

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 243 of 2020

BETWEEN: **URMILA DEVI SINGH** aka **URMILA DEVI** of 55 Nasilivata Road, Nadera, Nasinu, Domestic Duties as the executrix and trustee of the estate of **Mahendra Singh.**

PLAINTIFF

AND: **NASINU LAND PURCHASE AND HOUSING COOPERATIVE SOCIETY LIMITED** a limited liability company having its registered office at Suva, Fiji.

DEFENDANT

Counsel : **Plaintiff: Mr. S. Singh & Ms. I. Lute**

: **Defendant: Ms. S. Devan**

Date of Hearing : **26.10.2020**

Date of Judgment : **13.10.2021**

JUDGMENT

INTRODUCTION

1. This is an action filed by way of originating summons seeking declaration that the Plaintiff is a member of Defendant co-operative society, by virtue of being an executrix and trustee of late Mahendra Singh. Plaintiff is also claiming membership benefits in terms of said membership and to be appointed as member of Defendant. The originating summons was made in terms of 'Co-operatives Act, 1996 and inherent jurisdiction'. Plaintiff had not indicated any specific section of Co-operatives Act 1996 or by laws made pursuant to the Act to seek a declaration that Plaintiff be a member of Defendant. At the hearing both parties referred to Sections 30 and 31 of Co-operatives Act 1996 and Sections 8 and 12 of By-laws of Defendant. By law 8(a) of Defendant, states that membership of Defendant, shall be terminated upon death of a member. So there is no survivorship of membership in terms of said by law. Section 12 of By-law of the Defendant states that 'share and

interest' of the member may be transferred to nominee in terms of Section 31 of Co-operative Act 1996. If there is no nominee by the member, the 'sum representing the amount of the deceased member's share and other interests in the co-operative'¹ It shall also pay 'all the amount of money due' to the member, to such person. So Plaintiff's claim for declaration has no legal basis, under Co-operative Act 1996 or By –laws of the Defendant.

FACTS

2. Plaintiff's father in law, late Ram Narayan was a fully paid member of Defendant, co-operative society since the early 1970s.
3. Late Ram Narayan Singh died on 04 .3. 1993 and before he passed away, he had nominated his wife, Subodh Kumari and late Mahendra Singh as nominees.
4. Subodh Kutnari, renounced her entitlements as nomination in favour of late Mahendra Singh on 20.2.2006.
5. Late Mahendra Singh was accepted as '**Bona fide member**' of Defendant on 9.3.2006.
6. Late Mahendra Singh passed away on 28 .1.2012 and Plaintiff had taken out a Probate for his estate as executrix and trustee of this estate.
7. There was no nomination by late Mahendra Singh for his membership in Defendant prior to his death.
8. Plaintiff states that management of Defendant had told that she would be given share of her husband in terms of the last will.
9. The last will of late Mahendra Singh is silent as to any interest of Defendant.
10. On 16.7.2016, the Defendant advertised for a membership drive to locate all their members and verify their membership. The advertisement stated that if the members fail to verify membership within 30 days of the advertisement, then the membership would be forfeited.
11. On 21.8.2019 solicitors had written a letter to Defendant on behalf of administratrix of estate of Ram Narayan seeking allocation of land of a subdivision carried out by Defendant.

¹ See Section 12 of By Law of Nasinu Land Purchase and Housing Co-Operative Limited

12. On 11.10 2019 Defendant's solicitors have informed that.
 - a. That the estate of Ram Narayan Singh received a lot allocation by the Defendant on 19 January 1978 and that is all it will receive.
Annexed hereto and marked "H" is a copy of the title.
 - b. The membership of Mahendra Singh terminated on his death and only interest (i.e share, dividends payable) can be transferred to a nominee or persons entitled by law, in terms of Section 30 of Co-operative Act 1996 and Section 12 of By Law of Defendant
 - c. In terms of By Laws, Section 8 the membership is terminated upon a death of a member.
 - d. Denied that late Mahendra Singh was a member, but stated he was registered as the nominee of late Ram Narayan Singh.
13. Defendant in the affidavit in opposition stated
 - a. Late Ram Narayan Singh was a fully paid member and his land was allocated to nominee.
 - b. Only late Ram Narayan was entitled to land allocations and land was transferred to his nominees while he was living in 1978.
 - c. The membership of a person terminated upon death. It is only the interest or shares of the deceased member that devolved to next of kin or nominee of the deceased member.

ANALYSIS

14. Plaintiff filed this action by way of originating summons seeking following orders
 - a. A declaration that Plaintiff is a member of Defendant as executrix and trustee of the estate.
 - b. Plaintiff be reinstated as Member with 'all membership benefits accrued todate.'
15. Plaintiff had not indicated any specific provision in Co-operatives Act 1996 or By Laws for the said orders in the originating summons.
16. Both reliefs claimed are interconnected and if first declaration fails, second relief cannot be granted.
17. At the hearing relied on Sections 30 and 31 of Co-operatives Act 1996 and Sections 8 and 12 of By Laws of Defendant.(see paragraph 7 of affidavit in reply of Plaintiff filed on 29.9.2020 and submissions)
18. Section 30 of Co- operatives Act 1996 deals with the transfer of interests upon a death of a member. It states,

“Transfer of interest on death of a member

30.-(1) On the death of a member a co-operative **may** transfer the **share or interest** of that member to the person nominated in accordance with Section 31 of this Act or if there is no person so nominated, to the person as may appear to the Board to be the heir or personal representative of the deceased member, or pay to such nominee, heir or personal representative, as the case may be, **a sum representing the value of the member's share or other interest in the capital of the en-operative as determined in accordance with the regulations or the by-laws of the co-operative.**

(2) A co-operative shall pay **all moneys due to the deceased** member from the co-operative to the heir, legal representative or nominee, as the case may be.

