

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HPP 32 of 2015

IN THE MATTER of the ESTATE OF  
JAI RAM late of Yalalevu, Ba, Fiji,  
Cultivator, Deceased, Testate.

AND

IN THE MATTER of Succession, Probate  
and Administration Act Application by  
HARJIT SINGH and RANJIT SINGH,  
Yalalevu, Ba, Fiji, Cultivator.

BETWEEN : HARJIT SINGH and RANJIT SINGH, both of Yalalevu, Ba, Fiji, Cultivator.

PLAINTIFFS

AND : PREMJIT SINGH, of Yalalevu, Ba, Fiji, Cultivator.

DEFENDANT

BEFORE : Master Vishwa Datt Sharma

COUNSEL : Ms Mohini Pillai for the Plaintiff  
No Appearance of the Defendant

Date of Ruling : 05<sup>th</sup> June, 2017.

RULING

*[Application to remove the Trustee pursuant to Order 85 Rule 2  
and the Inherent Jurisdiction of this Honourable Court]*

## INTRODUCTION

1. The Plaintiff filed this Originating Summons and sought for the following orders-
  - (a) That the Defendant be removed and/or discharged from acting as one of the Executors and Trustees of the Estate of Jai Ram late of Yalalevu, Ba, Fiji, Cultivator, Deceased Testate who died on the 6<sup>th</sup> day of March, 1993 at Nailaga, Ba, Fiji pursuant to will dated 2<sup>nd</sup> February, 1990 and pronounced the validity in the grant of Estate under Probate Number 29473.
  - (b) That the Plaintiffs be allowed to carry out all duties as the remaining Executors and Trustees in place of the Defendant pursuant to Will dated 2<sup>nd</sup> February, 1990 and pronounced the validity in the grant of Estate under Probate Number 29473.
  - (c) That the Plaintiffs be allowed to operate Estates Westpac Bank Ba Branch Account Number 0264682340 until further order of the Court.
  - (d) That costs of this application be paid by the Defendant.
2. This application is made pursuant to *Order 85 Rule 2* and the *Inherent Jurisdiction of this Honourable Court*. It is noted that the application is not made pursuant to *Section 35 of the Succession Probate and Administration Act Cap 60*. The Court accordingly regularizes the same in terms of *Order 2 of the High Court Rules, 1988* since no proper administration has been done by the Executors and Trustees and to ensure the Deceased's Estate is fully administered now in the best interest of all beneficiaries.
3. The Defendant filed the acknowledgement of Service and both parties from the beginning were desirous of settling the matter since the 'Will' of the Deceased spelt out his wishes as to how he preferred to have his Estate or properties disposed of.
4. The application was adjourned by consent from time to time to allow the parties to resolve the dispute in terms of the wishes of the Deceased 'Will'.
5. Unfortunately, for one reason or the other, the Defendant failed to cooperate with the other Brothers and Executors and Beneficiaries to ensure to resolve the matter as informed to Court. No affidavit in opposition and or to counter the application was filed by the Defendant.
6. Therefore, the matter had to proceed undefended accordingly.

## LAW

7. *Section 35 of the Succession Probate and Administration Act Cap 60* deals with the removal of executor and provides as follows-

35. The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made-

- (a) make an order removing any executor of the will of such deceased person from office as, such executor and revoking any grant of probate already made to him; and
- (b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and
- (c) make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and
- (d) make such further or consequential orders as it may consider necessary in the circumstances.

#### ANALYSIS and DETERMINATION

8. The issue for this Court to determine is 'Whether the Defendant, Premjit Singh should be removed as one of the Trustees of the Estate of Jai Ram?
9. The Plaintiffs and the Defendant are brothers and lawful children of the deceased Jai Ram.
10. Deceased died intestate leaving behind a duly executed 'Will' dated 02<sup>nd</sup> February, 1990 appointing his lawful children Pradeep Chand, Harjit Singh, Ranjit Singh and Premjit Singh as Executors and Trustees of his Estate. The probate Grant was issued by the Court to all the Executors and Trustees on 22<sup>nd</sup> June, 1993.
11. It is noted that one Executor and Trustee Pradeep Chand is for one reason or the other not a party to this proceedings. The reason was not divulged to court as to why he opted to stay out of this proceedings.
12. The Plaintiffs in their affidavit evidence informed Court the following-
  - That the Defendant has been unable to perform his duty as required and failed to cultivate the Estate Farm Registration Number 411 at Varoko Sector since the Defendant was in full time employment with Manubhai Industries Ltd;
  - That the Defendant is not cooperate with the other Co-Executors and Trustees and it is very difficult for them to perform their duties in respect of the above Estate and to deal with Estates Westpac Bank Ba Branch Account Number 02646823401.

