

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Civil Action No. 10 of 2008

IN THE ESTATE of
SHIURAJI SUKHNANDAN
(alias) **SIURAJI** (*father's name*
Ram Rati) testate

A N D

IN THE ESTATE of **SUKH**
NANDAN (alias) **RAM**
SANEHI (*father's name*
Bissessar) of Waituri Nausori in
the Republic of Fiji Islands,
Intestate

BETWEEN : **RAJJANA NAND** of Waituri Road, Nausori

Plaintiff

AND : **UJJNA NAND** of 5 Esk Avenue, Green Valley, N.S.W., Australia

Defendant

Appearance : **Mr Maharaj** of **MC Lawyers** for the **Plaintiff**
Suresh Maharaj & Associates for the **Defendant**

Date of Judgment : **15 August 2014**

JUDGMENT

1. The Plaintiff issued Writ of Summons and Statement of Claim was filed on 14 April 2008 seeking the following reliefs:

- (a) **An Order** that probate granted number 40723 by this court to the Defendant on 23 February 2005 be recalled and revoked and fresh probate be granted to the Plaintiff on the Last Will and Testament dated 2 June 1999 of Siuraj and pronounce against the validity of the said purported Will pursuant to Order 76 Rules 3 and 4 of the High Court rules.
- (b) A fresh grant be issued pursuant to true last Will of Siuraji dated 2nd day of June 1999.
- (c) **An Order** that the Defendant do file within 42 days or within such time as the Court may deem fit an inventory and accounts in the estate of Sukhnandan as required under the provisions of Section 39, Section 40 and Section 41 of the Succession, Probate and Administration Act of Fiji Cap. 60.
- (d) **An Order** that the estate of Sukhnandan be valued by two registered and reputable valuers and the estate be distributed.
- (e) **An Order** that the Defendant be removed as the administrator of the estate of Sukhnandan and Plaintiff be appointed as the administrator in place of the Defendant under provisions of Section 35 of Succession, Probate and Administration Act. Cap 60.
- (f) **An Order** that cost of this action be paid by the Defendant on indemnity basis.

2. **Background**

The Plaintiff claimed:

- 2.1 Shiuraji Sukhnandan (alia) Siuraji and Sukhnandan (*alias*) Ram Sanahi were wife and husband respectively.
- 2.2 Sukhnandan died on 18 March 1984 at CWM Hospital, Suva and his wife Siuraji died on 21 April 2001 in USA.
- 2.3 Sukhnandan died interstate leaving behind his wife Siuraji and eight(8) children of whom are over sui juris and are beneficiaries in the Estate of Sukhnandan.

- 2.4 The names of all children and/or beneficiaries were stated in the Statement of Claim (*paragraph 4*) which was admitted by the Defendant.
- 2.5 In paragraph 5 of the Statement of Claim, the properties owned by the deceased as the sole proprietor or the joint owner were described.
- 2.6 On or about January 1985, Siuraji Sukhnandan was granted letters of Administration No. 20765 of her said husband's estate but did not distribute the estate of said Sukhnandan prior to her death.
- 2.7 The Defendant on or about 23rd day of February 2005 applied for and was granted Letters of Administration De Bonis Non in the Estate of Sukhnandan by the High Court of Fiji in which the Defendant declared the total value of the estate at \$180,815.00.
- 2.8 The Defendant in his capacity as the administrator has refused and/or failed to distribute the estate of Sukhnandan and failed to give any account of the affairs of the estate.
- 2.9 Siuraji made a Will dated 2nd day of June 1999 in which she appointed the Plaintiff as the sole executor and trustee as well as the sole beneficiary of all her estate.
- 2.10 Siuraji allegedly made another earlier Will dated 11 May 1998 in which she appointed the Defendant and the Plaintiff as executors and trustees of her Will and devised and bequeathed whole of her estate to her three children namely, Rajjna Nand (*Plaintiff*), Avinesh Nand and Anjani Devi in equal shares and share alike.
- 2.11 The Plaintiff contends that the purported Will dated 11 May 1998 made by Siuraji is not a valid last Will of the deceased as the purported Will has been revoked by the deceased's subsequent last Will made on 2nd day of June 1999.
- 2.12 The Defendant applied for Probate of the purported Will dated 11th day of May 1998 of Siuraji and the probate registry of this Honorable Court granted Probate to the Defendant (*via Probate No. 40723*) in which he was appointed the sole executor and trustee of the said estate.
- 2.13 Via registered letter dated 24th November 2007, the Plaintiff wrote to the Defendant and requested voluntary revocation of said grant No. 40723 and for full account of the financial affairs of the estate of Sukhnandan but the Defendant has failed and/or refused to respond to the letter.

