

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

Civil Action No: HBC 289 of 2017

(Appeal from the judgment of
the acting Master of the High
Court at Suva on 27 June 2019)

BETWEEN : LILA WATI aka LILA WATI SHARMA

APPELLANT

AND : HIRDEI WATI SHARMA and RAJIV SHARMA

RESPONDENTS

BEFORE : M. Javed Mansoor, J

COUNSEL : Ms. S. Saumatua for the appellant

: Ms. I. Lutu for the respondents

Date of Hearing : 17 November 2020

Date of Judgment : 14 October 2022

JUDGMENT

PROPERTY LAW

Appeal – Eviction proceedings by registered proprietor – Whether cause shown – Deed of renunciation challenged – Fraud – Section 169 of the Land Transfer Act

The following cases are referred to in this judgment

- a. *Inwards v Baker* [1965] 2 QB 29
 - b. *Azmat Ali v Mohammed Jalil* [1982] FJLawRp 9; [1982] 28 FLR 31 (2 April 1982) HBC 44.1981 (2 April 1982)
 - c. *Morris Hedstrom v Rashid Khan* [1987] FijiLawRp 8; [1987] 33 FLR 97 (3 July 1987)
 - d. *Caldwell v Mongston* [1907] 3 FLR 58
 - e. *Rajendra Prasad v Wali Mohammed* [2005] FJHC 124; HBC 272.1999L (3 June 2005)
 - f. *Fels and Another v Knowles and Another* [1906] 26 NZLR 604
 - g. *Assets Company Ltd v Mere Roihi* [1905] AC 176
 - h. *Sigatoka Builders Ltd v Pushpa Ram & Another* HBC 182.011 (22 April 2002)
 - i. *Darshan Singh v Puran Singh* [1987] 33 Fiji LR 63
 - j. *Wallingford v Mutual Society* [1880] 5 AC 685
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1. This is an appeal from the decision of the acting master of the High Court in Suva on 27 June 2019 refusing to make an order for possession under section 169 of the Land Transfer Act 1971.

The case before the acting master

2. The appellant filed action by originating summons on 6 October 2017 seeking immediate vacant possession of a parcel of land occupied by the respondents. The land is described in certificate of title number 17153 as lot 60 on deposited plan number 4257 containing an area of one rood, two perches and nine tenths of a perch. The land is situated at Qarase Road, Nadera in Nasinu (“the property”). The appellant also sought to restrain the respondents from damaging or interfering with the improvements and/or fixtures on the property.

3. The application was supported by the affidavit of the appellant's son, Chandra Kant Sharma. He held a power of attorney from the appellant, who is based in Australia.
4. Mr. Sharma averred that the appellant is the registered proprietor of the property. He stated that the property is owned by his mother. She is 83 years old and resides in Perth, Western Australia. He said that the property has a single story residential dwelling. He averred that the first named respondent, Hirdei Wati Sharma, is his brother's wife. Rajeev Sharma is the son of Hirdei Wati Sharma. The property was purchased by his father, Vijendra Sharma in March 1977. His father died on 8 March 1992 in Perth, Western Australia. He did not leave a will. The High Court granted letters of administration to his mother in respect of his father's estate on 27 January 1993. He averred that after his father's death, he and his siblings executed deeds of renunciations to lot number 61 to ensure that his mother was looked after. These were filed in the High Court in relation to the probate action of his father. Thereafter, his mother retained possession and ownership of property. He averred that his mother permitted his brother, Shekar and his family to live on the property. He said that his brother died on 10 June 2014. Thereafter, his wife Hirdei and son Rajiv continued to stay at the property with the consent of his mother and the rest of the family. He stated that in 2015 his mother formed the intention to sell the property and instructed her solicitors to transfer it to her. He said this was done to put beyond doubt his mother's ownership of the property. The transfer was registered with the registrar of titles on 14 December 2016. He said that after hearing of his mother's intention to sell the property, the first respondent had indicated that she would not move out of the property. Thereafter, his mother's solicitors wrote to the respondents asking them to vacate the property. The notice was served on the respondents on 26 May 2017. He averred that there is no agreement between the appellant and the respondents, and that the respondents have no right to remain on the property.
5. The first named respondent, Hirdei Wati Sharma, filed an affidavit in opposition on behalf of herself and her son, Rajeev Sharma. She averred that registration of the transfer was obtained by the appellant by fraud. She said that lot 60 and 61 were both owned by her father in law, Vijendra Sharma, and that the appellant and Vijendra Sharma resided on lot 61 before migrating to Australia more than 40

years ago. The first named respondent and her husband occupied lot 60, on which they erected and maintained a dwelling. She said that Mr. Vijendra Sharma had asked her and her husband to move into lot 60 and to build their residence on it. He had assured them that they would own the property after his death.

