IN THE FIJI COURT OF APPEAL
(AT SUVA)

CIVIL JURISDICTION

CIVIL APPEAL N0. ABU0052 OF 1996
(High Court Civil Action No. 24 of 1993)

BETWEEN

SHASI PRASAD SHARMA

APPELLANT

-AND-

DAVENDRA PRASAD SHARMA
RANJULA DEVI SHARMA

RESPONDENTS

Appellant in person
Mr. G.P. Lala for the Respondents

Date and Place of Hearing	:	**18th February 1998 at Suva**
Date of Delivery of Judgement	:	**27th February 1998**

JUDGMENT OF THE COURT

This is an appeal from a judgment of the High Court. The background to the appeal is as follows. Ambika Prasad Sharma (hereinafter referred to as the deceased) died on the 8th February 1992 at the Colonial Memorial Hospital. In a will dated 16th November 1991, the deceased named Devendra Prasad Sharma (son) and Ranjula Devi Sharma (daughter) (hereinafter referred to as the respondents) as Executors and Trustees of the said will. In a writ of summons (Civil Action No.24 of 1993) they claim that probate be granted in terms of the said will.

Shasi Prasad Sharma (son) (hereinafter referred to as the appellant) lodged a caveat no. 33/92 on 3rd November 1992 prohibiting the grant of probate.

The respondents applied to the High Court to remove the said caveat and that probate be granted to them in terms of the said will. Fatiaki J. heard the application in absence of the appellant on 7th July 1995 and the caveat was removed and probate granted to the respondents.

On the same date as the said order, the appellant filed another caveat no. 31/95 in identical terms to the first caveat prohibiting the grant of probate. At this juncture we should observe that the real reason for lodging the second caveat was due to the fact that the appellant did not appear at the hearing on the 7th July 1995. He was served with the documents in connection with the application to remove the caveat but he explained in his affidavit that he was waiting outside the Court House and the case was not formally called. In the circumstances the appellant could have applied to set aside the order of 7th July 1995 pursuant to O 14 r 11 of the ***High Court Rules*** 1988 (as amended). He did not do that. The order of 7th July 1995 was still on foot when the second caveat was lodged. It would follow from this that the appellant was seeking to raise the same issues decided by Fatiaki J. This point was not taken up by the respondents at the hearing before Pathik J. and we do not wish to take it any further.

The respondents simply applied to remove caveat no. 31/95 on general principles and probate granted in terms of the said will. This application was heard by Pathik J. and on the 30th August 1996 he ordered the said caveat be removed forthwith. The appellant has appealed against this decision.

The application to remove the caveat was brought pursuant to s 47 of the ***Succession, Probate and Administration Act*** (Cap. 60). The principle is now established that where such an application is made, the High Court has a discretion as to the grounds upon which a caveat may be removed (see ***Rosy Reddy f/n Rjun Prasad and Manchama Webb and Lawrence Webb,*** Civ. App. 14/94, a decision of the Court of Appeal dated 11th November 1994). A caveator should establish a contrary interest to the person applying for the removal of the caveat.

The High Court in considering this matter applied the proper principles set out by the Court of Appeal in ***Rosy Reddy f/n Rjun Prasad and Manchama Webb and Lawrence Webb*** (supra).

The appellant relied upon a number of grounds for not removing the caveat. It is not necessary to set them all out here. Most grounds relied upon are not proper grounds except for one, namely, that the caveat should not be removed to enable the appellant to re-open the inquest into the death of the deceased. The appellant alleges

that such an inquest would establish that the respondents were responsible for the death of the deceased. He submits that such a finding would result in the invalidity of the said will and consequently he would benefit from the estate of the deceased as one of the sons of the deceased.

The High Court dealt with the issue in the following terms:

> ***"For the purposes of the issue before me, the only ground which the defendant gives for not ordering the caveat to be removed is that the Plaintiffs should wait 'until the Inquest is re-opened, proper evidence collected and judgement made'.***
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> ***On the evidence before me, I do not consider this to be a good enough reason for grant of Probate purposes to let the caveat remain. There is also no indication when, if ever, the inquest will be re-opened. The inquest matter was also before his Lordship and he must have considered it before he made the said orders."***

The appellant has advanced no argument before us to demonstrate that the High Court erred in coming to this conclusion. As far as the inquest into the death of the deceased is concerned, such an inquiry has been conducted by Resident Magistrate, S. M. Shah under the law and a ruling handed down in March 1995. He concluded that the deceased died "due to multiple injuries consistent with a fall". He specifically found that "there was no evidence whatsoever of any foul play."

The appellant was not happy with this finding and sought to re-open the inquest. The appellant brought the issue of re-opening of the inquest to the attention of the Director of Public Prosecutions and the question was examined by various officers of the DPP. The Director finally advised the appellant in a letter dated 17th January 1996 that no grounds exist to recommend the re-opening of the inquest. In the same letter the

Director advised the appellant that the matter was referred to the Attorney-General for his decision under the ***Inquest Act***. The record of the proceedings in the High Court shows that the application to remove the caveat was adjourned several times to enable the appellant to obtain a decision from the Attorney-General. There is no evidence to show what steps the appellant has taken to obtain a decision from the Attorney-General. There is also no suggestion that a decision is forthcoming.

In our view the trial judge was correct in concluding that to allow the appellant further time to await and obtain a decision of the Attorney-General in the circumstances of the present case was not a good ground to allow the caveat to remain. It is now two years since the matter was referred to the Attorney-General and six years since the deceased died. It is in the interest of all parties that this matter should come to some finality.

We find that there is no merit in the appeal and we dismiss it with costs to the respondents.

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Sir Moti Tikaram
President, Fiji Court of Appeal

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Sir Mari Kapi
Judge of Appeal

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Mr Justice J. D. Dillon
Judge of Appeal

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