IN THE FIJI COURT OF APPEAL

CIVIL JURSDICTION

CIVIL APPEAL NO. ABU0070 OF 1995S
(High Court Civl Action No. 547 of 1982)

BETWEEN:

RAM SWAMY	1ST APPELLANT
ADI NARAYAN a.k.a TOTA	2ND APPELLANT

-and-

PADMA WATI	RESPONDENT

Mr. C. B. Young for the Appellants
Mr. H. A. Shah for the Respondent

Date and Place of Hearing : 21 February 1997, Suva
Date of Delivery of Judgment : 28 February 1997

JUDGMENT OF THE COURT

This is an appeal against a judgment of Sadal J. given on 3 November 1995 in the High Court at Lautoka. His Lordship made an order that the 1st and 2nd appellants formerly the 5th and 6th defendants deliver vacant possession of land occupied by them to the respondent formerly the plaintiff. The respondent is lessee of Native Leasehold land known as Qeleloa. The land was formerly held by Colonial Sugar Refining Company and the respondent's father was a former tenant of that company. The Native Land Trust Board assumed the lease in 1970. At that time it was occupied by the mother of the respondent. The Board issued approval notice to the respondent's mother for 10 years from 1 January 1971. That lease is now held by the respondent. She holds an extension

for 20 years from 1 January 1981 under the Agricultural Landlord and Tenant Act.

The appellants are occupying a small area of land. They are two of the sons of the former 1st defendant who died in 1985. The former 3rd defendant is another son of the former 1st defendant and is no longer living on the appellants' land.

When the matter came before Sadal J. it was alleged that the appellants were not living on the respondent's land. They were said to be living on another piece of land known as Lot 28 which had been owned by the 1st defendant. Sadal J. however held that that was not correct. Lot 28 had been sold by the 1st defendant and the appellants were living on the respondent's land. That finding was clearly correct. The evidence was overwhelming and Mr. Young for the appellants who presented his client's case clearly and competently (as also did Mr. Shah for the respondent) conceded that he could not maintain that his clients had any legal title to the land they were occupying.

He did say that there was doubt whether the lease held by the respondent encompassed the land on which his clients are living and since his clients were occupying the land they had a right to remain there. This principle known as jus tertii is set out in **Perry v Clissold** (1907) A.C. 73. Possession by itself gives good title against all the world except someone having a better right to possession.

In the light of the finding of fact that the plaintiff did have title to the land, however, this submission could hardly stand and we think it is fair to say that Mr. Young did not press it. He relied on the principle of estoppel.

That arose in this way. Shiu Narayan, the 1st defendant was related to the appellant's father, Viraiya. Viraiya invited Shiu Narayan to live on and use a small portion of his land and Shiu Narayan accepted and built a bure. He grew vegetables around the bure. This bure was destroyed in a hurricane in the 1960s and Shiu Narayan built a concrete house in 1970. It appears that the respondent did not object to the building of the house. The appellants lived in the house and it was not until a dispute arose about some cane which had been ploughed under by or on behalf of the appellants that an objection was made. The submission was therefore that since the respondent did not object to the building of the house and Shiu Narayan had expended money and effort in building it, Shiu Narayan had the right to occupy it and therefore the land on which it was built.

Mr. Young relied on the case of **Jai Chand v Sheila Maharaj** Privy Council Appeal No. 63 of 1984. That however was a case in which the Privy Council said there was a purely personal right not amounting to a property interest. It arose from the contributions made by a defacto wife to the expenses of establishing the home on her husband's land and on the understanding that it would be a permanent home for her and

her children. That was a very different situation from the one before us. Mr. Young also referred to the case of **D.R. Ives Investment Ltd v High** (1967) 1 All E.R. 504 but that was a case in which two neighbours agreed that the first could have a right of access across the second's property in exchange for the first permitting the second's foundations to trespass on his land. Again it was quite a different matter from the unilateral right claimed before us.

Even if it could be held that by building a house on the land held by Padma Wati, Shiu Narayan obtained a right to occupy the house it could not be held that that gave Shiu Narayan's sons or any of them or their children a personal right to occupy the land or grow vegetables on it.

The appeal is therefore dismissed with costs to the respondent.

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Sir Maurice Casey
Judge of Appeal

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Mr. Justice Gordon Ward
Judge of Appeal

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Mr. Justice Peter Hillyer
Judge of Appeal

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