6. The first named respondent averred that after Vijendra Sharma's death on 8 March 1992, the appellant approached her husband and told him that she wanted to sell lot 61. The appellant asked for his share to sell the property. In return, the appellant agreed to give him lot 60. In response to those promises, she and her husband went before a lawyer, and he signed a document. She said that her husband was not explained the contents of the document at the time of signature. She said that her husband signed the document on the clear understanding that he would be the owner of lot 60 as earlier promised by Vijendra Sharma.
7. The first named respondent said that she was surprised upon seeing the document of renunciation purporting to have been signed by her husband on 24 November 1992 in which he gave up all his rights to his mother. She stated that the appellant was aware that she and her husband were not educated. They trusted the appellants and relied on their assurance that the document would not affect his rights to occupy and own lot 60. They thought that Shekar's signature was only to give consent to the sale of lot 61. She averred that her husband's signature on the deed of renunciation was obtained by fraud. During her husband's life time, he requested the appellant to transfer the property to him, and although she agreed to do so the transfer was never carried out. She stated that she has a right to remain on the property because her husband never renounced his rights to the property. She stated that the appellant encouraged them to spend on the property after the death of Vijendra Sharma, on the assurance that she would transfer it to her husband.
8. By supplementary affidavit filed on 10 July 2018, the first respondent tendered a copy of the letters of administration issued by court on 19 January 2018 in respect of the estate of her husband, Chandra Shekar Sharma and the copy of the writ of summons to be issued against the appellant to make a claim based on the matters set out in her affidavit in opposition. In her affidavit in opposition filed on 20

November 2017 she declared that she instructed her lawyers to file a separate action to challenge the fraudulent transfer of the property to the appellant.

9. Chandra Kant Sharma in his affidavit in reply denied the allegations of fraud. He stated that the transfer of the property on 14 December 2016 was made pursuant to the last memorial on 25 February 1993 which is reflected on the title as a transmission by death to Lila Wati. He stated that the first named respondent had lodged a caveat on the property on 9 December 2015 prior to the transfer and that to the best of his knowledge the caveat was not accepted by the registrar of titles. He said that the transfer was registered almost a year after the first named respondent's lodgment of the caveat.
10. Mr. Sharma said that while lot 60 was owned by his father, lot 61 was purchased jointly by his father and his mother. Houses on both lots 60 and 61 were built by his father, who also maintained both houses. At the time the houses were built, the first named respondent had not occupied the property. He said that his father was not in Fiji when the first named respondent commenced her relationship with his brother, and that Vijendra Sharma did not meet or communicate with her as he had migrated to Australia before she occupied the property. She first occupied the property in 1992, about a week before his father passed away. Prior to that, he said, his brother was in a *defacto* relationship, and the children from that relationship were adopted by his parents and are in Western Australia.
11. He said that the house on the property was fully furnished at the expense of the appellant, by the time the first named respondent came into occupation. The appellant provided funds to his deceased brother to pay the various expenses associated with the property. He said that after his brother's death, the respondents paid council rates for 2015 and 2016, and the appellant paid for the year 2017. Mr. Sharma said he paid the sum of \$274.90 for 2018, which was reimbursed by the appellant. He said that prior to his brother's death, the appellant paid his brother to settle council rates. Mr. Sharma said that the property was provided to his brother to occupy only because he did not have the financial means to build his own house.

12. Upon the death of his father, Mr. Sharma said that his siblings, including his brother, Shekar, and himself agreed to renounce their shares in their father's property in favor of their mother. The renunciation of their interests was in respect of lot 61. Upon the sale of lot 61 in July 1993, the appellant distributed part of the proceeds of sale to all her children. This was done because his father intended all his property to be owned by his mother, and because he and his siblings wanted to make sure that she had the means to look after herself. He said that this was the reason to sign the deed of renunciation. At the time the deed of renunciation was signed, he said, the first named respondent was not married to his brother, but was in a *defacto* relationship.
13. He said that the first named respondent had not raised the issue of ownership previously. Probate was granted 25 years previously, and transmission by death registered. He said that the appellant had on numerous occasions told his brother that the property belongs to her, but his brother and the first named respondent did not object at such times. He said that his brother never denied having renounced his share of the property.

