**IN THE HIGH COURT OF FIJI**
**AT LAUTOKA**
**CIVIL JURISDICTION**

**Civil Action No. HBC 229 of 2024**

**BETWEEN:** **RB PATEL GROUP LIMITED**

**PLAINTIFF**

**AND:** **AJIT KUMAR as the Executor of the Estate of Dayanand**

**DEFENDANT**

**BEFORE:** **ACTING MASTER S SAUMATUA**

**Counsel for the Plaintiff:** **Mr V Swamy**
**Counsel for the Defendant:** **Mr A Dayal**

**Date of Hearing :** **1 July 2026**
**Date of Judgment :** **4 August 2026**

## RULING

### Introduction

This is the Plaintiff's application by way of Summons filed on 4 October 2024 seeking an order that the Defendant give vacant possession of the premises situated on CT 14144, particularly described as Elevuka in the District of Bulu comprising an area of 25 acres and 3 roods and 23 perches on Lot 1 on DP No. 3556 **("the Property").** The Plaintiff also seeks costs on an indemnity basis.

The application is made pursuant to **sections 169 to 172 of the Land Transfer Act 1971 ("the Act")** and the inherent jurisdiction of the Court.

The application is opposed. The Court has considered the affidavits filed by both parties, including the annexures, the written submissions and the oral submissions made at the hearing.

**Issue**

The principal issue is whether the Defendant has shown sufficient cause why he should remain in occupation of the Property.

## Plaintiff's Position

There is no dispute that the Plaintiff is the registered proprietor of the property, having acquired title on 26 October 2023. The Defendant does not challenge the Plaintiff's ownership. Instead, he relies on:

- His long occupation of the property (about 57 years);
- Alleged promises made by the previous owners that he would never be evicted; and
- Claims that he would eventually receive a portion of the land.

## Effect of the Sale and Purchase Agreement

The Defendant was one of the occupants expressly identified in Schedule 2 of that Agreement. Clauses 7 and 23 are particularly relevant.

The Sale and Purchase Agreement between the Plaintiff and the former owner, Kamla Wati Zita Singh ("***Kamla Wati***"), acknowledged that occupants were living on the property. However, the Agreement expressly contemplated that:

- The occupants would eventually leave;
- Notices to quit would be issued;
- The Plaintiff would obtain vacant possession if they did not leave; and
- No occupant had any agreement or arrangement giving them long-term rights to remain on the land.

It further acknowledges and records that the occupants would need to be relocated. The Vendor agreed to cooperate with the Plaintiff for a period of 12 months to assist in that relocation.

In my view, these provisions do not assist the Defendant. If anything, they demonstrate that both the Vendor and Purchaser proceeded on the basis that the occupants were not persons with permanent or proprietary rights to remain on the land.

The Agreement specifically contemplated that the occupants would eventually vacate the Property.

While the Defendant was not a party to the Agreement, the clauses are inconsistent with his contention that he possessed an enforceable right to remain indefinitely or that he had already been promised ownership of a portion of the land.

## Defendant's Alleged Promises

The Defendant says that the late husband of Kamla Wati and their sons promised that he would never be evicted and would eventually receive part of the land. However, there is no documentary evidence supporting these claims. There is:

- No written agreement;
- No lease or licence;
- No transfer document;
- No caveat;
- No correspondence or receipts recording such an arrangement.

The Court is therefore left with unsubstantiated oral assertions made many years after the alleged promises.

## Section 40 of the Land Transfer Act

The Plaintiff is entitled to rely on its registered title and section 40 of the Act.

Section 40 protects the Torrens system of land registration. The principle is that the register is conclusive evidence of ownership. Purchasers are entitled to rely on the register and are generally protected against unregistered interests unless fraud is established.

## Chand v Gokul

The Defendant relied on ***Chand v Gokul [2024] FJHC 411***. However, that case involved a written Sale and Purchase Agreement which expressly granted the former owner a right to lease part of the property back. The Court found that the written agreement provided tangible evidence of an arguable right requiring a trial.

