IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 192 of 2014

BETWEEN : **RENU KUMARI** of Cuvu, Sigatoka, Domestic Duties.

Plaintiff

AND : **ASHNEEL PILLAY** of Cuvu, Sigatoka, Occupation known to the plaintiff and **THE OCCUPANTS** of all that land known as Lot 1 NDSW 1079 with an area of 1328 square meters in the Tikina of Sigatoka in the province of Nadroga/Navosa in Tenancy at Will dated 18th February 2014

Defendant

Before : Master U.L. Mohamed Azhar

Counsels : Mr. R. Gordon for the Plaintiff
Mr. K. Vuataki for the Defendant

Date of Judgment : 05th June 2020

JUDGMENT

01. The plaintiff took out the originating summons against the defendant, pursuant to Order 113 of the High Court Rules and inherent jurisdiction of this court, seeking an order that the defendant to deliver vacant possession of all that land known as Lot 1 NDSW 1079 with an area of 1328 square meters in the Tikina of Sigatoka in the province of Nadroga/Navosa in Tenancy at Will dated 18th February 2014. The summons is supported by an affidavit sworn by the plaintiff and contains three annexures marked as **"A"**, **"B"** and **"C"**. The annexure **"A"** contains a copy of the 'Tenancy at Will' dated 18.02.2014 and a copy of Tax Payer Registration Letter (TIN). The annexure **"B"** contains a copy of the 'Tenancy at Will' that was previously granted to the plaintiff and some receipts of Crown Lease Rental. The annexure **"C"** is the copy of the consent letter issued by the then Acting Director of Lands to institute this legal proceeding against the defendant.

02. Upon service of the summons, the defendant appeared in person and moved to file the affidavit in opposition which was allowed. Thereafter, the defendant, through his solicitors, filed a summons with his supporting affidavit to name one Tota Ram as the second defendant in this matter on the premise that, he (the defendant) was mere caretaker and the said Tota Ram was residing in the house from which the plaintiff tried to evict the defendant. The summons filed by the defendant was heard by the previous Master of this court and dismissed. Though the defendant appealed against the decision

of the then Master, it was struck out for his non-appearance. The instant summons was then fixed for hearing as the defendant failed to appear even though the notice was served on him. On that hearing date, the counsel for the plaintiff moved to vacate the hearing as he wanted to amend the summons. The leave was granted and the amended summons was filed.

03. When the amended summons was taken up for hearing, the court found the amended summons contained multiple remedies running to 16 remedies divided into two parts. The Order 113 provides for a specific procedure for recovery of possession. In proceedings under this Order, the only claim that can be made in the Originating Summons is for the recovery of possession of land; notwithstanding O15 rule 1 no other cause of action can be joined with such a claim in proceeding under this Order, and no other relief or remedy can be claimed in such proceedings. The Order is narrowly confined to the particular remedy described in rule 1(**see: Supreme Court Practice 1988 (White Book) 113/1-8/1 page 1470**). Therefore, the court directed the plaintiff's solicitor to amend the summons in compliance with Order 113. In the meantime, the defendant's new solicitor, who was present in court, sought leave to file the affidavit in opposition of the defendant. The court vacated the hearing and directed the plaintiff to amend the summons and serve it on the defendant and further directed both the defendant and the plaintiff to file their respective affidavits. The parties complied with the directions and finally the summons was fixed for hearing.

04. At hearing of the summons, both counsels made oral submission and in addition, the counsel for the defendant tendered his written submission. The counsel for the plaintiff was allowed to file his submission within 28 days if he wished to do so and the reply submission (if any) by the plaintiff's counsel within 14 days thereafter. However, plaintiff's counsel did not file any such submission. Thus there was no necessity for the defendant to file a reply submission.

