

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 287 OF 2024

BETWEEN: **RANDHIR VIJAY SINGH**

PLAINTIFF

AND: **SEBA VERETI**

1ST DEFENDANT

ALL OTHER OCCUPIERS

2ND DEFENDANT

Appearances: Mr. R. Singh for the Plaintiff.

Mr. E. Moce for the 1st Defendant.

Date/Place of Judgment: Wednesday 16 April 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Application for vacant possession under Order 113 of the High Court Rules 1988 – has the 1st defendant entered into or remained in occupation of the property without the licence or consent of the plaintiff or that of any predecessor in title.

B. Legislation:

1. *High Court Rules ("HCR"): Order 113.*
2. *Indemnity, Guarantee and Bailment Act 1881: s. 59 (e).*

Cause and Background

1. This is the plaintiff's application against the 1st defendant for vacant possession of the land comprised in Certificate of Title No. 45488 being Lot 2 on Deposited Plan No. 5261 situated in the District of

Tailevu in the Island of Viti Levu and having an area of six hectares seven thousand three hundred and fifty square meters. It is also sought that the 1st defendant removes all structures, dwellings and burial site on the land.

2. The plaintiff has acquired ownership of the land recently. He became the registered proprietor on 30 April 2024.
3. The plaintiff says that there are squatters on the property who are occupying it illegally and unlawfully. He has not given any of the defendants consent or license to occupy the land.
4. The plaintiff says that the 1st defendant has buried two of his children on the said property which is illegal and unlawful. It is asserted that the 1st defendant has no right and interest in the said property.
5. The plaintiff says that eviction notices have been given to all occupiers of the subject land. There are 3 houses on the property. Two houses have been vacated and the 1st defendant is the only one left to vacate.
6. The plaintiff says that the eviction notices were served on 23 September 2024 and since the property is not fully vacated, the plaintiff cannot develop the land. The plaintiff says that he is deprived of his legitimate rights to deal with his property as he deems fit. He says he continues to incur expenses and loss of potential income and profits from the development.

The 1st Defendant's Position

7. The 1st defendant's position is that he is originally from the village of Lawaki which is adjacent to this subject freehold land. The initial proprietor of the freehold land was one Henry Milne Scott.
8. According to the 1st defendant, he and his parents had agreed to purchase the property that the plaintiff has now bought. Therefore they resided in this Lot for 42 years starting from 1982. The agreement was that they would purchase 16.4 acres of land in the sum of \$8,320 from Henry Milne Scott.
9. The 1st defendant says that the survey was completed by Mac Manus Rakai & Partners, Consultant Civil Engineers, Land Surveyors Town Planners. He paid the survey fees too. They paid \$1000 to Mr. Milne Scott's Solicitor Wm Scott & Co. A receipt of payment from Wm Scott & Co dated 23 August 1984 was attached to the affidavit.

10. The 1st defendant says that there were other payments done but they may have misplaced those receipts since this is a 1980s transaction.
11. Unfortunately the 1987 coup had stopped all their payments and the agent who was executing the transfer had disappeared with no notice. They tried to look for him but could not find him.
12. The 1st defendant says that the initial payment of \$1000 could not constitute consent but full payment would constitute consent. He says that he has made this property his home and has been survived by his parents. He says that he has 2 sons and he has buried them in the vicinity.
13. Since the property became their home, he has planted tree crops that are of significant economic value. The trees include sandalwood and mahogany. He has no knowledge of the transfer of the property to the plaintiff.

