

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

Civil Action No. 267 of 2020

**IN THE MATTER** of an application for partition proceedings under Section 119 of the Property Law Act Cap 130

**AND IN THE MATTER** of Section 5 of the Succession Probate and Administration Act 1970

**BETWEEN:** **RITA REDDY** of Lot 13 Kishore Kumar Road, Laucala Beach, Nasinu, Fiji, Domestic Duties.

**1ST APPLICANT**

**AND:** **NILESH KUMAR SHANKAR** of 31 Donu Place, Lower Ragg Avenue, Namadi Heights, Suva, Manager as the Administrator and Trustee in the ESTATE OF ANITA DEVI late of 31 Donu Place, Lower Ragg Avenue, Namadi Heights, Suva, Chef, Intestate.

**2ND APPLICANT**

**AND:** **ANIL PRASAD** of Lot 1 Cliffton Road, Kalabo, Nasinu, Carpenter as the Administrator and Trustee in the **ESTATE OF RAM PRASAD**.

**RESPONDENT**

**Before:** Mr. Justice Deepthi Amaratunga

**Counsel:** Ms. Singh A for the Applicants

Mr. Nand S for Respondent

**Date of Judgment:** 28.4.2025

## **JUDGMENT**

### **INTRODUCTION**

[1] By way of originating summons two Applicants who are beneficiaries of the estate of late Ram Prasad (the Estate) instituted this action seeking removal of Respondent as administrator *de bonis non* of the Estate and also sale of a property belonging to the Estate (the Property).

- [2] The Property comprised a Housing Authority Sub Lease to the Estate, which contains conditions that required consent of lessor for a sale and there is a caveat placed on the title of the Property by Housing Authority.
- [3] So the Property cannot be sold without seeking removal of the caveat and also without consent of Housing Authority in terms of Clause 2 of the sub lease.
- [4] Respondent object to sale of the Property. He had stayed with the widow of late Ram Prasad after; demise of her husband, in the Property.
- [5] Respondent state he had paid the lease rentals to Housing Authority, this can be accepted due to his long occupation on the Property, but first Applicant had stated that all of the children of late Ram Prasad paid it, so how much was paid by Respondent is not clear.
- [6] The Property was mortgaged to the Housing Authority by late Raj Kaur as administrator of the Estate but it is evidenced that mortgage was cancelled.
- [7] Respondent also deny that late Ram Prasad had registered title to the Property which is irrelevant as registered title is in the name of late widow of late Ram Prasad as the administrator or trustee of the Estate. There is no need to go behind the title to find out whether late Ram Prasad had title under Torrens System as the title is indefeasible. All parties to this action had also accepted this position even after they became aware of this.
- [8] So the Estate had obtained indefeasible title to the Property and any objection to that only shows Respondent's disregard to beneficiaries of the Estate. This shows that Respondent is not suitable to be trustee of the Estate as he is refusing to accept legitimate beneficiaries he had admitted in his alleged 'Deed of Renunciation' annexed as A4 to affidavit in opposition.
- [9] Respondent also stated that he had carried out improvements and maintenance of the Property, while living on it since birth for nearly sixty years. Initially he lived with both parents and also with Applicants, and after demise of late Ram Prasad he had continued to live with his family and his mother. Two Applicants had also lived in the Property after demise of late Ram Prasad till they got married. It is not clear when they left but Respondent had lived in the Property continuously.
- [10] After marriage of Respondent he had continued to live in the Property and first applicant had admitted Respondent building an additional house on the same premises due to some differences with his wife and mother, late Raj Kaur. Late Raj Kaur was the administratrix of the Estate and she had not completed administration when she died.
- [11] After demise of late Raj Kaur, on 24.2.2010, Respondent and his family have been the sole occupants of the Property, without payments to the Estate.

