

IN THE HIGH COURT OF FIJI AT SUVA

PROBATE JURISDICTION

Probate Action No : HPP 99 OF 2022

IN THE ESTATE of BHAGAUTI PRASAD SINGH also known as BHAGAUTI SINGH also known as BHAGAUTI PRASAD of Vuci Road, Nausori,

Deceased, Testate.

BETWEEN

SATAY BHAN SINGH also known as SATYA BHAN SINGH of Auckland, New Zealand,
Retired.

PLAINTIFF

AND

SACHINDRA PRAKASH SINGH of Lot 2 Vuci Road, Nausori,

Airline Pilot.

1st DEFENDANT

AND

FIJI PUBLIC TRUSTEE CORPORATION LIMITED

2nd DEFENDANT

Counsel : Mr. A. Nand for Plaintiff
Mr. V. Faktaufon with Ms. A. Narayan for 1st Defendant
Date of Hearing : 09th & 26th May 2023
Judgment delivered : 31st July 2023

JUDGMENT

[1] The Plaintiff filed this Originating Summons to seek following order from the Court.

- I. The 1st Defendant be removed as the executor and trustee of the estate of Bhagauti Prasad Singh also known as Bhagauti Singh also known as Bhagauti Prasad;
- II. The 2nd Defendant be appointed as the trustee for the estate of Bhagauti Prasad Singh also known as Bhagauti Singh also known as Bhagauti Prasad;
- III. New grant of Letters of Administration *de bonis non* with Will be issued in favour of the 2nd Defendant by the High Court Probate Registry;
- IV. The 2nd Defendant upon grant of the new Letters of Administration *de bonis non* register the Transmission of Death on the estate property comprised on the Native Lease No.17864 and transfer the property to the beneficiaries as follows;
 - a. 1/3rd undivided shares to Dharam Kuar
 - b. 1/3rd undivided shares to Vidya Bhan Singh
 - c. 1/3rd undivided shares to Satay Bhan Singh also known as Satya Bhan Singh
- V. The costs for the 2nd Defendant in attending to the transfer and winding up of the estate of Bhagauti Prasad be paid by the beneficiaries of the estate in equal shares;
- VI. The cost of the application be paid by the 1st Defendant on an indemnity basis.

- [2] Plaintiff relies on section 18 (1) (d) of the **Fiji Public Trustee Corporation Act 2006** to pursue this action. It states that the Fiji Public Trustee Corporation can be appointed to act as the executor or administrator of an estate for any deceased person on an application by the corporation or any interested person, where an order for replacing the executor or administrator appears to the Court to be justified on the terms and conditions determined by the Court.
- [3] The Plaintiff deposed an affidavit in support of this application where he states that he is one of the beneficiaries in the estate of his father, Bhagauti Prasad Singh along with Dharam Kuar (mother) and Vidya Bhan Singh (brother).
- [4] Bhagauti Prasad Singh died on 1st August 1997 and probate of his estate was granted to Dharam Kuar on 18th May 1999. Dharam Kaur died on 12th February 2002 leaving the estate un-administered. On or around 28th August 2002 Letters of Administration *de bonis non* was granted to the Plaintiff by the High Court. On or around 8th July 2003 an order for removal as trustee was made against the Plaintiff by Hon. Justice Scott. Subsequently Mr. Vidya Bhan Singh was appointed as the new trustee for the estate of Bhagauti Prasad Singh.
- [5] While attending to the partition and sale of estate property on or around 2019 unfortunately Vidya Bhan Singh collapsed in Court and later passed away leaving the estate of Bhagauti Prasad Singh further unadministered.
- [6] Later Vidya Bhan Singh's son, the 1st named Defendant was granted Letters of Administration *de bonis non* by the High Court on 6th April 2021.
- [7] The Plaintiff states the current trustee of the estate of Bhagauti Prasad Singh and his family reside on the estate property and not attending to the administration of the estate. Despite several email correspondence by the Solicitors of Plaintiff the 1st Defendant is yet to attend to the duties of the trusteeship.
- [8] The 1st Defendant agrees that he is currently residing on the estate property however denies the allegations of refusal to administer the estate.
- [9] At the hearing it was evident that there has been some degree of hostility between the Plaintiff and the 1st Defendant. At one stage, both learned counsel made an attempt to mediate the issues between parties. However, the discussions did not proceed for a final settlement.

