

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 48 of 1980

278/26

Between:

PRITAM KAUR d/o Ujagir Singh Appellants
and 3 OTHERS

and

BHAI POORAN SINGH Respondent
s/o Mohar Singh

Dr. Sahu Khan for the Appellants.
Respondent in person.

Date of Hearing: 9th March, 1981.

Delivery of Judgment:

JUDGMENT OF GOULD V.P.

I have had the advantage of reading the judgment of Marsack J.A. in this appeal. He has set out the basic facts and I do not need to repeat them, but would add a few words of my own.

As the words imply, the position of a "special referee" is particular and rather unusual. Under 0.36 r.2 of the Rules of the Supreme Court he is a person "nominated by the court" to make a report on certain matters referred to him. In a way the Court delegates to him some of its task. His remuneration is thus of special concern to the Court which is no doubt why Rule 2(3) of the Order is in such wide terms. It reads:


"(3) The Court may make such order as it thinks fit to provide for the remuneration of a special referee and may give such directions as may be necessary for the collection thereof from the parties and for the payment thereof to the special referee."

589
127

Having regard to the fact that the special referee is nominated by the Court it could be argued that the Court has a particular interest verging on a responsibility to see that he is remunerated, and could discharge this responsibility of its own motion. We do not need to examine this proposition further in view of the finding expressed by Marsack J.A., with which I agree, that the parties had a reasonable opportunity of presenting their case on the matter. Mr. Sahu Khan made a faint suggestion that he might have wished to argue that the order should have directed the amount to be paid as to one half by the estate and the other by the respondent. No such question was raised by counsel when they appeared on the 20th July, 1979, before Williams J. Moreover the original order appointing the special referee directed that the \$500 for the fees of the referee should be provided by the estate. The respondent himself had been trustee of the same estate. The argument in my opinion lacks any merit.

While the learned Judge could have called counsel before him again I do not think it a proper matter for appeal in a case where counsel had displayed such a marked lack of interest in the matter of curing their own admitted oversight, even, as Marsack J.A. points out, failing to appeal against the order of Williams J. of the 28th September, 1979.

For these reasons, as well as those expressed in the judgment of Marsack J.A., I agree that the appeal must be dismissed, subject to the clarification of the order under appeal contained in that judgment. That being the opinion of all members of the Court it is so ordered.



.....
Vice President