

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL NOs. ABU 95 of 2019
(Civil Action NO. HBC 12 of 2019)

BETWEEN : **MUKESH CHANDAR**
Plaintiff/Appellant

AND : **AJAY CHAND**
Defendant/Respondent

Coram : Basnayake JA
Lecamwasam JA
Jameel JA

Counsel : Mr. S. Ram with Mr. D. Patel for the Appellant
Mr. J. Singh for the Respondent

Date of Hearing : 17 February 2023

Date of Judgment : 29 September 2023

JUDGMENT

Basnavake JA

- [1] This is an appeal by the Plaintiff/Appellant (hereinafter referred to as the Plaintiff) against the judgment of the learned High Court Judge dated 30 September 2019 (Pgs. 4-12 of the Record of the High Court (RHC)). By this judgment the learned Judge had dismissed the Plaintiff's appeal against the judgment of the learned Magistrate of Sigatoka (Pgs. 39-43 RHC).
- [2] The Plaintiff filed a statement of claim on 16 February 2016 against the Defendant/Respondent (hereinafter referred to as the Defendant) in the Magistrate's Court of Sigatoka. In that the Plaintiff sought an order to evict the Defendant as well as for a sum of \$11,760.00 by way of arrears of rent, damages for loss of rental from 15th December 2015 to the date of vacant possession and costs.
- [3] As per the statement of claim one Ram Shankar Singh was the lessee of Crown Lease No. 26318 for the period 1 April 1973 to 31 March 2003 (Pgs. 20-21 RHC). An amended statement of claim was filed on 30 November 2018 (pg.100-102). Ram Shankar Singh had executed a Last Will on 4 February 2010 bequeathing the house in question to his grandson Rajnal Singh (pg. 67). Ram Shankar Singh died on 7 November 2013. On 1 January 2015 Rajnal Singh had assigned his interests under the Will of Ram Shankar Singh to the Plaintiff (72-73).
- [4] The Plaintiff avers that on or about 1st October 2001 the late Ram Shankar Singh had entered into an agreement with the Defendant as tenant (pg. 62). After the assignment the Plaintiff claims as the owner. The Plaintiff claims that as the Defendant has failed to pay rent to the Plaintiff a notice to quit was served on the Defendant (pgs. 70-71).
- [5] The Defendant denies tenancy. The Defendant also denies the *locus standi* of the Plaintiff. The Defendant claims that the Plaintiff is not the registered proprietor of any lease

(statement of defence is at pgs. 22-23). Admittedly the property is Crown land. The lease issued to Ram Shankar Singh had expired on 31 March 2003.

- [6] The learned Magistrate had dismissed the Plaintiff's case under section 16 (2) of the Magistrate's Court Act on the ground that the Magistrate had no jurisdiction to hear this case as the Defendant disputes the title. The Magistrate's Court also having considered section 13 of the State Lands Act stated that the claim of the Plaintiff is based on and arise from an unlawful transaction and agreement. *"This section makes any alienation or dealing with such land or any part thereof whether by sale transfer or sublease or in any other manner whatsoever without the written consent of the Director of Lands first had and obtained null and void and unlawful" ... "I therefore hold that the agreement to sublet without the consent of the Director of Lands first had and obtained is unlawful and void...The Plaintiff does not have any right of action arising therefrom"*.

The learned Magistrate relied on the judgments of **Chalmers v Pardoe** [1963] 3 All ER 552, **Khan v Prasad** [1996] FJHC 85 (23 Dec. 1996), **Jai Kiussum v Sumintra** [1970] 16 FLR 165, **Phalad v Sukh Raj** 24 FLR 170.

- [7] The learned Magistrate also held that that the agreement the Plaintiff intended to rely on does not bear the seal of the Commissioner of Stamp Duty and such an agreement cannot be accepted as evidence. The learned Magistrate decided that the court has no jurisdiction under section 16 (2) (a) of the Magistrate's Court Act which states that a Magistrate Court shall not exercise the following jurisdiction-(a) In suits wherein the title to any right, duty or office is in question etc. The learned Magistrate stated that, "the Plaintiff's title to the property had been challenged in that the Plaintiff is not the registered proprietor of the property". The learned Magistrate based his judgment on **Blasé v Watí** (2016) FJHC 185 and **Sukhja v Ram Pratap** (1967 in which the title to any right in section 16 (2) (a) was interpreted to mean "title to land".)

