

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**APPELLATE JURISDICTION**

**CIVIL APPEAL NO. HBA 12 OF 2019**

**IN THE MATTER** of an Appeal  
from the decision of the  
Sigatoka Magistrate's Court, in  
Civil Action No. 4 of 2016

**BETWEEN** : **MUKESH CHANDAR** of Cuvu, Sigatoka, Salesman.

**APPELLANT (ORIGINAL PLAINTIFF)**

**AND** : **AJAY CHAND** of Cuvu, Sigatoka, Mechanic.

**RESPONDENT (ORIGINAL DEFENDANT)**

**Appearances** : Mr N. Padarath for plaintiff/appellant  
Mr J. Singh for defendant/respondent

**Date of Hearing** : 31 July 2019

**Date of Judgment** : 30 September 2019

## **J U D G M E N T**

### **Introduction**

[01] This is an appeal from the Magistrates Court sitting at Sigatoka. The Learned Magistrate (*'the Magistrate'*), by his judgment dated 24 April 2019, dismissed an action brought by the appellant on the ground that the Magistrate's Court has no jurisdiction to resolve the dispute.

[02] At the hearing, both parties made oral submissions.

### **Background**

[03] In February 2016, a Mukesh Chandar, the plaintiff/appellant (hereinafter '*the appellant*') issued a writ of summons out of Magistrates Court of Sigatoka against once Ajay Chand, the defendant/respondent (hereinafter '*the respondent*') claiming vacant possession of a house, judgment in the sum of \$11,760.00, damages and costs.

[04] The writ of summons issued by the appellant disclosed that: the late Shankar Singh was the registered lessee of Crown (now State) Lease Number 26318 (file reference number 4/11/4217), which commenced on 1 April 1973 and expired on 31 March 2013. The lease also has a house on the land ('*the property*'). On 4 February 2010, the late Ram Shankar made a will and gave the house to his grandson, Rajnal Singh and Rajnal Singh assigned all his interest under the Will of Ram Shankar Singh to the appellant. Prior to his death, on 1 October 2001, the late Ram Shankar Singh, entered into an agreement with the respondent which allowed the respondent to occupy part of the house. Upon the death of Ram Shankar Singh and subsequent assignment by Rajnal Singh, the appellant became the owner of the house. In breach of the tenancy agreement the respondent has failed to pay rent. As at 15 December 2015, the respondent owed the appellant a sum of \$11,760.00 for rent. On 17 December 2015, the respondent was served a notice to vacate the house and outstanding rent.

[05] The respondent filed his statement of defence stating: the house was given to respondent by the late Ram Shankar Singh. There was no rental agreement. The respondent carried out all renovation and maintenance work to the house that the respondent is currently occupying. The late Ram Shankar Singh gave and/or assigned the house to the respondent for the respondent's lifetime. There was no tenancy agreement and the respondent is not required to pay any rent. The property falls on a Crown Land. This Court (*Magistrates Court*) does not have jurisdiction to determine this matter. The appellant is not the registered

proprietor of any lease on the property. Therefore, the appellant does not have *locus standi* to institute this proceeding. It is an abuse of process of Court.

[06] The Magistrate dismissed the appellant's action on the basis that the Magistrates Court is devoid of jurisdiction to resolve the dispute with summarily assessed costs of \$200.00.

[07] The appellant appeals the Magistrate's decision to this Court.

### **The Grounds of Appeal**

[08] The appeal is preferred on the following grounds:

1. *The Learned Magistrate erred in law and in fact in not taking into account that the claim by the appellant was not only for eviction of the respondent on the basis of trespass of land but also for damages for breach of contract to pay rent, water, electricity and all other outgoings over which the Magistrates Court had jurisdiction.*
2. *The Learned Magistrate erred in law in the interpretation of Section 16 (2) (a) of the Magistrate's Court Act when he said a disputed title to land fell within its ambit when: -*
  - 2.1 *Section 16 (2) (a) clearly deals with the title to any right duty of office other than a right to hold land as established in the High Court decision Lal v Santu [1978] FJSC 61; Civil Appeal 9 of 1977 (1 March 1978);*
  - 2.2 *Such interpretation would render redundant the jurisdiction given to the Magistrates Court in matters involving trespass to land and recovery of land.*
3. *The Learned Magistrate erred in law in dismissing the action for want of jurisdiction when the court had jurisdiction to hear matters involving trespass to land and recovery of land which the case involved.*

4. *The Learned Magistrate erred in law in holding that the appellant had no right of action because any purported agreement he relied on was void under Section 13 of the States Land Act.*
5. *Such further Grounds of Appeal as may be added upon receipt of the record of the Court.*

## **The Law**

[09] The Magistrates Court Act as amended ('MCA'), S 16 (1) (c) and (d) state:

*"16 (1) Without prejudice to the jurisdiction of a Magistrate under this Act or other written law, a Resident Magistrate shall have and exercise jurisdiction in the following civil causes. –*

- (a) ...;
- (b) ...;
- (c) *in in all suits between landlords and tenants for possession of any land (including any building or part thereof) claimed under any agreement or refused to be delivered up, where the annual value or annual rent does not or did not exceed \$50,000.00;*
- (d) *in all suits involving trespass to land or for the recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof);*
- (e) ...;
- (f) ...;
- (g) ...;
- (h) ...;
- (i) ...;
- (j) ... " (Emphasis provided)

[10] Section 16 (2) (a) of the MCA says:

*“(2) A Magistrates Court shall not exercise the following jurisdiction –  
(a) in suits wherein the title to any right, duty or office is in question; or  
(b) ...; or  
(c) ...; or  
(d) ...; or  
(e) ...”*

### **The issue**

[11] The issue for determination on appeal was whether or not the Magistrate was correct in dismissing the appellant’s claim for vacant possession of the property against the respondent.

