

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

Civil Action No. 190 of 2010

**BETWEEN** : **SHANTI DEVI SINGH** of 114 18139 Ave, North West, Edmonton TSX3L4, Canada, Trustee in the Estate of Veer Singh, in place of **VEER SINGH** of Vancouver, Canada, Businessman, now deceased.

**PLAINTIFF**

**AND** : **SUKUNTLA DEVI** aka **SHAKUNTALA DEVI** as Administratrix in the Estate of Lala Ram also known as Mannu Singh father's name Nandu and as Trustee in the Estate of Amar Singh father's name Lala Ram also known as Mannu Singh of Martintar, Nadi, Deceased of 4/177 Shirley Road, Papatoetoe, Auckland, New Zealand.

**DEFENDANT**

Solicitors : Patel & Sharma for the Plaintiff  
Pillay & Naidu & Associates for the Defendant

## **R U L I N G**

The trial of this case has been completed. There is, but only one issue of fact between the parties. And that is whether or not a certain Deed of Family Arrangement dated 29 July 1993 purportedly signed by the late Amar Singh, was really executed by the said Mr. Amar Singh. Amar Singh died on 29 August 1999. His surviving widow, Sukuntla Devi, is the administrator of his estate.

By the said Deed, the late Amar Singh purportedly "transferred" his one undivided half beneficial interest in the estate of Lal Ram to his brother, Veer Singh.

The main asset of the Lal Ram estate is a piece of real property legally described as CT 18285 being Lot 70 on DP 45009 on which is erected a building which earns rental income for the estate.

The late Lal Ram, whose estate property is the subject matter of this action, was the father of Amar Singh and Veer Singh.

Veer Singh had filed this action against Sukuntla Devi on 03 June 2010, some ten months or so after the passing of Amar Singh, and some eleven years after the date of

the said purported Deed of Family Arrangement. Veer Singh has since passed on and his widow, Shanti Devi Singh would carry on his fight after her appointment as sole executrix and trustee of his estate.

As one would expect, Sukuntla has refuted the said Deed of Family Arrangement.

At the trial of this matter, both counsel agreed that only one witness need to be called on this matter, namely, Mr. Hari Ram, a barrister and solicitor in Nadi, who had prepared and witnessed the said Deed. Mr. Ram's evidence was taken on 26 May 2016.

However, after the trial, Mr. Singh for the plaintiff would file an application to amend the statement of claim. The proposed amendments are to add the following relief:

1. A declaration that the Deed executed by the late Amar Singh on the 29<sup>th</sup> of July, 1993 is valid and enforceable.
2. A declaration that Veer Singh/Estate of Veer Singh by virtue of the Deed executed by the Amar Singh dated the 29<sup>th</sup> of July 1993 in the Estate of Lala Ram, has the benefit of one undivided half interest in the rest, remainder and residue of the Estate of Lala Ram.

The defendant opposes the application.

In **Ambaram Narsey Properties Limited v Mohammed Yahub Khan** [2001] 1 FLR 283, Mr. Justice Gates (as the Honourable Chief Justice then was) had to consider an application by the first defendant to amend his pleadings at a time when the case was already being tried and, in fact, when the 1<sup>st</sup> defendant had already begun his case in having called two witnesses.

In considering whether to allow a late amendment of the pleadings a court must consider what prejudice might be caused to the other parties. Here the Plaintiff and 2nd Defendant had elected to cross-examine the builder at length on his terms of engagement. Now that the matter is specifically pleaded and the witness is to be recalled after discovery no prejudice will occur to the litigants in meeting the 1st Defendants' claim in their respective cases. Inevitably this case must go part heard again. Such interval will provide further time for the 2nd Defendant to consider what evidence to adduce in challenging the claim clarified by the amendment. Time to meet the amended claim as a result of an abandoned trial hearing date was a significant reason for allowing the appeal and thus the amendment in ***Reddy Construction Co. Ltd. v Pacific Gas Company Ltd.*** [1980] Fiji LR 121 at p 126H.

In this case before me, there would be little or no prejudice at all caused to the defendants if the amendment was allowed. I say that because the validity of the Deed

already takes centre stage in terms of the issues raised in the original (existing) pleadings.

In paragraphs 1 and 9 of the existing statement of claim for example, the plaintiff pleads:

1. THAT by a Deed dated the 29<sup>th</sup> day of July 1993 Amar Singh father's name Lala Ram of Martintar, Nadi, Taxi Driver transferred his one undivided half beneficial interest in the Estate of Lala Ram.
9. THAT by virtue of the said Deed the plaintiff is entitled to one undivided half interest in the said land.

The defendant, at paragraphs 1, 5, 6, 8.2, 8.3 and 11 of the statement of defence, pleads *inter-alia* that:

1. The deceased Amar Singh who was the Defendant's husband at the time did not enter into or execute any Deed of Family Arrangement on the 19<sup>th</sup> day of July 1993 as alleged.
5. PARAGRAPH 9 of the statement of Claim is denied in that the said Amar Singh (Deceased) who used to confide in the Defendant his wife at the time did not disclose the existence of the alleged Deed which it is alleged is fraudulent and was never executed by the said Amar Singh (deceased).
6. THAT the Defendants states that the Plaintiff failed to disclose the existence of the Deed to the Defendant until the institution of this action by the Plaintiff.
- 8.2 THAT the alleged Deed was never made and/or executed by the Donor the late Amar Singh (deceased).
- 8.3 THAT the alleged signature if the late Amar Singh (Deceased) as shown on the Deed of Family Arrangement is a forgery and the said Deed is fraudulent.
11. THAT the late Amar Singh (Deceased) failed to understand the full effect and impact of the Deed of Family Arrangement dated 29<sup>th</sup> July 1993 which the said deceased is alleged to have signed in favour of the Plaintiff.

In the Pre-Trial Conference Minutes executed by the parties on 22 February 2012, the following are stated amongst the agreed issues:

Whether by a Deed dated the 29<sup>th</sup> day of July 1993 Amar Singh father's name Lala Ram of Martintar, Nadi, Taxi Driver transferred his one undivided half beneficial interest in the Estate of Lala Ram to the Plaintiff.

Whether the said Deed is a forgery and fraudulent.

Whether by virtue of the said Deed, the Plaintiff is entitled to one undivided half interest in the said land.

Whether any document and/or deed purported to have been executed by the late Amar Singh was of legal effect and lawful.

I grant Order in Terms of the application. I will call this case again for mention on 17 January 2017 for any further directions (if need be) and to then adjourn for ruling (if no further directions were to be ordered).



A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be "AT". The signature is written above a horizontal dotted line.

Anare Tuilevuka  
**JUDGE**  
15 December 2016.