IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Civil Jurisdiction

Action No. 124 of 1981

BETWEEN : PONSAMY f/n Chinakolanda Gounder &
VELIAMMA d/o Thandrayan &
VELIAMMA d/o Raj Mudaliar — Plaintiffs

A N D : DHARAM LINGAM REDDY s/o Muttap Reddy — Defendant

Messrs. Sahu Khan & Sahu Khan — Solicitors for the Plaintiffs
Messrs. M.T. Khan & Company — Solicitors for the Defendant

J U D G M E N T

The first plaintiff is the executor of the deceased holder of an undivided half of Native lease 13196, Lot 8, in Lubulubu Division of Tavua, and the second two plaintiffs are administratrices of the deceased owner of the other undivided half thereof.

They seek possession under section 169 of the Lands Transfer Act from the defendant who has cultivated the land during the years 1976, 1977 and 1978. Their affidavit sworn by the second plaintiff alleges that the defendant's licence to cultivate the land was terminated at the end of 1978 but he refuses to quit. He was again requested to quit by letter dated 16th January, 1981 and given until 28th February, 1981 to vacate.

The defendant admits that the plaintiffs are registered owners of the land. He alleges that he entered a share farming agreement on 12th December, 1973 with the owners (now deceased) of the estate. He appends an application to the Agricultural Tribunal dated 12th March, 1981, in which he requests relief under section 18(2) of ALTO in regard to what he suggests is "his unlawful tenancy". The defendant hopes that the Tribunal will award him a tenancy of half the acreage on the basis of the agreement.

The agreement to which the defendant refers is annexed to his affidavit. Nowhere in support of the defendant's reference to a tenancy, does it describe the registered proprietors of the land as "lessors" or "landlords", the preamble describes the plaintiffs as "the owner", and it describes the defendant (respondent) as "the Cultivator". Thus there is a definite avoidance of any use of words which would give support to the allegation of an intention to create a tenancy. The terms of the agreement describe the respondent as a labourer serving "the owner". The term of the agreement is 3 years during which time the "labourer" (defendant) does the work, buys all seed, manure, and bears the costs of planting, cultivating and harvesting. The parties then share the profit after payment of such outgoings.

Thelast paragraph permits "the owner" to terminate the arrangement by giving six months' notice if the defendant is not working satisfactorily and shall give "the worker" (defendant) six months' wages.

Clearly there is a deliberate avoidance of any word or expression which could imply any intention to create a tenancy.

There is no suggestion therein of a tenancy and I cannot see in what way it can be a tenancy.

The form containing the application to the Agricultural Tribunal is an official printed form which proclaims that relief can be granted when the tenancy is unlawful. Section 18(2) of ALTO which allows the Tribunal to grant such relief reads as follows :-

> "(2) Where a tribunal considers that any landlord or tenant is in breach of this Act or of any law, the tribunal may declare the tenancy or a purported tenancy granted by such landlord or to such tenant as aforesaid, null and void and may order such amount of compensation (not being compensation payable under the provisions of Part V) paid, as it shall think fit, by the landlord or by the tenant, as the case may be, and may order all or part of the agricultural land the subject of an unlawful tenancy to be assigned to any tenant or may make any determination or order that a tribunal may make under the provisions of this Act."

It is a difficult provision to understand and one wonders what can be meant by the expression "unlawful tenancy". But I do not think that the agreement between the parties can be regarded as a tenancy. In my view the agreement between the parties should show that there has been an attempt to create a tenancy which for some reason is unlawful. As I have said there is no sum fixed by way of rent; the defendant is not, as a tenant should be, free from the plaintiff's supervision and control, but under clause 1(b) comes under the direction and supervision of the plaintiff and must do such work as the plaintiff requires. This limitation on the defendant is repeated under clause (4) of the agreement. No tenant's liabilities arise under that agreement nor are there any tenant's rights. It does not even have the force of a licence.

Section 11 of the ALTO militates against the defendant's claim that the agreement might in some way be construed as a tenancy, by stating that rent cannot be paid wholly or in part by sharing the crop; or in the form of labour; it must be paid in legal currency unless the Minister approves the arrangement by order.

Even if the agreement could be construed by the Tribunal as a tenancy of half the holding it would amount to a sub-tenancy from the plaintiffs and by section 45 the sub-letting of all or part of the holding is prohibited unless the tribunal permits this on a temporary basis only, on the ground that the sub-lessor by reason of ill health or other special circumstance is unable to perform his obligations under the contract. There is no suggestion here that the plaintiff by reason of any special circumstance is sub-letting the land temporarily until he is again able to perform his obligations and duties under the contract. The defendant therefore cannot succeed in the tribunal on that ground. In fact is is apparent that he does not rely upon such a ground.

Even if the agreement were regarded as a licence the defendant under section 55 of the ALTO forbids the granting of licences of an agricultural holding except where it concerns

native reserve. Thus the defendant cannot succeed before the Tribunal on the ground that the agreement could be a licence.

Hence even if the agreement on application to the Tribunal were wrongly construed by the Tribunal as an unlawful lease or as a licence the defendant cannot have the land subdivided with a tenancy of a portion allocated to him by Agricultural Tribunal under section 18 of ALTO.

Accordingly no useful purpose can be served by staying these; proceedings as the defendant requests.

The defendant has not shown cause.

Judgment for plaintiff for possession with costs.

LAUTOKA,
12th June, 1981

sgd. (J T Williams)
Judge