(3) All transfers and payments made by a co-operative in accordance with the provisions of this Section shall be valid against any demand made upon the co-operative by any other person.

(4) Where the member of a co-operative is or becomes of unsound mind the provisions of subsections (1), (2) and (3) of this Section shall apply.

(5) Every registered co-operative shall furnish to the Commissioner of Estate and Gift Duties, in the prescribed form, a return of all transfers and payments made by it under the provisions of this Section, without the production of probate or the letter of administration within two months of such transfers and payments having been made.”(emphasis added)

19. Late Ram Narayan was a fully paid member of Defendant, he held also nominated two nominees. This is not possible under section 31 (2) of Co-operatives Act 1996. (But this issue was not considered by parties.)
20. One nominee relinquished on behalf the remaining nominee hence late Mahendra Singh became sole beneficiary as the only nominee of any interest of deceased member.
21. Section 30 of Co-operatives Act 1996, does not provide an heir of nominee to be appointed as member of Co-operatives Society. So there is no provision in the law to declare even a nominee as a member of Defendant.
22. Section 31 of Co –operatives Act 1996 provides for appointment of nominee by a member and it states,

“Appointment of nominee

31.-(1) Every appointment of a nominee by any member of a registered co-operative for the purposes of Section 30 of this Act shall be made in writing signed by the member in the presence of two attesting witnesses.

(2) No member of a registered co-operative with the share capital shall be entitled to appoint more than one nominee, unless that member holds more than one share.

(3) In any case where more than one nominee is appointed by any member, the

number of shares to be transferred or the exact proportion of the amount available that is to be transferred to each of these nominees shall be specified at the time of the appointment.

- (4) Every appointment of a nominee shall be recorded in the register of members.
 - (5) **For the purpose of a transfer to a nominee**, the value of any share or interest shall be represented by the **sum actually paid for the share or interest by the member holding it**, unless the by-laws of the registered co-operative otherwise provide.
 - (6) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his or her guardian shall be sufficient discharge to the registered cooperative.”
23. In the light of Section 30 and Section 31 of Co-operatives Act 1996, Plaintiff cannot seek membership of Defendant as executrix of the estate of late Mahendra Singh who became sole nominee of member of Defendant.
 24. Defendant had not accepted late Mahendra Singh as fully paid up member of Defendant, but accepted him as ‘**bona fide member**’. This document is dated 9.3.2006 and absence of his name in the membership registry of Defendant also substantiate the Defendant’s contention.
 25. Defendant had published its members in a newspaper and this included deceased member Ram Narayan.
 26. Plaintiff cannot claim membership of Defendant on said advertisement as her late husband Mahendra Singh was the nominee of Defendant’s deceased member Ram Narayan.
 27. There is no provision in the Co-operatives Act 1996 to inherit **membership** of Defendant. So her declaration for membership with Defendant is without merits.
 28. Membership Defendant is governed by statutory provisions and by laws made under said statute.
 29. Section 8(a) of by law of Defendant states that membership is terminated by death. This By Law is the existing by law made in terms of Co-operative Act 1996. It is neither challenged nor declared null and void. So it should be interpreted accordingly.
 30. Plaintiff’s submission that by law contradicts with Co-operatives Act 1996 hence should not be followed is also, without merit.
 31. Section 31(5) of Co- operatives Act 1996, states that by laws of respective co-operative societies shall take precedence in relation to transfer of interest or share to nominee of the members.

32. The provisions relating to transfer contained in Section 32(5) of Co-operatives Act 1996 will apply 'Unless the by-laws of the registered co-operative otherwise provide'. As By laws of Defendant determined membership, it not transferred upon death even to a nominee.
33. Plaintiff's late husband was a nominee of a deceased member. He was never a fully paid member of Defendant, but was classified as 'bona fide member' indicating he was entitled to interest of deceased member's entitlements.
34. Irrespective of what was given to him and how he was treated there is nothing in Co-operatives Act 1996 or By Laws of Defendant that allows Plaintiff to be declared as a member of Defendant.
35. As the second relief sought is a direction to Defendant to 'reinstate Plaintiff as member together with all her membership benefits accrued todate'. It is axiomatic that this relief fails as she cannot be declared a member of Defendant in law.

CONCLUSION

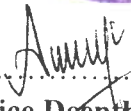
36. Plaintiff cannot be declared as a member of Defendant in terms of Co-operatives Act 1996. Sections 30 and 31 of the said Act does not grant a right to Plaintiff to be admitted as a member of Defendant. Originating Summons struck off. Considering circumstances of the case I do not award cost.

FINAL ORDERS

- a. Originating summons dismissed
- b. No costs ordered.

Dated at Suva this 13th day of October, 2021.




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Justice Deepthi Amaratunga
High Court, Suva