

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

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 184 of 2019**

**IN THE MATTER** of application under section 169 of Part XXIV of the Land Transfer Act, Cap 131 for an Order for immediate vacant possession

**BETWEEN** : **KRISHNA SAMI NAIDU** of Vulovi, Labasa, Fiji Islands,  
Businessman.

**Plaintiff**

**A N D** : **BISUN KUMARI AND ALL OTHER OCCUPANTS**  
(Occupants unknown to the plaintiff) in occupation of that part of the property comprised and described in Certificate of Title No. 12555 being Lot 32 on Deposited Plan No. 2631 known as Waqadra (portion of) situated in the District of Nadi in the Island of Vitilevu.

**Defendants**

Before : Master U.L. Mohamed Azhar  
Counsels : Ms. N. Choo for the Plaintiff  
Ms. A. Swamy for the Defendants  
Date of Judgment : 15.06.2023

**JUDGMENT**

01. The plaintiff summoned the defendant pursuant to section 169 of the Land Transfer Act (Cap 131) to show cause why she should not be ordered to deliver the vacant possession of property comprised in Certificate of Title No 12555 Lot 32 on DP No. 2631, Land known as "Waqadra" (portion of) situated in the Island of Viti Levu in the District of Nadi (**the subject property**) to the plaintiff. The summons is supported by an affidavit

sworn by the plaintiff and contains six annexures. The defendant opposed the summons and filed an affidavit in opposition. The defendant annexed two documents with her affidavit. This was replied by the plaintiff by his affidavit in reply.

02. At hearing of the summons, the counsels for both parties made oral submission and the counsel for the defendant tendered the legal submission in addition to her oral submission.
03. The plaintiff annexed a copy of the Certificate of Title No. 12555 marking as “**KSN1**” to prove his locus to summon the defendant in this matter. The defendant denied the proprietorship of the plaintiff. The annexure “**KSN1**” is certified by the Registrar of Title to be the true copy of the instrument of title. The section 18 of the Land Transfer Act provides that, every duplicate instrument of title duly authenticated under the hand and seal of the Registrar shall be received in all courts as evidence of the particulars contained in or endorsed upon such instrument and of such particulars being entered in the register and shall, unless the contrary be proved by the production of the register or a certified copy thereof, be conclusive evidence. Accordingly, the plaintiff’s locus is proved. There is no dispute in other procedural requirements under the section 170 of the Land Transfer Act.
04. The burden is shifted to the defendant to establish her right to remain in the subject property. The duty on defendant in this application is not to produce any final or incontestable proof of their right to remain in the properties, but to adduce some tangible evidence establishing a right or supporting an arguable case for her right to remain in possession of the subject property (**Morris Hedstrom Limited –v- Liaquat Ali** CA No: 153/87). The court can also dismiss the summons the issues between the parties require an open court hearing (**Ali v Jalil** [1982] 28 FLR 31).
05. The defendant stated in her affidavit in opposition that, the subject property was purchased by her son in law one Aleem Khan. He left the country for medical treatment allowing her to occupy it. The defendant further stated that, her son in law advised her that, the plaintiff took over the subject property from her son in law by fraud and misrepresentation. Her son in law filed a Civil Action No. 231 of 2018 against the plaintiff to recover the subject property from him.
06. In fact, the plaintiff and the son in law of the defendant had several cases. The plaintiff became the proprietor of the subject property pursuant to an order in one of those cases. The son in law of the defendant thereafter filed three cases against the plaintiff including Civil Action No. 231 of 2018 mentioned by the defendant. Finally the son in law of the defendant withdrew all three matters against the plaintiff and also paid costs to the

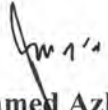
- plaintiff to withdraw the same. As at now, the Civil Action No. 231 of 2018 stands withdrawn. Therefore, the defendant cannot rely on the issues raised in that Civil Action No. 231 of 2018.
07. The one of the cases filed by the plaintiff against the son in law of the defendant is Civil Action No. 123 of 2012. The son in law of the defendant filed a Motion in that matter to stay the proceeding of this matter. The reason was that, the son in law of the defendant filed another summons in that matter to set aside an order which led to the transfer of the subject property to the plaintiff in this matter. Therefore, this ruling was delayed till determination of the summons filed by the son in law of the defendant in that Civil Action No. 123 of 2012. The said summons is dismissed in that matter. There is no reason to delay this matter.
  08. Apart from that, the defendant did not tender any evidence as required by the decision in **Morris Hedstrom Limited -v- Liaquat Ali** (supra). This court also did not see any complicated matters or issues between the plaintiff and the defendant. The matter is straightforward. Justice Gould V.P. stated in **Ram Narayan v. Moti Ram** (Civil Appeal. No. 16/83 FCA, decided on 28.07.1983) as follows:

“...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”.
  09. The above reasons warrant for an order in favour of the plaintiff. The plaintiff is entitled to for an order for immediate vacant possession in this matter.
  10. The transactions and the issues between the son in law of the defendant and the plaintiff are totally different and the defendant in this matter is neither a party to it, nor is she privy to them. Even if there are issues between the son in law of the defendant and the plaintiff, those issues will not give any right to the defendant to remain in the subject property. The defendant cannot rely on the issues pertaining to a third party to remain in possession of the subject property. However, she remained in the subject property and caused the plaintiff to incur costs in bringing this application. Therefore, the plaintiff should be entitled to a reasonable costs in this matter.
  11. In result, I make the following orders:
    1. The defendant is ordered to immediately deliver the vacant possession of the subject property to the plaintiff, and

2. The defendant is also ordered to pay a summarily assessed costs in sum of \$ 3000 to the plaintiff within a month from today.

At Lautoka  
15.05.2023



  
U.L.Mohamed Azhar  
Master of the High Court