

IN THE HIGH COURT OF FIJI  
AT SUVA  
PROBATE JURISDICTION

Probate Action No. 17 of 2018

In the Estate of the ESTATE OF  
RAM BARAN late of Flagstaff, Suva,  
in the Republic of Fiji, Lorry Driver,  
Deceased.

AND

IN THE MATTER of an application to  
remove Public Trustee of Fiji as  
trustee of the Estate of Ram Baran  
and an application pertaining to the  
sale of Crown Lease No. 1973 being  
Lot 2 Section 5 Flagstaff sub-division  
in Suva.

BEFORE: Hon. Justice V D Sharma

COUNSEL: Mr Ritesh Singh- for the Plaintiff/Applicant  
Ms. Priya Lal - for the Defendant/Respondent

Date of Ruling: 03<sup>rd</sup> October, 2018 @ 9.30 am

JUDGMENT

[Plaintiff/Applicant's Originating Summons seeking various orders for the removal and appointment of the Administrator/Trustee, sale and distribution of the Deceased's Estate property pursuant to Section 4(1) (e) (f) of the Trustees Act Cap 65 and Order 31 Rules 1 and 2 of the High Court Rules 1988]

INTRODUCTION

1. Before this Court is the **Plaintiff/Applicant's Originating Summons** seeking for the following orders-
  - (a) That the Public Trustee of Fiji be removed/discharged as the administrator and Trustee of the Estate of Ram Baran.
  - (b) That **Michael Deo** also known **Maha Deo** also known as **Mahadeo** be appointed as the Administrator and Trustee in the Estate of Ram Baran.
  - (c) That **Michael Deo** also known **Maha Deo** also known as **Mahadeo** be allowed to sell the Estate of Ram Baran property being crown Lease No. 1973 Lot 2 Section 5 Flagstaff Subdivision in Suva at a market value.
  - (d) That the sale proceeds of the property be distributed to all the beneficiaries of the Estate of Ram Baran after deduction of bills, any pending/outstanding city rates rental or any utilities.
  - (e) Any further direction as this Honourable Court thinks fit and proper for the purpose of administration of Ram Baran Estate and sale of the property.
2. This application is made pursuant to **Section 4(1) (e) (f) of the Trustees Act Cap 65 and Order 31 Rules 1 and 2 of the High Court Rules 1988 and the Inherent Jurisdiction of this Court.**

THE LAW

3. **Section 4 (1) (e) and (f) of the Trustees Act** deals with Appointment and Discharge of Trustees and provides as follows-
  - 4.-(1) Where a trustee, whether original or substituted, and whether appointed by the Court or otherwise-
    - (e) *is unfit to act therein; or*
    - (f) *is incapable of acting therein.*
4. **Order 31 Rules 1 and 2 of the High Court Rules, 1988** deals with sale of land by the order of the court and states as follows-

*1. Where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.*

*In this Order, "land" includes any interest in, or right over, land.*  
*Manner of carrying out sale (O.31, r.2)*

*2.-(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the*

*Court shall direct.*

*(2) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions-*

- (a) appointing the party or person who is to have the conduct of the sale;*
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;*
- (c) fixing a reserve or minimum price;*
- (d) requiring payment of the purchase money into Court or to trustees or other persons;*
- (e) for settling the particulars and conditions of sale;*
- (f) for obtaining evidence of the value of the property;*
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him.*

#### **BACKGROUND**

5. Deceased Ram Baran took demise on 03<sup>rd</sup> October, 1966 and left behind a Will dated 03<sup>rd</sup> June, 1965, wherein he appointed his son Ram Chandra as the Executor and Trustee of his Will, he gave his wife Sam Kali life interest.
6. The Deceased bequeathed the residue of his Estate to his 5 children; Ram Chandra, Ram Jas, Ram Sewak, Ram Rup and Michael Deo aka Maha Deo in equal shares.
7. On 25<sup>th</sup> March, 1971, the Public Trustee of Fiji was granted the Letters of Administration with Will Grant to administer the Deceased Estate in terms of his Will.
8. Transmission of Death was registered on Crown Lease No. 1973 on 01<sup>st</sup> July, 1971.
9. The Public Trustee of Fiji as Administrators has failed to carry out any administration of the Deceased Estate and or Administer the Estate in full in terms of the disposition of the property described as Crown Lease No. 1973 within the Deceased's Will.
10. Hence an application before court for seeking orders for the **removal and appointment of the Administrator/Trustee, sale and the distribution of the Deceased's Estate property.**

#### **DISCUSSION and DETERMINATION**

11. The Originating Summons was scheduled for hearing before this court on 26<sup>th</sup> September, 2018 at 9.30 am.
12. Both Counsels sought for the matter to be stood down and informed court that the parties were talking settlement in the interest of all the beneficiaries in the Deceased's Will.



