

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

CIVIL ACTION NO.: HBC 208 of 2016

**BETWEEN : SHAIENDRA, DEVENDRA PARASAD,
SUJENDRA PRASAD, SUNILA DEVI, SRILATA
DEVI, SONI LATA SINGH**

PLAINTIFFS

**AND : RAJAN RAHUL CHAUDHARY, AKSHAY AMAR
CHAUDHARY and SHARMILA DEVI as
Executors/Executrix and Trustees for the Estate of
Ramendra Prasad pursuant to grant 64260**

DEFENDANTS

APPEARANCES/REPRESENTATION

PLAINTIFFS : Mr A Chand [Amrit Chand Lawyers]
DEFENDANTS : Mr A Pal [AP Legal]
RULING BY : Master Ms Vandhana Lal
DELIVERED ON : 30 June 2023

INTERLOCUTORY RULING

[Locus to bring proceedings and Discovery pursuant to Order 24 Rule 7 of the High Court Rules]

Application

- 1. The Plaintiffs seeks orders for Defendants to disclose by an affidavit following to their (Plaintiffs') solicitors:**
- a) Copy of Deed for Lot 3 (Beneficiary – Ajay Prasad);**
 - b) Copy of Deed for Lot 4 (Ram Raji distribution);**
 - c) Copy of Deed for Lot 5 (Beneficiary – Vijendra Prasad);**
 - d) Copy of Deed for Lot 8 (Beneficiary – Pan Kuar);**

- e) All documents (including, but not limited to Plans, Applications, Approvals, Correspondences etc) pertaining to the Subdivision of Estate of Latchman and Estate of Vishnu Prasad properties;
- f) All the Wills, including codicils made by late Vishnu Prasad and Gyan Wati;
- g) Titles in relation to all properties;
- h) Copies of all Transfers of any property that belonged to the late Latchman;
- i) Vishnu Prasad's Estate Account;
- j) Copies of Bank Statements (including any loan documents) for Estate of Latchman and Estate of Vishnu from the date of their death to date.
- k) Deed of Renunciation, if any;
- l) Death Certificates of late Vishnu Prasad and Gyan Wati;
- m) Transmission by Death Application;
- n) All documents relating to any distribution of any Estate of Latchman or Estate of Vishnu Property;
- o) Copy of Application for Letters of Administration – De Bonis Non – Estate of Latchman, together with:
 - i. Copy of Death Certificate of Latchman;
 - ii. Copy of Death Certificate of Vijendra Prasad;
 - iii. Birth certificate of Vishnu Prasad;
 - iv. Birth certificate of Vijendra Prasad
 - v. Birth Certificate of Ganesh Prasad;
 - vi. Birth Certificate of Ramendra Prasad;
- p) Copy of Advertisement in respect of Probate Application – Estate of Latchman.

The said application is made pursuant to Order 24 Rule 7 of the High Court Rules and is supported by an affidavit sworn by the First Plaintiff on 20th June 2017.

2. The Defendants affidavit in opposition was filed on 11th October 2017 which was sworn by Ramendra Prasad on 11th October 2017.
3. The First Plaintiff replied to Defendants' affidavit on 16th November 2017.

The Plaintiff's Contention

4. The Plaintiffs' affidavit (both in support of the application and reply to the opposition) can be summarized as follows:

The First Plaintiff believes that the Defendants and/or their solicitors have or had documents in their possession which he claims is relevant to this proceedings and the documents are required under the rules to be discovered and disclosed.

The Plaintiff's solicitors had written to the Defendant's solicitors seeking discovery.

Documents enumerated on paragraphs a-d is relevant as any depletion of the assets of Estate of Latchman by way of Deed has the effect of affecting the share of Estate of Vishnu Prasad.

All the Deeds are required to reconcile the share distribution as expressed in the will of Latchman and the subsequent Deeds prepared for all beneficiary including Vishnu Prasad.

It is important to see how the Deeds dealt with Estate of Latchman Assets and how Estate of Vishnu Prasad are ultimately affected by the Deeds made.

