

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Civil Jurisdiction

Action No. 274 of 1976

000061

Between

LILA MATI d/o Suruj Bali Plaintiff

and

MADAN GOPAL s/o Ram Raj Defendant

Mr. C. Gordon, Counsel for the Plaintiff
Mr. S. Prasad, Counsel for the Defendant

JUDGMENT

This is an action in which the plaintiff seeks an order against the defendant to give vacant possession of a Native land comprised of a residential lot with an area of 9.6 perches known as Lot 1 Stage 1B Waiyavi Subdivision and situate in Lautoka.

The defendant was served with a notice to vacate dated 19th October, 1976 but the defendant has refused and still refuses to vacate the said land. The basic facts are not disputed and I hold them to be as follows:

The defendant and his parents have been living on the said land since 1958 when the land was under the control of the Colonial Sugar Refining Company Limited (hereinafter referred to as "C.S.R."). The defendant's father had been paying rent on the land regularly throughout the years to the C.S.R. In or about 1974 all the land comprising the Waiyavi Subdivision Stage 1B and adjacent lands which were formerly leased to the Colonial Sugar Refining Company Limited reverted to the Native Land Trust Board (hereinafter called "the Board"). In or about 1972 the plaintiff and her husband came on the said land after they had purchased a lean-to dwelling house on the land from the defendant's brother, one Vijay Kumar for a sum of \$200. The defendant's own lean-to dwelling house on the land is only a few paces away from that of the plaintiff's. The plaintiff's husband died on 4th August last year.

In anticipation of getting a residential block in the Waiyavi subdivision the defendant along with many other settlers in the

neighbourhood formed themselves into a cooperative group which was called the Cooperative Thrift and Credit Society. The object of the Society was to negotiate with the Board for the leasing out of the respective land then occupied by its members. The funds of the Society were contributed to by all members, including the defendant.

After the subdivision of the Waiyavi Native land was

- "10. In the alternative the Defendant says that although no documents have been registered to protect his right to occupation of the land described in paragraph 2 of the Statement of Claim and since the Defendant was in possession of the land for 20 years the Plaintiff was under a duty to enquire as to the Defendant's legal and equitable rights.
11. The Defendant says that the Plaintiff has had at all times a knowledge of the Defendant's legal and/or equitable rights of the land described in paragraph 2 of the Statement of Claim and is guilty of fraud in acquiring registered title of the said land with full knowledge of the Defendant's rights with a view of depriving the Defendant of his rights."

The defendant's counterclaim seeks a declaration that the plaintiff is holding the said land in trust for the defendant.

From the amended statement of defence and counterclaim it appears that the defence is now relying solely on the allegation of fraud against the plaintiff which of course if proved will defeat her title as registered native leasehold owner of the property. I have considered the evidence such as it is pertaining to the issue of fraud and find it so meagre and inconclusive. I am not satisfied that the plaintiff perpetrated any fraud against the defendant in obtaining her title. If there is any fault to be ascribed in the allocation of the lease I think that fault lies with the Board in appearing to have shown undue favouritism for the plaintiff. Be that as it may and in view of the evidence adduced I must hold that as against the defendant the plaintiff's title is indefeasible in law.

The circumstances surrounding the issue of the lease to the plaintiff have caused the defendant acute grievance and understandably so. This Court has much sympathy for the defendant for not being allocated the lease of the land to which he felt he was entitled as against the plaintiff. The defendant and his family have been living on this land for a much longer period than the plaintiff who only came upon the land about five years ago. The defendant's father had been regularly paying rent for the land in question to the C.S.R. since 1958 until the Board took over from the C.S.R. those native lands at Waiyavi. The defendant can therefore be forgiven for thinking that he and his family should have been given the land by the Board as a matter of elementary justice and fair play. In the absence of more information about the Board's handling of the competing applications for the land between the plaintiff and the defendant this Court hesitates to say any more than that the allocation of the lease in this case appears to be arbitrary and without rhyme or reason.

As I have indicated in the foregoing by virtue of her being in possession of a registered title to the land the plaintiff is bound to succeed in this action. Accordingly I will grant an order for vacant possession as prayed suspended for three months to enable the defendant and his family to seek an alternative place to move to.

There will be no order as to costs.

LAUTOKA,
1st June, 1978.

(sgd.) T.U. Tuivaga
JUDGE