Judgment of the acting master

14. By judgment dated 27 June 2019, the acting master dismissed the application with costs on the basis that the matter could not be determined by affidavit evidence. The master observed that the appellant had not brought proceedings against the first named respondent whilst her husband was alive.
15. The acting master said that in terms of the certificate of title, the appellant is the last registered proprietor of the property, and that the summons described the property in respect of which court orders were sought. The master observed that the appellant did not bring proceedings to evict the first named respondent and her husband during his lifetime.
16. The acting master made reference to the decision in *Inwards v Baker*¹. In that case, having surveyed several authorities, Lord Denning expressed the view that if the owner of a land requests another, or indeed, allows another, to expend money on

¹ [1965] 2 QB 29

the land under an expectation created or encouraged by the landlord that he will be able to remain, that raises an equity in the license such as to entitle him to stay.

17. The appellant appealed. As the appeal was not filed within time, the appellant sought an enlargement of time to file the grounds of appeal. The respondents resisted the application for enlargement of time. After hearing the parties, by ruling dated 31 January 2020, the appellant was granted time to file the appeal.

Grounds of appeal

18. There are 17 grounds of appeal. These are reproduced below:
 1. "That the Acting Master erred in the law and in fact when she held that Vijendra Sharma passed away in March 1977, when the affidavit evidence of both parties clearly indicates that he passed away on 8 March 1992.
 2. That the Acting Master erred in law and in fact when she held that the Respondents claim that they are living on the family property with the leave and permission of the Appellant, was in fact inconsistent and not true as the Court did not consider the affidavit evidence that:
 - i. There was a Notice to vacate on 8th February 2017 issued to the Respondents;
 - ii. There was no agreement between the Appellant and the Respondents for the Respondents to occupy the property; and
 - iii. The Respondents were occupying the said property without the Appellant's consent.
 3. That the Acting master erred in law and in fact when it held that the Respondents claim that they are living on the family property with the leave and permission of the Appellant, was in fact inconsistent and not true as the Appellant acted to the contrary when she applied to the High Court for vacant possession against the Respondents.
 4. That the Acting Master erred in fact and in law when it did not take into account the fact that the Respondents had been living on the appellant's property rent free.
 5. That the Acting Master erred in fact and in law when it did not take into account the Appellant's age and her need to sell Lot 60 to sustain her in her old age.

6. That the Acting Master erred in fact and in law when it took into account irrelevant considerations that there was never a proceeding brought to evict the First Respondent whilst her husband was still alive, as:
 - i. There is no legal or moral obligations on the Appellant to evict the First Respondent during her husband's lifetime;
 - ii. The Appellant is at liberty to institute evictions proceedings at any time.

7. The Acting Master erred in fact and in law when it took into account irrelevant considerations of the assurance that the First Respondent and her husband will own Lot 60 after the father –in –law's death, and failed to consider:
 - i. That there was no registered Last Will and Testament of the father –in-law conveying that purported intention;
 - ii. The documentary evidence of the Deeds of Renunciation executed by all the 7 siblings in 1992;
 - iii. The documentary evidence of the Letters of Administration granted by the High Court on 27 January 1993; and
 - iv. The documentary evidence of the Transfer of Lot 60 to the Appellant on 14 December 2016.

8. The Acting Master failed to consider that the Deed of Renunciation by the First Respondent's husband was never revoked.

9. That the Acting master erred in law and in fact when she failed to consider that:
 - i. The Appellant had an indefeasible title against the world;
 - ii. Except in the case of fraud, the register is everything and the title to the land is that as registered with the Register of Titles under the land Transfer Act.

10. The Acting Master erred in fact and in law when it took into account verbal statements alleged to have been made by the Appellant to the First Respondent's husband in paragraph 11(ii) when it failed to consider that the consent of the First Respondent's husband or any of the other siblings was not required for the sale of Lot 61.

