IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 260 of 1979

BETWEEN: RAM NARAYAN s/o Sahadeo Singh — Plaintiff

A N D : LATCHMAN SINGH s/o Sobha Ram — Defendant

Messrs. Stuart, Reddy & Co. — Solicitors for the Plaintiff
Messrs. G. P. Shankar & Co. — Solicitors for the Defendant

J U D G M E N T

This is a summons by the plaintiff under Section 169 of the Land Transfer Act 1971 for an order of possession against the defendant.

The plaintiff is the registered proprietor of freehold land in Solovi, Nadi of which about one acre is occupied by the defendant. It is not disputed that the defendant has no title to the land or house he occupies and that he never paid any rent for it. In accordance with Section 172 of the Act the onus is upon the defendant to satisfy the Court that he has a right to remain on the land.

The first thing that I would like to say is that there has been a break of about ten months in the hearing of evidence, the parties having misjudged the time the hearing would take in the first place. The plaintiff was being cross-examined when the hearing had to be adjourned to a new date to be fixed by the District Registrar. I do not know which side was responsible for the delay, but it was not until over ten months later that the cross-examination was resumed, and the hearing of evidence concluded. This was quite reprehensible, and it is quite impossible for the Court to remember what witnesses gave evidence before, what they said, or how they gave their evidence. Where credibility is such an important factor it places the Court in an almost impossible position.

This is one of those wretched family squabbles, the defendant, being married to the plaintiff's daughter, and the plaintiff's own son (D.5) and his brother-in-law seem to have joined forces with the defendant against him. The plaintiff who is an old man says that he would like to settle this matter now in his lifetime otherwise there will be endless problems for his survivors. I can well understand that. The defendant says that the acre of land was given to him by the plaintiff as a wedding present, part of his dowry or as an inducement to marry his daughter, it was not made very clear. The plaintiff

himself denied this, and said that in 1960 the land where the defendant was living was sold, the defendant had nowhere else to live and so the plaintiff allowed him to move onto the land where the defendant still lives. Apart from my preference for the evidence of the plaintiff there are facts which favour his version rather than that of the defendant.

The defendant married the plaintiff's daughter in 1953 but did not move onto the land until 1960. The plaintiff himself had no registered title to the land in question until 1978. Although the family had lived on the land since about 1943 his father did not buy the land till 1957, four years after the defendant's marriage. Although the plaintiff says his father was supposed to have given him half the land he did not do so, and when his father died the land vested in Lal Singh and his mother. There was a dispute between Lal Singh and the plaintiff, the plaintiff claiming half the land. Some agreement was reached, but it was not until 1978 that there was a final compromise settlement whereby the plaintiff paid for and got title to one-third of the land. So until 1978 the plaintiff was not in any position to give any land to the defendant or anyone else.

If the defendant was given the land in 1953 why did he not move onto it or take possession of it for seven years, or at least take some steps to ensure that his title or right to the land was recognised? Although he says he went many times to the plaintiff to ask him to give him a title, two surveys of the land in question were made, in 1966-67 by Mohindra Singh, and in 1977 by Farik Khan but on neither occasion was the acre claimed by the defendant marked out. The defendant says that Farik Khan was told to survey his acre so that separate title could be made. Farik Khan, whose evidence would have been most relevant was not called as a witness by the defendant.

The plaintiff's brother-in-law Ram Prasad Sharma gave evidence for the defendant. He said that the plaintiff told him he had given an acre to the defendant. He claims to have been some sort of benefactor or advisor to the family, and to know all about their affairs, but it seemed to me that he was more of an interfering trouble-maker who now has some grudge against the plaintiff. Previously he had sided with the plaintiff against Lal Singh, but now seems to be siding with the defendant against the plaintiff. I think that everything he has said must be treated with extreme caution, and not accepted without corroboration of some sort or another.

Another witness called by the defendant was Prem Singh (D. 5) one of the plaintiff's sons. He gave evidence that when the defendant got married he was given an acre of land plus a cow. Since his age now is 26, the defendant's marriage would have occurred the year before he was born. He then said he heard them talking between 1960-62 when they were building the house. His

age then would have been six to eight years, and I doubt whether his memory could have been so good after about eighteen years. He also gave evidence as to what the plaintiff is supposed to have told Farik Khan about the acre to be given to the plaintiff. As I have said before the best person to give that sort of evidence would be Farik Khan. It is clear that this witness has fallen out with the plaintiff and his faction of the family feud and has thrown in his lot with the defendant.

I am satisfied that the defendant's claim to have been given an acre of land as a wedding gift, or even the promise of a gift of land is not tenable and I reject it. Nor do I accept that the defendant came on the land in 1960 because he was asked to do so by the plaintiff, that he was given an acre of land for life so that he could build on it and live on it. I believe the plaintiff who said the defendant had to leave where he was living at the time and had nowhere else to go. I accept that the defendant was allowed to come and live on the land by the plaintiff and Lal Singh, in the usual Indian family fashion, the defendant being married to the plaintiff's daughter.

It is interesting to note that in previous proceedings before the Agricultural Tribunal the defendant made no claim that the land or any of it had been given to him as a wedding present, and although he claimed that the land (in that case about 3½ acres including and surrounding the house site) had been given to him by the plaintiff, he also agreed that it was only after he had to move away from his previous home and had nowhere else to go that the plaintiff allowed him onto his land to live.

