

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

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AT LAUTOKA

Civil Jurisdiction

Action No. 272 of 1976

BETWEEN: KRISHAN SINGH s/o Hunsary & ORS. Plaintiffs

-and-

THE PUBLIC TRUSTEE OF FIJI
SHASTA NAND f/n Dhani Ram Defendants

Mr. G.P. Shankar, Counsel for the Plaintiffs
Mr. B.C. Patel, Counsel for the 1st Defendant
Mr. Benefield, Counsel for the 2nd Defendant

JUDGMENT
on the counterclaim
of the second defendant

When I delivered my judgment on the plaintiff's claim I overlooked the second defendant's, Shasta Nand's, counter-claim.

He alleged that notice to quit terminating on or before 30/11/76 had been served upon the first plaintiff Krishan Singh and that the latter had failed to quit. The notice to quit was in regard to a dwelling house on the land which is still occupied by the first plaintiff.

The second defendant filed his counter-claim in relation to the first plaintiff's occupation of that house. It alleges that the house was worth \$60 per month and claims mesne profits. No defence to the counterclaim was filed by the plaintiff.

In evidence the second defendant stated that the value of the house was about \$50 - \$60 per month. He was not cross-examined on that evidence by the plaintiff and in his submissions the plaintiff's counsel concentrated entirely on the question as to whether the sale by the Public Trustee had been lawful. Plaintiff's counsel made no mention of the counterclaim and no evidence was called by the plaintiff in connection with her claim nor in rebuttal of the counter-claim. I accept \$50 as the monthly value of the house.

Accordingly there will be judgment for the second

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defendant for mesne profits at \$50.00 per month on and from 1/12/76 i.e. immediately following the expiry of the notice to quit up to the date of possession.

The plaintiff will pay the second defendant's costs which I fix at \$30.00.

LAUTOKA,
19th April, 1979.

(sgd.) J.T. Williams
JUDGE