

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 104 of 2022**

**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** : **ROSHAN SINGH** aka **ROSAN SINGH** of Maunikau, New Zealand as administrator in the estate of Dayal Singh late of Naidrodro, Ba, Fiji, Fiji Corporation Employee, deceased, Intestate.

**Plaintiff**

**AND** : **AMIT KUMAR** of Naidrodro, Ba.

**Defendant**

Before : Master U.L. Mohamed Azhar

Counsels : Mr. R. Charan for the Plaintiff  
Mr. N. Padarath for the Defendant

Date of Hearing : 06.03.2024

Date of Judgment : 28.03.2024

**JUDGMENT**

01. The plaintiff, in his capacity as the Administrator of the estate of Dayal Singh, is the registered proprietor of the property comprised in Crown Lease No. 17115 (L.D. Reference No. 4/1/1910) being land known as Rarawai & Vunisamaloa, Lot 2 on Plan No. SO 4265 having an area of 3231m<sup>2</sup> (whole) in the District of Ba, Province of Ba (subject property). The plaintiff summoned the defendant pursuant to section 169 of the Land Transfer Act (Cap 131) and sought the following orders:

- a. That the defendant to give plaintiff immediate vacant possession;

- b. That the costs of and incidental to this application be paid by the defendant to the plaintiff.
02. The defendant opposed the application and filed the affidavit which was responded by the plaintiff. However, the defendant admitted that, the plaintiff is the last registered proprietor of the subject property in this matter. There is no dispute either, on the other procedural requirements that should be followed by the plaintiff. Admittedly, the burden shifted to the defendant to show cause.
03. 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 property 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).
04. The defendant claims equitable right to occupy the subject property on the ground of proprietary estoppel. **Snell's Principles of Equity** (28th Edition 1982) at page 558, expounds the rule on proprietary estoppel. It states:
- “Proprietary estoppel is one of the qualifications to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property. Proprietary estoppel is older than promissory estoppel. It is permanent in its effect, and it is also capable of operation positively so as to confer a right of action. The term "estoppel", though often used, is thus not altogether appropriate. Yet the equity is based on estoppel in that one is encouraged to act to his detriment by the representation or encouragement of another so that it would be unconscionable for another to insist on his strict legal rights”.
05. The elements of the proprietary estoppel have been explained with the illustrations at pages 560 and 561 as follows;
- (1) Expenditure. In many cases A has spent money on improving property which in fact belongs to O, as by building a house on O's land, or by doing repairs to O's house and paying mortgage instalments and other outgoings, or by contributing to a joint venture

to be carried out on O's land, or by paying premiums required to maintain O's life insurance policy.

- (b) Expectation or belief. A must have acted in the belief either that he already owned a sufficient interest in the property to justify the expenditure or that he would obtain such an interest. But if A has no such belief, and improves land in which he knows he has no interest or merely the interest of a tenant (or licensee), he has no equity in respect of his expenditure.
- (c) Encouragement. A's belief must have been encouraged by O or his agent or predecessor in title. This may be done actively, as where a father persuades his son to build a bungalow on the father's land, or a mother assures her daughter that she will have the family home for her life, or a man assures his former mistress that the house in which they lived together is hers.
- (d) No bar to the equity. No equity will arise if to enforce the right claimed would contravene some statute, or prevent the exercise of a statutory discretion or prevent or excuse the performance of a statutory duty

- 06. The counsel submitted that, the defendant has provided in his affidavit sufficient evidence in relation to the first three elements for proprietary estoppel and there is no statutory bar by section 13 of the State Lands Act as the right of the defendant is purely personal right as envisaged in **Maharaj v Chand** [1986] 3 All ER 107. The counsel further submitted that, decision in **Chalmers v Pardoe** (1963) 1 WLR 687 does not apply to facts of this case.
- 07. The defendant claims in his affidavit that, the plaintiff represented to him to reside on the land and occupy the house as long as he wanted. This assertion is categorically denied by the plaintiff who claims that, the defendant has illegally been in occupation of the subject property. The counsel for the defendant submitted that, the notice to evict the defendant sent by the plaintiff does not specifically states that, the defendant is illegally occupying the subject property. It therefore means that, the defendant has been in possession with the knowledge and permission of the plaintiff.
- 08. Firstly, the procedure to evict an occupier under Part XXIV of the Land Transfer Act Cap 131 is sui generis. Any person named in section 169 may summon an occupier to show cause why he should not give up the vacant possession of a particular land to the applicant. The applicant is required to follow the procedure mentioned in section 170. Once these

requirements are fulfilled by an applicant, it is the duty of the person so summoned to satisfy the court as required by the case law, namely; Morris Hedstrom Limited –v- Liaquat Ali (supra) and Ali v Jalil (supra). There is no requirement under this procedure to issue notice on the occupier. It has been the practice to formally issue a notice. This is to avoid the litigation if the occupier moves out of the land with the notice only.