### **Discussion**

[12] The appellant issued a writ of summons out of the Magistrates Court claiming vacant possession judgment in the sum of \$11,760.00 and damages for loss of rental from 15 December 2015, to the date of possession limited to jurisdiction of the Magistrates Court.

[13] At the time when the appellant brought the action he was not the last registered proprietor or lessee of the property as the lease that had been issued over the property had expired in 2013.

[14] It was common ground that the lease that had been issued over the property was expired in 2013.

[15] The appellant had begun eviction proceedings on the basis that a proper lease would be issued to him as he has applied for one.

[16] The Magistrate who heard the case dismissed it that he had no jurisdiction to deal with the matter as the question of title to the land has been raised. He had

relied on section 16(2) (a) of the MCA and case authorities of *Sukhia v Ram Pratap* (1967) 13 FLR 19 and *Balase v Wati* [2016] FJHC 185. Both cases held that the Magistrates Court has no jurisdiction in a suit where the title to the land is disputed or question of ownership thereof arises.

- [17] Section 16 (2) (a) of MCA says that - A Magistrates Court shall not exercise jurisdiction in suits wherein the title to any right, duty or office is in question.
- [18] In my recent judgment in *Were v Vaurasi* [2019] FJHC 643; HBA03.2019 (26 June 2019), I said, deviating my previous judgment in *Balase* (above), that a Magistrates Court may exercise jurisdiction in suits even where the title to the land is disputed since "the title to any right, duty or office in question" in section 16(2) (a) of the MCA does not include "title to the land".
- [19] The appellant did not have a valid lease in his favour at the time when he issued the writ of summons. There was a dispute to the title to the land.
- [20] The Magistrate was bound by the High Court decisions. In the circumstances, one cannot say that he was wrong in dismissing the appellant's claim that he lacked jurisdiction as the title to the land was in dispute.-there was no landlord – tenant relationship between the parties.
- [21] Furthermore, I would say the Magistrate had no jurisdiction on a different footing.
- [22] The appellant brought the claim for vacant possession on the basis there was a landlord-tenant relationship between the respondent and the late Ram Shankar. He also claimed arrears of rent in the sum of \$11,760.00.
- [23] The statement of claim specifically pleads that there was a landlord and tenant relation between the respondent and the late Ram Shankar. It follows that the appellant cannot rely on the issue of trespass.

[24] A Magistrate has jurisdiction in all suits involving trespass to the land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof) (See S. 16 (1) (d), MCA).

[25] Having pleaded a rent agreement, the appellant is not entitled to label the respondent as a trespasser because his entry to the land was lawful. I would reject the appellant's contention that the respondent has become a trespasser after the service of the quit notice on him.

### **The alleged rent agreement**

[26] The appellant relies on an alleged rent agreement with the late Ram Shankar, the previous owner (lessee) and the respondent.

[27] A Magistrate has jurisdiction in all suits landlords and tenants for possession of land (including any building or part thereof) claimed under any agreement or refused to be delivered up, if the annual value or annual rent does not or did not exceed \$50,000.00 (see: S.16 (1) (c), MCA).

[28] The appellant has pleaded that the annual rent and damages for loss of rental do not exceed the jurisdiction of the Magistrates Court. This satisfies the second limb of S. 16 (1) (c). The first limb of that section is that the suit must be between the landlord and the tenant for possession of any land (including any building or part thereof). The question is whether the dispute was between the landlord and tenant for possession of the property. I would conclude that there was no landlord and tenant relationship between the parties for the following reasons:

- i. First, the lease that had been issued over the property has expired in 2013. Therefore, the appellant is not the registered proprietor or owner of the property. He cannot claim to be a landlord over the expired lease, albeit he has applied for a proper lease to be issued in his favour.

- ii. The appellant relies on a rent agreement between the respondent and the late Ram Shankar. It clearly demonstrates that there was no rent agreement between the respondent and him (the appellant).

[29] Therefore, the suit the appellant instituted in the Magistrates Court does not involve trespass to land and/or it is not a suit between the landlord and the tenant for possession of land. It follows the Magistrate Court had no jurisdiction to deal with the suit brought by the appellant against the respondent for possession of the property.

### **Merits of the case**

[30] For the sake of completeness, I would like to look at the merits of the appellant's claim, if I am wrong on the question of jurisdiction.

[31] It was not in dispute that the lease that was issued over the property which is in Cuvu, Sigatoka had expired. I was informed from the bar table by counsel for the respondent that all residents in Cuvu area have been declared squatters, and that was not disputed by counsel for the appellant.

[32] The appellant cannot have any right over an expired lease. Currently, he is not a registered proprietor. Therefore, he cannot bring eviction proceedings against the respondent, as he would lack standing. The appellant's claim would therefore fail even on merits.

### **Conclusion**

[33] For the reasons I have set out above, I would dismiss the appeal with summarily assessed costs of \$1,500.00 payable to the respondent by the appellant.

### **The result**

1. Appeal dismissed.
2. Appellant shall pay summarily assessed costs of \$1,500.00 to the respondent.



3. The case sent back to the Magistrates Court, Sigatoka.

*M.H. Mohamed Ajmeer*  
30/9/19

M.H. Mohamed Ajmeer  
JUDGE



At Lautoka

30 September 2019

Solicitors:

For appellant: Samuel K Ram, Barristers & Solicitors

For respondent: Samusamuvodre Sharma Law, Barristers & Solicitors