

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 157 of 2012

IN THE MATTER of an application under
Section 169 of the Land Transfer Act Cap 131

BETWEEN : **ROHINI SINGH** of Narere, Nasinu in the Republic of Fiji, Domestic
Duties as administratrix of the Estate of Bal Ram Singh deceased.

PLAINTIFF

AND : **CHANDA RANI** of Naulu, Nakasi, Domestic Duties.

DEFENDANT

BEFORE : **Master Deepthi Amaratunga**

COUNSEL : **Mr. R. P. Singh** for the Plaintiff
Mr. T. G. Sharma for the Defendant

Date of Hearing : **22nd August, 2012**

Date of Ruling : **24th September, 2012**

RULING

A. INTRODUCTION

1. The Plaintiff as the administratrix of the estate of the late Bal Ram instituted this action to evict Defendant who is also a beneficiary of the estate. The premises in issue is also a part of the estate and the Defendant is beneficiary to 2/15, but the Plaintiff seeks to evict the Defendant who had lived in the said property for a considerable time.

B. ANALYSIS

2. The application by the Plaintiff has been made under Section 169 of the Land Transfer Act, Cap 131 which provides as follows:-

“The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-

- (a) *The last registered proprietor of the land.*

- (b) *A lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;*

- (c) *A lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.*

3. If the Defendants oppose the application and files the Affidavit in opposition then under Section 172 of the Land Transfer Act it provides that;

“If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons....”

4. In the case of Morris Hedstrom Limited -v- Liaquat Ali CA No: 153/87, the Supreme Court said that:-

“Under Section 172 the person summonsed may show cause why he refused to give possession of the land if he proves to the satisfaction of the Judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right must be adduced.”

5. The Plaintiff has obtained Letters of Administration De Bonis Non of the estate of Bal Ram Singh. The Defendant has remained in the property which is part of the said estate of late Bal Ram Singh. The Defendant is admittedly a beneficiary of 2/15 of the estate which included this property in issue.
6. The possession of the Defendant cannot be considered as illegal as he as beneficiary of 2/15 of the estate including this property remained possession on his right to possession since the demise of late Bal Ram. The property has not been divided yet and Defendant has shown a right to possession of the property as he remained possession even long after the demise of late Bal Ram Singh.
7. What the Defendant has to demonstrate in this summary application by way of originating summons for eviction ‘*is not to say that final or **incontrovertible proof of a right to remain in possession must be adduced.** What is required is that **some tangible evidence establishing a right** or supporting an arguable case for such a right must be adduced’ (see Morris Hedstrom Limited Supra). The Defendant has established a right to possession of the property in issue by*

virtue of being a beneficiary to a share of 2/15. I have not been presented with any case law where a Defendant under similar circumstances being evicted in terms of the Section 169 of the Land Transfer Act, though I granted time for the Plaintiff to do so. In the circumstances I dismiss this application for eviction and grant a cost of \$300 assessed summarily.

C. FINAL ORDERS

- a. The application for eviction in terms of Section 169 of the Land Transfer Act is dismissed.
- b. The Defendant is granted a cost of \$300 assessed summarily.

Dated at **Suva** this **24th day** of **September, 2012**.

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Master Deepthi Amaratunga
High Court, Suva