

**IN THE HIGH COURT OF FIJI AT SUVA**  
**PROBATE JURISDICTION**

**ACTION NO. HPP 27 of 2013**

**IN THE ESTATE** of **NATWARLAL DULLABHAI** also known as **NATWAR** and **NATWAR LAL RAJPUT** formerly of Ba, Fiji and late of Maple of Ontario, Canada, Medical Practitioner, deceased, intestate.

**BEFORE** : **Hon. Justice Mayadunne Corea**

**COUNSEL** : **Mr. V. Maharaj for the Plaintiff**

**Date of Hearing** : **14<sup>th</sup> February, 2014**

**Date of Judgment** : **13<sup>th</sup> March, 2014**

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**ORDER**

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[1]. Before me is an Exparte Motion filed to obtain orders namely:-

- (1) **An Order that the certified copy of the Affidavit of Vithaldas Pandya be used and accepted in place of the Marriage Certificate of Ishwarlal Chauhan and Savitri Ben;**
- (2) **An Order that a copy of the Birth Certificate of Hina Chauhan be used and accepted in place of the original birth certificate of Hina Chauhan;**
- (3) **An Order that the school report dated 8<sup>th</sup> day of August, 1969 and Canadian Passport No. QE 119013 of Nirmala Rajput together be used and accepted in place of the original Birth Certificate of Nirmala Rajput;**

**(4) An Order that the notation of Divorce in the Death Certificate of Natwarlal Rajput be used and accepted as evidence of his divorce with Rukhmani.**

- [2]. There is an affidavit in support filed by one Pravin Chauhan dated 24.4.13 and a supplementary affidavit dated 25.11.13 deposed by the same deponent.
- [3]. The deponent of the affidavit sworn on 24.4.13 deposes that the affidavit had been sworn to comply with the requirements of the process of obtaining Letters of Administration pertaining to three deceased people. I find that this affidavit, as well as the supplementary affidavit sworn on 25.11.13 is of little use to court to make the orders sought in the Exparte Notice of Motion dated 28.5.13.
- [4]. To obtain the first order the petitioner had relied on two documents a photocopy of an affidavit marked and annexed as “D” and a photocopy of a Birth Certificate marked and annexed as “E”.
- [5]. On close scrutiny of the document Marked “E”, I observe it is a documents issued in Canada. However the said document does not stipulate the names of the parents of the child. Accordingly it has no relevance to the order being sought.
- [6]. The document marked “D” is deposed by a Hindu Priest. In the said document it is deposed that the said marriage had been performed by the deponent in India on 4.3.1959. However it has not been submitted to court whether a proper search had been done in India to obtain a copy of the marriage certificate and whether it is unavailable. Even though the deponent of the affidavit deposes that he has performed the marriage it does not state whether it has been registered. The petitioner has failed to satisfy court that they have done a search and a copy of the said Marriage Certificate is not available to obtain the order.
- [7]. The second order sought is to consider a photocopy of the Birth Certificate of Hina Chauhan be accepted in place of the original Birth Certificate of the said Hina Chauhan.
- [8]. The Deponent has marked annexure “E” which is a photocopy of the birth certificate. However the deponent has not submitted to court as to

why the original Birth Certificate or a certified copy of the original Birth certificate cannot be produced.

- [9]. The petitioner has submitted a photocopy of the birth certificate but has failed to explain the difficulty in producing the original or a certified copy. In the absence of any explanation the plaintiff fails to satisfy court as to the necessity of the order sought. Accordingly the petitioner has failed to satisfy court to obtain this order.
- [10]. By the 3<sup>rd</sup> order the petitioner is seeking for an order to consider the school report dated 8.8.1969 and the Canadian Passport No. QE 119013 of Nirmala Rajput together, to be used and accepted as the original birth certificate. At the submission stage it was disclosed that the said school report had not been annexed with the affidavit and it is not before the court. It also transpired that even the copy of the passport is not annexed and as such, is not before the court. Accordingly the court declines to grant an order as prayed under number 3 in the Exparte Notice of Motion.
- [11]. To obtain order number 4 in the summons, it was submitted that the petitioner is relying on the annexure marked "F" to obtain the said order.
- [12]. On close scrutiny of the document annexed and marked as "F" the court finds a copy of a Death Certificate of Natwar Lal Rajput. The petitioner submits, that under the heading "Marital Status" it is printed as "Divorced". The Petitioner pray that this be accepted as evidence of his divorce with Rukhmani.
- [13]. However it is pertinent to note that other than the word "Divorced" it does not stipulate any other material.
- [14]. In the absence of any reference to the name Rukhmani in the annexure "F" the Petitioner has failed to satisfy court, by the said annexure marked "F" that infact Natwarlal Rajput had been divorced from the said Rukhmani. The only inference the court can draw from the document "F" is that the deceased is a divorced person.
- [15]. Accordingly I decline to grant Order number 4 in the Exparte Notice of Motion date 28.5.2013.

**Conclusion**

- [16]. As for the above stated reasons, the court declines to issue the orders sought in the Exparte Notice of Motion dated 28.5.13.
- [17]. Accordingly the said Exparte Notice of Motion dated 28.5.13 is struck out.

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Mayadunne Corea  
**JUDGE**

**13.3.2014**