

**IN THE HIGH COURT OF FIJI  
AT LABASA  
PROBATE JURISDICTION**

**Probate Action No. HPP 24 of 2012**

**IN THE ESTATE** of **RAJ KALI SINGH** of Nasekula Road, Labasa, Deceased, Testate.

**BETWEEN:** **DAYA SINGH** of 53 Strathford Avenue, Albany Creek, Queensland 40235, Australia, as the nominated executor and trustee under the Last Will of Raj Kali Singh dated 22 January 2007, Retired.

**PLAINTIFF**

**AND:** **CHARAN JEATH SINGH** aka **CHARANJIT SINGH** aka **CHARAN JEET SINGH**, of Nasekula Road, Labasa, as sole Executor and Trustee of the Estate of Raj Kali Singh and in personam, Businessman.

**DEFENDANT**

**BEFORE:** Hon. Chief Justice Kamal Kumar

**COUNSEL:** Mr J. Turner and Ms M. Muir for Plaintiff  
Mr N.S. Geyde and Mr H. Nagin for Defendant

**Date of Hearing:** **10 to 13 April 2017 and 30, 31 May 2017**

**Date of Judgment:** **7 December 2021**

## **JUDGMENT**

1. On 14 September 2012, the Plaintiff filed claim against the Defendant seeking following remedies:-

- “A. An Order setting aside the Will dated 2 September 2006;
- B. An Order revoking the Grant of Probate dated 2 October 2007;

- C. An Order requiring the Defendant to surrender the Grant of Probate dated 2 October 2007 to the Probate Registry within 14 days after service of this Writ;
  - D. An Order granting probate of the Will dated 22 January 2007 and appointing the Plaintiff as sole Executor and Trustee of the Estate of the Deceased;
  - E. An Order for full accounts to be filed by the Defendant in respect of the Estate of the Deceased;
  - F. An Order for full accounts to be filed by the Defendant in respect of the Estate of Gurbachan Singh also known as Gurubachan Singh;
  - G. An Order requiring the Defendant to transfer all the assets of the Estate of the Deceased to the Plaintiff upon his appointment as Executor and Trustee;
  - H. An Order requiring the Defendant to transfer all the assets of the Estate of Gurbachan Singh also known as Gurubachan Singh to the Plaintiff upon his appointment as Executor and Trustee of the Estate of the Deceased;
  - I. An Order restraining the Defendant from dealing with the assets of the Deceased's Estate, including those assets bequeathed to the Deceased by her late husband, Gurbachan Singh, and any of them, in any manner whatsoever, and restraining the Defendant from voting, transferring or otherwise dealing with the shares of Gurbachan Singh & Company Limited held in the names of Gurbachan Singh and/or Raj Kali Singh.
  - J. Interest on withheld bequests; and
  - K. The costs of this action on any indemnity or solicitor/client basis."
2. On 2 October 2012, the Defendant filed Acknowledgement of Service and Application for Security for Costs.
  3. On 3 October 2012, Court adjourned this matter to 6 February 2013, for trial.
  4. On 17 October 2012, the Plaintiff filed Affidavit of Testamentary Script.
  5. On 25 October 2012, the Plaintiff filed Affidavit in Response.
  6. On 30 October 2012, the Defendant filed Statement of Defence.
  7. On 11 December 2012, the Defendant filed Affidavit Verifying List of Documents ("**AVLD**").

8. On 9 January 2013, the Plaintiff filed AVLD.
9. On 22 January 2013, the Defendant filed Supplementary AVLD.
10. On 30 January 2013, the Defendant filed Affidavit of Testamentary Script.
11. Trial could not be concluded on 6 February 2013, and on 7 February 2013, this matter was adjourned to 24 to 26 June 2013, for continuation of trial.
12. On 20 June 2013, the Defendant filed Further Supplementary AVLD.
13. Trial before Justice Kotigalage continued on 24 and 25 June 2013, and adjourned to 24 July 2013, for continuation.
14. Trial before Justice Kotigalage concluded on 24 July 2013, and adjourned for Judgment on Notice.
15. Justice Kotigalage left the Judiciary in 2015, without delivering the Judgment.
16. This matter was called before this Court on 10 September 2015, when parties submitted that this matter be heard de-novo by this Court and as such this matter was adjourned to 6 to 10 June 2016, for trial.
17. On the Defendant's Application, the trial dates of 6 to 10 June 2016, were vacated with costs in favour of the Plaintiff in the sum of \$2,000.00.
18. On 14 October 2016, this matter was listed for trial from 10 to 14 April 2017.
19. Trial proceeded on 10 April 2017, and on 13 April 2017, was adjourned to 30, 31 May 2017, for continuation.
20. Trial concluded on 31 May 2017, when parties were directed to file Submissions by 5 July 2017, with Judgment to be delivered on notice.

### Plaintiff's Case

21. The Plaintiff gave evidence himself and called following as witnesses:

- (i) Om Singh of Cunningham, Suva, Bank Officer (**PW1**).
- (ii) Mohammed Sadiq of Ritova Street, Labasa, Legal Practitioner (**PW2**).
- (iii) Kiran Baichandra Gaikwad of Suva, Medical Officer (**PW3**).
- (iv) Nita Wati of Vunika, Labasa, Cook (**PW4**).
- (v) Kusum Lata of Wailevu, Labasa, Supervisor/Salesgirl (**PW5**).

22. PW1 during evidence in chief gave evidence that:

- (i) He has been Bank Officer with Bank of Baroda ("**BOB**") for ten (10) years, and is currently based at Suva Office.
- (ii) He has file of RK Singh Fashions which firm was registered on 1 April 1992 (**Exhibit P1**).
- (iii) Account Opening Form of RK Fashion dated 24 April 1996 (**Exhibit P2**), shows Raj Kali Singh and Gurubachan Singh as partners.
- (iv) Account Opening Form has been signed by Raj Kali Singh and Gurubachan Singh and witnessed by a Bank Officer.
- (v) He has Account Ledger Inquiry Form dated **27 August 2007 (Exhibit P3)**.
- (vi) Bank Statement of RK Fashions (**Exhibit P4**) contains eleven (11) entries over the period 2 January 2007 to 31 January 2007, which indicates that RK Fashions was being operated in January 2007.
- (vii) BOB retains cheque deposits for maximum term of ten (10) years.
- (viii) Copies of RK Fashion's records are not with the Bank and have been destroyed.

23. During cross-examination PW1:

- (i) Stated that he has no personal knowledge of RK Fashions Account as he was posted to Labasa branch in 2010.
- (ii) Stated that he had personal knowledge of the Account holders but had nothing to do with the operation of the Account.
- (iii) In reference to Exhibit P2 he stated that BOB had provision for persons who could not sign but use thumb print for savings account.
- (iv) For Accounts that require signing of cheques and other documents, BOB will not allow persons who cannot sign to operate the accounts.

- (v) Agreed that Raj Kali Singh (**Testatrix**) was able to sign her name which was acceptable to the Bank and cheque for \$577.82 as shown in Exhibit P4 was signed by her.
  - (vi) Agreed that throughout January 2007, there were number of cash deposits for which they have no details now and that anyone could deposit cash in the account.
  - (vii) In reference to presentation of cheque of \$577.82 into the Account he stated that date on statement is not the date cheque is presented to the Bank but date cheque is entered into the system.
  - (viii) Agreed that cheque of \$577.82 could have been written earlier.
  - (ix) Agreed that photocopy of statement dated 13 February 2017, is in respect to same Account as Exhibit P4 of RK Fashions which covers period 9 January 2007 to 1 August 2007, and apart from Bank fees there are no other debits.
24. Before proceeding to examine PW2's evidence it is to be noted that from hereinafter Raj Kali Singh will be referred to as **Testatrix**.
25. PW2 during examination in chief gave evidence that:-
- (i) He graduated from London in 1967 and have been in practice since December 1967.
  - (ii) He looked for records for attending Testatrix and got documents.
  - (iii) He prepared a Will of Testatrix dated 12 April 1991, (hereinafter referred to as "**1991 Will**") of which he has a copy (**Exhibit P5**).
  - (iv) 1991 Will was executed by the Testatrix by putting her left thumb print and witnessed by him.
  - (v) **Agreed that subsequently he acted for the Testatrix and her family from time to time and later got instruction to make Testatrix's Will dated 22 January 2007 (hereinafter referred to as "2007 Will"), of which he has a copy (Exhibit P6).**
  - (vi) 2007 Will was executed by the Testatrix by putting her left thumb print and was witnessed by himself and Doctor Kiran whose signature appears in Will.
  - (vii) **Instructions for 2007 Will was provided to him by the Testatrix on phone which could be 5 or 6 days earlier and he had about 3 or 4 phone calls with the Testatrix.**
  - (viii) The Testatrix provided him with documents through one of her workers.
  - (ix) He drafted 2007 Will and gave it to his staff to type it.

- (x) In reference to numbering of paragraphs in 2007 Will which states 1, 2, 3, 2 he stated that staff was new and could have made mistake in numbering paragraphs.
- (xi) In respect to date on second page of 2007 Will, he stated that it appeared that his staff typed date using typewriter and not computer.
- (xii) He wrote the date in 2007 Will.
- (xiii) Stated that 2007 Will did not have backing sheet and it does not affect validity of the Will.
- (xiv) On 22 January 2007, Testatrix was upstairs of shop in Main Street, Labasa Town.
- (xv) In respect to execution of 2007 Will, he stated that when he went to the building where Testatrix was residing, Doctor Kiran was already there, and they both were taken upstairs by Daya Singh and they reached Testatrix, Daya Singh went back.**
- (xvi) He could not recall exact time of the day and stated it could have been after 10.00am and before lunch time.**
- (xvii) They went in a big room where Testatrix was.
- (xviii) When 2007 Will was signed Testatrix was sitting on her bed with himself and Doctor Kiran sitting on chairs in close proximity to the Testatrix.
- (xix) The house girl was not present in that room and could have been in another room.
- (xx) He recalled telling Testatrix that he brought her Will and asked if she wanted him to explain to her to which she said “yes”, and after that he read in Hindi **language and explained Will to her and asked if she wanted to execute the Will to which she said “yes” and then she executed the Will.**
- (xxi) Testatrix did not ask him any question and she was satisfied with term of the Will he prepared.**
- (xxii) Testatrix signed the 2007 Will by putting her left thumb print and he provided the ink pad.
- (xxiii) Him and Doctor Kiran witnessed the Will in Testatrix’s presence.
- (xxiv) He observed the Testatrix when she signed the Will who was sitting and appeared to be alright and comprehend what she was told.**
- (xxv) Daya Singh did not play any part in preparing 2007 Will.**
- (xxvi) He kept 2007 Will in the Will’s file in his office.**
- (xxvii) He is aware that Testatrix died in 2007.
- (xxviii) He received instructions from Daya Singh to advertise the 2007 Will and was advertised on 18 May 2007 **(Exhibit P7)**.

- (xxix) On the same day (18/05/2007) he received letter from Sherani & Co. stating that they advertised a Will earlier in which Charan Jeet Singh is the Executor and Trustee (Exhibit P8).
- (xxx) He sent copy of 2007 Will to Sherani & Co.
- (xxxii) When asked if he has copy of his fax on his file he stated that he faxed the 2007 Will with Sherani & Co.'s letter.
- (xxxiii) After that date (18/05/2007) he did not receive any further instructions from Daya Singh.**
- (xxxiiii) In reference to Clause 3(b) of 2007 Will which states Lot 5 Section 9 he received Titles of property from the Testatrix which shows Gurubachan Singh, husband of Testatrix as owner of that property.**
- (xxxv) After he received Title he discussed it with Testatrix and told her that Title is in her husband's name when Testatrix told him that her husband made a Will giving her everything and sent copy of Probate No. 42173 (Exhibit P10).**
- (xxxvi) He was satisfied with her explanation.
- (xxxvii) Testatrix then instructed him to transfer that property in her name which he attempted to do and applied for consent of iTaukei Land Trust Board (TLTB) as is evidenced by receipt No. 1400094119 dated 26 February 2007 (Exhibit P11).
- (xxxviii) He received letter dated 26 February 2007, from TLTB (Exhibit P12) advising that there is a rental arrears of \$2,709.53 which is to be paid within two (2) weeks.
- (xxxix) She discussed TLTB letter with Testatrix and she said she will pay the rental arrears but it was not paid.**
- (xl) If Testatrix had not died, bequest under Clause 3(b) of the 2007 Will be valid bequest.
- (xli) In respect to property at Raojibhai Patel Street, mentioned in Clause 3(e) of 2007 Will, he was provided with Rate Demand Notice dated 1 January 2000, from Suva City Council (Exhibit P13) in which Testatrix is shown as owner of property.**
- (xlii) He is not aware about Transfer of Raojibhai Patel Street property.
- (xliii) He does not know if Life Insurance Policy mentioned at Clause 2 of 2007 Will was charged to somebody.
- (xliv) He knows Daya Singh as they are from Labasa Town, and Daya Singh has a shop where he sees him and talk to when he goes in the shop to buy something.**
- (xlv) He is aware that Daya Singh left Fiji to live in Queensland, Australia.**

26. During cross-examination PW2:-

- (i) Agreed that in January 2007, he had forty (40) years of experience; **prepared hundreds of Wills; Solicitors need to take great deal of care in taking instructions and preparing Will;** it was his practice to check Wills carefully before it was signed and **be satisfied that contents of Will was correct intention of the Testatrix.**
- (ii) In respect to numbering in 2007 Will (Exhibit P6) he stated he did not look at numbers and looked at other things and content and everything was correct but did not take much care at numbers.
- (iii) In respect to the date inserted on page 2 of 2007 Will and typed words being in different format, he stated that when his staff gave the Will it was like that.
- (iv) When it was put to him that surely if his Secretary prepared document and realised that, witnessing part (date) is missing she would have gone back to the Computer, he stated she would but this one she typed in typewriter and gave it away.
- (v) **Accepted that Will with different fonts gave rise to suspicion that something is wrong and stated that she should have gone back to the Computer.**
- (vi) Agreed that when person making Will is not his client he looks at assets in the Will and last time he made Will for Testatrix was in 1991.
- (vii) **Agreed that it was his practice to meet client to take instructions for Will and in this case (2007 Will) first time he met Testatrix was when he took Will for execution.**
- (viii) **Stated that he took instructions from Testatrix on phone and wrote in piece of paper long time ago in his office and has no record of instructions taken.**
- (ix) **Agreed that he produced rest of the file.**
- (x) When it was put to him that only is instruction not there he stated that other things are not there.
- (xi) Agreed that he knew in May 2007, that another Will was advertised.
- (xii) **When asked why he did not keep instructions when he knew another Will being advertised he stated that he did not know, his clerk left job, girl who typed the Will passed away and he cannot find it.**
- (xiii) Accepted that when client is elderly you have to take extra care.
- (xiv) **When it was put to him that he knew Testatrix was 83 years old when 2007 Will was done he stated he knew she was old but did not know her age.**



- (xv) Agreed that when client is elderly it raises in your mind as to whether he/she has testamentary capacity.
- (xvi) **Accepted that a prudent solicitor would satisfy himself that elderly person did have testamentary capacity and medical practitioner is to carry out test as to capacity.**
- (xvii) When it was put to him that when he went to Testatrix's house he did not satisfy himself as to capacity he stated that when he went there, he saw Testatrix sitting on the bed, appeared quite well to him and he talked to her.
- (xviii) **Agreed that before he went to Testatrix's room he took no step to determine her capacity.**
- (xix) **Agreed that he was aware that it was not feasible for Testatrix to visit his Office.**
- (xx) **When it was put to him that that was so because of her ill-health he stated, Testatrix said she is unable to come to his Office.**
- (xxi) **Stated that he did not ask any question about Testatrix's health.**
- (xxii) Stated that he was not aware that Testatrix had three (3) housemaids caring for her day and night.
- (xxiii) **Stated that Testatrix wanted to sign by putting her left Thumb Print.**
- (xxiv) **Stated that words "LEFT THUMB PRINT" at signing part appears to be typewritten but he was not sure.**
- (xxv) When asked if these words were typed after he went to Office he stated that it was there when he took the Will.
- (xxvi) When it was put to him that it meant that he knew Testatrix will sign by putting left thumb print he agreed to it and stated that she had another Will.
- (xxvii) **Agreed that he retrieved 1991 Will and determined that she signed by putting left hand thumb print.**
- (xxviii) **Subsequently when asked when did he retrieve 1991 Will he stated that before preparing 2007 Will he knew but he did not retrieve 1991 Will at that time or until now.**
- (xxix) **When it was put to him that when you make Will for someone you ask how will they sign he stated when she gave instructions she asked him to bring "thump print" (corrected to ink pad).**
- (xxx) Stated that if he had known that Testatrix signed he would have asked her to do so in 2007 Will.
- (xxxi) **Stated that Daya Singh did not tell him that Testatrix will sign by putting thumb print.**

- (xxxii) Stated that he did not ask Testatrix, if she made her last Will before 2007 Will and she did not tell him that she wanted to make changes to recent Will she made.
- (xxxiii) Stated that if he had known that Testatrix made a Will on 2 September 2006, he would have made further enquiries with her.**
- (xxxiv) Stated when Testatrix called him 5 to 6 days before 22 January 2007, to give instructions and said that she wanted Daya Singh to be the Executor.**
- (xxxv) In reference to clause 3(a) of 2007 Will when asked what interest Testatrix had in building he stated he does not know and that was her instruction.**
- (xxxvi) Stated that he would have written it down in his instructions.
- (xxxvii) Stated that he did not ask if buildings existed.**
- (xxxviii) When it was put to him that Clause 3(a) of 2007 Will does not talk about shares in the Company he stated it is in the Company.
- (xxxix) Agreed that his job as a Solicitor was to make sense of instructions.**
- (xl) In reference to second part of Clause 3(a) when asked what buildings Soap and Allied had he stated that he knows there was a soap factory.
- (xli) Agreed that legally only Company can transfer its property and business.**
- (xlii) When it was put that Testatrix did not own any building he stated that she told him that she owned this building or has shares in the building.
- (xliii) When it was put to him if she gave these instructions she was confused he stated he did not think so.**
- (xliv) Stated that he did not ask what business were owned by Gurubachan Singh and Company Limited and Soap and Allied Industries (Fiji) Limited.
- (xlv) Stated that the copy of Crown Lease No. 2942 mentioned in Clause 3(b) of 2007 Will was sent to him through Testatrix's worker and stated that he asked for that Lease.**
- (xlvi) Stated that he asked for copy of Crown Lease No. 2941 in Clause 3(c) of 2007 Will which he has got with him in Court.**
- (xlvii) When asked why he did not ask for Titles for buildings in Clause 3(a) of 2007 Will he stated that he asked and she gave Raojibhai Patel Street Title.
- (xlviii) Agreed that he asked for CL2942 to be transferred in her name and requested her to sign Application for Consent and he does not have copy of Application Form as he submitted three (3) copies to TLTB.
- (xlix) Stated that Testatrix signed the Application Form which he took to her for signing with ink pad.**
- (l) Stated that Testatrix signed Application for Consent by putting her thumb print.**

- (li) When asked how he remembers that when it was ten (10) years ago he stated that she put thumb print.
- (lii) Stated that he did not make Application for Consent to Transfer CL 2941 in clause 3(c), of 2007 Will because Testatrix did not give instructions.**
- (liii) Agreed that there was no need for specific instructions to be given to transfer CL2941 and 2942 and stated that at the time she told him this particular block (CL2942).**
- (liv) Agreed that when he prepared 2007 Will Clause 3(b), (c) bequeathed properties not in Testatrix's name.**
- (lv) Stated that he did not get any documents about assets in Clause 3(d) of 2007 Will.**
- (lvi) In regard to bequeath in Clause 3(d) he stated that he asked for details of property and Testatrix only gave him two (2) Titles and SCC Demand Notice.
- (lvii) Agreed that Titles are registered in Land Registry and he could have carried out searches.**
- (lviii) Denied that he was in a particular hurry to do 2007 Will.**
- (lix) When it was put to him that he was content to draft Clause 3(d) of 2007 Will in respect to land at Delai Labasa with no specific details, he stated that all Testatrix said was Native Lease is there and if he had known she had more land then he would have asked.**
- (lx) In reference to Clause 3(e) of 2007 Will he stated when Testatrix called she said Suva Property, when he asked and she gave Demand Notice from SCC.
- (lxi) When asked why he was content with seven (7) year old Demand Notice, he stated that **she showed it to him and he believed property to be hers.**
- (lxii) Stated that he knows now that Suva Property has been transferred after hearing about it but has not seen the Title.
- (lxiii) Stated that he made arrangements with Daya Singh to have 2007 Will signed by the Testatrix.**
- (lxiv) Stated that he did not phone him.**
- (lxv) Stated that Daya Singh did not know he was coming to the property on 22 January 2007, and when he walked through the Shop, Daya Singh was there when he told him that he wanted to see his mother and Daya Singh took them.**
- (lxvi) Stated that he knows he needs two (2) witnesses, Law Clerk acts as second witness and he takes Law Clerk.**
- (lxvii) Denied that he did not take his Law Clerk because Daya Singh arranged second witness and stated that he met Doctor Kiran Gaikwad before at Daya Singh's place and when he went there Daya Singh, Doctor and one**

or two other persons were there and Daya Singh took him and Doctor upstairs.

- (lxviii) **Stated that he met Doctor Kiran Gaikwad 3 or 4 days before 22 January 2007, or thereabout at Daya Singh's place.**
- (lxix) **When it was put to him that it was apparent that Doctor Kiran Gaikwad was Daya Singh's friend he stated that he saw them together and sometimes they drank grog.**
- (lxx) When asked if he knew who Doctor Kiran Gaikwad was he stated that he met him one (1) month before.
- (lxxi) Stated that he did not act for Daya Singh and they both are from Labasa and know each other.
- (lxxii) **Stated that he did not tell Daya Singh that his mother was in touch with him or that his mother was going to execute Will in a short while.**
- (lxxiii) **When asked if Doctor Kiran Gaikwad being a witness was Daya Singh's idea he stated "no" and that Doctor Kiran Gaikwad was there and agreed to be a witness.**
- (lxxiv) **Agreed that when he went there, he knew Doctor Kiran Gaikwad would be a witness which was subject to arrangement made 3 or 4 days before at Daya Singh's place when Doctor Kiran Gaikwad was drinking grog with Daya Singh.**
- (lxxv) **Stated that neither Daya Singh nor anybody else paid his fee for 2007 Will till today.**
- (lxxvi) Stated that Daya Singh did not pay for his air ticket to New Zealand and that he did go to New Zealand.
- (lxxvii) Stated that Daya Singh did not assist him in anyway and that he only paid for his airfare and hotel expenses when he came for previous trial.
- (lxxviii) **When asked if he arrived to have 2007 Will executed after 10.00am he stated that he cannot remember and it was around 10.00am.**
- (lxxix) Stated he remembers what he did when he went there.
- (lxxx) When it was put to him that he could remember everything else except for time he stated that he did see his watch.
- (lxxxii) Stated that on 22 January 2007 he only went there once.
- (lxxxiii) When asked as to how Testatrix fully appeared to understand effect and meaning of Will **he stated that he read and explained to her and asked if she understood it and whether she wanted to sign to which she said "yes."**
- (lxxxiiii) **Confirmed that Testatrix did not ask any questions.**

- (lxxxiv) Stated that he did not ask about significance of Clause 3(a) of 2007 Will or whether she is happy for Daya Singh to take control of buildings and company.**
- (lxxxv) In respect to no specific bequeath provided for Jagjeet Singh solely he stated when asked if he discussed possibility of unique treatment leading to disputes later.
- (lxxxvi) Stated that to understand correctly he read out terms of 2007 Will to Testatrix.
- (lxxxvii) Stated that he did not discuss about the significance of the bequeath and that he did not give Testatrix opportunity to read but he read it.**
- (lxxxviii) Stated that Testatrix held copy of Will for about 15 to 20 minutes.
- (lxxxix) Stated that it was an open room and housegirl was in one of the rooms on the side.
- (xc) Stated that Pushpa was not in the room.
- (xci) When it was put to him that Pushpa will give evidence that Doctor Kiran was not with him he stated that Doctor was with him.
- (xcii) Stated that he could not say if Pushpa could see what was going on.
- (xciii) Did not agree when it was put to him that Pushpa would say that Testatrix's thumbprint was put in 2007 Will, with the assistance of Daya Singh.
- (xciv) Stated that Daya Singh may have known he is getting Will signed but he could not say.**
- (xcv) Stated that Daya Singh did not come into the room after Will was signed but he (witness) went down and went away.**
- (xcvi) When it was put to him that Testatrix was lying down and could not sit he stated that when he went there she was sitting on the bed.**
- (xcvii) Stated that he did not speak to Daya Singh about the Will and only spoke to him after Testatrix died.**
- (xcviii) Stated that after Testatrix died he went to Daya Singh and said that they need to advertise.**
- (xcix) Stated that Daya Singh was not surprised that he was the Trustee.**
- (c) Stated that he reads Fiji Times but did not see advertisement by Sherani & Co.
- (ci) Stated that he received letter from Sherani & Co. and from it, it was clear that their client had another Will.**
- (cii) Stated that he did ask for copy of Will from Sherani & Co.**
- (ciii) Stated that after that letter he did not do anything further and he told Daya Singh about it.**
- (civ) Stated that he did not consider lodging caveat as he had no further instructions.**

- (cv) Stated that he was aware about Power of Attorney given by Testatrix to Charan Jeet Singh.
- (cvi) Stated that he was not asked to draft Revocation of Power of Attorney and he did not give Revocation of Power of Attorney to Daya Singh.**
- (cvii) Stated that he did not render bill of Cost for the 2007 Will because Daya Singh did not ask for it.**
- (cviii) Stated he did not recover TLTB fees from Testatrix.**
- (cix) Denied he did not ask for re-imburement because he was doing those jobs as a favour to Daya Singh.**
- (cx) Agreed that Testatrix had lot of assets and shop business.
- (cxi) Stated that his charge for Will would be between \$50 to \$100.00 depending on client.**
- (cxii) Stated that TLTB Consent fee was paid by him.**
- (cxiii) Stated that advertisement of Will cost \$100.00 or something and that was paid by Daya Singh.
- (cxiv) Agreed that real reason he did not charge for 2007 Will was that he agreed to do a favour for Daya Singh.**

27. During re-examination PW2:-

- (i) Stated that he interprets Clause 3(a) of 2007 Will to grant all shares in Gurubachan Singh and Company Limited.**
- (ii) Stated that if there was surplus in respect to Life Insurance Policy it would have gone to Testatrix's two daughters.
- (iii) Stated that he was working on transfer of CL2942 before Testatrix died and if Testatrix would not have died he would have rendered the Bill.

28. PW3 during examination in chief gave evidence that:-

- (i) He has been a registered medical practitioner in Fiji since 2002 and at time of trial was Acting Medical Superintendent at St. Giles Hospital, Suva.
- (ii) He worked in Suva and was in Labasa Hospital in the years 2007 to 2009 and 2011.
- (iii) He has no special qualification on Mental Health issues but has Post Graduate Diploma in Mental Health and International Diploma in Mental Health, Human Rights and Law.
- (iv) He recalls having dealings with Testatrix in 2007 and she lives on top of building which is half occupied by Daya Singh and half by her.

