

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

HBC No. 266 of 2016

**BETWEEN:**            **RAMESH KUMAR AND SUNIL KUMAR** of Toko Fiji both Trustees of the Estate of Ram Asre, Purchase Manager and Freight Operation Co-ordinator both of 57/A Bestic Street, Rockdale, New South Wales, Australia.

**PLAINTIFF**

**AND:**                    **ANJILA WATI** of Toko Tavua Fiji engaged in Domestic Duties and widow/beneficiary of Estate of Hari Nand.

**FIRST DEFENDANT**

**AND:**                    **ASHIKA NAND**, Clerk of Toko, Tavua, Fiji and **AVITESH NAND** fitter of Toko Tavua, Fiji and **ASHMIKA NAND** of Canada address and occupation not known to the Plaintiffs, beneficiaries of the Estate of Hari Nand as the children of the late Hari Nand pursuant to Succession Administration & Probate Act, Cap 60, of Laws of Fiji.

**SECOND DEFENDANT**

Appearances    :    Mr. Vipul Mishra for the Plaintiffs  
                              In Person for the Defendants  
Date of Hearing :    11 July 2018, 24 September 2018  
Date of Ruling  :    22 November 2019

## **R U L I N G**

### **INTRODUCTION**

1.    The plaintiffs, Ramesh Kumar ("**Ramesh**") and Sunil Kumar ("**Sunil**"), are the sons of the late Ram Asre. They are also the trustees of their father's estate.
2.    The late Hari Nand ("**Hari**") was Ramesh and Sunil's brother.

3. This case concerns the distribution of the residue of the estate of Ram Asre to which Ramesh, Sunil and the estate of Hari have equal 1/3 share by virtue of the Last Will & Testament of Ram Asre.
4. The defendants are the surviving widow and children of Hari Nand. They are the beneficiaries of his estate.
5. There are several specific monetary bequests in the Will of Ram Asre. These have all been distributed to other beneficiaries. They have no stake in the residual bequest in question in this case.

#### **LEASE NO. 26833**

6. The residue of the estate of Ram Asre to which Ramesh, Sunil and the estate of Hari have beneficial interest is a 22-acre farm which is all comprised in Lease No. 26833 ("farmland") with a Sugar Cane Contract attached to it (No. 3377), Yaladro Sector.
7. Erected on this farmland are two houses.
8. As I have said, this farmland is the only asset of the estate of Ram Asre that is yet to be distributed.
9. The farmland is not specifically or demonstratively devised in the Will of Ram Asre. It will have to pass as a residuary pursuant to Clause 5 of the said Will.

#### **CLAUSE 5**

10. Clause 5 provides as follows:

*I GIVE DEVISE AND BEQUEATH all the rest residue and remainder of my property of whatsoever kind or nature and wheresoever situate or being including any property over which I may have a power of appointment or disposition TO and UNTO my wife BHAGWAN DEI daughter of Parbhu of Tokoia the district and Dominion aforesaid for her life and upon her death or remarriage TO AND UNTO my sons HARI NAND, RAMESH KUMAR and SUNIL KUMAR in equal shares, share and share alike absolutely.*

11. Mrs. Dei's life interest in the farmland ceased when she passed away on 25 June 1988.

12. Upon her death, the plaintiffs Hari, Ramesh and Sunil became entitled to the farmland in equal 1/3 shares<sup>i</sup>.

#### **PLAINTIFF'S APPLICATION**

13. The application before me is by Ramesh and Sunil in their capacity as trustees of the estate of Ram Asre. However, the Orders they seek will benefit them personally as beneficiaries. They seek an Order for the final distribution and settlement of the estate matter which would enable them, as beneficiaries as it seems, to buy out the 1/3 share of the estate of Hari Nand. To this end, Ramesh and Sunil have obtained a valuation of the entire farmland from a firm of registered valuers namely Trumarket Valuations & Property Consultant Limited ("Trumarket").
14. Trumarket valued the farmland at \$145,600 on 26 July 2016.
15. Ramesh and Sunil propose that they pay the defendants (estate of Hari Nand) a third of the sum of \$145,000 less some deductions (see below)

#### **DEFENDANTS' VALUATION**

16. In 2018, Anjila Wati and Avitesh Nand (1<sup>st</sup> defendant and named 2<sup>nd</sup> defendant) also engaged Trumarket to value the 7-acres portion of the farmland which they occupy, and which comprises approximately 1/3 of the 22 acre farmland.
17. Trumarket actually valued the 7 acres at \$65,000-00 (sixty five thousand dollars).
18. This is the figure at which Anjila Wati and Avitesh Nand are willing to settle if they are to sell their 1/3 share of the 22 acres.

