

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HPP Action No. : 25 of 2014

BETWEEN : AGNES ELIZABETH EDWARDS aka AGNES ENSOR & PETER VERMON ENSOR as the Beneficiaries of the ESTATE Kenwyn Ensor both of 17 Mitumba Road, Seven Hills, NSW, Australia 2147 Careworker and Construction Worker respectively.

PLANTIFF APPELLANT

AND : MARY ENSOR aka Mary Ensor Vuatalevu in her capacity as Adminstratrix of the Estate of Kenwyn Ensor of Lot 18 Tavola Road, Retired Sales Assistant.

DEFENDANT RESPONDENT

COUNSEL : Mr Faktaufon.V
Ms Jackson.L for 1st and 2nd Plaintiff
Ms Mary Ensor (In Person) for the Respondent

Date of Hearing : 9th April, 2015

Date of Judgment : 10th April, 2015

JUDGMENT

Introduction

1. The plaintiff filed the originating summons seeking following orders:

- i. *That the respondent in her capacity as administratrix in the Estate of Kenwyn Ensor equally subdivided the land to the Applicants for both Certificate of Titles Nos.41334 and 41335 Lots 1 and 2 on Deposited Plan 3245 respectively.*
- ii. *That an independent surveyor be appointed to carry out the subdivision for both certification of Tiles Nos.41334 and 41335 Lots 1 and 2 on Deposited Plan 3245 respectively; and*
- iii. *Other orders deem fit and just to this Honorable Court.*

The Plaintiff's claim

2. The two plaintiffs' and the defendant are children of Late Kenwyn Ensor whose death had occurred on 30.12.1975.
3. The deceased had a property depicted in CT No. 12198 Lot 3 and 4.
4. The defendant had applied for letters of administration and the same had been granted by the High Court on 1.5.91.
5. The plaintiff alleged that the defendant as the administratrix had not completed the administration of the Estate and the plaintiff had not got their share of the Estate. Thus the plaintiffs have filed the summons before me seeking for orders.

The Defendant's Reply;

6. The defendant in her reply acknowledged that she applied and obtained the letters of administration and had stated that on the advice of a person at the Titles office she had applied for two new titles to the land.

7. This had been done in the year 2013 and the defendant had obtained two titles namely. CT 41334 consisting Lot 1 in DP No. 3245 and CT 41335 which is Lot 2 in DP No 3245.
8. The defendant too wanted the land to be distributed among heirs.
9. Both parties filed their affidavits and the court fixed the case for hearing on 9.4.15 and the court allowed both parties to file their written submissions.

Hearing

10. The plaintiffs had filed their written submissions but the defendant had not filed written submissions.
11. At the hearing the plaintiff were represented by solicitors while the defendant appeared in person.
12. When the hearing commenced the parties agreed that it's a dispute between siblings and the defendant submitted she didn't have any intention to hold the property for herself.
13. The Parties sought an adjournment to explore the possibility of a settlement.
14. Accordingly both parties informed court that they want to settle the matter but requested court to incorporate the settlement in a judgment.

Settlement

15. Both parties informed court that the settlement is as follows:
- i. The defendant as the administratrix was willing to equally subdivide the land depicted in CT No.41334 and 41335 Lots 1 and 2 on DP 3245.
 - ii. Both parties agreed to get an independent surveyor to be appointed to carry out the subdivision for both CT No 41334 and 41335 Lots 1 and 2 on DP 3245.
 - iii. The surveyor fees to be born out by the 1st plaintiff in its entirety.
 - iv. The defendant to complete the administration of the Estate and transfer the property in all three names namely, the two plaintiffs and the defendant.
 - v. The defendant also agreed to complete the administration of the Estate and register the three names within two months from the date of this judgment.
16. When questioned by court the defendant submitted that she understood the settlement and agreed on it.

Orders of Court

17. Accordingly as per the settlement reached in court by the parties, I make following orders:-
- i. The defendant in her capacity as Administratrix in the Estate of Kenwyn Ensor is ordered to equally subdivide the land deposited in CT Nos.41334 and 41335 Lots 1 and 2 on DP 3245 among the plaintiffs and the defendant.
 - ii. An independent surveyor to be appointed to carry out the subdivisions for both CT 41334 and 41335 Lots 1 and 2 on DP 3245.

- iii. The surveyor fees in its entirety to be borne by the 1st plaintiff.
- iv. The defendant to complete the administration of the Estate and to transfer the property in all three names, namely the plaintiffs and the defendant.
- v. The defendant to complete the administration of the Estate and register the three names within two months from the date of this judgment.
- vi. Having considered the settlement I order no cost.



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Mayadunne Corea

JUDGE