

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 263 of 2022

BETWEEN : **ASHOK LAL CHARAN** and **PRADEEP CHARAN** of Lot 1 201 Princess Road, Nausori in the Republic of Fiji and currently residing in United States of America respectively.

PLAINTIFFS

AND : **ARTI NARAYAN** and **ALL PERSONS UNKNOWN BUT LIVING ON IN OCCUPATION OF THE PLAINTIFFS PROPERTY** of Lot 201 Princess Road, Flat One (Front Flat) Nausori in the Republic of Fiji, Domestic Duties.

DEFENDANTS

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Ms. Rakai N.** for the Plaintiffs

Mr. Singh N. for the Defendants

DATE OF JUDGMENT: 24th January, 2025

JUDGMENT

*[Vacant Possession pursuant to Order 113, Rule 1 of the High Court
Rules 1988]*

A. Introduction

1. The Plaintiffs filed an originating summons coupled with an Affidavit in Support and sought for the following orders:
 - a. Do immediately and forthwith vacate;
 - b. Do immediately and forthwith give to the Plaintiffs vacant possession of property namely the front dwelling situated at 201 Princess Road, Nausori comprise in Certificate of Title No. 39719 being Lot 1 on DP No. 5472.
 - c. Do pay the Plaintiff's costs of this action on an indemnity basis, and
 - d. Any other orders that this Honourable Court deems just and equitable
2. The application is made pursuant to **Order 113 Rule 1 of the High Court Rules, 1988 and the inherent Jurisdiction of this Honourable Court.**
3. The law in terms of Vacant Possession as I understand is thus:
 - A person who has a legal right to claim the possession of the land could institute an action under order 113 against a person who has entered into or remains in occupation without his licence or consent or that of any predecessor in Title.
4. The Defendant, Arti Narayan and her legal husband Rakesh Charan, both filed their affidavit in opposition.
5. The Plaintiff's subsequently filed an Affidavit in Reply.
6. Both Defendants furnished Court with their written submissions and are asking Court to dismiss the Plaintiff's substantive originating summons.

B. The Law

7. The principles governing application for eviction under Order 113 of the High Court Rules 1988:

The law provides a summary procedure for possession of land and states that:

1. Where a person claims possession of land which he alleges is solely occupied by a person or persons (not being a tenant or tenants holding over after the termination of tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order."

8. In **Baiju v Kumar** (1999) FJHC 20; HBC 298j. 98s, succinctly stated the scope of the order as follows:

'The question for (the) Courts determination is whether the Plaintiff is entitled to possession under this order. To decide this, Court has to consider the scope of the Order. This aspect is covered in detail in the Supreme Court Practice, 1993 Vol 1, O.113 /1-8/ 1 at page 1602 and the relevant portions in this regard are:

'This order does not provide a new remedy, but rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers."

9. This order is narrowly confined to the particular remedy stated in r.1. It is also to be noted, as the White Book says at p.1603:

'This order would narrowly apply only in virtually uncontested cases or in clear cases where there is no issues or question to try i.e. when there is no reasonable doubt as to the claim of the Plaintiff to recover possession on the land or as to wrongful occupation on the land without licence or consent and without any right, title or interest thereto."

Plaintiff's Contention

10. Seek an order for immediate vacant possession.
11. Satisfied two (2) issues of:
- i) That the Plaintiff had the rightful claim to recover possession and thus bring this proceedings; and
 - ii) The Plaintiffs were sure of the wrongful occupation of the land by the Defendants.
12. The facts are similar to the case of **Sagayam v Prasad** [2023] FJSC 51; CBV0006.2021 (27 October 2023).

Defendant's Contention

13. Arti Narayan and husband Rakesh Charan have been living on the property since 2005.
14. Make reference to the case HBC 298 of 2006 between **Brij Lal v Phul Mati and others**.
15. The Plaintiff's plan was purposely to deceive the other Beneficiaries and take the whole property.
16. In 2015, Defendant's father Jay Ram took demise and under took this opportunity to deceive the Defendants'.
17. That his brother and the Defendant are rightful beneficiaries to his father's estate.