Issue, Law and Analysis

14. Under Order 113 of the HCR, I need to determine whether the defendant has entered into the land or remains in occupation with the license or consent of the plaintiff or that of any predecessor in title.
15. The subject property was acquired by the plaintiff on 30 April 2024. This property was initially part of the land comprised in Certificate of Title Number 3917. Over a period of time, the land in Certificate of Title Number 3917 has been subdivided and sold to various persons since 1980.
16. The predecessor to the title now owned by the plaintiff was Electro Surveillance Pte. Limited. This company acquired the property on 31 March 2022. A new Certificate of Title Number 45488 was issued to Electro Surveillance Pte. Limited. The property was then bought by the plaintiff in 2024.
17. The 1st defendant has produced a receipt dated 23 August 1984 for purchase of Lot 6 in Certificate of Title Number 3917. There is no evidence that the property that the 1st defendant purchased included the land in respect of which a separate Certificate of Title Number 45488 was issued and sold to Electro Surveillance Pte. Limited and then to the plaintiff.
18. The plaintiff has not been able to establish that he has the license or consent of Electro Surveillance Pte. Limited to enter the land or remain in occupation since issuance of the new title to it. He only

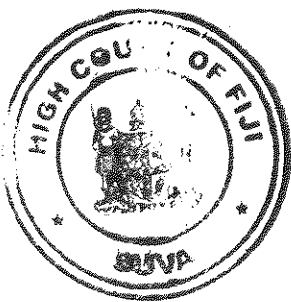
claims a right by virtue of some oral agreement to purchase the land before the subdivision of the land and sale of the same to the company.

19. Even if the 1st defendant and his family had the desire, interest or intention to purchase the land from Henry Milne Scott, being one of the registered proprietors of Certificate of Title Number 3917, and that land included the plaintiff's current Lot 2, they have not paid full consideration sum to claim any equitable right in the property.
20. The 1st defendant and his family were paying the purchase monies to Wm Scott & Co. Barristers & Solicitor who were accepting the payment for the purchase of the property on behalf of one John Scott and Harold Snell. These are not the same persons as the registered proprietors of Certificate of Title Number 3917 thus establishing that the Lot 6 that the 1st defendant was intending to purchase with his family is not the same property as the one that the plaintiff has bought.
21. Whichever property was being bought, the 1st defendant agrees that complete payments were not made. The 1st defendant and his family have therefore not purchased the property. No legal or equitable interest arises as a result. There is no evidence that the 1st defendant and his family were given license or consent to occupy the property by the rightful owners without buying it.
22. In any event, the 1st defendant cannot assert an interest in the land as there is breach of s. 59 (e) of the Indemnity, Guarantee and Bailment Act 1881 which states that "*no action shall be brought upon any contract or sale of lands, tenements or hereditaments or any interest in any or concerning them unless the agreement upon which such action is to be brought or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized*".
23. The proprietors of the property at the time the 1st defendant and his family wished to purchase it were one Henry Milne Scott and Henry Marks as Executor. There is no sale and purchase agreement between them and the 1st defendant or even a memorandum or note in writing signed by the proprietors or their authorized agents for the court to give legal effect to the arrangement for sale. The receipt from Wm. Scott & Co. indicates that the money was accepted on behalf of one John Scott and Harold Snell and not the proprietors of the property.

24. Further, if the 1st defendant had a claim in the land pursuant to any agreement, and the proprietors had defaulted on their part, he should have brought an action for specific performance long time back. No such action was ever filed and the 1st defendant therefore cannot now claim that he had the license to enter into and remain in occupation by any predecessor of the title.
25. The 1st defendant could have applied for a vesting order too if he claims to have been living on the property for over 42 years. No application was made. Now there is a new owner of the property and the 1st defendant does not have his license or consent to remain in occupation of the said land. He must give vacant possession to the new proprietor.

Final Orders

26. In the final analysis, I make the following orders:
- a. 1st defendant must vacate the property contained in Certificate of Title No. 45488 being Lot 2 on Deposited Plan No. 5261 situated in the District of Tailevu in the Island of Viti Levu having an area of six hectares seven thousand three hundred and fifty square meters on or before 30 May 2025.*
 - b. The 1st defendant shall pay costs of the proceedings to the plaintiff in the sum of \$3,500 within 21 days.*



.....
Hon. Madam Justice Anjala Wati

Judge

16.04.2025

To:

- 1. Sherani & Company for the Plaintiff.**
- 2. Vosarogo Lawyers for the 1st Defendant.**
- 3. File: Suva HBC 287 of 2024.**

