

**Barbe v Belize
(2004) SLR 39**

France BONTE for the Applicant
Dora ZATTE for the Respondent

Ruling on the application for a writ habere facias possessionem 2004 by:

KARUNAKARAN J: This is an application for a writ habere facias possessionem. The Applicant in this matter claims to be the owner of a dwelling house on land S979 at Anse Aux Pins, Mahe. He alleges that the Respondent occupies that property illegally without any colour of right. The Applicant seeks this Court for a writ ordering the Respondents to quit, leave and vacate the said property.

The Applicant and the Respondent were living together as man and wife in the said house for the past 12 years. According to the Applicant, he is the sole owner of the property in question for having purchased the same out of a home loan in the sum of MUR150,000 he took from the Seychelles Housing Development Corporation. He also took a further loan of MUR50,000 for the repairs of the house. He is still repaying the said loans. The relationship between the Applicant and the Respondent terminated in June 2002. Following an argument between the Applicant and the Respondent, the Respondent was admitted to the Victoria Hospital for a couple of weeks. After she came back all the door locks had been replaced and the Respondent was unable to continue living in the house with the Applicant. Further, the Respondent, in his affidavit that he has expressly withdrawn the licence given to the Respondent. He asked her to vacate the property but she refused in spite of the licence being withdrawn. According to the Applicant, the Respondent is presently occupying his property illegally without his consent and permission. The Applicant prays this Court to issue the writ ordering the Respondent to quit his house first above mentioned.

On the other hand, the Respondent contends that she was a statutory tenant by virtue of the fact that she paid the electricity, water and telephone bills. She bought the furniture in exchange for the house. Following the termination of tenancy by the Applicant, the Respondent contends that she has now become a statutory tenant and is entitled to all the protection under the Control of Rent and Tenancy Agreement Act. Therefore, the learned counsel for the Respondent submitted that this Court has no jurisdiction to make an eviction order against the Respondent in this matter. For these reasons, the Respondents seek dismissal of this application.

The general principles governing the writs of habere facias possessionem are well settled by case laws. As I have observed in *Mary Dubignon v Antonio Morin* Civil Side No 9 of 1999, following are the cardinal principles normally considered and applied by

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the Court in cases of this nature: -

1. The Court in granting the relief herein acts as a Court of Equity and exercises its equitable powers in terms of section 6 of the Courts Act- Cap 52.
2. Those who come for equity should come with clean hands. There should not be any other legal remedy available to the Applicant who seeks this equitable remedy.
3. This remedy is available to the Applicant whose need is of an urgent nature and any delay in the remedy would cause irreparable loss and hardship to him.
4. The Court should be satisfied that Respondent on the other hand has no serious defence to make.
5. If the remedy sought is to eject a Respondent occupying the property merely on the benevolence of the Applicant then that Respondent should not have any right or title over the property.

Applying these principles, I carefully analyse the evidence adduced by the parties in this matter.

As regards the issue of tenancy raised by the Respondent, it is evident on the face of the affidavits filed by the parties that the Respondent had been permitted by the Applicant to cohabit with him in his house as his common law wife. Undoubtedly, such permission in law only amounts to a licence. Now, the licensor namely, the Applicant has expressly revoked the licence. Therefore, the Respondent's continued occupation of the house is illegal and so I find. The payments made by the Respondent for the consumption of water, electricity etc. can no way convert a licence into a tenancy. Moreover, I find there is no evidence on record to show that the Respondent entered the property as a tenant at any point of time after the petitioner had allowed her to stay in his house as his concubine. Furthermore, I find no accuracy or correctness in the averments made by the Respondent in her affidavit in respect of her claim as to lease and statutory tenancy. In the circumstances, I find that the Respondent is presently in illegal occupation of the property without any colour of right.

As regards the Applicant's claim of ownership, I find there is sufficient evidence on record to my satisfaction in support of his claim in this respect. Consequently, I hold the Respondent does not have a serious defence to make in this matter. In my judgment, the claim made by the Respondent in her counter-affidavit is not tenable in law and on facts. On the face of the averments contained in the affidavits, simple justice demands that this petition should be granted. Indeed, no one should be deprived of his right to have exclusive possession and enjoyment of his property.

In my final analysis therefore, I find the Respondent does not have a serious defence to make to this petition. In the circumstances, I allow the petition, grant the writ and order

the Respondent to leave, quit and vacate the house in question on or before 30 June 2004. Having regard to all the circumstances of this case, I make no orders for costs.

Record: Civil Side No 61 of 2003