This case is different because:

- There is no written agreement between the Plaintiff and Defendant;
- There is no lease, licence, deed, caveat, or other document supporting the Defendant's claim;
- The Defendant relies solely on alleged oral promises; and
- The Sale and Purchase Agreement actually supports the Plaintiff's claim for vacant possession.

## Requirement for Tangible Evidence

In ***Morris Hedstrom Ltd v Liaquat Ali (Action No. 153 of 1987)***, the Supreme Court held that a person resisting a section 169 application must produce tangible evidence of a right to possession. Mere assertions or beliefs are insufficient. The purpose of the summary procedure would be undermined if occupation could continue indefinitely on the basis of unsubstantiated claims unsupported by objective evidence.

While the Court does not doubt the sincerity of his belief, the law requires more than a belief or expectation before the rights of a registered proprietor can be displaced.

## Section 59 of the Indemnity, Guarantee and Bailment Act 1881

This provision embodies the long-standing principle that certain dispositions or agreements concerning interests in land must be evidenced in writing before they can be enforced.

The alleged promise that the Defendant would be given part of the Property concerns an interest in land.

No written agreement or memorandum has been produced evidencing such an arrangement.

In the absence of the written evidence required by law, the alleged promise cannot establish an enforceable right to possession capable of defeating the Plaintiff's claim as registered proprietor.

### Long Occupation

The Defendant also places considerable reliance on the fact that he and his family have occupied the Property for approximately 57 years and that he has constructed a home and made improvements during that period. The Court accepts those facts. However, long occupation does not create a legal entitlement to remain on land owned by another person.

In ***Deo v Mati [2005] FJHC 136***, the High Court held that the length of occupation is not the determining consideration in an application brought under section 169 of the Land Transfer Act. The relevant inquiry is whether the registered proprietor has established title and a present right to possession, and whether the occupier can demonstrate a lawful right to remain on the land. Occupation, however lengthy, does not by itself confer ownership or create an enforceable right of occupation.

Accordingly, while the Defendant's occupation of the Property for many decades may explain his expectation that he should remain there, it does not constitute sufficient cause within the meaning of sections 169 and 170 of the Land Transfer Act. In the absence of any tangible evidence establishing a legal or equitable right to possession, the Defendant's lengthy occupation cannot defeat the Plaintiff's entitlement as registered proprietor.

## Discretion Under Section 172

The Court also considered whether it should refuse relief under section 172 because of a substantial dispute requiring a trial. However:

- There is no dispute over title;
- There is no tangible evidence of any proprietary or contractual right in favour of the Defendant; and
- The Defendant's case rests only on long occupation and alleged oral promises.

Unlike ***Chand v Gokul***, there is no written agreement between the Plaintiff and the Defendant giving rise to an arguable right requiring determination at trial.

## Conclusion

The Plaintiff has established ownership and a present right to possession of the property. The Defendant has failed to produce any tangible evidence of a legal right to remain on the land. His claims are based solely on long occupation and alleged oral promises, neither of which is sufficient to defeat the rights of the registered proprietor.

Accordingly, the Defendant has not shown sufficient cause to remain in occupation, and the Plaintiff is entitled to vacant possession.

## Orders

1. Pursuant to sections 169 and 170 of the Land Transfer Act 1971, the Defendant shall give vacant possession of the premises situated on CT 14144, particularly described as Elevuka in the District of Bulu comprising an area of 25 acres and 3 roods and 23 perches on Lot 1 on DP No. 3556, to the Plaintiff.
2. In light of the Defendant's long occupation of the Property and to allow reasonable time for relocation, vacant possession shall be delivered within **90 days** from the date of this Order.
3. In default of compliance, the Plaintiff shall be at liberty to apply for the appropriate enforcement orders, including a writ of possession.

4. The Plaintiff has succeeded in the application and is entitled to its costs. However, having regard to the nature of the dispute and the circumstances of the Defendant's occupation, I do not consider that this is an appropriate case for indemnity costs.
5. The Defendant shall pay the Plaintiff's costs of the application summarily assessed in the sum of $1,200.

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**Setavana Saumatua**
**Acting Master of the High Court**

**At Lautoka**
**4 August 2026**

*Solicitors:* *Plaintiff* — *Millbrook Hills Law Partners*
*Defendant* — *Dayal Lawyers*