

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

CIVIL ACTION NO.: HPP 26 of 2016

BETWEEN : **ROZINA BEGUM** **PLAINTIFF**
AND : **UMESH CHAND** **DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms M Pillai on instruction [Messrs Pillai Naidu & Associates]
DEFENDANT : Mr A. Nand [Kohli & Singh]
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 22 November 2018

INTERLOCUTORY RULING
[Order 20 rule 5 – Amendment of Statement of Defence & Counter Claim]

APPLICATION

1. It is the Defendants summon dated 16 April 2018 seeking leave to amend his Statement of Defence and Counter Claim dated 26 May 2017. This Application is made pursuant to Order 20 Rule 5 of the High Court Rules.

GROUNDS FOR AMENDMENTS

2. The amendment is required to include another last Will and Testament of Parmesh Kumar which was executed by him on 30 May 2016 and duly registered with the High Court on 31 May 2016.
3. According to the Defendant, if the Plaintiff is successful in her claim she would still be required to have the Will dated 30 May 2016 be declared invalid after which the deceased would be declared to have died intestate. These particulars are also the foundation of the Defendant's Counter claim and would help the Court to determine the issues.

DETERMINATION

4. Upon perusing the proposed amendment to the Statement of Defence and Counter claim I note that the whole document is being amended in its style and contents to some extent.

However I find the proposed amendment to be properly and exactly formulated.

5. The underlying issue is that there existed a previous Will dated 30 May 2016.

6. The Plaintiff's claim is to pronounce against the validity of the 3 June 2016 Will as the deceased was of unsound mind, memory and understanding at the time of making or affixing his thumb print for the purpose of execution of the same.
7. I agree with the Defendant's Counsel's submission that the Plaintiff would still be required to have the 30 May 2016 declared invalid if she is successful in the matter for the 3 June 2016 Will.
8. The parties are at the discovery stage.
9. The general principles for grant of leave to amend is outlined in the note to Order 20 Rule 8 of the Supreme Court Practice 1993 Volume 1 which is summarised as follows:
"cardinal importance all such amendments ought to be made" for the purpose of determining the real question in controversy between the parties correcting any defect or error in any proceeding [para 20/5 – 8/6].
10. I do not find there is any prejudice caused to the Plaintiff if the amendment is allowed as it is the intention of the Plaintiff to declare any Will made by the deceased as invalid. For the delay of the matter the Plaintiff can be compensated with costs.
11. Hence I will allow the amendment and order cost against the Defendant.

Orders

12. The Defendant is allowed to amend the Statement of Defence and Counter claim in the format of the proposed amendment attached to the Affidavit in Support. The amendments are to be highlighted with red making.

The amended Statement of Defence and Counter claim is to be filed/served in 14 days.

The Defendant shall pay cost summarily assessed at \$800 to the Plaintiff in 14 days.

The Plaintiff shall file/serve her reply to Statement of Defence and Defence to the Counter Claim in 14 days thereafter.

The Defendant shall thereafter file/serve its Affidavit Verifying List of Document in 14 days.

Parties to do discovery in 14 days and Pre-Trial Conference to be convened and minutes filed in 14 days thereafter.


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Vandhana Lal [Ms]
Acting Master
At Suva.

