

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

ACTION NO. 497 OF 1978

Between:

SAPT RISHI SHANKAR s/o ShankarPLAINTIFF

- and -

1. VILIAME SERUNADIBI TUIQILAQILA2. RAIJI ELI R. TUIQILAQILADEFENDANTS3. SAMUELA SUKABULA

Mr. H.M. Patel for the Plaintiff.

Mr. D.C. Maharaj for the Defendants.

J U D G M E N T

At the hearing of this action the plaintiff was granted leave to discontinue his action so far as the third defendant was concerned.

It was also agreed by the remaining parties that the amount for which the plaintiff was entitled to judgment was the sum of \$3,500. Liability of the second defendant was denied by her but the first defendant admitted liability and he confirmed this when he gave evidence.

The plaintiff, however, was not prepared to accept judgment against the first defendant alone and sought a joint judgment against the first and second defendants who are husband and wife.

The sole issue to decide is whether the plaintiff let his property to both defendants or only

to the first defendant and whether both defendants are liable for damages in respect of damage to the walls of the house and removal of two fowl houses.

About July 1975 the plaintiff discussed selling his freehold property with the first defendant. The two defendants came to inspect the property. The plaintiff suggested that as both the defendants were working they might be able to raise a loan with the Housing Authority. The plaintiff to use his own words when giving evidence said :

"He (i.e. the first defendant) asked me to give letter of offer which I did. I said as I was vacating property I wanted him to pay rent until he got loan. I made arrangements for them to pay \$70 a month direct to Housing Authority."

The proposed sale fell through as the defendants could not find their share of the purchase price.

On the 25th November, 1976, the plaintiff and the first defendant executed a tenancy agreement. This was at the request of the plaintiff's mortgagee, the Housing Authority, which prepared the agreement. The first defendant was the sole tenant.

The second defendant was not present when the agreement was signed and the plaintiff in evidence stated that as she was not present her name was omitted from the agreement.

The plaintiff is a barrister and solicitor and I cannot accept his explanation as to why the second defendant was not made a party to the tenancy agreement. Both the first and second defendants allege that it was the first defendant and he alone who rented the house. I believe them.

On the plaintiff's own evidence and the clear terms of the tenancy agreement the property was rented to the first defendant and not to him and his wife jointly.

The first defendant has been in prison and presently working for a company which has gone into receivership. His prospects of paying the debt on his past history are not good. The second defendant on the other hand is a civil servant employed at the C.W.M. Hospital as a dietician and judgment against her also would improve the plaintiff's prospects of ultimately being paid in full.

The burden of establishing that the premises were rented to both the defendants and that both were responsible for damage to the property and removal of the two fowl houses lies on the plaintiff. The first defendant has admitted liability and the sum of \$3,500 has been agreed but the plaintiff has not satisfied me the second defendant is liable in any way. She was a truthful witness and I accept her denial of liability.

The plaintiff's claim against the second defendant is dismissed without costs since the defendants are represented by one solicitor.

There will be judgment for the plaintiff against the first defendant for the sum of \$3,500 with costs to be taxed on the lower scale if not agreed.

R. G. Kermod
(R.G. KERMODE)

J U D G E

SUVA,

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JULY, 1981.