

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

CIVIL ACTION NO.: HBC 207 OF 2018

IN THE MATTER of an application
Under Section 169 of the Land Transfer
Act 131 for the order for immediate
vacant possession.

BETWEEN : **RAJENDRA KUMAR** as Administrator In the Estate of
RAJWANTI
PLAINTIFF

AND : **RONALD DUTT**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr K Singh [KS Law]

DEFENDANT : Ms M Pillai [Moharsh Pillai Lawyers]

JUDGMENT OF : Acting Master Ms Vandhana Lal

DELIVERED ON : **14 February 2020**

JUDGMENT

[Vacant Possession – Section 169 Land Transfer Act]

1. This is the Plaintiff's application seeking orders for vacant possession of the Plaintiff's land comprised and described in CT 8257 Lot 1 DP No. 1912 situated in the District of Navua.

Said application is made pursuant to section 169 of the Land Transfer Act and is supported by an affidavit of Rajendra Kumar sworn on 03 July 2018.

2. The Defendant filed his affidavit sworn on 24 October 2018 showing cause why he should not give up possession.

3. A reply by the Plaintiff was filed on 22 November 2018.
4. Rajendra Kumar is the administrator for the Estate of Rajwati. A letter of Administration with Will was issued on 29 September 2017 [Annexure "A" in the Plaintiff's Affidavit in Support].
5. The property in question was registered under the deceased's name and subsequently upon her demise to Rajendra Kumar as Administrator of the Estate. The transfer was effected on 08 November 2017.
6. A Notice to vacate was served on the Defendant on 18 April 2018.
7. According to the Defendant, there are 04 beneficiaries to the Estate of the Deceased namely Amika Kumar, Rajendra Kumar, Raveen Kumar and Narend Kumar.

Amika Kumar has passed away and bequeathed a will to the Defendant and the Defendant has since taken out a grant of Probate.

The Defendant claims that his father had built a house on the property and his family has been residing on the property prior to the Defendant's birth and the Defendant continues to reside on the property till now.

He further claims, he and his father have invested in maintaining the house.

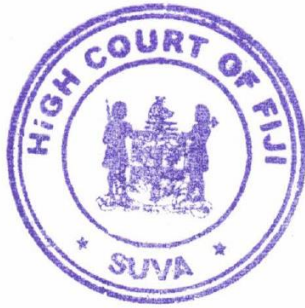
He now does farming on the property and sells produce for his living.


He claims to be residing on Amika's share of the property.

8. There is no dispute that Amika Kumar is one of the beneficiaries in the Estate of Rajwati.
The Defendant is the sole beneficiary for the Estate of Amika Kumar.
9. The Defendant claims to be residing on the property since his birth and prior to that his father has been residing there and both have invested on the property.
10. The Plaintiff states the Defendant has failed to show any evidence of investment.
11. The Defendant has been residing on the property since birth and it would be understandable that a person who thinks he owns a property would not keep receipts of expenditure done on the property.
12. The Plaintiff merely opposes the claim of how the Defendant came into occupation of the land.

13. There are matters such as subdividing the property to ensure there is just and equitable division of the beneficiaries interest in the property. These are matters that rightfully ought to be decided by way of a Writ and not to be ascertained summarily.
14. Accordingly the originating summons dated 11 July 2018 is dismissed with costs awarded in favour of Defendant and assessed at \$800.

The Plaintiff is to pay the said cost in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.