#### **888 YEARS - BALANCE LEASE TERM**

19. The 22-acre farmland was leased to the late Ram Asre for a term of **966 years 10 months and 13 days** from **01 January 1941** on a rental of \$400-00 (four hundred dollars per annum).

20. The balance on the lease term is 888 years or so (eight hundred and eighty eight years). This is long enough to last fifteen to twenty more generations.
21. Because the defendants cannot afford a lawyer, and have appeared unrepresented, it has always been of concern to me that they may have not had the full benefit of legal and investment advice regarding their options.
22. This Court has general supervisory powers in equity relating to the supervision of trusts for the welfare of beneficiaries (see Letterstedt v Broers (1884) 9 App Cas 371 and Hunter v Hunter [1938] NZLR 520).

### COMMENTS

23. The starting point is that the plaintiffs' primary obligation as executor/trustees is to see that the wishes of the testator as expressed in clause 5 of the Will are carried out (see Re Branson (1911) 31 NZLR 79 (SC)).
24. Clause 5 of the Will merely makes a residual bequest of the farmland in three equal shares, respectively to Ramesh, Sunil, and the estate of Hari Nand.
25. The second point is that the plaintiffs, as executor-trustees of the estate of Ram Asre, hold a fiduciary duty to act loyally for the benefit of the beneficiaries. In terms of the distribution of the estate of Ram Asre, it is incumbent still on Ramesh and Sunil to act so towards the interest of the estate of Hari Nand.
26. What would have been the wishes of the late Ram Asre? It is not too far-fetched a speculation that Ram Asre would have desired that, upon his demise, the farmland be subdivided and partitioned into three equal shares for his three sons.
27. The farmland is 22 acres in acreage. If it was to be divided equally into three shares, each would have 7.3 acres approximately.
28. For one reason or another, that option of sub-division or partition is not being pursued. Rather, the plaintiffs (executors-trustees) desire to buy out the 1/3 share of the estate of Hari Nand (beneficiaries).
29. There is potential conflict of interest for Ramesh and Sunil. On the one hand, is their duty of loyalty as trustees of the Ram Asre estate to the estate of Hari Nand as

beneficiaries. On the other hand, to the ordinary bystander, they may be proposing a deal for their own personal benefit to the prejudice of the estate of Hari Nand.

30. In the circumstances of this case, I keep in mind the following:

- (i) the farmland has a balance of 888 years remaining on its lease term which is enough to last 15 to 20 generations to come,
- (ii) the land is 22 acres or so in size, and that the estate of Hari Nand has a beneficial interest over some 7 acres or so of the land on which stands a house which Hari Nand had occupied and cultivated during his lifetime, and which his surviving widow and son continue to occupy, and
- (iii) the defendants are unrepresented in this case

31. These facts, and the fact that Trumarket has been the only registered valuer ever to value the property, do set the alarm bells ringing as to the potential unequal bargaining position of the parties. They certainly shed some perspective of the potential gain and loss at stake for the plaintiffs and the defendants respectively, from an ill-considered sale and purchase.

32. A second valuation from a different registered valuer would no doubt give a fairer picture as to what the market position is with regards to the property.

33. Nevertheless, I now accept that Anjila Wati and Avitesh Nand are willing to settle by selling off their share at the valuation price of \$65,000-00. However, it is not clear to me at this time whether the other beneficiaries of the estate of Hari Nand, namely Ashina Nand and Ashmika Nand, are agreeable to this.

34. Assuming that Ashina Nand and Ashmika Nand are agreeable, I would accept \$65,000-00 as being the value of the estate of Hari Nand's 1/3 share in the farmland.

35. The only issue to determine now is what deductions are to be made out of the \$65,000 on account of the Hari Nand's share in estate expenses.

36. Before I consider this below, let me just make a note here that a part of the deductions claimed by the plaintiffs have to do with the alleged loss by Hari Nand of a car and tractor which belong to the Ram Asre estate.