Documents including Plans, Application, Approvals Correspondence etc pertaining to the subdivision of Estate of Latchman and Estate of Vishnu Prasad properties are required as losses have been incurred by the beneficiaries of the Estate of Vishnu Prasad due to the failure of the administrators of the Estate of Latchman to subdivide and distribute the land contained in Certificate of Title 9037 in a timely manner. Probate was granted on the Will

of Latchman on 24th November 1962 and it is now 65 years that Probate has not been honoured.

The documents are required to establish if any subdivision plans have been lodged with Town and Country Planning and what are the blockers causing delay in the distribution of land as per the will of Latchman.

According to the Plaintiff, probate was granted in 1962 and the current administrators of Estate of Latchman has a responsibility to disclose the information and documents to the beneficiaries of Vishnu Prasad Estate who are suffering financial losses since 1989.

The trustees need to demonstrate that they are acting without their self-interest to capture all prime lots which was higher valuation and lower development costs.

Deposited Plan number for all land used for road alignment either internal or compulsory state acquisition affects Vishnu Prasad's Estate.

The Defendants have in their letter dated 05th May 2016 state that since subdivision of Latchman Estate was in its advanced stage and soon the Estate of Vishnu Prasad would commence the recessing distribution to the beneficiaries of Vishnu Estate however no actions has been taken.

According to the Plaintiffs, the relevance of the mentioned documents can be outlined as follows:

- Copy deed for the 4 Lots will show how they dealt with Estate of Latchman and how they will affect the share of Estate of Vishnu Prasad should there be depletion of the assets of Estate of Latchman:

The deeds are required to reconcile the share distribution as expressed in the will of Latchman and the subsequent deeds prepared for all beneficiaries including Vishnu Prasad.

- Documents pertaining to the subdivision of Estate of Latchman and Estate of Vishnu Prasad properties, since 55 years has gone without wishes of Latchman being honoured and the beneficiaries for Estate of Vishnu Prasad are said to have incurred losses.

In 2016 the Defendants stated the subdivision of Estate of Latchman was in advance stage and distribution will commence for Estate of Vishnu Prasad but no actions have taken place till to date.

To check if subdivision plans have been lodged with Town and Country Planning and what is causing the delay.

To see that the trustees are acting without their self-interest to capture all price lots.

Deposited Plan numbers for all lands used for road alignment either internal or compulsory state acquisition affects Vishnu Prasad's Estate.

- All the Wills, including codicils by late Vishnu Prasad and Gyan Wati:

The Original Will of late Vishnu Prasad is pertinent to the whole proceedings.

The Original Will of Gyan Wati is required as prior to his death, the Late Vishnu Prasad transferred 3a1r12p land comprised in

Certificate of Title 25039 to his wife – Gyan Wati in October 1987. She was the legal owner of the land until the death of her husband on 9th March, 1989 after which time the Late Gyan Watee transfer the land to Ramendra Prasad and Arun Prasad. Arun Prasad was suffering from mental illness during this time.

- Titles in relation to all properties:
To establish if land had been distributed as per the Will of Latchman and to confirm that Vishnu Estate is going to get it's true and correct share entitlement.

Details of transfer documents are required for the following titles, CT 25039, CT 29781, CT 29779, CT 29780, CT 36512, Partial Transfer 238687 and 241872 (DP6167) and Partial Transfer of 273597 and 273598 (DP6488).

- Copies of all Transfers of any property that belonged to the late Latchman:

To establish if land had been transferred as per the Will of Latchman.

To reconcile the current undistributed land of Latchman Estate to the Deeds prepared in 1987 for all the named beneficiaries of Latchman Estate.

To validate the proceeds from sale of land in the Estate account of Latchman and calculate the distribution to Vishnu Estate.

To know which surveyor prepared the Sub-division plan for the titles described hereinabove.

- Vishnu Prasad's Estate Account:

Estate accounts are required because the trustee of Vishnu Estate, the First Defendant (Ramendra Prasad) has allowed illegal squatter residents to reside on Lot 1 belonging to Vishnu Prasad. For the last 26 years, the First Defendant (Ramendra Prasad) was required to collect lease payments from these squatter residents and later distribute to the beneficiaries of Vishnu Estate.

