

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION
CIVIL ACTION NO. HBC 04 OF 2020

BETWEEN: **BHAN PRATAP CHAND**

APPELLANT\DEFENDANT

AND: **DURGA PRASAD GAUTAM**

RESPONDENT\PLAINTIFF

Appearance: Appellant\Defendant - Mr. Tuifagalele N.
 Respondent\Plaintiff - Ms. Lagonilakeba J.

Date of Hearing : 16th October, 2020

Date of Judgment : 16th October, 2020

JUDGMENT

Introduction

[1] Plaintiff filed originating summons in terms of Section 169 of Land Transfer Act 1971 in order to obtain vacant possession of a premises comprised in Crown Lease 512285. Plaintiff had filed an affidavit in support and annexed certified title to said Crown Lease. Upon the service of the same Defendant had appeared in court and was granted time to file affidavit in opposition. This was not done. On the day of hearing counsel for

Defendant stated the client had neither come to sign the affidavit nor answering to calls. So the matter proceeded to hearing without an affidavit in opposition. In such a situation court needs to only examine the title which was annexed. Master had delivered a written ruling 3.6.2020.

- [2] Defendant had filed Notice of Appeal on 18.6.2020 and on the same day a summons was filed seeking stay of execution pending appeal. Summons for Directions was filed on 8.7.2020 .I was informed that already Defendant was evicted from the premises, hence it is superfluous to deal the application for stay.
- [3] The appeal is against Master's decision of 3.6.2020. This action was instituted on 24.12.2020. There was no issue as to the service of the originating summons as there was appearance on behalf of Defendant on 4.3.2020. In the absence of affidavit in opposition Master needs to consider only formal proof of the title by Plaintiff. In the affidavit in support a certified copy of Crown Lease 512285 annexed. In that Plaintiff is the last registered lessee.
- [4] Plaintiff in the affidavit in support stated that Central Agricultural Tribunal had quashed ALTA Tribunal's decision, hence Defendant cannot occupy the land. He also stated that Defendant was allowed to occupy in the land by Plaintiff.

Appeal Ground 1 & 2

- [5] Defendant had ample time to file an affidavit in opposition before 20.4.2020 rather than seeking vacation of hearing on that day. So there is no error of law or fact made by Master proceeding to hearing when the counsel had indicated that Defendant was not answering to the phone calls and or he did not come to sign the affidavit in opposition.

Appeal Ground 3 & 5

[6] Crown Lease 512285 was issued to Plaintiff under certain conditions. Section 13 of the State Lands Act 1945 applies only to 'Protected Lease'. Master was correct in holding that Director of Land's consent was not needed when lessee seeking eviction proceedings in terms of Section 169 of Land Transfer Act 1971. Eviction of an unauthorized person is not a dealing which needs sanction of Director of Land.


Appeal Grounds 4 & 6

[7] In the absence of affidavit in opposition Master was correct to come to a conclusion that Defendant had not fulfilled the requirements in Section 172 of Land Transfer Act 1971.

Final Order

- a. Appeal is dismissed
- b. Master's decision affirmed.
- c. No cost ordered.




Deepthi Amaratunga
Judge