- (v) He recalled witnessing Testatrix's Will on 22 January 2007.
- (vi) On that day at around lunch he was at Daya Singh's shop where he usually goes for lunch meeting to have grog with friends when he was told by Daya Singh that his mother made Will and his lawyer Sadiq who made the Will, will bring it.**
- (vii) On that day they were taken upstairs, and Testatrix knew him by face as she had seen him with Daya Singh.
- (viii) When they went upstairs Daya Singh made them sit there (him and Sadiq) and he went downstairs, while Testatrix was sitting on the bed.
- (ix) He does not know if Testatrix's house girl was there because kitchen was at the back and she may have been there.
- (x) He does not know if house girl could have heard the discussion if she was there.
- (xi) Sadiq brought Will with him, read the Will in Hindustani language and Testatrix asked some questions but he does not know what was being discussed.**
- (xii) Testatrix signed the will using her thumb print.
- (xiii) Himself, Sadiq and Testatrix signed the Will and it was signed when all three were present.
- (xiv) He has not been Testatrix's doctor prior to signing the Will.**
- (xv) He observed Sadiq explaining the Will to Testatrix and looked like she understood and asked questions.**
- (xvi) Testatrix looked weak at that time as she was suffering from some illness and was in bed.**
- (xvii) He cannot say about Testatrix's mental illness because no such test had been done but she was looking alert and knew what Sadiq was saying.**
- (xviii) He is aware that in April 2007 Testatrix was admitted in Medical Ward at Labasa Hospital and he was part of the medical team.**
- (xix) In reference to "medication on discharge" stated in Doctor Mua's letter report dated 23 February 2017 (Exhibit P15), he read page 1 of Exhibit P15.
- (xx) Described purpose of "Medication on discharge" and its likely effect on mental health as follows:
- (a) **ASA 100mg OD:- Aspirin used in cases having ischemic heart disease to clear blood and prevent clotting of blood but has no effect on mental health.**
  - (b) **Isordil 10mg tds:- used for ischemic heart disease which has no effect on mental state.**
  - (c) **Calcitriol:- used as calcium supplement and has no effect on mental state.**
  - (d) **Glipizide:- used to lower sugar level and has no effect on mental state.**

- (e) **Voltaren SR 100MG bd/prn:-** pain killer and has **no direct effect on mental status.**
- (f) **Multivitamins tablet OD:-** vitamin supplement and has **no direct effect on mental status.**

(xxi) Confirmed that at page 2 of Exhibit P15 it is stated as follows:

“She presented again on 18/4/07 and died on 19/04/07 with:

- Generalised weakness
- Vague abdominal pains
- Decreased appetite
- Loose bowel motion

She was assessed as:

- Acute septic illness
- Likely acute Bacterial Gastroenteritis -??Typhoid”

- (xxii) He cannot say how long septic illness would have been present in respect to Testatrix **but “acute” suggests maybe one or two weeks and not more which he says became acute means short duration while chronic means once.**
- (xxiii) On 22 January 2007, he did not observe any of issues mentioned at paragraph 15 of Swaran Nandita Singh’s Report (Brief of Evidence)
- (xxiv) He is familiar with medications described in Swaran Nandita Singh’s brief of evidence which is as follows:
- (a) Valim is sleeping tablet and is not sure about digastric.
- (b) **Tramadol:- is pain killer which directly acts on brain.**
- (xxv) **These medication can make you drowsy and if over sedated can affect mental state.**
- (xxvi) He did not observe any form of drowsiness or mental concoction in Testatrix **as she was alert, understood what Sadiq was saying and asked question.**
- (xxvii) **When asked if it is possible that at certain periods Testatrix could be drowsy he stated that report suggests ups and down but he cannot say exactly.**
- (xxviii) When asked as to whether his observation of Testatrix concerned him about her mental state he stated that **if he had been asked to witness Will as a doctor he would not have witnessed because he had to interview and do assessment of her mental capacity.**
- (xxix) At the time of execution of Will Testatrix was able to listen and do what was said to her.
- (xxx) He is forming that view because of his medical experience.

29. During cross-examination PW3:-



- (i) Agreed that **he has to carry out proper examination before giving opinion on someone's health and tests are carried on elderly people which tests involve defined question and process, designed to determine whether that person's cognitive abilities are impaired or not.**
- (ii) Stated that when he attended Testatrix on 22 January 2007 he did not carry out any tests or physical examination on Testatrix and was in the room for maybe twenty (20) or thirty (30) minutes.
- (iii) **Agreed that he was not called as a doctor but a friend of Daya Singh.**
- (iv) When it was put to him that Testatrix said very little he stated that she **asked few questions to Sadiq.**
- (v) When asked what questions she asked he stated that **he did not pay much attention because they were discussing themselves.**
- (vi) **Stated his understanding was that he was called simply to witness execution of Will and his role was limited to view Testatrix putting her thumb print, Sadiq putting his signature and him putting his signature.**
- (vii) Stated that he was aware that Testatrix had some physical illness, was physically weak and was mostly in bed.
- (viii) Stated that he was not aware of Testatrix being on any medication or the level of pain she was experiencing.
- (ix) **Stated that if a person suffers severe pain they get irritable because of pain.**
- (x) **Stated that for an elderly person who is unwell and suffer pain for days will not cause mental confusion directly but it can be caused if pain killer is taken.**
- (xi) **Agreed that Tramadol is very strong pain killer and acts on the brain to control pain.**
- (xii) Stated that he is not aware about any instruction to not to drive after taking Tramadol.
- (xiii) When it was put to him that if he was aware that three (3) house girls were looking after her could there have been some problem he stated there could be many reason why house girls look after her and may be weakness.
- (xiv) Stated that he did not talk to Daya Singh about Testatrix's medical condition prior to visiting her on 22 January 2007.
- (xv) Agreed that he knows Daya Singh very well and stated that they have grog once or twice a week at Daya Singh's shop which was meeting place for their friends.
- (xvi) When it was put to him that he did a favour to Daya Singh he stated that he had no reason to refuse because person only signing in front of him.

- (xvii) **Stated that Daya Singh told him that Daya Singh's mother made a Will and he wanted him (PW3) to witness her signature.**
- (xviii) Stated that Daya Singh did not tell him that he was Sole Executor and Trustee in the Will he prepared.
- (xix) Stated that nothing was discussed about Daya Singh's mother leaving him all assets of the Company.
- (xx) **When asked if arrangement to witness 2007 Will was made 3 or 4 days earlier he denied that and stated that it was coincidence that he went there when Daya Singh told him that Testatrix made Will which Sadiq will bring and he can witness the Will.**
- (xxi) **Agreed that on 22 January 2007, he was going to Daya Singh's place for a regular normal lunch time get together and stated that his lunch time is sometimes between 12 noon to 1pm and sometimes between 1pm to 2pm.**
- (xxii) **Stated that he is clear that he went during his lunch time and not at 10.00am as at 10.00am because at this time he is quite busy.**
- (xxiii) Stated that it is quite clear that it was not agreed between him, Sadiq and Daya Singh few days before, but if Sadiq and Daya Singh did, he does not know and he was not expecting.
- (xxiv) Stated that Daya Singh took them in the room then left.
- (xxv) When it was put to him that housegirl's evidence will be that Daya Singh was in room and asked if it were correct or housegirl was mistaken he stated that Sadiq was not there and housegirl was mistaken.
- (xxvi) Stated that he cannot remember Daya Singh asking housegirl to rub ink off Testatrix's thumb.
- (xxvii) **Stated that Sadiq took thumb pad to Testatrix and asked her to put her thumb on the pad and that is all he remembers.**
- (xxviii) **When it was put to him that after that Sadiq lifted her to put thumb print on the Will, he stated that he cannot remember but something like Sadiq took thumb pad and he is not sure about exact sequence of events.**
- (xxix) Agree that date of 2007 Will is in different font.
- (xxx) Stated that he cannot remember now if these words and date was there when he witnessed the Will.
- (xxxi) When asked if Sadiq came earlier then him he stated himself, Sadiq and Daya Singh went upstairs together.
- (xxxii) **Stated that when he went there on 22 January 2007, Daya Singh told him that Sadiq has gone to his office to get Will which he is supposed to witness.**

- (xxxiii) **When asked if Testatrix looked at the Will before Sadiq read it out he stated that she could not understand English language and so there was no need to give it to her.**
- (xxxiv) **When asked if Testatrix had copy of 2007 Will, he stated Sadiq was reading and translating in Hindi.**  
**When Court sought clarification as to whether Sadiq was reading Will in English and interpreting it in Hindi or he was explaining directly in Hindi he stated that explaining in Hindi but he was not sure.**
- (xxxv) When it was put to him that maid will say that she was present in the room when 2007 Will was executed he stated that he did not see her but she might have been at the back which he does not know.
- (xxxvi) When it was put to him that maid will say that he was not present when thumb print was put on documents he stated “no” he was there.
- (xxxvii) Stated that he did not see Testatrix’s thumb print on any other document and he was not aware about discussions between Sadiq and Daya Singh in respect to TLTB Application.
- (xxxviii) Agreed that Application for Consent was not signed when he was there.
- (xxxix) Stated that he was not sure if Daya Singh was concerned about wiping ink or rubbing the wall, and may have wiped but he does not remember.
- (xl) Agreed that after 2007 Will was executed he went downstairs for a social meeting and that Daya Singh went to check his shop and came back.
- (xli) Stated that he did not chat with Daya Singh about his mother.
- (xlii)** Stated that it is possible that pain may make people move mentally a lot.

30. The Plaintiff during examination in chief gave evidence that:-

- (i) He is the eldest son of Testatrix and Gurubachan Singh and Testatrix was born on 17 September 1923, and died on 19 April 2007, at Labasa Hospital.
- (ii) Defendant is the youngest son of Testatrix and Gurubachan Singh.
- (iii) He is aware about Will of Testatrix dated 2 September 2006 (**2006 Will** – Exhibit D3) which was admitted to Probate with Defendant being Executor and Trustee.
- (iv) He is aware about Testatrix’s Will dated 5 August 2005 (**2005 Will** – Exhibit P16).
- (v) 2005 Will was signed by Testatrix by putting both her signature and left thumb prints which was witnessed by Raman Singh who acted for his mother (Testatrix).
- (vi) Recollect talking to Testatrix by telephone in the morning of 22 January**

- 2007 when she said to him that Sadiq was coming with some documents and he should send him upstairs.**
- (vii) **He was not aware about the nature of document Sadiq was bringing and he did not provide Sadiq any instructions for preparation of that document.**
- (viii) **Sadiq arrived at premise at lunch time and Sadiq said to him that he wanted to see the Testatrix and required witness for the document.**
- (ix) **He then called people sitting at the back and agreed for Doctor Kiran to be the witness.**
- (x) **Doctor Kiran was in a social meeting where Rotarians were having a discussion.**
- (xi) **He asked him (Dr Kiran) if he could go with Sadiq to which he answered yes, and after that he took Sadiq and Doctor Kiran upstairs.**
- (xii) He left Sadiq and Doctor Kiran at Testatrix's premises and came downstairs, where they were sitting and resumed their social meeting.
- (xiii) He did not notice Testatrix's housegirl when he went upstairs.
- (xiv) **He saw Doctor Kiran after they left Testatrix but did not talk to him.**
- (xv) He did not see Sadiq after he left Testatrix.
- (xvi) Sadiq and Doctor Kiran took about twenty to thirty minutes with the Testatrix.
- (xvii) Testatrix's medical condition on 22 January 2007, was that she fell but she was sitting and talking properly.
- (xviii) When asked if Testatrix was speaking most of her time in bed he stated that she could walk with a frame.
- (xix) **Testatrix's housegirls used to help her in cooking, washing and cleaning the house.**
- (xx) When asked if he saw any employees of Testatrix's Bank helping her from time to time he stated that Bank Officers used to come from time to time to see her.
- (xxi) He did not see Dr. Nandita Singh at her mother's premises on 22 January 2007.
- (xxii) **On that day he was not at Testatrix's premises all day but was in his shop from where he could see who was coming and going in relation to his mother.**
- (xxiii) After Testatrix's death on 19 April 2007, he saw Sadiq in middle of May when Sadiq brought an envelope and gave it to him.
- (xxiv) Sadiq did not tell him what was in the envelope and asked him to open it and see.
- (xxv) He is not aware that he applied under influence, and did not apply undue influence on Testatrix's Will.
- (xxvi) **Copy of 2007 Will (Exhibit P6) was in the envelope and it was the first occasion he saw the Will.**

- (xxvii) He had discussions with Sadiq when he asked him what to do with the Will and Sadiq responded by asking him to apply for Probate.
- (xxviii) He instructed Sadiq to apply for Probate on his behalf and Sadiq advertised for Probate in the Fiji Times of 18 May 2007, (Exhibit P7).
- (xxix) He saw the advertisement when it appeared.
- (xxx) Sadiq called him after the advertisement to advise that he received fax from Sherani & Co. which was showed to him (Exhibit P8) and he instructed Sadiq to send copy of Will to Sherani & Co. and he is aware that Sadiq provided copy of the Will.
- (xxxi) He knows that Testatrix signed documents by left thumb print.**
- (xxxii) He has seen Trust Instrument dated 12 September 1969, which is signed by himself, Testatrix and Gurubachan Singh (Exhibit P17).
- (xxxiii) His father signed Trust Instrument (Exhibit P17) by putting his signature and his mother signed Trust Instrument by putting her left thumb print.
- (xxxiv) Two days after Sadiq sent copy of 2007 Will to Sherani & Co. he had telephone conversation with Defendant (his brother) when Defendant said to him that his (Plaintiff's) Will was older whereas his (Defendant's) was later one and that he (Plaintiff) should not pursue Probate.
- (xxxv) He took Defendant's word as he is his younger brother.
- (xxxvi) In respect to state of his relationship with the Defendant he stated that they were in good talking terms.**
- (xxxvii) He asked Defendant for copy of Will the Defendant referred several times but no copy was provided in response to his request.**
- (xxxviii) In late 2007, he suffered from a stroke and CT Scan was sent to neurosurgeon in Brisbane.
- (xxxix) He suffers from diabetes, high blood pressure and in 2010 developed kidney issue.
- (xl) He had to go on dialysis three times a week.
- (xli) His health issues did not affect his ability to attend to business.
- (xlii) His health issue affected investigating Probate issues.
- (xliii) In November 2010, he moved to Queensland permanently as there was no dialysis in Labasa.
- (xliv) Subsequently he decided to investigate it was because of an incident where he sent his daughter to take over business and she was chased out of premises by the Defendant.**
- (xlv) He then instructed lawyers to check on Probate which led to issuing this proceedings in September 2012.

- (xlvi) He is aware about Extra Ordinary General Meeting of Gurubachan Singh & Co. Ltd. on 20 September 2012 of which he received notice and the purpose of meeting was to remove him from directorship and appoint new director.
- (xlvii) Company Search of Gurubachan Singh and Co. Ltd. as at 24 August 2012 shows directors as himself, Testatrix and Gurbachan Singh.
- (xlviii) Since his parents were deceased details have not been updated and shareholders are shown on Page 1 of search (Exhibit P18) with page 2 showing several borrowings.
- (xlix) As at date of Testatrix's death (18/4/2007) company's borrowing was approximately \$200,000-00.
- (l) He provided monies to Company from his own funds as shareholders loan.
- (li) Bank statement of Company (Ledger Account Entry) entries show amount of shareholders loan to Company.
- (lii) On 2<sup>nd</sup> page of Ledger Entry shows shareholders loan of \$72,276.08 from him to the Company.**
- (liii) Page 3 shows another shareholders loan of \$114,008.46 which adds up to \$186,284.56.**
- (liv) He sought repayment of those loans from Company but did not receive any response from the Company.**
- (lv) He is entitled to apply for Probate in respect to 2007 Will and intends to claim for shareholders loan in this proceedings.

31. During cross-examination the Plaintiff:-

- (i) When shown 2006 Will, stated that he recognised it as 2006 Will and that signature under date on page 3 looks like Testatrix's (his mother's signature).**
- (ii) Agreed that clause 3 of 2006 Will provided that all properties be divided amongst all children in equal share and he is one of named equal beneficiary.
- (iii) Accepted that 2006 Will provided just and fair distribution to all siblings of the family and his mother (Testatrix) would have wanted all children to share equally.**
- (iv) Accepted that his younger brother, Charan Jeath Singh was successful businessman and was well with money.
- (v) Accepted that at that time (time of 2006 Will) Testatrix (Mother) would have been comfortable to have Charan Jeath Singh as Executor and Trustee.**

- (vi) **Accepted that Testatrix (Mother) received advice from Raman Singh, Solicitor about 2006 Will.**
- (vii) After copy of 2006 Will was shown to him he accepted that Solicitor's signature on page 3 is of Raman Singh and agreed that 2006 Will has statement which says 2006 Will was read and explained to Testatrix in the Hindustani language and she appeared fully to understand and approved the same.
- (viii) When it was put to him that he said his mother (Testatrix) and father took advice from Raman Singh many times he stated he does not know.
- (ix) Stated that he is not aware that when 2006 Will was signed Raman Singh was Testatrix's (Mother) lawyer for some twenty-six (26) years.
- (x) **Agreed that in September 2006 when Testatrix made 2006 Will she was of good health for someone of her age.**
- (xi) **Agreed that in September 2006 Testatrix (Mother) was travelling to and from Labasa to Suva for her business and she took active role in her business in Labasa and Suva.**
- (xii) Stated that he is not aware that Testatrix met Raman Singh and discussed her business affairs prior to making 2006 Will.
- (xiii) Accepted that in September 2006 Testatrix (Mother) could tell her lawyer Raman Singh what she wanted to do.
- (xiv) In respect to 2007 Will, agreed that he said Sadiq came to the premises.
- (xv) **Agreed that he knows Sadiq well, saw him regularly and knows him as a reputable Solicitor.**
- (xvi) Stated that he heard Sadiq say that some three to four days before 22 January 2007, Sadiq was in his shop with Doctor Kiran.
- (xvii) **Stated that he does not agree with Sadiq's evidence that he (Plaintiff) agreed for Doctor Kiran to be a witness.**
- (xviii) Stated he did not know that Sadiq was bringing a Will and his mother did not tell him that Sadiq would bring a Will.
- (xix) Agreed that his case to this Court is that on 22 January 2007, his mother (Testatrix) was proposing to make Will appointing him as Sole Executor and Trustee.
- (xx) Stated that he is saying that Testatrix rang him to say Sadiq was coming but she did not tell him she is making him Executor of her Will.
- (xxi) Stated Testatrix did not say Will but said document.
- (xxii) **When it was put to him that if his elderly mother called a Solicitor and 2<sup>nd</sup> witness was needed he must know it was a Will he stated that he "guessed".**
- (xxiii) Stated on 22 January 2007, he was on talking terms with Testatrix (Mother).

- (xxiv) When asked as to why he did not ask Testatrix (Mother) what Sadiq was coming for he stated he did not ask her any question.
- (xxv) **Agreed that as one of Testatrix's children Will is something which would concern him.**
- (xxvi) Stated that the reason he did not ask Testatrix was that everything was normal in the family and as such he did not bother to ask her question.
- (xxvii) Stated that he did not ask Sadiq as to what was in 2007 Will.
- (xxviii) **Agreed that Doctor Kiran is his friend.**
- (xxix) Stated that on 22 July 2007, Sadiq came to the premises where Doctor Kiran and them were sitting
- (xxx) **Stated that Sadiq did not bring law clerk with him to be second witness and Sadiq arrived after Doctor Kiran.**
- (xxxi) **When it was put to him that Pushpa will say she was in the room when Testatrix thumb print was put on the Will he stated that to be untrue.**
- (xxxii) When asked why he did not feel free to stay in the room he stated that he did not have any interest in what was happening.
- (xxxiii) Stated that he did not feel any need to ensure that Testatrix knew what was happening because she was talking properly, so there was no need for him to go and see her.
- (xxxiv) **When it was put to him that maid will say he helped Testatrix put thumb print on the paper and he told maid to wipe ink off Testatrix's thumb he stated that to be untrue.**
- (xxxv) Stated that **Sadiq did not tell him that it is better he leave the room and he did not go inside the room.**
- (xxxvi) Stated that he did not go up and speak to Testatrix after Sadiq and Doctor Kiran left.
- (xxxvii) When it was put to him that Pushpa will say that Doctor Kiran was not in the room when Sadiq witnessed thumb print of Testatrix he stated that he did not know but he left Doctor Kiran at door with Sadiq and came down.
- (xxxviii) Stated that prior to visit by Sadiq on 22 January 2007, he did not talk to Sadiq about Testatrix's assets.
- (xxxix) Stated that he did not have any involvement in giving his boy documents to take to Sadiq.
- (xl) Stated that Testatrix kept documents in her house and he is not aware where in the house it was kept.
- (xli) Agreed that Testatrix could not read or write and it was his belief that as at 22 January 2007, Testatrix had clear mind and knew assets she owned.



- (xlii) When it was put to him that Testatrix could not make phone calls and maid would help her to make calls he stated that as far as he knew she could press the number and dial.
- (xliii) When it was put to him that if Testatrix wanted to contact Sadiq she could dial his number he stated that he did not know if Testatrix knew Sadiq's number as she would dial family members but Sadiq's number he does not know.
- (xliv) Stated that he did not give Testatrix Sadiq's number.
- (xlv) Stated that subsequent to 1991 Will (Exhibit P5) Testatrix learnt to write her name and his father taught her to write simple name.**
- (xlvi) Agreed that Testatrix enjoyed writing her own name and that 2006 Will had her signature on it.
- (xlvii) Stated that 2005 Will (Exhibit P16) has Testatrix's signature as well as her thumb print.
- (xlviii) Agreed that he was aware that Testatrix used to write cheques with her signature and Bank of Baroda cheques dated 26/4/2006, 23/5/2006, 15/6/2006, 22/6/2006 and 25/6/2006 (Exhibit D6) were signed by Testatrix.
- (xlix) Stated that Testatrix employed Prem Chand who worked in R.K. Fashion shop and would commonly write cheques and give it to Testatrix to sign.
- (l) Stated he was not aware if Testatrix pre-signed number of blank cheques.
- (li) Stated that he did not know if Testatrix kept her cheque book under the pillow of her bed.
- (lii) Agreed that "R. G. Singh" at top of Will annexed to Probate No. 42173 (**Exhibit P10**) taken out in 2004 is Testatrix's signature.
- (liii) When it was put to him that given Testatrix's health on 22 January 2007 deteriorated and the reason she did not sign the Will was that she was too weak to do Will, he stated that he was aware but she had her own thinking as to what to do.
- (liv) Confirmed that before 22 January 2007, Testatrix had a fall and stated that she was in good physical health.
- (lv) When asked if Testatrix suffered fall at Nausori Airport, he stated that he did not know about the fall and he was told that she fell in the house.
- (lvi) Did not accept that following the fall Testatrix's health deteriorated badly.**
- (lvii) When asked if he accepts Testatrix suffered serious injury and illness following fall he stated that she had serious injury.**
- (lviii) Agreed that Testatrix was hospitalised at Labasa Hospital from 20 to 24 November 2006.**

- (lix) **When it was put to him that Testatrix not only had back injury but had health problems as well he stated that he did not know about health problems.**
- (lx) **Agreed that Testatrix got re-admitted from 1/12/2006 to 11/12/2006 and accepted that on this occasion it was not because of back injury but whole range of medical problems as set out in the medical report (Exhibit P15) which from report included constipation, abdominal pain, poor oral intake and melena.**
- (lxi) Agreed that his shop is downstairs from Testatrix's house and stated that he was in shop everyday.
- (lxii) Stated that when he goes to open his shop in the morning he had to go through stairs which leads to Testatrix (his mother's) house and when he passes through her house he says hello to her.
- (lxiii) **When asked if Testatrix would commonly complain about her health and illness he stated that at times when it is very serious she will tell him.**
- (lxiv) When asked if he accepted Testatrix's condition deteriorated after first hospitalisation he stated that Testatrix was only complaining that she was not well with no family members to look after her, he decided to put her back in the hospital which is better place to get cured.
- (lxv) Agreed that Testatrix has been in hospital for 15 to 16 days and was 83 years old.
- (lxvi) Stated that Testatrix was not suffering lot of pain while in hospital and she was doing better.
- (lxvii) **Agreed that after Testatrix was released from hospital she was more or less bed ridden and housegirls were always caring for her.**
- (lxviii) When it was put to him that 2 housegirls were there during night and 1 during day he stated 1 during night and 1 during day.
- (lxix) **Stated that he did not talk to housegirls when he came and left on 22 January 2007.**
- (lxx) Stated that he did not talk to housegirls when he came and got out in late December 2006.
- (lxxi) **Stated that he is not aware if housegirls were caring for Testatrix by washing her or that Testatrix needed housegirl for all her basic needs.**
- (lxxii) **Stated that he was not present at Testatrix's house throughout the day to observe housegirls.**
- (lxxiii) **Stated that he cannot comment on Testatrix being assisted by housegirls to go to toilet or assisted with eating and stated that she could walk with frame.**

- (lxxiv) Stated that he did not know if Testatrix was on diapers and he did not supply any diapers for her.
- (lxxv) Stated that he had no knowledge about what medicine Testatrix was taking in December 2006.
- (lxxvi) Stated that he was not aware that Testatrix's memory was poor in December 2006 and stated that she was perfect.
- (lxxvii) When it was put to him that his mother (Testatrix) suffered lot of pain in December 2006 he stated that she complained about normal pain which means that she had pain and was taking Panadol.
- (lxxviii) Stated that he did not see Testatrix talking to herself and it was not true.**
- (lxxix) When it was put to him that Testatrix talked sensitically over and over again he stated that he had not seen and never heard.**
- (lxxx) Stated that he did not see Testatrix hallucinating and losing touch with reality and that she was perfect, was walking and talking.
- (lxxxix) Denied that from time to time from December 2006 to January 2007 Testatrix was tearing off her clothes and ripping her top.
- (lxxxii) When it was put to him that Testatrix was very distressed and tore her clothes he stated that she never tore her clothes in front of him.
- (lxxxiii) When it was put to him that in late December 2006 and January 2007, Testatrix was not able to go down to shop he stated that she would come down with housegirl and used frame in shop.
- (lxxxiv) When it was put to him that in January 2007, Testatrix no longer went downstairs or had anything to do with running of the shop he stated that she was still running the shop.**
- (lxxxv) When it was put to him that in shop Prem Chand would take cheques and do banking he stated that he did not know about Testatrix's business as she had her own business.
- (lxxxvi) **When it was put to him that Testatrix was not going to Bank to make deposits he stated that she never went to Bank to make deposits.**
- (lxxxvii) Agreed that his sister Jeet from US came to visit Testatrix in November 2006.
- (lxxxviii) Stated that he is not aware if Jeet came to Labasa at Testatrix's request to assist her and comfort her in her illness.
- (lxxxix) Stated that Jeet's visit and Testatrix's fall was purely coincidental.
- (xc) Accepted that when Jeet was in Labasa she spent lot of time with Testatrix and Jeet would have lot of opportunity to observe Testatrix's condition.**
- (xci) Agreed that Jeet took video of Testatrix's condition which he watched on 24 July 2013.

- (xcii) **Agreed that in December 2006 when Jeet was here she took video which shows Testatrix was in weak condition.**
- (xciii) **Disagreed when it was put to him that Jeet will say that between 5 and 19 December 2006, Jeet saw Testatrix's condition deteriorated.**
- (xciv) Disagreed when it was put to him that other witnesses will say Testatrix's condition further deteriorated in January 2007.
- (xcv) Agreed that his sister in law Nandita Singh is a medical practitioner.
- (xcvi) **Disagreed that Nandita Singh visited Testatrix in December 2006 and January 2007.**
- (xcvii) **When it was put to him that Nandita Singh will give evidence that Testatrix was fully cared for including washing and toilet functionalities he stated that he was not aware about it.**
- (xcviii) When it was put to him that if he had his shop downstairs and saw Testatrix daily he would be aware of level of dependency she had, he stated that when he passed house, she would sit in front room near window and he would speak to her and then go.
- (xcix) **When it was put to him that it was his evidence that he greeted Testatrix briefly and did not investigate about her medical condition he stated that he did on occasions as she was in hospital he would ask her if she was okay and she would say she was alright.**
- (c) **When it was put to him that Nandita Singh will say Testatrix had to wear diapers and would eat soup and blended food he stated that he is not aware.**
- (ci) **When it was put to him that Nandita Singh will say in January 2007 Testatrix was drowsy and not alert as effect of painkiller and general medical condition was fogging her mind, he stated that he is not aware and nobody told him.**
- (cii) When it was put to him that Nandita Singh will describe poor nutritional and weakness he stated that he is not aware.
- (ciii) Denied that Testatrix's mind deteriorated, was very ill and needed twenty four hour care and said he was not aware.
- (civ) **Stated that even if witnesses Nandita Singh, Jeet Singh, Pushpa Wati, Panjali Pillay, Nita and Charan Singh would say Testatrix was ill he would still maintain that she was perfect.**
- (cv) When it was put to him that if Testatrix was making Will at anytime she would want to make Executor who was financially reliable he stated that he did not know her opinion and what she was thinking.

