

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL ACTION. NO. HBC 120 OF 2018**

**BETWEEN** : **DEO NARAIN** of 40 Buckingham Loop, Oran Park, NSW 2570,  
Australia.

**PLAINTIFF**

**AND** : **BAL RAM** as the Administrator of the Estate of Bhan Mati of Nasau,  
Nadi.

**DEFENDANT**

**Appearances** : Mr B. Singh for the plaintiff  
: Mr A. J. Singh for the defendant  
**Date of Hearing** : 07 June 2019  
**Date of Judgment** : 29 August 2019

## **J U D G M E N T**

### **Introduction**

[01] The plaintiff filed an originating summons supported by an affidavit of Deo Narain, the plaintiff and seeks the following relief:

1. *That the defendant to provide full inventory and/or full and detail accounts of all assets of the Estate of Bhan Mati.*
2. *That the defendant to furnish full and detail for statements of income and expenditure of the cane proceed under the name and style "Estate of Bhan Mati" from the period 3 October 2004 to May 2018.*
3. *That the defendant to deposit all monies received from the cane proceeds from or any other income for an on behalf of the Estate of Bhan Mati into Messrs Babu Singh & Associates trust account and or alternative deposit the same into Court.*

4. *An order that the defendant is removed as the Administrator of the Estate of Bhan Mati and in the alternative appoint Deputy Registrar of the High Court as the Administrator.*
5. *An injunction that the defendant be restrained from disposing, dealing or assigning or transferring any Estate property whatsoever, until further Orders of the Court.*
6. *Costs be in the cause.*
7. *Any further and other relief that this Honourable Court deems just.*

[02] The application is made under Order 7 Rule 1 and Order 76 Rule 3 of the High Court Rules 1988, as amended ('HCR') and the inherent jurisdiction of the Court.

[03] The respondent opposing the claim filed an affidavit.

[04] At the hearing, parties made oral submission through their counsel and filed their respective written submissions. In addition, the plaintiff has also filed a replying submission.

## **Background**

[05] Bal Ram, the plaintiff and Deo Narain, defendant are brothers. There are a total of 8 siblings, 6 are living and 2 are deceased.

[06] In November 2015, the defendant was granted letters of administration No. 57619 by the High Court of Fiji to administer the estate of Bhan Mati (their mother) ('the Estate').

[07] On 21 May 2017, a meeting was conducted for the purpose of agreeing to the distribution of shares to each of the beneficiaries based on their contribution towards the estate. The meeting of beneficiaries was conducted by 3 independent persons.

- [08] The meeting agreed as to how shares would be distributed to the beneficiaries and the beneficiaries agreed that the contribution of each of them would be a factor.
- [09] The plaintiff agreed to participate and be bound by the outcome, he was given 5 weeks' notices of the meeting and he was aware that estate account and valuation would be tabled at the meeting.
- [10] The plaintiff agreed to receive \$45,000.00 of which he accepted \$1000.00 and the balance \$44,000.00 was to be paid to him at a later time.
- [11] Before the balance payment is made, the plaintiff files this action seeking the relief as stated in paragraph 1 (above).

#### **The law**

- [12] Order 7 of the High Court Rules 1988, as amended ('HCR') contains general provision relating to originating summons. That rule provides:

*"Application (O 7, R 1)*

*1 The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Act."*

- [13] O 7, R 3, dealing with contents of the originating summons, states:

*"Contents of Summons (O 7, R 3)*

*3 (1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy."*

[14] O 76, R 3 says:

*“Parties to action for revocation of grant (O 76, R 3)*

*3 Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his or her will or letters of administration of his or her grant shall be made a party to any action for revocation of the grant.”*

### **The evidence**

[15] The plaintiff has filed an affidavit in support together with documents DN1 to DN10.

[16] The defendant has filed an affidavit in reply with document BL1, to which the plaintiff did not file any response.

### **Discussion**

[17] In these proceedings initiated by way of originating summons, the plaintiff seeks, among other things, to remove the defendant as the administrator of the Estate.

[18] The originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy (see: HCR, O 7, R 3).

[19] The plaintiff's originating summons does not include a statement of the questions on which he seeks the determination of the court, but only a statement of relief sought.

[20] The basis for the plaintiff's claim is that share were not distributed as per the 1/8 each share as per the entitlement, and that this was not mentioned by the administrator (the defendant) and/or 3 non-beneficiaries (independent persons).

