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

CIVIL APPEAL NO. ABU 29 OF 2014
(High Court No. HPP 23 of 2006)

BETWEEN : **SANT RAM**

Appellant/ 1st Defendant

AND : **JAGAT RAM**

1st Respondent/Plaintiff

THE PUBLIC TRUSTEES OFFICE OF FIJI

2nd Respondent/2nd Defendant

Coram : **Calanchini , P**
Almeida Guneratne , JA
Kumar, JA

Counsel : **Ms. S. Kumar for the Appellant**
Mr. S. Singh and Ms. I. Latu for the 1st Respondent
Mr. R. Lal for the 2nd Respondent

Date of Hearing : **22 August 2017**

Date of Judgment : **14 September 2017**

JUDGMENT

Calanchini, P

[1] I agree that the appeal should be allowed.

Almeida Guneratne, JA

[2] The matter involved three last Wills executed by a testator. The learned High Court Judge rejected the final (the 3rd) last will in question and accepted the 2nd although in order to identify the Wills that were in issue, the Court had to spend considerable time at the commencement of the hearing of the appeal, on account of the misdescription of the parties to the dispute, the wrong dates on the wills in question, the paucity in which the Copy Record had been prepared without even the Appellant's statement of claim being furnished (submitted by the Appellant in open Court without objection by the Respondents).

[3] Those shortcomings (though unacceptable) were ultimately ironed out through the efforts and indulgence of Court. Consequently, the Appellant's counsel was invited to address on the Grounds of Appeal against the impugned judgment of the High Court dated 7th March, 2014. (hereinafter referred to as "the Judgment").

The Grounds of Appeal

[4] The grounds of appeal are at pages 12 – 13 of the Copy Record. Although as many as 11 grounds are urged therein, the learned Counsel addressed Court on what he submitted as being the main grounds. Viz: grounds 5, 6 and 7.

> *"THAT the learned Judge erred in law and in fact in not giving any weight to the evidence tendered by the Appellant/Defendant, hence there has been a substantial miscarriage of justice;*
>
> *THAT the learned Judge erred in law and in fact in not finding as a fact that the will made in favour of the Respondent/Plaintiff was not the last will of his father, hence there has been a substantial miscarriage of justice;*
>
> *THAT the learned Judge's decision is unfair and unreasonable in all the circumstances of this case."*

[5] The other grounds are merely descriptive of the aforesaid grounds and made with reference to the evidence that had been led at the trial.

The Core Issue to be Determined in this Appeal – Validity of the Will dated 28th December, 1995

[6] From the facts of the case, extracted from the pre-trial conference minutes (pp.130-132 of the Copy Record), the pleadings and the respective submissions made on behalf of parties, it is clear that the core issue to be determined in this appeal is the validity of the Will dated 28th December, 1995 (the Will subsequent to the earlier Will dated 21st December, 1995.

[7] Thus, while the 1st Respondent challenged the Will dated 28th December, 1995 (vide: Statement of Claim), the Appellant put in issue the validity of the earlier Will dated 21st December, 1995.

Was the subsequent Will dated 28th December, 1995 a valid Will?

[8] This question depended on whether the testator Sahadeo, (the father of the Appellant – Sant Ram, the younger brother of the 1st Respondent – Jagat Ram) executed the same.

The relevant legal provisions that impact on the said question in so far as they concern the matter in dispute – Re: the execution and making of Wills

[9] Section 6 of the Wills Act, 1972 (hereinafter referred to as the Act) provides as follows:-

> *"Subject to the provisions of Part V, a will is not valid unless it is in writing and executed in the following manner:-*
>
> *(a) it is signed by the testator or by some person in his presence and by his direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his will;*
> *(b) such signature is made or acknowledged by the testator in the presence of at least two witnesses present at the same time; and*
> (c) *the witnesses attest and subscribe the will in the presence of the testator, but no form of attestation is necessary."*

[10] The other provisions such as those relating to the capacity of a testator, (Part II of the Act), formal validity of a Will as contemplated by Part VII of the Act and the

construction of Wills as envisaged in Part VII of the Act not being in issue, the validity of the Will dated 28th December, 1995 rested on whether, the requisites laid down in Section 6 had been satisfied.

The Evidence

[11] The first witness called by the 1st Respondent who relied on the earlier Will of 21st December, 1995 was one Anwar Ali who was working for the Public Trustee at the time all three Wills (viz: Will dated 15th September, 1995 the Will dated 21st December, 1995 and the Will of 28th December 1995) had been executed, part of his duties being the making of Wills for people.