- 2.14 The Plaintiff contends that the Defendant who resides permanently in Australia for some years now is unwilling or is unable to manage the affairs of the estate of Sukhnandan and has failed to discharge his duties as the administrator in accordance with the law much to the detriment of the estate.
3. 3.1 The Defendant by the Statement of Defence admitted the contents of the paragraphs 1, 2, 3, 4, 6 and 7.
- 3.2 The Defendant denied paragraph (8) of the Statement of Claim i.e. The Defendant his capacity as the Administrator has refused to and/or failed to distribute the Estate of late Sukhnandan and failed to give any account of the affairs of the estate.
- 3.3 In replying to the paragraphs 9, 10 and 11 of the Statement of Claim:
- (i) *The alleged purported Will dated 2/6/1999 was obtained from Siuraji through fraudulent and deceitful means by the Plaintiff;*
- (ii) *Referring to the following clause of the said Will dated 2/6/1999, the Defendant stated deceased Siuraji was never in a position to instruct for the following clause:*
- “I Direct my Trustee that the proof of this my Will and the administration of my estate and all matters incidental thereto shall be done by Ram Chand & Company Solicitors of Nausori who shall be remunerated thereof for their services”.**
- 3.4 The Defendant further alleged that the delay in proving the said Will dated 2/6/1999 and further alleged the Plaintiff had obtained the said Will fraudulently, deceitfully and under duress and coercions.
- 3.5 Particulars of Fraud was stated as follows:
- (a) *Taking the deceased to the office of Messrs Ram Chand & Company of Nausori to execute the Will against her wish.*
- (b) *Providing instruction either written or oral as to how the purported Will was to be made.*

- (c) *Coercing and forcing the deceased into signing the purported Will.*
- (d) *Knowing or ought to have known that the deceased was not physically, mentally and medically fit to make the Will.*
- (e) *Taking advantage of the deceased condition and having prepared and giving instruction for the alleged Will to be prepared and executed.*
- (f) *That the deceased did not know or approve the contents of the Will but was made to sign the alleged Will.*

3.6 The Defendant further stated replying to paragraph 12 of the claim he had disclosed the existence of the later Will dated 2/6/1999 and all relevant information to the court in the application filed on 17/2/2008 and based on the correct and truthful facts the Probate Court had issued the Letters of Administration to the Defendant.

3.7 The Defendant had admitted that receipt of the letter dated 24/11/2008 and denied the rest of the contents of paragraph (13) and stated the Plaintiff is not a capable person to administer both the estates because he had not taken any steps to prove the alleged Will dated 2/6/1999 and had left the estate abandoned.

3.8 The Defendant had admitted that he is residing in Australia and denied the rest of the contents of paragraph 14 of the claim and reiterated the contents of preceding paragraphs.

4. The Plaintiff filed the reply to the Statement of Defence dated 18 August 2008 and stated:

4.1 The Plaintiff joins issues with the Defendant upon his Defence save in for as the same consists of admission, and save for any admissions contained in the reply to Statement of Defence.

4.2 The Plaintiff denied the Will dated 2/6/1999 was obtained from deceased Siuraji through fraudulent or deceitful means and further stated that the paragraph 3(ii), (iii), (iv) and (v) are matters of evidence and need not to be pleaded. Particulars of Fraud (a) to (e) are denied.