- [12] It seemed that Respondent is unwilling to accept the rights of first Applicant but allegedly obtained renunciation of rights of second Applicant's interest to the Property. This is in sharp contrast with his denial of first Applicant's interest to the Property. All three parties to this action derived the rights to the Estate being children of late Ram Prasad.
- [13] Respondent had neither administered the Estate since he was appointed as Administrator *De Bonis Non* on 26.2.2019, nor had taken any step for the appointment of him as administrator for the Estate while enjoying fruits of it exclusively, sine demise of his mother on 24.2.2010.
- [14] Late Raj Kaur who became beneficiary to 1/3 share of the Property had bequeathed her share to Respondent in her last will. Even late Raj Kur's estate remains not fully administered and the said interest is not registered on the title of the Property.
- [15] Respondent had refused to transfer the shares of first Applicant and also deny her rights to the Property which she had statutorily derived from the indefeasible title of the Property this is a misconduct on the part of the trustee of the Estate.
- [16] Respondent had not paid any rental for his occupation and had also not prepared accounts for the Estate and he was enjoying the Estate with virtual exclusion of all other beneficiaries including first Applicant.
- [17] From the facts before this court had shown Respondent is abusing the powers of trustee or administrator of the Estate. Accordingly Respondent is removed as trustee of the Estate and first Applicant is appointed as trustee of the Estate.
- [18] The request for sale and distribution of the Property is premature at this moment due to caveat lodged on the title of the Property and also clause 2 of the Housing Authority Sublease and also long occupation and improvements and or contributions made by parties to the Property, and also unpaid rent to the Estate by Respondent.
- [19] It is not clear as to under what condition of Housing Authority, the Property can be sold and also removal of caveat, lodged by them.
- [20] It is also not clear how the proceeds of the Estate can be distributed due to failure on the part of Respondent as well as late Raj Kaur to administer the Property. Admittedly, there are improvements to the Property and also due to nonpayment of rentals there is a debt to the estate from Respondent. These needs to be assessed.

- [21] It is not equitable to sale of the Property without assessment of the improvements on the Property through proper assessment and also assessment of rents payable to the Estate by Respondent who is abusing the power of the trustee to remain in occupation of the Property and also denying first Applicant's right to it. So Respondent is removed forthwith as trustee and administrator and first Applicant is appointed as trustee and administratrix of the Estate.
- [22] So first Applicant who is appointed as administratrix in place of Respondent is required to administer it and ascertain status of the Estate and also consent of Housing Authority and or removal of the caveat lodged on the Property, before seeking a sale of the Property. The request for sale of the Property is not allowed in the exercise of discretion of the court, as it is premature due to reasons given.

### **FACTS**

- [23] The Late Mr Ram Prasad died on 1.6.1980, had three children and they were: first Applicant late Anita Wati. (Second Applicant is administrator of the estate) and Respondent.
- [24] The widow of late Ram Prasad late Raj Kuar obtained letters of administration for the Estate of her late husband.
- [25] The Estate comprises of Housing Authority Lease No. 425192 (hereinafter referred to as "the Property").
- [26] The Property was mortgaged to Housing Authority, but this was cancelled.
- [27] The Respondent alleges that he helped his mother to make housing authority loan repayments and also paid for town rates, housing authority ground rental and repair and maintenance to the house.
- [28] First Applicant state that all children paid the said lease rentals to Housing Authority.
- [29] Respondent has been occupying the Property and in possession with the Property with his mother late Raj Kaur and his family, till her demise on 24.2.2010.
- [30] Since 2010 Respondent and his family were in exclusive possession of the Property, as beneficiaries of the Estate, and had not paid rental to the Estate for said occupation.
- [31] First Applicant admits that Respondent had built a separate house on the Property it is not clear as to legality of such improvements in terms of the conditions contained in the sub lease of Housing Authority.

- [32] Respondent is also refusing to transfer the share to first Applicant. He had obtained letters of administration *de bonis non* for the estate on 26.2.2019
- [33] Late s Raj Kuar made her will in favor of the Respondent making him beneficiary of 5/9 share of the Estate and the Property.
- [34] Respondent is alleging that share of second Applicant for the Property was renounced on 23.4.2019. This was not admitted by second Respondent. So there is no certainly even as to allocation of shares of proceeds from a sale of the Property sought by Applicants.
- [35] First Applicant's solicitors had written Respondent on the 23.10. 2019 and had also requested for her share in the Estate and Respondent have failed to provide to reply and or her share till this action.

### **ISSUES FOR DETERMINATION**

- a. Whether the Applicants have a *locus standi* in this originating summons for removal of trustee and administrator and or to sale of the Property?
  - b. Whether the Respondent should be removed from acting as the Administrator and Trustee of the Estate pursuant to letters of administration *de bonis non* No. 63380?
  - c. Whether 1st Applicant be appointed as the Administratrix and Trustee of the Estate?
  - d. Whether Property should be ordered a sale? (subject to settlement of debts to Housing Authority)
- [36] There are two applications before the court in the originating summons, and they are;
- a. Removal of Respondent as trustee or administrator of the Estate.
  - b. Sale of the Property.

