

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

Probate Jurisdiction No. HPP 139 of 2022

BETWEEN : **SAROJANI CHAND** of Vunivivi Hill, Nausori, Homemaker.
FIRST PLAINTIFF

AND : **ARVIN CHAND** of Melbourne, Australia, **ASHIKA LATA SAHIB** of Perth,
Australia and **DHINASH CHAND** of Nausori.
SECOND PLAINTIFFS

AND : **SATISH CHAND** of Nausori
DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Vijay Maharaj** for the Plaintiffs
Mr. Ronald Singh for the Defendant

DATE OF DECISION: 27th March, 2025

DECISION

[Release of Original Probate Grant No. 70029 with Will dated 24th July 2000 for examination by Writing Expert]

Introduction

1. The Plaintiff filed a Notice of Motion coupled with an Affidavit in Support and sought for the following orders:
 - (a) That the Chief Registrar do release the Original Probate No. 70029 with Will dated 24th July 2019 attached to it of Manik Chand deceased to Vijay Maharaj Lawyers for the purposes of examination by the Plaintiffs' hand-writing expert.
 - (b) Such further and other Orders incidental to the release as this Honorable Court may deem just and necessary.
2. The application is made pursuant to Order 38 Rule 4 of the High Court Rules 1988.

Background

3. The Defendant filed his Affidavit in Response together with two other affidavits deposed by Hariragni Raju and Noleen Arthika Karan.
4. Both parties to the proceedings furnished Court with written submission.
5. The Deceased Manik Chand took demise on 13th June 2022.
6. He left behind his Will dated 24th July 2019.
7. The Deceased appointed Satish Chand (Defendant) to be the sole Executor/Trustee of his last Will and have Devise and Bequeath the following:
 - (ii) Bank of Baroda Account Number 9108010000271 to be given to my daughter Ashika Chand Lata for her own use and benefit absolutely.
8. An application for the Grant of Probate under the deceased's Will was lodged by the Defendant Satish Chand and accordingly issued with a Probate Grant on 12 October 2022 by the Court via Probate Grant No. 70029.
9. On 25th November 2022 the Plaintiff filed a Writ of Summons with the contention to challenge the Deceased's Will stating that the purported Execution of the alleged Will was procured by undue influence, pressure and/or duress of the deceased by the Defendant motivated by personal greed and to conceal his personal abuse and wrongdoings of the Deceased's Business influence.
10. Subsequently, as a result of the impending substantive matter with regards to the challenge of the Will, the Probate Grant No. 70029 was deposited into Court to allow the Hearing and determination of the substantive matter and the status quo of the Deceased Estate to remain intact without any further Administration and disposition.

11. Hence, the current application filed by the Plaintiff seeking an order for the release of the Original Probate Grant No. 70029 with Will dated 24 July 2019 for the progress of Execution by the Plaintiff's hand-writing expert.

Determination

12. The only issue for this Court to determine is **'Whether the Chief Registrar should release the original Probate Grant No. 70029 with Will dated 24 July 2019 of the Deceased Manik Chand for the purposes of examination by the Plaintiff's hand-writing expert ?**
13. The application is made pursuant to **Order 38 Rule 4 of the High Court Rules 1988** which in fact deals with **'Limitation of Expert evidence'**. Above provisions of the High Court Rules 1988 does not apply. The provisions only the Courts power to limit the number of Expert witnesses and does not grant the Court power to order the release of the Probate grant and Will.
14. **The Plaintiff has decided to engage a hand-writing Expert 'Linda Morrell'**, Forensic documentation and hand-writing expert of Wellington, New Zealand to examine the **purported signature** of the deceased, Manik Chand against his other signatures on various other documents and to provide a report of her findings.
15. Further, the Courts' jurisdiction is not invoked by the application to allow the Court to make an order currently been lodged with the High court Principal Probate Registry. Current substantive application challenging the Deceased's Will is made in terms of **Order 76 of the High Court Rules 1988** and there is no provisions such relating to orders sought by the Plaintiff in the application.
16. It is not in dispute that the Deceased, Manik Chand Executed the Last Will. The claim revolves around allegations related to the Defendant's Testamentary capacity and undue influence. Forgery has not been specifically pleaded and the Plaintiff has not disclosed any evidence to indicate the Deceased's Will has been forged.
17. In Cross on Evidence (4th Ed) at page 529: ".....strictly an expert in handwriting should not be asked to say 'definitely that a particular writing is to be assigned to a particular person. His function to point out similarities between two specimens of handwriting or differences, and have the Court to draw their own conclusion."
18. Base on above, any handwriting Expert would only be able to assist the Court as far as determining the similarities between various signatures for the Court to formulate an opinion on who signed Last Will (and not the Testamentary capacity of the Deceased).
19. If this Court was to grant the orders sought herein, the Defendant would be prejudiced would need to bear the costs of his living his own hand writing expert to produce a report to rebut any evidence submitted by Ms. Morrell.
20. The Court's in Fiji have the facilities of Skype and Ms. Morrell could be invited to give Skype evidence and allow the Defendant's to cross examine her on any particular viva voce and/or documentary evidence that the defence is not satisfied with. This will give a Just and Fair opportunity for both parties/counsels to test the hand writing Expert's evidence.

21. For the aforesaid rational, the Plaintiffs Notice of Motion in Support of the affidavit cannot be acceded to and therefore is declined and accordingly dismissed in its entirety.

Costs

22. The matter proceeded to Hearing with parties to the proceedings filing affidavits and written submissions and orally arguing the application at length.
23. It is only Just and fair that I grant a summarily assessed costs of \$2,000 to the Defendant to be paid by the Plaintiff within 14 days timeframe.

Orders

- (i) The Plaintiff's Notice of Motion seeking for the Chief Registrar to release the Original Probate Grant No. 720029 with Will dated 24 July 2019 of Deceased, Manik Chand to the Plaintiff for examination by the Writing Expert is dismissed in its entirety.
- (ii) The Plaintiff to pay the Defendant summarily assessed costs of \$2,000 within 14 days timeframe.

Dated at Suva this 27th day of March ,2025.



VISHWA DATT SHARMA
PUISNE JUDGE

cc. Vijay Maharaj Lawyers, Suva
Munro Leys Solicitors, Suva