[12] Anwar Ali's evidence as an alleged attesting witness relating to the Will dated 28th December, 1995 was to the following effect, viz:

(a) He had not seen Sahadeo (the testator) since the making of the Will dated 15th September, 1995.

(b) He compared two Wills (apparently the Will of September, 1995 and the Will of 28th December, 1995) and said that he disagreed with the Will of 28th December, 1995.

(c) His signature on the Will of September, 1995 and his purported signature on the Will of 28th December, 1995 had differences. (a slant in the signature in the 28th December Will.

(d) He could not comment on Prishilla Devi, his clerk at the Public Trustee office at the relevant time signing as a witness to the said Will of 28th December.

[13] That evidence of the witness was in his examination in chief, the witness ending up by saying that he was "pretty certain that (he) did not sign the 2nd Will." (Page 243 of the Copy Record).

[14] In cross examination, the witness did not alter his stand that, he had not seen Sahadeo after the making of the 15th September, 1995 Will and in regard to the dates and the way the words on the said 28th December, 1995 Will had been used. In regard to the crucial issue as to whether it was his signature on the said 28th December Will, the witness had said, that he could only speak to the Will of 15th September, 1995 and he

could not vouch for the Will of 28th December, 1995. (at page 251 of the Copy Record). "But they look very similar?" Counsel had asked. The answer had been "Look similar but some difference." (going back to his examination in chief re-capped at paragraph [12](c) above) (vide: page 252 of the Copy Record).

[15] The re-examination of the witness at page 252 of the Copy Record does not appear to have impacted on the evidence of the witness either way.

[16] The next witness called on behalf of the 1st Respondent (the plaintiff) was one Peni Vula who had started work in the Public Trustee's office in the year 1999 and had relinquished the said office somewhere in 2006 or 2007. The witness had testified in regard to the Will of 15th September, as well as to the two Wills dated 21st December, and 28th December (all in the year 1995) and had deposed that:-

(a) in all three Wills the same testator's name appeared;

(b) as between the Will of 21st December, 1995 and the Will of 28th December the named beneficiaries only had changed;

(c) if the Public Trustee's office had prepared the said Will of 28th December, a copy of it should have been there in his office but the same had not been traceable but the same had surfaced later. The said beneficiaries were the same in the Will of 15th September 1995 and the Will of 28th December, 1995.

[17] Suffice it to say that, at this point the said evidence of the witness in examination in chief and the subsequent evidence in cross-examination followed by the re-examination (vide: pages 264 to 268 of the Copy Record) helped only to establish just one feature. That was in regard to the name of the testator and whether it was the testator's (Sahadeo's) signature was still left open and hung in the air like the shuttle in the loom.

[18] The next witness called was the 1st Respondent (the plaintiff) who had testified to the Will dated 21st December, 1995 – in respect of which probate had not been issued due to police investigations on the basis of an allegation of fraud which were still pending the reason why he had instituted the present action.

[19] Questioned in regard to the said Will of 28th December, 1995, the witness pointed out to mistakes in the use of language in it, the wrong dates and, as to when the Appellant had discovered the said Will of 28th December, 1995 after a lapse of as many as ten years, which had prompted the witness to suggest fraud in regard to the execution of the said Will of 28th December, 1995.

[20] However, when my brother, Justice Kumar interjected and pointed out to the Appellant's Counsel the evidence of the plaintiff (1st Respondent) at page 290 of the Copy Record where the testator's signature had been admitted by the witness Counsel sought to counter the effect of it by saying that, it was not an admission as to the testator's signature on the said Will dated 28th December.

[21] However, in cross examination it had been asked and the response had been thus:-

"Mr. S. Chandra:	*Now that you have seen all 3 Wills ... can you have a look at the signatures of your father on all of the Wills?*
Mr. Ram:	*Yes, it is my father's.*
Mr. S. Chandra:	*So all the 3 signatures belong to your father?*
Mr. Ram:	*Yes."*

[22] This was followed by what the 1st Respondent (plaintiff) had said at page 293, viz:

"Mr. S. Chandra:	*Yesterday you were shown a document by learned counsel. Document page 15 of the Agreed Bundle. You said that the document was not written by your father?*
Mr. Ram:	*My father was not well educated.*
Mr. S. Chandra:	*So when he signed the 3 Wills they were not signed by your father?*
Mr. Ram:	*Signature was my father's. But the document was written by someone else.*
Mr. S. Chandra:	*It is your father's signature but everything else was written by somebody else?*
Mr. Ram:	*Yes.*

The evidence led on behalf of the Appellant (1st Defendant)

[23] The first witness called on behalf of the Appellant was one Subramani, a farmer who had been known to the testator and bar the details he deposed to the fact that, the testator had made a Will in favour of the Appellant and his grandsons (vide: at page 299 of the Copy Record). The witness's evidence does not add anything more in as much as he was not a witness to the testator's signature on the Will dated 28th December, 1995.

