

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 205 of 2020

IN THE MATTER of application under section 169 of Part XXIV of the Land Transfer Act, Cap 131 for an Order for immediate vacant possession

BETWEEN : **RAJESH CHANDRA** aka **RAJESH CHANDRA SHARAN** as lawful Administrator of the Estate of Ram Sharan of Narere 8 Miles, Saku Place, Nasinu.

Plaintiff

A N D : **ROHIT PRAKASH** of Batiri Road, Maro, Sigatoka.

Defendant

Before : Master U.L. Mohamed Azhar
Counsels : Mr. S. Nand for the Plaintiff
Ms. J. Naidu for the Defendant
Date of Judgment : 18.10.2023

JUDGMENT

01. The plaintiff summoned the defendant pursuant to section 169 of the Land Transfer Act (Cap 131). The summons was supported by an affidavit sworn by the plaintiff and seeks the following orders:
 - a. That the plaintiff do recover immediate possession of all that piece of land contained and described in and as Crown Lease No. 7204, Part of Maro, formerly CT 5149 Nadroga/Navosa, Lot No 7, Plan No. N 1951;

- b. The Fiji Police Force to assist the plaintiff in the enforcement of this order; and
 - c. The defendant do pay the costs of the plaintiff on an indemnity basis.
02. The plaintiff brought this summons as the Administrator of the Estate of Ram Sharan. He is the registered proprietor of the subject property in his capacity as the Administrator of that Estate. The plaintiff annexed a copy of the Instrument of Title marking as "RC 1". The said annexure is not clear, nor is it complete. However, the defendant annexed a copy of the said Instrument of Title and admitted that, the plaintiff is the last registered proprietor of the subject property in this matter. This proves the locus of the plaintiff to summon the defendant. There is no dispute over the description of the subject property, because the defendant has also given the full details of the subject property including the details of the registration of the farm for growing sugar cane.
03. Even though the defendant admitted the locus of the plaintiff as the registered proprietor of the subject property, the defendant claims that, he entered the subject property on an agreement with a trustee of the Estate of Ram Sharan and upon the promise of the plaintiff. The defendant contends that, he cultivated the subject property whilst the plaintiff was residing in Suva. The defendant annexed a copy of the said Agreement marking as "RP2". The defendant further stated that, he filed an application in the Agricultural Tribunal seeking declaration of tenancy and also commenced a proceeding in the High Court and obtained interim injunction against the plaintiff preventing him from transferring the subject property to his son.
04. The duty on the defendant in this proceeding is not to produce any final or incontestable proof of his right to remain in the properties, but to adduce some tangible evidence establishing a right or supporting an arguable case for his right to remain in possession of the properties in dispute. This was laid down by the Supreme Court in the often cited decision of **Morris Hedstrom Limited -v- Liaquat Ali** CA No: 153/87. Even the defendant fails to satisfy the court as per the above decision; the court can dismiss the summons if it decides that an open court hearing is required (**Ali v Jalil** [1982] 28 FLR 31).
05. It appears from the averments of the defendant that, firstly he claims equitable right to occupy the subject property on the ground of promissory estoppel. Secondly, he relies on the both applications he made in the Agricultural Tribunal and High Court respectively.
06. **Snell's Principles of Equity** (28th Edition 1982) at page 556 states the rule of promissory estoppel as follows

“Where by his words or conduct one party to a transaction freely makes to the other an unambiguous promise or assurance which is intended to affect the legal relations between them (whether contractual or otherwise) a, and before it is withdrawn, the other party acts upon it, altering this position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it. It is essential that the representor knows that the other party will act on his statement. Yet the conduct of the party need not derive its origin only from the encouragement of representation of the first; the question is whether it was influenced by such encouragement or representation”. (Emphasis added)


07. According to the above passage, the conditions for the promissory estoppel are; (a) word or conduct which can freely make an unambiguous promise, (b) intention to affect the legal relations and (c) other party’s action altering position before withdrawal of promise. The question is whether the above conditions have been fulfilled in this matter for the defendant to claim equitable rights.
08. The Agreement marked as “RP 2” was entered on 14.09.2011 by and between the defendant as the cultivator and one Matia the sole executrix and trustee of the Estate of Tulsi Ram Sharma as the lessee. The plaintiff admitted in his affidavit in reply that, his mother entered into the said agreement with the defendant. The agreement is clear in its terms and conditions. Both the defendant and Matia – the lessee were desirous of cane farming and they entered into the said Agreement for “Share Farming”. Accordingly, the defendant was allowed to cultivate the farm registered in the subject property and both agreed to share the cane proceeds. The Agreement was for the period of 10 years from the date of grant of consent by the Director of Land. Furthermore, the agreement is explicit that, the defendant shall give the possession of the farm and the subject property upon expiry or sooner determination by Matia – the lessee by giving one month notice to the defendant.
09. It was further agreed by the parties that, the defendant can carry out any repair to the dwelling only after prior written consent from Matia – the lessess. The defendant also undertook, by the said Agreement, to hand over the vacant possession of the said dwelling on the same condition as it was taken by him, upon expiry or sooner determination of the said Agreement. The rights and the duties of both Matia – the lessee and the defendant were clearly defined by the said Agreement on mutual understanding. Accordingly, it was an agreement for sharing farm proceeds for a certain period of time on mutual agreement. Any dispute between them to be referred to a single arbitrator. It did not, in its unambiguous terms, give any promise to the defendant for him to change

his position, nor was it meant to create an equitable interest in favour of the defendant over the subject property.

10. The defendant's second position is that, he commenced two proceedings against the plaintiff in relation to the subject property in this matter. The first is that, he applied to the Agricultural Tribunal seeking declaration of tenancy in his favour over the subject property. The other one is the Originating Summons in which he obtained interim relief against the defendant. The counsel for the plaintiff later submitted the final decisions of the court and the tribunal in both matters. In facts these decisions are the matters for judicial notice as well.
11. The High Court on 22.09.2022 struck out the Civil Action 177 of 2020 filed by the defendant against the plaintiff. On the hand, the Agricultural Tribunal denied to declare tenancy by the defendant. It is also noted that, the Agricultural Tribunal observed that, the defendant did not want to rely on the Agreement (RP 2) he entered with Matia – the lessee at hearing of his application for declaration of tenancy even though he pleaded it in his application.
12. Having considered all, I am fortified in my view that, the plaintiff, as the Administrator of the Estate of Ram Sharan is the last registered proprietor of the subject property in this matter and the defendant failed to provide any tangible evidence establishing a right or supporting an arguable case for his right to remain in possession of the subject property. Furthermore, the defendant knew very well his rights and duties under the agreement he entered into with Matia – the lessess. However, he defended the summons making the plaintiff to incur costs in this matter. For these reasons, I make the following orders;
 1. The defendant should immediately deliver the vacant possession of the subject property in this matter to the plaintiff, and
 2. The defendant should pay a summarily assessed costs in sum of \$ 3,000.00 to the plaintiff within a month from today.

At Lautoka
18.10.2023




U.L.Mohamed Azhar
Master of the High Court