

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 190 of 2020

BETWEEN : **AJAY KUMAR** aka **BHAN PRATAP DEO** of Naitata, Navua, Fisherman.
PLAINTIFF

AND : **DHIRENDRA PRASAD** and **GITA DEVI** both of Vuninokonoko of Tokotoko
Navua, Farmer and domestic duties respectively.
DEFENDANTS

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Singh S.** for the Plaintiff

Ms. Chand A. for the Defendants

DATE OF JUDGMENT: 12th November, 2025

JUDGMENT

[Special and General Damages]

A. Introduction

1. The Plaintiff filed a Writ of Summons coupled with a Statement of Claim and sought for the following orders-
 - (a) Special Damage in the sum of \$70,000,
 - (b) General Damages,
 - (c) Costs, and
 - (d) Such further/or other relief as the Honourable Court deems just and necessary.
2. On 20th July 2020, the Defendant filed its Statement of Defence and a Counterclaim and sought for the Plaintiff's claim be Dismissed and Orders as per the Defendant's counterclaim be granted.
3. On 6th October 2020, the Plaintiff filed its Reply to Statement of Defence and Counterclaim.
4. At the hearing, the Plaintiff called three (03) witnesses whilst the Defendant as the only witness testified in the proceedings for the defence.
5. The entire evidence and the submissions recorded in the proceedings before this Court will be taken into consideration and determination accordingly made.

Plaintiff's contention.

6. The Defendants are the present owners of the property Certificate of Title No. 40636 being Lot 2 on DP no. 9936.
7. The Plaintiff and his parents occupied the property as tenants. The Plaintiff owned a three-bedroom dwelling house which was affixed on the said property.
8. On 3rd October 2017, the Defendant was ordered to vacate the said property on or before 3rd December 2017.
9. At this time, the Plaintiff acquired a lease of another land from the Director of Lands and was in the process of removing the dwelling house from the said property to his land.
10. On 4th December 2017, the Defendants forcefully and wrongfully removed the Plaintiff and did not allow him to remove his dwelling worth \$70,000 from Certificate of Title No. 40636, Lot 2 on DP No. 9936.
11. The Defendants conduct constitutes the tort of detinue and is entitled to special damages of \$70,000.

Defendant's contention.

12. Defendant agrees that the Plaintiff with his family were residing on the Defendant's dwelling on CT No. 40636, lot 2 on DP no. 9936 that belonged to the Defendants and transferred to the Defendants. The Plaintiff never purchased nor built the said dwelling.

13. The Plaintiff was not suppose to remove or to dismantle the dwelling as it never belonged to the Plaintiff.
14. Defendant says that the dwelling which the Plaintiff is claiming never belonged to the Plaintiff and the value cannot be of \$70,000, since it was in a bad condition and the Defendants have renovated to put it back to living condition.
15. The Defendants in its Counterclaim claims costs, damages, all legal costs, etc.

Determination

16. On 5th June 2017, the Plaintiff, Ajay Kumar was issued with a Notice to vacate and quit Certificate of Title No. 40636 on Lot 2 on DP No. 9936 at Vuninokonoko Navua.
17. The Notice further stated that 'Ajay Kumar is only to take his own items that he has in the property.'
18. Subsequently, the Defendant served an Originating Summons on to the Plaintiffs on 25th July 2017, issued out of Court on 21st July 2017.
19. On 3rd October 2017, Ms. Luisa Latu represented the Defendant and a Consent Order was entered into by the Plaintiff and the Defendant and the following orders were granted:
 - (1) The Defendant to give vacant possession to the Plaintiff property being Certificate of Title No. 40636 being Lot 2 on DP No. 9936 within two calendar month's time on or before 31st December 2017, and
 - (2) Execution will be suspended until 3rd December 2017 at 4pm.
20. Notably, no order was made in Civil Action No. HBC 190 of 2020 in favour of the Defendant, Ajay Kumar regarding the "removal of the dwelling house comprising of timber, cement and iron of three bedrooms affixed on the said property in which he was living on Certificate of Title No. 40636, Lot 2 on DP No. 9936."
21. The Certificate of Title No. 40636, Exhibit 1 within the Defendant's Bundle of Documents establishes that the property was transferred in the name of the Defendants - Dhirendra Prasad and Gita Devi on 20th October 2014.
22. The Plaintiff in the current Civil Action No. HBC 190 of 2020 continuously reiterate that the Plaintiff and his parents occupied the said property Certificate of Title No. 40636, being Lot 2 on DP No. 9936 as Tenants of the predecessors in title of the Defendant's and owned a dwelling house comprising of timber, cement and iron of 3 bedrooms which was affixed on the said property. The Plaintiff has spent about \$80,000 over the years on the maintenance work. The Plaintiff is now asking in his evidence to the Court that the Defendants pay him \$126,000. The Plaintiff admitted in his evidence that 4th December 2017, he was evicted from the said premises on a Consent Order made by this Honourable Court.
23. This Court noted the dilemma of the Plaintiff whilst giving evidence. He was very evasive indeed.