[24] Next, the Appellant (1st Defendant) himself had given evidence and said that, the signature on the Will (dated 21st December, 1995 was not of his father's (the testator's) why even police investigations had been initiated.

[25] Be that as it may, all that was irrelevant. The validity of the Will dated 28th December, 1995 in the light of Sections 15(b) and 6 of the Wills Act was what mattered for that reason. I am of the view that, the evidence of the other witnesses called on behalf of the Appellant also did not throw any light on that crucial issue. Satish Chand's evidence (the testator's brother) was largely concentrated on the estranged relationship the testator is supposed to have had with the 1st Respondent (pages 413 – 439 of the Copy Record) Kamal Prasad (a farmer) who had known the 1st Respondent could add nothing in his evidence touching on the two Wills of 21st December and 28th December, 1995. (Pages 439–441 of the Copy Record). Witness Kasmir Singh (a dairy farmer) who knew the testator and the Appellant, but not the 1st Respondent also could add nothing in that regard save as to speak to the good relationship the Appellant had had with the testator (Pages 441-451 of the Copy Record).

[26] Consequently what has to be determined in this appeal is, whether in the light of the evidence before him, the acceptance of the Will of 21st December, 1995 by the learned High Court Judge and the rejection of the Will of 28th December, 1995 in this case bears scrutiny.

The Judgment of the High Court

[27] In accepting the Will of 21st December and rejecting the Will dated 28th December the learned Judge held that, the evidence of Anwar Ali, who had been called by the 1st Respondent, stood uncontradicted and supported by Epeli Vula the Legal Officer of the Public Trustee's Department at the relevant time. (Vide: paragraph 5.7 at page 4 of the Copy Record).

[28] In arriving at that finding the learned Judge had observed as follows:

> *"5.5 PW1 (Anwar Ali) emphatically stated that the signature in the third Will was not his nor the handwritten words setting out his name and address. It was his practise to state in the jurat, that the contents were explained to the testator in 'Hindustani', as provided in the first Will. The third Will provides that it was explained in 'Hindi'. He was quite sure that no instructions were received from the testator as regards the disputed Will nor was there a record of that Will in their office. The similarities between the Will of 28th December, 1995 and the testator's first Will of 15th September, 1995, were that the beneficiaries, the two witnesses and sole executor are identical as are the contents, the wordings and the format."*

My Reflections on the said observations and finding

[29] I have earlier referred to the evidence of Anwar Ali and Epeli Vula.

[30] To my mind, the only evidence of Anwar Ali that needed to be looked at was when he said that he was "pretty certain that (he) did not sign the Will of 28th December, 1995 (at page 243 of the Copy Record) and then his evidence, that (a) there was "a slant" in his signature ("some differences") but "looked very similar" (recapped above).

[31] In my view, respectfully, was there a proper evaluation of the evidence of Anwar Ali, a lay witness who denied his signature on a last Will? The learned judge was therefore obliged to call for expert evidence. I saw nothing in the Civil Evidence Act of 2002 in Part IV thereof that stood in the way of the Court doing so particularly in the light of the fact that, the witness had said that in regard to his signature on the Will of 15th September, 1995 and the signature purporting to be that of his on the Will of

28th December, 1995 had differences (<u>viz</u>: "a slant" in the signature) but "looked similar" (as re-capped above).

[32] Consequently, could one say with certainty that Anwar Ali's evidence was uncontradicted? At least, that there was no inconsistency? Could a testator's wishes be allowed to be defeated given the fact that the testator's own signature on the impugned Will of 28th December, 1995 stood established through the plaintiff's own evidence (<u>vide</u>: paragraphs [20] to [22] above).

[33] For the aforesaid reasons, I hold, respectfully, that, the learned Judge's evaluation of the evidence amounts to a non-direction having regard to the provisions of <u>Section 6</u> read with <u>Section 15(b)</u> and the provisions of <u>Part IV</u> of the Wills Act.