05. The purpose of the Order 113 of the High Court Rules, in its plain meaning is to provide a summary and speedy procedure for the recovery of possession of any land when it is in wrongful occupation by a person who has no consent or licence either from the applicant/plaintiff or his predecessor in title. The introduction of this rule in United Kingdom was prompted by the decision of **Manchester Corp v Connolly** [1970] 1 All ER 961, [1970] Ch. D 420 where it was held in appeal that the court had no power to make an interlocutory order for possession. This was well explained in **Dutton v Manchester Airport** [1999] All ER 675 at 679 as follows:

> "**Order 113** was introduced in 1970 (by the Rules of the Supreme Court (Amendment No 2) 1970, SI 1970/944), shortly after the decision of this court in Manchester Corp v Connolly [1970] 1 All ER 961, [1970] Ch 420. It had been held in that appeal that the court had no power to make an interlocutory order for possession. **Order 113** provides a summary procedure by which a person entitled to possession of land can obtain a final order for possession against those who have entered into or remained in occupation without any claim of right--that is to say, against trespassers. The order does not extend or restrict the jurisdiction of the court. In University of Essex v Djemal [1980] 2 All ER 742 at 744, [1980] 1 WLR 1301 at 1304 Buckley LJ explained the position in these terms:

'I think the order is in fact an order which deals with procedural matters; in my judgment it does not affect in any way the extent or nature of the jurisdiction of the court where the remedy that is sought is a remedy by way of an order for possession. The jurisdiction in question is a jurisdiction directed to protecting the right of the owner of property to the possession of the whole of his property, uninterfered with by unauthorised adverse possession.'

06. The Order 113 rule 1 reads;

> "Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order".

07. The scope of this rule 1 was explained by Justice Pathik in **Baiju v Kumar** (supra). His Lordship cited the passage from the **White Book** when explaining the scope and stated that:

> "The question for Court's determination is whether the plaintiff is entitled to possession under this Order. To decide this, the Court has to consider the 'scope' of the Order. This aspect is covered in detail in **The Supreme Court Practice, 1993 Vol 1, O.113/1-8/1** at page 1602 and I state hereunder the relevant portions in this regard:
>
> > **"This Order does not provide a new remedy, but rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers."** (Emphasis mine)
>
> As to the application of this Order it is further stated thus:
>
> > **"The application of this Order is narrowly confined to the particular circumstances described in r.1. i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his. The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O.14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the**

determination of the licence (Bristol Corp. v. Persons Unknown) [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593."

This Order is narrowly confined to the particular remedy stated in r.1. It is also to be noted, as the **White Book** says at p.1603:

> **"this Order would normally apply only in virtually uncontested cases or in clear cases where there is no issue or question to try, i.e. where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as to wrongful occupation on the land without licence or consent and without any right, title or interest thereto."**

08. It appears from the decision in **Dutton v Manchester Airport** (supra) and the commentary in the **White Book** cited above that, this is the procedure to recover the possession of a land occupied by a trespasser or a squatter.

09. KENNEDY LJ., in **Dutton v Manchester Airport** (supra) said at page 689 that:

> The working of RSC Ord 113 and the relevant facts can be found in the judgment of Chadwick LJ. In Wiltshire CC v Frazer (1983) 47 P & CR 69 at 76 Stephenson LJ said that for a party to avail himself of the order he must bring himself within its words. If he does so the court has no discretion to refuse him possession. Stephenson LJ (at 77) went on to consider what the words of the rule require. They require:
>
> > '(1) Of the Plaintiff, that he should have a right to possession of the land in question and claim possession of land which he alleges to be occupied solely by the defendant. (2) That the defendant, whom he seeks to evict from his land [the land], should he persons who have entered into or have remained in occupation of it without his license or consent [or that of any predecessor in title of his].'