Ramendra Prasad must produce Vishnu's Estate account to show how much rental income was earned by the Estate in the last 26 years and if the First Defendant has failed to collect the rental despite allowing the residents to build homes and reside on the estate land, then he shall be held liable for the losses and damages suffered by the Beneficiaries of Vishnu Estate.

Ramendra Prasad fraudulently transferred land from Latchman Estate to his personal name despite not being a beneficiary in Latchman's Estate and operated a petrol station business from this land which rightfully should have been transferred to the Estate of Vishnu Prasad and any profits derived from the operation to be distributed to the beneficiaries of Vishnu Estate.

The Profits from the petrol station business should be reverted back to the Vishnu Estate for the Last 21 years and the beneficiaries of Vishnu Estate compensated accordingly.

- Copies of Bank Statements (including any loan documents) for Estate of Latchman and Estate of Vishnu Prasad from the date of their death to date;

Ramendra Prasad made an application to become the administrator of Latchman Estate on 23rd January, 1993. At the time of his

appointment, the Estate of Latchman had funds received from the State for compulsory acquisition of land from Latchman Estate. These funds were to be used for the subdivision of Certificate of Title 9037 as per the Will of Latchman. Banks statement of Estate of Latchman would show if there has been misappropriation of funds.

Bank Statement of Vishnu Prasad is required to establish the income earned through lease payments received from temporary squatters residing on the land belonging to the Estate of Vishnu Prasad.

Bank Statements, including Loan Statements will show what loans, if any were obtained and whether any Latchman or Vishnu Estate property is mortgaged or used as guarantor process.

- Deed of Renunciation, if any:

To establish whether any/all beneficiaries of Vishnu Estate have renounced their shares.

To establish whether if any agreements were made between Ramendra Prasad and Ganesh Prasad (Both Administrators of Latchman Estate).

- Death Certificate of late Vishnu Prasad and Gyan Wati:

To establish when the death of Vishnu Prasad and Gyan Wati was registered with the Register of Births, Deaths and marriages in Fiji by the First Defendant and if there were any delays in registration of the deaths, the reasons to be explained.

To establish if a valid death certificate of Vishnu Prasad was presented in the High Court to obtain probate of the Estate of Vishnu Prasad in 1991.

- Transmission by Death Applications:

To establish what documents and information were presented in the High Court to obtain probate in Vishnu Prasad's Estate.

- All documents relating to any distribution of any Estate of Latchman or estate of Vishnu Property:

Ramendra Prasad in his capacity as the Administrator of Latchman Estate transferred himself 3a0r24p of land being Lot3 on DP 24167 (CT 29781) in 1996.

The Ramendra Prasad was not a beneficiary to the Estate of Latchman.

All documents regarding any distribution of land from Estate of Latchman is required to establish what transfers have taken place.

These are also required to establish what the current assets are in the Estates.

- Copy of Application for Letters of Administration – De Bonis Non, together with:

- i. Copy of Death Certificate of Latchman;
- ii. Copy of Death Certificate of Vijendra Prasad;
- iii. Birth Certificate of Vishnu Prasad;
- iv. Birth Certificate Vijendra Prasad;
- v. Birth Certificate Ganesh Prasad;
- vi. Birth Certificate of Ramendra Prasad;

The Relevance of the above documents are that Ramendra Prasad applied for Letters of Administration – De Bonis Non on 23rd January, 1993 for Latchman Estate as the original executors/trustees of Latchman Estate died leaving the estate unadministered.

One of the executors/trustees of Latchman Estate was Vishnu Prasad.

Vishnu Prasad died on the 9th March, 1989 but it appears that his death was not registered till 31st May, 1996.

The above documents are required to determine how it was established that Vishnu Prasad, the Original executor-trustee of Latchman Estate was deceased.

On 17th April, 1996, Ramendra Prasad being Administrator of Latchman Estate transferred 3a0r39p land to himself from Latchman's Estate. He did not transfer the land into the estate of Vishnu Prasad.

