

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0035 OF2006
 (High Court Civil Action No. HBC 68/2001L)

BETWEEN:

MADHWAN KESHWAN
 (f/n Keshwan Raman)

Appellant

AND:

KESHNI DEVI
 (f/n Narsaiya)

First Respondent

AND:

SHAIEND R KRISHNA
 (f/n Ram Krishna)

Second Respondent

AND:

REGISTRAR OF TITLES

Third Respondent

Coram:

Scott, JA
McPherson, JA
Ford, JA

Date of Hearing: 16 March 2007

Counsel:

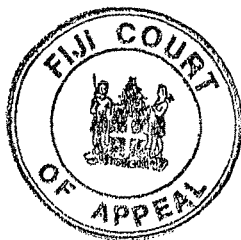
Dr. M.S.D. Sahu Khan]
Ms S. Sahu Khan] for the Appellant

Ms T. Draunidalo for the First Respondent
S.K. Ram for the Second Respondent
Ms M. Rakuita for the Third Respondent

Date of Judgment: 23 March 2007

JUDGMENT OF McPHERSON, JA

[1] I entirely agree with the orders proposed and with the reasons given by LJ Scott for dismissing this appeal. Even before the Judicature Act, the rule was settled that actual service of the writ or other originating process is not essential. "If the defendant appears, that gives the Court jurisdiction to proceed, provided the subject-matter of the action is one over which the Court has jurisdiction." See Oulton v Radcliffe (1874) LR 9 CPO 189, 195. Here the proceedings were for partial administration of the trusts of a deceased estate under the will, of which probate had been granted in Fiji. The subject-matter was therefore clearly within the jurisdiction of the High Court. The decision in Boyle v. Sacker (1888) 39 Ch D 249 cited by my Lord is to the same effect, and concerned proceedings like this on motion or originating summons.



A handwritten signature in black ink, appearing to read "B. McPherson", is written over a horizontal line.

McPherson, JA

Solicitors:

Sahu Khan and Sahu Khan Solicitors, Ba for the Appellant
Patel and Sharma Solicitors, Nadi for the First Respondent
Samuel K Ram Solicitors, Ba for the Second Respondent
Office of the Attorney General Chambers, Suva for the
Third Respondent