEN** : **MANISHGIRI RAJU** also known as **MANISH GIRI**  
**RAJU** of Vaqia, Ba currently of 3/1 Lucas CT, Jabiru,  
NT 0886, Australia as the Administrator of the Estate of  
Pot Raju.

**PLAINTIFF**

**AND** : **DHIRENDRA KUMAR** and **JOTIKA KIRAN** of Vaqia,  
Ba.

**DEFENDANTS**

**BEFORE** : **Master P. Prasad**

Counsel for Plaintiff : Ms. S. Ravai

Counsel for Defendant: Mr. V. Swamy

Date of Hearing : 2 December 2024

Date of Decision : 28 February 2025

**JUDGMENT**

(Vacant possession – Order 113)

1. The Plaintiff has instituted this action for eviction relying on Order 113 of the High Court Rules 1988. This is supported with an Affidavit of the Plaintiff.
2. The Defendants have opposed the Summons and filed an Affidavit in Opposition of the first named Defendant.
3. At the hearing of the application both counsels made oral submissions as well as relied on their written submissions filed.

**Plaintiff's Affidavit in Support**

4. The Plaintiff, as the Administrator of the Estate of Pot Raju, is the registered proprietor of State Lease number 20975 described as Lot 13 on BA 2389, Rarawai and Vunisamaloa (Part of) formerly CT 7822, in the Province of Ba, District of Ba, with an area of 4.9574 hectares (**Property**).
5. The Plaintiff is the grandson of the late Pot Raju, who died on 19 August 1985, after which Probate was granted on 10 July 1986 to Pot Raju's wife, namely Adiamma. After Adiamma passed away on 30 April 1994 leaving part of Pot Raju's Estate unadministered, the Plaintiff then applied for and was granted Letters of Administration *De Bonis Non* on 24 June 2011. The beneficiaries of Pot Raju's Estate (as per his Will) were Adiamma, Sesh Giri Raju and Pun Swamy in equal shares. Sesh Giri Raju was the Plaintiff's father, who has also passed away.
6. The Plaintiff issued a notice to vacate dated 6 July 2017 to the Defendants as the Plaintiff claimed that the Defendants were residing on the Property without the Plaintiff's consent (or any consent of any predecessor) and were unjustly enriching themselves.

#### Defendants' Affidavit in Opposition

7. The Defendants are opposing the application on the grounds that the first named Defendant entered into an agreement on 30 January 2004 with the Plaintiff's father Sesh Giri Raju (**Agreement**) whereby Sesh Giri Raju (employer) employed the first named Defendant (employee) to work on and cultivate farm number 1263 in Koronubu sector in Ba on the following terms:

*"1) That the employer shall employ the employee for the space of six years as from January 2004 till 2009 only (2004,2005,2006,2007,2008,2009)*

*2) That the employer will employ the employee for \$10.00 per day. If the employee do not work on the said farm then the employer will pay \$2.00 per as wages.*

*3) That the employer will pay all the land rental to the Lands Department.*

*4) That the employer and employee will share all the substitute for cane harvesting.*

*5) That the employee shall work in the said farm in husband like manner.*

*6) That any party who wishes to breach this agreement shall pay \$3,000.*

*7) That further to the breach of this terms and conditions – parties shall appoint Arbitrator to solve the problem.*

*8) That the employee will have first option to continue with this agreement after six years.*

9) *That the employer is giving ¼ acre land to employee to build his house with payment of \$20.00 P.A. land rent.*"

8. The Defendants aver: (i) that clause 9 of the Agreement is a 'stand-alone' clause; (ii) that they were given the approval of Sesh Giri Raju to reside permanently on the Property; and (iii) that Sesh Giri Raju was administering the Estate of Pot Raju at that time. The Defendants further claim that based on this understanding and the Agreement, they built their house on the Property in 2005 and have been paying their own utility bills.