24. The Plaintiff's elder brother [PW2] Kalika Prasad gave evidence and stated that he stayed in the same house before at Vuninokonoko, Navua and that his father had built that house. They all maintained that house. The valuation was done for that house at \$126,000, but the Plaintiff is asking for reimbursement of \$70,000 instead.
25. [PW3] Salacieli Tagane Lomaiviti, registered valuer testified and told Court that-
- "He did valuation of this current property at Certificate of Title No. 40636 on Lot 2 DP No. 9936 at Vuninokonoko, Navua in 2020 at the request of the Justice of Peace, Mukesh Reddy and the fees paid by Kalika Prasad [PW2]."
 - "There were two (2) buildings, did valuation for both buildings at \$70,000. However, the witness could not state the valuation of the dwelling/ house in 2017. Depreciation Valuation was at \$69,000, but rounded off to \$70,000.'
26. The Defendant, Dhirendra Prasad [DW1] gave evidence. He told Court, this property on Certificate of Title No. 40636 on Lot 2, on DP No. 9936, was transferred to the Defendants Dhirendra Prasad and Gita Devi by his mother-in-law by transfer document no. 305308 - Exhibit D-2. At that time of transfer to him, the Plaintiff - Ajay Kumar was staying in that house. He told Ajay Kumar to move out, gave him one (1) year time to vacate, eventually evicted him legally from the property in 2017. The Plaintiff at no time mentioned to the Defendant [DW1] that he had decided that the house he was staying in will be removed by Ajay Kumar [Plaintiff].

In Conclusion

27. There is concrete evidence before this Court as per Exhibit D-1 - Certificate of Title No. 40636 on Lot 2, DP No. 9936 that the transfer took place and was registered on 20th October 2014 from one Phoul Mati aka Phul Mati [First Defendant - Mother-In-Law] to the Defendants - Dhirendra Prasad in Gita Devi via transfer no. 805308.
28. The Plaintiff, Ajay Kumar was subsequently evicted from the property in 2017 by a Consent Court Order in Civil Action No. HBC 210 of 2017.
29. The *viva voce* evidence of the witnesses coupled with the documentary evidence, in particular the Certificate of Title No. 40636 on Lot 2 on DP No. 9936 clearly establishes that the Defendants - Dhirendra Prasad and his wife Gita Devi are the legal registered owners of the said property after the title was transferred to the Defendants by the First Defendant's mother-in-law on 20th October 2014.
30. I find there is not a stinca of evidence from the Plaintiff or his witness(es) to establish that the Plaintiff at any one time owned a dwelling house comprising of timber, concrete and iron of three (3) bedroom which was affixed to the Certificate of Title No. 40636 on Lot 2 on DP No. 9936 and was valued at \$70,000.
31. The certificate of title registration shows that the Defendants, Dhirendra Prasad and Gita Devi are the registered owners and proprietors of the said property in question accordingly.
32. I eventually find that the Plaintiff has failed to prove its case on the balance of probabilities against the Defendants as was required to do so by him in terms of the existing law.

33. The Plaintiffs Writ and the Statement of Claim in the circumstances is dismissed in its entirety.

Costs

34. The matter proceeded to full hearing with witnesses giving evidence and tendering documentary Exhibits. Further, parties furnished Court with written submissions. This Court took a day and half to complete the hear of all witnesses evidence.
35. It is only appropriate, just and fair that I award a summarily assessed costs of \$2,500 against the Plaintiff to be paid to the Defendants within 21 days timeframe.

Orders

- (i) The Plaintiff's Writ together with the Statement of Claim is dismissed in its entirety.
- (ii) The Plaintiff to pay the Defendants summarily assessed costs of \$2,500 within 21 days timeframe.
- (iii) File closed with orders intact accordingly.

Dated at Suva this 12th day of November ,2025.




VISHWA DATT SHARMA
PUISNE JUDGE

cc. Shelvin Singh Lawyers, Suva
Amrit Chand Lawyers, Suva.