- (cvi) Agreed that knowing his parents his mother (Testatrix) was proud of the assets built by them.
- (cvii) Agreed that in 1935, his father travelled from India to Fiji, started with humble beginnings in Fiji, was a hawker and after 15 years (1960) established his own business in Labasa under the name of Gurubachan Singh & Sons and stated that he joined the business in 1965 and in 1969, they set up the Company.
- (cviii) When it was put to him that through 1960s, 1970s, 1980s, 1990s both his parents worked extremely hard he stated that, three of them did it.
- (cix) Agreed that when his father died, his mother (Testatrix) wanted to preserve all the assets and not lose them and she felt responsible that assets were not fettered away or lost.
- (cx) Denied that in January 2007, his mother (Testatrix) would have regarded him as a person with very bad history with money.
- (cxi) Denied that his mother (Testatrix) knew about his financial history and that is the very reason why she would not have appointed him as Executor of her Will.**
- (cxii) Agreed that the Company was most valuable asset in Testatrix's estate.
- (cxiii) When it was put to him that Company represented business built by his parents over a decade he stated that he was part of business.
- (cxiv) When asked to explain why Testatrix would want her and his father's share to him leaving all other children out he stated that in 2007 Will all were there.
- (cxv) Agreed that 2007 Will starts with him alone getting all shares and buildings owned by Company (Gurubachan Singh & Co. Ltd.) and Soap and Allied Industry.
- (cxvi) Did not accept that in January 2007, Testatrix would have been aware of his long history of financial mismanagement.**
- (cxvii) When it was put to him that Testatrix would not have made him Executor and given him all assets he stated that all properties debt were paid off except overdraft facility of \$200,000 secured by his personal property.
- (cxviii) Agreed that Testatrix was in a position to observe his business dealings over last forty (40) years.**
- (cxix) Did not agree that Testatrix would have seen his long and consistent loss making and mismanagement.
- (cxx) Agreed that in 1972, he insisted Company open up business in Suva and Suva branch of the Company operated wholesale and warehouse business.
- (cxxi) Denied that Suva branch of Company suffered heavy losses and had to be closed and stated that there was reason for closure.

- (cxxxii) Did not agree that Suva branch closed down and stated that he closed it himself.
- (cxxxiii) Denied that at time Suva branch closed down there was overall loss in its operation.
- (cxxxiv) Stated that Suva branch produced overall profit in years it operated.
- (cxxxv) Agreed that soap factory business started in Labasa under the name Soap and Allied Industries which was manufacturing laundry bar soap and he was responsible for managing soap factory business.
- (cxxxvi) Denied that soap factory closed by early 1990, but stated that it stopped operation after 2010.
- (cxxxvii) When it was put to him that soap factory closed because of his mismanagement and losses he stated that to be not true.
- (cxxxviii) When asked why soap factory closed he stated that in 1994, it bought machinery, continued making soap until 2009 and when he left in 2009, debt was paid off leaving a loan debt of \$23,000.00.
- (cxxxix) Denied it as a fact that he did not have enough money in soap factory business to buy raw materials.
- (cxxx) Denied it as a fact that bank would not advance him enough money to run the soap factory.
- (cxxxii) Agreed that Mortgagee Sale Notice (Document No. 26 in Agreed Bundle of Documents) from Bank of Baroda (BOB) was in respect to property owned by Soap and Allied Industry and where soap factory was located.
- (cxxxiii) When asked if he accepts soap business was a failure he stated that he left factory due to ill-health and there was deliberate pressure on Bank by some people to have Mortgagee Sale done, and when he was told about the advertisement he immediately paid off the debt.
- (cxxxiiii) Did not agree that allowing Bank situation to go to Mortgagee Sale is bad management.
- (cxxxv) Denied that Charan Jeath Singh paid BOB soap factory debts and stated that he paid it within a week of advertisement.
- (cxxxvi) Denied that he started night club business called TRIO and stated that he had no interest in that business and they were renting Gurubachan Singh building at Raojibhai Patel Street.
- (cxxxvii) Agreed that, that building was owned by Testatrix (Mother).
- (cxxxviii) Stated that he also had a supermarket business in Labasa.
- (cxxxix) When asked if he accepted that supermarket business did not thrive and did not make profit he stated that in 2005 he was very sick and was airlifted to Australia when doctors told him that he would not live for long.

- (cxxxix) Stated that he suffered from gangrene, his back was operated, he was flown to Nadi on a chartered plane, then to Brisbane on a stretcher and was admitted at Royal Brisbane Hospital for five (5) months.
- (cxl) Denied that suppliers would not supply stock and as such supermarket did not have stock and stated that he cut down on buying, told his staff to try and pay off debts and after getting better he decided to come back and close operations.
- (cxli) Agreed that letter dated 19 December 2007 from BOB is addressed to him showing state of banking arrangements several months after Testatrix (mother) passed away and that at the time Testatrix passed away he was managing the Company and Soap & Allied Industry as Managing Director.
- (cxlii) Agreed that he was Director of the Company until September 2012.
- (cxliii) When it was put to him letter from BOB sets out arrears he stated that at that time he had stroke and was in Australia.
- (cxliv) Agreed that Bank states that he will regularise accounts without delay.
- (cxlv) When it was put to him that access and arrears continued he stated that when he returned after treatment for stroke he regularised account including payment of debt.
- (cxlvi) When it was put to him that BOB letter states December 2007 and Mortgagee Sale was in 2011, he stated that only \$23,000.00 was left for payment.
- (cxlvii) When it was put to him that letter from BOB addressed to him personally refers to assurance given by him he stated that he had a stroke and after he returned he saw debt and paid.
- (cxlviii) When asked why he did not clear arrears before he left Fiji he stated that arrears occurred when he was not in Fiji.
- (cxlix) Agreed that there was another Mortgagee Sale advertisement on 3 February 2011, of his personal property when he was in Australia and he paid debt off in full.
- (cl) Accepted that the Company's affairs were being mismanaged by his Manager and he as Director was responsible.
- (cli) In response to Small Claims Tribunal Claim by Vodafone he stated that he was not here and left Fiji in 2010.
- (clii) Agreed that there was something wrong with the Company and stated that his Manager mismanaged the Company and stated that he sent his daughter to sort all out and pay debt.
- (cliii) In reference to email dated 19 November 2012, from Tattslotto he stated he was in Australia and Company was managed by Manager.
- (cliv) Agreed that town rates due to Labasa Town Council was in arrears.

- (clv) Accepted that there was mismanagement and stated that it was by Manager.
- (clvi) In reference to letter dated 8 November 2013, from Lands Department he stated that he was not here and in 2011, post box was taken over by Charan Jeath Singh.
- (clvii) Agreed that email dated 21 January 2013, from Inland Revenue states no tax return lodged from 1990 to 2011.
- (clviii) When it was put to him if he thinks Company competently managed then it should lodge annual tax returns he stated that email says except for 1997 and 1998 all lodged.
- (clix) When it was put to him that email says no VAT Return lodged from May 2010, he stated that Soap operations closed in 2010.
- (clx) Stated that when he was director of the Company he sold Company's shares in APCO Coating.
- (clxi) Denied that he took proceeds of sale of shares for his personal benefit and stated that it went into Company's main Account.
- (clxii) Stated that shares were sold for \$340,000-00 which was paid in instalments.
- (clxiii) Agreed that in 2010, the Company sold property comprised in Crown Lease No. 6023 for \$125,000.
- (clxiv) When it was put to him that Company records does not show record of sale proceeds into Company Account he stated that some payment were received by the Company and deposited in Company Account and balance is with Company's lawyers which Company directors should check.
- (clxv) Agreed that sale took place on 20 August 2010, and stated that when he left monies were left with lawyers and he is not sure.
- (clxvi) When asked if only \$15,000-00 is left in Lawyers Trust Account he stated he is not sure and he does not have documents.
- (clxvii) Agreed that monies held in Lawyers Trust Account is very small part of sale.
- (clxviii) Agreed that Company sold shares in Flour Mills of Fiji Ltd. and stated that he is not sure in which month but was sold before 2010, and Company had many shares which were sold one by one.
- (clxix) Agreed that Company sold its property in Savusavu in 2009, and stated that proceeds of sale went to Company Account to reduce overdraft.
- (clxx) Denied that if Testatrix was going to make Will in January 2007, she was very upset about him extracting money from Testatrix against her wishes.
- (clxxi) Admitted receiving money from Testatrix for his personal use.
- (clxxii) Denied that from time to time he had need for funds and asked Testatrix for money or that he asked Testatrix for cheques to pay his debts.



- (clxxiii) Denied that at one occasion he asked his son Rajeev to persuade Testatrix to give him (Plaintiff) some money or asked Rajeev to persuade Testatrix to give letter authorising BOB to give him (Plaintiff) \$5000.00.
- (clxxiv) When asked if Testatrix wrote letter to BOB to release him money he stated that she was a director and if she wrote, he was not aware about it.
- (clxxv) When it was put to him that Testatrix was very upset as he applied pressure on her to give him money he stated it to be not true.
- (clxxvi) Denied that in December 2006 shortly before 22 January 2007, Testatrix would be saying time and again that he cleaned her up.
- (clxxvii) Did not accept that Testatrix became very anxious about money he obtained from her and asked what monies.
- (clxxviii) When asked what sort of monies Testatrix gave him he stated \$500 to \$1000 for his children in Australia.
- (clxxix) Denied receiving \$5000 or \$15,000 from Testatrix.
- (clxxx) When it was put to him that Panjali Pillay (Housegirl) will say Testatrix told her that she gave money to him he stated that Housegirl is telling lie.
- (clxxx1) When it was put to him that Panjali will say before 22 January 2007, he was taking money from Testatrix and she was getting sick he stated that it is false allegation against him.
- (clxxx2) When it was put to him that if Testatrix formed the view that he cleaned her she would not be thinking rationally he stated that she would have never said that.
- (clxxx3) Confirmed that on 2 September 2006, Testatrix signed Power of Attorney in presence of Raman Singh, Solicitor appointing Charan Jeet Singh as Attorney and stated that he has no reason to challenge validity of the said Power of Attorney.**
- (clxxx4) Stated that he became aware about Power of Attorney at first trial.
- (clxxx5) When it was put to him that Power of Attorney showed Testatrix had full confidence and trust in Charan Jeet Singh he stated that at the time she had.
- (clxxx6) Stated that he came in possession of Revocation of Power of Attorney and Notice to Charan Jeet Singh dated 21 September 2006, when he took over shop after Testatrix's death.
- (clxxx7) Agreed that he gave Revocation and Notice to his Solicitor in 2016.
- (clxxx8) When it was put to him that it took nine years he stated that they were sitting in file belonging to Testatrix.
- (clxxx9) Stated that when he filed this proceedings he was not advised to provide all relevant documents.

- (cxc) Stated that his daughter found these documents in 2012, in Testatrix's shop when she came to close the place.
- (cxci) Denied that after Testatrix died his brother Charan Jeeth Singh ran Testatrix's business R.K. Fashions.
- (cxcii) When it was put to him if brother gives evidence that he was running business after Testatrix's death he stated "no" and that brother removed all stock from shop.
- (cxciii) When asked if he was saying that legal document was there six years after Charan Jeet Singh closed the shop he stated he cleared stock and files were left in a corner.
- (cxciv) Agreed that during first trial he called Raman Singh who produced Power of Attorney.
- (cxcv) Stated that Raman Singh was not questioned about Revocation because it was not relevant and it was about Power of Attorney.
- (cxcvi) When it was put to him that Revocation and Notice was not produced at first trial because it was not there he stated they were there.
- (cxcvii) Stated neither him nor Sadiq had anything to do with creating Revocation of Power of Attorney.
- (cxcviii) Accepted that Testatrix could not type or write up those documents.
- (cxcix) Agreed that Revocation was witnessed by Kamal Datt who was his employee in 2006, with his role being Manager of the Company.
- (cc) Agreed that there is spelling mistakes in several parts and stated that he does not expect Kamal Datt to make those spelling mistakes.
- (cci) Stated that he did discuss about Will advertisement by Sherani & Co. in May 2007, or about this proceedings with Kamal Datt.
- (ccii) Stated that Kamal Datt did not say to him that he witnessed Revocation of Power of Attorney.
- (cciii) Stated that he believed Revocation was genuine document signed by Testatrix.
- (cciv) Stated that Kamal Datt left employment in 2011, and started his own business.
- (ccv) When asked if Testatrix on 2 September 2006, made Will and Power of Attorney why would she revoke Power of Attorney in eleven days he stated she may had her own reason and he does not know about anything that radically changed her mind.
- (ccvi) Stated that he had not found any Will dated 13 September 2006, being same date as Revocation.
- (ccvii) When it was put to him that Kamal Datt would not visit Testatrix normally he stated that two shops are together with common door and so Testatrix will see

- Kamal Datt every day.
- (ccviii) Agreed that Revocation of Power of Attorney is dated 13 September 2006, and Notice to Charan Jeet Singh is dated 21 September 2006.
- (ccix) Stated that there is no reason why one is dated 13<sup>th</sup> and another 21<sup>st</sup>.**
- (ccx) Refused to accept when it was put to him that it is highly likely that they are fraudulent documents.
- (ccxi) Stated that Testatrix did not give him Power of Attorney.
- (ccxii) Stated that he did not see or know about advertisement by Sherani & Co. and no one brought it to his attention.
- (ccxiii) Stated that he instructed Sadiq to send 2007 Will to Sherani & Co.
- (ccxiv) Stated that he did ask Sadiq to ask Sherani & Co. to send them Will as he was not aware of procedures.**
- (ccxv) Stated that he was curious of Charan Jeet Singh's Will.
- (ccxvi) Stated that at that time he never complained to Sadiq that he wanted to see that Will.
- (ccxvii) Stated that he did not decide or feel to lodge Caveat with Probate Registry.
- (ccxviii) Agreed that the reason he did not pursue Charan Jeet Singh's Will was because he trusted Charan Jeet Singh.
- (ccxix) When it was put to him that him and Charan Singh were not in talking terms with each other since 1997 he stated since 2007.**
- (ccxx) Denied that as at May 2007, he did not trust his brother Charan Singh at all.
- (ccxxi) Stated that dealings about Wills was conducted between Sherani & Co. and Sadiq and not him personally.
- (ccxxii) When it was put to him that it was simple to write to Sherani & Co. and ask for Will he stated that he took Charan Singh's word that Will was his and he did not interfere.
- (ccxxiii) Stated that he did not want to find what he was been left by Testatrix.
- (ccxxiv) Denied that he was content with what was in Charan Singh's Will and stated that he was busy with health issues.
- (ccxxv) Stated that he was appointed as Board Member for Airports (Fiji) Ltd. in 2007, Chairman of Labasa District Authority in 2005, member of Northern Development Program in 2006, and member of Labasa Divisional Liquor Tribunal in 2006.**
- (ccxxvi) Stated that he left Fiji in 2010 and did not attend any meeting.**
- (ccxxvii) Agreed that he left the Boards on 2 March 2011, and prior to that he continued being in the Boards in 2007, 2008 and 2009.**
- (ccxxviii) Agreed that he attended regular meetings and missed some.

- (ccxxxix) Accepted that he attended Northern Development Program meeting in 2009 as he was in Fiji at that time.
- (ccxxx) When it was put to him that in 2007, 2008, 2009, he was not that sick to give up those appointments he stated that he was sick and missed meetings.**
- (ccxxxii) Agreed that he learnt about Charan Singh's Will in 2007 and took no step to challenge Charan Singh's Will or advance his Will.**
- (ccxxxiii) Denied that delay was due to his health reasons.**
- (ccxxxiii) Agreed that he delayed because he trusted his younger brother when he said he had a Will.**
- (ccxxxiv) Agreed that he previously relied extremely on his ill health for delay.
- (ccxxxv) When it was put to him that now he is not relying on his ill-health he stated that he did not pursue Will because of his ill health.
- (ccxxxvi) Stated that he left in September or October 2010, to live in Australia.**

32. During re-examination the Plaintiff:-

- (i) Stated that he took Sadiq and Kiran upstairs and left them with Testatrix.
- (ii) Agreed that it is likely Testatrix kept her documents in her room.
- (iii) Agreed that he heard conversation between Testatrix and Defendant in the video talking about family matters.
- (iv) Agreed that it appeared to be coherent conversation.
- (v) Stated that when he said mother was ill in 2007, he meant she was mentally and physically fit.**
- (vi) Stated that Testatrix had a fall and was physically bad but mentally she was alright.
- (vii) In reference to second last paragraph of BOB's letter (Exhibit D13) to him the word "recuperation" meant additional overdraft he requested.
- (viii) Stated that when his daughter came to pay the debts she was not allowed to by Defendant.
- (ix) In reference to sale of CL6023 he stated that he ceased being involved in management of the Company in 2012, but cannot recall exact date.
- (x) Stated that his ill health was contributing factor for delay in bringing this action.**

33. PW4 during examination in chief gave evidence that:-

- (i) **She worked for Testatrix as Housegirl during night in the year 2006 but could not remember for how long and which month or if it was in early 2007.**
- (ii) **She was engaged by Charan Jeet Singh (Defendant).**
- (iii) She knows Testatrix died but could not remember date she died.
- (iv) In respect to Testatrix's physical condition when she was working for her was that sometimes she was sick, and sometimes okay.
- (v) Testatrix was upstairs in her bed and did not know if Testatrix had an accident or fall and she did not have any bandages.
- (vi) **Her duty as housegirl including **cooking, massaging Testatrix, assist her in walking when she stopped using frame after 2 or 3 days and be alert at night time.****
- (vii) She did not help Testatrix move up and down the stairs.
- (viii) There were two other housegirls namely Tara (night time) who was there when she started work and Pushpa (day time) who started 2 or 3 days after her.
- (ix) **When she started work Charan Jeeth's sister who came from somewhere was there.**
- (x) She had conversation with Testatrix when they would share about old time rituals and about Testatrix.
- (xi) Testatrix never talked to her about her family or money.
- (xii) **When asked if she could recall Testatrix suffering from hallucination or delusion of mind she stated when Testatrix was in pain she would shake her head.**
- (xiii) **At night Testatrix legs were in pain and every time she would wet her bed.**
- (xiv) She talked to Testatrix every night she was there and Testatrix understood the conversation.
- (xv) When asked if other housegirls talked to her about who came during the day she stated that by the time she came other housegirls would have left.
- (xvi) **She never saw Testatrix talking to herself or calling out asking about people who were dead.**
- (xvii) **Sometimes when Testatrix was in pain she would not sleep well at night.**
- (xviii) She cannot recall if she started work after 2006 Diwali.
- (xix) **Doctor Nandita Singh used to come during afternoon tea with bread and they used to have tea together.**
- (xx) She does not know as to how many times Doctor Nandita Singh would call in.
- (xxi) She gave medications to Testatrix when she was told by Doctor Nandita Singh to do so and Testatrix took all her medications.
- (xxii) She does not know if Testatrix was at hospital before she arrived.

34. During cross-examination PW4:-

- (i) **Stated that she worked as housegirl during night.**
- (ii) **Testatrix would sleep normally until she had pain and was in very weak condition.**
- (iii) When asked if Testatrix would need lot of care from housegirls for cleaning, washing and toilet, she stated that **Testatrix was on diaper and she would feed her.**
- (iv) Stated that Testatrix only ate soft food and could eat roti.
- (v) **Accepted that Testatrix got worse and more sick until she died.**
- (vi) Stated that she would **“agree” if Nandita Singh told Court that Testatrix’s condition got worse in January 2007**, then what it was in December 2006.
- (vii) Agreed that being night housegirl she could not talk about Testatrix condition during day.
- (viii) Stated that she cannot say what Testatrix condition was on a particular day because it has been long time and she passed away.
- (ix) **Stated that she knew housegirl Tara as she used to work with her during night but did not know that her formal name is Panjali Pillay.**
- (x) When asked if she would agree with Tara saying Testatrix suffered lot of pain she stated that **she was in pain but she used to talk.**
- (xi) **When it was put to her that Tara would tell Court, that Testatrix sometimes pulled her clothes she stated that when Testatrix felt hot she used to take off her top.**
- (xii) **Stated that she does not know if it was possible that Testatrix would take off her top because she was in pain and distressed.**
- (xiii) When it was put to her that Testatrix’s daughter would say she could hear Testatrix talking to herself she stated that **she never heard her talking maybe they heard.**
- (xiv) Stated that when someone called she would give Testatrix receiver to receive calls.
- (xv) Agreed that Charan Jeath Singh (Defendant) recently contacted her to give evidence in Court.
- (xvi) When asked why she agreed to give evidence from Daya Singh’s side she stated that she did not come from any side and she was called to Court, so she came.
- (xvii) **Stated that she did not receive Subpoena for this trial but received same for 10 April and 11 April.**

35. PW5 during examination in chief gave evidence that:-

- (i) She was working for Testatrix's shop from 2002, as salesgirl until the time Testatrix passed away in 2007.
- (ii) From November 2006 to end of January 2007, her duties involved opening of shop, doing sales, doing banking and dealing with customers.**
- (iii) She used to take instructions from Testatrix and used to ask her about buying for the shop which instruction she obtained when Testatrix used to come to shop and tell them what to do.
- (iv) From December 2006 – January 2007, Testatrix lived upstairs when she went upstairs to talk about the business and Testatrix would want to know how business was going, and if there was anything in shop.**
- (v) Described physical condition of Testatrix in December 2006 and January 2007 as okay but sickly and stated that during these months she had proper conversation with her and she did not seem crazy.**
- (vi) Testatrix did not talk to her about money concerns she had.
- (vii) When she talked to Testatrix she seemed to be normal.
- (viii) Testatrix kept her valuables in one safe which was just a tin case and she (witness) never saw what was in it.
- (ix) Tin case was taken by Testatrix's daughter Jeet in December 2006.

36. During cross-examination PW5:-

- (i) Stated that she remembers that Testatrix had a fall in November 2006 and before the fall Testatrix would fly to and from Suva which she stopped doing after the fall.**
- (ii) Stated that after the fall, Testatrix became very weak, used walker, did not do much because she was weak and as time went by she was put on diaper.**
- (iii) Stated that Testatrix had three (3) housegirls, Tara, Nita and Pushpa caring for her.
- (iv) Stated that Doctor Nandita Singh would also call on Testatrix and would prescribe medication for her, names of medication she does not know.**
- (v) When asked if some medication made Testatrix sleepy she stated that she does not know about medication.
- (vi) Stated that she cannot recall Testatrix going to hospital in November, December 2006 and January 2007 after her fall.**
- (vii) When it was put to her that Testatrix was admitted at Labasa Hospital and was there for few days she stated that she remembers Testatrix being admitted before she passed away.

- (viii) When it was put to her that most of the time she was busy in shop and did not go upstairs she stated that she used to work downstairs and from time to time went upstairs to see Testatrix.
- (ix) When it was put to her that question relates to what happened ten (10) years ago and she has trouble remembering it she stated that she can tell what she remembers.
- (x) When it was put to her that if Jeet says she took tin after Testatrix died and after her funeral she stated Jeet took the tin before.
- (xi) When asked if she has clear memory of Testatrix condition in December and January or her memory is affected by months she stated she cannot differentiate between months to tell her condition for the month.
- (xii) Stated that Testatrix condition did get worse before she died and she does not know if she went back to hospital before 2006 Christmas.**
- (xiii) Stated that two (2) months before Testatrix passed away she was in bed.**
- (xiv) Stated that she cannot recall Sadiq visiting Testatrix.
- (xv) Recalled Daya Singh (Plaintiff) running grocery shop next to Testatrix shop.
- (xvi) Stated that Daya Singh (Plaintiff) would go and see Testatrix every afternoon.
- (xvii) When it was put to her that Daya Singh only visited Testatrix in the morning when he passed her room, she stated that they waited downstairs for him to open the shop and used to go with him along the passage.
- (xviii) When asked if she observed Testatrix in pain at anytime she stated that it was normal pain because she was old.
- (xix) Stated that after Testatrix fell she came to shop very few times.**
- (xx) When asked if she knew when tin was opened she stated that she only knew Jeet took the tin.
- (xxi) When asked if Jeet called her and Prem to deliver tin to Testatrix's flat she stated that tin was in the shop and **Prem delivered tin to Testatrix flat and she was present in shop when Jeet made that request.**
- (xxii) Stated that she did not hear Jeet say that Testatrix was worried that Daya Singh would take the tin.
- (xxiii) Stated that Daya Singh (Plaintiff) did not come looking for the tin after it was taken away by Jeet.
- (xxiv) Stated that on occasions she visited Testatrix, she assisted her in sitting.**
- (xxv) Stated that she cannot remember Jeet taking video when she was upstairs.
- (xxvi) Agreed that she came to Court with her sister Veenu who stays in the house owned by Daya Singh (Plaintiff) and she (sister) lives there without paying rent.**



37. During re-examination PW5 stated that the fact her sister stays in house owned by Daya Singh without rent did not in any way affect her answers.

### **Defendant's Case**

38. The Defendant gave evidence himself and called following witnesses:-

- (i) Jeet Thakkar of Georgia, USA. Human Resources Specialist (daughter of Testatrix) **(DW1)**.
- (ii) Panjali Pillay commonly known as Tara of Vunivou Point, Labasa **(DW2)**.
- (iii) Nandita Singh of 14 Jaduram Ram Street, Labasa, Medical Practitioner **(DW3)**.
- (iv) Raman Pratap Singh of Karan Singh Road, Samabula, Suva, Legal Practitioner **(DW4)**.
- (v) Pushpa Wati of Khalsa Road, New Town, Domestic Duties **(DW5)**.

39. DW1 during examination in chief gave evidence that:-

- (i) She is Testatrix's daughter (5<sup>th</sup> child) and came to Fiji in November 2006 at the request of Testatrix for her to come and see Testatrix before she dies whom she was calling once a week.**
- (ii) She arrived in Fiji on 25 November 2006 and departed on 19 December 2006.**
- (iii) 19 December 2006, was not her original departure date and original departure date was 5 December 2006.
- (iv) She stayed longer after looking at Testatrix's condition and Testatrix would consistently cry and plead for her to stay and not leave.**
- (v) She arrived one (1) day after Testatrix was discharged from hospital, went straight to Testatrix and stayed at Testatrix's house.
- (vi) On the day she arrived Testatrix looked okay, was lying on bed and said that her back is bothering her a lot.**
- (vii) Testatrix went back into Hospital in December 2006, because she was complaining of back ache and she went with her to Hospital.
- (viii) Testatrix was discharged around 11 December 2006.
- (ix) She observed that between 11 and 19 December 2006, Testatrix's condition was deteriorating meaning she would cry a lot if they moved her as she could not move.**

- (x) The reason Testatrix cried was that she was very active person and being confined to bed was very devastating for her.
- (xi) By the time she left, Testatrix did not have any mobility.**
- (xii) Between the time she arrived and time she left (4 weeks) she saw change in Testatrix mobility in that she totally became immobile.**
- (xiii) By the time she left Testatrix had very poor nutrition in that because of pain she would not want to eat and they had to give her soup and soft food.**
- (xiv) Testatrix was not able to wash herself, for toilet she had diaper on and was not able to use bed pan.**
- (xv) Testatrix's level of pain was 10 with 10 being the highest.
- (xvi) Testatrix was not able to use telephone by herself and they would call for her or one of her employee Kusum would dial number for her.**
- (xvii) Apart from her there were 3 housegirls who cared for Testatrix and they were hired by her sister in law Doctor Nandita Singh.
- (xviii) Assistance provided to Testatrix by housegirls was that they washed her, bathed her, fed her, changed diapers, wiped her, gave medicine and all that a helper would do as Testatrix was totally immobile.**
- (xix) Her sister in law Doctor Nandita Singh would look after Testatrix's medication and she does not know what medicines were taken by Testatrix.
- (xx) Towards end of her stay (last week) she noticed Testatrix talking to herself a lot and would talk to her (witness) father, and her dead brother who Testatrix was very fond of which was very abnormal.**
- (xxi) She was present when Testatrix was talking like that.
- (xxii) When Testatrix was talking like that it did not make sense to her (witness).
- (xxiii) She cannot say anything about relationship between the talking and medication Testatrix was taking as she did not know which medication she was taking.
- (xxiv) She heard Testatrix say things about Daya Singh (Plaintiff) when she would beat her chest and say Daya Singh wiped her clean in Hindi.
- (xxv) She would recall Testatrix saying "Areh baap re, huma sab paisa khai gayis."
- (xxvi) Testatrix would say that consistently during last week of her (witness) stay.
- (xxvii) She recalled being with Testatrix in hospital in December 2006 when she mentioned about her security tin and Testatrix mentioned to her that she had nothing more left to give to her daughters and that there was a black iron trunk in the office downstairs (R.K. Fashion Shop) where she kept some money and jewellery for her daughters.**

- (xxviii) Testatrix said to her to take out the tin and give to her (witness) younger brother Charan Jeath Singh who was Trustee of her Estate and when she dies for him to distribute it amongst her (witness) sisters.
- (xxix) Testatrix wanted her to take the tin out as there was nothing left to give to daughters and she took out Insurance Policy for daughters which was taken away by Daya Singh too.
- (xxx) Testatrix was consistently telling her that Daya Singh has taken every single penny she had and because of Daya Singh her (witness) younger brother Udham had to leave Fiji.
- (xxxii) All these reference to Daya Singh was made by Testatrix to her while they were discussing the tin.**
- (xxxiii) After all she heard about Daya Singh from Testatrix she would not have made him Executor of the Will three (3) weeks after she left
- (xxxiiii) Before she left Fiji she observed Testatrix strip off her clothes when she was in lot of pain and stripping off means she would tear off and take it out as long as it is off her body.**
- (xxxv) When she is in Fiji Testatrix would wear nightie like dress with buttons in front.**
- (xxxvi) Testatrix was very distressed when she did that.**
- (xxxvii) Looking at Testatrix, by the time she left Fiji Testatrix could not have any clues on legal matters at all.**
- (xxxviii) About Testatrix's ability to find lawyers number and phone him, she stated that Testatrix was uneducated, not able to read or write in English and would not be capable of looking at number and names. By the time she left Testatrix was totally incapable to use her phone and make a call.**
- (xxxix) By the time she left Testatrix was incapable of dealing with the assets and she could not keep a conversation going and while talking she would doze off.**
- (xl) During night time Testatrix would take medication to lower pains which will make her fall asleep and during daytime Testatrix would doze off while talking.**
- (xli) She took video footage of Testatrix because she was about to leave for Canada and was for her other two sisters who were supposed to come to see Testatrix's condition.
- (xlii) She took videos in December 2006, whilst Testatrix was in hospital and after she was discharged and at home.**
- (xliii) First video clip was taken in hospital when Testatrix was lying on bed in which Testatrix was telling her to not to throw her away and she was telling Testatrix

that she will take her to Canada and USA.