09. Secondly, even the notice is issued, there is no requirement that, the notice should specifically include the word “illegal possession” in order to seek remedy under this procedure. The procedure is simple and it requires the applicant to pass the threshold. If he fails, the summons fails. If the applicant passes the threshold, the burden shifts to the occupier to adduce some tangible evidence establishing a right or supporting an arguable case for his right to remain in possession of the land in dispute. Therefore, argument of the defendant’s counsel that, absence of the word ‘illegal possession’ in the eviction notice denotes the knowledge and permission of the plaintiff, is misconceived and has no merits.
10. The next issue is the question of the credibility of both the plaintiff and the defendant. On one hand, the defendant claims that, the plaintiff represented to him to occupy the house as long as he wanted and he has been in possession with the knowledge and permission of the plaintiff. On the other hand, the plaintiff totally denies permitting the defendant to the subject property and describes him as illegal occupant. Furthermore, the defendant claims that, he spent on the subject property after it was destroyed by Cyclone Winston and the plaintiff denies it. If the court believes the plaintiff, the defendant will fail in his claim for equitable interest. On the other hand, if the defendant is believed, the next question is whether there is a statutory bar to equity. The court should examine whether the decision in Maharaj v Chand (supra) applies as argued by the counsel for the defendant or the decision in Chalmers v Pardoe (supra) applies in this case.
11. Firstly, the subject property belongs to the estate of late Dayal Singh. The plaintiff as the administrator hold the subject property on trust as per Section 6 of the Succession, Probate and Administration Act as amended. Moreover, Section 5 of the Succession, Probate and Administration Act provides that no person shall have any right, title, share, estate or interest in any estate property except as provided in the Act. Therefore the plaintiff, who holds the subject property on trust as the administrator, could not have granted permission to the plaintiff contrary to the provisions of the Succession, Probate and Administration Act.
12. Secondly, the defendant claimed that, he spent money to renovate the subject property after cyclone Winston. He stated in paragraph 14 that he, (a) repaired the roof of the house; (b) maintained the kitchen; (c) tiled and painted the house; and (d) maintained  $\frac{3}{4}$  area of the land. This was a major repair as per his averment. However, he did not adduce a single

evidence to substantiate his expenditure for this major repair. The defendant simply stated that, he could not locate the receipts. The persons who spent substantive amount of money on a property belonged to another should have kept the proof for the same. The reason given by the defendant for his failure to adduce proof for his expenditure is unreliable and cannot be accepted. A person who asserts a fact owes the burden to prove it. The defendant did not substantiate with evidence any of the facts he asserted in his affidavit. The failure of the defendant to prove his assertion affects his credibility. For these reasons, I do not believe the defendant and decide that he failed discharge the burden on him.

13. Obviously, there is no iota of evidence to establish the first three limbs in the test of proprietary estoppel in this case. Therefore, it is not necessary to examine whether **Maharaj v Chand** (supra) applies or **Chalmers v Pardoe** (supra) applies here in terms of the statutory bar in section 13 of the State Lands Act.
14. On the other hand, this is a straightforward case where no complicated issues are involved. Therefore, the plaintiff is entitled to have this matter decided in his favour as Justice Gould V.P. stated in **Ram Narayan v. Moti Ram** (Civil Appeal. No. 16/83 FCA, decided on 28.07.1983) as follows:

“...the summary procedure has been provided in the Land Transfer Act and, where the issues involved are straightforward, and particularly where there are no complicated issues of fact, a litigant is entitled to have his application decided in that way”.

15. In result, I make the following orders:
  1. The defendant is ordered to immediately deliver the vacant possession of the subject property to the plaintiff ;and
  2. The defendant is further ordered to pay a summarily assessed costs in sum of \$ 2500.00 to the plaintiff within a month from today.

**At Lautoka**  
**28.03.2024**



*U.L.Mohamed Azhar*  
**U.L.Mohamed Azhar**  
**Master of the High Court**