

1976, 16

16

IN THE PRIVY COUNCIL

No. 16 of 1975

ON APPEAL
FROM THE FIJI COURT OF APPEAL

Between

RAM SHANKAR s/o Pachu

Appellant

- and -

PAREKH HOLDINGS LIMITED

Respondent

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace Gardens
London, SW1P 1RL.

Solicitors for the Appellant

NORTON ROSE BOTTERELL & ROCHE,
Kempson House,
Camomile Street,
London EC3A 7AN.
Solicitors for the Respondent

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

Between

RAM SHANKAR s/o Pachu

Appellant

- and -

PAREKH HOLDINGS LIMITED

Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of document	Date	Page
<u>IN THE SUPREME COURT</u>			
1.	Summons for Ejectment	20th October 1972	1
2.	Affidavit of Sashi Kant Parekh with Annexure "A"	23rd October 1972	2
3.	Affidavit of Shanti Devi with Annexures "A" and "B"	21st December 1972	5
4.	Proceedings	12th December 1972 and 9th January 1973	26 27
5.	Decision	30th January 1973	28
6.	Order	30th January 1973	29
<u>IN THE COURT OF APPEAL</u>			
7.	Notice of Appeal	26th February 1973	31
8.	Judgment	19th July 1973	32
9.	Order	19th July 1973	36
<u>IN THE PRIVY COUNCIL</u>			
10.	Order granting special leave to Appeal in forma pauperis to Her Majesty in Council	18th December 1974	37

DOCUMENT TRANSMITTED TO PRIVY COUNCIL
BUT NOT REPRODUCED

Conditional Order

28th August 1973

1.

IN THE PRIVY COUNCIL

No.16 of 1975

ON APPEAL
FROM THE FIJI COURT OF APPEAL

Between

RAM SHANKAR s/o Pachu

Appellant

- and -

PAREKH HOLDINGS LIMITED

Respondent

RECORD OF PROCEEDINGS

No. 1

Summons for Ejectment

In the
Supreme Court

No. 1

Summons for
Ejectment

20th October
1972

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No.278 of 1972

IN THE MATTER of Section 169 of the Land
Transfer Act 1971

BETWEEN: PAREKH HOLDINGS LIMITED
a duly incorporated body
having its registered office
at Suva

PLAINTIFF

A N D: RAM SHANKAR son of Pachu of
Navua, Cultivator (1st Defendant)
RAM SARUP son of Pachu of Navua,
Cultivator (2nd Defendant) and
SHANTI DEVI daughter of Pardhuman
Maharaj of Navua, Domestic Duties
(3rd defendant)

DEFENDANTS

SUMMONS FOR EJECTMENT

20

LET all parties concerned attend a Judge in
Chambers Supreme Court, Government Buildings, Suva
on Tuesday the 12th day of December, 1972 at 2.15
O'clock in the afternoon on the hearing of an
application by the abovenamed Plaintiff that the
defendants RAM SHANKAR son of Pachu RAM SARUP

In the
Supreme Court

No. 1

Summons for
Ejectment

20th October
1972

(continued)

son of Pachu and SHANTI DEVI daughter of
Pardhuman Maharaj all of Navua in the Dominion
of Fiji, Cultivators and Domestic Duties
respectively do show cause why they should not
give up immediate vacant possession to the
Plaintiff of all that piece of land described in
Certificate of Title No.8633 as "TOKOTOKO"
(Part of) Lot 46 on D.P.1218, being an area of
6 acres and occupied by the defendants AND that
the cost of this application be paid by the
defendants to the plaintiff.

10

This Summons will be attended by the Counsel
for the Plaintiff.

DATED at Suva this 20th day of October, 1972.

This Summons was taken out by Messrs. Parshotam,
Chauhan and Company, Solicitors for the Plaintiff
whose address for service is at the Chambers of
the said Solicitors at Suva.

NOTE: It will not be necessary for you to enter
an appearance in the Supreme Court Registry, but
if you do not attend either in person or by your
solicitor, at the time and place above-mentioned,
such order will be made and proceedings taken as
the Judge may think just and expedient.

20

No. 2

Affidavit of
Sashi Kant
Parekh

23rd October
1972

No. 2

Affidavit of Sashi Kant Parekh

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

NO. 278 of 1972

IN THE MATTER of Section 169 of the Land 30
Transfer Act 1971

BETWEEN: PAREKH HOLDINGS LIMITED a duly
incorporated body having its
registered office at Suva PLAINTIFF

A N D: RAM SHANKAR son of Pachu of
Navua, Cultivator (1st defendant)
RAM SARUP son of Pachu
(2nd Defendant) and
SHANTI DEVI daughter of Pardhuman
Maharaj of Navua, Domestic Duties 40
(3rd defendant) DEFENDANTS

AFFIDAVIT OF SASHI KANT PAREKH

In the
Supreme Court

No. 2

Affidavit of
Sashi Kant
Parekh
23rd October
1972
(continued)

I, SASHI KANT PAREKH son of Jekisan Parekh of Suva, Company Director make oath and say as follows:-

1. THAT I am one of the Directors of PAREKH HOLDINGS LIMITED the Plaintiff herein and am duly authorised to make this affidavit on its behalf.

10 2. THAT PAREKH HOLDINGS LIMITED are the registered proprietors of all that piece of land described in Certificate of Title No.8633 known as "TOKOTOKO" (part of) Lot 46 on D.P. 1218 being an area of 6 acres.

3. THAT the defendants are in unlawful occupation of the land described hereabove.

4. THAT despite repeated verbal requests and a written notice dated the 6th October, 1972 and served on the defendants on the 6th of October, 1972 a copy whereof is annexed hereto and marked "A" the defendants have failed to vacate the said land and still refuse to do so.

20 WHEREFORE I pray to this Honourable Court to make the following orders:-

- (a) That the defendants are trespassers at law.
- (b) That the defendants do give immediate possession of the said land to the Plaintiff Company.
- (c) That the defendants pay to the Plaintiff such damages and costs as it seems just and expedient in the circumstances of the case.

30 SWORN by the said SASHI KANT PAREKH after the contents hereof had been read over and explained by me to him in the Hindustani language and that he appeared fully to understand the meaning and effect thereof before signing his name in my presence.) (Sgd.) S.K. Parekh

Before Me:

(Sgd.) R.I. Kapadia
A Commissioner for Oaths.

4.

In the
Supreme Court

No. 2

Annexure "A"

No. 2
Annexure "A"

6th October, 1972

14751

Messrs. Ram Shankar,
Shanti Devi and Ram
Sarup all of Calia,
NAVUA.

Dear Sir/Madam,

Re: Parekh Holdings Limited

10

Under instructions from our above named client, the registered proprietors of Certificate Title No. 8633, we hereby give you seven days notice commencing from the 9th day of October, 1972 to quit and deliver up the vacant possession of the said land to our client.

