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

Civil Misc Action No. HBM 32 of 2021

BETWEEN : **LEELA WATI** aka **LILAWATI SHANKARANA** of Navakai, Nadi, in Fiji, Retired, as Administratrix pursuant to Letters of Administration De-Bonis-Non No. 51837 annexed with Will in respect of the **Estate of Ganesh Shankaran** late of Martintar, Nadi, in the Republic of Fiji, Cultivator, Deceased, Testate.

PLAINTIFF

AND : **BENNADETTE** aka **BERNADETTE CHINNA** aka **BERNADETTE SHANKARAN** aka **BERNADETTE EVELYN SHANKARAN** of Saunaka, Nadi, Domestic Duties, as Sole Executrix and Trustee of the Estate of Prem Shankaran aka Felix Prem Shankaran

1ST DEFENDANT

AND **REGISTRAR OF TITLES**

2ND DEFENDANT

AND **THE DIRECTOR OF LANDS**

3RD DEFENDANT

Date of Hearing : 24 June 2022
Date of Ruling : 28 October 2022
Appearances : Mr. D.S. Naidu for the Plaintiff
Mr. Victor Sharma for the first Defendant

RULING

1. The background to this matter is set out in my interlocutory ruling dated 11 February 2022 (see **Wati v Bennadette** - Ruling [2022] FJHC 99; HBM32.2021 (11 February 2022).

2. The case concerns the estate of the late Ganesh Shankaran ("Shankaran"). Shankaran died on 11 December 1986. At the time of his death, Shankaran was the registered proprietor of State Lease No. 6476. This land has a total acreage of 13.7189 hectares. Shankaran's Last Will and Testament is dated 25 November 1957. By the said Will, Shankaran had bequeathed his estate in equal shares to his wife Alumelu and also to his three children, namely, Vijay Shankaran ("Vijay" son), Prem Shankaran ("Prem" son) and Leela Wati ("Leela" daughter – plaintiff). Shankaran also appointed his wife, Alumelu, as executrix and trustee of the said Will upon his death (she was granted Probate No. 10518 on 13 August 1969). Alumelu later died on 05 April 2000 leaving the estate un-administered. Upon her death, letters of administration de-bonis-none of the estate of Shankaran was granted to Prem on 25 May 2001. Vijay died on 23 June 1995. Prem died on 14 May 2011. Upon Prem's death, his surviving wife, Bernadette (first defendant) became the sole executrix and trustee of the estate. Notably, Shankaran had placed the following conditions on his Will:

   (a) that his estate is to be distributed when his youngest child, Prem, attains the age of twenty-one ("period of distribution")
   (b) that Leela is only entitled to her equal share in the estate if she remains unmarried at the time of the "period of distribution", that is, when Prem attains the age of twenty-one

3. Prem was born on 16 July 1947. He attained the age of twenty-one on 16 July 1968. Leela married on 05 April 2000 when Prem was fifty-three years of age. It appears that Prem had started subdividing the estate property whilst he was alive. Bernadette would carry on the work after the demise of Prem. This sub-division work is all still work in progress when Leela instituted these proceedings. Leela placed a caveat on the property on 08 October 2012.

4. Before me in January this year, the question arose as to whether the caveat was sustainable. I agreed with the arguments of the defendant's counsel. My reasons are stated in the above judgement.

5. Consequently, the caveat was not extended and it lapsed.

6. However, I did consider the facts deposed to in the affidavits and directed that an interim injunction should be imposed.

> 27. For all the above reasons, I am of the view that the caveat should not be extended.
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> 28. However, having said that, I am mindful that the plaintiff had not only sought an extension of the caveat – which I have now refused. She also appeals to this Court for:

*"**ANY OTHER ORDER** that this Court may deem just and equitable in the circumstances"*

29. The above is a plea to this Court to consider any other relief which is not specifically pleaded or sought in the Motion.

30. Admittedly, whilst the application to extend the caveat is fraught with problems which have led me to uphold the defendant's submissions not to extend the caveat, I am mindful that the plaintiff has a *prima facie* claim to the estate of Shankaran because of the testamentary bequests therein from which she stands to benefit. I am mindful also that the effect of not extending the caveat puts the plaintiff in a precarious position in terms of her claim to the Shankaran estate. To this day, the estate remains un-administered, but the indications are that the land in question has been sub-divided and parts of it have been sold off by the first defendant.