It needs to be established whether all the requirements were met and relevant documents lodged with the High Court to obtain Letters of Administration – De Bonis Non.

- Copy of Advertisement in respect of Probate Application – Estate of Latchman

To establish the total value of the funds/assets left behind by Late Latchman to be distributed to the beneficiaries including the share entitlement to Vishnu Estate.

According to the Plaintiffs a written request was made to the Defendants' solicitors who are not cooperating.

The Defendant's Argument

5. According to the Defendants, their solicitors responded to the Plaintiff's request as follows:

Items a-d – *Please provide relevance as this not related to the Estate of Vishnu*

Item e – *if you require the state of the subdivision that can be encompassed in a single report. Otherwise we do not see the relevant of this request – which also needs to be specified.*

Item f – *We do not see the relevance of this as the wills are not being challenged.*

Item g – *unfortunately your letter does not provide further particulars. Please be specific.*

Item h – *We do not see any relevance to your request as it is beyond your stated Claim*

Item i – *The Estate of Vishnu has no account as at present it has no asset, income or expense.*

Item j – *We reiterate our response in paragraph iii [item 1 in the Summons] there are no bank statements for the Estate of Vishnu seeing as there is no account.*

Item k – *Our clients confirm that there are no renunciations.*

Item l – *please be advised that these certificates are publicly available. You are liberty to access them.*

Item m – *please specific your request in greater detail.*

Item n – *We reiterate our response in paragraph iii here. Your request in relation to the Estate of Vishnu is quite generic*

Item o – *Please specify whose Letter of Administration de bonis non you require*

Item p – *We reiterate our response in paragraph vii here*

The Plaintiff's solicitors failed to respond to the letter.

The Defendants does not refuse to disclose document but makes specific comments to each request.

The Defendants deny having documents being copy deeds for Lots 3, 4, 5 and 8 and these would be with the beneficiaries themselves. The Deeds asked for relates to the Estate of Latchman and should not affect Estate of Vishnu or the entitlement the Estate of Vishnu would have from the Estate of Latchman.

The deponent further states that the Estate of Vishnu has no property.

The Defendants have offered to provide a report on the status of subdivision of the Estate of Latchman but requires the relevance of each document.

The Defendants' argument has been that the Plaintiffs have no locus as cause of action against the Estate of Latchman but only against Estate of Vishnu.

Regarding the request for wills including codicil the Defendants state that there is no challenge regarding will of Vishnu and the claim has nothing to do with Gyan Wati.

The request for title of all properties; the Defendants maintain that Estate of Latchman owns no land and for title numbers mentioned by the Plaintiffs these documents are public records and the Plaintiffs can carry out title search for respective titles.

The Defendants again states the Plaintiffs has no locus to ask for copies of all transfers of any property belonging to late Latchman.

The Defendants also maintain estate of Latchman has no land and it has no income and hence there is no need for accounts and the Plaintiffs has no locus to ask for the same as they are not beneficiary to Estate of Latchman.

Also Estate of Vishnu had no land, bank account, St or like.

The Defendant maintains there are no deed of renunciation.

The request for death certificates of Vishnu Prasad and Gyan Wati and transmission by death application is frivolous as the claim has nothing to do with wills etc and these documents are publicly accessible.

For all documents relating to distribution of Estate Latchman and application for Letter of Administrator – De Bonis Non Estate of Latchman with copies of death certificate etc the Plaintiffs have no locus to the claim against Estate of Latchman.

The Plaintiff's Claim

6. The Plaintiffs are said to be beneficiaries in the Estate of Vishnu Prasad who passed away on 09th March 1989.

When Vishnu Prasad passed away a grant for his Estate was issued to Ramendra Prasad and Arun Prasad.

In his will Vishnu Prasad stated:

"4. Should I receive sufficient land from the Estate of Latchman alias Latchman (fathers have Mahadeo) of Sawani near Nausori in Fiji, Cultivator, I direct my Executors and Trustees to distribute such land in the following manner:

According to the Plaintiffs, Vishnu Prasad was a beneficiary in the Estate of Latchman aka Lachman.