10. The above decisions and the commentary on this Order 113 makes it manifestly clear that, the courts must be satisfied that there is no reasonable doubt on, (a) the claim of the plaintiff and (b) on the wrongful occupation of the defendant. It follows that, it is the duty of the plaintiff, who invokes the jurisdiction of this court under this Order, to firstly satisfy the court that, it is virtually a clear case where there is no doubt as to his claim to recover the possession of the land. In that process, he must be able to show to the court of his right to claim the possession of the land and then to satisfy that the defendant(s) (not being a tenant or tenants holding over after the termination of the tenancy) entered into the land or remained in occupation without his licence or consent or that of any predecessor in title. Once the plaintiff satisfies these two factors, he or she shall be entitled for an order against the defendant. Then, it is incumbent on the defendant, if he wishes to remain in possession, to satisfy the court that he had consent either from the plaintiff or his predecessor in title. If the defendant can show such consent, then the application of the plaintiff ought to be dismissed.

11. The plaintiff in her last amended summons seeks an order on the defendant and other unknown occupants to immediately vacate and give the plaintiff the vacant possession of all that land known as Lot 1 NDSW 1079 with an area of 1328 square meters in the Tikina of Sigatoka in the province of Nadroga/Navosa in 'Tenancy at Will' dated 18th February 2014. The allegation of the plaintiff is that, the defendant and other occupants have been occupying the house situated in the above mentioned land comprised in her 'Tenancy at Will' without her consent and leave. On the hand, defendant claims that, he has been occupying portion of that house with the leave and license of Tota Ram who is entitled to that house by virtue of the will of his father and said Tota Ram occupies the balance portion. In fact, the plaintiff in paragraph 6 of her supporting affidavit admitted that, her brother Tota Ram allowed the defendant and other occupants to occupy the disputed house. In addition, the defendant raised three issues in this case. Firstly, the defendant stated that, the plaintiff's 'Tenancy at Will' refers to another land and not the land where the disputed house is situated. Secondly, the plaintiff's 'Tenancy at Will' does not include the house claimed by the plaintiff. Finally, the plaintiff fraudulently obtained 'Tenancy at Will' with the knowledge of the interest that Tota Ram has on the property by virtue of the Last Will of Balram – the father of both the plaintiff and Tota Ram.

12. According to the said 'Tenancy at Will', which is marked as **'A'** and annexed with the plaintiff's affidavit, she was granted an area of 1328 m^2 as residential tenancy on the annual rental of $ 100 effective from 01.01.2014. The main feature and one of the four conditions of this 'Tenancy at Will' is that, the plaintiff may be required to vacate the land as it does not operate as tenancy. The land is situated, as per the description given in that 'Tenancy at Will', in the Tikina of Sigatoka in the province of Nadroga/Navosa. In the meantime, the plaintiff annexed a copy of sub-divisional scheme plan of a land, highlighting her Lot 1 allegedly occupied by the defendant and others. However, as pointed out by the counsel for the defendant that sub-divisional scheme plan refers to a land situated in the Tikina of Cuvu and not Tikina of Sigatoka where the plaintiff's land, described in her 'Tenancy at Will', is situated. The defendant annexed the Last Will of the father of Tota Ram who allowed him to occupy the house and stated that, one acre land and the dwelling house was bequeathed to Tota Ram by his father through the said Last Will. The plaintiff did not dispute the said Last Will and it was admitted that, she and Tota Ram are sister and brother and it was the Last Will of their father – Balram.