13. The court resumed after sometime and both Counsels then informed court that the parties have now settled and sought for a week's adjournment in order to allow them to finalise the Terms of Settlement which will become the orders of this court.
14. The Terms of Settlement was finalised and filed on 03<sup>rd</sup> October, 2018. This court proceeded to make the final orders as set out hereunder.

#### FINAL ORDERS

15. Accordingly upon the parties' confirmation of the Terms of Settlement, the following orders were granted as the **orders** of this court. The parties were therefore directed to file and seal the orders as enumerated hereunder accordingly.
  - (a) That the sale of the residential property comprised and described in Crown Lease No. 1973 being Lot 2 Section 5 Flagstaff subdivision will be done collectively by the Plaintiff and the Defendant by calling for a public tender in the local media.
  - (b) That the tender should specify a minimum price of \$445,000.00 (Four Hundred and Forty Five Thousand dollars) as the minimum bid.
  - (c) That the subject property is to be sold at the highest bid price obtained by either the Plaintiffs lawyers or the Defendant anything above \$445,000.00.
  - (d) That a 10% deposit will be required from the purchaser of the subject property before any settlement is done.
  - (e) The 10% deposit sum and the balance purchase price be deposited in Messrs Sherani & Co. Trust Account by the intended Purchaser.
  - (f) Messers Sherani & Co. to attend to all conveyancing transactions in respect of the sale of the subject property to the intended purchaser.
  - (g) That the parties are to ensure that the property is free of all encumbrances before the subject property is sold.
  - (h) That the Deputy Registrar of the High Court of Fiji do execute all sale and purchase agreement, transfer of Crowns lease No. 1973 and all other incidentals for and on behalf of the registered lessor of Crown Lease No. 1973 and on being the vendor/transferor.
  - (i) After deduction of all liabilities, including payment of fees to the defendant being administrative cost in administering the property and plaintiff's solicitors' legal and disbursement fees in the High Court action No. 17 of 2018 and also cost of sale of property plus legal cost to the Defendant, the balance of the proceeds of sale of property plus legal cost to the Defendant, the balance of the proceeds of sale from the sale of the subject property is to be then deposited into the Chief Registrar's Trust Account.
  - (j) That each beneficiaries are then at liberty to make their respective claims to the High Court for release of their shares in the estate of Ram Baran.
  - (k) That the parties have agreed that all reasonable expenses relating to the sale of the subject property are to be borne out of the proceeds of the sale of the property.
  - (l) That the Defendant is to advise the occupants and/or his or her agents residing on the subject property to vacate the subject residential property comprised and described in

- Crown Lease No. 1973 being Lot 2 section 5 Flagstaff subdivision if need be take eviction proceeding against the occupants of Crown Lease No. 1973.
- (m) That the rental income of the subject property is to be calculated from the death of Mr. Baran Chandar which is the 11<sup>th</sup> March, 2017 and that rental amount is to be deducted from the estate of Ram Chandar for equal distribution between all beneficiaries.
  - (n) This agreement shall inure to the benefit of and shall be binding upon each of the parties here and their respective agents, representatives, executors, administrators, trustees, personal representatives, partners, directors, officers, shareholders, agents, attorneys, insurers, employees, representatives, predecessors, successors, heirs and assigns.
  - (o) That each party shall do all things and execute all further documents necessary to give full effect of the terms of settlement.
  - (p) That the Terms of Settlement constitutes the entire agreement as between the partners and supersedes and extinguishes all prior settlement agreements, arrangements and understandings between the parties relating to the transactions contemplated by the Terms of Settlement.
  - (q) That the terms of settlement will be the full and final settlements in relation to the estate of Ram Baran by any of the beneficiaries.
  - (r) That there will be no order for costs.



VISHWA DATT SHARMA  
JUDGE  
SUVA

03<sup>rd</sup> Day of October, 2018

cc. *Sherani Solicitors, Suva*  
*Fiji Public Trustee Corporation Limited, Suva.*