

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 573 of 1981

BETWEEN: FATIMA f/n Inayat Mohammed Plaintiff

A N D : 1. HARUN ALI f/n Ali Newaz First Defendant

A N D : 2. NADIRA NISHA f/n Mohammed Shaukat Hassan Second Defendant

Mr. S. Prasad Counsel for the Plaintiff
Mr. G. P. Shankar Counsel for the Defendants

R U L I N G

The plaintiff is the registered proprietor of land under a protected crown lease, and the defendants, her son and daughter-in-law occupy a house and house site, on the said land. Dispute having risen between the plaintiff and the defendants and the plaintiff having given them notice to vacate ^{the plaintiff} now seek an order for possession under section 169 of the Land Transfer Act.

The position is that in May 1981 the plaintiff permitted the defendants to occupy the house and house site free of rental. If that were all the plaintiff would be entitled to her order for possession. But in replying affidavits the defendants declare that on 23rd October, 1981 the plaintiff and her husband Ali Newaz entered into an agreement with them to transfer the house and house site to them with the consent of the Lands Department. There were other provisions under the agreement. The first defendant's affidavit in paragraph 6 says that the consent of the Lands Department has been obtained, but that is probably not correct since paragraph 8 says that the defendants' solicitors were applying for such consent. The affidavit also claims that the defendant is seeking specific performance of the agreement in the Court.

Apart from this agreement the defendants would not have any grounds to resist the plaintiff's application under Section 169.

As a preliminary point the plaintiff argues that since the defendants base their case on the agreement, they cannot succeed because the agreement is a dealing in the land which is unlawful and null and void

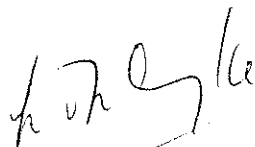
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under Section 13 of the Crown Lands Act. There would be merit in this argument if the defendants had entered the land in pursuance of the agreement, but that is not the case here. The defendants occupied the house and house site about five months before the agreement, on what was obviously a purely family arrangement. They are seeking the consent of the Lands Department to a transfer to them and then seeking specific performance of the agreement through the Court. On this basis they seek to resist the application for vacant possession.

The plaintiff and her husband now deny any such agreement and claim that their purported signatures are forgeries, but that must be a matter for evidence.

In my opinion therefore there is a triable issue and the preliminary issue raised by the plaintiff is dismissed.

Lautoka,
26th March, 1982



(G. O. L. Dyke)

Judge