- (xliii) When Testatrix told her not to throw her away she assumed from that Testatrix was not happy here.
- (xliv) Second video clips shows Testatrix bending, lady with arms around Testatrix is Pushpa (housegirl) and the other lady is Radha, helper in RK Fashions store who were trying to take Testatrix to bathroom and Testatrix was bent over because she could not stand up straight.**
- (xlv) Third video clip was taken in living room when she was taken from bathroom to lay her on the bed.
- (xlvi) Persons in the third clip are Pushpa, Radha, Kusum (PW4), her nephew and a lady who came to visit her.
- (xlvii) Testatrix was making noise because she was in lot of pain.**
- (xlviii) In video clip Testatrix's condition looked little better and by the time she left it got worse.
- (xlix) By the time she left Testatrix was not taken to toilet.**
- (l) Fourth video clip was taken in hospital where Testatrix is seen complaining about very bad pain as little movement causes pain.
- (li) Testatrix was experiencing pain more on lower back.
- (lii) She is not sure if Testatrix was given pain relief when she was in hospital.
- (liii) Pushpa is seen in 4<sup>th</sup> video clip and she stayed with Testatrix in the hospital.**
- (liv) She did not know about dressing on her hand but Testatrix was on drip.
- (lv) In video clip she is saying to take off railing when she told her no because she may fall and hurt herself.
- (lvi) Agreed that Testatrix appears restless and was typical of her when she was in hospital.**
- (lvii) When Testatrix was sedated she was fine otherwise she was very restless and moving all the time.**
- (lviii) Other lady on bedside is Kusum (PW4) who worked at RK Fashions.
- (lix) Fifth video clip shows Testatrix sleeping at home on her bed during night time and she had no clothes on top because she took it off before falling asleep as she was restless.**
- (lx) About rubbing Testatrix leg, she became very restless when she wakes up as pain was intense.
- (lxi) She asked Testatrix if she could rub Vicks and it is her preparing to rub Vicks which was at night time.

- (lxii) What is shown in video clip is very unusual of Testatrix to behave that way and this happened a lot after Testatrix got back from hospital.**
- (lxiii) She is not sure about medication as her sister in law was giving medication.
- (lxiv) They did not have medication which they could give her at times like that.
- (lxv) When Testatrix was like that Testatrix could not converse with her in clear and coherent way.
- (lxvi) Testatrix would sleep for few minutes and become restless again.**
- (lxvii) By the time she left in December Testatrix's condition did not change.**
- (lxviii) Whatever Testatrix is saying in video did not make sense and she was confused as to whether Testatrix is talking to herself or her and thought Testatrix was talking to her (witness).
- (lxix) That sort of restlessness would go throughout the night.
- (lxx) In the morning Testatrix would sleep for a while and will be back to same.
- (lxxi) From what she observed she gathered that Testatrix did not trust Daya Singh at all and she would mention him every day.

40. During cross-examination DW1:

- (i) Stated she is not aware that video disc provided on discovery had conversation between Charan Singh and Testatrix and that nobody edited it.
- (ii) Stated that her son put the video disc together by taking it from video.
- (iii) Stated that she does not know of any animosity between her and Daya Singh.
- (iv) Stated that she does not remember her asking her father for a loan of \$40,000.00 in 1986.
- (v) When it was put to her that it was refused and she blamed Daya Singh she stated:
- (a) In 1986 some issues arose which had nothing to do between Daya Singh and her;
- (b) Her husband who was in Fiji sold his business and his lawyers did not clear debenture and Court asked him not leave Fiji unless he deposits \$50,000.00 into Court.
- (c) Since, husband did not have money with him, he asked her father for help and told her father to pay for him which money he will refund once he goes back to Canada which never happened.
- (d) Only her family knew that her husband was leaving for Canada, but was caught by Immigration Department.
- (e) Her husband escaped out of Police custody and committed suicide.

- (vi) **Stated that what happened did not affect her relationship with Daya Singh, and after she re-married in 2001, she came to Fiji with her husband to visit her family when Daya Singh took her, her husband, her daughter in law, her mother, one of Daya Singh's son to Savusavu and they spent a day there.**
- (vii) **Stated that even if she does not talk to Daya Singh everyday their relationship is cordial.**
- (viii) **When it was put to her that she is giving evidence to stop grant of Probate in respect to 2007 Will she stated she is not opposing new Will and if Testatrix was in sound mind she would have no issue but she does not think Testatrix was capable of making that Will.**
- (ix) Stated that she is suggesting that Daya Singh took advantage of Testatrix when 2007 Will was made.
- (x) **When it was put to her that there is "no evidence" she stated she stayed **there for a month, saw Testatrix's situation deteriorated and Testatrix was not in her sound mind in January.****
- (xi) When it was put to her that she did not observe during January 2007 she stated that she did not see Testatrix any better after what she saw in December and that it was not an assumption.
- (xii) When asked if she thinks Charan Singh is jealous of brother Daya Singh she denied it and stated Charan Singh is the best brother and only brother who helps his sisters, keeps in touch with sisters, nieces and nephews.
- (xiii) When it was put to her that only brother helping sister in financial needs she stated financial, emotional, visits them and calls them.
- (xiv) **When it was put to her that her financial interest is best served by supporting Charan Singh other than Daya Singh she stated "sorry" she does not need financial assistance from Charan Singh because she is married to a very wealthy man.**
- (xv) When asked if she would be grateful for Charan Singh and sometimes repaid for the gratitude she stated that there is no payment of gratitude and she follows her own mind.
- (xvi) Denied that she participated in family meeting to discuss who will give evidence on behalf of Charan Singh in this proceeding.
- (xvii) Stated that she did not discuss her evidence with Charan Singh or Nandita Singh and she has her own mind.
- (xviii) **Stated that she understood Testatrix having hallucination when she started talking to herself which did not make sense and talking about her father and dead brother and calls them all night.**

- (xix) Stated that she is not sure if Doctor Nandita Singh used word “hallucination” in her expert evidence.
- (xx) Stated that she said level of 10 because she had lot of friends who are physicians and she has a L2 herniated disc and when she visits her doctor he asks for level of pain that is how she describes level of pain.
- (xxi) Denied that Doctor Nandita suggested she say level of pain at 10 and stated she uses her own mind.
- (xxii) Denied that Charan Singh influenced her to support his case.
- (xxiii) When it was put to her that she was prepared to give evidence for her brother close to her she stated that her role was helping person who was on the right.**
- (xxiv) Stated that if Daya Singh would have contacted her and asked for help she would have asked for Will, looked at how it was signed and done then would make a decision.
- (xxv) Denied that if she formed the view that if 2007 Will treated family fairly she would have given evidence for Daya Singh.
- (xxvi) Stated that when Will to Charan Singh was made Testatrix was in sound mind and when 2007 Will was made Testatrix was not in sound mind.**
- (xxvii) Stated that when she came to Fiji she called Daya Singh to say hello and would talk to him occasionally when Daya Singh came upstairs to see Testatrix.
- (xxviii) Stated portion of video she took when she came shows Testatrix more coherent.
- (xxix) When it was put to her that Testatrix’s condition was more favourable then video presented in Court she stated that video was taken between 25 November and 1 December 2006 and confirmed that before Testatrix went to hospital she was alert.
- (xxx) Agreed that Exhibit P15 states Testatrix was admitted from 20 to 24 November 2006.
- (xxxi) When it was put to her that, it was after the fall she stated that she was not aware about the fall and she did not know Testatrix suffered a fall.
- (xxxii) Stated that she took video between 25 November and 1 December 2006, and she was not there for Testatrix’s first hospital visit.
- (xxxiii) Stated that she took first video on 1 December 2006 and that the Testatrix had coherent conversation with Charan Singh and was mentally alert.**
- (xxxiv) Stated that one video showed Testatrix on wheelchair in hospital but does not think Testatrix was alert.**
- (xxxv) Last video clip which showed degree of discomfort was taken around time she was about to leave and somewhere around December 2006.**

- (xxxvi) Stated that she did not remove security tin from Testatrix's flat and that when Testatrix told her about the security tin and that Kussum knows about it, she called Kussum who brought it upstairs with help of Prem.
- (xxxvii) Stated that on Testatrix's instruction she gave security tin to Charan Singh.
- (xxxviii) Stated that Testatrix told her what was in the security tin and she did not see what was in it.
- (xxxix) When asked security tin and insurance policy coming out person having hallucination she stated that, that conversation took place in hospital when Testatrix was alert and not during later part of December.
- (xl) Stated that Testatrix's condition deteriorated around third week of December 2006.**
- (xli) Agreed that whatever she was saying could be observed between 14 and 19 December 2006.
- (xlii) Agreed that in January 2007 her sister in law was giving pain killers to Testatrix.
- (xliii) Agreed that state of Testatrix's health would be quite different after she saw her last.
- (xliv) Did not accept that she cannot say about Testatrix's condition after she left.**
- (xlv) Stated after she left for Canada she was getting reports from Testatrix's employees in Fiji specially from Kussum that Testatrix was getting worse day by day.**
- (xlvi) Stated that discussion about insurance policy took place in hospital around 1 to 5 December.**
- (xlvii) When it was put to her that Kiran Gaikwad gave evidence on 22 January 2007, that Testatrix appeared to be mentally alert she stated that she does not believe that.**
- (xlviii) When it was put to her that Kussum would go and talk to Testatrix about business and customer she said she did not think so.
- (xlix) When it was put to her that Kiran Gaikwad said if you in pain it does not affect your mental state but may enhance your mental status she stated that she is not medical person and does not know.
- (l) Did not accept when it was put to her that Nita said she would have conversation with Testatrix and Testatrix was all right and was alert while she was awake.
- (li) Denied that she accepted adverse report on Testatrix's conditions and not those that says it was not so bad.



- (lii) When it was put to her that she accepted reports from Fiji that says Testatrix's condition was bad and not that of Doctor Kiran, Sadiq, Nita and Kussum she stated that she got report from Testatrix's helpers and she believed them.
- (liii) Did not accept that Nita had conversation with Testatrix because Nita was caught sleeping many times.**
- (liv) When it was put to her that Nita gave evidence that Nandita Singh would come for tea and gave medicine and as such Testatrix and Nita would be aware on these occasions she stated she thought so.
- (lv) When it was put to her that she is going out of her way to paint bad picture as possible of Testatrix's state in December 2006 and January 2007 she stated that she is saying what she observed.

41. DW2 during evidence in chief gave evidence that:-

- (i) From 21 November 2006, she was employed by Nandita Singh to look after Testatrix.
- (ii) She went to hospital from 21 to 26 November and took care of Testatrix.
- (iii) When it was put to her that she after Testatrix came back she went back to hospital on 1 December 2006 she stated that she was on leave that day because her son was sick.
- (iv) She was caring for Testatrix in January 2007 during night and her duties included changing diaper, cleaning urine and wiping Testatrix.**
- (v) Testatrix was in pain in December 2006 to January 2007 and she assisted her by massaging her hands and legs.
- (vi) Testatrix was not able to use telephone herself or get out of bed.**
- (vii) Testatrix spoke to her about Daya Singh and said that he took all her money, put her in debt and that is why she was sick.
- (viii) When Testatrix was talking about Daya Singh she was talking to herself and her (witness).**
- (ix) Testatrix talked about Daya Singh everyday.

42. During cross-examination DW2:-

- (i) Stated that generally she worked at night from 6.00pm to 6.00am or 7.00am or 9.00am.
- (ii) Stated that Nita was working with her and they both looked after Testatrix.
- (iii) When it was put to her that Nita would talk to Testatrix at night she stated that Testatrix was sleeping at night and she never saw Nita talking to**

**Testatrix.**

- (iv) When it was put to her that Testatrix was in pain and alert she stated Doctor used to come every morning to give Testatrix tablet.
- (v) Stated that when Testatrix was well she would tell old stories about herself.
- (vi) When it was put to her that is what Nita said in that Testatrix would tell old stories about herself she stated that she did not know what time Nita talked to Testatrix.
- (vii) Maintained that she never saw Nita talking to Testatrix but if they talked she does not know at what time they talked.
- (viii) When asked if Testatrix wanted to call someone she would ask housegirl to look for number and call she stated that she never did that and if it happened during day she would not know.
- (ix) When asked if Testatrix ever appeared to be confused that she is in another place or another person she stated that **Testatrix had no idea what she was doing and that after January 15 Testatrix was very sick and did not know what she was doing.****
- (x) Denied that someone told her to say that and stated she was working there and she knew.
- (xi) When asked why she fixed date on 15 January 2007, she stated that she cared for Testatrix, that is how she knew date she started work and date she passed away which was in April 2007.
- (xii) When asked as why out of all dates she happened to say 15/1/07 is important she stated that it is not important, that is what she knows and that is what she is saying.**
- (xiii) When it was put to her after 10 years, 15 January 2007, fixed on her mind, she stated that she started work on 21 November 2006, and she knows dates because she was working for Testatrix.
- (xiv) When asked about first set of date Testatrix went to hospital she stated that she does not know first set of dates and what she knows she knows is from the date she started work.**
- (xv) Stated that Testatrix was in hospital for 2 nights and she was in hospital with her.**
- (xvi) She did know date of second visit as she was on leave around that time as her son was sick and the next visit was on 18 April and Testatrix passed away on 19 April.
- (xvii) Stated that Testatrix was always sick and started getting worse and from 2<sup>nd</sup> week in January became more sick and did not improve and became more sick day by day.**

- (xviii) When asked what makes 1<sup>st</sup> and 2<sup>nd</sup> week in January stick in her mind she stated “nothing” and that since Testatrix fell sick, they used to be awake whole night to look after her.**
- (xix) Stated that she did not speak to Charan Singh or anyone in his family about her evidence.
43. DW3 during examination in chief agreed that she prepared Brief of Evidence dated 4 April 2017 (“**BOE**”), is signed by her, authorised it to be provided to Court and confirms the content of Brief of Evidence to be true and correct (**Exhibit D2**).
44. During cross-examination DW3:-
- (i) Agreed that she lives in Labasa with her husband and two daughters who are lawyers.
  - (ii) Agreed that if Plaintiff is successful in this proceeding then her husband will leave share in the Company and Soap and Allied Industry.
  - (iii) Stated that she does not think her family will suffer financial detriment if Plaintiff is successful and they have their own personal business which is doing well and she has her own medical practice which is also doing well.
  - (iv) When it was put to her that if Plaintiff’s claim is successful they would be less wealthy she stated “maybe”.
  - (v) Stated that she is not sure if the Company and Soap and Allied Industry are trading profitably at the moment.
  - (vi) When it was put to her, her and her family have financial interest in the outcome of the proceedings she stated “maybe little.”
  - (vii) When asked why is her husband not consenting to Plaintiff’s claim she stated that it is between him and his brother.
  - (viii) Agreed that husband provides funding for the family.
  - (ix) Stated that she does not think if husband is less wealthy then her family will be financially worse off.
  - (x) Agreed that apart from money matters she has moral obligation to help her husband.
  - (xi) Stated that maybe she would support his defence in this proceedings.
  - (xii) Agreed that her BOE proves Testatrix did not have mental capacity to make Will in 2007.
  - (xiii) Stated she was Testatrix’s doctor and looked after Testatrix to her best capacity and as good daughter in law.**

- (xiv) Stated that she made note of attendance at the times she gave medication to Testatrix and when asked how could she remember she stated maybe she got good memory.
- (xv) **In reference to first sentence or parts of paragraph 15 of BOE she stated at times she went three times and agreed it is stated in 2<sup>nd</sup> sentence of BOE.**
- (xvi) **Stated that she does not agree with Nita's evidence that she came once a day during afternoon tea.**
- (xvii) **Stated that on 20 and 21 January 2007, she visited Testatrix 2 or 3 times a day and on 22 January 2007, definitely 3 times.**
- (xviii) Stated she remembers visiting Testatrix 3 times on 22 January 2007, because certain things happened on that day and this is why she remembers.
- (xix) Stated that every morning she would call day time housegirl Tara to check on Testatrix's health and housemaid would call her if Testatrix was restless.
- (xx) On 22 January 2007:-
- (a) Vividly remembers her calling Tara or Tara calling her and when she found Testatrix was restless she came running to see her.
  - (b) When she came she saw Testatrix and she told Tara to give her tablets which was given under her supervision, which tablets were strong and would soothen her down.
  - (c) **She came back at lunch time when she saw some ink marks on the wall and Testatrix's thumb.**
  - (d) **Housemaid told her that one man in coat came with Daya Singh.**
  - (e) She did not take it seriously as she was more concerned about Testatrix's health and so checked her and went home.
  - (f) She came back in the afternoon before going home and Testatrix was lying down and when she told night housemaid to give Testatrix blended food and tablet.
- (xxi) **Stated that before Tara left Testatrix's home she used to call Tara or housemaid would call if they needed her when Testatrix was restless and that had become her routine because she was concerned about Testatrix's health.**
- (xxii) Stated that housemaid said 2 guys came in, one in coat and the other was Daya Singh.
- (xxiii) Stated that it is possible the visitors could have been Sadiq or Kiran Gaikwad but was not sure.
- (xxiv) Stated that she knows Kiran Gaikwad but not that well and stated that he is a good medical practitioner.

- (xxv) When asked if he was man of integrity she stated that she does not know him that well.
- (xxvi) Stated that ink stains on wall had been cleaned by the maids and she cannot recall her telling them to clean it but it was cleaned.**
- (xxvii) When asked if she had personal opinion on Daya Singh she stated that whatever she was told about him was mostly from Testatrix and his other siblings.
- (xxviii) Denied that it was fair to say that her husband was jealous of Daya Singh.
- (xxix) Stated that as she could remember her husband and Daya Singh were not in very good terms.
- (xxx) Stated that in December 2006, and around about first week in January 2007 Testatrix was okay to give advice on business she was doing.
- (xxxi) Agreed that at certain stage Testatrix stopped being like that and stated that around 2<sup>nd</sup> week of January 2007, she was depressed, distressed and lost interest in her environment.**
- (xxxii) In reference to medication given by hospital upon discharge of Testatrix as stated on first page of Exhibit P15, when asked whether it had any effect on Testatrix's mental capacity, **she stated that after the fall Testatrix had very bad back ache which made her bed-ridden and being an independent businesswoman she felt useless and it got her down badly.**
- (xxxiii) When it was put to her that it was because Testatrix was concerned about her medical condition she declined, she stated that she was not eating well too.
- (xxxiv) When it was put to her that not eating well does not affect her mental capacity she stated that she was treating Testatrix for pain and tablet she used could have caused some mental side effect.**
- (xxxv) Agreed with what is said at 4<sup>th</sup> sentence of paragraph 15 of BOE in that sedatiary medication was to put Testatrix to sleep so that she could recover.
- (xxxvi) Agreed that after Testatrix took medication, slept and woke up she would be mentally alert.**
- (xxxvii) Stated that:-
- (a) Medication was given to Testatrix during morning and depending on her restlessness and pain with main reason being her pain which was causing her lot of agitation.
  - (b) She had to keep Testatrix comfortable and had to weigh pros and cons.
  - (c) Good way was for them to change doses and never give such amount to overdose.
  - (d) Testatrix damaged her vertebrae which was very painful and considering her age it was causing her severe pain.**

- (e) **Only problem was that any movement drew pain because of fracture and disc collapsed at the back.**
- (f) **Testatrix used to cry out in pain and it was unbearable to see.**

- (xxxviii) When it was put to her that what she is saying that when she gave Testatrix sedative medication, she slept better and did not have side effect, she **stated that Testatrix did have side effects.**
- (xxxix) When it was put to her that Kiran Gaikwad said when he observed Testatrix on 22/1/07 that she appeared to be mentally alert or comprehending with what was being explained to her she stated that she did not agree after what happened on the second week of January 2007, **in that Testatrix had been really depressed and lost interest in her environment.**
- (xl) **When it was put to her that most of us get depressed but that does not make us mentally incapable she stated that you would not unless you have very severe pain and you lose independence, that will make the person very depressed.**
- (xli) Stated that considering Testatrix's age and severe pain, Testatrix would have been mentally incapable because it was not an assumption and she was quite sure about it.
- (xlii) **When it was put to her that she did not carry any test on Testatrix for mental capacity she stated that when she went to see Testatrix in the morning Testatrix was very agitated, took her blood pressure, checked glucose level, and pain and those were more important to her and she did not think mental test was necessary.**
- (xliii) **When it was put to her that mental test may have been necessary she stated that Testatrix lost interest in her environment and so she does not know why it was necessary.**
- (xliv) Denied that what is said at first sentence of paragraph 18 of BOE is a throw away opinion.
- (xlv) When it was put to her that there is difference of opinion between Kiran Gaikwad and her on Testatrix's mental capacity she stated that she gave her tablets which had sedative effect and that is why Testatrix would not have been able to understand what was being read to her.
- (xlvi) **Denied that it is speculation because she was not there and stated that she gave Testatrix tablet around 9.00 to 9.30am which causes person to be drowsy and pain free for up to 6 hours and you may be able to shrug her and wake her but she would still be drowsy and not fully awake to understand what is being said to her.**

- (xlvii) When it was put to her that is all opinion as Kiran Gaikwad was there and not her she stated that she still says Testatrix would not have been alert.
- (xlviii) Stated that she does not think that Doctor Kiran Gaikwad was in better position to assess Testatrix and stated that she has 32 years of experience as medical doctor.**
- (xlix) When it was put to her that she is in a better position to assess person rather than make assumptions she stated that she attended Testatrix (mother in law) from day to day and know exactly what her condition was.
- (l) When asked if she was aware that Bank staff visited her she stated that lot of people visited Testatrix and she did not ask or needed to know who.
- (li) When asked if she meant Testatrix was dealing with Bank on 22 January 2007, she stated that Testatrix was very prominent businesswoman and as such prominent people used to visit her.
- (lii) Agreed that she said to maid that they maybe Bank people and stated that she said Bank people because maid told her that man in coat and in Labasa mostly lawyers and Bank staff wear coat so she thought that and it did not interest her.
- (liii) Stated that she became aware about 2007 Will when they had last trial and agreed it was some six years after Will was signed.
- (liv) When it was put to her that Nita said she talked to Testatrix at night when Testatrix told about her life she stated:-
- (a) It depends on what time she was talking.
  - (b) She always kept Testatrix positive and said to her that she will recover and get better to keep her happy.
  - (c) As time progresses Testatrix knew she could not get out of bed, she cried and said that it was last stage of her life.
- (lv) Stated that she had those discussions in December 2006 and New Year (2007).
- (lvi) When it was put to her that she selected time frame to cast doubt on validity of 2007 Will she denied it and stated that:-
- (a) Around New Year's day Testatrix was asking to stand her up which she (witness) initially did not want to do, knowing how painful it would be.
  - (b) Testatrix kept insisting when she said she would try which was a grave mistake.
  - (c) Because Testatrix really wanted to stand, she obliged with help of maid and Testatrix just went back on bed.
  - (d) Then Testatrix said to her that she was dying and she (Testatrix) knew that she would not get better now.
  - (e) From there onwards Testatrix became more and more sad and very disturbed.

- (f) Testatrix did not want to eat and became oblivious to the world.
- (lvii) Stated that when she gave medication she asked Testatrix how she was doing and had eaten when she nodded her head and thumped her chest.
- (lviii) When it was put to her that when Testatrix nodded her head she may not be talking but comprehending what was being said to her she stated that at the stage “yes” because she just woke up but have been vague and she was banging her chest because of pain.
- (lix) When it was put to her that Testatrix was not hallucinating or talking to dead people she stated that Testatrix was muttering something which she could not understand.
- (lx) Denied that she is making it up and stated that Testatrix would hallucinate at early stages when she had a fall and would say that she could see her (witness) father in law smiling at her and she was talking to him but this time around she would utter things, something would be clear but mostly would not be clear.
- (lxi) When it was put to her that paragraph 17 of BOE suggest Testatrix lacked mental capacity she stated it was because of drugs.
- (lxii) Denied that looking at her evidence as a whole she is trying to picture as adverse in respect to Testatrix’s mental capacity she denied and stated that whatever she said is true.
45. During re-examination DW3:-
- (i) Stated that Testatrix said lot of things about her eldest son Daya Singh to her and few of those things were:-
- (a) He was responsible for keeping all his other siblings away from business.
- (b) He wanted everything for himself only.
- (c) He took money out of her bank by forging her signature which was in the sum of \$80,000 or \$90,000.
- (d) He was emotionally blackmailing her.
- (e) He had two (2) wives.
- (f) She was not happy.
- (ii) Stated that her loyalty to her husband has not affected her evidence and she said the truth.
46. DW4 during examination in chief gave evidence that:-
- (i) He has 39 years experience as a Solicitor and has prepared many Wills.



- (ii) In respect to dealings with Testatrix he stated that in 1980, when he started his practice in Labasa, he acted for Testatrix, wife of Gurubachan Singh with their main Company being Gurubachan Singh & Co. Ltd. for in various matters including their properties, Wills, preparations of Power of Attorney amongst other matters.
- (iii) From 1980 to 2006, when Testatrix made Will he worked for her and her husband on few occasions.
- (iv) He recognise 2005 Will (**Exhibit P16**), which was a simple Will when Testatrix left everything to her children and he acted for Testatrix in respect to 2005 Will.
- (v) In 2005 Will, Testatrix put her thumb print and when he asked her if she signed, she wanted to put her name, that is being her signature.
- (vi) He recognises 2006 Will (**Exhibit D3**), whereby Testatrix left all her property in equal shares in Clause 3(b), and he discussed about her properties and she found Testatrix to be in normal state.
- (vii) Testatrix signed the 2006 Will, by putting her name and she came to his Office to sign the Will.
- (viii) There was no instruction from Testatrix to leave specific property to each child in respect to 2005 Will (**Exhibit P16**), and 2006 Will (**Exhibit D3**), as she wanted them to have equal shares.
- (ix) He prepared Power of Attorney dated 2 September 2006, and registered it on 5 September 2006, which was signed by Testatrix and her signature was witnessed by him.
- (x) After he explained Power of Attorney to Testatrix he was satisfied that she understood it and intended to grant to her son Charan Jeet Singh.
- (xi) He could not recall if Testatrix advised him why she is preparing Power of Attorney in favour of Charan Singh.
- (xii) After 2 September 2006, he did not receive instructions from Testatrix to revoke Power of Attorney and Revocation dated 13 September 2006, and Notice dated 21 September 2006 (Exhibit D5), were not prepared by him.
- (xiii) Revocation of Power of Attorney is not in the Form required by Registrar of Titles (ROT) and printed by Government Printery and witness is not qualified witness under Land Transfer Act.
- (xiv) Notice dated 21/9/06 does not follow ROT form.
- (xv) However he agreed with Court when it was put to him that Notice does not have to be in a particular form.
- (xvi) He is not aware of any falling out between Testatrix and Charan Jeet Singh between 2 September 2006 to 21 September 2006, and she did come to him

during that period to say she wanted to change arrangement in regards to her son.

- (xvii) Agreed that Daya Singh called him as witness in first trial in 2013, and he cannot remember Daya Singh showing him the Revocation and Notice at that time.
- (xviii) In addition to Will and Power of Attorney, Testatrix on 2 September 2006, asked him to transfer her property at Raojibhai Patel Street, Suva ("**Suva Property**") which consisted of 5 storey commercial building.
- (xix) He attended to Transfer of Suva Property (Exhibit D4 - Transfer No. 594818).
- (xx) Suva property was transferred to Company owned by Charan Jeath Singh and he was satisfied that Testatrix knows what she was doing.
- (xxi) He does not remember reason to transfer Suva property to Charan Jeath Singh's Company.
- (xxii) He cannot remember Testatrix wanting him at any time later in 2006, or early 2007, to assist her with any other legal transactions unless he can see any document then he would remember.
- (xxiii) Testatrix did not contact him in December 2006 or January 2007, asking him to make a new Will.