- *That the Estate's source of income is derived from cane harvested and delivered to the Rarawai, Mill and payments have been made into the Estates Westpac Bank Ba Branch Account Number 0264682340.*
  - *That the Plaintiffs on numerous occasions requested the Defendant to go along with them to sign and uplift the cane proceeds from the Estate Bank Account, but the Defendant has neglected and/or refused to cooperate with the Plaintiffs;*
  - *The Estates Bank Account has accumulated funds amounting to approximately \$20,000.00 and held in the bank account which remains undistributed to the beneficiaries to date;*
  - *That the Plaintiffs have to pay for the laborers, buy electricity and water Bills from their own funds and they find it very difficult to cope with these expenses. The Defendant being one of the Co-Executor and Trustee has failed to perform his duties as a Trustee and deliberately makes the administration of the Estate difficult;*
  - *That the Plaintiffs are joint Executors and Trustees of the Estate of Jai Ram and deceased's sons;*
  - *The remaining trustees are in better position to perform the duty of the Estate rather than waiting for the Defendant to perform his obligations and jointly operate the Estates Westpac Bank Ba Branch Account Number 0264682340;*
  - *That the Plaintiffs are managing, cultivating and looking after the Estate property and are facing financial difficulties to cultivate the Estate property together with operating the Estates Westpac Bank Ba Branch Account Number 0264682340. This has led them to financial difficulties for the trustees/beneficiaries;*
  - *That at present the meter has been disconnected and the Plaintiffs have no means to pay and reconnect the meter;*
  - *That Plaintiffs mother is still alive and she is very old being approximately 80 years old and it is very difficult for the Plaintiffs to look after her with their own funds as the income of Estates farm is held under the said Estates Westpac Bank Ba Branch Account Number 0264682340;*
  - *That in view of the circumstances of the Estate affairs and the monies held into the said Estates Westpac Bank Ba Branch Account Number 0264682340 the Plaintiffs are facing great financial difficulties and are unable to cultivate the said Estate Farm.; and*
  - *That the Plaintiffs further request this honorable Court to allow them to operate the Estates Westpac Bank Ba Branch Account Number 0264682340 until further order of the Court and the Defendant be removed as one of the Executor and Trustees in the Estate of Jai Ram.*
13. I have had several opportunities on the requests of both parties and Counsels representing the parties to the proceedings to carry out a mediation to see if the matters can be resolved in terms of the deceased 'Will' between the parties.
14. Whilst mediating, I also noticed the dilemma of both the parties to the proceedings. It became very obvious to Court that the Defendant was reluctant and incorporative and that he was the one responsible for causing problems and disputes amongst the parties and would not assist in any way to see that the Deceased Estate is administered and the

properties are distributed according to the Deceased 'Will'. Finally, the parties agreed to resolve the matter with the assistance of their Counsels and file a terms of settlement.

15. The Court adjourned the case for hearing and simultaneously to find out if the parties have resolved the issue and filed the terms of settlement. The Plaintiff's Counsel informed Court that the Defendant was absent from Court because he has accompanied his daughter for studies to India.
16. It has become obvious from the affidavit evidence before the Court now that the Plaintiffs are carrying out the cane farming on the Deceased Estate land and the cane proceeds after cane harvest is directly deposited into the Estate bank account. It is also crystal clear that the Defendant has now abandoned the current case and without taking leave of this court or informing court of his intentions to travel abroad has further put the other Executors and Trustees (Plaintiffs) into further difficulties in terms of the administration of the Deceased Estate and operation of the Estate Bank account which receives all cane funds and remains in operational.
17. The Defendant would continue to be an obstacle and cause obstruction with regards to the administration of the Deceased Estate, now that he has travelled overseas to India and still not cooperating with the other Executors and Trustees.
18. Until and unless the Plaintiff and the Defendant join hands and cooperate with each other, only then they will be able to administer and distribute the properties and money of the Deceased Estate in terms of the 'Will' in the interest of all the beneficiaries otherwise there will never be any end to the existing dispute between them.
19. In order to ensure that the Deceased Estate of Jai Ram is fully administered and the assets of the Estate is distributed to the beneficiaries in terms of the Deceased's "will", this Court needs to remove the Defendant as one of the Executors and Trustees of the Deceased's Estate.
20. For the Rational as discussed hereinabove, I proceed to make the following Orders-

#### ORDERS

1. The Defendant, Premjit Singh is hereby immediately removed as one of the Executors and Trustees from the Deceased's Estate of Jai Ram.
2. The Defendant is further ordered to surrender the Probate Grant issued to him dated 22<sup>nd</sup> June, 1993 with immediate effect to the Principal Probate Registry in Suva.

3. The Plaintiffs Harjit Singh and Ranjit Singh appointed as the Executor and Trustee to continue with the full administration of the Deceased's Estate and distribute the assets of the Estate in terms of the expressed "Will" of the Deceased Jai Ram.
4. The Defendant is also ordered to pay costs to each Plaintiff summarily assessed at \$750 each (A total of \$1500) and to be paid within 14 days.

DATED AT SUVA THIS 05<sup>TH</sup> JUNE, 2017



MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc: *Reddy & Nandan Lawyers, Suva.*