

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action No. **HBC 208 of 2016**

BETWEEN: **SHAIENDRA** of 59 Stonecutters Dr, Colebee, NSW, 2761, Australia, Accountant, **DEVENDRA PRASAD** aka *Divendra Prasad*, **SUJENDRA PRASAD**, **SUNILA DEVI**, **SRILATA DEVI** aka *Shree Lata* all of Sawani, Nausori and **SONI LATA SINGH** of Vunivadra Place, Lautoka.

Plaintiffs

AND: **RAJAN RAHUL CHAUDHRY**, **AKSHAY AMAR CHAUDHRY** and **SHAMILA DEVI** all of Princess Road, Sawani, Nausori, Businessman and Retiree respectively as Executors/Executrix and Trustees for the Estate of Ramendra Prasad pursuant to Probate Number 64260 and **ARUN PRASAD** of Sawani, Nausori, Deceased.

Defendants

Representation:

Plaintiff: Mr. A, Chand (Amrit Chand Lawyers).

Defendant: Mr. A. Pal (AP Legal).

Date of Hearing: 10th July 2024.

Judgment

A. Introduction

- [1] The Plaintiffs are beneficiaries in the Estate of Vishnu Prasad. Vishnu Prasad was the eldest son of Latchman and a beneficiary in the Estate of Latchman. Latchman was the registered proprietor of CT 9037. The area of the land in CT9037 is 347 acres 1 rood.
- [2] Latchman passed away on 28th May 1962. His Probate (No. 7499) was issued to Vishnu Prasad and Vijendra Prasad, his sons as Executors and Trustees. Vishnu and Vijendra passed away on 9th March 1989 and 4th August 1991, respectively.
- [3] Vishnu passed away testate and his Probate (No. 26216) was issued to his sons, Arun Prasad and Ramendra Prasad. Arun Prasad, one of the Defendants in this matter is now deceased. Ramendra Prasad passed away on 27th January 2019. Ramendra Prasad's Probate being No. 64260 was issued to Rajan Rahul Chaudhry, Akshay Amar Chaudhry and Shamila Devi as Executors/Executrix and Trustees. Ramendra Prasad was a defendant in this action. His Trustees and Executrix/Executors have been substituted as Defendants.
- [4] The Plaintiffs are seeking shares in the Estate of Vishnu Prasad. They have also sought that the Defendants be removed as Executors and Trustees in the Estate of Vishnu Prasad. They are seeking a number of orders.

B. Other Pertinent Issues

[5] On 30th June 2023, Master Lal delivered an Interlocutory Ruling on locus to bring proceedings and discovery pursuant to Order 24 Rule 7 of the High Court Rules 1988. She ordered as follows:

“...- The Defendants shall by 12 noon on 21 July 2023 file an affidavit stating whether the following documents or class of documents is or has been in their possession, custody or power, and if not then in their possession, custody or power, when they parted with it, and what has become of them:

- (i) *Copy of deed for lots 3, lot 4, lot 5 and lot 8.*
- (ii) *All documents (including but not limited to Plans, Application Approvals, Correspondences etc) pertaining the properties to the subdivision of the Estate of Latchman and Estate of Vishnu Prasad.*
- (iii) *Titles in relation to all properties and transfer documents.*
- (iv) *All transfer of properties for Estate of Latchman.*
- (v) *Account for Estate of Vishnu Prasad.*
- (vi) *Bank Statements (including loan documents) for the Estate of Vishnu Prasad and Latchman.*
- (vii) *Deed of renunciation in relation to Estate of Vishnu Prasad.*
- (viii) *Documents relating to distribution of properties from the Estate of Latchman and Estate of Vishnu Prasad.”*

[6] On 10th August 2023, the Orders of Master Lal was not complied with. The Defendants also did not appear. Pursuant to Order 24 Rule 16, Master ordered that *“...unless Defendants comply with orders of 30th June 2023 by 31st August 2023. Statement of Defence shall stand struck out”*.

[7] The orders of Master Lal were not complied with. Summons under Order 34 for entry of action for trial was filed for undefended hearing. It first came up before me on 11th December 2023. Mr. Pal sought 4 weeks adjournment. He had indicated that he needed time to make certain applications to court. I granted time. On 23rd January 2023 I set matter for trial on 10th July 2024.

C. Hearing

[8] In the interest of justice I allowed Mr. Pal to cross-examination the Plaintiff's witness. The matter was on an undefended basis. The Statement of Defence was struck out by the Master. The Plaintiff's called Shailendra Latchman as their witness.