As per the last will of Lachman rest and resident freehold land at Sawani on Certificate on Title 9037 was to be distributed equally amongst his wife Ram Raji and sons Vishnu Prasad, Vijendra Prasad, Ganesh Prasad and Ajay Prasad.

After a grant was made for Estate of Latchman, Vishnu Prasad transferred to himself land containing an area of 3a1r12p. A certificate of title number 25039 was registered on 09th September 1987 over the said piece of land. This was by way of partial transfer from CT 9037.

On or about 19th October 1987 Vishnu Prasad transferred Certificate of Title 25039 to his wife Gyan Wati.

Gyan Wati on 17th October 1989 transferred Certificate of Title 25039 to Arun Prasad and Ramendra Prasad for consideration sum of \$100.

Certificate of Title 25039 now stands cancelled as the land was further subdivided into 5 new lots – Lot 1 – 5 on Deposited Plan 7977 and new title number are – Certificate 36113; 36114; 36115; 36116 and 36117.

All said titles are registered under Arun Prasad and Ramendra Prasad.

Later a Letters of Administration De Bonis Non 28858 for Estate of Latchman was issued to Ganesh Prasad and Ramendra Prasad. This was on 23rd January 1993.

On or about 30th September 1991 Ganesh and Ramendra were registered as Administrators for Estate of Latchman on Certificate of title 9037.

Thereafter by way of Partial transfer further transfers were made of Certificate of Title 9037:

- a. *Partial Transfer No. 394678 in favour of Ganesh Prasad for 1a3r14p being lot 1 Deposited Plan 2416 (certificate of title 29779);*
- b. *Partial Transfer No. 394679 in favour of Ganesh Prasad for 3a1r4p of land being lot 2 Deposited Plan 2416 (certificate of title 29780);*
- c. *Partial Transfer No. 394680 in favour of Ramendra Prasad for 3a0r24p being lot 3 on Deposited Plan 2416? (certificate of title 29781);*
- d. *Partial Transfer No. 391726 in favour of Ganesh Prasad for 3.57ha of land being lot 1 Deposited Plan 9192 (certificate of title 36512).*

As at 04th September 2016 Ganesh Prasad has deceased leaving Ramendra Prasad as Sole Administrator of the Estate of Latchman.

According to the Plaintiffs, total land owned by Latchman at the time of his death was 347a1r0p. After his death 34.82239 area of land has been transferred leaving a balance area of approximately 313 acres.

The 313 acres of land ought to have been distributed as follows:

- a. *Ram Raji - 60.29*
- b. *Vishnu Prasad - 60.29 (less 3a already transferred)*
- c. *Ganesh Prasad - 60.29 (less 12a already transferred)*
- d. *Vijendra Prasad - 60.29*
- e. *Ajay Prasad - 60.29*
- f. *Pun Kaur & Ram Narayan - 6 acres*

The Plaintiffs allege that the Defendants have failed in performing their duty as Executor and trustee for Estate of Vishnu Prasad in failing to compel Administrators of Estate of Latchman to distribute the Estate in a timely manner.

Further allegation are that Ramendra acted fraudulently by transferring to his name 3a0r24p area of land when he is not a beneficiary to the Estate of Latchman. As a result the residual estate has been reduced.

The orders sought by the Plaintiffs are:

- a) The Defendants account for all income in the Estate of Vishnu Prasad;
- b) Ramendra Prasad be ordered to Transfer back to the Estate of Latchman aka Lachman all land that has been transferred to him from Certificate of Title Number 9037.