- [10] The learned counsel for the 1st Defendant pointed out that the Originating Summons is incomplete as the Plaintiff has failed to identify the relevant legal provisions applicable to the action.
- [11] I have noted this. The Originating Summons only carries section 18 (1) (d) of the Fiji Public Trustee Corporation Act 2006 as the legal basis for this application. In order to make an appointment under section 18 (1) (d) firstly the Court needs consideration on whether to remove the current administrator of the estate. There was no such application in the Originating Summons by the Plaintiff. However the Court views this as a minor technicality, hence I shall proceed with further consideration of Plaintiff's application.
- [12] The 1st Defendant's written submissions highlighted that the Court has powers under section 35 of the Succession, Probate and Administration Act 1970 for the removal of an executor. Mr. Fuktaufon provided legal precedents in **Nizam v. Shah** [2014] HBC 47 of 2009 and **Kishore v. Wati** [2018] HPP 50 of 2015 where the Court held that it would not lightly remove an executor and trustee in the absence of proved risk prejudicing the interests of the beneficiaries.
- [13] The said cases also made reference to **Harsant v. Menzies** [2012] NZHC 3390 where the New Zealand High Court held, *inter alia* hostility between administrators/trustees and beneficiaries is not by and itself a reason for removal. Such hostility assumes relevance if and when it risks prejudicing the interests of the beneficiaries.
- [14] Section 35 of the Succession, Probate and Administration Act 1970 provides legal basis for removal of an executor. Whether the provisions could be used to remove an administrator possessing Letters of Administration *de bonis non* is another question. I would leave that issue for a future discussion.
- [15] Even in the event of an affirmative answer to the said question, the Plaintiff should provide evidence on prejudice caused to the beneficiary's interests in the estate. The 1st Defendant has denied the allegations of prejudice made by the Plaintiff. Having perused the supporting affidavit of the Plaintiff it appears to me that there is no sufficient evidence to determine 1st Defendant's actions had risked the welfare of the Plaintiff.
- [16] However the annexures relating to the email correspondence between the Solicitors of the Plaintiff and the 1st Defendant indicate that the 1st Defendant as a devisee has made several requests between December 2021 and May 2022 to have the estate administration of Bhagauti Prasad Singh wound-up. Subsequently the Originating Summons was filed in August 2022.

[17] This situation in my view provides the basis to invoke the powers given under section 38 of the Succession, Probate and Administration Act 1970.

[18] Section 38 states as follows.

Subject to the provisions of section 37, if an executor who has obtained probate, or an administrator with the will annexed, after request in writing neglects or refuses to-

(a) execute a transfer of land devised to a devisee; or

(b) transfer, pay or deliver to the person entitled any bequest, legacy or residuary bequest,

such devisee or person may apply for an order upon such executor or administrator to comply with such request, and the court may make such order as it thinks fit.

[19] The Plaintiff has made this application after the lapse of one year since granting of the Letters of Administration to the 1st Defendant hence section 37 would not apply.

[20] Though the initial Originating Summons has not sought an order relating to section 38 of the Act, I think that is the only avenue available for the Court to intervene in resolving this prolonged dispute among two close family members.

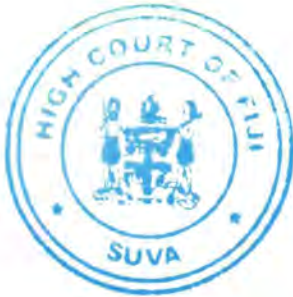
[21] Section 38 can be invoked when the executor or an administrator *de bonis non* neglects or refuses to act in the manner described in the section. Upon perusal of the email correspondence I could not find any refusal by the 1st Defendant to attend to his duties, however the time consumed and the approach of the 1st Defendant towards winding up of his grandfather's estate, sufficiently allowed me to conclude that he has neglected distribution in a swiftly manner.

[22] In conclusion I hold the view that there is no grounds provided by the Plaintiff to remove the 1st Defendant from the duties of administrator *de bonis non*. There is sufficient evidence to grant orders pursuant to section 38 of the Succession, Probate and Administration Act 1970.

[23] Thus, Court makes following orders.

ORDERS

1. The 1st Defendant to wind-up the administration of the estate of Bhagauti Prasad Singh as per Letter of Administration DBN [Will] 67278 on or before 31st October 2023.
2. Parties to bear cost.



A handwritten signature in black ink, appearing to be "Yohan Liyanage". The signature is stylized and written in a cursive script.

Yohan Liyanage
JUDGE

At Suva on 31st July 2023