

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 1998

BETWEEN:

SURESH KARNANI
APPELLANT

AND

PERCY CAMPBELL
RESPONDENTS

AND

WALTER GARRETT
(Executors of the Estate of
Gordon Hutchinson, deceased)

Before: The Hon. Mr. Satrohan Singh Justice of
Appeal

The Hon. Mr. Albert Redhead Justice of
Appeal

The Hon. Mr Albert N.J. Matthew Justice
of Appeal [Ag.]

Appearances: Mrs. Celia Edwards for the Appellant
Mr Derek Knight, Q.C. for the Respondent

1998: July 16

JUDGMENT

SINGH, J.A.

In this appeal there was a claim for possession after a valid notice to quit. At the time of judgment the appellant was in arrears of rent. In our view that was enough to give the Judge jurisdiction to make the order for

possession.

On the issue of capacity in the Respondents to issue the writ and to obtain judgment thereon, the evidence shows that at the time of the issue of the writ, the respondents were executors with title to the property. Subsequently and before judgment (even before the trial), title in the property passed to a third party by the name of Butani. Despite this, the evidence disclosed an inclination on the part of Mr. Butani of not recognizing the appellant as his tenant, thereby leaving the court with the inference that he was not prepared to accept the role of landlord of the appellant.

Knight vs Clarke is authority for the proposition that in a situation where after the writ was filed, title to the property passed to a third party, the respondent would be allowed to issue the writ of possession, notwithstanding that his estate in the premises terminated after the commencement of the action and before trial.

This was permissible, unless it were shown to be unjust and futile to issue such a writ. The onus was on the appellant to show affirmatively that such would be the result if the order of

possession was given to the respondents.

In our Judgment, the appellant has not discharged this onus, especially when regard is had to the attitude of Butani concerning his non-acceptance of the appellant as his tenant. This attitude seems to suggest that Butani would not be objecting to the respondents being given the Order for possession. We therefore do not see futulity and injustice in the order of possession being made in favour of the respondents.

The appeal is accordingly dismissed with costs to the respondent to be taxed if not agreed.

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Singh
Appeal

Satrohan
Justice of

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I CONCUR
Appeal

Albert Redhead
Justice of

I CONCUR

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Albert N.J.

Matthew
Appeal [Ag.]

Justice of