9. Order 113 states that:

*"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being tenants of tenants holding after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provision of this Order"*

10. Footnote 113/1-8/1 of the 1997 Supreme Court Practice at page 1653 reads:

*"The application of this Order is narrowly confined to the particular circumstances described in r.1, i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his. The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O.14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence (Bristol Corp. v. Persons Unknown) [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593). The Court, however, has no discretion to prevent the use of this summary procedure where the circumstances are such as to bring them within its terms, e.g. against a person who has held over after his licence to occupy has terminated (Greater London Council v. Jenkins [1975] 1 W.L.R. 155; [1975] 1 All E.R. 354) but of course the Order will not apply before the licence has expired (ibid.). The Order applies to unlawful sub-tenants (Moore Properties (Ilford) Ltd v. McKeon [1976] 1 W.L.R. 1278)."*

11. Order 113 outlines a summary procedure for possession of land and Master Azhar (as he then was) in ***Prasad v Mani*** [2021] FJHC provided a detailed explanation of its history. Master Azhar further stated that "*this Order does not*

*provide a new remedy, rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers who have neither license nor consent from the current owner or his predecessor in title."*

12. Thus Order 113 is in essence applied for eviction of squatters or trespassers.

13. Goulding J in **Department of Environment v James and others** [1972] 3 All E.R. 629 said that:

*"where the plaintiff has proved his right to possession, and that the defendant is a trespasser, the court is bound to grant an immediate order for possession".*

14. Master Wickramasekara in **Singh v Koi [2024] FJHC 57** on the application of Order 113 stated as follows:

*"40. The onus is on the Plaintiff to satisfy Court that there is no doubt as to his or her claim to recover the possession of the land. In that process, he/she must be able to show the Court the right to claim the possession of the land and then to satisfy that the Defendant/s (not being a tenant or tenants holding over after the termination of the tenancy) entered the land or remained in occupation without his or her license or consent or that of any predecessor in title. Once a Plaintiff satisfies these two factors, he or she shall be entitled for an order against the Defendant or the occupier.*

*41. Then, it is incumbent on a Defendant, which the Plaintiff alleges to be in occupation of the land, if he or she wishes to remain in possession, to satisfy the Court that he or she had consent either from the Plaintiff or his or her predecessor in title or he Page 10 of 14 or she has title either equal or superior to that of the Plaintiff. If the Defendant can show such consent or such title, then the application of the Plaintiff ought to be dismissed."*

15. Master Wickramasekara further explained that for Order 113 to be applicable, it is a requirement that a plaintiff establish that the occupiers have entered into occupation without license or consent of the plaintiff. It is also applicable in the event a person who has entered into possession of land with a license but has remained in occupation without a license.

16. The Plaintiff has annexed to his Affidavit in Support a certified true copy of the State Lease number 20975 issued to the Plaintiff as the Administrator of the Estate of Pot Raju for a term of 99 years from 1 January 1995. The same lease was registered on 12 June 2017. The Plaintiff claims that neither he nor any predecessor in title gave consent to the Defendants to stay on the Property.

17. Accordingly, the main issue to be determined is whether the Defendants have a licence or consent of the Plaintiff (or any predecessor in title) to occupy the subject Property.
18. The Defendants' legal counsel submitted that: (i) Sesh Giri Raju as the 'intended Administrator' had given the Defendants the authority to stay on the Property; and (ii) Sesh Giri Raju may have intended to formalise the Agreement with the Director of Lands but for some reason he could not and that is sufficient reason to convert this action into a Writ.
19. In the same submissions it has also been asserted that the Plaintiff became the Administrator of Pot Raju's Estate on 24 June 2011, yet it took the Plaintiff 6 years to issue the Notice to Vacate to the Defendants. As a result of this the Defendants rely on the doctrine of ratification and acquiescence.
20. In this regard, I note that the State Lease over the Property was only registered to the Plaintiff on 12 June 2017 and it is only after this date that the Plaintiff issued the Notice to Vacate to the Defendants. From this it can be inferred that the Plaintiff was awaiting registration of the State Lease before issuing the Notice to Vacate.
21. The Defendants' counsel further relied on the case of **Jay v Prasad** [2024] FJHC 605, and submitted that since the Defendants were entitled to seek equitable relief from the Plaintiff, either on a claim based on equitable interest to compensate for their building expenditure or a personal claim based on unjust enrichment, this matter should be converted to a Writ to allow for *viva voce* evidence.
22. **Jay v Prasad** [supra] is distinguishable on the facts from the present case as it was not a claim for vacant possession. On the contrary, in that matter, the plaintiff had been invited by the defendants to build a farmhouse on land leased to the defendants by the iTaukei Land Trust Board. The plaintiff was then evicted from the land by the iTaukei Land Trust Board for occupation without their consent. The plaintiff claimed for equitable compensation from the defendants for the money he had spent on the house that he had built.
23. In response to the above, the Plaintiff's counsel in her written submissions stated that the Agreement was only for a term of 6 years and there was no evidence produced to show that the said Agreement was extended after the expiration of the 6 years.
24. The Plaintiff's counsel further submitted that if the Defendants were relying on clause 9 of the Agreement to prove that it was a stand-alone clause, and that they were given consent to permanently live on the Property, then this was a breach of section 13 of the State Lands Act 1945 and the lease conditions as the consent of the Director of Lands had not been obtained for this dealing.