11. The Acting Master erred in fact and in law when it took into account verbal statements alleged to have been made by the Appellant to the First Respondent's husband in paragraph 11(iv) when it failed to consider that at the time this statement is alleged to

have been made, the Appellant was not the registered proprietor of Lot 60 and therefore could not have given what she did not have.

12. The Acting Master erred in fact and in law when it held that the Deed of Renunciation was obtained by fraud as the First Respondent's husband was not explained what the paper was about when:
 - i. Both the Appellant and Chandra were not present at the time the First Respondent's husband executed the Deed.
 - ii. Both the Appellant and Chandra did not have the onus of explaining the Deed to the first Respondent's husband at the time of execution.
 - iii. It was the First Respondent's husband that attended before the Commissioner of oaths and attested to the fact that the contents of the Deed were explained to him in English and that he understood its contents and the meaning and effect thereof. This is apparent from a plain reading of the Deed of Renunciation itself.
 - iv. The option to obtain alternative legal advice and/ or request an explanation from the Commissioner of Oaths was available to him.

13. The Acting Master erred in fact and in law when it held the First Respondent's husband signed the Deed on the understanding that the Lot 60 will be his, when this evidence is best established by the First Respondent's husband himself.

14. The Acting Master erred in fact and in law when it held that the First Respondent's claim for cancellation of transfer dealing no. 836835 on CT 17153 is on the basis that the Deed of Renunciation:
 - i. By her husband lacks consideration, when the consideration is clearly stated in the Deed to be natural love and affection;
 - ii. Is vague about who the gift was being made to, when the Deed clearly states that the gift is being made to the Appellant.
 - iii. Was in breach of the Land Sales Act, when in fact there is no breach, as any gifts to a non- resident (the Appellant being a non- resident) does not require Ministerial consent.

15. The Acting Master erred in fact and in law when it did not consider that even if the First Respondent's husband's Deed of Renunciation was set aside by the Court, it does not entitle the First Respondent's husband's Estate to ownership of Lot 60, it only means that he is entitled to one –seventh of two- thirds of the Estate.

16. The Acting Master erred in fact and in law when it considered the Respondent's unsubstantiated evidence of equitable interest over the Appellant's concrete evidence of her indefeasible title.

17. The Acting Master erred in fact and in law when it relied on *Inwards v Baker* to refuse an order for vacant possession against the Appellant, when there was no documentary evidence or supporting evidence produced by the Respondent in the High Court to show that Vijendra Sharma and/ or the Appellant requested them to expend money or allowed them to expend money on the land under an expectation or encouragement that they will be able to remain there, as these claims were clearly disputed by the Appellant in the affidavit evidence".

19. The first ground of appeal was abandoned at the hearing. Concisely, when taken together, the main question raised by these grounds is whether the appellant is entitled to an order for possession of the property after considering the cause shown by the respondents in opposition to the appellant's claim.

20. At the hearing counsel for both parties made oral submissions. In addition, the appellant filed written submissions. The respondents did not do so.

Is the appellant entitled to possession of the property?

21. This was the crux of the question before the master in the context of an application for possession of land by summary proceeding. A consideration of the relevant provisions of the Land Transfer Act are necessary to adjudicate the matter.

22. Section 169 (a) of the Land Transfer Act 1971 states:

“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;

23. In an action under section 169 of the Act, if a respondent proves to the satisfaction of the judge a right to possession, the judge is required to dismiss the summons or make any other appropriate order. This is provided by section 172 of the Act. Courts in Fiji have proceeded on the basis that if a person summoned proves to the

satisfaction of the judge a right to possession or can establish an arguable defence, the application would be dismissed. The person summoned must adduce some tangible evidence establishing a right or supporting an arguable case. In this case, the respondents showed cause and asked the acting master to dismiss the appellant's summons.