- c) Ramendra Prasad be ordered to account for all income derived from the Estate of Latchman aka Lachman land that has been transferred to him from Certificate of Title Number 9037;
- d) The first named Defendant be ordered to account for all assets and liabilities of Estate of Latchman aka Lachman.
- e) The first named Defendant be ordered to account for all income and expenses for the Estate of Latchman aka Lachman.
- f) The Defendants be ordered to account for assets and liabilities of Estate of Vishnu Prasad.
- g) The Defendants be ordered to account for all income and expenses for the Estate of Vishnu Prasad.
- h) Declaration that the transfer of land from the Estate of Latchman aka Lachman owned Certificate of Title No. 9037 to Ramendra Prasad is fraudulent and therefore null and void and of no effect.
- i) An Order that the Estate of Latchman aka Lachman and Estate of Vishnu Prasad be distributed forthwith.
- j) An Order that the first Defendant be removed as Administrators in the Estate of Latchman aka Lachman and the 1st, 2nd, and 3rd named Plaintiffs be appointed Trustees in the Estate of Latchman aka Lachman.
- k) An Order that the Defendants be removed as Executors and Trustees in the Estate of Vishnu Prasad and the 1st, 2nd and 3rd

named Plaintiffs be appointed trustees in the Estate of Vishnu Prasad.

- l) An Order restraining the Defendants or either of them from in any manner threatening, evicting or disturbing the peaceful occupation and enjoyment of the Estate of Lachman aka Lachman Property by the 2nd, 3rd, 4th and 5th Plaintiffs.
- m) General Damages:
- n) Interest on all income and money held by the First Defendant for the benefit of the Plaintiff and the other beneficiaries.

Determination

- 7. Before proceeding to deal with the Order 24 rule 7 application I will deal with the objection raised by the Defendants regarding Plaintiffs locus to seek discovery for documents relating to Estate of Lachman.

Do the Plaintiffs have standing to bring the claims in their capacity as beneficiaries of the Estate of Vishnu Prasad?

- 8. *“Upon grant of probate or administration all property of which a deceased person dies possessed, or entitled to, in Fiji shall as from the death of such person, pass to and become vested in the executor to whom probate has been granted, or administrator for all the estate and interest of the deceased therein, in the manner following, that is to say -
(a) On testacy or on partial intestacy, in the executor or administrator with the will annexed; and
(b) On intestacy, in the administrator.”*

[Section 9 of Succession Probate of Administration Act]

- 9. *“Subject as aforementioned the real estate of every person who dies – testate shall be held by the executor to whom probate has been granted or the administrator with the will*

annexed according to the trusts and dispositions of the will of such person." – Section 12 of Succession Probate Administration Act.

10. In *Wong Moy v Soo Ah Choy* [1996] 3 SLR @ 27 the Singapore Court Appeal dealt with issue relating to a beneficiary's standing to sue on behalf of unadministered Estate.

The Plaintiff originally brought the proceeding in her capacity as an administrative but had not extracted the grant.

The High Court noted that it was an established principle that it is the grant under seal and not the order of the court which confers the status of personal representative.

The Plaintiff later brought the proceedings in her personal capacity as a beneficiary of the deceased's estate as well as on behalf of other beneficiaries. The High Court struck out the Plaintiff's action on the ground that she has no standing to sue without administration. On appeal the Court of Appeal dealt with the issue whether the Plaintiff qua beneficiary of her deceased husband's estate was entitled to institute an action against the Defendant to protect the assets of the estate.

The Court of Appeal allowed the appeal, and found the Plaintiff had the requisite standing to commence the action against the Defendant. The court first clarified that ordinarily beneficiaries have no equitable or beneficial interest in any particular asset comprised in an unadministered estate.

The court held that there are certain limited, special circumstances under which a beneficiary of an estate which is unadministered or under administration may institute an action to recover assets of the estate. These special circumstances are not confined solely to cases where the personal representative has defaulted in acting to recover the property. All the circumstances of the case should be considered and the court must ultimately decide whether it is "*impossible or at least seriously inconvenient for the representatives to take proceedings such that the beneficiaries ought to be given the right to sue*".