31. This alone, in my view, should entitle the plaintiff to some Order to restrain the first defendant or her servants and/or agents and/or employees from dissipating, transferring, selling, dealing with, charging, mortgaging, assigning or disposing off the three properties in question which are all now comprised in Certificates of Title 22074, 22079 and 21906.

32. Accordingly, applying the equitable principles of Lord Diplock in **American Cyanamid Co. v Ethicon Ltd** [1975] AC 396, I have considered the following questions:

    - (i) whether there is a serious question to be tried,
    - (ii) whether damages would be adequate remedy; and
    - (iii) whether the balance of convenience favours the grant or the refusal of an interlocutory injunction.

33. My answers follow. Yes, there are serious issues to be tried. At the foremost, is the plaintiff's entitlement to share in the estate of her late father, Shankaran. There is also the issue which remains in the related action before the Master – and which is conceded to by the defendant's solicitors as follows:

    "....the only pending issue in that action is the validity of the De Bonis Non which is annexed as "KC-2" in Kunal Chand's Affidavit filed on 19th November, 2021.

    I am of the view that damages would not be an adequate remedy in this case as the land in question is part of the inheritance which Leela has been given by her late father and is unique in that sense. It must hold some sentimental value to Leela.

35. I am also of the view that the balance of convenience favours the granting of an interim injunction.

ORDERS

The first defendant or her servants and/or agents and/or employees are hereby restrained from dissipating, transferring, selling, dealing with, charging, mortgaging, assigning or disposing off the three properties in question which are all now comprised in Certificates of Title 22074, 22079 and 21906 until further orders of this Court.

2. The Registrar of Titles is hereby restrained from registering any dealing, or charge or instrument pertaining to the three properties in question which are all now comprised in Certificates of Title 22074, 22079 and 21906 until further orders of this Court
3. The first defendant has succeeded in their application and are entitled to their costs which I summarily assess at $1,500 (one thousand five hundred dollars) only.
4. The first defendant is at liberty to file an application to dissolve the interim injunctive orders granted above.

7. Before me now is an application by the defendants to dissolve the interim injunction in question. The defendant argues:

   (a) that the plaintiff still has not filed a Writ of Summons and Statement of Claim and therefore, there is no cause of action, let alone, any serious issue to be determined between the parties.

   (b) Material non-disclosure. It was argued that at the time the plaintiff made the application to extend the caveat, she did not disclose that there was already a pending action namely HBC 157 of 2015 which concerns the same issues.

8. Mr. Naidu submits that he has already filed an application to consolidate this action with the other pending matter and if the application is granted – there would be no need to file a Writ of Summon and Statement of Claim in this case.

9. As for the pendency of HBC 157 of 2015, I am of the view that had that been disclosed to me – it would simply have accentuated the need to make an Order to preserve the status quo and perhaps – consolidate the two proceedings.

10. In the final, I am inclined to exercise my discretion to extend the injunction. I am also of the view that the two actions should be consolidated. I acknowledge that the rules require that a Writ of Summons and Statement of Claim ought to have been filed before an interlocutory injunction ought to have been ordered. I also acknowledge that the rules do provide that in exceptional urgent cases, an interim injunction might be granted ex-parte with directions to file and serve a Writ of Summons and Statement of Claim later at the earliest. I commend Mr. Sharma for highlighting this.

11. As I have said, the material in the affidavits filed *prima facie* disclose that the plaintiff has a beneficial entitlement to a portion of the land in question and that there are indeed serious issues to be tried and that the balance of convenience supports that the estate be preserved until the question about the parties'respective beneficial entitlement is sorted out in a trial. At some point, the caveat had served that purpose in preserving the estate. With the caveat removed as a matter of non-compliance with the statutory provisions – I decided to that an interim injunction would be appropriate for that purpose – this being an equitable remedy.

12. In the final, I dismiss the application to dissolve the interim injunction. The plaintiff is to file and serve a Writ of Summons and statement of claim in twenty one days from the date of this ruling. Costs to the defendant which I summarily assess at $1,000.

13. The consolidation of this matter with other related matters will be formalized after the plaintiff has paid the costs ordered above and after the service of the Writ of Summons and Statement of Defence.

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Anare Tuilevuka
JUDGE
Lautoka

28 October 2022