

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

Probate Action No. HPP 22 of 2016

IN THE ESTATE of **CHAND KUMARI** late of Lot 17 Tivi Road, KInoya, Nasinu, Fiji,
Domestic Duties, Testate.

BETWEEN

RITA RANJANA SINGH aka **REETA ANJANA SINGH** of 10 Romona Avenue,
San Fransisco, California 9408, USA, Consultant; and **SAILESH CHANDRA LAL**
of Lot 17 Tivi Road, Amanu Place, Kinoya, Nasinu, Businessman.

PLAINTIFFS

AND

SARITA SANJANI LAL KASHYAP of Lot 17 Amanu Road, Tivi Road, Kinoya,
Nasinu, Librarian.

DEFENDANT

Counsel : Mr. S. Chandra for the Plaintiffs
Mr. R. Singh for the Defendant

Date of Hearing : 01st June, 2017

Date of Ruling : 24th July, 2017

RULING

- [1] The plaintiffs' case is that Chand Kumari died leaving the last will dated 16th March, 2016 appointing the first named plaintiff as the sole executor and the trustee of the estate and the beneficiaries of the last will are Rita Singh aka Reeta Singh, the second named plaintiff, Ranjesh Chandra Lal and the defendant.
- [2] The first named defendant initiated proceedings seeking probate under the last will of the testator dated 20th October, 2011.
- [3] The plaintiffs thereafter filed writ of summons seeking the following reliefs;
1. That the court shall pronounce against the validity of last will dated 20th October, 2011;
 2. That grant be issued in the solemn form pursuant to the last will dated 16th March, 2016;
 3. An order that instrument of transfer of one undivided half share No. 754311 registered on 16th January, 2012 be expunged from the Register;
 4. An order that the defendant to pay the plaintiffs and other beneficiaries of the last will the sum \$162,000.00 together with interest; and/or
 5. The defendant to pay t the plaintiffs an equitable and fair share out of the estate of Chand Kumari deceased.
 6. Costs.
- [4] The defendant filed summons for Security for costs and summons to strike out the name of the second named plaintiff on the ground that he has been improperly joined, on 19th July, 2016 and 20th July, 2016 respectively.

Application to strike out the 2nd named plaintiff from the proceedings.

- [5] Order 15 rule 6(2) of the High Court Rules 1988 provides as follows;

Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

- (b) order any of the following persons to be added as a party, namely-
 - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
 - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[6] The 1st named plaintiff is the executor and trustee and also a beneficiary of the last will dated 16th March, 2016 and the 2nd named plaintiff is a beneficiary. The testator has nominated the 1st named plaintiff as the executor of her estate. She brought this action not only on her behalf but also on behalf of the other beneficiaries. There is no necessity to make every beneficiary a party to an action instituted in respect of the estate. Both plaintiffs came to court on the basis that the earlier last will has been revoked by the second last will. The defendant in her statement of defence averred that the last will dated 16th March, 2016 is not a last will of the deceased and alleged that the signature found on the purported will had been forged. If the plaintiff is successful in this action the estate of the testator will be administered according to her wishes as expressed in the last will dated 16th March, 2016 and all the beneficiaries who are named in the last will, will get their respective share of the estate. There is absolutely no reason to make the 2nd named defendant a party these proceedings. Therefore the court is not inclined to the argument of the learned counsel for the plaintiffs there are two different causes of action for the two plaintiffs against the defendant.

[7] For the reasons setout above the court is of the view that the 2nd named plaintiff is not a necessary party to these proceedings.

Application for security for costs.

[8] Order 23 rule 1 of the High Court Rules 1988 provides thus:

- (1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court-

- (a) that the plaintiff is ordinarily resident out of the jurisdiction, or

- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or
- (c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

- (2) The court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without intention to deceive.
- (3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

[9] It is common ground that the 1st named plaintiff is residing in the United States. The 1st named plaintiff has instituted these proceedings in dual capacity that is on her own behalf and also on behalf of the other beneficiaries of the estate although it is not specifically stated in the writ of summons. The question whether the plaintiff is in a position to pay costs to the defendant if the court holds with the defendant. In the last will dated 20th October, 2011 there is only one beneficiary that is the defendant. There is no material on record to show that the plaintiff has any properties in Fiji.

[10] Order 23 rule 1 of the High Court Rules 1988 confers a discretion on the court to order security for costs after taking into consideration the grounds stated therein. In the instant application the fact that the plaintiff lives abroad and also that she

has not properties in Fiji in my view warrant the grant of an order for security for costs.

- [11] The learned counsel for the plaintiffs submitted that when the 1st named plaintiff applies for the grant of probate under section 44 of the Succession, Probate and Administration Act (Cap 60) she submits to the jurisdiction of the court and therefore becomes a citizen of Fiji. Submitting to the jurisdiction of the court does not have the effect of conferring citizenship in Fiji and mere submission to the jurisdiction of the court does not mean she is a resident of Fiji.
- [12] On behalf of the defendant a bill of costs has been tendered with the affidavit in support of the summons for security for costs. In the said bill of costs the solicitors have arbitrarily stated certain amounts without giving details of the expenses already incurred and the expenses that will be incurred in future. Therefore, in arriving at the amount of costs that would be awarded the court will not take the said bill of costs into consideration. The court is of the view that in these circumstances it is reasonable to award \$7500.00 as security for costs.
- [13] In the circumstances the court concludes it is reasonable to order the plaintiff to pay into court \$7500.00 as security for costs.
- [14] For the reasons aforementioned the court makes the following orders.

Orders

- (1) The name of the 2nd named plaintiff is struck out of the proceedings.
- (2) The plaintiff is ordered to deposit to the credit of the case \$7500.00 as security for costs.
- (3) The plaintiff is also ordered to pay \$1000.00 as costs of these applications.




Lyone Seneviratne

JUDGE

24th July, 2017