13. In the meantime, the plaintiff annexed the previous 'Tenancy at Will' issued to her on 14.06.2011, marking as **"B"**. According to that 'Tenancy at Will', she was given one acre land in the Tikina of Cuvu in the province of Nadoga. It is obvious that, the plaintiff was given a larger land (one acre) in that previous 'Tenancy at Will' in the Tikina of Cuvu in the province of Nadroga. Later, she was given 'Tenancy at Will' for a smaller land in the extent of 1328 m^2 in the Tikina of Sigatoka and the province of Nadroga/Navosa. There is no explanation by the plaintiff as to why her previous 'Tenancy at Will' was revoked and she was given the current 'Tenancy at Will'. In any event, it appears on the face of these two 'Tenancies at Will' (documents marked as **"A"** and **"B"** and annexed with the affidavit of the plaintiff) that, both relate to different land situated in different Tikinas and provinces. However, according to the Schedule to the iTaukei Affairs (Boundaries) Regulation both the Tikinas of Cuvu and Sigatoka (Nasigatoka) comprise of the portion of Nadroga and Navosa. Therefore, it cannot be said, without proper plan, whether the present 'Tenancy at Will' falls within the province of Cuvu or Sigatoka. Further, the defendant annexed a copy of an e-mail marked as **"A"** with his affidavit filed on

03.05.2019. It is from the Department of Housing and deals with the dispute between the plaintiff and her brother Tota Ram who allowed the defendant to occupy the disputed house. It states that, the department is continuing the sub-division of the land in Cuvu and it is to regularize the site where the house of Tota Ram is situated. The e-mail further states that, the separate lot within the same land should be sub-divided and allocated to the plaintiff. This document which was tendered by the defendant himself clearly indicates that, the disputed house is situated in the same land. Therefore, I am unable to accept the first issue raised by the defendant.

14. Though this e-mail rebuts the claim of the defendant that, the disputed house is situated in a different land, it indicates the will of the department that, Tota Ram to be regularized on his house site and a separate lot to be sub-divided and allotted to the plaintiff. This supports the second issue raised by the defendant that, the 'Tenancies at Will' of the plaintiff does not include the disputed house. The defendant annexed the copy of the letter issued by the then Acting Director of Land Ms. Preetika Prasad, marking as **"AP3"** with his affidavit. The said letter is reproduced below for easy reference and discussion.

> From: Preetika P. Prasad
> Sent: Friday, April 04, 2014 10:50 AM
> To: Saroj
> Cc: Tevita G. Boseiwaqa;William A. Sigh; Ilaitia B. Navunisaravi
> Subject: RE: File 4/11/1211 & 69/10 (Appointment 14/05/14/ or 15/05/14
>
> **"WITHOUT PREJUDICE"**
>
> Dear Mr. Ram
>
> 1. Should you wish to challenge our decision, it is your right to. We cannot comment on that.
> 2. The decision we have made in regards to granting a tenancy at will to Ms. Renu Kumar is based on legal advice receive from our legal officers.
> 3. However, the tenancy at will makes Ms. Umar a tenant over the land, not the house or the chattels which could be on the land. If this is in dispute in court already then if any Orders are made by the court which will need our intervention, we will abide by the same.
> 4. Hope the above clarifies.
>
> Kind regards
> Preetika Prasad (Ms)
> **Acting Director of Lands**

15. It seems from the above letter that, it was addressed to Tota Ram on his query about the 'Tenancy at Will' issued to the plaintiff. The Acting Director clearly stated the decision of the department to grant 'Tenancies at Will' to the plaintiff and further stated that, such

decision was taken by her on legal advice. Whilst acknowledging the right of Tota Ram to challenge the said decision, the Acting Director made it clear that, the 'Tenancies at Will' of the plaintiff does not include house or chattels on the said land. The plaintiff in reply to this document stated in her affidavit in reply that, her current 'Tenancy at Will' includes the said house which is now occupied by the defendant. Her 'Tenancy at Will' comprise the land marked as Lot 1 in NDSW 1079 in the extent of 1328 m^2. However, the said 'Tenancies at Will' does not prescribe the boundaries of her land. Further she failed to annex a copy of Plan NDSW 1079, to ascertain the boundaries of her 'Tenancy at Will'. Instead she attached another sub-divisional scheme plan of a land situated in Tikina of Cuvu and asserted that, the Lot 54 in that sub-divisional scheme plan refers to her Lot 1 in NDSW 1079 which is mentioned in her 'Tenancy at Will'. However, all these assertions are not supported by any evidence. What appears from **"AP3"** (the letter from the then Acting Director of land) and **"AP4"** (the e-mail from the Department of Housing) that, the Department of Housing is developing the land in Cuvu and according to that development, Tota Ram to be regularized on his house site and a different lot to be allotted to the plaintiff. That is why the Director of Land clearly affirmed that, the 'Tenancy at Will' of the plaintiff does not include any house or chattels in that land. Therefore, it is proved that, the plaintiff has no right over the house situated in that land and occupied by the defendant and Tota Ram.