D. Evidence and Determination

- [9] Having noted the evidence of Shailendra, I accept his evidence. He is credible and I believe him. He was thoroughly cross-examined and he was truthful. Even though the matter was to be on an undefended basis (Formal Proof) the Defendants were given a chance to cross examine him. The cross-examination of Shailendra tested the veracity of his evidence. He was truthful and had first hand knowledge of issues and events. He is personally affected in this matter.
- [10] From the evidence before me I find that Latchman (Grandfather) bequeath CT 9037 (having an area of **347 acres 1 rood**) as follows:
- (a) to his **daughter (Pankuar)** and her husband (**Ram Narayan**) **6 acres** more or less as tenants in common in equal shares absolutely.
 - (b) the **balance of the land** to his wife (**Ram Raji**) and sons (**Vishnu Prasad, Vijendra Prasad, Ganesh Prasad, and Ajay Prasad**) in equal shares, subject to the proviso that **Ram Raji shall take her share the area on of Latchman's residence.**
- [11] Certificate of Title no. 25039 (having an area of 3 acres 1 rood and 12 perches) was issued to Vishnu Prasad on 9th September 1987 from CT 9037. CT 25039 was transferred to Gyan Wati (wife of Vishnu Prasad) on 19th October 1987. On 17th October 1989, CT 25039 was transferred to Arun Prasad and Ramendra Prasad.
- [12] CT 25039 was subsequently cancelled and 5 separate Titles were issued, being CT 36113 (3860m²), CT 36114 (3156m²), CT 36115 (1802 m²), CT 36116 (1218 m²), and CT 36117 (1253m²). These stand in the names of Ramendra Prasad and Arun Prasad.
- [13] Vishnu Prasad and Vijendra Prasad passed away in March 1989 and August 1991. The Estate of Latchman was left un-administered. Vishnu Prasad left a will and appointed, Arun Prasad and Ramendra Prasad as his Executors and Trustees. Probate no. 26216 was granted to them.
- [14] The will of Vishnu Prasad provided as follows:

4. *SHOULD I receive sufficient land from the Estate of Latchman alias Lachman (father's name Mahadeo) of Sawani near Nausori in Fiji, Cultivator, I direct my Executors and Trustees to distribute such land in the following manner:*

- (a) $\frac{1}{2}$ acre land to my daughter **SHREE LATA**
- (b) $\frac{1}{2}$ acre land to my daughter **SONI LATA**
- (c) $\frac{1}{2}$ acre land to my daughter **SNEH LATA**
- (d) $\frac{1}{2}$ acre land to my daughter **SUNILA LATA**
- (e) 3acre 1 rood 12 perches to my sons **ARUN PRASAD** and **RAMENDRA PRASAD**
- (f) Any remaining balance to be equally divided amongst my sons **ARUN PRASAD,** **RAMENDRA PRASAD,** **DIVENDRA PRASAD,** **SUJENDRA PRASAD** and **SHAIENDRA PRASAD.**

The location and selection of the land mentioned above shall be at the discretion of my Executors and Trustees.

5. *I GIVE DEVISE AND BEOEATH all the rest and residue of my estate to my sons **ARUN PRASAD,** **RAMENDRA PRASAD,** **DIVENDRA PRASAD,***

SUJENDRA PRASAD and **SHAIENDRA PRASAD** in equal shares and shares alike for their own use and benefit.”

- [15] The will of Vishnu Prasad is clear as to the beneficiaries. The Plaintiffs are beneficiaries in his Estate.
- [16] On 23rd July 1993 Letters of Administration De Bonis Non (No. 28858) in the Estate of Latchman was granted to Ganesh Prasad and Ramendra Prasad.
- [17] Following the grant of Administration, Ganesh Prasad and Ramendra Prasad through dealing No. 346224 were registered as Administrators of CT 9037. Under their administration partial transfer of **CT 9037** were made as follows:
- (a) **CT 29779 (1 acre 3 rood 14 perches)** in favor of Ganesh Prasad. This has been transferred to Ganesh's beneficiaries, subsequently.
 - (b) **CT 29780 (3 acres 1 rood and 4 perches)** in favor of Ganesh Prasad. This has been transferred to Ganesh's beneficiaries, subsequently.
 - (c) **CT 29781 (3 acres 39 perches)** in favor of Ramendra Prasad.
 - (d) **CT 36512 (3.5134 Hectares)** in favor of Ganesh Prasad.
- The land area of these partial transfers was approximately **16.68 acres**.
- [18] The **total land area** of **CT 9037** was **347 acres 1 rood**. At the time of Latchman's demise, the land area remained the same. Meaning that the land was not transferred to anyone else. Latchman passed away on 28th May 1962.
- [19] CT 9037 was transferred (Partial Transfer) to other persons as follows:
- (a) **CT 24562 (2448m²)** to Bhagwat Prasad on 3rd July 1986.
 - (b) **CT 24868 (1.7786 Hectares)** to Jamma Prasad on 16th September 1986.
 - (c) **CT 26377 (2.0155 Hectares)** to Hem Nath and Mano Dutt on 4th July 1989.
 - (e) **CT 26378 (2.4891 Hectares)** to Bipat, Shiu Pal and Chandar Pal on 4th July 1989.
- [20] The land area of these partially transferred land comes to approximately **16.12 acres**. Adding up all the land partially transferred from the time of Latchman's death amounts to approximately **36 acres**.
- [21] The balance land left is approximately **311 acres**. According to Latchman's will the entitlements are as follows:
- (a) **Pankuar and Ram Narayan** – 6 acres more or less. (Balance being approximately 305 acres)
 - (b) **Ram Raji, Vishnu Prasad, Ganesh Prasad, Vijendra Prasad, and Ajay Prasad** equal shares and shares alike of the approximate 306 acres. Each is entitled to approximately **60 acres**.
- [22] I also note that Vishnu Prasad and Ganesh Prasad have already taken certain shares which amount to approximately 3 acres and 12 acres, respectively.
- [23] It is clear from the time that has lapsed that the Executors and Trustees and the Administrators acting de bonis non did not act in a timely manner to distribute the

