

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0066 OF 1996S  
(High Court Civil Action No. HBC 307 of 1996)

BETWEEN:

SATISH PRASAD APPELLANT

-AND-

VIJAY PRASAD RESPONDENT

Mr S. Chandra for the Appellant  
Mr. H.K. Nagin with Ms P. Narayan for the Respondent

Date and Place of Hearing: 20 November, 1997, Suva  
Date of Delivery of Judgment: 28 November, 1997

JUDGMENT OF THE COURT

On 27 June 1996 the Respondent applied to the High Court pursuant to the provisions of Section 169 of the Land Transfer Act Cap. 131 seeking an order for vacant possession of the land contained in Certificate of Title No. 9758. The order sought was necessary because the Appellant, his brother, refused to vacate the family home that had been erected on that land.

In a judgment dated 12 December 1996 the Court determined that the Respondent, was entitled to an order for immediate vacant possession subject to the execution of that order being stayed for 3 weeks from the date of personal service of the order upon the Appellant.

The Appellant now challenges that decision, and relies on the following grounds of appeal viz:-

- (a) *The Learned Judge erred in law and in fact by wrongfully exercising his discretion under Section 169 of the Land Transfer Act Cap. 131 to allow a rectification of a defective application by the Respondent under the Section;*
- (b) *The Learned Judge erred in law and in fact by exercising his discretion in favour of the Respondent by refusing to accept for filing by the Appellant a Supplementary Affidavit sworn on 1st day of November, 1996 before the hearing of the substantive matter;*
- (c) *The Learned Judge erred in law and in fact by granting to the Respondent an Order for immediate vacant possession when the Appellant had raised triable issues of fraud on the part of the Respondent in obtaining the proprietorship of the Certificate of Title 9758.*
- (d) *The Learned Judge erred in law and in fact in granting to the Respondent an Order for immediate vacant possession under section 169 of the Land Transfer Act Cap. 131 when the Appellant had raised triable issues of Proprietary Estoppel and equitable ownerships which ought to have been tried in the open Court."*

**Ground of Appeal (a)**

The Appellant contends that when the Respondent issued the Summons pursuant to the provisions of S.169 of the Land Transfer Act on 27 June 1996 the Registrar of Titles had not authenticated the memorials which had been entered on the Register. Consequently, it was submitted that the Respondent was not "the last registered proprietor of the land" which was a necessary prerequisite for initiating action under the provisions of S.169.

It is true that the Certificate of Title annexed to the Respondent's affidavit filed in support of his summons while indicating that transfer No. 390405; mortgage No. 390406; and charge No. 390407 were all entered on the Certificate of Title as memorials, the Registrar of Titles had indeed not signed them. That lack of authentication, Mr Chandra submitted, was fatal and so prevented the Respondent seeking relief pursuant to the provisions of S.169.

But S.21 of the Land Transfer Act provides as follows:-

*" S.21(1) Every instrument of title shall be deemed and taken to be registered under the provisions and for the purposes of this Act as soon as the same has been signed by the Registrar and marked with a serial number in the register, and every instrument purporting to transfer or in any way to affect land subject to the provisions of this Act, or any estate or interest therein, shall be deemed to be so registered as soon as a memorial thereof as herein described has been entered in the register upon the folium constituted by each existing instrument of title affected by such dealing."*

The first part of Sub-Section (1) does require the Registrar of Titles to sign a new Title in order to give it legal effect. However, the second part of that Sub-Section (underlined to give emphasis) does not impose the same requirement upon the Registrar in order to give legal effect to registration.

This distinction is again evident in Sub - section (2) which provides as follows:-

*"S.21 (2) - The person named in any instrument of title or other instrument registered as provided in subsection (1) as the proprietor or as becoming a proprietor, of land subject to the provisions of this Act, or of any estate or interest therein, shall be deemed and taken to be the duly registered proprietor thereof."*

Again the underlining is provided to emphasise that a person "becoming a proprietor" by registration is deemed to be the registered proprietor.

Mr Chandra relying on the copy of the title attached to the respondents affidavit in support of the originating summons submits that the Registrar of Titles had not authenticated the memorials by 20 June 1996. Those memorials were entered on the title on 17 January 1996 and it would be most unlikely if 5 months later the Registrar had not signed the Register. While no evidence was presented to us as to when authentication was completed there is no doubt the Registrar did sign the memorials as he was required to do. When he did is immaterial since s.25 of the Land Transfer Act requires that such a "..... certificate shall be received in all courts, as conclusive evidence that such instrument has been duly registered."

The Respondent therefore was "the last registered proprietor of the land"; and as such was entitled to make the application pursuant to the provisions of s.169 of the Land Transfer Act.

#### Ground of Appeal (b)

This ground of appeal alleges that His Lordship "erred in law and in fact" when he refused to accept an affidavit which the Appellant attempted to file on the morning of the hearing some 4 months after the proceedings had been first filed in the High Court. The basis for that allegation was that the affidavit referred to "complicated questions of fact and law." Such questions however relate specifically to the part heard proceedings which the Appellant

himself has filed in the High Court under No. 348 of 1995 (S). The questions are not relevant to the very limited issue of the Respondent's action in these proceedings which is to recover possession of the land of which he is the registered Proprietor.