47. During cross-examination DW4:-

- (i) Agreed that he is very close friend of Charan Jeath Singh (Defendant) and stated that he is friends with Daya Singh (Plaintiff) as well.
- (ii) Stated that from 1994 to 1999, him and Charan Jeath Singh were in Parliament and were from same party.
- (iii) Stated that he kept Original of Will and if client wants Original he keeps copy and in this case he cannot remember if the kept original or copy.
- (iv) Stated that he did not tell Charan Jeath Singh that 2006 Will had been made and did not give copy of Will to anyone else.
- (v) Stated that Testatrix provided instruction for 2006 Will, and Charan Jeath Singh had no involvement at all in providing those instructions.
- (vi) Stated that signature and thumbprint in 2005 Will, are proper signatures and they were put on the Will at the same time.
- (vii) Stated he enquired if Testatrix was signing during the process of signing which was immediately after she put her thumb print.
- (viii) Stated that attestation clause refers to signing and not thumb print.
- (ix) Stated that Testatrix was living at Nasea, Labasa at that time.
- (x) Stated that he is aware that Testatrix was living in a house on top of her shop in Labasa Town and knows that Charan Jeath Singh was not living in that

house.

- (xi) When asked if Testatrix visited his office or he went to see her at her house in Labasa he stated that she came to his office, and Testatrix did not have any mobility difficulty at that time.
- (xii) Did not accept and stated it as incorrect when it was put to him that 2005 Will, was prepared by him and given to Charan Jeath Singh to have it signed by Testatrix and bring it back to him.
- (xiii) Did not agree when it was put to him that Testatrix put thumbprint, Charan Jeath Singh said not valid and took it back got her signature and stated that Charan Jeath Singh had nothing to do with 2005 Will.
- (xiv) Stated that Testatrix did not have any mobility difficulty at that time.
- (xv) Stated that him or anyone else did not arrange to have Testatrix's signature affixed on a later occasion.
- (xvi) When asked if he customarily prepares file notes about execution of Will he stated that he takes instructions and gives it to typist to type the Will.
- (xvii) Stated that he did not prepare any notes on how 2005 Will was signed.
- (xviii) When it was put to him that after 12 years he had re-collection he stated that re-collection comes from sighting of Will and surrounding circumstances.
- (xix) Stated that he does not know whether Testatrix was living with Charan Jeath Singh when 2006 Will (Exhibit P3), was signed.
- (xx) Stated that him and Kulbushan Singh his brother who had been working in his office for number of years witnessed 2005 Will, and not 2006 Will.
- (xxi) Stated that Testatrix's signature to 2006 Will, was witnessed by him and his typist/clerk Zamira Shafik and instructions for that Will was given by Testatrix with Charan Jeath Singh having nothing to do with it at all.
- (xxii) Stated that Testatrix signed 2006 Will by printing her name.
- (xxiii) When it was put to him that it seemed unusual that previous Will was signed by thumbprint and this one by signature he stated that there is nothing unusual about written signature and thumbprint in 2005 Will with written signature in 2006 Will.
- (xxiv) Denied that he gave 2006 Will to Charan Jeath Singh, which he took it away, arranged for Testatrix to sign it, brought it back to his Office and him and his typist witnessed but not in presence of Testatrix and stated that Testatrix signed in his office after she gave instructions.
- (xxv) When asked what colour dress Testatrix was wearing he stated that obviously he does not remember that.

- (xxvi) Stated that he cannot remember time 2006 Will, was signed but was signed during working hours.
- (xxvii) Stated that never in his life has he given Will to family members to take Will out of his office.
- (xxviii) When it was put to him that not even for his best friend Charan Jeeth Singh he stated not for anybody and he does not remember being so close to Charan Jeeth Singh in 2006 as he was friend but not best friend at that time.
- (xxix) Stated that Testatrix and in his belief her daughters came with her when 2006 Will was signed.
- (xxx) When it was put to him that it was likely Testatrix family would have known that 2006 Will was made he stated that Testatrix and her daughters may have spoken about the Will.
- (xxxi) When it was put to him that any member of her family could have arranged for Testatrix to sign Revocation of Power of Attorney (Exhibit D5) he stated that he agrees with that.
- (xxxii) Stated it as likely when it was put to him that any family member not happy with Will may have made representation to Testatrix.
- (xxxiii) Stated that Transfer of Suva property was executed in his office and at the time Transferor (Testatrix) who was brought by her family members was present but Transferee or its representative was not present.
- (xxxiv) Stated Charan Jeeth Singh was not included in family members who brought Testatrix to his office.
- (xxxv) Stated that instructions for Transfer was given by Testatrix and Transferee gave consideration sum on telephone.
- (xxxvi) When it was put to him that he is telling Testatrix being elderly lady knew identity of Transferee Company he stated she would have said in Hindustani that she wanted to transfer to Charan Jeeth Singh Company.
- (xxxvii) Stated that she would not have known full company name.
- (xxxviii) Agreed that he took name of company and price from Charan Jeeth Singh.
- (xxxix) Stated that he is familiar with Suva Property as he drives past it almost every day.
- (xl) Agreed that as experienced legal practitioner he had quite an idea about value of the property and stated that in 2006, was not that much compared to present time.
- (xli) Stated in his view value of that property on 2 September 2006, would have been around \$500,000.00.
- (xlii) When it was put to him that he is taking that figure from Transfer he stated that in Cunningham Street property was sold for \$800,000.00 and \$500,000.00 is

not too far off.

- (xliii) Stated that he assumed that Testatrix was happy with price by talking to her, she agreed and that is why document was made.
- (xliv) When it was put to him that what actually happened was that Charan Jeeth Singh brought Transfer for him to arrange Testatrix to sign it he stated that it did not happen that way and Testatrix came and gave instruction and signed the Transfer in his office.

48. The Defendant during examination in chief gave evidence that:-

- (i) Around 1940s his father started hawker business and subsequently registered limited liability company known as Gurubachan Singh and Co. Ltd.
- (ii) Agreed that from that time till 2006, the Company did trade.
- (iii) Testatrix being his mother made 2006 Will seven (7) years after his father passed away and she was aware about the assets her and her late husband's estate owned in general terms.
- (iv) In respect to Testatrix's attitude towards protecting those properties he stated that his parents worked very hard day and night for their children and family and they would never have any intention to sell or dispose of the assets.
- (v) Confirmed that Exhibit D3 is 2006 Will.
- (vi) Testatrix generally discussed about 2006 Will with him by asking about him getting to be Trustee of her Will and whether he agreed to that.
- (vii) Agreed that at the same time Testatrix appointed him her Attorney.
- (viii) After he explained to Testatrix that Will is something by which he can operate her estate after she dies and if she wanted him to administer her affairs until she was gone, then there is to be Power of Attorney after which she was comfortable with making Power of Attorney.
- (ix) Revocation dated 13 September 2006 (Exhibit D5), was witnessed by Kamal Datt, employee of Daya Singh who literally ran down Daya Singh's business as was said by Daya Singh in his evidence.
- (x) Notice dated 21 September 2006 (Exhibit D5) was never given to him and he did not see it at all until it was first produced during trial.
- (xi) Wordings in the Revocation are not those Testatrix would have used as she could not spell any English word.
- (xii) Nothing happened between him and Testatrix during the eleven day period between date of Power of Attorney and date of Revocation.

- (xiii) He did not receive Notice dated 21 September 2006, and did not see it until produced during this trial and there was no reason for Testatrix to revoke Power of Attorney nineteen days later.
- (xiv) Reason Testatrix instructed Raman Singh to transfer Suva Property to him was that:-
  - (a) Testatrix had that property in her name for fifteen or twenty years ago which was given to her by his father and once father was alive he had control over collection of rent for himself and Testatrix.
  - (b) Upon death of his father, Testatrix had given responsibility to Daya Singh to collect rent as he was staying next door to Testatrix's business and she thought it convenient for her to deal with him on her property matters.
  - (c) He gathered from Testatrix that all rentals collected from Suva property did not reach her and instead Daya Singh pocketed them and used them for his own purpose which made her very angry as to what was going through her handing responsibility to Daya Singh.
- (xv) In light of that and him (Defendant) being a successful businessman doing various types of business, property being depleted and uncared for and for old age she felt and decided that he should take charge of the building and look after it.
- (xvi) Testatrix effectively gifted the Suva property to him and his company.
- (xvii) In reference to 2006 Will and Testatrix's trust and confidence in Daya Singh he stated that:-
  - (a) Businessman Daya Singh, was running what was handed to him by his father and was thriving and was one of leading supermarkets in Labasa (Business).
  - (b) Through total mismanagement of Daya Singh it resulted in bringing the business to the ground.
  - (c) As such she had no confidence whatsoever as to how Daya Singh would be able to handle her affairs.
  - (d) He can think of nothing that would have happened between that time (2/9/06) and 22 January 2007, which would have altered Testatrix outlook on Daya Singh.
- (xviii) On 2 September 2006, Testatrix was of old age, not getting stronger but was in a state to communicate, understand and do normal activities expected of her age.
- (xix) Testatrix travelled for regular periods between Labasa and Suva.
- (xx) Testatrix has been signing all documents that he came across.

- (xxi) Although Testatrix could not read or write, she learnt to write her signature as his father taught her as to how to put it and she enjoyed signing.
- (xxii) Bank of Baroda cheque Nos. 134238, 134240, 134236, 134239 and 134223 were written out of Testatrix's business R.K. Fashion Account and signed by Testatrix.
- (xxiii) Testatrix enjoyed signing and he has seen many documents signed by her.
- (xxiv) When Sadiq sent 2007 Will on 18 May 2007, his reaction by looking at Testatrix state in late December and January 2007, and seeing what she was going through he felt she had no knowledge or whether she understood what she was asked to put thumbprint on.
- (xxv) Testatrix enjoyed signing and if she was capable she would have signed 2007 Will.
- (xxvi) His parents held 17364 shares in the Company and Daya Singh was director and secretary of the Company upto 30 September 2012.
- (xxvii) His parents held 2001 shares in Soap and Allied Industry Ltd. and Daya Singh was director and secretary of Soap and Allied Industry Ltd. until 6 January 2013.
- (xxviii) In reference to Clause 3(a) of 2007 Will which states "all shares in my building" stated that building belongs to Company as such she could not give building but could have given shares in Company only.
- (xxix) Agreed that if clause 3(a) of 2007 Will intended to be company shares that will give Daya Singh controlling shares and controlling right.
- (xxx) In dollar terms value of shares in the Company and Soap and Allied were much greater than value of other assets including CL 2942, 2941 cash and jewellery.
- (xxxi) Crown Lease Nos. 2942 and 2941 were registered in the name of Gurubachan Singh.
- (xxxii) He saw Exhibits P11 and 12 (TLTB Receipt and letter from NLTB) for the first time when it was produced in evidence by Sadiq (PW2).
- (xxxiii) He received CTC of Application for Consent to Transfer CL249 (**Exhibit D7**) when his Counsel (Mr Geyde) asked for it.
- (xxxiv) **Agreed that signature on Exhibit 7 appears to be Testatrix's left thumb print and was dated 22 January 2007.**
- (xxxv) He has no idea about circumstances including time and place Application for Consent was executed.
- (xxxvi) Labasa land in the asset schedule was rental flat which is mentioned at clause 3(d) of the 2007 Will and was owned by the Company.
- (xxxvii) Property mentioned at clause 3(e) of 2007 Will was transferred to him on 2 September 2006.

- (xxxviii) From discussions held with Testatrix he knew that she had taken out a Life Policy for the sum of \$20,000.00 and the beneficiaries were all his sisters in equal shares.
- (xxxix) On 30 July 2007, Life Policy was encashed by BOB, Labasa.
- (xl) Agreed that cash and jewellery was distributed amongst Testatrix's daughters with no residue left.
- (xli) When asked about likelihood of Testatrix making 2007 Will he stated that looking at detail of the properties put in the Will, with her education she would at no point would be able to instruct any Solicitor to make Will of this nature.
- (xlii) In respect to fairness and treatment of matters in 2007 Will he stated that:-
- (a) It clearly shows lopsided Will which has given majority of assets to only Daya Singh leaving all other sons behind.
- (b) Left out his brother Jagjeet Singh in clause 3(e) and does not think Testatrix would have left him without any specific property if she had done 2007 Will.
- (xliii) Given that Testatrix had given him Power of Attorney and made 2006 Will, he could not see any reason why she would have made Daya Singh Sole Executor and Trustee of the Will knowing that Daya Singh had bankrupt a thriving Company and she was also aware about Bank not wanting to give Daya Singh more money based on Daya Singh being a failed businessman who had no repute with financial institutions and who nearly closed down good operation of his father's business.
- (xliv) Single most concern was Testatrix kept on telling him that his later father had left close to \$800,000.00 and she did not know where all those money had gone and for what purpose because Daya Singh kept on asking her, bothering and pressuring her to give her money from deposits she had.
- (xlv) He did not feel comfortable about it and was very worried as Testatrix kept on telling him that her bank Account had been made empty by Daya Singh.
- (xlvi) After Testatrix's fall she kept on repeating about money taken away from her Account and asked him to enquire with Bank and Bank Manager as to how this money disappeared from her Account when him and his brother Jagjit concluded that because Daya Singh and BOB Manager drank together in his shop it was very likely that BOB Manager and Daya Singh colluded and by forgery withdrew money from her Account.
- (xlvii) When asked if he knew Sadiq acted for Testatrix before January 2007 he stated that:-
- (a) Testatrix was illiterate but was aware of type of people that were in Labasa.



- (b) Testatrix knew Sadiq's dodgy and dicey type of business dealings and would have never touched Sadiq on a forty-foot pole.
- (xlviii) He does not specifically know what was the relationship between Sadiq and Daya Singh but his conclusion is that bad fellows hang out together.
- (xlix) He visited Testatrix every 2<sup>nd</sup> or 3<sup>rd</sup> day in a week which was not as frequent as his wife would do.
- (l) In December 2006, Testatrix was not in condition to either sit properly, eat properly and do anything a normal and fit person is required to do and her health deteriorated continuously over the months.
- (li) As for Testatrix's pain level he could not even bear to see her yelling, crying and suffering she was going through.
- (lii) About the phone call she was said to make to Sadiq, he was surprised as Testatrix being in condition to barely sit, talk or say anything properly and being illiterate how could she pick directory and look for Sadiq's number and as he said before she did not want to see Sadiq.
- (liii) In respect to Testatrix's ability to take out legal documents and have it delivered to Sadiq he stated that her literacy was so bad that she would not know about Titles, had no knowledge about documents, she had not sent them and it must have been Daya Singh.
- (liv) Testatrix's condition on 22 January 2007, compared to December 2006, was that she was just like a vegetable lying on bed and at that stage she was mumbling and they could hardly understand and had to do actions.
- (lv) In respect to him noticing any effect on Testatrix because of medication he stated that:-
- (a) His wife kept on telling her about Testatrix condition every time he discussed with her about Testatrix.
- (b) His wife told him that Testatrix was getting increased pain and was very uncomfortable so she increased dosage of certain medication.
- (c) From his observation on 22 January 2007, Testatrix looked drowsy and not herself and was just lying down.
- (lvi) On or after 22 January 2007, Testatrix did not tell him she had visit from a lawyer and she signed documents but his wife told him that some officers had come to Testatrix house and reason for that was she was sickly and as such lots of people came and visited her.
- (lvii) He did not see Bank Officers visiting Testatrix and stated Testatrix was with BOB so they could have just visited to pamper her and pay respect.
- (lviii) Testatrix did not mention to him about tin in RK Fashion shop containing valuables but his sister asked him to take the tin from the hands and sight of

Daya Singh.

- (lix) He opened the tin after Testatrix's death and religious ceremony was over in presence of his 4 surviving sisters and his wife, divided jewellery and money into 5 shares with 4 surviving sisters taking their share and the sisters were very happy.
- (lx) After Testatrix passed away he instructed Sherani & Co. to apply for Probate on 2006 Will and notice of intention to apply for Probate was advertised in Fiji Times of 2 May 2006 (Exhibit D8).
- (lxi) On or about 18 May 2007, he became aware of advertisement published by Sadiq in respect to Testatrix's Estate in the Fiji Times and subsequently he received 2007 Will.
- (lxii) After that he contacted Sadiq and told Sadiq that 2007 Will looked fictitious one and if him (Sadiq) and Daya Singh would proceed to take out Probate under that Will he will challenge it and take them both to Court.
- (lxiii) On 2 July 2007, Sherani & Co. wrote to Daya Singh (Exhibit D9) because Testatrix had put properties under his control, rent from those properties were collected by Daya Singh supposedly for Testatrix but it never reached her as Daya Singh was pocketing all income from the flats as well and he asked him to be away from those flats as he has taken control.
- (lxiv) Letter dated 2 July 2007, was written on his behalf as Executor of Testatrix's Estate.
- (lxv) Daya Singh agreed to what was said in the letter after it was sent.
- (lxvi) He obtained Probate on 2006 Will and prior to that no Caveat was lodged by Daya Singh against grant of Probate and no step was taken by Daya Singh to challenge his position as Executor of 2006 Will.
- (lxvii) In reference to Daya Singh's evidence that he phoned him he stated he did not communicate with Daya Singh at all and he never communicated with Daya Singh in any way whether verbal or in writing as he was not in talking terms with Daya Singh for number of years prior to 2007.
- (lxviii) He cannot remember any request made to Sherani & Co. by Daya Singh or anyone for 2006 Will and if it had been then Mr Nagin would have told him.
- (lxix) This action was issued in September 2012, and to his knowledge between May 2007 and September 2012 his brother did not challenge 2006 Will or tried to validate 2007 Will.
- (lxx) During May 2007 and September 2012, his brother Daya Singh held public office and the ones he remember are:-

- (a) Board Member of Airports Fiji Limited - Daya Singh would go to Labasa Airport every day to show he had authority.
  - (b) Chairman of Macuata Advisory District Council.
  - (c) Deputy Chairman of Northern Development Project.
  - (d) Board Member of Northern Division Liquor Tribunal.
- (lxxi) He is aware that Daya Singh suffered health problems between May 2007 to September 2012, but not sure what problems he had.
- (lxxii) In 2009, he was granted Administration De-Bonis Non for his father's Estate and that had put him in direct control of Testatrix's Estate and Testatrix share in Native Lease in his father's name.
- (lxxiii) From February 2009 to August 2009, Daya Singh was in Fiji and did not take step to oppose granting of Administration De Bonis Non.
- (lxxiv) He is not satisfied that Daya Singh managed Company's business competently and honestly between the period following Testatrix's death and September 2012, and because his (Defendant) Company Gurubachan Singh Foodtown Ltd and Gurubachan Singh & Co. Ltd had similar name, their suppliers used to get confused and closed all his (Defendant's) account and the Banks and Suppliers freaked when they saw Mortgagee Sale advertisement of property of Gurubachan Singh & Co. Ltd which affected reputation of his Company when he had to give explanation as to what had happened.
- (lxxv) In respect to Daya Singh's competence for financial management from 2007 to 2012, he stated that Daya Singh was basically useless person to even run a business because most suppliers were not prepared to give him anything on credit when it came to a point that he (Daya Singh) had to buy 2 cartons of beer everyday from MH as his stock to sell.
- (lxxvi) Agreed that advertisement for Mortgagee Sale (Exhibit P25) was of Daya Singh's property.
- (lxxvii) When asked in his view what it shows about Daya Sing's financial management he stated that an enquiry being made to Gibson & Co. they confirmed that Daya Singh has not made his normal repayments for several months despite Mortgagee giving time.
- (lxxviii) Mortgagee Sale Advertisement (Exhibit D12) is over property near Namara where soap factory was and this advertisement indicates that Daya Singh's ability to run a business was pathetic as he was not honouring payments he was supposed to make to BOB.
- (lxxix) Letter dated 19 December 2007, from BOB to Daya Singh (Exhibit D13) was in respect to the Company's trading and loan account, Soap and Allied trading

account and Testatrix loan account for which (Testatrix loan account) Daya Singh engaged her Life Policy.

- (lxxx) When asked what letter shows about Daya Singh's Management of BOB accommodation he stated:-
- (a) His father was very prominent and first customer of BOB when it opened Labasa Branch and they had very high regard for his father.
- (b) When Daya Singh took over operation it became pathetic and worried as those sort of letters started coming in.
- (lxxxix) Daya Singh did not take good care of Tax and VAT returns.
- (lxxxii) In reference to E-mail dated 21 January 2013, from FRCA (now FRCS) (Exhibit D14), agreed that Soap and Allied Industries did not lodge tax returns for the years 1990 to 2011 (except for 2 years) and no VAT Return was lodged from May 2010 to January 2013.
- (lxxxiii) When BOB wrote letter to the Company on 16 May 2012 (Exhibit D15), Daya Singh was managing the Company and from letter it is very clear that Daya Singh had not met obligations to Bank and Bank came hard wanting all pending issues to be resolved.
- (lxxxiv) Agreed that in addition to Bank arrears there were SCT Claim of \$600 Tattslotto debt of \$1,000.00, Lands Department rent arrears which all were notified to the Company and Soap and Allied and these documents show Daya Singh was incompetent and bad in management of financial affairs.
- (lxxxv) On 20 June 2010, the Company sold CL No. 6023 and he only came to know about this sale from the Purchaser and Sale and Purchase Agreement (Exhibit D16) states price at \$125,000.00.
- (lxxxvi) When asked if he checked the Company's account to see if majority of \$125,000.00 was deposited he stated that he has gone through Bank Statements and none of that money has gone through the Bank.
- (lxxxvii) In respect to sale of Company's shares in APCO and FMF, he stated that he checked Statements and none of the sale proceeds of the shares have been received into any of the Company's Account.

49. The Defendant during cross-examination:-

- (i) Agreed that Daya Singh was eldest son of his parents.
- (ii) Stated as incorrect when it was put to him that Daya Singh assisted his parents set up business in 1960s.
- (iii) Agreed that shareholding of Gurubachan Singh & Sons Ltd in reference to Annual Returns of the Company upto 31 December 1991 (**Exhibit P18**) were as

follows:-

Gurubachan Singh	4,935
Raj Kali Singh (Testatrix)	12,429
Daya Singh	9,387
Udhan Singh	5,236
Jagjit Singh	5,233
Charanjit Singh	5,233
Surjit Singh	<u>7,979</u>
	<u>\$50,432</u>

- (iv) Stated it to be incorrect when it was put to him that the fact that Daya Singh out of all sons had largest individual shareholding he had control and leading role in the business.
- (v) When it was put to him that there was no other logical reason why Daya Singh had larger share he stated that historically Daya Singh always tried to play trick on his parents and how he had such shares surprises him now as all were sons of Gurubachan Singh.
- (vi) Agreed that under Trust Instrument dated 12 September 1969, his father is settlor and Daya Singh is described as Assistant Manager and Partner but did not agree when it was put to him on the face of Exhibit P17 Daya Singh was playing a leading role in the Company.
- (vii) When asked if his parents were lying he stated “No, they were illiterate”.
- (viii) Agreed that when Exhibit P12 was signed his parents were of middle age at the height of physical and mental state, Daya Singh was about 20 years old, other four brothers were minors with him (Defendant) being about 7 years old.
- (ix) When it was put to him that Daya Singh was working and he (witness) was in school he stated Daya Singh was not working in the shop and had calibre of making wrong things and is doubtful whether parents agreed.
- (x) Agreed that he is saying Daya Singh at the age of 20 manipulated parents which he saw now.
- (xi) Agreed that on 3 October 1980, his father signed Power of Attorney in favour of Daya Singh.
- (xii) When it was put to him that his father had trust in Daya Singh he stated “no trust” and could have given as he was older son.
- (xiii) Stated it to be incorrect when it was put to him that evidence shows whilst him and his brothers were at primary school Daya Singh was running the Company.

- (xiv) Agreed to what is said in clause 2(c) of Trust Instrument (**Exhibit P17**).
- (xv) Agreed that 1991 Will (**Exhibit P5**), was prepared by Sadiq, is dated 12 April 1991 and stated that it appears Testatrix signed by her thumbprint.
- (xvi) Agreed that 2005 Will dated 5 August 2005 (**Exhibit P16**), was signed by Testatrix using thumbprint and block signature.
- (xvii) Stated that in 2005, Testatrix mostly signed and 2005 Will appears to be validly signed by Testatrix.
- (xviii) Stated that 2007 Will, appears to be signed by thumbprint and Application for Consent to Transfer (Exhibit D7) is signed by thumbprint.
- (xix) Could not recall witness from BOB saying in cross-examination that savings account can be signed by thumbprint but cheque account needs printed signature but stated that it seemed correct.
- (xx) When it was put to him that presumably that was the reason his father taught her to sign he stated that ever since Testatrix learned to sign, she wanted to sign by using normal letters.
- (xxi) Agreed that Testatrix could not have operated business or written cheque without using printed signature and stated that it is what Bank requires.
- (xxii) Stated that it appears Testatrix made number of Wills and agreed that prior to January 2007, she made 1991 Will, 2005 Will and 2006 Will.
- (xxiii) **Agreed that his father was named as Executor in 1991 Will (Exhibit P5) and clause 3(a) of that Will bequeaths all property to Testatrix's 5 sons in equal shares.**
- (xxiv) Stated that **2005 Will (Exhibit P16)**, named **Jagjeet Singh** and **Daljeet Kaur** as Executors and **all children had equal shares**.
- (xxv) When asked why Testatrix made 2006 Will one year after 2005 Will he stated:-
  - (a) Lot of things happened in family and Testatrix wanted to see that hard earned properties built by his parents to be in safe hands with nothing to be sold or disposed of.
  - (b) Having seen that Daya Singh, his elder brother had basically run the business he was given to take care of by his parent to the ground, and Daya Singh spending money lavishly became a worry to Testatrix.
  - (c) To top it up Daya Singh had extra-marital affair with another lady.
  - (d) This all went into Testatrix's mind that any responsibility given to Daya Singh will not be in safe hands and so she changed her mind to give responsibility to him.
- (xxvi) Agreed that at time Testatrix signed 2006 Will (Exhibit D3), her intention was that none of real property was to be sold and they were to remain in Estate.

- (xxvii) When it was put to him that shortly after 2006 Will, was signed he arranged for her to transfer Suva Property to his Company he stated that was Testatrix's intention and her reason was:-
- (a) Building on the property had run down badly over the years.
  - (b) Being valuable property rental income was only \$50,000.00 a year from a 5 storey building.
  - (c) Testatrix knew what he had been doing over the years in real estate business and asked him how could they improve on income from the property.
  - (d) Because his sisters were left high and dry Testatrix mentioned to him that after improvements are done on the building if he could distribute dividend on yearly basis to his sisters for their welfare.
  - (e) It was because of her old age she could not borrow money to improve the building.
  - (f) It is within that cause he suggested that if building comes under umbrella of his real estate business whereby he had good name with the Bank, he could easily borrow funds, improve the building and get better income from the property.
  - (g) Transferee borrowed \$500,000.00 from Fiji Development Bank to improve building and installed lift in the building.
  - (h) Thereafter rental income increased from \$50,000.00 a year to \$140,000.00 a year.
- (xxviii) Agreed that Suva Property was transferred for \$500,000.00.
- (xxix) Stated to be incorrect when it was put to him that Suva property was far more valuable in his Company other than his sisters' share and stated that value of property at that time was that price around same area and state of property was depleted.
- (xxx) Agreed that he is saying \$500,000.00 was fair market value at that time.
- (xxxi) Stated it to be incorrect when it was put to him that \$500,000.00 value was more than what his sisters got under the Will.
- (xxxii) In reference to 2006 Will he stated that no specific asset is given to sisters as all children got equal shares.
- (xxxiii) Did not agree when it was put to him that no other asset was given to his sisters apart from tin of valuables and stated that valuables were shared equally and Life Policy was assigned to BOB by Daya Singh which disappeared in paying debts.
- (xxxiv) When it was put to him that Daya Singh had nothing to do with running RK Fashion he stated that:-

- (a) Daya Singh had great influence over BOB Bank Manager and BOB Manager used to come to drink grog daily behind the shop and Daya Singh and BOB Manager used to manipulate and manufacture documents.
- (b) Testatrix told him that she was not aware that Insurance Policy was liened.
- (xxxv) When it was put to him that BOB documents showed properties of RK Fashion was their parents he stated that document is one thing and bank interference is another which Daya Singh was doing.
- (xxxvi) Stated that there was total mismanagement and that is why Daya Singh had to put Life Policy as a Lien because Gurubachan Singh & Co. Ltd's cheques started bouncing.
- (xxxvii) Stated that Daya Singh had indirect benefit by taking money from mother's account.
- (xxxviii) Could not recall if Life Policy was assigned to Bank soon after 1990 when account was opened.
- (xxxix) Stated that it was clear understanding between himself and Testatrix that whatever the property earns after it is improved, surplus will go to his five sisters so basically his company was custodian over that asset.
- (xl) Agreed that Charan & Togavere Holdings Ltd which took transfer of Suva property is wholly owned by him and his wife.
- (xli) Stated that he is having lot of discussion with his sisters because all are in Canada and America who are aware about the legal proceedings and he is flying to Canada on 1 June 2017, for joint meeting with sisters to know where and when they want surplus funds to be distributed.
- (xlii) When asked about value of valuables in tin he stated that he cannot say as it was jewellery about which ladies should know, he is not a jeweller and as such has no idea.
- (xliii) Stated that his sisters will get surplus in future, it is his word and sisters trust him.
- (xliv) Denied that he made arrangements with his brother Udham Singh for renovation of Suva Property and stated that he was not part of his company.
- (xlv) In reference to fax dated 22 May 2007, from him to Udham Singh he stated that he was simply informing him about renovations and read part of email which states that "My plan of action in regards to Suva building is give contract to Western Builders for necessary renovation to prepare building to put lift".
- (xlvi) Stated he is aware about lot of tax issues for his parents in 2007.
- (xlvii) When asked if he had disagreement with Udham Singh he stated not at all.
- (xlviii) Stated that he is not aware about Udham Singh's Solicitors and cannot recall Udham Singh instructing Howards in Suva.



