

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

**Civil Action No.: HBC 103 of 2018**

**BETWEEN** : **SUNIL DUTT** of Verata, Nausori, Taxi Driver and one of the  
Beneficiaries in the Estate of late Sudamaji of Verata Nausori, Landlord.

**PLAINTIFF**

**AND** : **HIRDESH CHAND** of Auckland, New Zealand, Retired as Executor and  
Trustee in the Estate of Sudamaji of Verata Nausori, Landlord.

**DEFENDANT**

**Counsel** : **Plaintiff: Mr Dayal R**  
**Defendant: Mr Maharaj V**

**Date of Hearing** : **19.2.2019**

**Date of Judgment** : **5.7.2019**

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff who is entitled to an undivided share of the property where he is residing filed this action seeking removal of Defendant as trustee of the estate of deceased father of the parties, and appointment of him as the administrator. Alternatively, Plaintiff is seeking transfer of his undivided, share to him. Since there was nothing to prevent Plaintiff's undivided share being transferred, upon last will of their father, adequate time was granted for the parties to amicably settle the alternate remedy. It did not happen and finally I was informed that settlement failed. Since the hearing was concluded on 19.2.2019 and it took more than five months for the parties to explore settlement, mainly due to one party is living abroad and had already engaged solicitors overseas. Settlement had failed despite efforts by the counsel. There is nothing preventing an order directing the Defendant to transfer Plaintiff's share in in terms of the last will of their father, as the executor and trustee of the estate of late Sudamaji, and also as administrator of the estate of their mother.

## FACTS AND ANALYSIS

2. Plaintiff and Defendant are siblings and, Plaintiff is a beneficiary of his late father (late Sudamaji)'s estate, and late mother's estate.
3. Late Sudamaji died 4.10.1988 and according to his last will he had appointed his wife and the Defendant as executors and upon the death of said widow Defendant became sole executor and trustee.
4. According to the last will, Defendant was bequeathed residue of the estate and condition 1 of last will, stated that Plaintiff along with two other siblings were entitled to 1/12, share or undivided 16 square chains on the Deposited Plan No 230 in the District of Naitasiri CT 5399, eight square chains (on Rakiraki side) to be shared equally among three sons.(the Property) (see the annexed last will which is admitted fact).
5. Defendant, who is residing in Auckland NZ had engaged a local surveyor for subdivision of the land but due to non co-operation of all the co-owners of the property, final subdivision had not happened. There are other co-owners of the property in issue who needs to co-operate for subdivision of the land. Defendant desired to transfer subdivide shares to beneficiaries of the last will of his father.
6. The reason for such subdivision is obvious, as the property is possessed by co-owners and it is desired to end the co ownership with subdivision of land and there was communication prior to this action that Defendant had intimated that sentiment to Plaintiff when he requested for transfer of his undivided share.
7. This may be due to fear that Plaintiff will encroach more than his share in the property. He is in possession of the property in issue while the Defendant is in Auckland, NZ.
8. Defendant had over the years had taken initiative to subdivide the land at his own expense, while the Plaintiff and others are residing and benefiting from the estate. Apart from delay and lack of unison of the co-owners to subdivide there is no other reason to conclude administration of the property in issue. Defendant is not benefiting from the delay in the distribution and subdivision of land and there is no evidence that delay had benefited Defendant.
9. The reason to seek subdivision and distribute shares under the last will is due to fear of Plaintiff encroaching more than his share and for that there are adequate remedies available.

10. Plaintiff cannot seek removal of Defendant as trustees who are acting altruistically. He had engaged even surveyors at his expense. So the application for removal of Defendant as trustee is refused.
11. Plaintiff's entitlement in terms of the last will can be transferred to him as an undivided share in the said property. Defendant state that title of the said property already contained transfer of undivided shares and this had made the certificate not as clear as to its owners.
12. The reason that title looks complicated if further co ownership is registered is not a good reason for not transferring shares to beneficiaries. Defendant had taken steps to subdivide but due to reasons beyond his control it had not happened. Plaintiff cannot wait till all co owners consent for subdivision, and co-ownership terminated with registration of separate titles.
13. According to Defendant transferring another undivided share to title will create some 'complication' and this is not a reason to halt transfer of undivided shares, as the trustee of the estate.
14. Plaintiff is entitled to transfer his share with or without subdivision. This will not give Plaintiff any authority to expand and or encroach his possession over the land exceeding his share. No evidence is presented as to the present status of the property, and what is the area on which Plaintiff occupy. In the circumstances it is pertinent for the Plaintiff to maintain status quo until his entitlement is determined through a subdivision.
15. Plaintiff through transfer of his undivided share will not acquire any new right to possession than he already enjoying. It will only be registered on the title.

## **CONCLUSION**

16. Plaintiff's application for the removal of Defendant as trustee and executor is struck off. Alternate remedy for an order to transfer his share in the property is granted. Plaintiff is also directed to maintain status quo of the property and not to expand his possession until subdivision is done and final determination of his entitlement is finalized. Considering circumstances of the case no costs awarded.

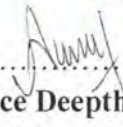
## **FINAL ORDERS**

- a. Plaintiff's application for removal of Defendant as trustee and appointment of him as trustee of the estate of their late father is dismissed.
- b. Defendant is directed to transfer undivided share of the Plaintiff in terms of the last will of late Sudamaji, forthwith.

- c. Plaintiff is directed to maintain status quo of the property specially the area he is in possession without encroaching till subdivision of the land, and his share is determined.
- d. Each party to bear their own costs for this action.

Dated at Suva this 5<sup>th</sup> day of July, 2019.



  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**