For that reason we are of the opinion that His Lordship exercised his discretion in a manner which in all the circumstances was justified.

**Ground of Appeal (c)**

The Appellant alleges that the Respondent secured his Title to this disputed land by fraud. The basis of this allegation is an order secured by the Appellant on 14 August 1995 in the following terms -

*"It is Ordered*

- (a) *that the Order made by this Honourable Court on Wednesday the 16th day of July, 1995 in respect of Caveat Number 377943 lodged against the land more particularly described as Lot 32 on Deposited Plan 2320 comprised in Certificate of Title number 9758 be extended until further Order of the Court."*

That order the Appellant alleges should have protected his interests "until further order of the Court," However he claims that contrary to the directions contained in that order the property has been transferred into the name of the Respondent. Further the Appellant alleges that the Registrar of Titles conspired in his alleged fraud by authenticating the memorial of transfer contrary to the Court Order.

Mr Chandra produced to us a copy of the above order. This had not been included in the Court record. Endorsed in handwriting on the back of this copy was the following -

“----- and

16/8/95

10.30 a.m.

Registrar of Titles Office.”

The first word is indecipherable. Mr Chandra nevertheless suggested that this endorsement was a form of acknowledgement of receipt by the Registrar of Titles. We reject that suggestion. This so called endorsement without any form of proof provides no foundation whatsoever for a covert allegation of fraud.

There is no evidence that the Court order dated 14 August 1995 was ever served on the Registrar of Titles. There is certainly no memorial to that effect on the Register. The Respondent denies having ever received a copy of the order.

For those reasons the Appellant's allegations of fraud against the Respondent have no foundation and are without substance. In this respect we mention that the allegation of fraud against the Registrar of Titles was made by counsel for the Appellant in the course of his submissions to this Court. It may be observed, that in a statement of claim proposed to be served on the Registrar of Titles and the Attorney General who are joined as third and fourth defendants in Action No.348 of 1995, no claim against the Registrar of Titles, or for that matter, the

Attorney General, is based on fraud. The allegation is that the Registrar of Titles unlawfully or negligently accepted for registration transfer of Certificate of Title No.9758 from the present Respondent's mother. Particulars are appended to that allegation but they do not include any allegation of fraud involving the Registrar of Titles.

It should be emphasised that counsel are under a duty to the Court not to make unsubstantiated allegations of fraud. Furthermore, Rules 7 and 11 of Order 18 of the Rules of the High Court make it clear that allegations of fraud must be specifically pleaded and particularised. The Rules in this respect are in a common form. Their equivalents are to be found in the Rules of Court of most jurisdictions. The Rules are an implementation of the common law. In Wallingford v. The Directors of the Mutual Society (1879) 5 App. Cas 685 the Lord Chancellor, Lord Selborne, said (at 697):-

*“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any Court to understand what it was that was alleged to be fraudulent. These allegations, I think, must be entirely disregarded; and the conclusion is, that it is only for the purpose of taking the account that any defence ought to be admitted in this case.”*

Wallingford was referred to by Gibbs J in Ritter v. North Side Enterprises Pty Ltd. (1975) 132 C.L.R. 301 at 304.

Here there is nothing but the bare assertion of counsel to support the allegation of fraud. Yet the allegation is of a most serious kind putting in jeopardy as it must the reputation and good standing of the person against whom it is made, in this case the holder of an important public office. The allegation is no more than an assertion and must be ignored. More could be said of what has transpired. In the circumstances it is sufficient to say that the allegation upon which the submission is based is entirely without foundation and must be ignored.

**Ground of Appeal (d)**

Because the Appellant in this ground of his appeal claims "proprietary estoppel and equitable ownership" he now submits under those headings that His Lordship erred both in law and in fact when he ordered possession in favour of the Respondent under s.169 of the Land Transfer Act.

Such issues however have no relevance in the present circumstances when the Court is considering a s.169 application for possession. The Respondent as the registered proprietor of the land was in all the circumstances, entitled to the order he sought.

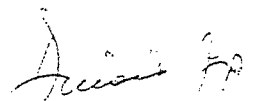
S.25 of the Land Transfer Act provides that this Court must receive a certificate as conclusive evidence of registration. This Court is therefore bound by those provisions in the same way as His Lordship was so bound when he rejected this ground of appeal.

All of the issues raised by the Appellant in this appeal must therefore be rejected. He has misconceived the appropriate forum to consider such issues. They may very well be relevant to those proceedings already referred to as No.348 of 1995 which he has instituted against the administratrix of his father's estate. Those pleadings also include the Respondent, the Registrar of Titles, and the Attorney General. The Appellant is therefore not left without recourse if he wishes to continue that action which he has already initiated.

This appeal however is dismissed, with costs and disbursements to the Respondent to be fixed by the Registrar.



.....  
**Sir Maurice Casey**  
**Justice of Appeal**



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**Mr Justice J D Dillon**  
**Justice of Appeal**



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**Mr Justice I. F. Sheppard**  
**Justice of Appeal**