C. Determination

18. **Order 113 of the High Court Rules, 1988** provides a summary procedure for possession of land. The main purpose of Order 113 is to provide a speedy and effective procedure for the owners of the land to evict person(s) who have entered into and taken the occupation of the land without the owner's **licence** or **consent** or that of any predecessor in title. They can be defined as trespassers or illegal occupants. There are two parts and/or sections front and rear portions to the property in question. The Plaintiffs are seeking for immediate vacant possession of the front part and/or dwelling of the building.
19. The Plaintiff's simply want the Defendants' to uproot their structure (portion of the dwelling) and leave the premises.
20. This application for immediate vacant possession is opposed by Defendant, Arti Narayan stating in her affidavit that her husband, Rakesh Charan is the son of Jay Ram Charan who is the brother of the late Brij Lal who is the father of the Plaintiff's and allowed his brother, Jay Ram Charan to build a house on the property which was built by Arti Narayan and Rakesh Charan in September 2005.
21. The Defendant, Arti also alleges that the said property was owned by late Daya Ram Charan, brother of Plaintiff's late father, Brij Lal and Jay Ram Charan who later died.
22. The Defendant(s) rely on the Consent given by late Brij Lal to Arti and Rakesh and later father in law to build and stay on the said property of which vacant possession is sought by the Plaintiff.
23. Court's attention was drawn to a Civil Action No. HBC 298 of 2006 wherein Brij Lal was the Administrator of the Estate of Daya Ram filed proceedings against Phul Mati and others seeking for specific performance of the 1983 Agreement.
24. The Court in Civil Action No. HBC 298 of 2006 delivered a Judgment on 30 January 2009, that it declared that the Plaintiff Brij Lal was entitled to Lot 1 on Deposited Plan 5472, the land in question in the current proceedings HBC 263 of 2022. Accordingly, the Court granted an order for specific performance and ordered the Defendants to execute the necessary documents for transfer of the property to the Estate of Daya Ram, Purchaser. Daya Ram was the brother of Brij Lal.
25. Rakesh Charan's affidavit which was filed on 31 March 2023 after serving his Prison term deposes that he was given permission by the Plaintiff's late father to build their home and reside on the property by virtue of their relationship. Rakesh Charan had placed a caveat on the said property on 12 January 2015. However, subsequently, the said property was transferred to the Plaintiff's **Ashok Lal Charan** and **Pradeep Narayan Charan** on 12 September 2019 from Brij Lal.
26. There is not a stinca of evidence that the Defendants including Rakesh Charan and all persons unknown but living in occupation of Plaintiff's property was ever given any **consent Licence** and/or **permission** to reside on the said property, occupying the front portion and or flat of the building.

27. Further, there is no evidence that Arti nor her legal husband, Rakesh Charan had built the house of the said property for which the Plaintiffs are now seeking for an immediate vacant possession order against them.
28. The Affidavit in Reply filed by the Plaintiff's on 05th May 2023 refutes the allegation made by the Defendant, Arti and husband, Rakesh Charan making a stance that they are bona fide owners by virtue of inheritance from their late father, Jay Ram.
29. The Plaintiff's inherited the said property from their father, Brij Lal aka Brij Charan and had the title transferred and registered in their name on 12th September 2019.
30. The Plaintiffs have submitted to Court that they simply want the Defendants to uproot their structure from the said property and leave that is seeking for immediate Vacant Possession of the said property.
31. The Defendants have failed to satisfy this Court that they had any **licence** and or **consent** and **possession** to occupy the said property.
32. I have perused and borne in mind both parties written submission coupled with oral submissions together with the affidavit evidence filed herein.
33. I find that the Plaintiffs have established that they have a legal right to claim the possession of the said land and quite rightly instituted this action against the Defendants, Arti Narayan, her legal husband, Rakesh Charan and all persons unknown but living on in occupation of the Plaintiff's said property described as 201 at Princess Road Flat one [Front Flat] Nausori forthwith accordingly.
34. I proceed to grant the order for immediate Vacant Possession forthwith.

Costs

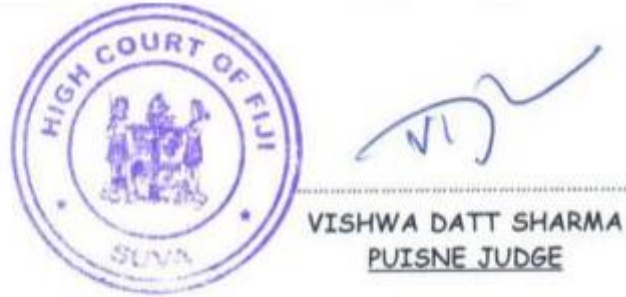
35. The substantive action proceeded to full hearing.
36. It is only just and fair that I order the Defendants, Arti Narayan, and Legal husband Rakesh Charan to pay a summarily assessed costs of \$1,000 to the Plaintiffs within 14 days timeframe.
37. Following are the Orders of this Court.

Orders

- (i) The Defendant's, Arti Narayan, her legal husband Rakesh Charan and All persons unknown but living in occupation of the Plaintiff said property described as 201 Princess Road Nausori comprised in Certificate of Title no. 39719 being Lot 1 on DP No. 5472 to immediately and forthwith give vacant possession of the said property.

- (ii) The Defendants Arti Narayan and her legal husband, Rakesh Charan to pay the Plaintiff's a summarily assessed costs of \$1,000 within 14 days timeframe.

Dated at **Suva** this **24th** day of **January** ,**2025**.



cc. **Sherani & Company, Suva**
Nambiar Lawyer, Suva