Take notice that if you fail to vacate the said land within the time prescribed hereabove, we shall take the necessary action to evict you therefrom in which event you will be held liable for all the costs incurred therein.

20

We do hope that such action will not be necessary.

Yours faithfully,
PARSHOTAM, CHAUHAN & CO.

Per: Sgd. V.S.

"A"

This is the annexure marked "A" referred to in the annexed affidavit of Sashi Kant Parekh sworn before me this 23rd day of October, 1972.

Before Me:

(Sgd.) R.I. Kapadia
A Commissioner for Oaths

No. 3

Affidavit of Shanti Devi with
Annexures "A" and "B"

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

NO. 278 of 1972

IN THE MATTER of Section 169 of the
Land Transfer Act 1971

BETWEEN: PAREKH HOLDINGS LIMITED a duly
incorporated body having its registered
Office at Suva PLAINTIFF

A N D: RAM SHANKAR son of Pachu of Navua,
Cultivator (1st defendant) RAM SARUP
son of Pachu of Navua, Cultivator
(2nd defendant) and SHANTI DEVI
daughter of Pardhuman Maharaj of
Navua, Domestic Duties (3rd
defendant) DEFENDANTS

AFFIDAVIT OF SHANTI DEVI

I, SHANTI DEVI daughter of Pardhuman Maharaj of
Navua, Domestic Duties make oath and say as
follows:

1. THAT I am the 3rd Defendant in this action.
2. THAT prior to 23rd day of November, 1968 I was
the registered proprietor of the freehold land
known as "Tokatoka" (part of) being Lot 46 on
Deposited Plan No. 1218 situate in the
district of Deuba in the Island of Vitilevu,
containing six (6) acres and comprised in the
Certificate of Title No. 8633 (hereinafter
called "the said land")
3. THAT on the 23rd day of November, 1968 I
executed a transfer of the said land in
consideration of the sum of £850.0.0. now
\$1,700.00 to be paid to me after execution,
in favour of Craids Enterprises Limited, a
limited liability Company having its
registered office at Suva, Fiji (hereinafter
called "the Purchaser").

In the
Supreme Court

No. 3

Affidavit of
Shanti Devi
with
Annexures "A"
and "B"

21st December
1972

In the
Supreme Court

No. 3

Affidavit of
Shanti Devi
with
Annexures "A"
and "B"

21st December
1972

(continued)

4. THAT the said sum of £850.00 was never paid to me by the said purchaser and still remains unpaid as at the date hereof.
5. THAT I have caused a Caveat No.117514 registered over the said land and that the said Caveat has been extended from time to time by Order of this Honourable Court in civil action No.283 of 1971 (hereinafter called "the said Caveat"). To the best of my knowledge, information and belief, the said Caveat still subsist on the said land. 10
6. THAT I have instituted legal proceedings against the said Purchaser in the Supreme Court of Fiji namely the Civil Action No.20 of 1971. A copy of the proceedings of the said action is hereto annexed marked "A". The present Solicitors for the Plaintiff Company herein were acting for me in the said civil action No.20 of 1971. The said Civil Action is still pending before this Honourable Court. 20
7. THAT subsequent to the transfer of the said land, the said Purchaser mortgaged the said land subject to the said Caveat to the Bank of New South Wales.
8. THAT the said land so mortgaged to the Bank of New South Wales by the said Purchaser was sold by the Mortgagee to the Plaintiff Company herein, in exercise of powers of sale contained in the said Mortgage No. 112317. 30
9. THAT an Order for winding up of the said Purchaser Company has been made by this Honourable Court and the Official Receiver has been appointed the receiver of the said Company.
10. THAT it is my intention and I have been advised by my Solicitors to amend the said Civil Action No.20 of 1971 to set aside the said Transfer No.106953 registered on 19th December, 1968 in the name of the said Purchaser on the ground that the same is null and void by reason of want of consideration. 40

11. THAT in the alternative, I say that the said purported sale of the said land was subject to then existing agricultural tenancies to the following persons:-

- (a) RAM SARUP son of Pachu of Tokotoko, Navua, Farmer
- (b) RAM SHANKAR son of Pachu of Tokotoko, Navua, Farmer

In the Supreme Court

No. 3

Affidavit of Shanti Devi with Annexures "A" and "B"

21st December 1972

(continued)

10

12. THAT I have been informed by the said Ram Shankar and do verily believe that he has instituted legal proceedings against the Plaintiff Company under the provisions of the Agricultural Landlord and Tenant Ordinance, namely the Agricultural Tribunal Reference No. C6ED 27 of 1972 which said action is still pending before the Agricultural Tribunal. A copy of the said proceedings is hereto annexed marked "B".

20

13. THAT in the alternative, I say that the Plaintiff's Notice to quit herein is defective by reasons of:-

- (a) that at no time the Plaintiff gave any notice or informed me that it has become the registered proprietor of the said land
- (b) that at least six (6) months notice is required to be given, in any event, to the Defendants in this action.

30

14. THAT by reason of the matters raised herein, I say that this action be dismissed with costs or alternatively be stayed pending the determination of the said Civil Action No.20 of 1971 and the said Tribunal Action No. Reference C6ED 27 of 1972.

40

SWORN by the said SHANTI DEVI)
 at Suva, Fiji before me this)
 21st day of December, 1972)
 and I certify that I read over)
 explained and interpreted the) (Sgd.) Shanti Devi
 contents of this Affidavit to)
 the Deponent in the Hindi)

In the
Supreme Court

language and she seemed fully)
to understand the meaning and)
effect thereof.

No. 3

Affidavit of
Shanti Devi
with
Annexures "A"
and "B"

(Sgd.) H.M. Patel

A Commissioner of the Supreme Court
of Fiji for taking Affidavits.

21st December
1972

(continued)

No. 3

No. 3

Annexure "A"

Annexure "A"

G.P. FORM 198

No. 20 of 1971

10

IN THE SUPREME COURT OF FIJI

Between SHANTI DEVI, daughter of Pardhuman
Maharaj of Navua, Fiji, Domestic
Duties Plaintiff

and CRAIDS ENTERPRISES LIMITED, a duly
incorporated limited liability
company having its registered
Office at Suva, Fiji Defendant

ELIZABETH II, by the Grace of God of the United
Kingdom of Great Britain and Northern
Ireland and of Her other Realms and
Territories Queen, Head of the Commonwealth,
Defender of the Faith

20

To CRAIDS ENTERPRISES LIMITED

of Suva, Fiji

WE COMMAND YOU, That within Eight days after the
service of this Writ on you inclusive of the day
of such service you do cause an appearance to be
entered for you in an action at the suit of
SHANTI DEVI, daughter of Pardhuman, of Navua,
Fiji and take notice that in default of your so
doing the plaintiff may proceed therein, and
judgment may be given in your absence.

30

WITNESS the Honourable SIR CLIFFORD JAMES HAMMETT
Chief Justice of our Supreme Court, at Suva, this
19th day of January, 1971.

