

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

Action No. HPP 19 of 2019

IN THE MATTER of an application under the provisions of section 6A(2),
6A(3)(c) and 6B(2)(a) of the Succession, Probate and
Administration Act 1970.

AND

IN THE MATTER OF THE ESTATE OF MAHENDRA PRATAP SINGH late of
Lot 37, Kalokalo Crescent, Makoi, 8 Miles, Nasinu, Manager,
Deceased, Intestate

AND

IN THE MATTER of an application by **PRAKASHNI DEVI SINGH** as the
surviving wife and Administratrix in the **ESTATE OF MAHENDRA**
PRATAP SINGH late of Lot 37, Kalokalo Crescent, Makoi,
8 Miles, Nasinu, Manager, Deceased, Intestate,
to acquire matrimonial home.

APPLICANT

Counsel : Mr. Prasad K. for the Applicant

Date of Hearing : 23rd May, 2019

Date of Ruling : 18th June, 2019

RULING

[1] The applicant filed this ex-parte notice of motion seeking the following order:

The piece of land comprised in Housing Authority Sub-Lease No. 215315 known as Lot 37 DP No. 5208 in the Tikina and Province of Naitasiri containing an area of 14 perches be transferred to PRAKASHNI DEVI SINGH.

[2] Section 6(1)(c)(i) of the Succession, Probate and Administration Act 1970 (the Act) provides:

Subject to the provisions of Part 2, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Act on trust to distribute the same as follows-

(c) if the intestate leaves issues and

(i) a wife or husband or *de facto* partner but not both a wife or husband and a *de facto* partner, the surviving wife or husband or *de facto* partner shall take the prescribed amount and the personal chattels and one-third only of the residuary estate absolutely;

and the issue shall take *per stirpes* and no *per capita* the remaining two-thirds of the residuary estate absolutely.

[3] Section 6A of the act provides that Matrimonial home in relation to the estate of an intestate for the purposes of the Act means a dwelling house in which the intestate held an interest in respect of which the surviving husband or wife of the intestate is entitled to exercise the right conferred by this section.

[4] Dwelling house means;

(a) a building that is designed to be used, or designed to be used principally, as a separate resident for one family or person, together with the land which form the curtilage of the building; or

(b) an apartment or flat that is so designed, together with any interest in any part of the building of which the apartment or flat forms a part, or in any part of the curtilage of that building, that is owned or otherwise held in conjunction with the apartment or flat.

[5] The applicant has attached to the affidavit filed in support of the ex-parte notice of motion the marriage certificate and the Housing Authority Sub-Lease No. 215315. According the Sub-Lease the property in question has been transferred to the applicant and her deceased husband in 12th May, 2014 and they have got married on 20th July, 2005.

[6] There are two children by this marriage and her deceased husband had been married earlier with one son.

[7] Section 6A(2) of the Act provides:

Where -

- (a) an intestate dies leaving a husband or wife and issue;
- (b) the value of the estate of the intestate (excluding any personal chattels) exceeds the prescribed amount;
- (c) the intestate at the time of his or her death, held an interest in a dwelling house which is situated in Fiji; and that dwelling house was, at the time, occupied by the intestate and his or her husband or wife, as their only or principal residence.

the surviving husband or wife of the intestate has the right to acquire the matrimonial home under section 6B to 6F **for an amount equal to the value for an amount of the matrimonial home as fixed in accordance with the provisions of this section.** (*Emphasis added*).

Section 6A(8) of the Act provides:

For the purpose of enabling the surviving husband or wife to decide whether or not to exercise the right conferred by section (2), he or she may require the administrator to ascertain and fix the value of the intestate in the matrimonial home under subsection (7), (8) and (9) and to inform surviving husband or wife of that value.

- [8] In this application the applicant is seeking to have the matrimonial home transferred in her name relying on the above provisions. On a careful reading of section 6(2)(a) with section 6A(8) it appears that the applicant has to satisfy all the requirements contained in these sections for her to become qualified to have the matrimonial home transferred in her name. What these sections say is that the surviving husband or wife of an intestate has the right to acquire the matrimonial home for an amount equal to the value of the matrimonial home after ascertaining and fixing the value of the interest of the intestate in the Matrimonial home. It cannot be said that the legislature intended in enacting these provisions to deprive the children of the intestate from their interests in their father's estate and give the matrimonial in its entirety to the wife.
- [9] In the affidavit in support of the applicant there is no averment indicating that she has already ascertained the value of the matrimonial home or at least she would ascertain its value if the court makes orders as prayed for in the ex-parte notice of originating motion.
- [10] In paragraphs 24 and 25 of her affidavit the applicant states that the Registrar of Titles had informed her counsel that she must execute a deed of trust in favour of her children, however, she does not have to execute a deed of trust since the law gives her the exclusive right to the matrimonial home. As I have said earlier in this ruling

section 6A(2) does not have the effect of giving the matrimonial home free to the surviving husband or wife depriving the issues of their right to succession from the father.

[11] Therefore the applicant cannot have the matrimonial home transferred in her name to the detriment of the other heirs of the deceased without paying into the estate the value of the house. For the above reason the motion of the applicant is liable to be struck out.

ORDER

1. The application of the applicant is refused and ex-parte notice of originating motion is struck out.



[Signature]
Lyone Seneviratne

JUDGE

18th June, 2019