

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HPP 18 of 2019

BETWEEN : **ASHOK KUMAR aka ASOK KUMAR**

PLAINTIFF

AND : **VIJAY KUMAR**

DEFENDANT

Counsel : Plaintiff: Mr Sailo E
: Defendant: Mr Lanyon J
Date of Hearing : 30.10.2019
Date of Judgment : 31.10.2019

JUDGMENT

INTRODUCTION

1. This is an action filed by beneficiary of the estate of Ram Bali against Defendant who had obtained Letters of Administration *De Bonis Non*. Plaintiff and Defendant are siblings and late Ram Bali who was the father of them who died intestate. Widow and four children survived late Ram Bali, and widow was appointed as the administrator of the estate of late Ram Bali. All four children of late Ram Bali were married and they also had children and widow of late Ram Bali died leaving the estate of Ram Bali unadministered, but she had left a last will where Plaintiff is appointed as executor of her estate. So, as regards to estate that she inherited from her late husband's estate, Plaintiff becomes executor. Plaintiff had also obtained probate in terms of said last will. Defendant had obtained Letters of Administration *de bonis non* in relation to the estate of late Ram Bali, but had not taken steps to distribute the shares to all the beneficiaries. He had obtained agricultural lease in relation to LD4/7/2014 as the administrator of estate of

late Ram Bali in 2005 but over fourteen years had lapsed since then and no steps taken to administer the said property . Defendant did not file a statement of defence.

FACTS AND ANALYSIS

2. Plaintiff in his evidence stated that after death of their father late Ram Bali all four siblings including Defendant consented and their mother obtained Letters of Administration. Widow of late Ram Bali, and all four children became beneficiaries of estate of late Ram Bali. Widow died without fully administering estate of late Ram Bali and she had left a last will where Plaintiff is the executor, to her estate including inheritance from late Ram Bali.
3. While Plaintiff had obtained probate with respect of the estate of late widow's estate, Defendant had obtained Letters of Administration *De Bonis Non* regarding to estate of late Ram Bali, on 27.4.2004.
4. Estate of late Ram Bali comprised a Crown Lease number 16006 and it was an agricultural lease. Defendant had obtained said lease as the administrator, in 2005 but had not taken steps to distribute the respective shares to the beneficiaries.
5. There is no evidence that this land was cultivated and or some income was generated in last 14 years since Defendant became administrator.
6. Plaintiff in his evidence stated that Defendant is going to sell the said property, and he also said Defendant was not willing to give shares to the estates of two of the dead siblings.
7. Plaintiff also said Defendant is not talking with him for over one year and this started when he talked to him regarding distribution of shares of crown lease and long time he had taken without administering the estate.
8. Though no statement of defence was filed Plaintiff was cross examined and he said that prime purpose of this litigation is to administer the property and obtain his share. He said Defendant is not administering the property.
9. There is no dispute that Crown Lease Number 16006 marked P1 belonged to the estate of late Ram Bali. Defendant had obtained the said lease as the administrator *de bonis non* in 2005 as the lessee. No steps were taken to administer the same for over 14 years. Defendant was not cooperating with Plaintiff and other beneficiaries regarding the distribution of shares of estate. He had stop even talking about distribution of estate.

10. Plaintiff is the executor of estate of late widow of late Ram Bali. He had shown that Defendant and neglected or refused and failed to administer estate of late Ram Bali for over 14 years. Defendant is the lessee as the administrator, of agricultural lease over 7.5523 ha of land but there is no evidence of either cultivating the same land and or distributing any share of that. This is a waste of an agricultural land at the hand of administrator *de bonis non*. In the circumstances Defendant is removed as the administrator *de bonis non* of late Ram Bali and Plaintiff is appointed in place of Defendant.
11. Defendant had obtained Letters of Administration *De Bonis Non* on 27.4.2004, but there is no evidence of accounts of the estate. Defendant is ordered to provide the same. In the prayer of statement of claim there is no request for time period to submit accounts, so it must be within a reasonable time period from the service of this order.
12. Cost of this proceeding is summarily assessed at \$2,500 to be paid within 21 days by the Defendant.

FINAL ORDERS

- a. Defendant is removed forthwith as Administrator *De Bonis Non* of estate of late Ram Bali and Plaintiff is appointed for the said position.
- b. Defendant is ordered to provide all accounts of estate of late Ram Bali from 27.4.2004.
- c. Cost of this action is summarily assessed at \$2,500 to be paid within 21 days by Defendant to Plaintiff.

Dated at Suva this 31st day of October, 2019.



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Justice Deepthi Amaratunga
High Court, Suva