

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

Probate Action No. HPP 61 of 2022

In the Estate of **RAM SAMY** aka **RAM SAMI GOUNDAR** late of Yalandro, Tavua, Fiji, Cultivator, Deceased, Testate.

BETWEEN: **MUNIRATNAM** of Yalandro, Tavua, Fiji, Cultivator and **LOG NADAN** of Naikabula, Lautoka, Retired.

PLAINTIFFS

A N D: **RAMAN GOUNDAR** of Yalandro, Tavua, Fiji, Cultivator

FIRST DEFENDANT

A N D: **VELAYDAN** of Lautoka, Fiji, Retired.

SECOND DEFENDANT

Appearance : Mr. Shelvin Singh with Ms. Kerela Saumaki for the plaintiffs
The defendants did not enter an appearance

Decision : Friday, 21st October 2022 at 9.00am

DECISION

[1]. By Originating Summons filed on 08.06.2022 the plaintiffs seek the following orders:

- A. *An order that the defendants be removed as the trustees and/ executors and trustees of the estate of **RAMY SAMY** aka **RAM SAMI GOUNDAR** late of Yalandro, Tavua, Fiji, Cultivator, Deceased, Testate.*
- B. *An Order that the Plaintiffs be appointed administrators with Will annexed of the **RAM SAMY** aka **RAM SAMI GOUNDAR** late of Yalandro, Tavua, Fiji, Cultivator, Deceased, Testate.*

- C. *An Order that the Probate Registry of the High Court do grant the Plaintiffs Letters of Administration with Will annexed or alternatively, Probate De Bonis Non (with Will Annexed) of the estate of **RAM SAMY** aka **RAM SAMI GOUNDAR** late of Yalandro, Tavua, Fiji, Cultivator, Deceased, Testate*
- D. *Such further or other relief as seems just and equitable to this Honourable Court.*
- E. *Costs of this action.*

- [2]. The summons is filed pursuant to Section 73 of the Trustee Act and Section 35 of the Succession Probate and Administration Act, Cap 60.
- [3]. An affidavit sworn on 06.06.2022 by the plaintiffs is filed in support of the Originating Summons.
- [4]. According to the affidavit of service filed by the plaintiffs on 15.07.2022, the Originating Summons and the Affidavit in Support were served on the defendants.
- [5]. The defendants have acknowledged the service of the documents served on them by the plaintiffs but the defendants did not enter an appearance.
- [6]. Furthermore, the plaintiffs' notice of appointment to hear Originating Summons was served on the defendants on 11/9/2022 and the defendants have acknowledged the service of the document.
- [7]. The plaintiffs' father, Ram Samy aka Ram Sami Goundar passed away on 6 June 2000.
- [8]. The said Ram Samy aka Ram Sami Goundar left a Will dated 14 February 1998 in which the Second Defendant Velaydan was named Executor and Trustee. On 14 August 2000, Velaydan obtained a grant on Probate in the estate of the Ram Samy aka Ram Sami Goundar.
- [9]. On 18 February 2003, Velaydan retired as executor and trustee and by a deed appointed one Latchman Goundar as Trustee.
- [10]. The said Latchman Goundar retired and appointed Ram Goundar, the First Defendant as trustee to manage the deceased's estate in or about 12 October 2010.
- [11]. Under the Will of the plaintiffs' father, the Plaintiffs' late mother had a life interest while plaintiffs' in this action are named as beneficiaries.
- [12]. The Estate owns the property comprised in Crown Lease No. 6649 being Lots 15 & 17 Plan No. RR 1217 Part of Yaladro Formerly CT 6594 (Farm 3456) which was for a term of 21 years and 9 months from 01 April 1973 which expired in 2015.

- [13]. On 01 September 2015, the said First Defendant, Raman Goundar applied for an extension of the Lease on the said property and a new Lease over the said property, being State Lease No. 20874 being Lots 15 and 17 on Plan RR 1217 ('the said estate property') was granted to Raman Goundar as the Executor and Trustee of the estate of Ram Samy aka Ram Sami Goundar.
- [14]. The plaintiffs alleged that: (Reference is made to paragraph (15) to (21) of the plaintiffs' affidavit in support sworn on 06.06.2022).

15. *The said property is cane farm which is being cultivated by the first defendant and he is the sole owner of the proceeds.*

16. *On 18 November 2021, the said Ram Goundar granted a mortgage over the said estate property to one Shalendra Reddy to secure the purchase consideration as set out at page 1 of the said mortgage.*

Annexed hereto and marked "H" is a copy of the said mortgage.

Prejudice to Plaintiffs/Removal of Defendant as Trustee.

17. *We verily believe that the first defendant's action of granting a mortgage over the said estate property to secure a sale to Shalendra Reddy is illegal. We verily believe that he tried to sell the estate property to Shalendra Reddy and has secured the sale by the mortgage.*

18. *The first defendant cannot be trusted with estate property in his name. He had no authority and we fear that he may dispose of the property to our detriment.*

19. *More than 20 years have passed since our father passed away and no effort has been made to transmit the estate property to us. We have made numerous requests to the first defendant but without success.*

20. *We verily believe that unless the defendant is removed as Trustee and ordered to transfer the said estate property to us, the plaintiffs' will not be able obtain their lawful entitlements from the said estate.*

21. *There will be great prejudice to the plaintiffs if the defendant is not removed as a Trustee and us being appointed as executors and trustees to complete the administration of our father's estate.*

- [15]. In terms of Section 73(1) of the Trustee Act [Cap 65] the court is entrusted with the appointing new trustee whenever it is 'expedient' to do so. In terms of Section 73(2) the court is entrusted with the removal of a trustee.

- [16]. The delay of 20 years in distribution of the estate property to the beneficiaries is a very strong ground for raising a suspicion that the interests of the beneficiaries or the estate are being compromised.
- [17]. Furthermore, the misconduct in question (granting a mortgage over the said estate property to secure a sale) is a threat to a welfare of the beneficiaries or to the estate in question.
- [18]. The affidavit evidence in this case demonstrate a clear threat to or a compromise of the interests of the estate and the beneficiaries.
- [19]. The interests of the beneficiaries and of the estate will be compromised if the defendants continue as trustees.

ORDERS

1. The defendants are removed as the executors and trustees of the estate of Ram Samy aka Ram Sami Goundar late of Yalandro, Tavua, Fiji, Cultivator, Deceased, Testate.
2. The plaintiffs are appointed as the new executors and trustees of the estate of Ram Samy aka Ram Sami Goundar.
3. The new executors and trustees to submit the necessary documents to the probate registry, Suva for the issuance of L/A DBN with will annexed.



High Court - Suva
Friday, 21st October 2022

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Jude Nanayakkara
JUDGE