

IN THE HIGH COURT OF FIJI AT SUVA
IN THE CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 186 of 2024

IN THE MATTER OF Order 85 (1) (2) (3) and
(4) of the **HIGH COURT RULES 1998**

BETWEEN: **SALMAN KHAN aka SALMAAN SHAH aka BOOBBY KHAN** as
Administrator of the Estate of **ALI MOHAMMED aka ALI**
MOHAMMED

PLAINTIFF

AND: **MOHAMMED YASIN SHAH,** unknown.

FIRST DEFENDANT

AND: **REGISTRAR OF TITLES** Ground Floor, Civil House.

SECOND DEFENDANT

AND: **HOUSING AUTHORITY OF FIJI** Housing Authority Building, Saqa
Street, Valelevu, Nasinu.

THIRD DEFENDANT

AND: **ATTORNEY GENERAL OF FIJI** of Level 7, Suvavou House,
Victoria Parade, Suva.

FOURTH DEFENDANT

Date of Hearing	: 10 December 2024
Counsel For Plaintiffs	: Ms Tivao. S
Counsel for the 3rd Defendant	: Ms Devi and Mr Waqanivavalagi
Counsel for the 2nd and 4th Defendants	: Mr Nawaikula P.
Date of Decision	: 14 April 2025
Before	: Waqainabete-Levaci S.L.T.T, J

JUDGEMENT

(APPLICATION FOR ENTERING OF ORDERS AGAINST TITLE PURSUANT
TO SECTION 168 OF LAND TRANSFER ACT)

BACKGROUND AND AFFIDAVIT

1. The Plaintiff has filed an Originating Summons seeking orders as follows:
 - (1) Under section 168 of the Land Transfer Act that the Second Defendant accept the execution of the transfer instrument on Certificate of Title Number HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai without Deed of Consent or Deed of Renunciation of the First Defendant;
 - (2) An Order pursuant to section 21 (2) and 24 of the Land Transfer Act that the Second Defendant make and enter all such memorials of instrument t being the transfer of property comprised in certificate of title HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai, Suva in the name of the purchasers of the property ;
 - (3) Pursuant to section 168 of the Land Transfer Act that the Second Defendant register and subsequently issue the property comprised of Certificate of Title Number HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai without Deed of Consent or Deed of Renunciation of the First Defendant;

- (4) The Deputy Registrar execute the consent to transfer on behalf of the First Defendant for the property comprised in Certificate of Title HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai, Suva.
2. The Plaintiff has deposed in their Affidavit he was appointed as administrator for the Estate of his father, Ali Mohommed who is also the registered proprietor of the land and property comprise of Certificate of Title HASL 145582 on DP 3876 of Cheng Place, Raiwai, Suva which is now vacant and has been sold.
 3. That the Plaintiff has six other siblings, two of which have passed away.
 4. Three siblings have renounced their shares to him and the Deed of Renunciation is annexed as evidence.
 5. Mohammed Yasin Shah, his brother and also a shareholder in the property has not been located despite attempts to contact him or his family including his wife's family.
 6. The last that the Plaintiff had contacted him was during his late father's funeral in 2008. To date there has not been any other contacts.
 7. Since all of his siblings now live overseas, he has sold the property to willing purchasers and a Sale and Purchase Agreement has been signed.
 8. He has filed this application and advertised a copy in the newspaper after having sort leave to serve by substituted service, given that his brother, Mohammed Yasin Shah address is unknown.
 9. He seeks for an Order for the Register of Title to register the transfer of the said property to the intending purchasers and that the Register of Title waive the requirement to file a Deed of Renunciation from his brother, Mohammed Yasin Shah.

LAW AND ANALYSIS

10. Section 21 and 24 of the Land Transfer Act recognizes that a person becomes a proprietor once the memorial is entered. Every memorial states the name of the instrument, time and date of lodgment and any other details the Registrar directs.
11. The Applicant seeks to enter the name of the intending purchasers as new proprietors. However because he has not been able to secure the consent of his sibling, Mohammed Yasin Shah, he seek Court Orders to sell.

12. The Court finds that the Plaintiff has made all attempts to contact Mr Mohammed Yasin Shah and has served by substituted service the application to Court seeking for Court Orders to transfer the said lands by sale.
13. The property which is sold, includes the shares of all the siblings, including Mr Mohammed Yasin Shah, who was properly served but was not present to raise his objection to the sale of the property in Court.
14. The court is therefore satisfied that the Plaintiff has intended to transfer the said lands by sale to the intending purchaser and ensure the proceeds of the sale is equally shared to all the siblings as beneficiaries of the Estate of Mohommod including his brother, whose address is unknown.
15. The Court will therefore Order that judgment be entered entitling the Plaintiff to sell the property as Administrator of the Estate of Mohommod pursuant to section 105 of the Land Transfer Act.
16. That pursuant to the filing of the instrument of transfer, the court will enter into the memorial the transfer and register the same.
17. Costs will be borne by the Plaintiff.

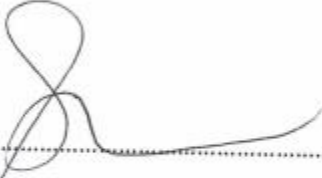
ORDERS

18. The Court will Order as follows:

- (1) That Court will Order that the Plaintiff, as Administrator of the Estate of Mohommod and holding consent of the equal shares as beneficiaries of his siblings, will also be entitled to hold and deal with the share of Mohammed Yasin Shah, who holds an equal share in the property pursuant to section 105 and 106 of the Land Transfer Act;
- (2) An Order pursuant to section 21 (2) and 24 and 105 of the Land Transfer Act that the Second Defendant make and enter all such memorials of instrument being the transfer of property comprised in certificate of title HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai, Suva in the name of the purchasers of the property;

- (3) Pursuant to section 168 of the Land Transfer Act that the Second Defendant register and subsequently issue the property comprised of Certificate of Title Number HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai without Deed of Consent or Deed of Renunciation of the First Defendant;
- (4) The Deputy Registrar execute the consent to transfer on behalf of the First Defendant for the property comprised in Certificate of Title HASL 145582 Lot 39 on DP 3876 Cheng Place, Raiwai, Suva.
- (5) Costs bourne by the Plaintiff.




Senileba Waqainabete-Levaci
Puisne Judge of High Court