24. In *Morris Hedstrom v Rashid Khan*², the then Supreme Court stated that the onus is on the defendant to show an arguable case, and not just an argument. That means, the court said, the defendant must show evidence to support its contention. In that case, the plaintiff contended that the defendant was a month to month tenant of the land under a lease. The defendant was held not to have shown cause.
25. Once a certificate of title is registered with the registrar of titles, the instrument of title is considered indefeasible. Section 25 of the Act states that once a certificate of title is registered as provided, "...such certificate shall be received in all courts as conclusive evidence that such instrument has been duly registered".
26. Section 38 of the Land Transfer Act states:

"No instrument of title registered under the provisions of this Act shall be impeached or defeasible by reason or on account of any informality or in any application or document or proceedings previous to the registration of the instrument of title".
27. The appellant is the last registered proprietor of lot 60, the subject property. This is confirmed by the certificate of title. The respondents do not deny that the appellant is the registered title holder to the property. The respondents' contention is that registration of title to the property has been obtained by fraud.
28. The respondents submitted that the acting master's judgment was given after taking into account the pending writ action against the appellant and the affidavit evidence of both parties. In *Caldwell v Mongston*³, it was held that where

² [1987] FijiLawRp 8; [1987] 33 FLR 97 (3 July 1987)

³ [1907] 3 FLR 58

proceedings involve the consideration of complicated facts or serious issues of law, it will not decide the case on summary proceedings.

29. Three important matters are central to the cause shown by the respondents. These concern the deed of renunciation by Shekar Sharma, alleged fraud by the appellant in obtaining registration of title to the property and a writ action filed against the appellant by the respondents in respect of the property.

Fraud

30. Once title is registered according to the provisions of the Act, it is indefeasible except in the case of fraud. In *Rajendra Prasad v Wali Mohammed*, Gates J (as he then was) said:

“In Fiji, under the Torrens system of land registration, the register is everything; *Subaramani & Another v Dharam Sheela & 3 Others* [1982] 28 Fiji LR 82. Except in the case of fraud, the title to land is that as registered with the Registrar of Titles under the *Land Transfer Act* [see sections 39, 41 and 42]”⁴.

31. Where fraud is alleged, the court held in *Rajendra Prasad's* case, actual fraud must be proved.
32. In *Fels and Another v Knowles and Another*⁵, the New Zealand Court of Appeal considered the right of indefeasibility conferred by section 87 of the Land Transfer Act of 1885 and had this to say:

“The object of the Act was to contain within its four corners a complete system which any intelligent man could understand, and which could be carried into effect in practice without the intervention of persons skilled in the law. In this respect the Act goes so far as to make provision for the licensing of unskilled persons, called land brokers, to act for reward in the preparation of the instruments necessary to carry its provisions into effect. The cardinal principle of the statute is that the register is everything, and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world. Nothing can be registered the registration of which is not

⁴ [2005] FJHC 124; HBC 272.1999L (3 June 2005)

⁵ [1906] 26 NZLR 604 at 620

expressly authorised by the statute. Everything which can be registered gives, in the absence of fraud, an indefeasible title to the estate or interest, or in the cases in which registration of a right is authorised, as in the case of easements or incorporeal rights, to the right registered”.

33. *Rajendra Prasad v Wali Mohammed* referred to the decisions mentioned in the following paragraphs that discuss important principles that are relevant to the matters placed before court in this case. Fraud was defined in this way by the Privy Council in *Assets Company Ltd v Mere Roihi*⁶:

“...by fraud in these Acts is meant actual fraud, i.e. dishonesty of some sort, not what is called constructive or equitable fraud – an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud. Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shewn that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him. A person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can be properly acted upon.”

34. In *Sigatoka Builders Ltd v Pushpa Ram & Another*⁷, the High Court stated:

“Though evidence of fraud and collusion is often difficult to obtain, the evidence here falls a good way short of a standard requiring the court’s further investigation”.

⁶ [1905] AC 176 at 210

⁷ HBC 182.011 (22 April 2002)

35. In *Darshan Singh v Puran Singh*⁸, the court stated:

"There must, in our view, be some evidence in support of the allegation indicating the need for fuller investigation which would make section 169 procedure unsatisfactory. In the present case the appellant merely asserted that he had paid the money for the purchase of the property. This was denied by both Prasin Kuar and the respondent. There was nothing whatsoever before the learned judge to suggest the existence of any evidence, documentary or oral, that might possibly assist the appellant in treating the case as falling within the scope of section 169 of the Land Transfer Act and making an order for possession in favour of the respondent."

In that case it was held that a bare allegation of fraud did not amount by itself to a complicated question of fact that would make the summary procedure of section 169 inappropriate. The court held that a threshold of evidence must be reached by the defendant before the plaintiff can be denied his summary remedy.