<u>Re : the evaluation of the Appellant's evidence</u>

[34] For convenience, I shall reproduce what the learned Judge said in that regard at paragraphs 5.9 to 5.13 of his judgment.

> *"5.9 The second defendant, in his evidence in chief, said that his father did not tell him about the Will of 28th December. In answer to Mr. Suresh Chandra, the second defendant stated that the third Will was found in September, 2004, by his cousin, Narayan Prasad Maharaj, among his water bills.*
>
> *5.10 A written statement from Narayan Prasad Maharaj was produced. This provides that the testator, after having lunch with him sometime at the end of 1995, at his house at Makoi, had left behind an envelope. Nine years later, in September, 2004, when he (Narayan Prasad Maharaj) was shifting house he came across the envelope with the original Will and other documents. He rang the second defendant and informed him to collect the papers. He had collected it '1 or 2 months later'. Narayan Prasad Maharaj was not called to testify.*
>
> *5.11 The second defendant, in his evidence, said that he then took the Will to the first defendant. Anil Kumar at that office, told him to take it to a lawyer, since Mr. Ram Chand, Solicitor and PW2 were 'old friends'. A delay of one year arose, as he was collecting money to pay lawyer's fees.*

> 5.12 *I find astounding how the disputed Will was alleged to have been found eight years after the testator's death and collected one year later by the second defendant, after an Order was made by this Court granting probate to the plaintiff, in terms of an earlier Will.*
>
> 5.13 *I did not find the second defendant to be a reliable witness. In order to establish that the testator could not have attended the office of Mr. Ram Chand, solicitor in Nausori, to execute the second Will of 21st December, 1995, he produced a receipt which stated the testator had sold a calf on that day at 11.30am. When it was put to him that the other receipts in the receipt book do not state the time, he said the time was written at the purchaser's request. The time was written by him, since his father was illiterate."*

[35] I am afraid I cannot see how the learned Judge found on that evidence the Appellant "to be not a reliable witness."

[36] The reasons given by the learned Judge in my view do not bear scrutiny in as much as the learned Judge ought to have had regard to the Appellant's evidence in conjunction with the evidence led on behalf of the 1st Respondent in regard to the evaluation of which I have already expressed my view that the same constituted non-directions.

[37] In the result, it is my considered view, which I have no hesitation in laying down as a proposition, that, even where a trial judge purports to give reasons for a finding, should the said reasons be found not to bear scrutiny, such findings tantamount to findings arrived at without proper reasons in which context I have derived guidance from the English Court of Appeal decision in **Flannery, etal v. Halifax Estate Agencies Ltd**. [2000] 1 All ER 373.

Re : the learned Judge's finding that, the Will dated 28th December, 1995 is a forgery

[38] That finding is at paragraph 5.14 of the Judgment (page 5 of the Copy Record).

[39] The learned Judge continued to reason as follows:

"5.15 The second defendant, in his counter-claim has sought that the Court pronounce against the second Will of 21st December, 2005.

5.16 The defence sought to establish that the testator had not left his farm at Tailevu on 21st December, 2005, during his rest hours between milking the cows. The second defendant said that the signature on the second Will was not his father's signature. He portrayed the plaintiff as a villain of the piece. He was exiled to New Zealand by his father and had travelled on a forged passport. Consequent to him assaulting his father, a notice was put up on the testator's farmland prohibiting him from entering the land. It was similarly suggested to the plaintiff that he had assaulted his father, forced him to work at 70 years and live in the quarters of the dairy farm, where he passed on.

5.17 But this is an attempt to relitigate a claim, in respect of which this Court has made a final decision. Winter J made order granting probate to the plaintiff, in terms of the will of 21st September, 1995. The matter is res judicata. The only question before me was whether the testator had executed a Will subsequent to the Will of 21st September, 1995.

5.18 PW2 testified that in the action before Winter J, the Public Trustee looked after the interests of the second defendant, after obtaining instructions from him. I have perused that court record. I find that the first defendant had filed affidavit in reply to the inter partes summons, stating that the Will of 21st December, 2005 was forged. The Public Trustee had finally consented to the plaintiff's inter partes summons, as provided in Winter J's notes on the day sheet of 9th September, 2005. As Simon Tuckey QC stated in ***Palmer v. Durnford****, (1992) 2 All ER 122 at page 128.*

Any attempt to resurrect the claims could be met by a successful plea of res judicata. It does not matter that the judgment was by consent (see ***Cohen v. Jonesco*** *[1926] 1 KB 119 at 125).*

5.19 I strike out the second defendant's counter claim, as an abuse of the process of court."

[40] I regret to say but I am compelled to say that, I could not see how a finding as to forgery of the said Will dated 28th December, 1995 could have been arrived at by the learned Judge on his own exposition as re-capped above.

