

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

Civil Action No. HBC 34 OF 2014

IN THE MATTER OF THE LAND TRANSFER ACT

BETWEEN : MISHRI PRASAD JAS as Executor and Trustee of the estate of Ram Jas
Plaintiff/Intended Appellant

AND : SANT RAM AND SHIU RAM as the Executors and Trustees of the
estate of Ram Baran.
Defendants

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr A. Sen for the Plaintiff
Ms M Tikoisuva for the Defendants

Date of Hearing : 9 March 2018

Date of Judgment : 4 July 2018

DECISION

1. This is the Plaintiff's Application (Application) seeking the following orders:
 - 1) That leave be given to substitute the Plaintiff/Intended Appellant with Roshni Bala as sole executrix and trustee in the estate of Mishri Prasad aka Mishri Prasad Jas and
 - 2) Roshni Bala as the administratrix in the estate of Ram Jas
 - 3) The Plaintiff/Intended Appellant be granted leave to appeal and to appeal out of time against the Ruling of Master Robinson on 11 March 2015.

2. The Application is supported by the Affidavit of Roshni Bala (Roshni) who deposes as follows:-
 - 1) She is the widow of the Plaintiff who died testate on 5 April 2017. Probate of his estate was granted to her on 14 July 2017.
 - 2) Probate to the estate of Ram Jas was granted to the Plaintiff on 24 May 2001.
 - 3) Letters of Administration De-Bonis-Non were granted to her on 12 October 2017.
 - 4) An action was filed by the Plaintiff which was adjudicated upon by the Master who made a ruling on 11 March 2015.
 - 5) After that judgment (sic) the Plaintiff was not legally advised on the impact of the same.
 - 6) She is advised that the Master had no jurisdiction to hear the same under Order 59 of the High Court Rules (HCR) and that his decision is a nullity, and needs to be set aside.

3. The Application is made pursuant to O.59 r 10 and r 11 HCR.

4. I note from the court file that the Defendants were to have filed an answering affidavit by 16 February 2018 but had not done so. On 28 February 2018, Master Bull held that as the Application was filed out of time it must be made to a Judge. Accordingly the matter came up before me on 9 March 2018.

5. At the commencement of the hearing, Counsel for the Defendants said she had no objection to the substitution of the widow (Roshni) for the deceased (Mishri).
6. Counsel for the Plaintiff then submitted. He said the reason for seeking the extension of time is the husband died on 5 April 2017. The decision of the Master was on 11 March 2015. He said the Plaintiff was not properly advised by his then Counsel and this is the only reason for the delay. The ground of appeal is that the Master had no jurisdiction to hear the matter and he asked for the Master's decision to be reversed and the matter to be heard by a judge as his decision is a nullity. There is no prejudice to the Defendants.
7. The Defendants' Counsel said there was a delay and the deceased for the next 2 years never filed an appeal against the Master's decision. Instead he was filling other applications while represented by Counsel. The Master did not say he dismissed the application because he did not have the power. The Plaintiff never objected to the Master hearing the matter and did not object that he had no jurisdiction. Finally she said there would be prejudice to the Defendants.
8. The Plaintiff's Counsel in his reply said the parties never gave consent to the Master to extend his jurisdiction which they could not do in any event. There was no prejudice because the parties were sitting on the lots.
9. At the conclusion of the arguments I said I would take time for consideration. Having done so I shall now deliver my decision. The sole issue is whether there is anything for the Plaintiff/Intended Appellant/Roshni Bala to appeal against the Ruling. The Master in his Ruling did not grant any of the declarations; neither did he order both Defendants to hand over the title to the Plaintiff; nor did he order both Defendant to execute the Transfer etc, which were what the Originating Motion sought.

10. Instead the Master in the Ruling concluded “the application to sever the joint tenancy is dismissed”. Therefore if I may say so with respect I fail to see what Counsel for the Plaintiff means when he says he is asking for the Ruing to be reversed on the grounds that the Master had no jurisdiction to grant the order (therein) under O.59 r.2 HCR. It is as clear as daylight that he granted no order whatsoever.
11. Consequently there is nothing for me to reverse, which disposes of this Application. As there is nothing to appeal, it follows there can be no reason to substitute Roshni Bala for the Plaintiff/Intended Appellant.
12. Before I pronounce my decision I shall deal with the issue of jurisdiction. My careful perusal of Order 59 rule 2 HCR leads me to opine that a Master has no jurisdiction with regard to the matters applied for in the Originating Motion (O.M.). But nothing turns on this in this matter for the simple reason the Master did not grant any of the reliefs sought in the O.M.
13. In fine, I shall dismiss the Application, decline to grant any of the orders sought therein and shall order the Plaintiff/Intended Appellant to pay both Defendants, the costs of this Application (Summons) summarily assessed at \$750.

Delivered at Suva this 4th day of July 2018.



David Alfred

JUDGE

High Court of Fiji