

IN THE FIJI COURT OF APPEAL
(AT SUVA)

370

CIVIL JURISDICTION

CIVIL APPEAL NO. 8 OF 1991

BETWEEN:

BRYAN CHARLES FERRIER-WATSON
AND OTHERS

Appellants

AND

SULTAN MOHAMMED s/o Din
Mohammed

Respondent

Dr. Sahu Khan for the Appellants
Mr. Dorsami Naidu for the Respondent

Date of Hearing: 3rd November, 1992
Date of Delivery of Judgment: 9th November, 1992.

JUDGMENT OF THE COURT

This is an appeal from the decision of Sadal J. who declined to make an order for possession of land.

The Respondent, who was in occupation of agricultural land, made an application to the Agricultural Tribunal for an extension of Tenancy for the statutory period of twenty years. At the hearing the matter was settled by the parties and the Tribunal made an order by consent on 12 July 1988. That order required the execution of an instrument of Tenancy, fixed the rent and premiums for extension and stipulated the dates by which arrears of rent were to be paid. Para.5 of the Order then provided:

"5. If the rent and/or premium as stipulated and agreed today are not paid within the stipulated time then the Applicant must give vacant possession immediately."

The instrument of tenancy was duly executed and was registered on 24 August 1988.

On 22 August 1988 the Respondent paid all the rent that was owed under the order. This payment was, however, a few days later than the stipulated time. The payment was accepted by the Appellants' solicitors and paid to their Trust Account "absolutely without prejudice to our clients' rights but our clients are definitely not accepting them as payments nor are they waiving the breach of the terms and conditions in the Tribunal Order. Certainly our clients are not accepting your clients as tenants."

The Appellants then, on 25 August 1989, applied by summons to the High Court under Sections 169 to 172 of the Land Transfer Act Cap.131 for an order for possession of the land.

Sadal J., in a brief Judgment, set out the main facts and held that, although there had been a short delay in the payment of the amounts stipulated the Court had power under S.172 of the Land Transfer Act to dismiss the summons and did so.

This appeal involves precisely the same principles of law as were involved in the appeal of Venkatamma and Sath Narayan v Bryan Charles Ferrier-Watson and others (No.22 of 1991). That appeal was heard by the same Court immediately before the present appeal and the same counsel appeared in both appeals. In its Judgment in the Venkatamma appeal, delivered contemporaneously with the present Judgment, the Court has set out fully the submissions made and reasons given for the conclusions reached. We do not now set them out again.

It is sufficient for us to say that, for the reasons given in the Venkatamma appeal, the right of the Respondent to remain in occupation of the Appellants' land ceased by virtue of the Tribunal's order as soon as there was default in payment and the tenancy could not be revived by the provisions of S.172 of the Land Transfer Act. If it is thought that this conclusion is a harsh one because of the brief period of default then we observe that the terms of the Tribunal's order were not imposed on the Respondent but were made by consent. It was the Respondent's obligation to observe the order scrupulously.

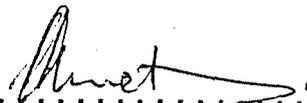
The appeal is accordingly allowed and the decision of the High Court quashed. Instead there will be an order for possession of the land in favour of the Appellants with costs in the High Court and on the appeal.



.....
Sir Moti Tikaram
Vice President



.....
Sir Peter Quilliam
Justice of Appeal



.....
Mr. Justice Amet
Justice of Appeal