- (xlix) Agreed that he arranged with Sherani & Co. to obtain Probate over 2006 Will which was granted on 2 October 2007, and show value of assets at \$200,000.00 (Exhibit D16).
- (l) Stated that valuables left for sisters are not part of value in probate.
- (li) Disagreed that Life Policy was worth \$20,000.00 and stated that when BOB encashed it, was worth about \$75,000.00.
- (lii) Stated that Life Policy was assigned for overdraft and loan on account of RK Fashion.
- (liii) Agreed that even if value was \$100,000.00 it was small proportion compared to value of Suva Property.
- (liv) Agreed that his sisters are entirely reliable on his goodwill to give share.
- (lv) When asked if he would not transfer Suva Property to a trust with sisters as beneficiary he stated that his sisters have lot of trust in him and are quite happy with current arrangement.
- (lvi) Stated that he knew generally about 2006 Will as Testatrix had good discussion but did not know about contents and as to what Raman Singh prepared.
- (lvii) Stated that he saw no reason to tell Daya Singh about 2006 Will and Power of Attorney.
- (lviii) Stated that his brother in Suva, Jagjeet Singh, his sisters, his wife and two daughters were all aware about the Will.
- (lix) Stated that he still says Revocation and Notice (Exhibit D5) are fake.
- (lx) When it was put to him that if Daya Singh did not know about 2006 Will and Power of Attorney, it is highly unlikely he would have arranged Testatrix to sign Revocation and stated that one of his sisters may have told him about 2006 Will and Power of Attorney.
- (lxi) When it was put to him that Daya Singh said his daughter found papers in Testatrix shop he stated it be incorrect because Daya Singh's daughter was not allowed to enter the shop at all.
- (lxii) When it was put to him that he was not standing outside the shop everyday to check she did not go in he stated that, he placed securities in front and back of supermarket for the reason that he did not want anyone from Daya Singh's side to enter the shop and take any documents if there was any.
- (lxiii) Stated that Security people were well aware who Sanjeet Olak was.
- (lxiv) When it was put to him that he basically went out of his way to hound her out of town in 2012, he stated that he is not that low down and it was for her to decide.
- (lxv) When it was put to him that Daya Singh said he sent her to sort out his company affairs and pay his bill he stated that it was never done.

- (lxvi) When it was put to him that it was never done because he drove her out of town he stated that, if that was the case then she should have left money in the Bank and she did not have the money at first place.
- (lxvii) When it was put to him that up until 30 September 2012, Daya Singh was a director of the Company and was perfectly entitled to send his daughter to sort out affairs of the Company he stated that he may have been a director but his daughter was in Labasa to sell and dispose of property.
- (lxviii) Stated that Daya Singh should have come instead of sending daughter.
- (lxix) When it was put to him that Daya Singh was on dialysis 3 times a week he stated that he went on dialysis recently.
- (lxx) When it was put to him that he has been on dialysis since 2010, he stated that he is a liar and did not agree that he was on regular dialysis in 2012.
- (lxxi) In reference to Revocation of Power of Attorney when asked if it is not likely that Testatrix had second thoughts about transfer of Suva property he stated that by looking at the paper if Testatrix would have got Sadiq to do it and signed by Kamal Datt, another crook in the Company.
- (lxxii) When it was put to him that Testatrix could have got any business person or lawyer to do it inducing Kamal Datt he stated that Testatrix was illiterate but not naive to use Kamal Datt, employee of Daya Singh to do this.
- (lxxiii) When it was put to him that Testatrix did not use lawyer because Revocation did not follow prescribed Form he stated that he heard in Court that there is a prescribed form.
- (lxxiv) In respect to Transfer of Suva property he stated that Testatrix knew about affairs of his family company and knew that him and his wife had shares in the Transferee and were directors of that company.
- (lxxv) When it was put to him that he does not know that for certain he stated that Testatrix was not that smart but not that dumb and she knew who directors of company were.
- (lxxvi) When it was put to him that does it then follow that she was smart enough to change her mind and make another Will in January 2007, he stated it to be incorrect and looking at her state of health in 2006, she was perfect and whereas in 2007 she was not.
- (lxxvii) When it was put to him that Kusum Lata said when Testatrix wanted to make call, she would look for number and give it to Testatrix, he stated that Kusum is a liar and he can prove that.
- (lxxviii) Stated that he cannot remember Jeet Thakkar saying that when Testatrix wanted to call she would call Kusum who would dial and give her the phone.

- (lxxix) Stated that there was news in Town that Testatrix was getting worse and so relatives, Bank officers and those who wanted to see her, came and visited her in natural way to ask about her health.
- (lxxx) Stated that from his understanding Rate Notice and copy of Lease were not with Testatrix but all were with Daya Singh which he knew for sure as if she had it she would have discussed about it with him.
- (lxxxii) Stated that he does not think Testatrix ever instructed a boy by the name of Prem Chand working for her, to deliver the document because she never had any papers in her custody at first place.
- (lxxxiii) When it was put to him that he alleges Daya Singh applied undue influence in respect to 2007 Will and Suva Property was left to all brothers he stated that in hurriedly manner he missed out his name.
- (lxxxiiii) When it was put to him that even though his name, his sister and his wife's evidence is that Daya Singh was getting money he gave opportunity for him to get \$500,000.00 property he stated that he can say that all money Testatrix had in her Bank account and given by his father were siphoned systematically by Daya Singh leaving nil balance and he could not give Suva Property because it belonged to Testatrix with Daya Singh having no show, so why would he worry.
- (lxxxv) When it was put to him that in 2007 Will, Suva Property is gifted to four brothers and asked why he didn't give share to himself he stated that his understanding is that Daya Singh wanted to show and wanted to balance off.
- (lxxxvi) When it was put to him that his evidence was that Daya Singh was pestering Testatrix to clean her out when it came to 2007 Will, he overlooked \$500,000.00 property he stated that he does not think he overlooked but he missed hurriedly.
- (lxxxvii) When it was put to him that simple reason Testatrix gifted Crown Lease to him and Udham Singh in 2007 Will when she succeeded in getting it in her name he stated that he does not think it was Testatrix's intention but simply a play by Daya Singh to show documents is fair.
- (lxxxviii) When it was put to him that as per his allegation Daya Singh applied undue influence to make Will that was fair to whole family and not just Daya Singh he stated that in 2007 Will, first two properties Nasekula Road property and Soap Factory in Namara assigned to Daya Singh are most valuable properties so where is the fairness.
- (lxxxix) When it was put to him that if Daya Singh applied undue influence on Testatrix he would have got Suva Property and Crown lease for himself, he stated if he had his way he would but Suva Property had gone.
- (lxxxix) When asked current value of Suva Property and if he thought it would be \$5m he stated that he would be happy to get \$5m.

- (xc) Stated that current value would be about \$1m.
- (xci) Agreed that Insurance Policy mentioned in clause 2 of 2007 Will, was assigned to BOB and Bank cashed Policy on 30 July 2007, and stated that it cashed it upon Testatrix's death.
- (xcii) When it was put to him that when Testatrix made 2007 Will, she did not know how much was owed to the Bank he stated that he realised later when he took over.
- (xciii) When it was put to him that when 2007 Will was made Testatrix would have realised there would be surplus Insurance proceeds after bank debt is paid off he stated that she knew actual value and surrender value would not be known until insurance company advised surrender value to the Bank.
- (xciv) Agreed that Testatrix was perfectly entitled to gift proceeds of Life Insurance Policy to her daughters and it would depend later what was surrender value.
- (xcv) In reference to tin of jewellery stated that it would obviously have been divided between his sisters and it does not matter under which Will.
- (xcvi) Recalled his and sister Jeet's evidence that Testatrix said to them that Daya Singh has taken money or cleaned her up.
- (xcvii) Stated that he does not accept Daya Singh's evidence that he never asked Testatrix for money or cheques.
- (xcviii) Stated that he does not accept Kusum Lata's evidence that she never heard Testatrix saying she is worried about Daya Singh.
- (xcix) Agreed that he said Testatrix told him that his late father left her \$800,000.00 and she did not know where that money had gone.
- (c) Agreed that value of his father's assets shown in Letter of Administration De-Bonis Non No. 43734 (Exhibit D17) is shown as \$495,000.00.
- (ci) When it was put to him that Testatrix is mistaken or LA is incorrect he stated that he does not think Testatrix was mistaken.
- (cii) Stated that he cannot recall if he was responsible for giving value to be put on LA.
- (ciii) Stated that he as Administrator of his father's estate could not recall where or how amount came about but maybe from Company's books and accounting papers.
- (civ) Stated that his father died in 1999, and his mother was appointed the Administratrix and after she passed away, he obtained Letters of Administrator De Bonis-Non.
- (cv) Agreed that as at 24 August 2012, being date of Company search (Exhibit P18) the Company had significant borrowing of over \$2m.

- (cvi) Agreed that as at that date his parents and Daya Singh were directors of the Company.
- (cvii) When it was put to him that debt and securities were approved by the Directors being his parents and Daya Singh he stated obviously bank would have taken Directors consent.
- (cviii) When it was put to him that his evidence was that Daya Singh put the Company to ground but he was acting jointly with his parents he stated that as elder son, Daya Singh ill-advised his parents as it was best business in Labasa.
- (cix) When it was put to him that his father was successful businessman and would not be pushed around by Daya Singh he stated that Daya Singh was fourth child born after three daughters, every one commented that he was spoilt child and his father accepted Daya Singh's words to not to upset him.
- (cx) When it was put to him that he said in evidence that Daya Singh was friends with Bank Manager and they colluded to withdraw money from Testatrix's Account he stated it to be true and that his brother Jagjeet Singh also told him that current manager of BOB, Nausori Branch was then Manager Labasa Branch and prior to him being appointed Labasa Branch Manager, Daya Singh used to withdraw money from Testatrix's account on thumbprint authority letter which Testatrix was not aware of.
- (cxi) When it was put to him that Testatrix owed money to BOB on overdraft and not clear that BOB would withdraw he stated it was withdrawn from Bank Account which Bank Manager told them and definitely Bank Manager would not lie.
- (cxii) Stated that investigation against Bank Manager was initiated when initial complaint was made by Testatrix and Jagjeet Singh and investigation was instigated by Jagjeet Singh through Ram Chand & Co. Solicitors and because Bank documents were missing in links, Ram Chand & Co. could not go very far but yes investigation did start which was in 2006 or so.
- (cxiii) Agreed that BOB maintains records for ten years and would have gone back to 1995.
- (cxiv) When it was put to him Bank could have gone ten years back to retrieve record he stated that when his brother initiated investigation he saw Managers were manipulative saying documents have been archived and delay caused frustration.
- (cxv) Stated that his brother did investigation.
- (cxvi) Denied that his evidence about brother investigating is fabricated on his part.
- (cxvii) Admitted that he said in evidence that Testatrix will not touch Sadiq on a forty foot pole.

- (cxviii) When it was put to him Testatrix was happy for Sadiq to do 1991 Will he stated he does not know if Testatrix instructed or someone else.
- (cxix) Stated that he could not recall Sadiq saying he subsequently acted for Testatrix.
- (cxx) When it was put to him that Testatrix constantly dealt with Sadiq in 1991, he stated that, dealt under what circumstances he could not say.
- (cxxi) In respect to relationship between Daya Singh and Sadiq recalled saying "bad fellows hang out together".
- (cxxii) When it was put to him that Sadiq is vegetarian, never drank alcohol and not part of social gathering at Daya Singh's shop he stated Sadiq is not vegetarian as he ate with him, he is not aware about him taking alcohol but he drinks grog together with Daya Singh and group where they gossip about successful people in town.
- (cxxiii) Stated that Daya Singh was not successful, was morally and financially bankrupt person.
- (cxxiv) Stated that Nita Wati was lying when she said Testatrix never talked about money matters and that Nita Wati was brought in case to lie.
- (cxxv) Stated that Testatrix mentioned to him that Daya Singh took Life Policy.
- (cxxvi) When it was put to him that Testatrix gave Life Policy as Security he stated that lot of pressure was put on her by Daya Singh and Daya Singh had influence and tried to harass her and threaten her.
- (cxxvii) Stated that Daya Singh did not want to see any of his brothers in business and sidelined Udham who migrated to Canada, Surjeet made so much trouble and committed suicide and Testatrix kept on repeating that Surjeet committed suicide.
- (cxxviii) Stated that him and his brother Jagjeet Singh decided to start their own business which they did and when parents wanted assistance they would help them out but bottom line is Daya Singh did not want brothers to come close to parents so that he can take full control of Gurubachan Singh & Co. Ltd, the Company.
- (cxxix) Agreed that Daya Singh effectively forced his brother Udham to leave Fiji.
- (cxxx) Did not agree when it was put to him that reason Udham left Fiji because he got into fight at Grand Eastern Hotel when Police agreed with his father that Udham should leave town.
- (cxxxii) Stated that he did not think it is true when it was put to him that Udham left for Canada because he got into a fight and was arrested.
- (cxxxiii) Denied that his sister and him collaborated to concoct evidence against Daya Singh and stated that they said whatever is true.

- (cxxxiii) Agreed that 2007 Will, is lopsided and left out his brother Jagjeet Singh and denied that likely reason he was left out because he dealt badly about Transfer of CT 2943 and stated that his parents gave it to him.
- (cxxxiv) Stated it to be incorrect when it was put to him that Jagjeet Singh had land with building which had machines imported by his father from Taiwan and stated that Jagjeet Singh bought it himself and he is running that factory in Suva.
- (cxxxv) Stated it to be incorrect when it was put to him that when his father was visiting China, Jagjeet Singh removed machines for his own use.
- (cxxxvi) Stated that Jagjeet Singh is mechanical person, his father had full faith that Jagjeet Singh will be able to run factory so father gave him the machines.
- (cxxxvii) Stated that he is not aware that Jagjeet Singh gave dated cheques to his father when he bought CT 2943.
- (cxxxviii) Stated it to be incorrect when it was put to him that when father died Jagjeet Singh had to put stop payment on those cheques and reason for him saying incorrect is that Jagjeet Singh is a rather honest person who would honour his dealings.
- (cxxxix) Stated that in 2005, Testatrix agreed for APCO dividend of \$12,500 deposited into Jagjeet Singh's account because Testatrix bought second hand clothes from Australia which was facilitated by Jagjeet Singh.
- (cxl) When it was put to him that Jeet said videos were taken in Labasa Hospital in December 2006 he stated if she said that then it must be correct.
- (cxli) Stated that when Jeet left she gave him copy of that video and he has provided it to his Solicitor.
- (cxlii) When it was put to him that in first clip played saw Testatrix having conversation with him he stated that she was trying to talk and in trying to understand her body language.
- (cxliii) Could not recall additional DVD clip produced by Jeet which contained additional clip produced in cross-examination which evidence was not produced when she gave evidence in chief.
- (cxliv) Stated that he did not have any involvement in editing that disc before it was sent to his Solicitors.
- (cxlv) Stated that he cannot say that Testatrix was having coherent conversation with him when she got out of hospital and that Testatrix was trying to talk to him and reach him in some way.
- (cxlvi) When it was put to him that his and Jeet's evidence was that she was coherent about Insurance Policy he stated that she said it before and not when lying in bed.

- (cxlvii) When it was put to him that Kusum Lata said Testatrix was still taking interest in business he stated that she deliberately lied to Court.
- (cxlviii) When asked if Testatrix ever talked to him in December 2006 or January 2007, about her business he stated that he gave her some information to make it bit lively and she had no energy whatsoever to worry about the business.
- (cxliv) When asked what Testatrix said on her enquiries about business he stated that he did not make enquiries but trying to make her feel better by saying do not worry, things will be alright and he will take care of business.
- (cl) When it was put to him that presumably Testatrix did not say she did not care about her business he stated that he does not think she would have said as she was the one who established it with his father who was dear to her and she would never say such things.
- (cli) When it was put to him that business was dear to her she would ask him how it was going and if customers in shop he stated with her health she was least worried and he was trying to cheer her up.
- (clii) When it was put to him that Nita Wati said while Testatrix was in some pain in January 2007, she was mentally alert he stated that it is incorrect and Nita had lied to Court.
- (cliii) When it was put to him that Nita said she had conversation with Testatrix and she was not hallucinating or talking to dead people he stated that is incorrect and whilst they paid money to Nita to look after Testatrix at night she was sleeping and not honest with them in looking after Testatrix and therefore lied.
- (cliv) When it was put to him that Nita said his wife would come for tea and Nita would talk to her and Testatrix, he stated his wife and her would know better.
- (clv) Stated that he could not say anything when it was put to him that Nita Wati could not have been asleep when his wife Nandita Singh would come for tea he stated that his wife came in the afternoon when Nita started work and Nita was sleeping at night.
- (clvi) Stated that he thinks Nita Wati lied when it was put to him that she said in January 2007 Testatrix was in pain but she could talk.
- (clvii) Stated that he did not discuss evidence with housegirl Panjali Pillay commonly known as Tara prior to commencement of trial or anything at all.
- (clviii) Stated he provided for Pushpa Wati's return economy fare to Fiji from USA.
- (clix) Stated that he did not provide Pushpa Wati any expense and that Pushpa Wati is crucial witness and was planning to come in August but he asked her daughter if Pushpa Wati could come now and he will provide Pushpa Wati's ticket back to Fiji to which they obliged and he is grateful she came.



- (clx) Stated he does not provide accommodation to Pushpa Wati and she is staying with her son in Suva who supports her.
- (clxi) Stated that he does not think Pushpa Wati must be grateful to him for paid visit to Fiji because he tried to disturb her normal trip to Fiji and she is in great pain for her mobility.
- (clxii) Recalled Daya Singh saying in evidence that he had telephone conversation with him (witness).
- (clxiii) Stated it to be incorrect when it was put to him that Daya Singh said he told Daya Singh that he had a later Will and Daya Singh should not get Probate on 2007 Will.
- (clxiv) Did not accept when it was put to him that he deceived Daya Singh by him not taking action on 2006 Will.
- (clxv) When it was put to him that Daya Singh said that Daya Singh made several requests to him for copy that Will but he did not respond to that he stated that he was not in talking terms with Daya Singh so why would he converse with him.
- (clxvi) When stated that Daya Singh had various health issues and stroke in 2007, he stated that he has no idea what was Daya Singh's health issues from 2007 to 2016.
- (clxvii) When it was put to him that Daya Singh suffered from back injury, had diabetes, kidney issues and had to go on dialysis in 2006 he stated he has no idea and cannot accept it.
- (clxviii) Agreed that looking at period Testatrix died and this action was instituted Daya Singh delayed issuing this proceeding.
- (clxix) When it was put to him that Daya Singh's health issues incapacitated him he stated that Daya Singh was very much about and around in Fiji during this period and could not see anything holding him back in taking out probate action.
- (clxx) When asked that even though the Company had three directors with Daya Singh being one of them he still blamed Daya Singh he stated that:-
- (a) Daya Singh being the educated one of the three, his parents had faith in Daya Singh to run business in the right direction, pay taxes, file company tax returns.
  - (b) By Daya Singh not paying Testatrix's tax she was slapped with Departure Prohibition Order which they got released later after he (Defendant) cleared Testatrix's tax arrears.
- (clxxi) When asked why he blames Daya Singh when Daya Singh was not involved in RK Fashion he stated that while Testatrix was running RK Fashion she was still

director of the Company which company was in a mess which also got Testatrix trapped with FRCA.

- (clxxii) When asked why Daya Singh would be involved in tax of RK Fashion he stated that RK Fashion is one entity and Testatrix's return was to come from RK Fashion and the Company for which Tax was not paid in time.
- (clxxiii) Stated that Testatrix did not have an accountant but a Tax Agent by the name of Ranjit Singh of Ranjit Singh & Co. who was also Daya Singh's Agent.
- (clxxiv) When it was put to him that Ranjit Singh was responsible for filing Testatrix's tax return he stated that when he took over the business he called Ranjit Singh to provide Testatrix's tax return documents but he did not comply and never gave documents.
- (clxxv) When it was put to him that for one reason or other Tax Agent did not do his job, that becomes Daya Singh's fault he stated that Agent was another grog drinker and he is pretty sure Agent colluded with Daya Singh by not providing expert advise to Testatrix and RK Fashion.
- (clxxvi) When it was put to him that Daya Singh said he advanced shareholders loan of \$186,284.54 in total he stated that he has to see accounts and cannot comment at this stage.
- (clxxvii) In reference to Exhibit D9 he stated that flats were owned by Gurubachan Singh personally.
- (clxxviii) Recalled saying that Daya Singh was pocketing rent from Suva Property which had various tenants, had 5 floors and he was not aware which tenants were on each floor.
- (clxxix) When asked if it is his view that if you run a nightclub in Fiji you are unethical businessman he stated:-
  - (a) Running nightclub and what you do in the nightclub are two different things.
  - (b) Daya Singh was in the nightclub with girls and general complaint was given to his parents by Daya Singh's wife.
  - (c) Daya Singh would stay whole night away from home, hang around in nightclub till early hours of morning everyday and would not go out to Suva shop which was the reason for collapse of Suva shop.
  - (d) Those were complaints to their parents.
- (clxxx) Stated that his group of companies have three nightclubs in Fiji being Hunters Nightclub and Ashique Nightclub in Lautoka and Pontoon in Labasa which are run by his managers.
- (clxxxix) In reference to Daya Singh's evidence that deficiency of Kamal Datt led to problems in the Company he stated that Kamal Datt was ordinary worker and

Daya Singh was directly controlling it and putting blame on Kamal Datt.

- (clxxxii) When it was put to him that Daya Singh moved to Queensland, Australia in 2010, so Daya Singh could not be controlling business from there he stated that over years the business hardly had any stock left, there was nothing to control and whether he was living in Australia or not Daya Singh did not look after his business.
- (clxxxiii) When it was put to him that prior to 2010, Kamal Datt was the person managing business and for better or worse he was the person to run the business properly he stated that business is running if directors are capable of directing the entire business, have strong financial backing and have prudent accountant and that is when business runs and he cannot see how Kamal Datt can be blamed for this.
- (clxxxiv) When it was put to him that on one hand he says Kamal Datt was fraudster and on the other hand say that you cannot blame him for not running business properly he stated that he observed Kamal Datt operating grocery canteen and he recently claimed that he was not paid salary by Daya Singh for which they received notice from him so for him it was confusing in that where he got money to start canteen when he was not paid salary.
- (clxxxv) When it was put to him correspondence to Daya Singh or his Manager did not get passed to Daya Singh and as such did not get actioned he stated that it is not correct and his understanding is that all correspondence were sent to Daya Singh by fax or was told on phone and because he wanted to dodge these letters he made excuse that he did not get the correspondence.
- (clxxxvi) When it was put to him that when Daya Singh tried to address the problem by sending his daughter whom he haunted out of town he stated that it is not correct and the fact is that:-
- (a) Daya Singh's daughter Sanjeet Olak and her husband Sandeep Olak came to Labasa and without his knowledge sold vehicles which included tractors, pick-up vans and trucks worth over \$305,000.00 to Company called Local Timber for \$65,000.00.
  - (b) He had to put his foot down and told them that they are not to touch any of the Company's Assets because they did not belong to them.
  - (c) Even \$65,000.00 belonged to the Company but has not been deposited into Company's account to date.
- (clxxxvii) Agreed that all those events are disputed facts subject to separate proceedings in High Court.

- (clxxxviii) Agreed that in 2009, he obtained Letters of Administration De-Bonis Non on his father's Estate.
- (clxxxix) When asked if he took any step to distribute that Estate he stated:-
- (a) In consultation with his brother Jagjeet Singh, his sisters in Canada and America they decided that all properties had to be upgraded, have value added to those properties in order to bring good returns.
  - (b) As a result, they decided to retain the Mall in Labasa Town which would bring estimate income of \$50,000.00 a month.
  - (c) Soap and Allied Factory has been upgraded.
  - (d) Trying to increase revenue so that all shareholders get a better return.
- (cxc) Agreed that after obtaining Probate on 2006 Will, he allowed Daya Singh to remain as Director of the Company until 30 September 2012, and he did so because he had his own substantial business to look after. Jagjeet Singh also had fairly big business in Suva, Udham Singh had no interest in coming from Canada and so they decided to give Daya Singh another chance to pull-up and that is the reason they delayed.
- (cxcii) When it was put to him that from 2 October 2007 to 30 September 2012, he gave Daya Singh another chance and that is why Daya Singh did not issue proceedings he stated that he does not agree as Daya Singh knew about 2006 Will and knew 2007 Will was frivolous and fictitious and most importantly he did not have money to fight case which he only got after he sold his house in Labasa.
- (cxciii) When it was put to him that he instructed his lawyer Sarju Prasad on 30 August 2010, who wrote about rates on CL 6023 he stated that to be incorrect and that letter was written by Company's lawyer on instruction given by Daya Singh.
- (cxciv) He became aware about sale of CL 6023 after Abdul Munif, the Purchaser told him that Daya Singh had signed Sales and Purchase Agreement with him and he had paid substantial amount of money in Trust Account of Sarju Prasad and that Daya Singh and his Solicitors were not completing transfer.
- (cxcv) He stated after Abdul Munif knew that he has taken over control of the Company and that is when he came to know about the Sale (Exhibit D18).
- (cxcvi) Agreed that he had concerns about that dealing as there were bogus signatures with Kamal Datt signing as Company Secretary.
- (cxcvii) When it was put to him that despite those concerns he waited for another two years to remove Daya Singh as director of **family Company** he stated that the deal was not approved by the Company but decided to let go that piece of land because Abdul Munif, the Purchaser was a very religious and honest man.

- (cxcvii) When asked with problems concerned he persevered with Daya Singh and waited till 30 September 2012, he stated that they are very kind hearted.
- (cxcviii) When it was put to him that given he allowed Daya Singh he can hardly complain about delay on his part for issuing this proceeding he stated that he cannot talk for Daya Singh as to why he started late.
- (cxcix) When it was put to him that issues he is complaining regarding Daya Singh's performance was after Testatrix death he stated that mismanagement started well before Testatrix's death.
- (cc) Stated that they are looking into allegation about misappropriation of the Company's funds by Daya Singh.
- (cci) When asked if Testatrix was not concerned about his business records when she appointed him Executor of 2006 Will, he stated that he did not have any issue with his business record.
- (ccii) When it was put to him that in 1983, his father removed him as manager of Soap and Allied because he came to work drunk he stated he opted to move out of that company and went to New Zealand for pilot training.

50. During re-examination the Defendant:-

- (i) Agreed that two thumbprints are of Testatrix which are affixed in Application for Consent (Exhibit D7) and one in 2007 Will.
- (ii) Stated that based on his knowledge of Testatrix's condition, his view is that thumbprint were not affixed voluntarily and he says so because by looking at Testatrix's condition on those days she had no idea of what, why and how she was signing and also there were two properties side by side and if Testatrix had any knowledge she would transfer both properties together and not only one.
- (iii) Stated that he is of the firm view that 2007 Will, was manufactured and created on 22 January 2007.
- (iv) In reference to 2005 Will, he stated that his uncertainty of Testatrix's intended method of execution of that Will was that she preferred to sign and not put thumbprint.
- (v) Stated that he fully agreed with Raman Singh when he said that initially he thought she would put thumbprint and later she said she could sign, hence she signed and that is why it has thumbprint and signature in 2005 Will.
- (vi) Stated that he knew Testatrix's habit and she preferred to sign as she loved signing because she was illiterate, his father taught her to sign and she would sign any document if she understood what that document was.