I believe the plaintiff in this respect and not the defendant, and reject the defendant's claim that the land was given to him or that his occupation was any more than by way of a typical Indian family arrangement. The defendant paid no rent, but on the other hand he helped the plaintiff cultivating and marketing his vegetables.

There was first of all a very modest house built for the defendant on the site. Later this was replaced by a more ambitious structure, later extended and partly replaced when it was damaged by the hurricane. The last of the extensions have clearly been without any planning permission. The defendant fenced an area round the house of about an acre and planted fruit trees and vegetables. There seems to have been some trouble when the defendant's fence obstructed one of the plaintiff's access roads, and relations soon deteriorated. The defendant tried (unsuccessfully) to get the Agricultural Tribunal to give him a tenancy of about 3½ acres of the plaintiff's land and relations are now so bad that the plaintiff wishes the defendant to leave, as he says so that his survivors will not be faced with endless problems.

Having rejected the defendant's contention that the land was a gift - either a wedding gift or any other gi there remains only the questi on of whether proprietary estoppel will act to give the defendant some right to rema n on the land. The present building was valued by a contractor Suresh Chand (D. 1) who said a similar house now would cost about $11,250 to build, basing his estimate on a value of $9 per square foot. This is almost certainly an optimistic valuation.

The defendant has lived on the land in question for about twenty years. He has certainly spent time and money building the house in which he now lives, in putting a fence round the area and planting fruit trees and growing vegetables. But there is a dispute between the plaintiff and the defendant as to who contributed to the building and the extent of each's contribution. When the defendant first moved to Solovi he lived in the plaintiff's house until another house was built. The plan was approved in the name of Lal Singh, since the title to the land was then in his name. Presumably there was difficulty getting planning permission for another house because the plan described the simple building as a bulk store.

The defendant says the plaintiff only supplied him with a few oil drums for the walls, but the plaintiff says that he supplied money as well as material, and his sons also helped in the building. On this point I believe the plaintiff, and it would be normal to expect a father-in-law to help his daughter and son-in-law when they were in need of a home.

That house however was demolished in the floods about 1964, and had to be re-built, this time with a proper concrete foundation, raised on the side of the river to provide storage space underneath. The plaintiff claimed to have given the money to the defendant to build the new house, the defendant denied this though he admitted that the plaintiff's sons helped with the concrete. I think it is only to be expected that the plaintiff would assist the defendant with money and labour to rebuild the house destroyed by the floods. But how much the building cost and how much of the cost was borne by the plaintiff is unknown and probably could not be assessed at this stage.

Other rooms were added later and the plaintiff has not made any claim to have assisted the defendant to build those or to have financed their construction. Later still the rooms were partitioned so that there are now about eleven rooms, but these seem to have been done without planning permission and without the plaintiff being aware of it.

The fact remains that the defendant now has a fairly substantial house on the land, most of which was built and financed by himself, and the plaintiff

must have been aware that the defendant was extending his house. The plaintiff said that he told the defendant from the beginning and went on telling him to look for his own place, but if he did so he could not have been serious about it. As I have said, the defendant has lived there for about twenty years and has spent quite a sum of money building, and improving his home, and the plaintiff must have been well aware of what was going on.

There seems to be no doubt that both parties considered the arrangement to be a permanent arrangement, that they would all live on the land under the usual Indian family arrangement. And no doubt this state of affairs would have continued indefinitely if the parties had not fallen out. Thus the defendant would have felt no qualms about expending money on building and extending his house, and the plaintiff would not have felt constrained to stop him or point out that he had no right to remain on the land.

I do not believe that the defendant spent money on the land in the belief (mistaken or otherwise) that he had been given the land, or had some right to it during his life. And I do not believe that the plaintiff stood by and watched the defendant spending his money on land that would never be his. I'm sure those considerations or thoughts never came into the matter at all. The defendant no doubt expected to be allowed to live on the land for many years, but he surely knew that the plaintiff was and never ceased to be the owner of the land.

The question now is whether equity would compel the plaintiff to give right or title to the land to the defendant. This issue is not on all fours with Badal v Bhim Sen, Civil Action 251/76 on which the defendant greatly relied. It is much closer to the case of Ramsden v Dryson (1866) L.R. 1 H.L.129 and Unity Bank v King 25 Beav. 72.

In such case equity will not act to give the defendant a right or title that he never had, and was never made to believe that he had, but it may or may not act to give him the benefit of money he has expended in erecting buildings on the land.

In the circumstances of this case although the defendant has not satisfied me that he has any right to continue in occupation of the land and the plaintiff is entitled to the order of possession sought; I will grant the order subject to the condition that the plaintiff pays to the defendant compensation for the money expended on building the house. I have not been given any idea of the cost of building the house or exactly how much of the cost may be attributable to the plaintiff and his sons. The present valuation of $11,250 is almost certainly on the high side, and it is not a very accurate guide to what the

house cost to build. It is not practical to allow the defendant to remove the building because of the nature of the concrete foundations.

I would therefore assess the compensation to be paid to the defendant to be $7,500 so that the order for possession of the land and the house will be made subject to the payment by the plaintiff to the defendant of the sum of $7,500 in compensation for the money and effort spent on building the house. The plaintiff is entitled to be paid his costs to be taxed if not agreed.

(sgd.)
G. O. L. Dyke
JUDGE

LAUTOKA,
4th November, 1980