

In the High Court of Fiji at Labasa
Civil Jurisdiction

HBA Civil Appeal No. 4 of 2016

Between

Kanda Sami Naicker

Appellant

v

Mukesh

Respondent

COUNSEL: Mr A Sen for the defendant-appellant
Mr S Sharma for the plaintiff-respondent

Date of hearing : 17th February, 2017

Date of Judgment: 23rd February, 2017

Judgment

1. The respondent filed statement of claim in the Magistrates Court stating that he is a tenant of agricultural land by instrument of tenancy no.10400. The appellant, his neighbour forcefully acquired and cultivated 2.5 acres of his land from 2006. The respondent sought that the appellant vacates that portion of his land and damages, both general and special. The appellant denied the claim and contended that the Magistrates Court had no jurisdiction to deal with the claim.
2. The Learned Magistrate, in his Judgment held quite correctly that the respondent was not entitled to claim general damages, as he had failed to claim a specified amount. He noted that special damages must be specifically pleaded, but went on to hold that the respondent was entitled to receive a sum of \$2,500.00 as special damages. It was finally held that the appellant should vacate the portion of the land and hand over peaceful possession to the respondent.

3. The appellant appealed on the following grounds of appeal:
- (i) *The Learned Magistrate erred in law and in fact in determining the entire action without allowing the defendant/appellant to adduce his testamentary and documentary evidence.*
 - (ii) *The Learned Magistrate erred in law in entering a summary judgment for the plaintiff/respondent when he did not have jurisdiction to do so and further when the rules of Magistrate Court did not allow such a procedure.*
 - (iii) *The Learned Magistrate erred in law in failing to determine the preliminary point on jurisdiction, instead venturing into determination over the substance of the matter.*
 - (iv) *The Learned Magistrate erred in law and in fact in giving a judgment to the plaintiff when the entire proceedings were outside the jurisdiction of the Magistrates Court.*
 - (v) *The Appellant reserves his rights to add or alter the Grounds of Appeal upon receipt of the copy record from the Magistrates Court.*
 - (vi) *Your humble Appellant prays:-
The findings of the Resident Magistrate be reversed and Judgment be entered for the Appellant and the decision be set aside.
That the Respondent be ordered to pay costs of this appeal.
Such further and/or other relief as this Honourable Court may deem just and expedient.*
4. At the hearing, Mr Sharma, counsel for the respondent conceded that the appeal must be allowed as submitted by Mr Sen, counsel for the appellant for the following reasons.
5. Firstly, the Magistrates Court had no jurisdiction to hear a boundary dispute between the parties, as contended in the third and fourth grounds of appeal. The Agricultural Tribunal created under the Agricultural Lands and Tribunal Act,(ALTA) determines such disputes.
6. Secondly, the Learned Magistrate had come to a finding without hearing evidence, as urged in the first ground.
7. Finally, the lower court erred in entering a summary judgment as stated in the second ground of appeal. There is no provision in the Magistrates Court Rules as in the High Court Rules to enter summary judgment.

8. In support of that proposition, Mr Sen relied on the case of *Mahesh Chand v Carpenters Fiji Ltd*, [1995] 41 FLR 155 which held that Magistrates do not have a power similar to that exercised by the High Court under Or 14.
9. I agree with the reasoning of Mr Sen. The appeal succeeds on all the grounds of appeal.
10. Mr Sen moved for \$ 1000 as costs. Mr Sharma argued that the appeal be allowed with no order as to costs.
11. In my judgment, the respondent is entitled to costs in the sum of \$ 750 summarily assessed.
12. **Orders**
 - a. The appeal of the appellant is allowed. The judgment of the Magistrates Court is set aside.
 - b. The respondent shall pay the appellant costs in the sum of \$ 750 summarily assessed.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE

23rd February, 2017