

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CIVIL JURISDICTION

CIVIL CASE NO.: HBC 204 OF 2018

BETWEEN : LAILESH KUMAR of Tulalevu, Sigatoka, Farmer.  
[Plaintiff]

AND : ANIL KUMAR of Tulalevu, Sigatoka, Farmer.  
[Defendant]

Before : A.M. Mohamed Mackie – J.

Counsel : Mr. R. P. Chaudhary for the Plaintiff.

: The Defendant absent and unrepresented.

Date of Hearing : 21<sup>st</sup> February 2019.

Date of Judgment: 12<sup>th</sup> March 2019.

J U D G M E N T

1. The Plaintiff commenced the above styled action, against the defendant, by way his Writ of Summons and the Statement of Claim dated and filed on 10<sup>th</sup> September 2018, moving for the following reliefs.
  - i. For an Order that the probate number 62393 granted to the Defendant on 8<sup>th</sup> August 2018 be revoked and cancelled.
  - ii. For an Order that the grant of probate in the Estate of Karia be applied for and granted pursuant to the Last Will dated 25<sup>th</sup> November 1988, in which the Defendant is also a trustee.
  - iii. That the plaintiff be added as a Co-Trustee in the Last Will dated 25<sup>th</sup> November 1988.

- iv. That the Estate of Karia be distributed pursuant to the Last Will dated 25<sup>th</sup> November 1988.
  - v. That the Defendant be restrained from dealing with or disposing any assets of the Deceased Karia.
  - vi. That the Defendant be restrained and prohibited from uplifting any funds from the Deceased Karia's account at Bank of Baroda, Sigatoka.
  - vii. That the Costs of this action be paid by the Defendant.
  - viii. Any other and further reliefs that seems just to this Honorable Court.
2. The Writ of Summons and the Statement of Claim being, reportedly, served on the defendant on 11<sup>th</sup> September 2018 as per the even dated affidavit of service, the defendant on his own filed the Acknowledgment of Service of writ of Summons dated 18<sup>th</sup> September 2019 on the same date indicating his intention to contest the proceedings.
  3. However, since no Statement of Defense was filed by the defendant within the prescribed time period, the Solicitors for the plaintiff filed a Motion dated 26<sup>th</sup> October 2018, moving for the Orders therein, which are identical to the reliefs prayed for in the prayers to the SOC, pursuant to Order 19 Rule 7 of the High Court Rules and the inherent jurisdiction of this Court.
  4. Accordingly, the matter being fixed for formal proof hearing, when the hearing was taken up before me on 21<sup>st</sup> February 2019, the plaintiff and a witness, namely, Sunil Kumar, "PW2" who happened to be one of the attesting witnesses to the impugned Last Will dated 6<sup>th</sup> April 2018 gave evidence on behalf of the plaintiff.
  5. Following documents were marked through the above witnesses in support of the plaintiff's claim.
    - a. **PE-1-** Birth Certificate of the plaintiff.

- b. PE-2 – Copy of Probate dated 8<sup>th</sup> August 2018 obtained by the defendant on the impugned Last will dated 6<sup>th</sup> April 2018 and a copy of the said last Will.
  - c. PE-3- Copy Native Lease number 25346.
  - d. Pe-4- Copy of the Last Will dated 25<sup>th</sup> November 1988 on which plaintiff relies for his claim.
  - e. PE-5- Statutory declaration by the plaintiff's witness Sunil Kumar Chand, sworn on 4<sup>th</sup> September 2018.
6. The plaintiff challenges the propriety of the Last Will dated 6<sup>th</sup> April 2018 on which the Defendant, purported to have obtained the probate (both are marked as "PE-2).
  7. Perusal of the impugned Last Will shows that it has been executed just 8 days prior to the death of **Karia**, the father of both the plaintiff and the defendant.
  8. According to the impugned Last Will, a major part of the declared Estate has been devised and bequeathed unto the defendant, leaving only a very tiny share from and out of the bank balance of the deceased unto the plaintiff Lalesh Kumar, and without giving anything from and out of the estate to another son namely, Pradeep Kumar.
  9. The Last Will dated 25<sup>th</sup> November 1988 marked "PE-4" and relied upon by the plaintiff is said to be the actual Last Will of the deceased, according to which the Estate had been bequeathed on the deceased's wife DURGA WATI and their 3 children, including the plaintiff and the defendant, in equal shares, which appears to be justifiable distribution depicting the true will of the deceased.
  10. The wife of the deceased DURGA WATI, who was the joint executor and trustee with the defendant as per the Last Will dated 25<sup>th</sup> November 1988 (PE-4) has predeceased the testator.
  11. The plaintiff and the witness PW-2 called on behalf of the plaintiff have given

