

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

**PROBATE ACTION NO. HPP 31 OF 2015**

**IN THE ESTATE OF GURU CHARAN SINGH** also known as **GURCHARAN SINGH**, of Yalalevu, Ba, Fiji, Retired Motor Mechanic, Deceased.

**BETWEEN** : **ANIRUDH SINGH** of 78 Sawau Road, Bayview Heights, Namadi, Associate Professor

**PLAINTIFF**

**AND** : **NIRBHAY SINGH** also known as **NIRBHAI SINGH** of 259a Woodham Road, Linwood, Christchurch, New Zealand, Retired Trade Unionist.

**DEFENDANT**

**Appearances** : Mr V. Chandra with Mr R. R. Gordon for the plaintiff  
Mr E. Moapa for the defendant

**Date of Hearing** : 26 February 2020

**Date of Ruling** : 10 March 2020

## **R U L I N G**

[on enforcement of judgment]

### **Introduction**

[01] This is an application for enforcement of a judgment.

[02] By an *inter partes* summons filed in the Suva High Court Registry on 17 May 2019 (the '*application*'), the plaintiff seeks the following orders:

- i. *That the plaintiff be ordered to distribute the Estate of the said Guru Charan Singh in accordance with the terms of his will dated 17 December 1981;*

- ii. *The defendant be removed as the Trustee of the Estate of Guru Charan Singh also known as Gurcharan Singh;*
- iii. *That Jaiwant Singh, one of the beneficiaries of the Estate of Guru Charan Singh also known as Gurcharan Singh be appointed as Trustee for the purposes of compliance with the orders of the court delivered on 9 February 2016;*
- iv. *All costs associated with this summons and compliance with the court orders be borne by the defendant;*
- v. *Such further orders this Honourable court deems just, fit and expedient.*

[03] The application is supported by an affidavit sworn by Anirudh Singh, the plaintiff.

[04] The defendant has filed an affidavit in opposition where he says he will rely on and refer to his affidavit filed in HPP 16 of 2018.

[05] At the hearing, both counsel made oral submissions, and only the plaintiff tendered written submission.

## **Background**

[06] The brief background facts are as follows:

- 6.1 In 2015, Anirudh Singh, the plaintiff filed this action at the Suva High Court Registry for distribution of the Estate property in accordance with the last will and testament.
- 6.2 The defendant did not contest the claim made by the plaintiff. As a result, on 9 February 2016, the Suva High Court entered a judgment that the defendant must distribute the Estate of Guru Charan Singh in accordance with the terms of his Will dated 17 December 1981.

- 6.3 To date, the defendant has not taken any steps to implement the judgment and orders of the Suva High Court.
- 6.4 The plaintiff subsequently instituted a fresh action in the Lautoka High Court for distribution of the Estate and removal of the defendant as trustee. The Lautoka High Court struck out that action on the basis that the matter had already been tried in the Suva High Court and any action for enforcement of the judgment was to be taken in the action in which the judgment was delivered.
- 6.5 As a result, the plaintiff filed the current application in the Suva High Court and thereafter sought for the matter to be transferred to this court, which was consented to by the defendant's solicitor. During the proceedings before the Master of the High Court in Suva, the defendant's solicitor had prayer one expunged on the basis that this has been dealt with in HPP No. 16/2018 (the action that was struck out by the Lautoka High Court).
- 6.6 By the current application, the plaintiff applies to this court to make an order appointing Mr Jaiwant Singh, one of the beneficiaries of the Estate as Trustee for the purpose of enforcement of the judgment dated 9 February 2016.

## The Law

[07] The application is made under O 45, R 7 of the High Court Rules 1988, as amended ('HCR'). Rule 7 provides:

*"Court may order act to be done at expense of disobedient party (O 45, R7)*

*7 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon*

*the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs". [Emphasis provided]*

## **Discussion**

- [08] This is an application for enforcement of the judgment delivered on 9 February 2016. The plaintiff complains that the defendant has failed to comply with the judgment and order made that the defendant shall distribute the Estate of Guru Charan Singh in accordance with the terms of his Will dated 17 December 1981.
- [09] It has been more than 4 years since the judgment was delivered. Yet, the defendant has not taken any steps to distribute the Estate.
- [10] The affidavit evidence adduced by the plaintiff demonstrates the defendant has failed to act and comply with the judgment.
- [11] The defendant appears to be the disobedient party as he had failed to comply with the judgment made in the nature of specific performance of a contract. The judgment directs the defendant that he shall distribute the Estate in accordance with the terms of the will.
- [12] Rule 7 empowers the court to direct that the act required to be done should be done by the party by whom the judgment was obtained. That rule says: "*If ... a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained ...*"
- [13] In this case, the judgment was obtained by the plaintiff, and the defendant has been the disobedient party.
- [14] This is an application for enforcement of a judgment. Therefore, the question of removal of the trustee and appointment of a new trustee do not arise.

[15] I would, therefore, having been satisfied with the application, affidavit and submissions advanced by counsel appearing for the plaintiff, direct the act required to be done for enforcement of the judgment dated 9 February 2016 be done by the plaintiff, Anirudh Singh at the expense of the defendant, Nirbhay Singh aka Nirbhai Singh. The defendant must provide the original/duplicate title of the Estate property to the plaintiff to enable him to execute the necessary documents for the purpose of enforcement of the judgment

**The result**

1. The plaintiff, Anirudh Singh shall do everything required to be done for enforcement of the judgment dated 9 February 2016 at the expense of the defendant, Nirbhay Singh aka Nirbhai Singh.
2. The defendant shall provide the original/duplicate title of the Estate property to the plaintiff within 7 days of this ruling.
3. There shall be no order as to the costs of this application.

*M.H. Mohamed Ajmeer*  
10/3/20  
.....  
M.H. Mohamed Ajmeer  
JUDGE



At Lautoka  
10 March 2020

Solicitors:

For the plaintiff: Millbrook Hills Law Partners, Barristers & Solicitors  
For the defendant: Babu Singh & Associates, Barristers & Solicitors