16. In fact, the counsel for the plaintiff admitted that, the director of land excluded the house from the 'Tenancy at Will' of the plaintiff. However, he challenged that decision of the Director of Land in his argument. At that time, the court suggested to convert this originating summons into a writ action, so that Director could come and give evidence at trial justifying the decision to exclude the house from the 'Tenancy at Will' of the plaintiff. However, the counsel for the plaintiff did not want it, but he insisted this court to make an order that, the plaintiff is entitled to possess the house. He further stated that, the decision of the Director of Land excluding the house from the 'Tenancy at Will' of the plaintiff was wrong and this court should correct it. Basically he wanted a declaration by this court that, the plaintiff is entitled to the house which was excluded from her 'Tenancy at Will'. What the counsel for the plaintiff missed is that, the 'Tenancy at Will' shall not create a tenancy in respect of the land and the right of occupancy can be brought to an end at any moment. The Fiji Court of Appeal in **Ganpati v Somasundaram** [1976] 22 FLR 194 (26 November 1976) considered a 'Tenancy at Will' and cited a decision of Stuart J in *Damodaran Reddy v Raghwa Nand (Civil Appeal 3/1972) decided on 1st October 1973* where Judge Stuart discussed about an 'Approval Notice' in respect of a land. Having approved the decision of Stuart J, the Court of Appeal held that:

> *The instant case is therefore stronger on the facts (in favour of the appellant) than Damodaran Reddy v Raghwa Nand, to which Marsack J.A. has referred in his judgment. Stuart J. there had to consider whether an approval notice, similar to the one before this court had in equity the status of a lease. He held that it did not, as no action for specific performance could have been brought against the Director of Lands.* ***The bar against an action for specific performance by the holder of a tenancy at will such as the one in the present case is even stronger— the document is expressed to create no tenancy and the right of occupancy can be brought to an end at any moment. Also, as has been***

said, the tenancy at will contained no reference to a protected lease. (Emphasis added).

17. The Fiji Court of Appeal made it abundantly clear that, there is a strong bar against an action for specific performance by the holder of a 'Tenancy at Will' and therefore, no action for specific performance could be brought against the Director of Land. It follows that the court has no jurisdiction to make an order on the Director of Land for specific performance in relation to a 'Tenancy at Will' if it is revoked or cancelled. Furthermore, the jurisdiction of the court under Order 113 of the High Court Rule is to restore a person, who is entitled to possess any property evicting any person who is wrongfully occupying the same. It is not the duty of this court under this rule to decide the ownership of any person to any property or to make an order on the director of land to grant lease to any person. Therefore, the submission of the counsel for the plaintiff, that this court is to correct the decision of the Director of Land which excluded the disputed house from his client 'Tenancy at Will', is not only misleading, but also against the settled law of this country.

18. Under the Order 113, a plaintiff should satisfy his or her right to claim the possession of the subject property. Thus, a plaintiff could be a licensee too, who is entitled for possession. In **Dutton v Manchester Airport** (supra) Laws LJ, held at page 689 that:

> *'In my judgment the true principle is that a licensee not in occupation may claim possession against a trespasser if that is a necessary remedy to vindicate and give effect to such rights of occupation as by contract with his licensor he enjoys……"*