[21] The defendant's position was that: the purpose of the meeting of 21 May 2017 was to agree to distribution of shares to each of the beneficiaries based on their contribution towards the Estate. The meeting was conducted in the presence of 3 independent witnesses who were not beneficiaries of the Estate and their names were approved by each one present and none of these persons had any interest on the outcome of the distribution. Further, he states at paragraph 10 of his affidavit in reply that:

*"10... I wish to state that the Plaintiff began to question the agreement to which he was a party, almost 4 months after the agreement and as such he is estopped from denying the agreement and its finality and further the Plaintiff has received part payment that is \$1,000.00 from his \$45,000.00 share and because of his acceptance of the \$1,000.00 he is estopped from denying that he agreed to accept \$45,000.00 as his share in the estate. The balance sum of \$44,000.00 was offered by me to him by way of full and final settlement of his share however, the Plaintiff stated "I do not have a bank account in Fiji therefore I will take the \$44,000.00 when I return to Fiji next" and I responded "That is fine by me"."*

[22] The issue then arises whether the agreement of shares for the Estate of Bhan Mati dated 21 May 2017 is a lawful and binding agreement on the beneficiaries of the Estate of Bhan Mati.

[23] Mr Babu Singh of counsel for the plaintiff submits that the agreement of shares signed on 21 May 2017 cannot and should not be considered a legal document and therefore should be binding on the beneficiaries and cannot be enforced.

[24] On behalf of the defendant Mr Anil J. Singh contends that: the plaintiff agreed to the settlement figure. He had received part payment and did not raise any objection until after a period of 4 months, therefore he is estopped from taking this action.

[25] At the meeting, where the 7 beneficiaries and the 3 independent persons were all present, the defendant as the administrator of the Estate announced the shares as follows:

- “1. *Padma Wati* : gets 5K
- 2. *Maya Wati* : gets the house where she was staying on Lot 18.
- 3. *Late Prem Narayan* : gets 15K
- 4. *Deo Narayan (plaintiff)* : gets 45K
- 5. *Bal Ram (defendant)* : gets the farm at Nadi back road lot 4 and balance  
farm on Lot 18
- 6. *Aysua Narayan* : gets 40K
- 7. *Vijay Narayan* : gets family house on Lot 2
- 8. *Late Raj Narayan* : gets 5K

*Total cash 95k to be distributed. There is 84k in bank. Lease rent from Maya \$5850.00 gets total to \$89850.00... short by \$5150.00. Bal Ram and Vijay to cover this to meet settlement by boosting \$2575.00 each.”*

- [26] All the beneficiaries except Maya Wati signed accepting the distribution arrangement in the presence of the 3 mediators. Their signatures also appear in the agreement.
- [27] Interestingly, only the plaintiff challenges the agreement. Other beneficiaries did not challenge it. They are not even parties to this action.
- [28] The minute of the meeting clearly states that this meeting is to finalise the proportion share of the Estate of Bhan Mati (properties) as proposed by the administrator Bal Ram. Therefore, I would reject that the defendant had misled the beneficiaries. The plaintiff knew very well that the meeting was to make arrangement for the distribution of the Estate property as per entitlement of each beneficiary.

*Promissory estoppel*

- [29] The defendant has pleaded the doctrine of promissory estoppel.

[30] The operation of the doctrine is contained in the speech of Lord Cairns LC in *Hughes v Metropolitan Railway Co.* (1877) 2 App Cas 439 (at p. 448):

*“It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results...afterwards by their own act or with their own consent enter upon a course of negotiations which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced or will be kept in suspense or held in abeyance, the person who might otherwise have enforced those rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have thus taken place between the parties.”*

[31] By the agreement entered between the parties, the plaintiff promised that he will accept a sum of \$45,000.00 in place of his entitlement (1/8) in the Estate. This promise has the effect of leading the defendant (promisee) to suppose that the plaintiff (promisor) will not enforce his right arising under the Estate. This is fortified by the acceptance of part payment by the plaintiff. The parties have acted upon the agreement. Therefore, the plaintiff will not be allowed to enforce his entitlement arising under the Estate.

### **Conclusion**

[32] By their own act or with their own consent, the parties have entered into definite and distinct terms involving their entitlements in the Estate. The agreement has been acted upon. It has led the defendant to suppose that the plaintiff will not otherwise enforce his entitlement in the Estate. On the evidence, I hold that there was a valid agreement between the parties about the distribution of the Estate property as per each beneficiary's entitlement. In the circumstances, the plaintiff will not be allowed to enforce his entitlement. I would accordingly dismiss the plaintiff's claim with summarily assessed costs of \$1,000.00, payable by the plaintiff to the defendant.

[33] It is not appropriate to convert the originating summons as a writ action under O 28, R 9 of the HCR as I have decided that the doctrine of estoppel applies against the plaintiff.

**The result**

1. Plaintiff's claim dismissed.
2. Plaintiff will pay summarily assessed costs of \$1,000.00 to the defendant.

*M. H. Mohamed Ajmeer* 29/8/19  
.....

**M. H. Mohamed Ajmeer**

JUDGE



**At Lautoka**

**29 August 2019**

Solicitors:

Babu Singh & Associates, Barristers & Solicitors for the plaintiff

Anil J Singh Lawyers, Barristers & Solicitors for the defendant