4.3 The Plaintiff joins issue with the Defendant in paragraph 4 of the Defence.

- 4.4 The Plaintiff denied that he is incapable of administering both estates as alleged by the Defendant.
5. This matter was mentioned on 5 April 2013, Ms A Maharaj counsel for the Plaintiff and Mr A Chand counsel for the Defendant on the instruction from Suresh Maharaj & Associates appeared. The matter was fixed for trial on 3rd; 4th and 5th of September at 9.30am.
6. When the matter was taken up for trial on 3 September 2013, Mr V Maharaj appeared for the Plaintiff and the Defendant was not present and no counsel/solicitor appeared for the Defendant. Mr Maharaj stated that after 5 April 2013, Mr Suresh Maharaj of Suresh Maharaj and Associates passed away and the Defendant was in Australia. He further stated this matter was pending since 2008 and if the Defendant had interest he would have retained a counsel and moved for formal proof. The court had fixed this matter for 3 September 2013 when it was mentioned on 5 April 2013 approximately before five months from the date of trial. When it was fixed for trial the Defendant was represented by Mr A Chand, counsel on the instructions of Suresh Maharaj & Associates. Considering all the circumstances, the Defendant's non-appearance, and inaction justified the application by the Plaintiff and the court allowed the application for formal proof.

7. **Evidence**

7.1 The Plaintiff Rajjana Nand was called to give evidence in Hindi language and was translated by a clerk/interpreter Shaheen. The witness stated his father died on 18 March 1982 and mother died on 21 April 2001. Agreed bundle of documents was tendered marked as 'PI'. Referring to paragraph 3 of the Statement of Claim, the Plaintiff stated that the names of his brothers and sisters were stated in there i.e.:

1. *Sajjna Nand is residing in Canada when he comes to Fiji stays with the Plaintiff and he runs his Feed Mill business is run by himself.*
2. *Rajjna Nand is the Plaintiff.*
3. *Ujjna Nand is the Defendant who is residing in Australia for 15 years and who was a School Teacher when he was in Fiji.*

4. *Nidya Nand and his wife were deceased too leaving behind 3 children. One child is living with the Plaintiff, other 2 children are abroad.*
 5. *Parma Nand lives in Fiji in a separate house in Waituri, Nausori.*
 6. *Avinesh Chand lives in Australia and he comes to Fiji sometimes.*
 7. *Lalitha Chand married and living in USA for last 2 years.*
 8. *Anjani Devi married and living in USA for last 30 years.*
- 7.2 Referring to paragraph 5(1) (a) of the Statement of Claim, witness stated document 1 in the Plaintiff's bundle of documents is the Crown Lease No. CL4682 Lot 11 of TL1771 and tendered marked as Exhibit '*PI (A)*'. This property is jointly owned by the deceased Sukhnandan and Shiuraji, father and mother. Ujjna Nand uses the property and part was rented and used for storage.
- 7.3 Referring to paragraph 5(1) (b) of the Statement of Claim, the witness tendered the document marked as '*PI(B)*' in the Plaintiff's bundle of documents Crown Lease No. CT 4703 (*which was mistakenly stated as 4703 and corrected in the Statement of Claim*). It is closer to '*PI(A)*' use as a feed mill CT4703 is jointly owned by the father and Ujjana Nand and by memorial $\frac{1}{2}$ share was transferred to Ujjana Nand, the Defendant. Balance half-share was owned by the deceased Sukhnandan and on the balance half share the Defendant is also entitled to $\frac{1}{8}$ share. The land is used as a feed mill and the Defendant runs it and occupies top floor, feed mill storeroom. 4 to 10 people are employed by the Defendant and he also exports the chicken and cow feed produced there. No income is given to the Plaintiff.
- 7.4 Referring to paragraph 5(2) of the Statement of Claim, witness stated CT10578 is pertaining to the property situated at No. 250 Rewa Street consists of four flats. CT 12722 is situated at No. 252 Rewa Street and consists of five flats. Both CT10578 and CT12722 are owned by the deceased Sukhnandan, father of the Plaintiff and he looked after the said properties from 1994 to 2001. All the flats are rented and the Defendant collects the rental income. CT1058 and CT12722 were tendered in the evidence marked as Exhibit '*P2*' and '*P3*'.
- 7.5 Referring to paragraph 5(4) of the Statement of Claim, the witness stated CT17183 approximately 12 acres are jointly owned by the deceased father and mother, the witness and his brothers. The property was transferred in 1984 as per the memorial and the said Title CT17183 was tendered in evidence marked as '*P4*'.

