

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

**Civil Action No. HBC 232 of 2013**

**BETWEEN : PRIYA PRAKASH MATI CHAND aka PRAKASH MATI RATTAN of**  
Lot 13, 4 Miles, Kings Rod, Nasinu, Senior Human Resources &  
Administration Assistant.

**PLAINTIFF**

**AND : SOLOCHANA BHARTI of Lot 19, Mandir Street, Nadera, Domestic Duties.**

**DEFENDANT**

**BEFORE : Acting Master Thushara Rajasinghe**

**COUNSEL : Ms. Kumar K. with Mr. Niubalavu P. for the Plaintiffs**  
**Mr. Maisamoa K. for the Defendant**

**Date of Hearing : 11<sup>th</sup> November, 2013**

**Date of Ruling : 13<sup>th</sup> December, 2013**

## **JUDGMENT**

### **A. INTRODUCTION**

1. The Plaintiff instituted this action pursuant to Order 113 of the High Court Rules seeking following orders inter alia that;

- i. The Plaintiff is the registered proprietor of the land situated at Lot 19, Mandir Street, Nadera, Nasinu described in CT 28127 as Lot 19 on Deposited Plan No 5521 and is entitled to possession of the said land,

- ii. The Defendant together with other persons not named in the Summons are occupying the Plaintiff's land without her licence or consent,
  - iii. The Defendant together with other persons not named in the Summons occupying the Plaintiff's land, shall give vacant possession of the Plaintiff's land,
  - iv. The Defendant to pay costs to the Plaintiff;
2. The Defendant upon being served with the Summons filed her affidavit in opposition which was then followed by the reply affidavit of the Plaintiff. Subsequently this matter was set down for hearing on the 11<sup>th</sup> of November 2013 where both learned counsel for the Plaintiff and the Defendant made their oral arguments. Thereafter, I invited them to file their closing submissions with they filed accordingly.
3. Having considered the Summons, respective affidavits and written submissions of the parties and their respective oral arguments, I now proceed to pronounce my judgment as follows.

## **B. BACKGROUND**

### *Plaintiff's affidavits,*

4. The Plaintiff stated that she together with her former husband, late Mr. Suresh Chand Rattan bought this land described in CT 28127 as Lot 19 on Deposited Plan No 5521 containing an area of 810 sq (m) and situated in the District of Naitasiri in the Island of Viti Levu and built a 3 flat house on it. She further deposed that she together with her late former husband held the land as joint tenants with rights of survivorship. She divorced her late husband and he then got married to the Defendant in 2007. Mr. Rattan died on the 2<sup>nd</sup> of April 2013 and his death was registered on CT 28127 on the 26<sup>th</sup> of June 2013 pursuant to section 101 of the Land Transfer Act. She then sent a notice to quit to the Defendant to vacate and give her vacant possession of the land. She further stated that the

Defendant lives in the main flat and has rented out other two flats attached to the land to persons who are not known to the Plaintiff.

***Defendant's Affidavit.***

5. The Defendant denied that she is occupying this land illegally and contended that the right of survivorship was severed after the dissolution of the Plaintiff's marriage with late Mr. Rattan. She claims that she is the successor of her late husband's rights and interest in the land. She has presently obtained a letter of administration from the High Court in respect of the estate of her late husband.

**C. THE LAW**

6. I now turn to briefly review the laws pertaining to the summary procedure for possession of land under Order 113 of the High Court rules.

7. Order 113 rule 1 of the High Court rules states that;

*“where a person claims possession of land which he alleges is occupied solely by a person or persons (not being tenant or tenants holding over after the termination of the 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. Pathik J in ***Baiju v Jai Kumar*** (1999) 45 FLR 74) extensively discussed the scope of the order 113 while refereeing “The Supreme Court Practice, 1993 Vol 1, where he held that

*“To decide this the 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 I state hereunder the relevant portions in this regard:*

*"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."* (emphasis mine)

As to the application of this Order it is further stated that:

*"The application of this Order is narrowly confined to the particular circumstances described in r.1. i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his. The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O.14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence (Bristol Corp. v. Persons Unknown) [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593."*

*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 normally apply only in virtually uncontested cases or in clear cases where there is no issue or question to try, i.e. where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as to wrongful occupation on the land without licence or consent and without any right, title or interest thereto."*

#### **D. ANALYSIS,**

9. Bearing in mind the laws applicable for the proceedings under order 113 of the High Court rules, I now turn to analyse the evidence presented before me with these applicable laws and provisions.

10. I am mindful of the extensive arguments and submissions of the learned counsel of both parties on the issues of proprietorship and survivorship of the joint tenancy. However I find the central issue is whether the Defendant falls within the meaning of “*a person who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his*” as stipulated in Order 113.
11. Both parties agreed that the Defendant is the wife of late Mr. Rattan who was the joint tenant to this property with the Plaintiff. She married to the late Mr. Rattan in 2007 and has been occupying this land since then as her matrimonial house. In view of these facts, I find that she has entered into and has been occupying this land by virtue of her marriage to late Mr. Rattan. She is not a trespasser, illegal occupier nor does a licensee whose licence was terminated by the proprietor of the land.
12. The Defendant has entered into the house as a spouse of the co owner who subsequently died leaving the survivorship to the other co owner. This is a legal issue of importance which needs to be determined in a proper hearing.
13. Under such circumstances, I am satisfied that the Defendant does not fall with the meaning of “a person” defined in order 113. I accordingly make following orders;
  - i. The Originating Summons filed by the Plaintiff on the 5<sup>th</sup> of August 2013 is refused and dismissed accordingly,
  - ii. The Defendant is granted a cost of \$ 750 assessed summarily,

Dated at Suva this 13<sup>th</sup> day of December, 2013.

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**R.D.R. Thushara Rajasinghe**  
**Acting Master of High Court, Suva**