

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 126 of 2021

BETWEEN : **BELA RANI GHOSH** of 34 Kelvin Road, St Ives, Sydney, Australia, Widow

PLAINTIFF

AND : **RAKESH CHANDRA AKHIL** of 54 Longshore Dr Clyde North, Victoria
3978, Australia.

FIRST DEFENDANT

AND : **ANUSHKA ANJELI VASEK** of 42 Grenfell Rise, Narre Warren, Victoria
3805, Australia

SECOND DEFENDANT

Appearances: Mr. Drole for the Plaintiff
Ms. Singh K. for the Defendants
Date of Hearing: 27 July 2022
Date of Ruling: 14 October 2022

R U L I N G

1. Before me is a Summons filed on 26 January 2022 by Neil Shivam Lawyers for the Plaintiff seeking the following orders:
 - (1) That the Plaintiff's claim against the Defendants be struck out on the grounds that:
 - a) It discloses no reasonable cause of action;
 - b) It is scandalous, frivolous or vexatious; and/or
 - c) It is otherwise an abuse of the process of the Court; and
 - d) It is statute barred under the Limitation Act 1971
 - (2) Cost of this Application.
2. The application is supported by an Affidavit of Anushka Anjeli Akhil Vasek sworn on 26 January 2022.

3. Notably, on 23 September 2021, the Plaintiff had filed a summons seeking the following orders:
 - (1) That this matter be formally proofed;
 - (2) That this Honorable Court assess the damages and costs in favour of the Plaintiff;
 - (3) That the service of this Summons be abridged;
 - (4) Costs of this application be costs in cause;
 - (5) Any other Orders that this Honorable Court deems just and expedient.
4. The Plaintiff is the stepmother of the first Defendant. The first Defendant is the father of the second Defendant.
5. The patriarch of the family was the late Hari Charan Akhil (“**Akhil**”). Akhil died on 17 August 2017.
6. Akhil left a Will in which he named the second Defendant and her husband as Executors/Trustees.
7. Notably, the Plaintiff is not named in the Will as Executor/Trustee or as beneficiary.
8. In 2001, the Plaintiff took out Letters of Administration in Fiji.
9. It appears that, around 2009, the Defendants, Akhil, and other siblings of the Defendant were discussing about selling a block of land belonging to Akhil.
10. The Plaintiff was not privy to these discussions.
11. The sale however did not proceed.
12. As it turned out, Akhil however, at some point, did transfer his shares in the Company to his granddaughter, the second Defendant.
13. The Plaintiff appears to be claiming an interest over the proceeds of the purported sale which did not eventuate.
14. The Plaintiff questions why the second Defendant did not sell that land to any prospective buyers.
15. Her claim for loss appears to be premised on an alleged purported interest in a portion of the sale proceeds which, had the sale happened, Akhil would have been beneficially entitled to.
16. The Plaintiff, notably, as I have said, is not a beneficiary under the Will. Nor has she challenged that Will.

17. Notably, there is no probate granted over the Will which the Defendants are relying on. The Plaintiff however obtained Letters of Administration in 2021.
18. Apart from applying under Order 18 Rule 18, the Defendants also argue that they are ordinary residents out of Fiji and that the writ was served on them without the prior leave of the Court to serve out of jurisdiction. The Plaintiff concedes but argues that the Defendants have waived this requirement by accepting service and by responding to the writ.
19. The Defendants submit that without the prior leave of the Court, the mistake is fatal and that the action must therefore be struck out.
20. I have read the authorities relied on by the Defendants. While I would not strike out the claim on all the other grounds, I agree that the requirement under Order 6 Rule 6 of the High Court Rules is mandatory (see **Habib Bank Ltd v Raza (2019) FJHC 308; Civil Action 53 of 2005 (21 February 2019)**, **Ralulu v Chand (2019) FJHC 1025; Civil Action 87 of 2013 (25 October 2019)**).
21. This error cannot be cured under Order 2 Rule 1. (**Ralulu v Chand** (supra)).
22. Accordingly, agreeing with the above authorities, I dismiss the Writ and Statement of Claim.
23. Costs to the defendant which I summarily assess at \$500-00 (five hundred dollars only).



Anare Tuilevuka
JUDGE
Lautoka

14 October 2022