Wm. SCOTT & COMPANY

Per: ?

Solicitors for the Plaintiff.

In the
Supreme Court

No. 3

Annexure "A"

(continued)

10 N.B. - This Writ is to be served within twelve
calendar months from the date thereof, or, if
renewed, within six calendar months from the date
of the last renewal, including the day of such
date and not afterwards.

20 The defendant may appear hereto by entering
an appearance either personally or by Solicitor
at the Supreme Court Registry at Suva. If the
Defendant enter an appearance they must also
deliver a defence within 14 (fourteen) days from
the last day of the time limited for appearance
unless such time is extended by the Court or Judge
otherwise judgment may be entered against them
without notice unless they have in the meantime
been served with a Summons for Judgment.

ENDORSEMENT OF CLAIM

STATEMENT OF CLAIM

- 30 1. Sometime between the months of October to
December, 1968 the Defendant Company bought
from the plaintiff all that land belonging
to the Plaintiff and comprised in Certificate
of Title No. 8633 situated at Calia, Navua,
Fiji, for the sum of \$1700.00 (One thousand
and Seven Hundred Dollars).
2. The transfer document affecting the said
land was duly signed by the Plaintiff,
transferring all her rights, title and
interest in the said land, before Mr. Devendra
Pathik, Barrister and Solicitor, Suva.
- 40 3. The Defendant did not at the time of the
signing of the said transfer document pay to
the Plaintiff the sum of One Thousand Seven
Hundred Dollars OR has ever paid this sum or
any part thereof despite repeated verbal
demands made by the Plaintiff.

In the Supreme Court

No. 3

Annexure "A"

(continued)

- 4. The Plaintiff through her Solicitors caused a written demand to be sent to the Defendant on the 3rd day of November, 1970 BUT the Defendant has still not paid the amount due and owing.
- 5. The Plaintiff therefore claims from the Defendant the said sum of \$1700.00 (one Thousand Seven Hundred Dollars) and the costs of this action.

Wm. SCOTT & COMPANY

10

Per: ?

(Solicitors for the Plaintiff)

AND \$25.00 (or such sum as may be allowed on taxation) for costs and also, if the plaintiff obtains an order for substituted service, the further sum of \$12.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff, his Solicitors or Agent within 8 days after service hereof (inclusive of the day of service), further proceedings will be delayed, but if it appears from the endorsement on the Writ that the Plaintiff is resident outside the scheduled territories as defined by the Exchange Control Act 1947, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into Court within the said time and notice of such payment in is given to the Plaintiff, his Solicitors or Agent.

20

30

IN THE SUPREME COURT OF FIJI

No. 20 of 1971

BETWEEN SHANTI DEVI, daughter of Pardhuman, of Navua, Fiji, Domestic Duties PLAINTIFF

A N D CRAIDS ENTERPRISES LIMITED a duly incorporated limited liability Company having its registered office at Suva, Fiji DEFENDANT

DATED the 22nd day of March, 1971.

NO DEFENCE having been entered by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff \$1,700.00 and \$25.00 costs.

(Sgd.) S. Dee
DEPUTY REGISTRAR.

In the
Supreme Court

No. 3

Annexure "A"
(continued)

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No. 20 of 1971

IN CHAMBERS

10

Before the Hon. Mr. Justice H.K. Nair, J.
Tuesday the 17th day of August, 1971 at 9.30am

DEFENDANT'S MOTION TO SET ASIDE
JUDGMENT

Mr. Gray for the Defendant.
Mr. Parshotam for the Plaintiff.

GRAY: Moves in terms of Application.

PARSHOTAM:
Objects - judgment was entered.
Compromise.

20

Counsels heard.

ORDER: Judgment set aside. Question of cost to be agreed by both counsels with liberty to apply.

(Sgd.) H.K. Nair

IN THE SUPREME COURT OF FIJI

No. 20 of 1971

BETWEEN: SHANTI DEVI daughter of Pardhuman
of Navua, Fiji, Domestic Duties
PLAINTIFF

30

A N D: CRAIDS ENTERPRISES LIMITED a duly
incorporated limited liability company
having its registered office at Suva,
Fiji
DEFENDANT

In the
Supreme Court

No. 3

Annexure "A"
(continued)

DEFENCE

THE defendant admits the allegations contained in paragraphs 1 and 2 of the Statement of Claim.

2. THE defendant admits the allegation contained in paragraph 3 of the statement of claim that at the date of signing, the money was not paid but denies each and every other allegation contained therein and says that the defendant advanced to the Navua Trading Company, in which the within plaintiff was a partner when the first loan was made, the sum of \$1654.00 (ONE THOUSAND SIX HUNDRED AND FIFTY FOUR DOLLARS) by way of loans and paid a sum of \$46 (FORTY SIX DOLLARS) to Morris Hedstron Limited on behalf of the said firm, a total of \$17.00.00 (ONE THOUSAND AND SEVEN HUNDRED DOLLARS) which said sum formed the consideration for the transfer. 10

3. THE defendant neither admits nor denies the allegation contained in paragraph 4 of the statement of claim. 20

4. IN respect of paragraph 5 of the statement of claim the defendant repeats paragraph 2 of the within defence.

COUNTER-CLAIM

THE defendant repeats paragraphs 1 and 4 of the within defence and says that the plaintiff still continues to occupy the land comprised in Certificate of Title No. 8633 without permission although requested to move. 30

WHEREFORE THE DEFENDANT CLAIMS:-

- (1) That the plaintiff's claim be dismissed;
- (2) That the plaintiff be ordered to vacate the land comprised in certificate of Title No. 8633;
- (3) That the defendant be awarded the costs of this action;
- (4) Such further and other relief as may seem just. 40

DELIVERED this 20th day of September, 1971.

MARQUARDT-GRAY & CO.

Per: H.A.L. Marquardt-Gray
Solicitors for the Defendant

In the
Supreme Court

No. 3

"Annexure "A"
(continued)

To: The abovenamed Plaintiff or to her Solicitors
Messrs. Wm. Scott & Company of Suva.