- 7.6 Referring to paragraph 5(5) of the Statement of Claim, the witness stated Lot 8 on SO2087 situated at Lakena/Manoca, 5 acres and 7 acres agricultural land was owned by the deceased Sukhnandan. However, the Plaintiff tendered document marked 'P8' refers to Approval Notice of Lease as 131/81 in extent of 5 acres and the title document Lot 8 on SO2087 was not tendered. Further, the witness stated this is an agricultural land and after the father's death, the Plaintiff was doing rice farming. When his brother Sajjna Nand came from Canada, the witness had given this land to him for farming and document 131/81 was tendered marked as 'P8'. Witness further stated these are the only properties that he is entitled for the benefits, 'P1(A)'; 'P1(B)'; 'P2'; 'P3'; 'P4' and 'P8'.
- 7.7 The witness stated that paragraphs 1 to 8 of the Statement of Claim are admitted by the Defendant in his Statement of Defence. Although, Letters of Administration was granted to his mother, she never administered the estate. Referring to paragraph 7 of the Statement of Claim, the witness stated the Letters of Administration was granted to the Defendant and it was tendered marked as Exhibit 'P9'. The value of the estate was understated and the Plaintiff was not served with any documents. The witness asked the Defendant to distribute the shares and it was not done.
- 7.8 The Plaintiff stated after the father's death, their mother was living in Fiji with the Plaintiff and she went to US in 2001 and died there. Until 2001 the witness had given money to the mother from the rental income from the Rewa Street properties. The witness's mother made a Will on 02/06/1999 and it was done on her free will. The Will was executed in the office of Ramchand Lawyers and the Will was tendered in evidence marked as Exhibit 'P5'. The witness explained that he was told by the mother she executed a Power of Attorney at the Solicitor's Office and copy of the Power of Attorney was tendered in evidence marked as 'P6'. The witness stated he never knew she had executed a Will. After execution of the Power of Attorney, witness looked after the properties and the Defendant too asked him to look after the properties.
- 7.9 The Plaintiff stated he became aware of the Will after the mother's death. 'P5' was given to him by the lawyer's clerk after a payment of \$50.00. At the time the Will was executed, mother was in good health and on her dead body was brought back to Fiji and funeral was at the Plaintiff's residence. The Plaintiff stated he told his brother the Defendant about the Will after 6 months of his mother's death at a function. He also had shown the Will to his brother Sajjna Nand and sister Anjani Devi Nand. The Plaintiff had given a copy of the Will to his brother Sajjna Nand. The Defendant also had a Will and he had obtained Letters of Administration on 23

February 2005. Copy of the Probate was tendered marked as 'P7(A)' and the annexed Last Will dated 11 May 1988 was tendered marked as 'P7(B)'. The Letters of Administration was granted to the Defendant after 4 years of the death of the mother Siuraji Sukhnandan. The obtaining of Letters of Administration was informed to the Plaintiff by the Defendant when he visited Fiji. In the Will marked 'P7(B)' the Plaintiff is also named as a Trustee. The witness stated he has the valid Will and he did not make an application to the Court. The witness stated the Defendant told him that the Plaintiff is an uneducated person and the Defendant will look after everything. The witness stated he went up to Class 8 and the Defendant is a graduate from USP who was working as a school teacher and the witness believed him.