convincing evidence for the consideration of the orders in favor of the plaintiff. The plaintiff's witness, namely, Sunil Chand, who happened to be a witness for the purported Last Will dated 6<sup>th</sup> April 2018 has given clear and acceptable evidence as to the circumstances under which the impugned Last Will (PE-2) was signed. He, in his evidence substantiated his averments in his Statutory Declaration marked as "PE-5". This witness in his evidence says that the impugned Last Will "PE-2" was signed while he was in his bus at the Sigatoka Bus Stand on the impression that he was signing a documents for certain bank purpose of the defendant Anil Kumar, and it was signed not in the presence of defendant's father.

12. It is highly improbable for the deceased to have bequeathed the major part of his declared Estate, being the 15 acres of Farm Land in Lease No. 62393 (PE-3), all the Livestock and 4/5 share of the bank balance, only to the defendant leaving only 1/5 share of the bank balance to the plaintiff and giving nothing to the other Son Pradeep Kumar.
13. As I highlighted above, the disputed Last Will dated 6<sup>th</sup> April 2018 has purportedly been executed just 8 days prior to the death of the deceased and under highly suspicious circumstances.
14. Although, the defendant filed the Acknowledgment of service and indicated his intention to contest the proceedings, after the summons being duly served on him, chose not to file any Statement of Defence warranting the plaintiff to move for Orders under Order 19 Rule 7 of the HCR.
15. I am fully convinced on the pleadings of the plaintiff and both the oral and documentary evidence adduced to substantiate the claim of the plaintiff. Accordingly, I see no reason as to why the orders prayed for by the plaintiff in the Statement of Claim and Motion dated 26<sup>th</sup> October 2018 should not be granted.
16. Accordingly, being satisfied on the overall evidence placed before this Court, I decide to grant Orders in terms of the prayers to the Statement of Claim and the Motion dated 26<sup>th</sup> October 2018.

**Final Orders:**

- i. That the Probate number 62393 granted to the Defendant on 8<sup>th</sup> August 2018 is hereby revoked and cancelled.
- ii. An application shall be made forthwith for the grant of probate pursuant to the Will dated 25<sup>th</sup> November 1988.
- iii. The plaintiff is added as a Co-Trustee of the Last Will dated 25<sup>th</sup> November 1988 and the defendant shall also remain as Co-Trustee.
- iv. The Estate of deceased Karia shall be distributed as per the Will dated 25<sup>th</sup> November 1988.
- v. The defendant is restrained from dealing with or disposing the assets of the deceased Karia, except under the Co- Trusteeship with the plaintiff.
- vi. The defendant is hereby restrained and prohibited from uplifting any funds from the deceased's Karia's account at Bank of Baroda, Sigatoka Branch, except under the Co-Trusteeship with the plaintiff.
- vii. The defendant shall pay a summarily assessed cost of \$2,500.00 unto the plaintiff within 21 days from the service of this judgment.
- viii. This judgment shall be sealed and served on the defendant and the affidavit of service be filed within 14 days.



At Lautoka  
12<sup>th</sup> March, 2019

A. M. Mohammed Mackie  
**Judge**