IN THE SUPREME COURT OF FIJI

No. 20 of 1971

10

BETWEEN: SHANTI DEVI, daughter of Pardhuman
of Navua, Fiji, Domestic Duties PLAINTIFF

A N D: CRAIDS ENTERPRISES LIMITED a duly
incorporated limited liability
company having its registered
office at Suva, Fiji DEFENDANT

I, DAVID CHARLES RAIHMAN of Suva in the Dominion
of Fiji, Company Director make oath and say as
follows:-

20

1. THAT I am Managing Director of the within
defendant Company;

2. THAT in the month of February 1971 the writ
issued in the within action was served at the
registered office of the Company at Walu Bay;

3. THAT I caused an appearance to be entered
through the Company's Solicitors Messrs.
Marquardt-Gray & Co., of 94 Waimanu Road,
Suva;

30

4. THAT at the time the writ was served the
Company's Secretary Mr. Isaac Raihman was
ill in hospital having suffered a Coronary
occlusion, a copy of the consultant physicians
certificate is annexed hereto and marked with
the letter "A";

5. THAT the defendant Company advanced by way
of loans to the Navua Trading Company, the
sum of \$1654.00 (£827.00) in which the within
plaintiff was a partner when the first loan
was made;

In the
Supreme Court

No. 3

Annexure "A"
(continued)

6. THAT one Ram Shankar (son of Pachu) who is the defacto husband of the plaintiff herein was the Manager of the said firm at all relevant times;
7. THAT I annex hereto and mark with the letters B, C, D, E, F, G, H and I photostat copies of the vouchers made in respect of the loans hereinbefore referred to and signed by the said Ram Shankar; 10
8. THAT in addition to the sum hereinbefore to the Company also paid a sum of \$46.00 (£23.00) to Morris Hedstrom Limited of Suva being an instalment on a motor vehicle registered No. P616 which at that time was registered in the name of the said firm.
9. THAT subsequent to the 15th day of May, 1968 the Secretary of the defendant Company was instructed to put pressure on the said Ram Shankar for the full payment of the sum of \$1700.00 (£850.00) advanced by the defendant Company; 20
10. THAT it was finally agreed that the within plaintiff would transfer all her right title and interest in Certificate of Title No. 8633 to the defendant Company, the consideration being the sum of \$1700.00 (£850.00) and that the defendant company would forego any claim in respect of the cash advances made to the Navua Trading Company; 30
11. THAT the delay in making the within application to set judgment aside is due to the fact that the defendant Company's Secretary was ill when the action commenced, he being the only person who knew the whereabouts of the vouchers hereinbefore mentioned and due to the fact that it has taken a considerable time to locate them; 40
12. THAT the defendant Company is not indebted to the plaintiff in the sum claimed or in any sum whatsoever and that for the reasons aforesaid I pray that the judgment entered herein be set aside.

SWORN by the said DAVID CHARLES RATHMAN at Suva this 27th day of July, 1971 after the contents hereof had been read over and explained to him in the English language and he appeared fully to understand the same in my presence

In the
Supreme Court
No. 3
Annexure "A"
(continued)

40¢ stamp cancelled.

10 BEFORE ME:

(Sgd.) H. Charan
A Commissioner for Oaths

Coat of Arms

COLONIAL WAR MEMORIAL HOSPITAL
Suva, Fiji

JTC/nnk
IN REPLY PLEASE QUOTE
CWM.12/7-III
I.P. No.1284

20 20th July, 1971

TO WHOM IT MAY CONCERN
RE: ISAAC RATHMAN

The abovenamed was a patient in this hospital from 21.2.71 to 5.3.71 having suffered a coronary occlusion. After discharge on 5.3.71 he would have required at least six weeks' convalescence at home.

(Sgd.) J.T. Cassidy
Consultant Physician

30 This is the Annexure referred to in the within affidavit of David Charles Raiman sworn this 27th day of July, 1971 and marked with the letter "A".

(Sgd.) H. Charan
A Commissioner for Oaths.

In the
Supreme Court

No. 3

Annexure "A"
(continued)

This is the Annexure referred to in the within
affidavit of David Charles Raihman sworn this
27th day of July, 1971 marked with the
letter "B"

(Sgd.) H. Charan
A Commissioner for Oaths.

PAY RAM SHANKAR 16th MAY, 1967
DEBIT ADVANCE NAVUA TRADING CO. CHEQUE NO.188630

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

10

On account of ADVANCE 20 -
in the sum of TWENTY pounds - shillings
- pence 20 - -

NAVUA TRADING CO.

Passed for Payment

(Sgd.) ?

This is the Annexure referred to in the within
affidavit of David Charles Raihman sworn this
27th day of July, 1971 and marked with the
letter "C".

20

(Sgd.) H. Charan
A Commissioner for Oaths.

PAY RAM SHANKAR 6th JUNE, 1967

DEBIT

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

On account of ADVANCE 75 - -

.....
.....
.....

the sum of Seventy Five pounds

- shillings - pence 75 - -

NAVUA TRADING CO.

..... (Sgd.) ?
Passed for Payment Signature

In the
Supreme Court
No. 3
Annexure "A"
(continued)

This is the Annexure referred to in the within affidavit of David Charles Raihman sworn this 27th day of July, 1971 and marked with the letter "C"

10

(Sgd.) H. Charan
A Commissioner for Oaths.

This is the Annexure referred to in the within affidavit of David Charles Raihman sworn this 27th day of July, 1971 and marked with the letter "D"

(Sgd.) H. Charan
A Commissioner for Oaths

PAY RAM SHANKAR 18th November, 1967

DEBIT Navua Trading Co.

20

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

On account of Advance made to Navua Trading Co.

..... 46 - -

the sum of Forty six pounds - shillings

- pence 46 - -

..... (Sgd.) ?
Passed for Payment Signature

30

(Sgd.) H. Charan
A Commissioner for Oaths.

In the
Supreme Court

No. 3

Annexure "A"
(continued)

This is the Annexure referred to in the within
affidavit of David Charles Raihman sworn this 27th
day of July, 1971 and marked with the letter "F"

(Sgd.) H. Charan
A Commissioner for Oaths.

PAY Morris Hedstrom Limited 24th February 1968

DEBIT Navua Trading Company 866136

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

On account of Cash advance to you 23 - - 10

.....
.....

The sum of twenty three pounds - shillings
- pence 23 - -

NAVUA TRADING CO.

..... (Sgd.) ?
Passed for Payment Signature

(Sgd.) H. Charan
A Commissioner for Oaths.

PAY NAVUA TRADING CO. 1st May, 1968 20

DEBIT -do-

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

On account of Advance 280 - -

.....
.....

the sum of Two hundred and eighty
pounds - shillings - pence 280 - -

NAVUA TRADING CO.

..... (Sgd.) ?
Passed for Payment Signature 30

This is the Annexure referred to in the within affidavit of David Charles Raihman Sworn this 27th day of July, 1971 and marked with the letter "G".

(Sgd.) H. Charan
A Commissioner for Oaths

In the
Supreme Court
No. 3
Annexure "A"
(continued)

10

This is the Annexure referred to in the within affidavit of David Charles Raihman sworn this 27th day of July, 1971 and marked with the letter "H".

(Sgd.) H. Charan
A Commissioner for Oaths

PAY Navua Trading Co. 1st May, 1968

DEBIT

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

On account of advance 23 - -

.....
.....

20

the sum of twenty three pounds - shillings
- pence 23 - -

NAVUA TRADING CO.