- [8] On appeal the High Court too dismissed the appeal. The learned High Court Judge said the issue for determination was whether or not the Magistrate was correct in dismissing the

Plaintiff's claim for vacant possession. One of the grounds for dismissal in the Magistrate Court judgment was that the Magistrate's Court has no jurisdiction where the title to land was disputed. The learned Judge conceded that this reasoning is not sound. In Vere v Vaurasi [2019] FJHC (26 June 2019) the learned Judge said that he decided that a Magistrate's Court may exercise jurisdiction as the "title to any right, duty or office under section 16 (2) (a) of the MCA does not include, "title to the land". However the court held that the Magistrate had no jurisdiction for the following reasons;

1. The Plaintiff brought the claim for vacant possession on the basis that there was a landlord-tenant relationship. It follows that the Plaintiff cannot rely on the issue of trespass as Section 16 (1) (d) states that, "*in all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof)*". This action is based on tenancy. However the learned counsel for the Plaintiff submits that the Defendant would become a trespasser on the issue of quit notice. The learned Judge did not accept this as a rule of law. The learned Judge said that there was no landlord tenancy relationship for the reason that the lease issued over the property had expired prior to the filing of this action. The learned Judge held that the lease had expired in 2013. However the lease admittedly had expired in 2003 (as per the writ of summons). The Plaintiff cannot claim to be the landlord over the expired lease. As the Defendant did not enter the land unlawfully the learned Judge ruled against trespassing.
2. The Plaintiff relied on a rent agreement between the Defendant and the late Ram Shankar Singh. That clearly demonstrates that there was no rent agreement between the Plaintiff and the Defendant. The learned Judge held that therefore this case is neither a case for trespass nor a case for landlord and tenant. The court held that as the Plaintiff is not the registered proprietor he cannot bring eviction proceedings as he would lack standing.

3. The learned Judge also having ruled that there was no landlord tenancy agreement dismissed the Plaintiff's appeal. In paragraph 29 and 32 (pg. 11 RHC) the learned Judge stated, that, "*Therefore the suit the appellant instituted in the Magistrate Court does not involve trespass to the land and/or it is not a suit between the landlord and the tenant for possession of land. It follows the Magistrate Court had no jurisdiction to deal with the suit brought by the Appellant against the Respondent for possession of the property*". "*The Appellant cannot have any right over an expired lease. He is not a registered proprietor. Therefore, he cannot bring eviction proceedings against the Respondent, as he would lack standing*". Thus the appeal was dismissed.

[9] **Grounds of Appeal**

1. *The learned Judge of the High Court erred in law in making findings of facts, particularly, that there was no agreement between the Respondent and the Appellant when no evidence had been led in the Magistrate's Court and issue for determination on appeal was whether the Magistrate's Court had jurisdiction to hear the matter.*
2. *The learned Judge of the High Court erred in law in holding, at paragraph 20, that the Magistrate was correct in dismissing the claim for want of jurisdiction because at the time of his decision, a ruling delivered by the Learned Judge of the High Court was binding upon him when:-2.1 It was the duty of the Magistrate's Court to interpret and apply the law correctly and the case law of Lal v Santu [1978] FJSC 61; Civil Appeal 9 of 1977 (1 March 1978), which established the correct interpretation of section 16 (2) (a) of the Magistrate's Court Act, was binding; and 2.2 The High Court Judge on appeal had to apply the correct law.*
3. *The learned Judge erred in law in the interpretation and application of the law of trespass particularly when he held:- 3.1 At paragraph 23 that if there is a landlord and tenant relationship, the tenant does not become a trespasser if the tenant remains on the land after the tenancy has come to an end; 3.2 At paragraph 25 that a notice to quit served on a tenant does not mean that the said tenant, if he or she remains on the property, becomes a trespasser.*
4. *The learned Judge erred in law at paragraph 28 when he held that the parties could not be in a landlord-tenant relationship because the head lease expired in 2013.*

5. *The learned Judge erred in law at paragraph 29 when he held that because the case did not involve trespass to land or a lawsuit between landlord and tenant, the Magistrate Court had no jurisdiction when Sections 16 (1) (c) (d) of the Magistrate Court Act provided jurisdiction to the court to determine suits where a person in occupation refuses to deliver possession or for recovery of land.*
6. *The learned Judge erred in law in relying on evidence from the bar table on the status of the parties and further erred in holding that the Appellant did not have any right to bring eviction proceedings against the Respondent because he lacked standing.*

Submissions of the learned counsel for the Plaintiff

- [10] The learned counsel for the Plaintiff concedes that the Plaintiff does not have a lease. The original lease issued to Ram Shankar Singh had expired in 2003. The tenancy agreement said to have been entered between the Plaintiff's predecessor in title, namely, Ram Shankar Singh in 2001 does not have the consent of the Director of Lands as required by section 13 of the LTA. The learned counsel submits that the issue is who has the right to possession. The learned counsel submits that the court is required to decide who has a greater right of possession. To determine who has a greater right of possession the Plaintiff does not need to possess a valid title. The issue of whether the Plaintiff had a right to remove the Defendant as a trespasser is based on their respective right of possession which could not be determined summarily.
- [11] The learned counsel submitted that the court can hear actions for possession to land, recovery of land and trespass. He submitted that the case ought to be properly heard with evidence to determine who has a greater right of possession.
- [12] From the submissions of the learned counsel it is clear that that the Plaintiff admits some rights to possession by the Defendant. The learned counsel submits that the person has greater rights should be given possession.

