

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

Probate Action No. HPP 118 of 2022

**IN THE MATTER of the ESTATE of
CHANDRA BHAN late of Lot 37 Ura
Place, Valelevu, Nasinu, Retired, Testate.**

**MAHENDRA CHAND SHARMA of Lot 37 Ura Place, Valelevu,
Nasinu, Taxi Driver**

Applicant

Representation:

**Mr B. Ram for the Applicant (Benjamin Ram Lawyers).
No appearance or representation of the other issues of the deceased.**

Date of Hearing: 9th October 2023

Ruling

A. Introduction

[1] On 29th September 2022 an Ex-Parte Originating Summons was filed on behalf of the Applicant pursuant to Section 5 of the Wills (Amendment) Act 2004, Rule 54 of the Non-Contentious Probate Rules 1987 and the inherent jurisdiction of the High Court seeking the following orders:

- “a. That there be a declaration that the document dated 10th March 2022 is a Will and Testament of CHANDRA BHAN of Lot 37 Ura Place, Valelevu, Retired, Testate.*
- b. That the document declared to be the Will and Testament of CHANDRA BHAN of Lot 37 Ura Place, Valelevu, Retired, Testate, bearing the date 10 March 2022 be admitted to proof as contained in the copy thereof exhibited in the affidavit of MAHENDRA CHAND SHARMA, the grant to also include the*

English translated version of the document dated 10 March 2022 to be of the same effect.

*c. That the Letters of Administration with Will annexed be granted in the name of **MAHENDRA CHAND SHARMA.**”*

The Ex-Parte Summons was filed with an affidavit in support of Mahendra Chand Sharma.

B. Brief Background

- [2] Upon filing of the Ex-parte Summons, Master Lal directed that the Application be made Inter-parte, all issues of the deceased were to be served and affidavit of service filed. On 17th January 2023 an ex parte summons was filed seeking leave to serve the Originating Summons upon Surendra Chand Sharma by way of advertisement in an Australian newspaper. On 20th January 2023, Master Lal granted leave for service upon Surendra Chand Sharma by way of advertisement in a daily newspaper circulating in Australia.
- [3] On 17th March 2023 an affidavit of service was filed attesting that the issues of the deceased were served. On the same date a supplementary affidavit of the Applicant was filed including the translation of the will and the witnesses confirming that they witnessed the signature of the deceased when he had executed the will. The matter was then referred for hearing.

C. Discussion

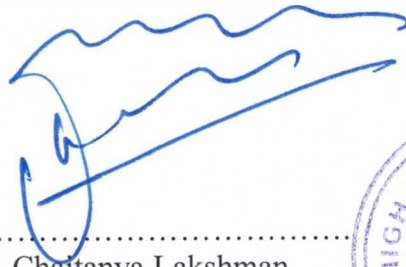
- [4] At the hearing of the matter, Mr Ram on behalf of the applicant informed me that they have filed for the validity of the will. They sought that the document filed be declared the will of the deceased, Chandra Bhan. Mr Ram relied on the supplementary affidavits filed which contained affidavit of the 2 witnesses that had seen the deceased, Chandra Bhan purportedly execute the will.
- [5] While I was writing up this Ruling I thought of checking if any Probate application was made for the Estate of the Deceased, Chandra Bhan. Upon enquiry with the Acting Senior Officer (Probate Registry), Ms Hirdeshni Kumar, I was forwarded a file and informed that Probate in the matter was granted to Surendra Chand Sharma on 4th November 2022, being Probate Number 70325. I note from the Probate file that the intended application for the probate was advertised in the Fiji Sun on **2nd August 2022**. This gave notice to everyone about the application of the Probate. This was also a notice to the Applicant. Mahendra Chand Sharma of the intended application for the Probate of the Estate of the Deceased, Chandra Bhan. The probate application was subsequently filed in Court on 12th October 2022. The Application before me by the Applicant was made on **29th September 2022**. The Applicant in his affidavit does not mention about the grant of the Probate. The Applicant had also sworn a supplementary affidavit on 17th March 2023. The supplementary affidavit did

not contain any details about the grant of the Probate. A Probate in the Estate of Chandra Bhan has been granted on 4th November 2022

- [6] The effect of a grant of probate is stated in **Tristram and Coote's Probate Practice, Thirty- Second Edition, 2020, LexisNexis, Page 6** (para 1.18) as "... *conclusive evidence of the executor's title, and of the formal validity and contents of the will: this applies equally to a grant of administration with the will annexed.*" The Applicant is not challenging the grant of probate in the Estate of Chandra Bhan with his application before me. Furthermore, **Tristram and Coote's Probate Practice** (supra: P.8 (Para 1.28) provides that "*any person whose interest is adversely affected by a grant of probate in common form may proceed by a revocation claim to put the grantee to proof of the will in solemn form*" and on (P. 798 (Para 27.24) under the head – Claims for revocation when a will has been proved states that "*a claim for the revocation of probate, or administration with will is instituted when a will has been proved in common form and it is alleged that the will is invalid or that the grant was improperly obtained. eg by a person not entitled.*" Probate Practice in Fiji is governed by Order 76 of the High Court Rules 1988 which contains special provisions relating to particular proceedings - Probate Proceedings. For Probate Action, Order 76 Rules must be complied with. For the reasons given the originating summon is struck out. As no other parties were involved in the matter, no costs are awarded.

D. The Court Orders as follows:

- (a) The Originating Summon is struck out.
- (b) No orders as to costs.



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Chaitanya Lakshman

Acting Puisne Judge

11th December 2023