36. The words of Lord Selbourne in *Wallingford v Mutual Society*⁹ are often quoted in cases where allegations of fraud are raised. Those words are relevant to the present appeal and are stated below:

"With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any Court to understand what it was that was alleged to be fraudulent."

37. The respondents say that the appellant procured registered title through fraud by inducing her husband, Shekar, to sign a deed of renunciation by promising to convey title to lot 60.

⁸ [1987] 33 Fiji LR 63 at 67

⁹ [1880] 5 AC 685 at 697

Renunciation

38. The documents of renunciation signed by all of the appellant's children were before court. The instruments bear the name of the High Court of Fiji in its caption. The appellant said that these documents were filed in the probate proceedings of the estate of Vijendra Sharma. This is not disputed by the respondents. The renunciation signed by the first respondent's husband, Shekar Sharma is no different to the renunciations signed by any of his six siblings; three brothers and three sisters. Shekar and another sibling were resident in Fiji, while the other signatories were based in Perth, Western Australia. In the document, Shekar says he is unemployed. He declares himself to be one of the beneficiaries entitled to share in the estate of the deceased. By deceased, the reference is to his father, Vijendra Sharma. He states further:

"NOW THEREFORE IN CONSIDERATION OF NATURAL LOVE AND AFFECTION I the above named CHANDRA SHEKAR SHARMA DOTH HEREBY RENOUNCE all my rights and interest to my share which I am entitled to in the estate of the deceased to my mother LILAWATI (father's name Ram Kisun Pande) of Lot 61 Nadera Nasinu in the Republic of Fiji Domestic Duties the proposed administratrix absolutely".

39. Chandra Shekar Sharma signed the renunciation at Suva on 24 November 1992. The language of the document leaves no doubt as to why he renounced his interest to his share of the property. As professed in the instrument, the renunciation was actuated by the natural love and affection he had for his mother, the appellant. He signed before a commissioner for oaths. Opposite his signature, a clause states that he signed after the contents were read over and explained to him in the English language and he appeared to fully understand the meaning and effect thereof. The signature is not legible. The respondents do not deny that he signed the document. In fact, the first named respondent admits to having accompanied him to the lawyer's office to sign the document. It is unclear whether a copy of the document was given to the signatory. The first respondent has not said anything on the matter.
40. The first respondent's explanation is that her husband was deceived into signing the deed. She alleges fraud on this basis. This does not seem plausible. There is

nothing on record to show that her husband considered himself to have been deceived or that he laid claims to the property. According to the evidence the appellant and the other siblings were not present when he signed the deed. He had the opportunity to obtain legal advice either before or after signing the deed. He does not seem to have raised the matter with the appellant at any time. From the date of signing the document on 24 November 1992 until his death on 10 June 2014, Shekar did not question any aspect of the document he signed renouncing his right to lot 61. The likelihood is that he signed the deed willingly along with his siblings so that his mother would benefit out of his father's estate.

41. The respondents claimed that Chandra Shekar was illiterate. Mr. Sharma disputed this claim. He said that his brother had a good education of the English language, having attended D. A. V College in Nabua. Shekar's signature on the instrument does not suggest him to be illiterate. It is noteworthy, that letters of administration issued in respect of the estate of Vijendra Sharma, describe him as a school teacher. Though this is by no means conclusive, the likelihood is that Shekar was not illiterate to the point of being ignorant of what he was signing. I am not inclined to accept the evidence of the respondents on the matter.
42. The deed of renunciation was signed by all of the appellant's children. Considering that all of the appellant's children have renounced their rights to the property, there is no reason for the appellant to promise only one of her children, the first respondent's husband, that the property would be conveyed to him and deny the other six children. The evidence of the first named respondent concerning those representations are weak and utterly inadequate to challenge the appellant's registered title to the property.

The respondents' writ action

43. The respondents have filed a writ action (HBC 204 of 2018) against the appellant and the registrar of titles. The causes of action are based on fraud and estoppel. Alternatively, the respondents pleaded that the deed of renunciation dated 24 November 1992 lacked consideration and is void *ab initio*. The particulars in the statement of claim are similar to the averments in the first respondent's affidavits filed before the master. They asked court for an injunction to restrain the appellant

from evicting them from CT 17153, the property, and an order cancelling transfer number 836835 on CT 17153 (this refers to the transfer of the property to the appellant on 14 December 2016).