### **PRELIMINARY OBJECTION – *Locus Standi* and Removal of Administrator or Trustee of the Estate**

- [37] Removal of a trustee is in terms of Section 35 of Succession Probate Administration Act 1970 and section 73 of Trustee Act 1966.

[38] Section 73 of Trustee Act 1966 states

“Power of Court to appoint new trustees

73.-(1) The Court **may, whenever it is expedient to appoint a new trustee** or new trustees, and it is inexpedient, difficult or **impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution** for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) In particular, and without limiting the generality of the provisions of subsection (1), the Court may make an order appointing a new trustee in substitution for a trustee who-

- (a) desires to be discharged;
- (b) **has been held by the Court to have misconducted himself in the administration of the trust;**
- (c) is convicted of any misdemeanor involving dishonesty, or of any felony;
- (d) is a person of unsound mind;
- (e) is bankrupt; or
- (f) is a corporation that has ceased to carry on business, or is in liquidation, or has been dissolved.”(emphasis added)

[39] In terms of the Section 73 of the Trustee Act 1966 the court is entrusted with the removal of trustee 'whenever it is expedient' to do so. So there is no restriction as to who can bring such an action. Such action in terms of Section 73 of Trustee Act 1966 can be instituted by Applicants who are affected by the actions of the trustee.

[40] What constitutes 'expedient' may differ depending on the circumstances of the case.

[41] A trustee can be removed due to 'misconduct' and the following actions of Respondent are misconduct and they are;

- i. Refusal to admit first Applicant's share of 2/9 to the Estate while he had allegedly obtained a renunciation of the rights to the Property from late Anita Devi (see annexed A4 to affidavit of Respondent)

- ii. Occupation of the Property without payment of rental to the Estate as sole occupant – beneficiary since demise of late Raj Rur on 24.02.2010
- iii. Refusal to pay first Applicant's share of the Estate and or settle the accounts of the Estate
- iv. Failure to preparation of accounts for the Estate.
- v. Failed or neglected to register his interest on the tile of the Property as administrator *de bonis non* and enjoying the Property to the exclusion of other beneficiaries.
- vi. Respondent had failed even to ascertain a reasonable rent for his occupation in the Property, indicating abuse of his power and denial of rights of beneficiaries including first Applicant.
- vii. Neglect of his duties of trustee of the Estate, in order to delay or refuse rights of first Applicant being recognized and her share ascertained.

[42] On or combination of any of the above mentioned actions are sufficient to remove Respondent who is abusing the powers of the trustee in order to exclude first Applicant's share to the Property.

[43] There is discretion granted to court to removal of '*any person interested*' can seek removal of

29. Halsbury's Laws of England/WILLS AND INTESTACY (VOLUME 102 (2010), PARAS 1-564; VOLUME 103 (2010), PARAS 565-1304)/10 under the heading of 1165. Power of the High Court to substitute or remove personal representative's states as follows;

'When exercising its discretion the court is governed by the same principles that govern the removal of trustees. The overriding considerations are whether the trusts are being properly executed and the welfare of the beneficiaries.<sup>1</sup>

[44] The court is not precluded from considering the admitted facts and also facts which are stated in the affidavit in opposition filed by the trustees to ascertain the conduct and due administration of the estate. In this action Respondent's conduct is self-evident. He is neither administering the Estate nor paying to the Estate rent for his occupation, which is an abuse considering his exclusive occupation of the Property since demise of late Raj Kaur.

[45] In Letterstedt v Broers [1881–5] All ER Rep 882 at 886-7 Lord Blackburn dealt the issue of conflicts between the trustee and beneficiary and said

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<sup>1</sup> Thomas and Agnes Carvel Foundation v Carvel [2007] EWHC 1314 (Ch), [2008] Ch 395, [2007] 4 All ER 81, [2007] WTLR 1297.

"As soon as all questions of character are as far settled as the nature of the case admits, **if it appears clear that the continuance of the trustee would be detrimental to the execution of the trusts**, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intentions of the framer of the trust to give this trustee a benefit or otherwise, the trustee is always advised by his own counsel to resign, and does so. If, without any reasonable ground, he refused to do so, it seems to their Lordships that the Court might think it proper to remove him; but cases involving the necessity of deciding this, if they ever arise, do so without getting reported.'

