h2

000123

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Appellate Jurisdiction

Civil Appeal No. 9 of 1980

Between

SURAT SINGH s/o Alla — Appellant

- and -

GURUBACHAN SINGH s/o Surat Singh — Respondent

Mr. Sahu Khan — Counsel for the Appellant
Mr. M. T. Khan — Counsel for the Respondent

J U D G M E N T

The respondent is the Crown lessee of a farm known as Lot 4 RR1126 comprising 12 acres and 3 roods and has occupied it for 25 years. For the last 8-11 years the appellant had helped the respondent farm the land and in return was allowed to occupy a house on about $\frac{1}{4}$-$\frac{1}{2}$ acre of the land. There was no formal agreement, in fact it was more of an informal arrangement and no formal recognition of any right by the appellant to occupy the land exists.

The respondent on 22/9/78 gave the appellant one month's notice to quit the premises occupied by him, and then since the appellant refused to leave instituted these proceedings. The appellant in his defence claimed that the respondent was estopped from evicting him from land he had worked and lived on for the last 15 years; and also claimed that under the Agricultural Landlord and Tenant Act he had a statutory right to remain on the land.

As the magistrate found in the lower court, in so far as the area occupied by the appellant was only $\frac{1}{4}$-$\frac{1}{2}$ acre in extent the ALTA had no application, being less than the $2\frac{1}{2}$ acres stipulated in section 3(1) of that Act.

It will be noted that in the pleadings neither the Statement of Claim nor the Defence specifies the area of land involved, nor identifies it.

It seems however to be common ground that the appellant was allowed by the respondent to occupy a house on an area of $\frac{1}{4}$-$\frac{1}{2}$ acres. But the appellant claimed to be occupying a larger area than that. It seemed to be common ground that the appellant helped the respondent to farm the land, because the respondent was unable to look after it by himself until his children and grandchildren grew up. That of course could not amount to occupancy by the appellant.

However he claimed to have farmed in his own right several acres of the respondent's land. As I have said and as the magistrate found the exact acreage was never defined, in fact it seemed to have varied from year to year, but the magistrate was prepared to accept that the appellant cultivated up to 3-4 acres

for himself. The magistrate didn't say so in his judgment but I think that the evidence didn't show that 3-4 acres was so cultivated each year, sometimes it was less, or that it was the same 3-4 acres each year.

However, what the evidence showed and the magistrate found was that the appellant did not cultivate any land - except for the $\frac{1}{4}$-$\frac{1}{2}$ acres around his house exclusively for himself. He only cultivated in the off season after the respondent's cane had been harvested. The respondent clearly never relinquished his control over the land, it was always planted with his cane, but after the cane was harvested he allowed the appellant to grow rice and vegetables on the land.

This also seems to suggest that the land cultivated by the appellant varied from year to year, because presumably not all the cane would be cut each year, and there must have been a certain amount of ratoon growing between seasons.

There was no suggestion that the appellant ever grew his own cane on the land or grew his own crops at any time but between seasons after the respondent's cane had been harvested or that his cultivation of the land was other than a friendly arrangement between him and the respondent.

Apparently the appellant has applied to the Agricultural Tribunal for a tenancy of the land or part of it. It was not made clear what area of land he is claiming or whether in fact he is trying to take over the whole of the respondent's land, or on what basis he is claiming to be entitled to have the respondent's lease, or part of it transferred to him.

The Court was urged to leave the matter to the Agricultural Tribunal, but I see no reason to do so. On the facts before the Court it is difficult to see how the Tribunal could possibly interfere. This is a straight issue for the court to decide and the Tribunal will be bound by the court's decision.

The only ground of appeal is that "the learned magistrate erred in law and in fact in not holding that the Appellant was entitled to a statutory tenancy under the provisions of the Agricultural Landlord and Tenant Act."

The appellant had no tenancy so that his only claim to a statutory tenancy would be in accordance with section 4(1) of the Act which provides -

> " Where a person is in occupation of and is cultivating an agricultural holding and such occupation and cultivation has continued before and after the commencement of this Ordinance for a period of not less than three years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent, and if the landlord fails to satisfy such onus of proof, a tenancy shall be presumed to exist under the provisions of this Ordinance."

The magistrate found that the appellant had only established occupation of the ¼-½ acre which went with his house, he had not established occupation of any larger area of the respondent's land so that section 4(1) had no application. I cannot see that he could have come to any other conclusion. Apart from the fact that the area cultivated by the appellant was never clearly defined, that it probably varied in size and location from year to year, it is quite clear that the respondent himself never relinquished his own occupation of the land, that it remained planted with his own cane, and that it was only between seasons, after harvesting the cane, that the appellant was permitted, on a clearly friendly but casual basis, to grow his own crops.

In the light of the facts the magistrate's finding that the appellant's occupation of the land never amounted to more than ¼-½ acre, although he may have from time to time cultivated a larger area, cannot be faulted.

It therefore follows that the appellant has no claim to a statutory tenancy and this appeal will be dismissed with costs.

LAUTOKA,
29th July, 1980

(sgd.) G. O. L. Dyke
JUDGE