

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**HBC Civil Action No. 192 of 2024**

**BETWEEN:**                    **ROZLIN BIBI KHAN** of Lot 109, Laucala Bay Road, Suva, Fiji,  
Teacher.

**PLAINTIFF**

**AND:**                            **PRANIL SHARMA** of Lot 109, Laucala Bay Road, Suva, Fiji.

**DEFENDANT**

**Representation**                : Mr. S. Kumar (Neel Shivam Lawyers) for the Plaintiff.  
    : Defendant – In Person.

**Date of Hearing**                : 10<sup>th</sup> September 2024.

**RULING**

1. Originating Summons were filed on behalf of the Plaintiff 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 and dwellings comprised in Certificate of Title No. 11961 being Lot 5 on DP 2337 located at Laucala Bay Road, Suva. An Affidavit in support of the Plaintiff was filed with the Summons. No affidavit in response was filed by the Defendant.
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.*”

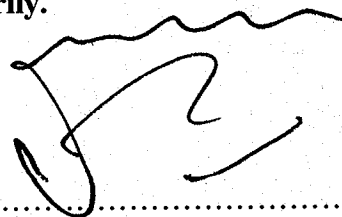
Section 172 of the Land Transfer Act 1971 provides that “*if the person summoned appears he may show cause why refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, 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 relevant 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 I find that the Plaintiff is the registered proprietor of the property. She has locus to seek vacant possession.
5. Section 172 of the Land Transfer Act 1971 shifts the burden upon the Defendant to establish their right to remain on the subject property. It is upon the Defendant in this application to adduce some tangible evidence establishing a right or supporting an arguable case for such a right for them 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 Defendant does show cause the Judge shall dismiss the Summons (**Azmat Ali v. Mohammed Jalil**).
6. The Defendant has not filed any response. Neither has the Defendant at the hearing established a right to remain on the subject property. The Plaintiff is entitled to immediate vacant possession. The Plaintiff is entitled to costs, which I have assessed summarily to be \$1000.00.

### **Court Orders**

- (a) **The Defendant, Pranil Sharma is ordered to immediately deliver vacant possession of the subject property to the Plaintiff.**
- (b) **The Defendant to pay \$1000.00 as costs to the Plaintiff within 21 days. Costs have been assessed summarily.**



Chaitanya S.C.A Lakshman  
**Puisne Judge**  
30<sup>th</sup> September 2024