11. In the current proceedings Ramendra Prasad was appointed as one of the executor and trustee and later was sole executor and trustee for estate of Vishnu Prasad and he was also one of the Administrators of the Estate of Latchman.
12. One of the orders sought is for Ramendra Prasad to be removed as Executor and trustees and the Plaintiffs be appointed trustees of the Estate of Vishnu Prasad.
13. With the Executor and trustees of both the Estate of Vishnu Prasad and Latchman being alleged as wrong doers, it would be inconvenient to expect the Executor and trustees of the Estate of Vishnu Prasad to bring these proceedings.
14. For this reason, I find the beneficiaries for Estate of Vishnu Prasad have standing to sue.
15. Estate of Vishnu Prasad has beneficial interest in the Estate of Latchman pursuant to the last will of the late Latchman.
16. Hence I find the Plaintiffs have locus to seek discovery for documents relating to the Estate of Latchman as their gifts from Estate of Vishnu Prasad depends on how the properties in the Estate of Latchman Prasad was distributed.
17. Ramendra Prasad was the sole administrator of the Estate of Latchman Prasad pursuant to grant Letter of Administrator De Bonis Non 28858 and the surviving executor for estate of Vishnu Prasad.
18. Hence the Administrator of the Estate of Latchman Prasad and Executor of Estate of Vishnu Prasad are the best person to make discloses regarding the discovery sought by the Plaintiff.

Should there be an order made for discovery?

19. Order 24 Rule 7 of the High Court Rules states:

- (1) *Subject to Rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his or her possession, custody or power, and if not then in his or her possession, custody or power, when he or she parted with it and what has become of it.*
- (2) *An order may be made against a party under this Rule notwithstanding that he or she may already have made or been required to make a list of documents or affidavit under Rule 2 or 3.*
- (3) *An application for an order under this Rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this Rule has, or at some time had, in his or her possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.*

20. Whilst Rule 8 reads:

On the hearing of an application for an order under Rule 3 or 7, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Does the Affidavit by the Plaintiff fulfil the requirement of Order 24 Rule 7 (3)?

21. Paragraph 4 of the affidavit in support states:

I verily believe that the Defendant and/or their Solicitors have or have had documents in their possession which are relevant to this proceeding

and the documents are required under the rules of discovery to be discovered and disclosed.

22. And I have earlier outlined why the Plaintiff states that the document relates to one or more of the matters in question.

Are Discovery of the documents necessary for disposing fairly or for saving costs?

23. Copy of deed for lot 3; lot 4; lot 5 and lot 8:

I agree with the Plaintiffs that the deeds will show whether they reconcile with the share distribution as expressed in the will of Latchman and how Estate of Vishnu Prasad has been affected.

24. All documents (including, but not limited to Plans, Application, Approvals, Correspondences etc) pertaining to the subdivision of Estate of Latchman and Estate of Vishnu Prasad properties:

This will show what action has been taken to distribute Certificate of title 9037.

I agree with the Plaintiffs that the relevant document will establish what subdivision Plans has been lodged and why and where is the delay caused in distributing Certificate of title 9037.

The documents sought should relate to CT 9037.

25. All the wills including codicils by late Vishnu Prasad and Gyan Wati.

I do not agree that will and codicil by Gyan Wati is of relevant to matters in question in the cause.

Hence refuse to make any orders for disclosure of wills and codicils by Gyan Wati.

26. Titles in relation to all properties and transfer documents.

Certificate of title 25039 relates to transfer of land by Vishnu Prasad registered on 09th September 1987 which stands cancelled as it was subdivide into 5 new lots and registered under Ramendra Prasad and Arun Prasad.

Partial transfer 238687 was done from certificate of title 9037 to Bhagwat Prasad. Whilst partial transfer 241872 was done to Jamma Prasad.

Partial transfer 273597 was made in favour of Mano Butt and 273598 to Bipati.

For titles and document regarding following Certificate of title 29781, certificate of title 29771, certificate of title 29780, certificate 36512 allegation are that Ganesh Prasad and Ramendra Prasad as Administrators of the Estate Latchman effected partial transfer of Certificate of title 9037 unto themselves.

Documents as requested will confirm if distribution was done as per the will of Latchman and if Estate of Vishna Prasad recorded its true and correct share.

27. Copies of all transfers of any property that belonged to the late Latchman.

I agree with the Plaintiffs that the documents are required to establish if land was distributed as the will and reconcile undistributed land to the Deed of 1987 and validate the proceeds from the sale and distribution to the Estate of Vishnu Prasad.

28. Vishnu Prasad's Estate account

Orders asked for in the claim is account for all income of Estate of Vishnu Prasad and account for assets and liabilities with income and expenses.