..... (Sgd.) ?
Passed for Payment Signature

(Sgd.) H. Charan
A Commissioner for Oaths

PAY NAVUA TRADING CO. 19th May, 1968

DEBIT

30

Received from CRAIDS ENTERPRISES LIMITED
Registered Office: Suva, Fiji

on account of Cash Advance 300 - -

.....
.....

the sum of Three Hundred Pounds - shillings

In the
Supreme Court

No. 3

Annexure "A"
(continued)

- pence

300 - -

NAVUA TRADING CO.

.....
Passed for Payment

(Sgd.) ?
Signature

This is the Annexure referred to in the within
affidavit of David Charles Raihman sworn this
27th day of July, 1971 and marked with the
letter "I".

(Sgd.) H. Charan
A Commissioner for Oaths.

ANNEXURE "A"

This is the Annexure marked "A" referred to in
the Affidavit of SHANTI DEVI sworn before me
this 21st day of December, 1972

(Sgd.) H. M. Patel

A Commissioner of the Supreme Court
of Fiji for taking Affidavits

APPLICATION FORM 6

AGRICULTURAL LANDLORD AND
TENANT ORDINANCE, 1966

Application for Reference to a
TRIBUNAL
and
NOTICE TO RESPONDENT

Official use only

Ref. No. C.C.E.D. 27/12

Fees—R.R. Nos. :—

Application

Service

Hearing

N.B.—There is a separate form for each type of application which can be made to a Tribunal. Make sure you have the right form. If in doubt which form to use or how to fill it in you should get assistance at the office of the Tribunal or from any District Officer.

MO NI KILA—Sa tu na Fomu ni Kerekere e na veimataqali kerekere yadudua ki na Mata Bose ni Veivaqagai. Qaraua vinaka mo vakayagataka na Fomu dedoua. Ke sega ni matata vinaka vei iko se mataqali Fomu ni Kerekere eava mo vakayagataka se na kena vakaleweni, mo kere veivuke ki na Vale ni Volavola ni Mata ni Veivaqagai se ki vua na District Officer.

सूचना—द्राइवुवल के पास हर एक तरह की अर्जी भेजने के लिये अलग अलग फॉर्म हैं। यह निश्चय कर लीजिये कि आप के पास ठीक फॉर्म है। अगर अर्जा को भेजते हैं कि फॉर्म को पास में लाया जाये अथवा भेजे गए जाये तो द्राइवुवल के अधिकारी से अथवा किसी भी डिस्ट्रिक्ट ऑफिसर से आप को सहायता लेनी चाहिये।

APPLICATION FORM Nos.

1. Consent to sublease, relet or sharefarm and any *ex parte* application.
2. Objection to termination of tenancy (section 13).
3. Relief against eviction or forfeiture (section 36(2)).
4. To determine any compensation (sections 40, 41 and 43).
5. To fix or re-assess rent (sections 9(1)(g), 21(1)(a) and 23).
6. To declare a tenancy and/or secure an Instrument of tenancy (sections 5(1) and 22).
7. To fix boundaries (section 21(i)).
8. For relief when Tenancy is unlawful (section 18(2)).
9. To obtain consent of landlord to transfer or assignment (section 47(2)), and for leave to resettle a tenant, or to repair, reduce or recover a tenancy and any other matter for which no special form is provided (section 21).

NOTE—The date of hearing is set out on the back page. If you do not appear the Tribunal may proceed in your absence unless you notify the Tribunal and sufficiently excuse your non-attendance.

In the
Supreme Court

No. 3

Annexure "B"
(continued)

APPLICANT'S SECTION (c)

1. Name	<u>PAH SHANKAR</u> Father's Name <u>PACHH</u>	
2. Address	<u>CHITTA, HAVUA</u>	
3. Address for service (if different from above)	<u>AS ABOVE</u>	
4. Landlord/Tenant (a)	<u>TENANT</u>	
5. Description of land	<u>TOKOPCKO (Part of) LOT 46</u>	Agre
In	<u>CHITTA, HAVUA</u>	
6. If you know the Certificate of Title No. of the respondent's parcel of land of which the piece you occupy is part set it out.	<u>C.T. 8533</u>	6.
7. Area if surveyed Approximate area if unsurveyed } (a)	<u>6 ACRES</u>	7.
8. When was contract of tenancy entered into	.....	8.
9. How is it evidenced	.....	9.
10. When did you ask other party for an instrument of tenancy	.....	10.
11. When did you first occupy this land	<u>ABOUT 12 YEARS</u>	11.
12. When was your landlord first aware of this	<u>ALL ALONG</u>	12.
13. Have you ever paid anything by way of rent	<u>YES</u>	13.
14. Did your landlord accept rent at any time	.....	14.
15. If the answer to 13 or 14 is "yes" give details	<u>MY ORIGINAL LANDLORD WAS MAINTAINED AND SUPPORTED BY ME IN LIEU OF RENT. HER SUCCESSORS IN TITLE WERE TENDERED RENT BUT THEY REFUSED TO ACCEPT.</u>	15.
16. Have you ever been employed by your landlord	<u>NO</u>	16.
17. If "yes" then in what capacity and for how long	.....	17.
18. Have you ever requested your landlord to have a contract of tenancy evidenced by an instrument of tenancy under the provisions of this Ordinance	<u>NO</u>	18.
19. All applications. Unless the respondent's title is free-hold state the name of the person or body from whom he leases the land	.....	19.
20. Set out the consents to your occupation of the land that have been obtained from the persons or bodies set out in your answer to Q. 19 above. (If there have been no consents enter "nil")	.....	20.

Date 6TH DECEMBER, 1972.

Signed R. S. Shankar
Applicant Date

N.B. - It is a criminal offence to knowingly and wilfully
(a) Strike out inapplicable item.
(b) If denied give your alternative answer where applicable.
(c) Applicant should fill in all boxes on his side and the name of the person or body from whom he leases the land.
If insufficient room in any box attach further answers on a separate sheet.

In the
Supreme Court

No. 3

Annexure "B"
(continued)

RESPONDENT'S SECTION

1. Name PARESH HOLDING LIMITED	
2. Address SUVA.	
3. Address for service (if different from above)	
Agreed or denied (b)	<p>If you wish to defend this reference you should enter below opposite the item concerned details of any matter on which you disagree with the facts set out by the applicant.</p> <p>Within 14 days after service on you of this application you must file this statement of defence, together with any counter application you may wish to make, at the office of tribunal (Lautoka) or post it to the said office by registered post.</p>
6.	
7.	<p>21. Here set out any facts which are incompatible with the contract of tenancy claimed:</p>
8.	
9.	
10.	
11.	
12.	<p>22. Here set out any facts which are incompatible with the Tenancy claimed:</p>
13.	
14.	
15.	
16.	
17.	<p>23. Here set out any facts relevant to consents which are incompatible with relief claimed:</p>
18.	
19.	
20.	

Date

Signed Respondent

Do not sign and wilfully make a false statement in this form.

Signatures of the respondent, if any, should be placed on a separate sheet of plain paper.
 Give the name and address of respondent, only, on the other side.