- (vii) Stated that his understanding of Clause 3 of 2006 Will (Exhibit D3), is that it does not make any specific bequeath of any specific asset and it is very clear that Testatrix decided that all her assets be shared equally amongst Charan Jeath Singh, Jagjit Singh, Udham Singh, Daya Singh, Daljeet Kaur Charan Kaur, Jeet Kaur and Pritam Kaur, the surviving children of Testatrix.
- (viii) Agreed that Testatrix did not provide any specific legacy to his brother Jagjit Singh, in 2007 Will.
- (ix) Recalled it being put to him about alleged grievance by Testatrix against Jagjit Singh.
- (x) Agreed that all the matters in respect to the allegation occurred prior to 2006 Will and would be known to Testatrix in 2006.
- (xi) In respect to Testatrix's treatment of Jagjit Singh on 2006 Will, he stated that he had equal share and there was no discrimination whatsoever.
- (xii) Stated that he did not see Testatrix having any grievance against Jagjit Singh and Jagjit Singh visited Testatrix from time to time.
- (xiii) Stated that he borrowed \$500,000.00 for Suva Property from FDB in the name of Charan Katonivere Co. Ltd. with him and wife giving personal guarantee.
- (xiv) When asked why no fixed arrangement for his sisters and if could ask his sisters to be personally liable to the Bank he stated that his sisters are very well settled and having discussions with them, they did not want to be entangled with the Bank for one reason or the other and preferred him to develop and upgrade the property and to distribute dividend to them as and when he is ready to do.
- (xv) Stated that value shown on Probate (Exhibit D13) at \$200,000.00 as net value.
- (xvi) Stated that letter dated 9 December 2007, from BOB sets out debt owed to the Bank by Testatrix.
- (xvii) Stated that valuation of shares in the two Companies would reflect debts owed by the companies to the Bank.
- (xviii) Agreed that total debt comes to \$320,000.00.
- (xix) Recalled it being put to him that if Daya Singh was not aware about Power of Attorney he could not be responsible for any false revocation document.
- (xx) Stated that Power of Attorney was mentioned during first trial of this action in 2013.
- (xxi) Stated no Revocation document was produced during first trial.
- (xxii) Recalled Daya Singh being questioned as to whether 23 May 2016, was first time he provided Revocation and Daya Singh accepted was first time he produced Revocation documents, during trial held in May 2017.
- (xxiii) Stated that he became aware about Revocation when it was produced in Court.

- (xxiv) Agreed that Testatrix granted him Power of Attorney on 2 September 2006, and he was in talking terms with the Testatrix then and until her death in April.
- (xxv) Stated that nothing passed between him and Testatrix after 2 September 2006 which would have caused a change of her to have him removed as her Attorney.
- (xxvi) Stated assets listed in Schedule of Assets (**Exhibit D20**) are as follows:-
- 1) Shares in the Company;
  - 2) Shares in Soap & Allied Industries (Fiji) Ltd;
  - 3) Crown Lease No. 2942;
  - 4) Crown Lease No. 2941;
  - 5) Delailabasa Land;
  - 6) Freehold land at Raojibhai Bhai Patel Street, Suva;
  - 7) Life Insurance Policy;
  - 8) \$30,000.00 cash (distributed to daughters);
  - 9) Jewellery (distributed to daughters).
- (xxvii) Agreed that Items 3 and 4 were his father's Estate properties but would eventually come to Testatrix; items 5 and 6 were not owned by Testatrix's Estate with items 7, 8, 9 and item 10 (if any) were assets of Testatrix in the year 2007.
- (xxviii) Agreed that for the purpose of Probate in 2007 it covers items 1, 2, 3 and 4 and schedule shows who is beneficiary.
- (xxix) When asked what he thought about fairness of 2007 Will, he stated that it is heavily stacked in favour of Daya Singh.
- (xxx) Stated that approximate value of two Crown Leases in 2007 would be \$50,000.00 each and 2007 Will was designed to give Daya Singh absolute control.
- (xxxii) Stated that 2006 Will, was fair to every surviving child of the Testatrix whereas 2007 Will gave Daya Singh maximum benefit of the Estate.
- (xxxiii) Recalled being asked about investigation by brother Jagjit Singh about improper withdrawal of money by Daya Singh from Testatrix's account and stated that:-
- (a) Testatrix was the one who asked Jagjit Singh to go and find out where and how her bank account was all empty.
  - (b) He remembers Jagjit Singh telling him that he has instructed Ram Chand Solicitor in Suva to do investigation with all the Banks and see how Daya Singh managed to empty her Bank Account.
- (xxxiiii) Stated that based on his experience Testatrix used to hallucinate a lot and talk about son she lost and she would realise that his father was sitting next to her.
- (xxxv) In respect to being put to him that he deceived Daya Singh about 2006 Will when asked if his Solicitors received request from Daya Singh for copy of 2006

Will he stated “not at all”.

- (xxxv) Stated that there was on reason as why he would have objected to providing copy of 2006 Will to Daya Singh in 2007, and that he would have happily provided it if he had requested.
- (xxxvi) When asked as to what was his understanding until this proceeding that Daya Singh will assert 2007 Will is valid and 2006 Will is not to proceed he stated that Daya Singh was well aware that Probate was granted under 2006 Will, Daya Singh was cooperative when he (Defendant) was running the Estate as Trustee and he sees no reason why Daya Singh had to wait for so long to realise his Will was proper.
- (xxxvii) In respect to question in cross-examination if he realised Daya Singh was seriously ill between 2007 and 2012, and when asked if that period Daya Singh held any public office or position he stated that Daya Singh was on several Government Boards and was actively attending all the meetings of the Board.
- (xxxviii) Stated that he was aware about Daya Singh conducting travel within Fiji and to and from Fiji within that period and stated that he would travel to show off that he is a multimillionaire and would travel to show people that he is important person in Fiji.
- (xxxix) Stated that he was not provided any evidence to show that Daya Singh was so sick to instruct his lawyers from 2007 to 2012.
- (xl) Agreed saying in evidence that mismanagement of financial affairs by Daya Singh when Testatrix was alive.
- (xli) Stated that mismanagement prior to 2007 he was referring to are:-
  - (a) Supermarket was established by his father in the main street of Labasa Town which was very famous and thriving Supermarket and until his father died that supermarket had name and fame.
  - (b) After death of his father business was given to Daya Singh for him to run.
  - (c) From Company that was very reputable when creditors would have easily given goods on credit it came to a point where no supplier was willing to give any goods to Daya Singh.
  - (d) It came to a point that Carlton Brewery Forsters Groups stopped Account and shamefully Daya Singh had to go to MH to buy two cartons of beer and sell in his supermarket.
- (xlii) Stated other examples of mismanagement were as follows:-
  - (a) In 1970 his father established a retail grocery business in Suva and sent Daya Singh with his wife to operate the business.



- (b) Because of lack of interest or perhaps living beyond his means, business collapsed in two years and Daya Singh had to return to Labasa.
  - (c) Daya Singh was given chance of running Soap Factory and it came to a point that he did not have enough raw material to manufacture soap and as a result soap factory also closed operations.
  - (d) TRIO Nightclub in Suva was established by his father and Daya Singh was given responsibility to keep an eye on the business which business also collapsed and closed because of Daya Singh's mismanagement.
- (xlili) When asked what was Testatrix's feeling about examples he just gave he stated that:-
- (a) she felt very sad that after her having earned hard dollars, money was being splashed by Daya Singh as water and she was worried that his father's good name in Fiji and abroad was being spoilt by news of what Daya Singh was doing.
- (xliv) When it was put to him that in cross-examination it was alleged that he left Air Pacific because of misconduct and when asked the reason he left Air Pacific he stated that:-
- (a) After the 1<sup>st</sup> Coup in 1987 when his younger brother Jagjeet Singh who was running business with his father in Labasa left for Canada and his father saw abuse by Daya Singh in the Company his father called and persuaded him and his wife Nandita who was working as doctor at CWMH to come and join business and look after it from where Jagjeet left.
  - (b) Also around that time he bought property in Labasa near the market which he had to develop.
- (xlv) Stated that there was nothing about his departure from Air Pacific which Testatrix would have regarded as disreputable.
- (xlvi) Stated that nothing happened to him between the period he left Air Pacific and Testatrix made 2006 Will which Testatrix would have found disreputable.

51. DW5 during examination in chief gave evidence that:-

- (i) She was employed as Housegirl to look after Testatrix from December and cannot recall the year.
- (ii) Testatrix died in April 2007 which is well after she started work.
- (iii) She carried out her duties from 7.30am to 4.30pm every day.
- (iv) She started work in December after Testatrix came back from hospital as that is when they needed them.

- (v) When she started work Testatrix was not able to walk, was bed-ridden and had pain at back, hips and legs.
- (vi) Testatrix's hip pain was more as she would fold her hands and legs, was not moving, was restless and doctor used to come and tell them what tablet to give and at what time.
- (vii) When Testatrix was restless she would hold her hands, legs and would take off her clothes and diapers.
- (viii) Testatrix would pull off her clothes in an unusual manner and will take off clothes because of sudden pain.
- (ix) Testatrix was given tablets three times daily being morning, lunchtime and afternoon and she assisted in giving medication to Testatrix.
- (x) Dr Nandita gave tablets and told them which tablet to give at what time.
- (xi) She observed that after taking medication Testatrix would be drowsy and sleepy.
- (xii) Testatrix's condition was not good after she woke up and she would pull her clothes, shake her head and legs and would pull diapers out.
- (xiii) If she asked Testatrix question after she woke up, she would be quiet and if you feed her she would take it out of her mouth.
- (xiv) Testatrix was not talking that much and she heard Testatrix speaking to herself and when she asked Testatrix what she was saying she would not say anything.
- (xv) She cannot remember what Testatrix was saying.
- (xvi) Testatrix's condition was getting worse in January and following months.
- (xvii) In January, month after she started work Testatrix was weaker than in December.
- (xviii) Testatrix was not aware what she was doing and was lying in bed.
- (xix) In January 2007, Testatrix was not able to use phone and start phone call herself as she was not able to speak and was speaking less and when someone rang, they would give her phone when party from other side would talk, she (Testatrix) would only listen.
- (xx) Testatrix never asked her to find telephone number for a lawyer or dial number to put through a call for a lawyer.
- (xxi) In January 2007, Testatrix was not talking about legal matters and she did not know about it.
- (xxii) In January 2007, she never saw Testatrix collecting legal documents and sending them away.
- (xxiii) **She remembers in January 2007, two persons came to see Testatrix with documents.**
- (xxiv) On that day Testatrix was given medication in the morning and she was at work at Testatrix's house on that day.

- (xxv) No other housegirl was at work in the morning of that day because when she came they left and they used to go on time.
- (xxvi) Of the two persons who came that day, one was Daya Singh, Testatrix's son and the other one was bald man wearing coat who looked like working at high place.
- (xxvii) When Daya Singh and other man came into Testatrix's room she was in the room.
- (xxviii) After they came Daya Singh spoke to Testatrix, asked Testatrix about her health and said to her (DW5) to go from there as he wanted to talk something.
- (xxix) She then went near the kitchen where she was safe and was standing and looking from there.
- (xxx) She at the request of the Counsel prepared a plan of kitchen and the room and the Counsel wrote words on the plan on her instructions (Exhibit D19)
- (xxxi) Identified the door, Daya Singh and other man came from and the bed Testatrix was lying on.
- (xxxii) There was a seat by the bed and a large sofa on other side of the room.
- (xxxiii) When Daya Singh and visitor came in the room, they were standing beside the bed.
- (xxxiv) Identified kitchen where she was standing when Daya Singh asked her to go.
- (xxxv) There is a gap like a window, size of the witness box between the kitchen and where Testatrix was lying.
- (xxxvi) She was leaning on the gap and looking at them and had clear view of what Testatrix and visitors were doing.
- (xxxvii) She could not understand what they were talking about.
- (xxxviii) No third person entered the room during that visit.
- (xxxix) Visit occurred between 10.30am to 11.00am.
- (xl) She saw the visitor put thumbprint on paper and she thought it must be some document or paperwork.
- (xli) Daya Singh was present while the other man was present
- (xlii) The other man did not talk to Testatrix or read any document to Testatrix and Testatrix did not respond or talk to the other man.
- (xliii) Testatrix mental status was that she was drowsy and was asleep before the visit.
- (xliv) She saw them grab Testatrix's thumb, put it on ink and then put it on the paper with the visitor holding the ink pad and Daya Singh holding her thumb and putting it on ink pad and the paper.
- (xlv) She clearly saw Daya Singh putting Testatrix's thumb print on the paper.
- (xlvi) Testatrix did not say anything nor complained or protested when thumbprint was being put on the paper.

- (xlvii) She saw thumbprint being put on paper but did not see how many times it was put but saw thumbprint being put on one sheet of paper.
- (xlviii) When thumbprint was being put on the paper there was no third person in the room apart from Daya Singh and that other person.
- (xlix) After thumbprint was put on paper Daya Singh took other man outside and returned.
- (l) When Daya Singh returned he told her to clean Testatrix's thumbprint and said that it was property matter as his brothers and sisters are creating problems so he came to have paper signed.
- (li) When Daya Singh told her to go she was near Testatrix.
- (lii) Whole visit by Daya Singh and other person lasted for approximately 5 to 10 minutes.
- (liii) Apart from Daya Singh telling her to clear thumbprint and that he brought papers to sign he did not say anything else to her (DW5).
- (liv) Testatrix's bed was against the wall and some ink ended up on the wall.
- (lv) When she went to Testatrix and called her she was shaking and throwing her hand so thumb went on the wall.
- (lvi) During the visit by Daya Singh and other man Testatrix was lying.
- (lvii) After Daya Singh left she did not tell Testatrix anything and Testatrix did not say anything to her.
- (lviii) Based on where she was standing in the room she would have seen any other third person enter the room.
- (lix) When asked how certain is she that no third person came, she stated no one came and she knows.

52. During cross-examination DW5:-

- (i) Stated that she did not suffer from stroke but her knees are paining.
- (ii) Stated that on her visit she was staying in Fiji for one month, is staying at son's place at Nadera and will be visiting friends and relatives during the one month period.
- (iii) Stated that she has not been provided any spending money.
- (iv) When it was put to her that she must be grateful to Charan Jeath Singh to pay for her trip she stated that she had to come to Fiji on 22 June 2017, and his son-in-law paid her fare.
- (v) When it was put to her that by her coming now her son-in-law saved money she stated that her son-in-law paid for her June trip and Charan Jeath Singh only paid extra amount to change the date.

- (vi) Stated that she did not go to Charan Jeeth Singh to discuss as to what to say in Court and she did not speak to his family.
- (vii) Stated that she knows Panjali Pillay also known as Tara.
- (viii) Stated that she has not met Tara and have not spoken to her about the evidence today.
- (ix) Stated that she is not related to Nita Wati and Nita Wati is not her aunty.
- (x) When asked was Tara away from work for lot in December 2006, she stated Tara was not there during day and by the time she came in the morning Tara used to go.
- (xi) Stated that she did not take day off during the week and was there every day.
- (xii) When it was put to her that Nita Wati said in January 2007, Testatrix was in some pain but could talk she stated that Testatrix used to speak but she was not sure what Testatrix was saying.
- (xiii) Stated that she did not work with Nita Wati and Nita Wati was working at night and maybe with Tara.
- (xiv) When asked if Nita worked sometimes when Dr Nandita came for tea she stated that she does not know as she left at 4.30pm.
- (xv) When asked if Nandita Singh came after 4.30pm she stated maybe but she (DW5) used to go.
- (xvi) When it was put to her that Jeet said Testatrix was alert at some time she stated Jeet left two days after she started work and have never met her after that.
- (xvii) Stated that Testatrix never talked to her about Insurance Policy or tin of valuables and she did not know that Testatrix kept a tin in the shop.
- (xviii) Did not agree when it was put to her that Nita said that in January 2007 Testatrix would talk about her life to Nita which Nita could understand.
- (xix) Stated that she did not talk to Testatrix properly because when Testatrix was talking it was like she was lost and was not clear.
- (xx) Stated that Testatrix did not talk to her about Daya Singh or her money.
- (xxi) Stated that she did not hear Testatrix talking to someone else about Daya Singh and her money.
- (xxii) Stated that she knows Kusum Lata working in Testatrix's shop and that she did not hear Testatrix talking to Kusum Lata about her business.
- (xxiii) Did not agree when it was put to her that Kusum Lata said that when Testatrix wanted to talk to someone she would dial number and give to Testatrix.
- (xxiv) When asked if she even helped Testatrix make telephone calls she stated that she did not dial but when phone calls came she answered and gave receiver to her and person from other side spoke and that Testatrix only listened.
- (xxv) Stated that she did not see anyone make calls for Testatrix.

- (xxvi) Stated that when people like Testatrix's daughters called Testatrix did not have conversation with them.
- (xxvii) When it was put to her that she is saying daughters spoke and Testatrix did not say anything she stated Testatrix was not saying anything from her side.
- (xxviii) Stated that the day two people came to see Testatrix she was near Testatrix's bed.
- (xxix) When it was put to her that when they arrived she went into the kitchen she stated that she did not go by herself but Daya Singh asked her to go.
- (xxx) Stated that she went to wash Testatrix dishes.
- (xxxii) Stated that she did not do any job in the kitchen when those two people were there.
- (xxxiii) When asked why she was looking at those people when they were there she stated that she was looking at them just like that.
- (xxxiv) Agreed that it was not really her business as to what was happening in the room and stated that nothing for her but was watching.
- (xxxv) When it was put to her that Daya Singh said he brought two other gentlemen to see Testatrix then he left, she did not agree and said only Daya Singh and another person came.
- (xxxvi) Stated that she knows Dr Kiran Gaikwad as she had seen him few times when she visited hospital when sick.
- (xxxvii) Stated that she never saw Dr Kiran Gaikwad see Testatrix.
- (xxxviii) Did not agree when it was put to her that she is mistaken and that Dr Kiran Gaikwad was there with another man.
- (xxxix) Stated that picture of plan (Exhibit D19) was drawn by her but writing on plan is not hers.
- (xl) Agreed that wording was done by lawyer with who she talked about the picture.
- (xli) When it was put to her that bed was on right hand corner she stated bed was next to doorway as you enter.
- (xlii) In reference to second change denied that doorway was halfway along living room.
- (xliii) In reference to other change denied that there was table and chairs.
- (xliv) In respect to window stated that one was towards back of bed and one next to door.
- (xlv) Stated that from the time when she arrived and time she saw two men arrive there as no major changes to Testatrix room.
- (xlvi) When it was put to her that if there were three chairs in the room and three people came they could have sat down she stated that three did not come so

how will they sit and if there were three people and three chairs they would have sat.

- (xlvi) Did not agree when it was put to her that Daya Singh's witness said Daya Singh took lawyer and Dr Kiran to see Testatrix and Daya Singh went downstairs.
- (xlvii) When asked if she is saying Dr Kiran and lawyer are wrong when they said this in Court she stated that Dr Kiran did not come, she did not see her.
- (xlviii) Stated that day was a weekday and was middle week.
- (xlix) When asked if she meant Tuesday, Wednesday or Thursday she stated that it could be possible but she cannot remember which day.
- (l) Stated that ink pad was held by other man and not Daya Singh.
- (li) Stated that when she wiped ink colour of ink was blue.
- (lii) When asked how she could remember so clearly what happened on that day in January 2007, she stated that when she is being asked, she starts to recall how it was.
- (liii) Stated that she never talked to Charan Jeeth about this case as they never met and lawyer talked to her and she talked to lawyer.
- (liv) Stated that her son-in-law talked to Charan Jeeth Singh about change of flight from USA to Fiji when Charan Jeeth Singh agreed to pay difference in fare.

53. During re-examination DW5:-

- (i) Stated that she would have recognised Dr Kiran Gaikwad if he came to Testatrix's place.
- (ii) Stated that in reference to the Plan she drew, distance between Testatrix bed and serving window she was leaning on would be same distance as between witness box and Court's doorway.
- (iii) Stated that there was no furniture impeding her view of Testatrix's bed.
- (iv) Stated that none of visitors on that day sat on the seat next to the bed.
- (v) Stated that in view of her memory she had to think all the facts before the first trial in 2013.

### **Application To Amend Statement Of Defence**

54. On 27 January 2017, the Defendant filed Application to Amend Statement of Defence ("**Amendment Application**") which was returnable on 3 February 2017.

55. On 3 February 2017, parties were directed to file Submissions and Amendment Application was adjourned for Ruling on Notice.
56. On 10 April 2017, Court granted the Defendant Leave to Amend Defence with reasons to be given at time of delivery of Judgment in the substantive matter.
57. Order 20 Rule 5-(1) (2) and (5) of the High Court Rules provide:-

**“5.-(1) Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.**

**(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.**

**(3) ...**

**(4) ...**

**(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.”**

58. The test to be applied when dealing with Application to Amend Pleadings was stated by Full Court of Fiji Court of Appeal in **Sundar v. Prasad** [1998] FJCA19’ Abu0022u.97s (15 May 1998) as follows:-

**“Generally, it is in the best interest of the administration of justice that the pleadings in an action should state fully and accurately the factual basis of each party’s case. For that reason amendment of pleadings which will have that effect are usually allowed, unless the other party will be seriously prejudiced thereby (G.L. Baker Ltd. v. Medway Building and Supplies Ltd [1958] 1 WLR 1231 (C.A.)). The test to be applied is whether the amendment is necessary in order to determine the real controversy**



*between the parties and does not result in injustice to other parties; if that test is met, leave to amend may be given even at a very late stage of the trial (Elders Pastoral Ltd v. Marr (1987) 2 PRNZ 383 (C.A.)). However, the later the amendment the greater is the chance that it will prejudice other parties or cause significant delays, which are contrary to the interest of the public in the expeditious conduct of trials. When leave to amend is granted, the party seeking the amendment must bear the costs of the other party waster as a result of it.”*

59. In **Ambaram Narsey Properties Ltd v. Khan** [2001] FJHC 306; [2001] 1 FLR 283 (16 August 2001) his Lordship Justice Gates (current Chief Justice) adopted with approval the following principles in **Cropper v. Smith** (1884) 26 Ch. D. 700 p 710 Bowen L.J. said:-

*“Now, I think it is a well established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace.”*

*and his Lordship added at p 711:*

*“It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.”*

60. His Lordship further stated that:-

*“Amendment may be allowed “at any stage of the proceedings” which includes during a trial The Duke of Buccleuch [1892] P. 201, at p 211 per Lord Esher MR; G. L. Baker Ltd. v. Medway Building & Supplies Ltd. [1958]*

***1 WLR 1216. With some reluctance the trial judge was prepared to allow the statement of claim to be amendment in Loutfi v. C Czarniow Ltd. (1952) 2 All ER 823 as late as after close of the case but before judgment.”***

61. This Court granted Leave to Amend the Statement of Defence for following reasons:-

- (i) The amendment does not create any new issues;
- (ii) At paragraph 5 of the Original Defence, the Defendant challenged the validity of the 2007 Will on the ground that the Plaintiff deceptively and fraudulently obtained Testatrix's thumbprint, Testatrix was not in a proper medical and mental condition to have executed 2007 Will and 2007 Will could not have been made by Testatrix.
- (iii) Amendment to paragraph 5 of Original Statement of Defence pleads almost same particulars with very minor additions.
- (iv) The evidence that was needed to be called to challenge the particulars in the Amendment will be same to challenge the particulars in the Original Statement of Defence.
- (v) Interest of Justice demand that Amendment be allowed and for this matter to proceed to trial.
- (vi) The amendment sought was not mala fide in view of the nature of the issues this Court had to deal with.
- (vii) In view of what is stated at paragraph 61 (ii), (iii) Plaintiff would not have been prejudiced in way whatsoever.

62. Cost for the Application to Amend Statement of Defence be costs in the cause.

### **Issues for Determination**

63. Even though evidence has been led on various aspects of parties dealings including their employment history, ability to manage business, to some extent their personal life, transfer of Suva Property, 2006 Will, the manner in which 2007 Will was prepared, in that it had incorrect numbering and had different fonts, in the end parties agreed that the only **issue this Court has to determine relates to the making and validity of 2007 Will.**

64. As such issues this Court needs to determine are as follows:-

- (a) Whether execution of Will by putting thumb print makes the Will invalid?
- (b) Whether Testatrix, Raj Kali Singh gave instructions to Mr Sadiq (PW2) for 2007 Will?
- (c) Whether 2007 Will was signed in compliance with the Wills Act 1972?
- (d) Whether the Testatrix had testamentary capacity when 2007 Will was made on 22 January 2007?

**Whether execution of Will by putting thumb print makes the Will invalid?**

65. Much has been said about Testatrix executing the Will by affixing thumb print instead of signing in print.
66. The common ground and unchallenged evidence is that:-
- (i) Testatrix was uneducated and illiterate person who initially was unable to sign her name in print.
  - (ii) For her to run the business with her husband and be able to operate business cheque account with Bank of Baroda she had to learn to sign in print.
  - (iii) Testatrix's husband then taught her to sign in print which she learnt and from then onwards she started signing in print. This is apparent from the fact that Testatrix signed Exhibits P2, P16, D3, D4 and D6 in print.
67. What is stated at preceding paragraph comes from the evidence of PW1, DW1 and the Defendant.
68. 2007 Will was allegedly signed by the Testatrix by affixing her left thumb print.
69. In **Steiner v. Steiner** [2017] FJCA 102; ABU 91 of 2015 (14 September 2017) Court of Appeal (Her Ladyship Justice Jameel JA) stated as follows:-

*“[41] The law requires the witnesses to witness the fact of the testator expressing his intention to devise and bequeath his property. This intention is signified by the symbolic act of placing his signature. Though the provision refers to a ‘signature’, a mark that the will-maker intends to take effect as his signature will be sufficient to satisfy the requirements of the law. The following have been regarded as adequate in this regard; a mark - **Re Mc Namee** (1912) 31 NZLR 1007 (SC) ; **Re Brandon** [1926] NZLR 892 (SC), or initials - **In bonis Savory** (1851) 15Jur 1042, a thumbprint -**In bonis***

*Finn* [1935] All ER 419, [1935] 105 LFP 36 (P,D and Admity), a seal bearing the will-maker's initials-**In bonis Emerson** (1882) 9LRir 443, (although not a mere sealing)- **Wright v Wakeford** (1811) [1811] EngR 228; 17 Ves454, 34 ER 176, [1803-13] All ER 589 (CC), and a stamped signature- **Jenkins v Gaisford and Thring** (1863) 3 Sw & Tr 93, 164 ER 1208, (cited in Nevill's *Law of Trusts, Wills and Administration*, by Dr. N Richardson, 10 ed. 2010)

*Therefore, the fact that the Will that was admitted to Probate was signed with a thumb print and was not signed in writing, is of no significance in respect of its validity. Accordingly, the finding that the Will dated 26 December 1969 was not the act and deed of Jacob Steiner Snr is an error of law."*

70. Therefore if this Court finds the answers to remaining questions in favour of 2007 Will then the fact that 2007 Will was signed by the Testatrix by putting her left thumb print instead of signing it will **not by itself** make 2007 Will invalid.

#### **Whether Testatrix gave instruction for 2007 Will?**

71. It is common ground and uncontradicted evidence that:-
- (i) In January 2007, Testatrix was 83 years old.
  - (ii) Plaintiff and Defendant are lawful sons of the Testatrix.
  - (iii) Sometimes in November 2006, Testatrix fell and injured herself which resulted in her being hospitalised from 20 November to 24 November 2006, and from 1 to 11 December 2006.
  - (iv) Plaintiff and Testatrix resided in adjacent premises and ran their shop business adjacent to each other.
72. Mr Sadiq (PW2), Solicitor who prepared 2007 Will, gave evidence that the Testatrix gave instruction over telephone and then sent documents in relation to land details for properties stated in 2007 Will through her worker.
73. PW5 and DW5's evidence which this Court has no reason to doubt was that Testatrix could not dial telephone numbers on her own and when someone called her, the phone (receiver) was handed to Testatrix.

