

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 320 of 2013

BETWEEN : **ALIVETA DRAVEURU aka ANA** of Lot 17, Narere Subdivision, Stage 4
Narere, Nasinu, Domestic Duties.

PLAINTIFF

AND : **ASHWIN LAL** of Narere, Nasinu, Supervisor.

1st DEFENDANT

ROSELYN RENUKA PRASAD of Narere, Nasinu, Machinist.

2nd DEFENDANT

CHANDRA DEO SINGH formerly of Lot 7, Narere Subdivision, Narere,
Nasinu, Retired.

3rd DEFENDANT

THE REGISTRAR OF TITLE

4th DEFENDANT

ATTORNEY GENERAL OF FIJI

5th DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Mr. Tuberi.** for the Plaintiff
Mr. Nand. for the 1st & 2nd Defendant
Mr. Huare for the 3rd Defendant
Mrs. Sharma for the 4th & 5th Defendant

Date of Hearing : 26th September, 2014

Date of Ruling : 28th November, 2014

RULING

A. INTRODUCTION

1. The Plaintiff filed this Summons dated 28th of April 2014 together with her affidavit in support seeking an order pursuant to Order 28 rule 9 of the High Court Rules that

the section 169 Summons in the High Court Civil Action HBC 320 of 2014 and this Writ of Summons be amalgamated and consolidated and this matter to proceed as if it had begun by writ.

2. The Plaintiff deposed in her affidavit in Support that the first and second Defendant instituted the civil action HBC 320 of 2014 pursuant to section 169 of the Land Transfer Act (hereinafter referred as the Act) against the plaintiff to evict her from her matrimonial house. Upon being served with that Summons she filed this writ of summons in response of that action. .
3. The first and second Defendants filed their affidavit in opposition which was followed by the reply affidavit of the Plaintiff. This Summons was then set down for hearing on 26th of September 2014. The learned Counsel for the Plaintiff and the Defendant made their respective oral submissions during the cause of hearing. The learned counsel for the 1st and 2nd Defendant tendered his written submissions at the conclusion of the hearing. Having carefully considered the respective affidavits and submissions of the parties, I now proceed to pronounce my ruling as follows.
4. The first and second Defendant instituted the civil action HBC 320 of 2014 pursuant to section 169 of the Land Transfer Act seeking an order to evict the Plaintiff from the property morefully described in the said summons. Instead of filing her show cause pursuant to section 172 of the Act, the Plaintiff (the Defendant in HBC 320 of 2014) filed this Writ of Summons under the same case number as of the action filed by the Defendants. Having considered those documents, the court ordered the registry to allocate a separate case number for the writ of Summons filed by the Plaintiff (the defendant in that action). Now this action is pending under HBC 320 B of 2014. Subsequent to the allocation of a separate case number, the Plaintiff filed this Summons for amalgamation pursuant to Order 28 r 9 of the high Court Rules.
5. The learned counsel of the Plaintiff continuously urged that the Plaintiff is allowed to filed a writ of summons in order to show cause pursuant to section 172 of the Land Transfer Act as there is no specific procedure for action instituted under section 169 of the Act. This contention of the Plaintiff is utterly misconceived as it has been a

settle law that the procedure for application made pursuant to section 169 is the summary procedure.

6. This Summons is filed pursuant to Order 28 r 9 of the High Court Rules, which states:
 - i. *Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.*
 - ii. *Where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7 (1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.*
 - iii. *This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.*
 - iv. *Every reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.*
7. It appears that Order 28 r 9 has provided a procedure to continue of proceedings begun by Originating Summons as if it begun by writ. This instance case is instituted by way of a writ of Summons, wherefore it is my opinion that there is no procedure stipulated under Order 28 r 9 to convert this action which was begun by way of a writ of summons to any other form.

8. Moreover, the Plaintiff has not given any specific reason for his application for amalgamation. The Plaintiff only stated that she filed this writ in response of the civil action HBC 320 of 2014.
9. Having considered the reasons set out above, I make following orders, that;
- i. The Summons filed by the Plaintiff on 28th of April 2014 is hereby refused and dismissed,
 - ii. The Plaintiff is ordered to pay cost of \$150 for each of 1st, 2nd and 3rd Defendants,

Dated at Suva this 28th day of November, 2014.



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