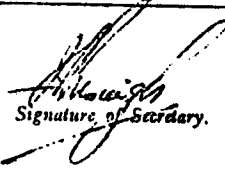
In the
Supreme Court

No. 3

Annexure "B"
(continued)

NOTE.—When completed this form together with a fee of 10s. must be either posted by registered post or taken to the office of the Tribunal at Lautoka or taken to the office of any District Officer except those at Nadi, Ba, and Lautoka.

Where appropriate you should include copies for service on other interested persons and for endorsing affidavits of service on them.

<p><i>Official use only</i></p> <p>APPLICATION ACCEPTED.</p> <p>Date of filing. 6 DEC 1972</p> <p>THE DATE OF FIRST HEARING of this application will be: held at _____</p> <p>* notified to you by notice sent to the address you have given as your address for service.</p>		 <p>Signature of Secretary.</p>
---	--	--

SERVICE

Except for such applications on Form 1 as can be heard *ex parte* all references must be served on all interested parties. Unless so served by the Tribunal an authenticated copy of this application must be served by the applicant. If desired an additional authenticated copy may be obtained and the affidavit of service below used to prove service. This sets out all permissible means of service. Strike out those that have not been used.

AFFIDAVIT OF SERVICE

I _____ make oath and say as follows:

I did on the _____ day of _____, 19____ at (a) _____

serve a true copy of the within application of reference which appeared to be regularly issued by the Agricultural Landlord and Tenant Tribunal on (b) _____

- (i) by delivering it to him personally after he was identified to me by (c) _____
- (ii) by leaving it at his usual/last known (d) place of abode as identified to me by (c) _____
- (iii) being an incorporated company/body (d) by the following means (e) _____
- (iv) by affixing it to a conspicuous part of the premises to wit (c) _____
- (v) by posting it to him by registered mail as evidenced by the attached receipt.

Sworn by the said

at _____ on _____ day of _____

Before me,

COMMISSIONER FOR OATHS

- (a) Place where service affected.
- (b) Name of person served.
- (c) State means of identifying.
- (d) Strike out part not applicable.
- (e) State means of service being one of those in section 39(d).

In the
Supreme Court

—
No. 3

Annexure "B"
(continued)

ANNEXTURE "B"

This is the Annexure marked "B" referred to in the
Affidavit of SHANTI DEVI sworn before me this 21st
day of December, 1972.



A Commissioner of the Supreme Court of Fiji
for taking Affidavits

26.

In the
Supreme Court

No. 4

Proceedings

12th December
1972

No. 4

Proceedings

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No. 278 of 1972

IN CHAMBERS

Before the Hon. the Chief Justice

Tuesday the 12th day of December, 1972 at 2.15 p.m.

Between:

PAREKH HOLDINGS LIMITED

Plaintiff

10

- and -

1. RAM SHANKAR s/o Pachu
2. RAM SARUP s/o Pachu
3. SHANTI DEVI d/o Pardhuman
Maharaj

Defendants

SUMMONS FOR EJECTMENT

Mr. Chauhan for the Plaintiff.

Mr. Chand for the Defendants.

Adjourned to 9/1/73. Defendants' solicitors to
serve answering affidavit on Plaintiff's
solicitors within 7 days from today's date.

20

12/12/72

(Sgd.) John A. Nimmo
C.J.

Before the Hon. Mr. Justice Tuivaga, Puisne Judge
Tuesday the 9th day of January, 1973 at 2.15 p.m.

ADJOURNED SUMMONS FOR EJECTMENT

Mr. Chauhan for the Plaintiff.

Mr. Chand for the Defendants.

Chand - I would like to point out that there is
a pending action (No.20 of 1971) which
is closely related to this action.

30

There is also an application by defendants to the LAT ref. No. C6ED 27 of 1972.

In the
Supreme Court

Chauhan - This application is made under s.169 of I/A.

No. 4

Proceedings

Affidavit filed in opposition to application. 3 parts.

9th January
1973

(continued)

10 (i) paras 1 to 10 - fraud alleged.
This issue is matter between Defendant and Craids Enterprises Ltd. (time liquidated).
Paras 1 to 10 therefore irrelevant to application.

Refer to ss. 38 and 40 of I/A.

(ii) paras 11 to 12
Reliance on agricultural tenancies. This land is exempted by virtue of AIT. (Exemption) Regulations 1967, reg. 2(2).

20 (iii) para 13.
This relies apparently on the Fair Rents Ordinance which is applicable only to dwelling houses.

Refer s.169 of I/A. Submit notice to quit is not necessary under the I/A.

Notice was however given as per annexure to affidavit of Sashi Kant Parekh.

30 Chand Suggest matter should go to trial as fraud is alleged in this case. Refer to s.40 of I/A.

Submit land under C-T was sold subject to existing agricultural tenancies.

Court - Adjourned to 30.1.73 at 2.15 p.m.
Decision on application for ejectment.

In the
Supreme Court

No. 5

No. 5

Decision

Decision

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

30th January
1973

Action No. 278 of 1972

Between:

PAREKH HOLDINGS LIMITED

Plaintiff

- and -

1. RAM SHANKAR s/o Pachu
2. RAM SARUP s/o Pachu
3. SHANTI DEVI d/o Pardhuman
Maharaj

10

Defendants

D E C I S I O N

This is an application by way of summons pursuant to the provisions of section 169 of the Land Transfer Act, 1971 wherein it is sought that the defendants be ordered to give up possession to the plaintiff of the land described in Certificate of Title No. 8633 being an area of six acres at Navua.

20

It is not in dispute that the plaintiff is the registered proprietor of the land. This land was purchased by the plaintiff from Craids Enterprises Limited free of encumbrances. Craids Enterprises Limited had purchased the land before that from the defendants.

In view of the provisions of Section 39 of the Land Transfer Act, I cannot see how the defendants could establish a prima facie right to stay on the land in question. The only circumstance in which the title of the plaintiff could be impeached would be on proof of fraud on its part. There is no evidence whatever that the plaintiff acquired its registered title to the land through fraud. Although an allegation of fraud has been made by counsel for the defendants it is quite clear that this allegation refers to

30

Craids Enterprises Limited who had purchased the land from the defendants and is irrelevant to this application.

In the
Supreme Court

No. 5

Decision

30th January
1973

(continued)

10 The defendants were served with a seven days' notice by the plaintiff to quit the land but they refused to comply with that notice. They have failed to provide any defence to the plaintiff's application. I therefore grant the application and order that the defendants give up possession of the land in question to the plaintiff. However, in view of all the circumstances, I feel that a reasonable time should be allowed to the defendants to vacate the land. Accordingly I order that the order for possession shall not become operative until 28th February, 1973.

(Sgd.) T. U. Tuivaga
J.

30.1.73

Chand - I give notice of appeal.

20 (Sgd.) T. U. Tuivaga
J.