74. It is not disputed that Testatrix was not educated and except for printing her name as taught by her late husband Gurbachan Singh, she could not read or write in English.
75. No evidence was led to establish that anyone dialled Mr Sadiq for the Testatrix the day before 22 January 2007 (date of 2007 Will).
76. From the evidence led in this Court and after analysing the demeanour of witness, this Court has no hesitation in making following finding of facts:-
- (i) The Testatrix did not give any instruction for Mr Sadiq to prepare 2007 Will.
  - (ii) Details of property subject to 2007 Will, and how they were bequeathed was something that was given to Mr Sadiq by his friend Daya Singh, the Plaintiff.
  - (iii) Testatrix was not educated enough to look for Mr Sadiq's number and dial number, and provide the details about her property.
  - (iv) On or just before 22 January 2007, Testatrix was not in a state of mind to provide details of properties that are subject to 2007 Will.
77. Court also takes into account that PW2 during cross-examination agreed that real reason he did not charge for 2007 Will was that he agreed to do a favour for Daya Singh.
78. If instructions was given by Testatrix without Daya Singh knowing anything about the Will then why did Mr Sadiq favoured Daya Singh.
79. This Court finds that Testatrix did not give any instruction to Mr Sadiq to prepare 2007 Will.

**Whether 2007 Will was signed in compliance with the Wills Act 1972?**

80. Section 6 of Wills Act 1972 ("**Wills Act**") provides as follows:-

- "6. A will is not valid unless it is in writing and executed in the following manner-
- (a) it is signed by the testator or by some person in his or presence and by his or her direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his or her will;
  - (b) **such signature is made or acknowledged by the testator in the presence of at least 2 witnesses present at the same time;** and

(c) **the witnesses attest and subscribe the will in the presence of the testator;**

but no form of attestation is necessary.”

*(emphasis added)*

81. PW2's (Solicitor who made 2007 Will) evidence in brief was that:

- (i) After the Will was typed in his office he called at Testatrix's premises and prior to that he met Plaintiff;
- (ii) Time he went to have 2007 Will signed would have been **after 10.00am and before lunch time.**
- (iii) Plaintiff then took him and Dr Gaikwad (PW3), who was in the company of Plaintiff to Testatrix's premises (upstairs).
- (iv) Plaintiff left him and PW3 with Testatrix and went downstairs.
- (v) He came and met the Plaintiff and went to the Testatrix at about 10.00am on 22 January 2007 (date of 2007 Will) and got the Will signed by the Testatrix in presence of PW3 and himself.

82. PW3's evidence in brief was that:-

- (i) He seldom visited the Plaintiff to have kava and Rotary meetings between 12 noon to 1.00pm and sometime between 1pm to 2pm.
- (ii) He always went to the Plaintiff's premises at that time and could not go at any other time because of his work commitment.
- (iii) On 22 January 2007 (date of 2007 Will) he went to the Plaintiff's premises at around 12 to 2pm (lunch time).**
- (iv) He met PW2 at the Plaintiff's premises and was taken upstairs (Testatrix premises) with PW2 by the Plaintiff.
- (v) The Plaintiff left them with the Testatrix and went downstairs.
- (vi) PW2 then spoke to the Testatrix about something in Hindustani language which he could not understand.
- (vii) Testatrix then signed the document by putting her left thumb print.
- (viii) He then went downstairs for a social meeting.

83. It is evidently clear from the evidence of PW2 and PW3 that they both arrived at the Plaintiff's premises at different times and as such the Plaintiff could not have taken them both to Testatrix at the same times as alleged.

84. DW5's evidence in brief (paragraphs 51 to 53 of this Judgment) is that:-
- (i) She was employed as a maid to look after the Testatrix and she worked everyday from December 2006 till 19 April 2007.
  - (ii) On 22 January 2007 (date of 2007 Will) she was at work at the Testatrix's premises.
  - (iii) On that day, the Plaintiff came upstairs with one bald man in suit to see the Testatrix.
  - (iv) At that time she was with the Testatrix who was lying on her bed and she was told by the Plaintiff to leave the Testatrix.
  - (v) She then went into the kitchen from where she could observe what was happening.
  - (vi) She saw the man in suit holding the ink pad and Daya Singh (Plaintiff) holding Testatrix's thumb, placing thumb on the ink pad and putting it on a sheet of paper.
  - (vii) At no point in time she saw PW3 (Dr Gaikwad) at Testatrix's premises on that day or any other day.
  - (viii) She knew PW3 because she used to visit Labasa Hospital and was attended to by PW3.
85. DW5 was an independent witness who was present with Testatrix and attended to her needs on the date 2007 Will was allegedly executed by the Testatrix.
86. I find DW5 to be a credible witness and her integrity as truthful witness is not doubted at all.
87. She remained steadfast during cross-examination and when asked how she remembered something that transpired in January 2007, she stated that when she is asked questions and events are put to her she recalls what happened on that day. She also stated that she recalled the particular events during 2013 trial.
88. This Court finds it quite hilarious and comical when Senior Counsel for the Plaintiff being very experienced legal practitioner asked DW5 as to the colour of dress she was wearing on 22 January 2007 (more than ten years ago).
89. This Court finds the Plaintiff's evidence that he took PW2 and PW3 to Testatrix and went downstairs uncredible and unbelievable.

90. After analysing the evidence of the Plaintiff, PW2, PW3 and DW5 this Court finds that PW3 (Dr Gaikwad) was not present when 2007 Will was allegedly signed by the Testatrix.

91. As such 2007 Will was not signed as required by s6(b) of the Wills Act.

92. Section 6A of the Wills Act which was inserted pursuant to Wills (Amendment) Act 2004 provides as follows:-

“6A-(1) A document purporting to embody the testamentary intentions of a deceased person, **even though it has not been executed in accordance with the formal requirements under section 6, constitutes a will of the deceased person if the court is satisfied that the deceased person intended the document to constitute his or her will.**

(2) The court may, in forming its view, have regard, in addition to the document, to any other evidence relating to the manner of execution or testamentary intentions of the deceased person, including evidence, whether admissible before or after the commencement of this section, of statements made by the deceased person.

(3) **A party that seeks a declaration under this section has the onus of proof.”**

*(emphasis added)*

93. It is for the Plaintiff to prove that Testatrix intended 2007 Will to be her Last Will.

94. No evidence has been led by the Plaintiff to prove that the Testatrix intended to bequeath her estate as stated in 2007 Will.

95. In fact, earlier Will made by Testatrix bequeathed her estate as follows:-

**1991 Will (Exhibit 5)**

“3. **I DEVISE AND BEQUEATH** all my property whatsoever and wheresoever situate or over which I may have any disposing power at the time of my death as follows:-

(a) To my said husband **GURBACHAN SINGH** all my property real and personal absolutely for his own use and benefit, but if he dies at the same time with me, then in that event, all my property shall go to my five sons namely **DAYA SINGH, SARJIT SINGH, UDHAN SINGH, JAGJEET SINGH** and **CHARANJEET SINGH** in equal shares share and share alike absolutely for their own use and benefit.



- (b) My share in the business being carried in the building opposite the market and known as **"FOOD TOWN"** shall go to my son **CHARANJEET SINGH** absolutely for his own use and benefit.
  - (c) I Direct my said Trustee or my said five sons to pay the sum of \$5,000.00 (FIVE THOUSAND DOLLARS) to each of my these five daughters namely **TEJ KUAR** wife of Vijay Singh of Canada, **PRITAM KUAR** wife of Dhirend Singh of Suva, **JEET KUAR** of Vancouver, Canada, **CHANNA KUAR** wife of Anand of Vancouver and **DALJEET KUAR** wife of Harjindar Singh of Toronto and the said sum shall be paid as soon as reasonably possible.
4. **I DIRECT** my said Trustee to use all my cash whether in any bank or elsewhere as follows:-
- (a) First towards the payment of funeral expenses, debt and testamentary expenses.
  - (b) Then use the balance for the payment of the legacy of \$5,000.00 (Five Thousand Dollars) given to each of my said five daughters.
  - (c) If there is any balance left, then it shall be divided equally amongst my said five sons namely **DAYA SINGH, SARJIT SINGH, UDHAN SINGH, JAGJEET SINGH** and **CHARANJEET SINGH** for their own use and benefit.
5. The rest residue and remainder of all my property including my shares in all the companys shall go to my said five sons in equal shares share and share alike absolutely for their own use and benefit."

*(emphasis added)*

#### **2005 Will (Exhibit P16)**

- "3. **I GIVE DEVISE AND BEQUEATH** my property located at Marks Land CT 125978 to my trustee **UPON TRUST** to sell, call in and convert into money such parts thereof as shall not consist of money and to hold the net proceeds received from such sale calling in and conversion and any ready money (thereinafter call "the trust") upon the following trusts:-
- a. To pay my just debts, my funeral and testamentary expenses and all estates and other duties and taxes imposed under the Laws of Fiji or any other country under my estate pertaining to property CT12598 at Marks Lane, Suva.
  - b. I give devise and bequeath my property comprises in Certificate of Title No. 125978 at Marks Lane, Suva unto my eight children **Daya Singh, Udam Singh, Pritam Singh, Jeet Kaur Singh, Chanan Kaur Lal, Jagjeet Singh, Daljeet Kaur** and **Charan Jeath Singh** in equal shares share and share alike absolutely.
  - c. If any of my above children predecease me than his/her share to be distributed to his/her spouse and children.
4. **I GIVE DEVISE AND BEQUEATH** the rest and residue of my property both real and personal whatsoever wheresoever and of what nature or kindsoever unto my four

sons namely **DAYA SINGH, UDAM SINGH, JAGJEET SINGH** and **CHARAN JEATH SINGH** in equal shares share and share alike absolutely.”

*(emphasis added)*

**2006 Will (Exhibit D3)**

“3. **I GIVE DEVISE AND BEQUEATH** the whole of my property both real and personal of whatsoever nature and kind and wheresoever situate unto my trustee UPON TRUST to pay thereout all my just debts and funeral and testamentary expenses and all duties payable in respect of my estate and to stand possessed of the residue thereof and the investments representing the same as to both capital and income upon the following trusts namely:-

- (a) **TO PAY** thereout all my just debts and funeral testamentary expenses including all estate succession legacy and other duties payable in respect of my estate.
- (b) **UPON TRUST** as to both capital and income of my residuary estate **I GIVE DEVISE AND BEQUEATH** the whole of my estate of whatsoever nature and kindsoever and wheresoever situate unto my said surviving children **CHARAN JEATH SINGH, JAGJEET SINGH, UDHAM SINGH, DAYA SINGH, DALJEET KAUR, CHANNAN KAUR, JEET KAUR** and **PRITAM KAUR** in equal shares share and share alike absolutely”

*(emphasis added)*

96. It is evident from earlier Wills of the Testatrix that prior to her fall and her being bed-ridden she never made a Will bequeathing specific properties to specific individuals, except for bequeathing “FOOD TOWN” business in 1991 Will.

**Whether the Testatrix has testamentary capacity when 2007 Will was made on 22 January 2007 and Whether she intended to make 2007 Will?**

97. It is well established that burden of proof that maker of Will had testamentary capacity rests on the person propounding the Will. **Ho v Ho** FJCA 53; ABU 6 of 1966S (16 May 1997); **Banks v. Goodfellow** (1870) 5LR 549.
98. Court of Appeal in **Ho v. Ho** adopted what is stated in the following passages from Re: White [1951] NZLR 393, 409 **Worth v. Clasohm** (1953) 86 CLR 439 at 453:-

*“A doubt being raised as to the existence of testamentary capacity at the relevant time, there undoubtedly rested upon the plaintiff the burden of satisfying the conscience of the Court that the testatrix retained her mental powers to the requisite extent. But that is not to say that he was required to answer the doubt by proof to*

*the point of complete demonstration, or by proof beyond a reasonable doubt. The criminal standard of proof has no place in the trial of an issue as to testamentary capacity in a probate action. The effect of a doubt initially is to require a vigilant examination of the whole of the evidence which the parties place before the Court; but, that examination having been made, a residual doubt is not enough to defeat the plaintiff's claim for probate unless it is felt by the Court to be substantial enough to preclude a belief that the document propounded is the will of a testatrix who possessed sound mind, memory and understanding at the time of its execution."*

99. In this instant the burden of proof to establish that testamentary capacity when 2007 Will was made rests on the Plaintiff.

100. Both parties relied on **Ho v. Ho** and **Banks v. Goodfellow** (1870) 5LR 549.

101. In **Bank's** case (Supra) full Court in respect to Testator's capacity to make Will stated as follows:-

*"As to testator's capacity he must, in the language of the law, have a sound and disposing mind and memory. **In other words, he ought to be capable of making his will with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them.** It is not necessary that he should view his will with the eye of a lawyer, and comprehend its provisions in their legal form. **It is sufficient if he has such a mind and memory as will enable him to understand the elements of which it is composed, and the disposition of his property in its simple forms.** In deciding upon the capacity of the testator to make his will, it is the soundness of the mind and not the particular state of the bodily health, that is to be attended to; the latter may be in a state of extreme imbecility, and yet he may possess sufficient understanding to direct how his property shall be disposed of; his capacity may be perfect to dispose of his property by will, and yet very inadequate to the management of other business, as, for instance, to make contracts for the purchase or sale of property. For, most men, at different periods of their lives, have meditated upon the subject of the disposition of their property by will, and when called upon to have their intentions committed to writing, they find much less difficulty in declaring their intentions that they could in comprehending business in some measure new."*

102. Court at 566 of **Bank's** case stated:-

***"It may be here not unimportant to advert to the law relating to unsoundness of mind arising from another cause - namely, from want of intelligence occasioned by defective organization, or by supervening physical infirmity or the decay of advancing age, as distinguished from***

***mental derangement, such defect of intelligence being equally a cause of incapacity.***

***(emphasis added)***

103. Also at page 565 Court in **Bank's** case stated:-

***“It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties - that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”***

***(emphasis added)***

104. Testatrix pursuant to alleged 2007 Will (Exhibit P6) made following bequeaths:-

- “3. **SUBJECT** to the payment of all my just debts funeral and testamentary expenses **I DEVISE AND BEQUEATH** all my property real and personal whatsoever nature and wheresoever situate of or to which I may be entitled or over which I may have any disposing power at the time of death as follows:-
- (a) To my said son **DAYA SINGH** all my shares in the buildings and the business owned or registered under or in the Company known as “Gurubachan Singh and Company Limited” and all buildings and business under or in the name of the Company known as “Soaps and Allied Industries (Fiji) Limited absolutely for his own use and benefit.
  - (b) To my son **UDHAN SINGH** all the land the buildings comprised in the Crown Lease Number 2942 known as “Lot 5 - Section 19 - Labasa Township” absolutely for his own use and benefit.
  - (c) To my son **CHARAN JEET SINGH** all the land and the buildings comprised in the Crown Lease Number 2941 known as “Lot 6 - Section 19 - Labasa Township” absolutely for his own use and benefit.
  - (d) To my son **DAYA SINGH** the Native Lease and the Building erected on the land at Delailabasa, Labasa absolutely for his own use and benefit.
  - (e) The freehold land situated at Raoji Bhai Patel Street, Suva comprised in the CT 12598 and the building erected on it shall go to my four sons namely **DAYA SINGH, CHARAN JEET SINGH, JAGJEET SINGH** and **UDHAN SINGH** in equal shares share and share alike absolutely for their own use and benefit.
2. **I DIRECT** my said trustee to pay all the proceeds from my Life Insurance Policy to my four daughters namely **DALJIT KAUR, PRITAM KAUR,**

**CHANAN KAUR** and **JEET KAUR** in equal shares share and share alike absolutely for their own use and benefit.

3. **I FURTHER** direct my said Trustee to use all my cash whether in any Bank or elsewhere as follows:-
  - (a) First towards the payment of funeral expenses, debt and testamentary expenses.
  - (b) The balance shall be paid to my said four sons, **DAYA SINGH, CHARAN JEET SINGH, JAGJEET SINGH** and **UDHAN SINGH** in equal shares share and share alike absolutely for their own use and benefit.
4. **I FURTHER DIRECT** my said Trustee to give all my Jewellery to my said four daughters namely **DALJIT KAUR, PRITAM KAUR, CHANAN KAUR** and **JEET KAUR** and in case of any disagreement amongst themselves, then my said Trustee shall have the absolute discretion to distribute the jewellery as he likes.
5. **THE REST RESIDUE** and remainder of all my property shall go to my said four sons namely **DAYA SINGH, CHARAN JEET SINGH, JAGJEET SINGH** and **UDHAN SINGH** in equal shares share and share alike absolutely for their own use and benefit.”

105. Much has been said about paragraph 3(a) of 2007 Will, in that she did not own any buildings and all buildings were owned by Gurubachan Singh and Company Limited and Soap and Allied Industries (Fiji) Limited.
106. Testatrix only had shares in abovenamed companies which company owned real properties.
107. Crown Lease Nos. 2942 and 2941 bequeathed pursuant to Clause 3(b) and (c) were in the name of her late husband Gurubachan Singh who passed away on 31 May 1999, which is more than seven years prior to 2007 Will and these properties were not transferred to the Testatrix pursuant to her late husband’s Will.
108. On 2 September 2006, Testatrix had transferred her property comprised in CT 12598 being property mentioned in Clause 3(e) of 2007 Will to Charan Katonivere Holdings Limited (Exhibit “D4”) and such she did not have any power to bequeath the said property.
109. From what is stated at preceding paragraphs it is evidently clear that the Testatrix had very little or no knowledge in all the circumstances of the nature of and extent of her Estate (**Bank’s** case).

110. The Plaintiff's fourth witness, Kusum Lata's (PW4) who managed Testatrix's business evidence in summary was that:-
- (i) Sometime after Testatrix's fall in November 2006, she (PW4) managed Testatrix's business as Testatrix stopped going to her shop.
  - (ii) She would go upstairs and talk about business with Testatrix and even though Testatrix was sickly she appeared to understand her and talk to her properly.
  - (iii) Testatrix's health condition did deteriorate about two (2) months prior to her death.
  - (iv) Dr Nandita Singh, Testatrix's daughter in law (DW3) used to visit Testatrix and she saw her visiting the Testatrix.
  - (v) After closing the shop she would walk along the passage with the Plaintiff passing Testatrix's premises.
  - (vi) Her sister, Veena is staying at property owned by the Plaintiff free of rental and she was also present in Court with her.
111. It is surprising to note that during cross-examination PW4 stated that she was not aware about Testatrix being admitted at Labasa Hospital in November (5 days) and December (11 days).
112. Does it mean that after Testatrix fall she did not take instruction about the Testatrix's business from the Testatrix and was running business (Testatrix's business) herself or on someone else's instruction?
113. In this instance this Court after analysing the oral/video/documentary evidence and demeanour of witnesses make following findings:-
- (i) The Testatrix at time of 2007 Will was 83 years old.
  - (ii) The Testatrix was uneducated and apart from signing her name taught by her late husband she could not speak, write or understand English.
  - (iii) After death of her husband she mostly relied on the Plaintiff being her eldest son to run the offices of the companies in which her, her husband and children were shareholders.
  - (iv) In November 2006, the Testatrix had a fall and injured herself.
  - (v) Prior to her fall in 2006, Testatrix carried on and managed her own business by the name of R K Fashions.
  - (vi) The Plaintiff being resident in the adjacent premises had very close contact with the Testatrix compared to other children.

- (vii) After the fall, Testatrix could not look after business and stayed home since then.
  - (viii) She relied on her staff Kusum Lata to manage the business of R K Fashions.
  - (ix) The fall resulted in Testatrix having a slipped disc which affected her spine;
  - (x) Testatrix was admitted at Labasa Hospital from 20 to 24 November 2006, with complain of back ache.
  - (xi) Investigation at Labasa Hospital included Electrocardiogram (ECG) which showed evidence of Antero-lateral Ischemia which resulted in her being admitted to the coronary unit (Exhibit P15).
  - (xii) Upon discharge from hospital, Defendant and his wife (DW3) arranged for three (3) maids to look after the Testatrix with one (Pushpa) during day time and two (Tara and Nita) during night time.
  - (xiii) Testatrix was on regular medication to relieve her of pain suffered by her.
  - (xiv) Testatrix was re-admitted at Labasa Hospital from 1 to 11 December 2006.
  - (xv) Testatrix's condition deteriorated towards end of December 2006 and in January 2007 to the extent that she was confined to bed, was wearing diaper, was fed soft foods and only able to walk with the assistance of the maids or another person including PW5 (Kusum Lata). Testatrix's condition got worse in January 2007 as appears in DW1 and DW3's evidence which is confirmed by PW4 (paragraph 34(vi) of this Judgment).
  - (xvi) In January 2007, Testatrix lacked capacity to make the Will in terms of what is stated in 2007 Will because of want of intelligence, supervening physical infirmity and decay of advanced age (**Bank's** case).
  - (xvii) Furthermore, because of matters stated above and in particular 113(xiv), Testatrix did not understand nature of business she was engaged (in particular about her having 17,364 (including her late husband's shares) shares in Gurbachan Singh & Sons Ltd and 2001 (including her late husband's shares) shares in Soap and Allied Industries Ltd, recollection of properties she intended to dispose and manner of disposal (property mentioned in clause 3(e) of 2007 Will had already been transferred by her in September) (**Bank's** case).
  - (xviii) PW2 (Mr Sadiq) did not discuss significance of 2007 Will or its implication with the Testatrix (Paragraph 26 (lxxxvii) of this Judgment).
114. Even though the Plaintiff's Counsel vigorously attempted to discredit evidence of Jeet Thakkar (DW1) sister of the Plaintiff and the Defendant and Nandita Singh (DW3) Defendant's wife, this Court has no reason to discredit or disbelieve their evidence.
115. In fact DW1 stated in her cross-examination that she is in talking terms with the Plaintiff and has no reason to not to tell the truth.

116. The Plaintiff relied on case of **Ho v. Ho** (Supra) where a 78 year olds' Will was held to be valid.
117. This Court notes that there are lot of distinguishable features between **Ho's** case and this case.
118. It will be appropriate to have these distinguishable features put in a table format which are as follows:-

<b>Ho v. Ho</b> (Facts as found by Court)	<b>Instant case</b> (Facts as found by Court)
1. Testator was 78 years of age.	Testatrix was 83 years of age
2. Testator understood English well.	Testatrix did not understand English.
3. Lawyer's (Mr Subhas Parshotam) firm who prepared the Will acted for Testator from 1960's.	Except for 1991 Will made by PW2 (Mr Sadiq) no evidence was led to show that he acted for Testatrix after that.
4. On 4 December 1986, Testator saw Mr Subhas Parshotam in latter's office for over an hour long interview.	According to PW2 (Mr Sadiq) instruction was given on phone days prior to execution of 2007 Will. Court's finding is that no instruction was given.
5. Testator's intention was to disinherit the Appellant (Testator's son) who was residual beneficiary with his brother in earlier Will.	No evidence to show Testatrix's intention was established.
6. Mr Parshotam told Testator that he should reflect before taking such a radical step as disinheriting the Appellant; to speak to his Accountant and this was the reason he did not prepare new Will immediately and waited till 11 December 1986.	No such steps was taken here.
7. On 11 December 1986, Testator went to sign Will with his wife (did not speak English)	Mr Sadiq came by himself to Testatrix's premises to have the Will signed.
8. Mr Parshotam explained provision of the Will and its implication carefully.	No evidence was led to show that provision of 2007 Will and its implication was explained to Testatrix in detail.
9. Mr Parshotam then arranged for Mr Mohammed Afzal Khan, a Suva	No such step was taken.



Solicitor to be a witness and asked him to explain independently the provision of the Will.	
10. Mr Khan then explained the provision of the Will to Testator in the presence of Testator's wife, Mr Parshotam and Mr Chand (Mr Parshotam's experienced law clerk) and witnessed Will with Mr Chand.	No such steps were taken.
11. Testator did not appear to be suffering from any mental or physical impairment either on date of giving instruction or on date Will was executed	Testatrix was admitted twice at Labasa Hospital and was constantly cared for by three (3) maids and only moved with assistance of other persons, was using diaper and not able to do almost anything by herself.

119. Even though no evidence has been led to show Testatrix's mental illness this Court has no hesitation in finding that on 22 January 2007, Testatrix lacked capacity to understand the nature and effect of her properties, give instruction for Will, understand its implications unless and until someone assisted her and she was explained in detail the nature of her properties and implication of any bequeath under the Will.
120. Any prudent legal practitioner would have had a medical officer examine Testatrix to establish as to whether Testatrix was a fit and proper person to give instruction for the Will and also taken the steps that was taken in **Ho v. Ho**.
121. It is surprising to note that PW2, being a legal practitioner of some forty years of experience comes to Court and gives contradictory evidence. One such example is whether the Plaintiff knew about 2007 Will.
122. During cross-examination he stated as follows:-
- (i) He did not tell the Plaintiff (Daya Singh) and Testatrix was in touch with him and that he was going to have Will executed by her (Paragraph 26 (lxxii) of this Judgment).
  - (ii) Dr Gaikwad (PW3) being a witness was not Daya Singh's idea and PW3 was just there.
123. However, as appears at paragraph 26 (lxvii), (lxviii) and (lxxiv) PW2 stated that:-

- (i) He met Gaikwad (PW3) 2 or 3 days before 22 January 2007 (date of 2007 Will) at Daya Singh's (Plaintiff) place;
  - (ii) When he went there on 22 January 2007 (date of 2007 Will) Daya Singh (Plaintiff), Dr Gaikwad and two other persons were there;
  - (iii) Daya Singh then took him and Dr Gaikwad upstairs;
  - (iv) Agreed that when he went, he knew Dr Gaikwad would be a witness which was subject to arrangements made 3 or 4 days before at Daya Singh's (Plaintiff) place when Dr Gaikwad was drinking kava with Daya Singh (Plaintiff) (Paragraph 26(lxxiv) of this Judgment), and that is the reason he did not take his law clerk with him.
124. PW3 denied that arrangement was made 3 or 4 days prior to date of 2007 Will and stated that it was just a coincidence that he was at the Plaintiff's place on 22 January 2007 when **the Plaintiff told him that Sadiq will bring Will which he can witness** (paragraph 29(xx) of this Judgment).
125. In cross-examination PW3 also stated that when he went to Daya Singh's (Plaintiff) place on 22 January 2007, Daya Singh told him that Mr Sadiq had gone to Mr Sadiq's office to get Will which he (PW3) has to witness.
126. What appears at paragraphs 122 to 125 of this Judgment shows as to why this Court doubts the evidence of PW2 in favour of 2007 Will.
127. PW2 had given evidence that he takes his law clerk to witness Wills which he obviously **did not do** in this instance.
128. Before I conclude I need to highlight something that has not been raised as an issue or fact for determination.
129. Mr Sadiq's (PW2 - Solicitor) evidence was that on 22 January 2007, **he only went to Testatrix's premises once to have 2007 Will signed.**
130. DW5's evidence was that:-
- (i) When Daya Singh came back after taking PW2 down, Daya Singh asked DW5 to wipe the ink on the wall next to Testatrix's bed and told DW5 that it was property matter as his sisters/brothers were creating problem (paragraph 51(l) of this Judgment).

(ii) Thumb print was put only on one sheet of paper (paragraph 51(lxvii) of this Judgment).

131. The question that lingers is that if PW2 (Mr Sadiq) **on 22 January 2007, came only once to see the Testatrix** then **when did he get the Testatrix to sign Application for Consent** to Assign Lease No. 2942 (Exhibit D7). It must be noted that both the Application and the 2007 Will are dated 22 January 2007, and witnessed by Mr Sadiq.

### **Conclusion**

132. This Court determines the issues raised as follows:-

- (i) If Testatrix would have signed the 2007 Will by affixing her left thumb print instead of signing in print, Will would not be invalid only because of the fact that Testatrix signed the 2007 Will by putting her left thumb print (**Steiner**).
- (ii) Testatrix did not give any instructions to PW2 (Mr Sadiq) to prepare 2007 Will.
- (iii) Provision of s6(b) of Wills Act had not been complied with in respect to 2007 Will.
- (iv) Plaintiff has failed to prove that Testatrix had intended to bequeath her estate as stated in the 2007 Will (s6A – Wills Act).
- (v) Testatrix had no knowledge about the nature and extent of properties subject to her estate.
- (vi) Testatrix lacked testamentary capacity because of “want of intelligence occasioned by defective organisation, by supervening physical infirmity and decay of advanced age. (**Bank’s** case)

### **Costs**

133. This Court takes into consideration the following factors:-

- (i) Trial lasted for six (6) days;
- (ii) Both parties filed comprehensive submissions;
- (iii) Parties are siblings and lawful children of the Testatrix;


134. Based on what is stated at paragraph 133 this Court is of the view that each party should bear their own costs of this proceeding.

**Orders**

135. This Court makes following Declaration and Orders:-

- (i) Last Will and Testament of Raj Kali Singh dated 22 January 2007 is invalid;
- (ii) Probate No. 46421 deposited in Court be released to the Defendant or his Solicitors.
- (iii) Each party bear their own costs of this action.



  
Kamal Kumar  
**Chief Justice**

At Suva  
7 December 2021

**Solicitors:**

**SIWATIBAU AND SLOAN for the Plaintiff**

**SHERANI & CO. for the Defendant**