## CAR & TRACTOR

37. According to the plaintiffs, the estate of Ram Asre owns a motor vehicle [registration number AU 600 – (“car”)] as well as Tractor No. V645 (Massey Fergussen 135 Engine/Chassis No. 894 682 M3) (“tractor”).
38. Neither the car nor the tractor is specifically or demonstratively devised in the Last Will and Testament of Ram Asre.
39. I accept that a chattel which forms part of the assets of an estate, and which chattel is not specifically devised in the relevant Will, may pass as a residuary pursuant to a residuary clause, if any, in that Will. However, in order to pass so, it must be clear that the asset did in fact belong to the decedent testator at the time of death, and that no other person has a clear title or claim to it.
40. There is no clear evidence before me that the car or the tractor ever belonged to the late Ram Asre at the time of his death, or that anyone else has a claim on these assets.
41. Notably, these assets (car and tractor) have always been in the possession of the late Hari Nand.
42. Avitesh Nand has sworn an affidavit that the tractor belonged to his father Hari Nand. That effectively raises the bar to the plaintiffs to prove that these assets belong to the estate of Ram Asre.
43. Where ownership of a motor vehicle is disputed, a good starting point in resolving the issue is the production of an extract of the relevant Land Transport Authority registration records.
44. However, no such document is annexed in any affidavit filed by or on behalf of the plaintiffs.
45. As such, and given the fact that both the car and the tractor have always been in the possession of the late Hari Nand, albeit that he lived and cultivated on the farmland of his father, Ram Asre, it is just as probable that the car and the tractor did belong to the late Ram Asre as the late Hari Ram.

46. In the circumstances, I am guided by the principle that a person in possession of a chattel has a better title to it than anyone except the true owner. Accordingly, taking account of the fact that the car and the tractor were always in the possession of the late Hari Ram, and that there is no conclusive evidence that the late Ram Asre owned the car and the tractor, I find that the estate of Hari Ram has a better claim to these assets than the estate of the Ram Asre.

## DEDUCTIONS

47. I tabulate below the various expenses allegedly incurred by the estate of Ram Asre (Sunil Kumar affidavit sworn on 14/12/16) and the ones for which the plaintiffs claim deductions against the share of the estate of Hari Nand and my comments on each:

Item	Deductible from Defendant	My Comment
Funeral and testamentary expenses	N/A	No amount to be deducted from Defendant.
Payment out of certain bequests (as per para 3 of Will)	N/A	These were specific monetary bequests.
Maintenance of Ms. Kamla Wati (as per paragraph 4 of Will)	N/A	This was a specific monetary bequest
Cane Proceeds To Be Paid To The Plaintiffs	N/A	The Plaintiffs were not paid certain cane proceeds prior to the time the Court appointed them as executors-trustees. However, they have been fully paid all outstanding payments <sup>i</sup> .
Mrs. Bhagwan Dei (Testator's surviving widow) provisions as per para 5 of Will.	N/A	Mrs. Dei life interest in the property. She died 25/06/88.  Upon her death, Ramesh Kumar and Sunil Kumar (plaintiffs) and estate of Hari Nand became entitled to residue of Ram Asre estate in equal 1/3 shares <sup>iii</sup> .
Legal Costs  (a) \$30,000.00  \$30,000 legal costs for previous proceedings to enforce their rights already recovered <sup>iv</sup>	N/A  (already recovered)	

<p>(b) \$52,574.71</p> <p>Alleged that total costs is \$52,574.71 but no evidence attached yet<sup>v</sup></p> <p>(c) \$10,203.96</p> <p>Estate costs in defending Agricultural Tribunal</p>		<p>NB. But affidavit of Ramesh Kumar values total legal costs at \$81,235.37. Balance is \$54,657.52 (unrecovered). \$18,219.17 share of that is defendants.</p> <p>No Bill of Costs/ evidence that the estate of Ram Asre has suffered these payments.</p> <p><b>Caution:</b> If, in fact, the Courts in those cases had assessed costs summarily, the plaintiffs should not have to double dip by claiming solicitor-client costs as they are trying to do here.</p>
Discharge of a Mortgage (ANZ – which had nothing owing on it)	N/A	
<p>Costs of Repairs to Damaged Property (other residential property other than the one occupied by defendants)</p> <p>Costs allegedly borne by plaintiffs personally as estate had no money.</p>	N/A	<p>The plaintiffs allege that they spent \$15,000-00<sup>vi</sup> on costs of repairs. This house presumably is not located within the defendant's share. Although the property is yet undivided, I see no reason why the estate of Hari Nand should share in the cost of repairs of the other house which the defendant has not been occupying.</p>
i-TLTB Land Rentals	<p>@\$315 per annum<sup>vii</sup></p> <p><math>\\$315 \div 3 = x</math></p> <p>no. of years unpaid.</p>	Estate of Hari Nand needs to pay their 1/3 share



