

IN THE HIGH COURT OF FIJI
PROBATE JURISDICTION
AT SUVA

HPP Action No. 82 of 2017

IN THE ESTATE of AATISH KUMAR late
of Lot 9 Manuka Street, Nakasi, Bank
Officer, Deceased, Testate

BETWEEN : SUSHEELA LATA aka known as ROHINI KUMAR

PLAINTIFF

AND : PRITIKA also known as PRITIKA KUMAR

DEFENDANT

CORAM : The Hon. Mr. Justice David Alfred

COUNSEL : Mr. S. Nand, Mr. N. Nand with him, for the Plaintiff.
Ms. J. Lal for the Defendant

Date of Hearing : 24 January 2019

Date of Decision : 25th January 2019

DECISION

1. This is the Plaintiff's Summons applying for an Order that a grant of administration pendente lite be issued to her as administratrix of the estate of Aatish Kumar (deceased).
2. The Application is made under s.29 of the Succession, Probate and Administration Act (Act) and under Order 76 rule 14 of the High Court Rules.
3. It is supported by the affidavit of the Plaintiff who deposes as follows:
 - (1) She is the executrix and trustee named in the last will of the deceased. An application for probate was made to the Probate Registry which was not granted as the Defendant has also applied for a grant of Letters of Administration of the same estate (L.A)
 - (2) She has lodged a caveat at the Probate Registry to object to the grant of the L.A.
 - (3) The Defendant has filed a Warning to Caveator to which the Plaintiff has filed an appearance. (There is no appearance, annexed to the affidavit, in the court file).
 - (4) There is pending before the Court this probate action concerning the validity of the will.
 - (5) The estate of the deceased comprises assets with a gross value of \$650,000.
 - (6) The assets include a building where a flat requires repair and a mortgage which ought to be paid off through the deceased's staff insurance cover, and other assets which the Plaintiff requires to be informed of.
4. The Defendant in her affidavit in response deposes as follows:
 - (1) The High Court has not granted probate of the alleged will and therefore the Plaintiff's right to administer the estate is yet to be determined.
 - (2) She has a term deposit with the deceased (her late husband) with the Bank of the South Pacific and the motor vehicle is jointly owned by her and the deceased, and neither requires any administrative intervention by the Plaintiff.
 - (3) The deceased and the Defendant jointly contributed towards acquisition of the property which is being looked after by her.
5. At the hearing both Counsel made oral submissions, the gist of which was the Plaintiff's Counsel saying the Defendant was administering the estate and the Defendant's Counsel saying there was no need for an administrator pendente lite (A.P.L).

6. At the conclusion of the arguments I said I would take time for consideration. Having done so and having perused the written submissions of both Counsel, I now deliver my decision.
7. I start with section 29(1) of the Act which reads as follows:

“Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the court and act under its direction.”
8. The crux of this application is whether the Plaintiff should be appointed the A.P.L. The Plaintiff’s Counsel has cited the case of *Lingam Reddy v Wati* [2000] FJHC 67, where Nazhat Shameem J said at page 3 of her Judgment that “In this case, I am satisfied, that the Plaintiff has shown that there is a need to appoint an administrator to cultivate the cane farm to prevent waste and deterioration...”
9. Is that the case in the instant matter? I think not, based on the evidence before this court. It was not the Plaintiff, the alleged executrix, who started the legal process to distribute the deceased’s estate but the Defendant. This is made clear by the Plaintiff in her affidavit in support where she says in para 3 “That before I made the application for grant of Probate, I had lodged a Caveat in the Probate Registry to object to grant of the Letters of Administration”.
10. One would have thought if the Plaintiff had the will and had noted she was the executrix named therein, she would have proceeded with expedition to the Registry to obtain probate. Instead it is the Defendant who has started the process.
11. Further, the Plaintiff states in para 10 of the said affidavit “That before the demise of the deceased, the deceased and his spouse had been separated and had been living separately for 2 years 9 months or so”.
12. Yet it is to be noted that the Certificate of Death states “(b) Informant/Witness (is) Pritika Kumar” who is the Defendant.
13. Finally I note from the Warning to Caveator issued at the instance of the Defendant to the Plaintiff dated 14 July 2017, that the Plaintiff was required to “setting forth what interest you have in the Estate of the abovenamed Aatish

Kumar” yet the Court file reveals no document filed by the Plaintiff setting forth her interest by annexing the will.

14. Nothing has been produced to this Court to evince any urgency or necessity on the part of the Plaintiff to be appointed an A.P.L because something needs to be done and no one has the power or authority to do it.
15. At the end of the day I will adopt and apply the words of Sir J.P Wilde in *Horrell v Witts and Plumley* [L.R vol 1] 1866 at page 105 that “At present the case is not strong enough to induce the Court to interfere, and I reject the motion” (to appoint an A.P.L).
16. In the result as the Plaintiff has not satisfied me why she should be appointed administrator, the Summons filed on 2 November 2017 is hereby dismissed. I refuse to grant an order for the Plaintiff to be granted administration pendente lite of the estate of the deceased and the Plaintiff is ordered to pay the Defendant the costs of this proceedings summarily assessed at \$500.

Delivered at Suva this 25th day of January 2019.



David Alfred
JUDGE
High Court of Fiji