30.1.73

No. 6

No. 6

Order

Order

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

30th January
1973

ACTION NO. 278 of 1972

(continued)

30 BETWEEN: 1. RAM SHANKAR s/o Pachu
2. RAM SARUP s/o Pachu
3. SHANTI DEVI d/o Pardhuman Maharaj

APPELLANTS
(ORIGINAL DEFENDANTS)

A N D: PAREKH HOLDINGS LIMITED

RESPONDENT
(ORIGINAL PLAINTIFF)

In the
Supreme Court

No. 6

Order

30th January
1973

(continued)

J U D G M E N T

BEFORE THE HONOURABLE MR. JUSTICE TUIVAGA
PUISNE JUDGE (IN CHAMBERS) TUESDAY THE 30TH
DAY OF JANUARY 1973

UPON READING the application by way of
Summons dated the 20th day of October, 1972
made unto this Court by the Plaintiff pursuant
to Section 169 of the Land Transfer Act, 1971

AND UPON READING the Affidavit of SASHI KANT
PAREKH filed herein on the 23rd day of October,
1972 and the affidavit of SHANTI DEVI sworn the
21st day of December, 1972 filed herein

10

AND UPON HEARING MR. KHUSHAL DASS CHAUHAN
of Counsel for the Plaintiff and MR. VIJAI CHAND
of Counsel for the Defendants

IT IS ORDERED that the Defendant do give
possession of the land described in the
Certificate of Title No. 8633 as "Tokotoko"
(Part of) Lot 46 on D.P. 1218 being an area of
6 acres and occupied by the Defendants, by the
28th day of February, 1973.

20

L.S.

BY THE COURT

(Sgd.) M.V. Bhai

ACTING CHIEF REGISTRAR

No. 7

Notice of Appeal

In the Court
of Appeal

No. 7

Notice of
Appeal

26th February
1973

IN THE FIJI COURT OF APPEAL

Civil Appeal No. 16 of 1973
Supreme Court Action No. 278 of 1972.

BETWEEN: 1. RAM SHANKAR s/o Pachu
2. RAM SARUP s/o Pachu
3. SHANTI DEVI d/o Pardhuman Maharaj

APPELLANTS
(ORIGINAL DEFENDANTS)

10

A N D: PAREKH HOLDINGS LIMITED

RESPONDENT
(ORIGINAL PLAINTIFF)

NOTICE OF APPEAL

TAKE NOTICE that the Fiji Court of Appeal will be moved at the expiration of fourteen (14) days from the service upon you of this notice, or so soon thereafter on the application by the above-named Appellant/Defendants FOR AN ORDER that the verdict given and the Judgment delivered on the trial of the abovementioned action before His Lordship Mr. Justice Tuivaga in Chambers at Suva on the 31st day of January, 1973 whereby it was ordered that the Appellant/Defendants do give vacant possession of the land in question in this Action to the Respondent/Plaintiff be set aside and FOR AN ORDER that a trial de novo be had between the parties in other Court and the costs of the former trial be paid by the Respondent/Plaintiff to the Appellant/Defendants or alternatively that the costs abide the result of the new trial AND FOR AN ORDER that the Respondent/Plaintiff pay to the Appellant/Defendant costs of and occasioned by this Application.

20

30

AND FURTHER TAKE NOTICE that the grounds of this application are:-

1. that the learned trial Judge erred in law in not making an order for a trial in open court of the issues raised by the third Appellant/Defendant in her Affidavit in view of the fact

40

In the Court
of Appeal

No. 7

Notice of
Appeal

26th February
1973

(continued)

those issues controverted the issues raised [sic]
by the Plaintiff.

2. that the learned trial Judge erred in law
and in facts in making an order for
possession against the Appellant/Defendants
when the land in question was an agricultural
land and when there was an action pending
before the Agricultural landlord and
Tenant Tribunal;

3. that the verdict is wrong in law and is
unreasonable and cannot be supported having
regards to the whole of the facts in this
action.

10

DATED this 26th day of February, 1973.

(Sgd.) RAM SHANKAR
First Appellant/Defendant.

This Notice of Motion was taken out by the above-
named Appellant/Defendant of Navua in person and
whose address for service is c/- Gulab Singh,
Koya and Co., Suva.

20

To: The Respondent/Plaintiff and/or to its
Solicitors Messrs. Parshotam, Chauhan and
Company, of Suva

No. 8

Judgment

19th July
1973

No. 8

Judgment

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 16 of 1973

B E T W E E N: RAM SHANKAR
s/o Pachu Appellant
(Original 1st Defendant)

- and -

PAREKH HOLDINGS
LIMITED Respondent
(Original Plaintiff)

30

Mr. H.M. Patel for the Appellant
Mr. K. Chauhan for the Respondent Company

Date of Hearing: 2.7.73
Delivery of Judgment: 19.7.73

J U D G M E N TIn the Court
of Appeal

No. 8

Judgment

19th July
1973

(continued)

Gould V.P.

Section 169 of the Land Transfer Act, 1971 empowers certain persons, including the registered proprietor of land registered under that Act to summon any person in possession of that land to appear before a judge in chambers to show cause why that person should not give up possession to the applicant.

10 Parekh Holdings Limited, the Respondent Company in this appeal, as the last registered proprietor of an area of six acres at Navua, took out a summons under section 169, against three persons allegedly in possession of that land, one being Ram Shankar, the appellant in these proceedings and the others being Ram Sarup and Shanti Devi. It was established that at an earlier date Shanti Devi had been the registered proprietor of the land in question.

20 About November 1968, she transferred the land to Craids Enterprises Ltd. for a stated consideration of \$1700. In January, 1971, she instituted proceedings in the Supreme Court claiming from Craids Enterprises Ltd. the amount of \$1700 on the ground that she had never received the consideration above referred to. According to her affidavit, she was later advised to amend her claim to ask for the setting aside of the transfer to Craids Enterprises Ltd. There is no evidence that any such amendment was actually sought but in any event, in the mean-

30 time, Craids Enterprises Limited mortgaged the property to the Bank of New South Wales, which, in exercise of its power sale transferred the property to the respondent company, the present registered proprietor.

The learned judge in the Supreme Court basing himself on the indefeasibility provisions of the land Transfer Act made an order that the three persons mentioned in the application give up possession of the land. There is reason to believe that the three are related, as we were informed

40 that Shanti Devi is the daughter of Ram Shankar and that Ram Shankar and Ram Sarup are described in the proceedings as sons of Pachu. The only appellant in this appeal, however, is Ram Shankar, and the brief history of the matter given above is necessary only to make it clear that it was only Shanti Devi who sought to base her right to

In the Court
of Appeal

No. 8

Judgment

19th July
1973

(continued)

possession upon a question relating to the title to the land. She failed, and in the absence of an appeal by her, that is the end of that aspect of the matter.