19. According to the above dictum, a licensee who has right to possession can bring an action under this Order, even though he is in de facto possession of the subject property. However, he cannot invoke the jurisdiction of this court under this rule if he has no right of occupation. Furthermore, it is the settled law that, the person who seeks an ejectment must have a superior legal title. In **Danford v McAnulty** (1883) 8 A.C 456 at 462 Lord Blackburn said:

> *'…in ejectment, where a person was in possession those who sought to turn him out were to recover upon the strength of their own title; and consequently possession was at law a good defence against any one, and those who sought to turn the man in possession out must show a superior legal title to his.'*

20. The plaintiff claims the right to occupation of the disputed house situated in the land marked Lot 1 in NDSW 1079 containing an area of 1328 m^2 by virtue of the 'Tenancy at Will' dated 18.02.2014. Undoubtedly, the 'Tenancy at Will' of the plaintiff does not include that disputed house occupied by the defendant with the leave and license of Tota Ram. She is not a licensee who has no right to possess the disputed house, as her 'Tenancy at Will' excludes that house. Thus she has no locus to invoke the jurisdiction of this court under Order 113 of the High Court Rules. On these reasons alone, the summons filed by the plaintiff must be dismissed.

21. The third issue raised by the counsel for the defendant is the allegation of fraud on part of the plaintiff. The counsel submitted that, the father of both the plaintiff and Tota Ram, by his Last Will, a copy of which is marked as **"AP1"** and annexed with the affidavit of the defendant, bequeathed the disputed house to Tota Ram and moneys to his children including the plaintiff and Tota Ram. The counsel further stated that, plaintiff, knowing the unregistered interest of her brother Tota Ram, fraudulently obtained the current 'Tenancy at Will'. In support of his argument, the counsel cited several authorities which deal with allegation of fraud. On the other hand, the counsel for the plaintiff counted this submission saying that, the subject land is a crown land and transfer of any right over such land without consent of the Director of Land is contrary to section 13 of the State Land Act. Therefore, the counsel submitted that, the transfer of disputed house by the father of plaintiff to Tota Ram through a Last Will is null and void. In my view the submission of both counsels are not relevant to this case for the reasons given below.

22. The plaintiff is given only the 'Tenancy at Will' and as discussed above it shall not operate a tenancy in respect of the said land and the occupancy of the plaintiff could be brought to an end at any moment. The plaintiff is obliged to vacate the land whenever such notice is issued by the Director of Lands as stipulated in condition 3 of the 'Tenancy at Will' dated 18.02.2014. As the Fiji Court of Appeal held in **Ganpati v Somasundaram**(supra) the holder of 'Tenancy at Will' cannot bring action for specific performance against the Director of Lands. Furthermore, the 'Tenancy at Will' of the plaintiff, as expressly stated by the Director of Lands, does not include the area which was bequeathed to Tota Ram and the disputed house situated therein. Therefore, it cannot be said that, the plaintiff obtained a 'Tenancy at Will' over the house bequeathed to Tota Ram. The area in which the disputed house is situated and the house itself too is not affected by the Tenancy at Will of the plaintiff. It follows that, the issue of fraud does not arise in this case.

23. On the other hand, the first thing that strikes everyone who intends to deal with the either state land or native land is consent of the Director of Lands or the iTaukei Land Trust Board. The section 13 of the State Land Act and section 12 of the iTaukei Land Trust Act are the relevant provisions in this regard. However, the difference between these two provisions is seldom considered or mostly overlooked by both the parties and their solicitors. The section 12 of the iTaukei Land Trust Act is applicable to all leases issued under that Act and it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof without the consent of the Board.