According to the Plaintiffs there are illegal squatters residents on Lot1 belonging to Vishnu Prasad.

I agree with the Plaintiff that to ascertain what income was collected the Executors of estate of Vishnu should provide account for the Estate of Vishnu Prasad.

29. Copies of Bank Statement (including any loan documents) for Estate of Latchman and Estate of Vishnu Prasad.

According to the Plaintiff Estate of Latchman had recorded funds from state for compulsory acquisition of land from Latchman Estate. These funds were to be used to subdivide certificate of title 9037.

I agree with the Plaintiffs that Bank Statement will show if there has been misappropriation of funds.

Bank Statement of Estate of Vishnu Prasad will show income generated.

The loan documents would show if any of the Estate property was or is held as mortgage.

30. Deed of Renunciation

I agree with the Plaintiff that this document will establish which beneficiaries from Vishnu Estate renounced their shares.

31. Death Certificate of Vishnu Prasad and Gyan Wati.

I do not agree with the Plaintiffs that these documents relate to any matters in question in the cause or matter.

There is no allegation in the claim that the probate for Estate of Vishnu Prasad was obtained fraudulently.

32. Transmission by Death Application

Again, there is no challenge in the claim as to how a grant of probate was obtained for Estate of Vishnu Prasad.

Hence these documents do not relate to matters in question in the cause.

33. All documents relating to distribution of any property from Estate of Latchman or Estate of Vishnu Prasad.

I agree with the Plaintiffs that these documents will establish what properties have been transferred and will assist in establishing the assets of both the Estates.

34. Copy of Application of Letters of Administrators and other documents outlined in the application.

There is no challenge as to how Ramendra Prasad obtained grant for Letter of Administration De Bonis Non for Estate of Latchman.

Hence these documents do not relate to matters in question in the cause.

35. Copy of advertisement in respect of Probate Application for estate of Latchman.

I do not find this document relate to matters in question in the cause.

36. As administrators of both the Estate of Latchman and Vishnu, the Defendant should have in possession and/or power the said documents.

37. The documents for which order is being allowed will assist in ascertaining the assets each estate had and distribution done by the administrators.

38. It will assist the court in ascertain if the Administrators have breached in performing their duties as administrators of respective estate.

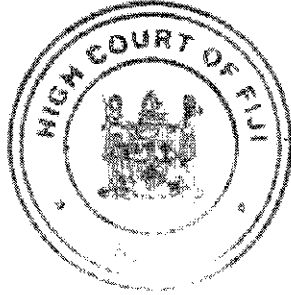
Orders

39. On the Plaintiff's application dated 29th June 2017 following orders are made:

- The Defendants shall by 12 noon on 21 July 2023 file an affidavit stating whether the following documents or class of documents is or has been in their possession, custody or power, and if not then in their possession, custody or power, when they parted with it, and what has become of them:
 - (i) Copy of deed for lots 3, lot 4, lot 5 and lot 8
 - (ii) All documents (including but not limited to Plans, Application Approvals, Correspondences etc) pertaining the properties to the subdivision of Estate of Latchman and Estate of Vishnu Prasad.
 - (iii) Titles in relation to all properties and transfer documents.
 - (iv) All transfers of properties for Estate of Latchman.
 - (v) Account for Estate of Vishnu Prasad.
 - (vi) Bank Statements (including loan documents) for the Estate of Vishnu Prasad and Latchman.
 - (vii) Deed of renunciation in relation to Estate of Vishnu Prasad.

(viii) Documents relating to distribution of properties from
the Estate of Latchman and Estate of Vishnu Prasad.

40. The Defendants are also ordered to pay to the Plaintiffs cost of this application which is
summarily assessed at \$1,000 and is to be paid by 12 noon on 21 July 2023.




Vandhana Lal [Ms]
Master
At Suva.

30 June 2023

TO:

1. Suva High Court Civil File No. HBC 208 of 2016;
2. Amrit Chand Lawyers, Solicitors for the Plaintiffs;
3. AP Legal, Solicitors for the Defendants;

