IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

HBC Civil Action No. 248 of 2023

IN THE MATTER of an application Under Section 169 of the Land Transfer Act 1971.

BETWEEN: **RAM PRASAD** aka **RAM PRASAD LOCHAN** of Lot 3 Chanik Place, 4 Miles, Nasinu, as the Lawful Administrator in the Estate of Ram Lochan by virtue of Letters of Administration De Bonis Non No. 55098.

PLAINTIFF

AND: **MACIU NAIVALU** of Lot 1, Madhavan Street, Nasinu.

DEFENDANT

Representation : Ms. A. Singh (Kohli & Singh Suva) for the Plaintiff.

: Defendant Not Present.

Date of Hearing : 8th February 2024.

JUDGMENT

1. The Plaintiff filed Originating Summons on 14th August 2023 pursuant to Section 169 of the Land Transfer Act for an Order that the Defendant show cause why an order for immediate vacant possession of the Land comprised in Certificate of Title No: 13856, Being Lot 1 on DP 3474. The Summons is supported by an Affidavit of the Plaintiff. The Plaintiff subsequently filed an amended Originating Summons and Affidavit on 27th November 2023. An affidavit of service was filed on 27th December 2023. The Defendant has neither responded to the originating summons nor appeared in Court.

2. Section 169 of the Land Transfer Act 1971 provides "*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) ...

(c) ..."

Section 170 of the Land Transfer Act 1971 requires the particulars be stated in the summons and that "*the summons shall contain a description of the land and shall require the person summoned to appear at the Court on a day not earlier than sixteen days after the service of the summons.*" Section 171 of the Land Transfer Act 1971 dealing with order of possession states that "*on the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the Judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the Judge may order immediate possession to be given to the Plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment.*"

Section 172 of the Land Transfer Act 1971 provides that "*if the person summoned appears he may show cause why 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, provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled, provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.*"

3. **Morris Hedstrom Ltd v. Liaquat Ali (SBC 153/87S) Supplementary FLR Volume 1 (Civil) 1887-2000) 141, Gurdial Singh v Shiu Raj (ABU 44/82) Supplementary FLR Volume 1 (Civil) 1887-2000, 84, Shyam Lal v Eric Martin Schultz (1972) 18 FLR 152** and **Azmat Ali v. Mohammed Jalil (1982) 28 FLR 31** are some of the cases that have dealt with Section 169 Land Transfer Act 1971 applications. These and a number of other cases have set out the procedure for Section 169 Applications.

4. Section 169 (a) of the Land Transfer Act, requires the Plaintiff to be the **last registered proprietor** of the land. The term **"proprietor"** is defined in the Land Transfer Act as "*the registered proprietor of land, or of any estate or interest therein*". The term **"registered"** is defined in the Interpretation Act, as "*registered used with reference to a document or the title to any immovable property means registered under the provisions of any written law for the time being applicable to the*

registration of such document or title". In this matter the Plaintiff, Ram Prasad aka Ram Prasad Lochan, is the Administrator De Bonis None of the estate. The Plaintiff is registered by virtue of the Transmission by Death (No. 806 430) as the Administrator De Bonis Non for the subject land for which vacant possession is being sought. Section 93 (3) of the Land Transfer Act 1971 provides that *"... the person so registered shall hold such estate or interest subject to all equities affecting the same, but for the purpose of any dealing therewith shall be deemed to be the absolute proprietor thereof."(my underlining)* Furthermore by virtue of Section 93 (4) of the Land Transfer Act the Plaintiff's title is deemed in law to be vested in him. The Plaintiff has locus to seek vacant possession in this matter.

5. Section 172 of the Land Transfer Act 1971 shifts the burden upon the Defendant to establish his right to remain on the subject property. It was upon the Defendant in this application to adduce some tangible evidence establishing a right or supporting an arguable case for such a right for him to remain on the property. Final or incontrovertible proof of right to remain in possession need not be adduced **(Morris Hedstrom Ltd v. Liaquat Ali)**. If the person, in this case the Defendant does show cause the Judge shall dismiss the Summons **(Azmat Ali v. Mohammed Jalil)**.
6. The Defendant has failed to show cause why the order sought by the Plaintiff should not be made. He has not appeared in Court nor opposed the application and filed any response. The Plaintiff is entitled to an order for immediate vacant possession. The Defendant is to pay the Plaintiff $1000.00 as costs. The costs have been summarily assessed. .

Orders

(a) The Defendant is ordered to immediately deliver vacant possession of the subject property to the Plaintiff.

(b) Defendant to pay Plaintiff $1000.00 as costs within 30 days. Costs have been summarily assessed. .

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Chaitanya Lakshman

Acting Puisne Judge

28th February 2024