

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction
CIVIL APPEAL NO. 41 OF 1983.

Between:

NORTHERN HOTELS LIMITED

APPELLANT

- and -

CORAL COAST AVIATION LTD.

RESPONDENT

K.R. Handley Q.C. & J. Singh for the Appellant
B.N. Sweetman for the Respondent

Date of Hearing: 26th March, 1984.

Delivery of Judgment: 26th March, 1984.

JUDGMENT OF THE COURT

Speight, J.A. (Orally)

As Mr. Sweetman says it is most unusual to encounter Order 14(2) procedures in cases concerning freehold land. More usually resort is had directly to section 169 of the Land Transfer Act Cap. 131. But the Order is certainly available, and in some cases has certain tactical and procedural advantages.

When a Summons for Final Judgment is issued under the Order one must look to see whether there is a triable issue. For that purpose one must turn to the pleadings.

Here the Statement of Claim alleged that the Plaintiff was the owner of freehold land and that the Defendant had been wrongfully in possession since 10th October, 1979 (paragraphs 3 and 6). The Statement of

Defence admitted the ownership but said that its possession was by virtue of the authority and consent of the Plaintiff on the terms of an agreement. In the Counterclaim the agreement was identified as the lease between the parties, bearing date, 10th October, 1979, and the affidavit of Mr. Oliver on behalf of the Defendant confirmed that that document was the basis of the Defendant's claim to be entitled to be in possession. It is apparent from the balance of his affidavit that the Defendant came within the class of non-resident persons, and that the only written consent of the appropriate Minister - acting in the capacity of Minister - came upwards of 2 years after the date of possession.

It was submitted that there may have been some other agreement giving a right of possession - of which there is no suggestion in the pleadings or affidavit - or that this agreement was inchoate pending approval by the Minister.

These suggestions fell strangely on my ears for any as yet unpleaded licence would have been terminated by the notice given by the Plaintiff, and any concept of an inchoate agreement pending consent cannot stand against proof of entry and commencement of improvements before the suggested condition precedent was fulfilled.

That being so it is clear that the contract was illegal and that was the only triable matter. It has been frequently held by this Court that illegality of the sort which is virtually admitted here can give rise to no rights, and there is an abundance of authority in the highest courts to the same effect - in particular Mistry Amar Singh v. Kulubya 1964 A.C. 142.

When one finds that the grounds upon which alone the Respondent claims it has rights as an occupier, cannot stand, then the Plaintiff can make out its claim to possession without relying on

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the illegal contract and is clearly entitled to an order as sought in its Statement of Claim. It is entitled to judgment accordingly. That Order simultaneously eliminates the matters in the Respondent's Counterclaim.

Appeal allowed and Order for possession with costs to Appellant in both Courts.

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