

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 16 of 1983

Between:

RAM NARAYAN  
s/o Durga Prasad

Appellant

and

MOTI RAM  
s/o Ram Charan

Respondent

H. Sharma for the Appellant  
A. Singh for S.R. Shankar for the Respondent

Date of Hearing: 25th July, 1983  
Delivery of Judgment: 28th July, 1983

JUDGMENT OF THE COURT

Gould V.P.

This is an appeal from a judgment of the Supreme Court of Fiji dismissing the appellant's application under section 169 of the Land Transfer Act (Cap.131 - 1978 Edn.) for an order for possession against the respondent of 5 acres 3 roods 24 perches of agricultural land at Savusavu. The section 169 procedure is summary in nature and calls upon the person served to show cause why he should not give up possession.

The land is the subject of a native lease to the appellant and has been the subject of earlier native leases

and/or extensions thereof, to him. The respondent is the son-in-law of the appellant and there has been litigation between the parties before the Agricultural Landlord and Tenant Tribunal in which the occupation by the respondent of the land in question has been disputed.

The affidavits show the nature and result of these proceedings to some degree. It was contended by the respondent that he held a tenancy of the land from the appellant, but that, as the land was native land the subject of a native lease his subtenancy was unlawful because no consent of the Native Land Trust Board (as required by section 12 of the Native Land Trust Act (Cap.134)) had been obtained to it. In such circumstances among the powers which may be exercised by a Tribunal under section 18 of the Agricultural Landlord and Tenant Act (Cap.270), is one of "assigning" the whole or part of the land in question to such unlawful tenant. The respondent apparently applied for relief of this nature. The Tribunal made an order, but the appellant successfully appealed to the Central Agricultural Tribunal. Mr. Sharma has put before us the judgment of the Central Agricultural Tribunal and it is based on a finding of the Tribunal below that the present respondent occupied the land under a gift. Hence he was not a tenant and section 18 of the Agricultural Landlord and Tenant Act did not entitle him to relief.

The appellant gave notice to the respondent to leave, stating that in view of the Central Agricultural Tribunal's decision he had no right of occupation. The respondent did not vacate the premises, and, on these proceedings being instituted, filed an affidavit claiming that in April 1944, he was married to the appellant's daughter and, during the wedding, the appellant made an absolute gift to him of the said parcel of land.

It was claimed by the respondent that the appellant told him he would transfer the land to him; he (the respondent) was not aware that the consent of the Native Land Trust Board was required. It appears that he has been in occupation ever since; he has built a house and claims

that the appellant holds the land in trust for him.

It is to be noted that the Native Land Trust Act first came into effect on the 7th June, 1940. It contained the present section 12 (then section 13) and was accordingly in operation prior to the making of the gift which is alleged.

The learned Judge in the Supreme Court dismissed the application under section 169 of the Land Transfer Act, saying :

"There are issues here that need to be resolved by evidence."

The intent and implication was that the appellant could, if he wished, bring proceedings for possession by way of writ. Such a procedure has been approved by this Court in suitable and appropriate cases. In Vallabh Das Premji v. Vinod Lal and Others F.C.A. Civil Appeal No.70 of 1974 (unreported) the Court said :

" In the past, on earlier but similar legislation, the Supreme Court has held that if the proceedings involve consideration of complicated facts or serious issues of law, it will not decide them on summary proceedings of this nature, but will dismiss the summons without prejudice to the plaintiff's right to institute proceedings by Writ of Summons. Instances quoted by counsel are Caldwell v. Mongston (1907) 3 F.L.R. 58 and Ferrier Watson v. Venkat Swami (Civil Action 29 of 1967 - unreported). The power of the court to adopt this approach has not been challenged so it is not material to consider whether it arises under section 172 of the Act or from inherent power to reject as unsuitable procedure where another, comprehensive and better suited to the determination of controversial matters, is available. "

At the same time, 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.

In the present case the learned Judge did not specify the issues. One matter which the respondent might have had to establish in an action would have been whether or not the appellant had expressed himself as making such a gift as alleged. Conflicting evidence might have been involved there. The learned Judge might not have had (as we did) the benefit of an admission from the bar that the Tribunal proceedings proceeded on the basis that there had been such a declaration by the appellant at the relevant time.

But we do not regard that issue as in any way decisive of the matter. Even conceding, by way of assumption, that the respondent was entitled to succeed on that question, the respondent would still be left to surmount the provisions of the Native Land Trust Ordinance. It is common ground that no consent of the Native Land Trust Board was obtained to the transaction of gift. It is common ground that the transaction was implemented to the full by the respondent going into possession of the land and building a house upon it. These are the very circumstances which have been held, where no consent has been obtained, to constitute a dealing in land contrary to section 12 of the Act and thereby unlawful, null and void in terms of the section. We do not need to repeat the numerous decisions of this and other courts to this effect.

We consider it inescapable that, whatever the outcome of the "gift" issue, the respondent could not show a lawful title to remain on the land.

Counsel for the respondent, asked by the Court

what issues he would seek to rely on, mentioned an estoppel arising from the expenditure of money on the building of the house to the knowledge of the appellant and without objection from him. In this respect we would mention that in addition to section 12 the Native Land Trust Act contains section 27, which renders a person found in unlawful occupation of native land liable to immediate eviction and a penalty. The two sections, clearly designed for the control and protection of native land, are manifestly not such that an estoppel could be permitted to operate to their negation.

A similar answer must be given to counsel's next submission - that the appellant was a trustee for the respondent. It would be quite contrary to the whole purpose of the Native Land Trust Act to permit a lessee of native land, who could not (without consent) transfer or deal with his lease, to do so by the simple expedient of declaring or constituting himself a trustee. Such a device would not render the transaction any less a dealing.

Under section 13 of the Court of Appeal Act (Cap.12) for the purpose of determination of appeals this Court has all the power and authority of the Supreme Court and we think this is an appropriate case to use those powers in order to bring about an end to the litigation. Once it is appreciated that the one possibly complex issue, however resolved, cannot alone provide the respondent with a right to remain on the property the remaining issues are not, in the circumstances, complex and must, in our opinion, be answered in a way fatal to his right to do so.

We therefore allow the appeal, set aside the orders made in the Supreme Court and substitute an order for possession to be given to the appellant - such order

to be stayed for thirty days.

The appellant will have costs in both Courts,  
to be taxed if not agreed.

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Vice President

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Judge of Appeal

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Judge of Appeal