In the Supreme Court and in this Court it was argued for the appellant that he was entitled to remain in possession of the land as an agricultural tenant. He has not supported the claim by any affidavit sworn by himself, but relied upon an affidavit by Shanti Devi containing an assertion that the sale to Craids Enterprises Limited was subject to agricultural tenancies in favour of Ram Sarup and Ram Shankar (the respective areas not being specified) and that she had been informed by Ram Shankar that he had instituted proceedings before the Agricultural Tribunal under the Landlord and Tenant Ordinance (Cap.242). A purported copy of his application form indicates that it is an application either to declare a tenancy or to secure an instrument of tenancy. The application is dated the 6th December, 1972, some seven weeks after the respondent company's summons for ejection was filed. Among the answers to questions shown on this form appears - "My original landlord was maintained and supported by me in lieu of rent. Her successors in title were tendered right but they refused to accept." It seems evident, having regard to the history of the matter outlined above, that the "original landlord" must have been Shanti Devi, his daughter as we were informed, or, as one affidavit on the file alleges, his de facto wife.

10

20

30

The question is whether evidence of this type, put forward in the way it was, is sufficient to show cause why the appellant should not be put out of possession. The learned judge in the Supreme Court apparently thought not, for he made no reference to the matter when making his order. The argument before this Court of counsel for the respondent company was that there was no evidence of any tenancy and that by virtue of section 3 of the Land Transfer Act, 1971, a right to tenancy under the Agricultural Landlord and Tenant Ordinance (Cap. 242) could not avail as against a new registered proprietor of the land. To this last proposition we are unable to accede and, if it arose, it is at least a highly important question which would have to be settled in an action and not by summary procedure under section 169.

40

In our opinion, however, the question does not arise. In order to show cause the appellant surely had to come forward with his own evidence, not hearsay, condescending upon particulars, showing that the land in question was in fact agricultural land subject to the Ordinance in question, giving some details as to area, crops, parties, rent, and matters generally which would indicate at least a possibility that his claim might be supported. It is not of course, and would not have been even if the appellant had provided evidence to the purport abovementioned, the task of the Supreme Court or this Court to decide whether the appellant would be entitled to a tenancy under the Agricultural Landlord and Tenant Ordinance; that is a question for the Tribunal established by the particular legislation. It is enough for present purposes to say that he clearly has not shown himself to have any claim as a common law tenant; nor has he, by the manner in which he has chosen to put forward a case which at best can only be described as shadowy and suspect, shown sufficient cause to be permitted to remain in possession while he pursues his application to the Agricultural Tenancy Tribunal.

The appeal is dismissed with costs but it is ordered that no execution upon the order for possession shall be issued before the 31st July, 1973.

(Signed) T. GOULD

VICE PRESIDENT

(Signed) C.C. MARSUCH

JUDGE OF APPEAL

(Signed) T. HENRY

JUDGE OF APPEAL

SUVA,

19th July, 1973.

In the Court
of Appeal

No. 8

Judgment

19th July
1973

(continued)

36.

In the Court
of Appeal

NO. 9

Order

No. 9

Order

19th July
1973

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

Civil Appeal No.16
of 1973

BETWEEN: RAM SHANKAR s/o Pachu APPELLANT
(Original 1st Defendant)

AND PAREKH HOLDINGS LIMITED RESPONDENT
(Original Plaintiff) 10

DATED AND ENTERED THE 19TH DAY OF JULY, 1973

UPON READING the Notice of Motion herein dated the
26th day of February, 1973

AND UPON READING the Judge's notes herein

AND UPON HEARING MESSRS. HARILAL MANILAL PATEL of
Counsel for the Appellant and MR. KHUSALDAS CHAUHAN
of Counsel for the Respondent

AND MATURE deliberation thereupon had

IT IS THIS DAY ORDERED that the Judgment of the
Honourable Mr. Justice Tuivaga in the Supreme Court 20
Chambers of Fiji dated the 30th day of January,
1973 allowing vacant possession of the land in
question in this action to the Respondent/Plaintiff
be affirmed.

AND THAT the appeal be dismissed with costs in
favour of the Respondent and it is further ordered
that no execution upon the order for possession
shall be issued before 31st July, 1973.

BY ORDER

(L.S.)

(Sgd.) S. Deo

30

REGISTRAR

No. 10

Order granting Special Leave to Appeal
in forma pauperis to Her Majesty in
Council

AT THE COURT AT BUCKINGHAM PALACE

The 18th day of December 1974

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

In the Privy
Council

No.10

Order
granting
Special Leave
to Appeal in
forma
pauperis to
Her Majesty
in Council

18th December
1974

10 WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 5th day of December 1974 in the
words following viz.

20 "WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was
referred unto this Committee a humble
Petition of Ram Shankar (s/o Pachu) in the
matter of an Appeal from the Fiji Court of
Appeal between the Petitioner and Parekh
Holdings Limited (Respondent) setting forth
that the Petitioner prays for special leave
to appeal in forma pauperis from a Judgment
of the Fiji Court of Appeal dated the 19th
July 1973 which dismissed the Petitioner's
appeal from a Decision of a Judge in the
Supreme Court allowing an application by the
Respondent under s.169 of the Land Transfer
Act 1971; And humbly praying Your Majesty
30 in Council to grant the Petitioner special
leave to appeal in forma pauperis against
the Judgment of the Fiji Court of Appeal
dated the 19th July 1973 or for further or
other relief:

40 "THE LORDS OF THE COMMITTEE in obedience
to His late Majesty's said Order in Council have
taken the humble Petition into consideration and
having heard Counsel in support thereof no one
appearing at the Bar on behalf of the
Respondent Their Lordships do this day agree
humbly to report to Your Majesty as their
opinion that leave ought to be granted to the
Petitioner to enter and prosecute his Appeal in

In the Privy
Council

No.10

Order
granting
Special Leave
to Appeal in
forma
pauperis to
Her Majesty
in Council

18th December
1974

(continued)

forma pauperis against the Judgment of the
Fiji Court of Appeal dated the 19th July 1973;

"And Their Lordships do further report to
Your Majesty that the proper officer of the
said Court of Appeal ought to be directed to
transmit to the Registrar of the Privy
Council without delay an authenticated copy of
the Record proper to be laid before Your
Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into
consideration was pleased by and with the advice
of Her Privy Council to approve thereof and to
order as it is hereby ordered that the same be
punctually observed obeyed and carried into
execution.

10

Whereof the Governor-General or Officer
administering the Government of Fiji for the time
being and all other persons whom it may concern
are to take notice and govern themselves
accordingly.

N. E. LEIGH.

IN THE PRIVY COUNCIL

No. 16 of 1975

ON APPEAL
FROM THE FIJI COURT OF APPEAL

Between

RAM SHANKAR s/o Pachu

Appellant

- end -

PAREKH HOLDINGS LIMITED

Respondent

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace Gardens
London, SW1P 1RL.

Solicitors for the Appellant

NORTON ROSE BOTTERELL & ROCHE,
Kempson House,
Camomile Street,
London EC3A 7AN.
Solicitors for the Respondent