

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 244 OF 2018

**IN THE MATTER** of an application for possession of land under section 169 of the Land Transfer Act.

**BETWEEN** : **NIRMALA WATI** **PLAINTIFF**

**AND** : **SACHIDA NAND SHARMA aka SUNNY** **DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr J. Vulakauvaki [Jiten Reddy Lawyers]

**DEFENDANT** : Mr V Prasad on instructions [KS Law]

**RULING OF** : Acting Master Ms Vandhana Lal

**DELIVERED ON** : 29 May 2019

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**JUDGMENT**

[Section 169 application for vacant possession]

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1. This is the Plaintiff's application under section 169 of the Land Transfer Act seeking orders for possession of property described and comprised in Crown Lease No. 714093 being Wainibuku (Part of) formerly Lot 3 R1669 being Lot 1 on DP 9677.
2. According to the Plaintiff she is a joint tenant of the property with one Uday Raj Singh who was her husband and is now deceased leaving the property to her as sole surviving joint tenant.

After her husband's demise, she asked her brother to look after the property.

She was also informed by her husband that her husband had appointed her brother Ashok Prasad to be the sole executor and trustee of his estate.

Ashok Prasad informed that the defendant had entered into a tenancy agreement with the deceased on 9 January, 2015 to operate a car wash from an area adjacent to the property.

She was not part of the agreement nor is she aware of the terms of the agreement.

The said agreement is also without the consent of the Director of Lands and is said to be void ab-initio for lack of consent from the Director of Lands.

The Director of Lands has also written a letter to this effect stating that there is a breach of Clause 2 of the lease condition.

She also annexed a letter from the Nausori Town Council according to which the Town Council had never issued any business license to Sunny's car wash. The business is operating illegally.

Despite the numerous request the Defendant refuses to save up vacant possession of the property.

She also alleges that the Defendant has sub-let part of the property to another unknown person.

A demand Notice dated 26 February 2018 was served on the Defendant on 6 March 2018.

The Defendants are said to be in occupant illegally and without any colour of rights.

3. In opposition the Defendant states that he made a tenancy agreement dated 9 January 2015 with late Uday Raj Singh for property known as Crown Lease No. 714093 Lot 3 Wainibuku Subdivision, Kings Road on DP No. 9677.

According to him, the Plaintiff was aware of the agreement as she had placed thumb print on letter to the than Fiji Electricity Authority for connection of power to the area he occupies.

He believes the agreement is not void ab-initio as he believes the Plaintiff is legally bound by it.

It's the Plaintiff's duty to apply for consent of the Lands Department and he has been advised the Plaintiff can lodge for consent.

After the demise of Uday Raj Singh rental sum of \$500 per month was received and receipted by the Plaintiff.

The tenancy agreement is for 10 years.

According to him, consent of the Director of Lands for issuance of business license of its operation was not required as he had previous business and renewal of business license.

The car wash business was still in the process of registration at the town council who had inspected the proposed place for the construction of a water closet system. A completion certificate was to be issued after completion of the work.

The validity of the agreement is a triable issue hence the originating summons should be converted and proceed to trial proper.

It was a term of the agreement that he can at any time sell the business to any other party or sub-lease the same.

4. Section 169 of the Land Transfer Act reads:

*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.*

5. The Defendant under section 172 of the Land Transfer Act *"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 with costs against the proprietor, mortgage or lessor or he may make any order and impose any terms he may think fit"*.

6. Annexure "A" to the Affidavit of Nirmala Wati sworn on 19 April, 2018 is copy of the Commercial Lease with Crown Lease No. 714093 for land being CT Number XI/056 (part of) Wainibuku (part of) formerly Lot 3 R1669, Naitasiri, Lot No. 1 on DP No. 9677.

It contains a clause stating:

*"It is expressly declared that this lease is a Protected Lease under the Provisions of the Crown Land Act"*.

The Lease is between the Director of Lands as lessor and Uday Raj Singh and Nirmal Wati as joint tenancy being lessees on the other part.

7. I find that the Plaintiff has established a right to being the proceeding against the Defendant.
8. The Defendant relies on a tenancy agreement dated 9 January 2015 between the late Uday Raj Singh and himself for him to open and operate:
  - Car wash;
  - Tyre sale and repair centre;
  - Workshop/service and repair centre;
  - Rental car office;
  - Spare part sale.

One of the clauses also allows the Defendant to sell the business to other parties and/or to sub-lease to other parties.

This is a 10 year lease which can be renewed if the owner wishes to.

9. The said piece land being a protected lease is subject to section 13 of the Crown Lands Act which section reads:
  - a. *Whenever in any lease under this Act there has been inserted the following clause:-*
    - "This is a protected lease under the provision of the Crown Lands Act"*
    - (hereinafter called a protected lease).*
    - It shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sub-lease or in any other manner whatsoever. Not to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease".*
    - Any sale, transfer, sub-lease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.*
10. The Defendant has obtained possession of land without first obtaining the consent of the Director of Lands.

He has taken the risk to occupy a land under protected lease without obtaining a consent from the Director of Lands Act.

Hence I do not find the Defendant can rely on the Tenancy Agreement dated 9 January 2015. It is null and void to claim interest on the property and a right of possession.

11. Accordingly an order is made as per the application.

The Defendant to give vacant possession of the property described and comprised in Crown Lease No. 714093 being Wainibuku (Part of) formerly Lot 3 R1669 being Lot 1 on DP 9677.

Execution is stayed for 30 days.

Further the Defendant is ordered to pay cost to the Plaintiff in sum of \$1,000. Said cost is to be paid in 14 days.



  
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**Vandhana Lal [Ms]**  
Acting Master  
At Suva.