

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

ACTION NUMBER:	Family Appeal Case Number 0007 of 2018
BETWEEN:	SADHVI APPELLANT
AND:	NANDISH RESPONDENT
APPEARANCES:	Ms. S. Daunivesi for the Appellant. No Appearance for the Respondent.
DATE/PLACE OF JUDGMENT:	Friday 20 October 2023 at Suva.
CORAM:	Hon. Madam Justice Anjala Wati
CATEGORY:	All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.

JUDGMENT

Catchwords:

FAMILY LAW – COSTS – whether the grant of costs against the wife for seeking to join the owner of the property as party to her claim for distribution of property justified on the facts of the case.

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Cause

1. The Family Division of the Magistrates’ Court granted the wife her application to join the husband’s mother as a party to the cause in the property distribution proceedings. In doing so, it granted costs against the wife in the sum of \$300.00 to be paid before filing of amended claim joining the husband’s mother to the proceedings. The wife appeals against that order.

Appeal and Determination

2. The sole ground of appeal is against the order for costs of \$300.00. I find that the order for costs was not properly made against the wife as the order for amendment did not entail any costs to the respondent. The husband would not need to change his pleadings as he had already pleaded that he is not the owner of the property and as such there should not be any division in the same.
3. All the parties knew well in advance, for more than a year after the filing of the Pre-Trial Conference Minutes, that the husband's father had transferred the property to the husband's mother through a variation of sale and purchase agreement. The same property was initially subject to a sale and purchase agreement in favour of the husband.
4. The question before the court for trial was whether the subject property should form part of the pool of assets. This issue was identified in the Pre-Trial Conference Minutes as well.
5. After filing of the Pre-Trial Conference Minutes, the parties wanted to try the issue as a preliminary issue and the matter was fixed for hearing when the wife made an application for joinder.
6. When the court granted leave to join the owner of the property as the party to the cause, it had to vacate the hearing. Irrespective of that, the costs for \$300.00 is unjustified because the matter should not have been listed for preliminary hearing to determine whether the property forms part of the pool of assets. That question is an issue for the main trial.
7. In any event, there was no need to grant costs as the argument of the issue did not require any oral evidence. All the parties needed to do was to make submissions to the court and any preparation in that regard did not go waste as it could always be used in the closing submissions.

8. Further, if the issue of whether the property was to form part of the pool of assets was granted in favour of the wife, joinder would have been a natural consequence. Prima facie, it appears that the transfer of the property to the husband's mother was a transaction to defeat the wife's interests in the property as initially that property was to be transferred to the husband but a year before the separation it got transferred to the husband's mother. It therefore was more likely than not that the subject property was going to be included in the pool of assets.
9. It is my finding that joinder would have become necessary even after the hearing of the preliminary issue so the vacation of the hearing date for which costs may have been granted is not justified. The order for joinder at any time would not hinder the progress of the case in any significant way entailing costs to the husband. I therefore do not find that an order for costs was justified on any basis.

Final Analysis

10. In the final analysis, I find merits in the appeal and order that the costs of \$300 against the wife be set aside in full. Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

20.10.2023

To:

1. Legal Aid Commission for the Appellant.
2. Respondent.
3. File: Family Appeal Case Number: 0007 of 2018.