<p>Alleged non-cultivation of 1/3 share occupied by defendants. Resulting in loss to estate.</p>	<p>N/A</p>	<p>There is no clear figure on this. If there is in fact a figure, the basis of arriving at that figure should be explained and set out clearly.</p> <p>That figure should then be adjusted for contingencies such as cyclones and droughts and floods etc.</p> <p>Also, it is unclear to me why this should be counted as a loss to the estate if (i) the plaintiffs have been paid their fair share of cane proceeds and (ii) the defendants (I presume) have not been receiving cane proceeds from cultivation of plaintiff's share since the plaintiffs took over as trustees of Ram Asre estate.</p>
<p>Defendants alleged refusal to allow plaintiffs to use tractor. Whether tractor belongs to estate.</p>	<p>N/A</p>	<p>Plaintiffs claim they spent \$1,500 p.a. in hiring out "other" tractor for cultivation = total of <b>\$10,500</b> up to end of 2015. (eight years). Paragraph 46 and 52 are inconsistent. Also inconsistent with Ramesh Kumar affidavit para 13 (7 years).</p> <p><i>Unclear as to whether estate of Ram Asre bought tractor or Hari Nand. Def Avitesh Nand sears it was bought by his father.</i></p> <p><i>Tractor not registered with LTA (see my comments above).</i></p>
<p>Surveyor to ascertain and mark out estate boundary as a result of one Satish Chand trespassing on one acre of land of estate. Allegedly, defendants allowed Satish to so trespass.</p>	<p>N/A</p>	<p>Plaintiffs claim the estate spent \$2,800. I am not prepared to accept that the defendants should be liable for this as there is no clear evidence before that they were responsible for encouraging that trespasser Satish Chand.</p>

## CONCLUSIONS

48. I accept the valuation of \$65,000 as being the value of the defendants' 1/3 share of the farmland. That in itself, without any further deduction, would be a more than a fair bargain for the plaintiffs considering the size (7 plus acres) of what is essentially close to a freehold tenure (balance 888 years). I am not prepared to make any

deduction on legal costs, considering that the plaintiffs have already recovered \$30,000 and considering the points I have raised above. I am only prepared to make deductions on account of the estate of Hari Nand's contribution to land rental based on the formula above ( $\$315 \div 3 = x$  no. of years unpaid).

49. It is unclear to me at this stage as to whether Anjila Wati and/or Avitesh Nand have authority to agree to the sale of the share of the estate of Hari Nand at the price of \$65,000 less the rental deductions, on behalf of the other beneficiaries namely Ashina Nand and Ashmika Nand. Unless they are the appointed personal representatives of the estate of Hari Nand, they do not have such an authority.
50. I can only direct that Anjila Wati and/or Avitesh Nand produce to this Court conclusive evidence that Ashina Nand and Ashmika Nand are agreeable to the sale on the above price and terms before the a final Order for sale can be made.
51. Once that evidence is produced, then Ramesh, Sunil, Anjila Wati and Avitesh Nand may further apply for an Order for the sale of the estate of Hari Ram's share in the farmland at the price of \$65,000 less the rental deductions.
52. The matter is now taken off the cause list. Parties at liberty to apply.



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**Anare Tuilevuka**  
**Judge**  
**Lautoka**

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<sup>i</sup> para 10 of Sunil Kumar affidavit sworn on 14/12/16)  
<sup>ii</sup> para 15 of Sunil Kumar affidavit sworn on 14/12/16)  
<sup>iii</sup> para 10 of Sunil Kumar affidavit sworn on 14/12/16)  
<sup>iv</sup> para 16 of Sunil Kumar affidavit sworn on 14/12/16)  
<sup>v</sup> para 18 of Sunil Kumar affidavit sworn on 14/12/16)  
<sup>vi</sup> para 26 of Sunil Kumar affidavit sworn on 14/12/16)  
<sup>vii</sup> para 36 of Sunil Kumar affidavit sworn on 14/12/16)