- [46] Section 73 of Trustee Act 1966 read with Section 35 of Succession Probate and Administration Act 1970, gives a discretion to court to appoint a trustee, with directions.
- [47] This is an action seeking removal of Respondent as administrator and trustee and he is refusing to distribute Applicant's share and enjoying the Property without payment of rental or distribution of the profits and or preparation of any accounts for the Estate. This is an abuse of the power of the trustee so Applicants have *locus standi* to instate this action in terms of Section 73 of Trustee Act.
- [48] Respondent is removed forthwith as administrator and trustee of the Estate forthwith for one or more actions of 'misconduct' of Respondent which were stated earlier.
- [49] Applicant is appointed as administrator and trustee of the Estate. She had voluntarily sought to be appointed as trustee of the Estate. So first Applicant as the trustee of the estate is required to administer the Property, from the available information to her.
- [50] Respondent must co-operate in this regard and also must pay a reasonable rent for his occupation in the Property. He as the beneficiary of the majority share of the Property should be accommodated to retain the Property if he is willing to purchase the rights of other beneficiaries especially first Applicant who is the new administrator of the Estate.
- [51] First Applicant's responsibility as new trustee is to administer the Property by assessment of the improvements and also ascertaining unpaid rentals to the Estate.
- [52] Considering long occupation of Respondent for over sixty years and as beneficiaries are siblings they can explore any amicable arrangement themselves.



- [53] Respondent should also aware if there is no amicable settlement between the parties the only option available will be sale of the Property and distribution of shares. So Respondent must co-operate with the new administrator and seek conclusion of the administration of the Property.
- [54] As the newly appointed trustee first Applicant is required to obtain assessment of the improvements on the Property and also unpaid rental for the Estate by Respondent and his family.
- [55] So in my mind request for sale of the Property is premature at this stage as allocation of proceeds can vary depending on rentals payable and improvements to the Property.
- [56] Whether the Applicants as a beneficiaries have a right to bring this action under section 119 of the Property Law Act need not be considered as sale of the property is premature at this stage.
- [57] Without prejudice to above in brief, Section 119(2) and 119(3) of Property Law Act 1971, allows a party 'interested' to make an application for sale and first Applicant qualifies as a beneficiary of the Estate. So the objection raised by counsel as to *locus standi* of Applicants as unregistered beneficiaries of the Estate to seek relief under Section 119 (2) is overruled.
- [58] Sale of the Property is an exercise of the discretion of the court and this cannot be exercised without knowing the state of the Estate, which remained administered state for several decades and parties had not taken steps to conclude administration of the Estate. So in my mind for the reasons given in this judgment it is premature to seek a sale of the Property.

## **CONCLUSION**

- [59] Respondent had lived on the Property for over sixty years, first as a child and also as an adult with his family. First Applicant had also lived in the Property till her marriage. The Property belonged to the Estate and remained unadministered state despite death of both parents. Respondent who had obtained letters of administration *de bonis non* was abusing his power to the exclusion of legitimate beneficiaries of the Estate. Respondent is removed forthwith as administrator *de bonis non*. First Applicant is appointed in place of Respondent as Administrator subject to fulfillment of requirements of the Probate Registry for such appointment. Request for sale of the Property is premature considering circumstances such as improvements and arrears of rentals for unpaid rentals. Respondent must pay a reasonable rental to the Estate forthwith.

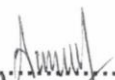
[60] It is important to seek removal of caveat and also conditions for such removal and or consent for the sale from Housing Authority before seeking a sale. This is paramount requirement if the sale is inevitable.

[61] Cost is summarily assessed at \$1,000 to be paid within 21 days.

**FINAL ORDERS:**

- a. Respondent is removed as administrator *de bonis non* of the Estate of Ram Prasad.
- b. First Applicant is appointed as the administrator *de bonis non* for the Estate of Ram Prasad.
- c. First Applicant to make necessary application to Probate Registry for fulfilment of administrative requirements. First Applicant is also required to assess the improvements of Respondent and also arrears of rental for past as a debt for the Estate before seeking sale of the property.
- d. Request for sale of the Property is premature in the present status of the Property, so it is refused.
- e. Respondent to return Letter of Administration De Bonis Non No 63380 forthwith.
- f. Cost of this action is summarily assessed at \$1000 to be paid within 21 days by Respondent to first Applicant.



  
.....  
Deepthi Amaratunga  
Judge

**At Suva** this 28<sup>th</sup> day of April, 2025.

**Solicitors:**

Kohli & Singh Lawyers

Nands Law