44. The statement of claim said that the appellant instructed Chandra Shekar Sharma to sign a document consenting to the sale of lot 61, on the assurance that the appellant would transfer lot 60 to him. The respondents pleaded that Shekar executed the document with the clear understanding that he was consenting to the sale of lot 61. It was pleaded that her husband was not explained the document before he signed it. The first respondent pleaded that she was unaware of the contents of the document signed on 24 November 1992, until she read an affidavit signed by the appellant in October 2017.
45. In regard to the deed of renunciation, the respondents claimed that it lacked consideration, that it was vague as to whom the gift was being made to, that transfer of the property to the appellant – a non-resident – through the deed of renunciation was in breach of the Land Sales Act and that it was being used 22 years after execution and lacked legal effect at the time of presentation to the registrar of titles.
46. The cause of action on estoppel, was on the basis that the first respondent and her husband acted to their detriment by relying upon the appellant. There is no allegation of fraud against the registrar of titles. The only material pleading concerning the registrar of titles is that he wrongfully accepted the document of renunciation dated 24 November 1992.
47. Counsel for the respondents submitted that the writ action was at the stage of discovery, while the appellant's counsel said it had come up for summons for directions. The respondents have not informed the court regarding the progress of that case.
48. The date on which the respondents filed the writ of summons against the appellant is not stated, but the first respondent's supplementary affidavit dated 10 July 2018, says that the writ was in the process of being issued. It was not filed at

the time the first named respondent's affidavit in opposition was filed on 20 November 2017. The quit notice was served on her on 26 May 2017. The writ was filed more than a year later. The respondents saw no urgency in filing action to secure their rights to the property. It is also not clear why the respondents waited this long to impugn a document signed in 1992 and challenge the registration of title to the property on 14 December 2016 on the basis of fraud. There is no explanation for the delay. It is noteworthy that a year before registration of the property in the appellant's name, the first named respondent filed and registered a caveat in respect of the property on 9 December 2015. The respondents have made no reference to this caveat.

Conclusion

49. The respondents tried to justify remaining on the property on the basis that the renunciation signed by Shekar and the registration of the property in the appellant's name were fraudulently obtained. Shekar Sharma signed the document for the purpose of filing it in probate proceedings. His six siblings also renounced their shares in the property. The court will not lightly disregard a serious legal document signed by a person who cannot now be summoned to give evidence on the matter. The signing away of rights was in respect of lot 61, which was sold by the appellant a long time ago. The present dispute concerns lot 60 in respect of which Shekar did not have proprietary rights at any stage. The respondents' claims are not based on tangible evidence. Mere assertions cannot defeat the indefeasibility of title given by the statute. The respondents have failed to establish fraud as a basis to challenge the appellant's title to the property. They have failed to show cause as contemplated by section 172 of the Land Transfer Act. The filing of the writ action by itself is not sufficient cause to deny the summary procedure available to the appellant under section 169 of the Land Transfer Act. The judgment of the acting master has to be set aside for the foregoing reasons. There is nothing to prevent the respondents in making a claim in equity – which they assert – in separate proceedings.

50. The acting master also made reference to section 6(1) of the Land Sales Act 1974. Neither party made reference to this enactment in their respective affidavits. The Act provides for the regulation of certain speculative and other dealings in land

and the taxation of profits thereon. The provision imposes a restriction on the transfer of property to a non-resident, where the extent exceeds an acre. In the present case, the extent of the property – lot 60 – is less than an acre. The word sale is defined in section 2 of the Land Sales Act. On the face of it, the definition does not seem to encompass the passing of property in proceedings of the High Court’s probate jurisdiction. An analysis of the matter is not necessary, as the respondents did not raise the matter at the appeal hearing.

ORDER

- A. The appeal is allowed.
- B. The judgment of the acting master is set aside.
- C. The respondents are directed to hand over to the appellant vacant possession of the property within three weeks of this judgment.
- D. The respondents are restrained in terms of paragraph (b) of the appellant’s originating summons.
- E. The respondents are to pay the appellant costs summarily assessed in a sum of \$2,000.00 within three weeks of this judgment.

Delivered at **Suva** on this 14th day of **October, 2022**



M. Javed Mansoor
Judge