

IN THE FIJI COURT OF APPEAL

Civil Appeal No. 33 of 1986

Between:

DINESH CHANDRA SHARMA

Appellant

- and -

MAHENDRA PRATAP SINGH

Respondent

H.K. Nagin & V.K. Kapadia for the Appellant
V. Maharaj for the Respondent

Date of Hearing: 2nd July, 1986.

Delivery of Judgment: 4th July, 1986.

JUDGMENT OF THE COURT

Roper, J.A.

This is an appeal against the refusal of Rooney J., to make a summary order for vacant possession of a residential property at Waila, Nausori, pursuant to section 169 of the Land Transfer Act (Cap. 131).

As it is probable that the dispute between the parties will be the subject of an ejectment action it is inappropriate for us to dwell at length on the facts, or to express opinions upon them.

In his affidavit in reply the Respondent claimed that he had been in occupation of the land since 1969, had erected substantial buildings on it, and relied for his

title on an agreement for sale and purchase of the 23rd September 1970 with the Appellant's father. Various exhibits were attached to his affidavit which prima facie support his contentions.

On the 18th October 1984 the Appellant's father, who was then the registered proprietor of the land, issued proceedings claiming vacant possession on the ground that the Respondent had breached the 1970 agreement. The Respondent filed a defence and counter-claim in which he sought specific performance of the agreement. The counter-claim was filed on the 14th March 1985, and on the 6th May 1985 the father transferred the property to the Appellant, his son, with a mortgage back. We were informed from the Bar that the consideration in the transfer is \$15,000, and the mortgage back is for a like sum. The allegation has been made that the transfer from father to son was simply a fraudulent means of defeating the Respondent's claim to title, for the action between the father and the Respondent has not yet been heard.

Here there are disputed facts and allegations of fraud accompanied by supporting facts that cry out for a more careful investigation than would be possible on a summary proceeding in Chambers, and in our opinion Rooney J., was quite right in refusing to entertain the matter. It is not to be thought that a bald allegation of fraud unaccompanied by facts tending to support the allegation will suffice to defeat the section 169 procedure.

A caveat was lodged against the title by the Respondent in 1974 but this was removed in 1978 following an application under section 110(1) of the Land Transfer Act. Section 112 provides that a second caveat cannot be lodged except by order of the Court. It might be prudent for the Respondent to apply to the Supreme Court for such leave.

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The appeal is dismissed with costs to the Respondent to be fixed by the Registrar.


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Vice President


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Judge of Appeal


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Judge of Appeal