7.10 The witness stated the Defendant knew that he had the Will that was after 6 months of the death of his mother Siuraji. The Plaintiff had asked his brother the Defendant to distribute the estate which he promised but he never did. On 24 November 2007, witness sent a letter through his solicitor asking for information about the estate which was not responded and no information was given. The letter was tendered marked as Exhibit 'P10'. The witness stated he claim reliefs in the prayer of the Statement of Claim.

8. **Analysis and Conclusion**

8.1 The late father of the Plaintiff and the Defendant died intestate on 18 March 1984 and the mother Siuraji wife of the deceased died on 21 April 2001. On 22 January 1985, Letters of Administration No. 20755 (Exhibit 'P9') in the Estate of Sukhnandan was granted to Siuraji. However, she failed to distribute the estate of her late husband during her life time.

8.2 On 11 February 2005, the Defendant was appointed as the Administrator to the unadministered estate of Sukhnandan (Exhibit P7A).

8.3 The Plaintiff in his evidence explained about the brothers and sisters in his evidence which was summarized hereinbefore.

8.4 The paragraphs 1 to 7 of the Statement of Claim was admitted by the Defendant.

8.5 I am satisfied, the Plaintiff is entitled to 1/16th share of all the properties described in the Exhibits P1(A); P1(B); P2; P3; P4; P5; and P6 produced in the evidence of the Plaintiff.

- 8.6 The Plaintiff in his evidence stated the Defendant migrated to Australia and he never distributed the estate of the deceased Sukhnandan. Although he made several request those were ignored by the Defendant which compelled the Plaintiff to institute this action.
- 8.7 The Defendant had stated in his Statement of Defence the second Will dated 2 June 1999 document marked as 'P5' was executed under duress. I believe the evidence of the Plaintiff and conclude there was no fraudulent and deceitful means used by the Plaintiff in the process of executing the said Will by Siuraji.
- 8.8 I considered the submissions made by Mr V Maharaj in paragraph 13 to 23 and agree that out of the 8 beneficiaries of the estate only two of the beneficiaries namely the Defendant Ujjna Nand and Sajjna Nand are receiving all the benefits and the Defendant had not taken steps to distribute the Estate of Sukhnandan for the benefit of other beneficiaries.
- 8.9 As stated in paragraph 17 of the submissions, Hon. Justice Jitoko had failed to consider there were two competing Wills in existence on the Ex-parte Motion filed on 11 April 2008 pursuant to Order 76 Rule 4 of the High Court Rules.
9. The Defendant had failed to deposit in the Court Registry the Original Grant in the state of the deceased Siuraji and the Defendant's position was original probate was lodged at the Registrar of Titles Office and it was missing. Whilst the Defendant failed to distribute the estate, he had after obtaining the grant he had as stated in *PI(A)*; *PI(B)*; *P2*; and *P3* memorial shows the Defendant registered himself as the Administrator/Executor in each of the properties owned by the two estates which led the Plaintiff to obtain an interim injunction on 23/7/2010 restraining the Defendant from disposing any of the assets. I am satisfied any that the Defendant has failed in his duties as an administrator as such the Plaintiff is entitled to the Orders sought.
10. **Orders:**
- (a) *The Probate No. 43285 granted by Jitoko J. on 23 February 2005 is recalled and revoked pursuant to Order 76 Rule 2, 3 and 4 of the High Court Rules;*

- (b) *A fresh probate is granted to the Plaintiff pursuant to the Last Will of Siuraji executed on 2 June 1999;*
- (c) *The Defendant to file audited accounts and inventory in the Estate of Sukhnandan within 60 days of this Judgment;*
- (d) *The Estate to be valued by two registered valuers and the estate be distributed thereafter;*
- (e) *The Defendant removed as the Administrator of the Estate of Sukhnandan and the Plaintiff is appointed as the Administrator in place of the Defendant;*
- (f) *The Defendant to pay summarily assessed costs of \$2,500.00 to the Plaintiff.*

Delivered at Suva this 15th Day of August 2014.



A handwritten signature in blue ink, appearing to read "C. Kotigalage", is written over a horizontal line.

.....
C. KOTIGALAGE
JUDGE