24. However, the question of consent of the Director of Land under the section 13 of the State Lands Act arises only when a lease is a 'protected lease' under the provisions of that Act as it has been clearly provided in section 13 of that Act. Justice K.A Stuart in **Damodaran Reddy v Raghwa Nand** Civil Appeal No. 03 of 1972, decided on 1st October 1973 clearly expounded the application of section 13 of State Land Act. This was also articulated by Hammett Ag. C.J. in **Ram v Pal** [1963] 9 FLR 141 (20 September 1963). It was an appeal against the decision of a magistrate which held a contract for transfer of a 'Tenancy at Will' was illegal for lacking the consent of Director of Lands. His Lordship stated that:

In this connection one point appears to have been overlooked. This arises out of the wording of section 15 of the Crown Lands Ordinance (Cap. 138), of which the material part reads:

"(1) Whenever in nay lease under this Ordinance there has been inserted the following clause:-

'This lease is a protected lease under the provisions of the Crown Lands Ordinance' (hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with land comprised in the lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same without the written consent of the Director of Lands first had and obtained..."

It appears, therefore, that it is only when a lease is expressly stated to be "a protected lease", that the consent of the Director of Lands to its transfer becomes necessary. If it is not "a protected lease" the consent of the Director of Lands does not appear to be necessary before it can be transferred or sold. There is no evidence in this case that the land concerned is held under a protected lease, in fact if the respondent only held a tenancy – at – will it is extremely unlikely that his title could be "a protected lease" at all. The consent of the Director of Lands would not, therefore, appear to have been required in this case under the Crown Lands Ordinance itself.

25. In fact, Hammett Ag. C.J. in that case meant the section 13 as His Lordship mentioned that section though the passage indicates it as section 15. The Fiji Court of Appeal in **Ganpati v Somasundaram** (supra) upheld both decisions of Hammett Ag. C.J. and Justice K.A. Stuart. It must be noted here that the court dealt with an issue in relation to a Tenancy at Will in that **Ganpati case**. It follows that, the consent of the Director of Land is necessary only when a lease is a 'protected lease' under the provisions of State Land Act. It is not even required for the 'Tenancy at Will' according to the above decision. In the case before me, neither Tota Ram has, nor did his father have any lease at all. Tota Ram has been occupying the house in a state Land in Cuvu after his father's death. It reveals, from the document marked as **"AP4"** and annexed with the affidavit of the defendant, that Tota Ram to be regularized when the Department of Housing completes the sub-division and development of state Land in Cuvu. Therefore, the question of consent of Director of Lands does not arise at this moment. As a result, I am unable to agree with the submission of both counsels in relation to allegation of fraud and absence of consent.

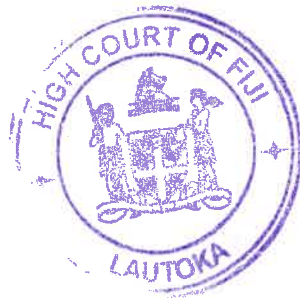
26. According to the above discussion, it reveals that, the plaintiff failed to prove that, her 'Tenancy at Will' includes the disputed house occupied by the defendant and others including Tota Ram. On the other hand, the evidence adduced by the defendant clearly proves that, the Director of Land had clearly excluded the said house from the 'Tenancy at Will' of the plaintiff. Thus the plaintiff's summons for the ejecting the defendant and others and claiming the possession of that house must fail and ought to be dismissed. Further, it reveals from the evidence of before the court that, the plaintiff was aware and or could not have been unaware of this clear exclusion of the said house. She also

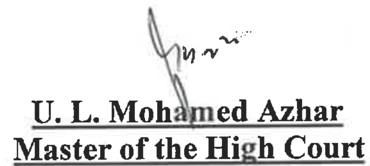
admitted in her affidavit that, her brother Tota Ram allowed the defendant to occupy the said house. However she brought this summons against the defendant and others who were allowed to occupy by her brother. Therefore, the defendant must be reasonably compensated with a cost,

27. Accordingly, I make following final orders:

   a. The summons filed by the plaintiff is dismissed, and

   b. The plaintiff should pay a summarily assessed cost of $ 2,000 to the defendant within a month from today.





U. L. Mohamed Azhar
Master of the High Court

At Lautoka
05.06.2020