Jurisdiction of the magistrate Court as per the MCA

Section 16 (1) (c) and (d)

[13] (c) *In all suits between landlords and tenants for possession of any land (including any building or part thereof) claimed under any agreement or refused to be delivered up, if the annual value or annual rent does not or did not exceed \$50,000:*

(d) In all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof): (emphasis added)

[14] Section 16 (1) (c) confers jurisdiction on Magistrates in cases between landlord and tenant. The Plaintiff in this case alleges the existence of a tenancy agreement between the Defendant and Ram Shankar Singh in 2001. The Defendant denies such an agreement. The agreement the Plaintiff appeared to rely on could not be produced as it was not duly stamped. As per section 13 of the LTA the learned counsel concedes to not obtaining the consent of the Director of Lands for sub-leasing. The learned counsel also concedes to not being in possession of a valid lease at the time of filing this action in 2016. There is no averment in the writ of summons as to the date from which the Defendant commenced payment of rent and the date the Defendant ceased to make such payments. The Defendant admits to having entered into possession with the leave and license of Ram Shankar Singh in 2001. According to the Defendant the Defendant was allowed to live in this premises for life by Ram Shankar. His occupation admittedly began in 2001. Ram Shankar Singh appears to have left a last will leaving everything including this house to his grandson Rajnal Singh in 2010. Ram Shankar Singh died in 2013. The grandson has assigned all his rights to the Plaintiff (son of Ram Shankar) in 2015 by which the Plaintiff claims ownership. The Plaintiff sued the Defendant on a lease said to have been entered between Ram Shankar and the Defendant in 2001. This agreement was denied. The document could not be produced due to not having been stamped. The Plaintiff also had another difficulty owing to not having obtained consent for the alienation.

- [15] Section 16 of the Magistrate's Court Act spells out the civil jurisdiction of Magistrates. The sections relevant to this particular case are sections 16 (1) (c), (d) and 16 (2) (a). The Plaintiff's case has to fall within the four corners of the above sections. The Plaintiff originally filed action against the Defendant for arrears of rent and ejectment. The Plaintiff admits now that he cannot come by way of a landlord. The Plaintiff does not have a valid lease to demand a sub-lessee to vacate. First, the Plaintiff should rectify his position as a person holding a valid lease. The learned counsel for the Plaintiff submits that the Defendant is a trespasser. He states that once the Plaintiff issues a quit notice to vacate, the Defendant becomes a trespasser. However, in order to issue a quit notice the Plaintiff himself must have legal authority. The Plaintiff derives his authority through the lease. Without a valid lease the Plaintiff has no authority to issue a quit notice.
- [16] The learned counsel now submits that the Plaintiff's possession is superior to that of the Defendant. In other words the Plaintiff admits that the Defendant too has some basis for possession. The only sections the Plaintiff could invoke jurisdiction are under section 16(1) (c) and (d) of the MCA. The Plaintiff is not a landlord. Therefore the Plaintiff cannot invoke section 16 (1) (c). If the Plaintiff is not a landlord the Plaintiff cannot issue a quit notice on the Defendant. Therefore the Defendant does not become a trespasser. The Plaintiff also cannot invoke the jurisdiction of the Magistrate's Court to claim a 'superior possession' as the Magistrate's Court does not have jurisdiction for such action. Therefore the Plaintiff has to fail.
- [17] Of the issues, No. 2 is answered in favour of the Plaintiff. All the other issues are answered in the negative. For the above reasons the Plaintiff's appeal is dismissed with costs in a sum of \$5000.00 to be paid within 28 days from the date of this judgment.

LecamwasamJA

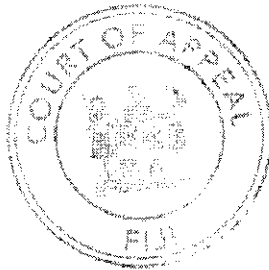
- [18] I agree with the reasons and conclusions of Basnayke JA.

Jameel JA

[19] I have read the draft judgment of Basnayake JA and am in agreement with the judgment and proposed orders.

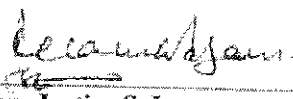
Orders of Court are:

1. *The appeal is dismissed.*
2. *The Plaintiff/Appellant to pay costs \$5000.00 to the Defendant/Respondent within 28 days from the date of this judgment.*






Hon. Justice Eric Basnayake
JUSTICE OF APPEAL



Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL



Hon. Justice F. Jameel
JUSTICE OF APPEAL