Estate of Latchman. The evidence shows that Ganesh Prasad and Ramendra Prasad did not act in the interest of the beneficiaries. They did not perform their duties properly as Executors and Trustees or as Administrators for the respective Estates. They mainly were concerned about their interests. It is reflected in the Certificate of Titles being issued in their names. I also note from the Orders made by the Master that the Defendant's had not been co-operating. Numerous documents that were to be discovered were never made available. The Administrators and Executors are to account to the beneficiaries. Such disregard for court order is tantamount to contempt. The Defendants so substituted are put on notice.

[24] Both Ganesh Prasad and Ramendra Prasad were beneficiaries of the Estate of Vishnu Prasad. They were entitled to shares. I do not find fraud on their part. No evidence of fraud is before me. However, they should have ensured that every beneficiary was allocated their shares. As Executors and Trustees and Administrators they owed an obligation to the beneficiaries. Their siblings and other family members. The Plaintiffs are entitled to their share in their late father's Estate as per his will.

[25] Shailendra correctly pointed out that the Estate of Latchman is a big piece of land. All parties should come together and work it out at once, not on a piece meal basis. I agree with this suggestion. It is in everyone's interest that this is done. If one generation does not quickly rectify the actions of their ancestors the next will be embroiled in dispute. It is in all the beneficiary's interest that the issues are resolved quickly and amicably. Land is not worth fighting over. Nobody takes land with them when they finally depart.

[26] I am mindful that the Estates need to be resolved and appropriately dealt with. I am informed that the Estate of Vishnu Prasad is now being dealt with by Shailendra and Sujendra Prasad. With the passing of Ramendra Prasad and Arun Prasad. I am informed that currently there are no Administrators of the Estate of Latchman. This Estate needs to be administered. Shailendra and Sujendra Prasad and any other beneficiary of the Estate of Latchman and Vishnu Prasad are at liberty to apply and be appointed as Administrators of the Estate of Latchman.

[27] The Defendants are to assist appointed the Administrators and provide all the necessary documents, information, statements (income and expenses), accounts (assets and liabilities) and other details held by the previous Administrators/the Defendants and/or their representatives.

E. Court Orders

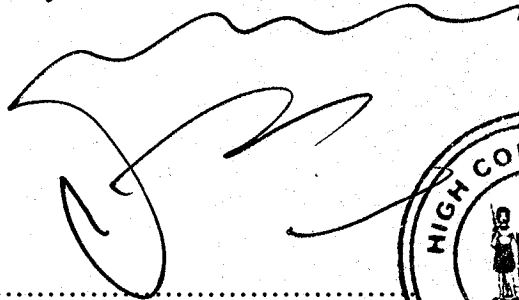
[28] For the reasons given I make the following **orders**:

(a) The Plaintiffs and/or any other beneficiary under the Estate of Latchman and/or the Estate of Vishnu Prasad is at liberty to apply to administer the Estate of Latchman.

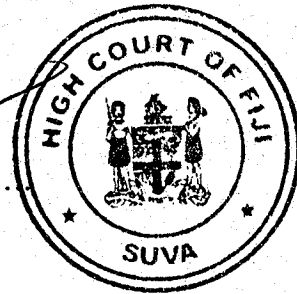
(b) The Defendants are to assist the appointed Administrators and provide all the necessary documents, information, statements (income and expenses), accounts

(assets and liabilities) and other details held by the previous Administrators/the Defendants and/or their representatives for the Estate of Latchman and the Estate of Vishnu Prasad.

- (c) The Executors/Trustees/Administrators of the Estate of Latchman and that of Vishnu Prasad are to promptly distribute the shares under the relevant Estates.
- (d) The Defendants are to pay the Plaintiffs \$5000.00 as costs within 21 days. The costs have been summarily assessed.



Chaitanya S.C.A. Lakshman
Puisne Judge



10th February 2025