Furthermore, Sesh Giri Raju was not an authorised person to give away State Land without the consent of the Director of Lands. This renders the Agreement null and void and as a result, the Defendants occupation of the Property is illegal.

25. The Plaintiff's also relied on **Jay v Prasad** [supra] to distinguish the facts of this case and submitted that in **Jay v Prasad** the dealing was made between the lessee of the land and the plaintiff whereas in this case the Defendants had entered into an Agreement with Sesh Giri Raju, who was not a registered lessee.
26. In addition to the above, the Plaintiff's counsel also submitted that the Defendants could not rely on the principles of ratification and acquiescence on the basis that Sesh Giri Raju was neither the authorised person who could have entered into the Agreement with the Defendants nor could he have given the Defendants consent to reside permanently on the Property.
27. The Defendants' argument primarily revolves around the claim that: (i) clause 9 of the Agreement granted them consent to live on the Property permanently; (ii) they have built a permanent structure which they will not be able to remove from the Property; (iii) the Plaintiff has acquiesced to the Defendants' occupation of the Property; and (iv) there are triable issues which requires a proper hearing.
28. The Defendants rely on the Agreement, which was made between them and Sesh Giri Raju on 30 January 2004, to claim that their occupation of the Property is legal. It is an undisputed fact that there was no lease issued over the Property at that time. The lease was only issued and registered on 12 June 2017 to the Plaintiff as the Administrator of the Estate of Pot Raju.
29. I agree with the Plaintiff's submission that Sesh Giri Raju was not an authorised person to have dealt with the Property in 2004 as he was not appointed the Administrator of the Estate of Pot Raju.
30. In 2004, neither the Plaintiff nor Sesh Giri Raju had the locus to enter into any dealing in regard to State Land as the lease over the Property had expired and the land had reverted to the Director of Lands. There was no active lease on the Property at that time. Consequently, the issue that the Director of Lands consent was not obtained does not arise at all.
31. It thus follows that only the Director of Lands would have had the authority to approve any occupation of the Property in 2004 and until 12 June 2017 when the lease was issued to the Plaintiff.
32. Therefore, this Court is satisfied that the Plaintiff has successfully established his rights to claim vacant possession of the Property pursuant to Order 113 of

the HCR, and the Defendants have failed to establish any legal right to claim occupation of the Property.

33. If the Defendants believe that the Plaintiff will be unjustly enriched upon eviction of the Defendants, then the Defendants have the option to pursue separate legal action against the Plaintiff seeking compensation for the house that the Defendants have built on the Property. However, in the current proceedings the Defendants cannot assert a right to remain on the Property without demonstrating any legal basis for their claim.

34. Therefore, I find that the Defendants have not obtained any consent nor a license to occupy or remain in occupation of the Plaintiff's land.

35. Accordingly, I make the following orders:

(a) The Defendants are ordered to immediately deliver to the Plaintiff vacant possession of State Lease number 20975 described as Lot 13 on BA 2389, Rarawai and Vunisamaloa (Part of) formerly CT 7822, in the Province of Ba, in the District of Ba with an area of 4.9574 hectares.

(b) Costs of this action summarily assessed at \$1,000.00 to be paid by the Defendants within 28 days.



**P. Prasad**  
**Master of the High Court**

**At Lautoka**  
**28 February 2025**