What is a forgery?

[41] It is the 'fraudulent making or alteration of a writing with the intent to prejudice the rights of another' (vide: Salwan and Norong – Academics Legal Dictionary, 11th ed, 1996).

> *"A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice." (see: **R v. Ondhia** [1988] 2 Cr. App. R. 250 and **R v. Winston** [1998] 162 JP 775.*

[42] The element of 'fraud' is an essential part of 'forgery' which involves obliquity.

[43] Where and how does the learned Judge find those ingredients in the Will of 28th December, 1995 particularly in view of the proven signature of the testator on it? (vide: paragraphs [21] and [22] above).

[44] Consequently, while it might be one thing to say that the said Will had not been proved on the failure to prove the attesting witnesses' signatures, but how could the said Will have been regarded as a forgery?

[45] Accordingly, I hold that, even in regard to the learned Judge's said finding based on 'forgery', the learned Judge non-directed or misdirected himself both in fact and in law.

One final word in regard to the province of a trial Judge and an appellate Court's power to disturb the findings of a trial Judge

[46] I shall begin by referring to the case of **Powell v. Streatham Manor Nursing Home** [1935] AC. 243, and to the observations made therein that the appellate Court *"will not depart from the rule it has laid down that it will not over-rule the decision of the Court below on a question of fact in which the judge has had the advantage of seeing the witnesses and observing their demeanour, unless they find some governing fact which in relation to others has created a wrong impression."*

Rule and the Exceptions in the context of the said observations

[47] I fully endorse those observations but there are exceptions. This Court is a Court of Appeal for the correction of both errors of fact and law committed by a subordinate court from whose decisions an appeal lies. It has before it a verbatim record of the evidence together with all the documents placed before the trial judge.

[48] In the case of **S. S. Hontestroom v. S. S. Sagaporack** [1927] AC 37, Lord Summer suggested an approach to the question which I think is useful for the purpose of this Court although His Lordship was there dealing with an appeal from the Admiralty Court. His Lordship said:

> *"The material questions to my mind are: (1) Does it appear from the President's judgment that he made full judicial use of the opportunity given him by hearing the viva voce evidence? (2) Was there evidence before him, affecting the relative credibility of the witnesses, which would make the exercise of his critical faculties in judging the demeanour of the witnesses a useful and necessary operation? (3) Is there any glaring improbability about the story accepted, sufficient in itself to constitute a governing fact which in relation to other has created a wrong impression, or any specific misunderstanding or disregard of a material fact, or any extreme and overwhelming pressure that has had the same effect?"*

[49] Then in **Yull v. Yull** [1945] 1 All ER 183, Lord Greene, (Master of the Rolls) had said:

> *"We were reminded of certain well-known observations in the House of Lords dealing with the position of an appellate court when the judgment of the trial Judge has been based in whole or in part upon his opinion of the demeanour of witnesses. It can, of course, only be on the rarest occasions and in circumstances where the appellate court is convinced by the plainest considerations that it would be justified in finding that the trial judge had formed a wrong opinion. But when the Court is so convinced it is, in my opinion, entitled and indeed bound to give effect to its conviction. It has never been laid down by the House of Lords that an appellate court has o power to take this course. Puisne Judges would be the last persons to lay claim to infallibility, even in assessing the demeanour of a witness. The most experienced judge may, albeit rarely, be deceived by a clever liar or led to form an unfavourable opinion of an honest witness or*

may express his view that his demeanour was excellent or bad, as the case may be ... I may further point out that an impression as to the demeanour of a witness ought not to be adopted by a trial judge without testing it against the whole of the evidence of the witness in question. If it can be demonstrated to conviction that a witness whose demeanour has been praised by the trial judge has on some collateral matter deliberately given an untrue answer, the favourable view formed by the judge as to his demeanour must necessarily lose its value."

[50] Lord Thankerton analysed the question and reduced what had been said before into the form of three propositions in the case of **Watt (Or Thomas v. Thomas** [1947] 1 All ER 582. They are as follows:-

> *"I. Where a question of fact that has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.*
>
> *II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.*
>
> *III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appear from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."*

[51] The instant case is one which comes within the first and third of the above rules.

[52] At this point, in addition to the above, I venture to refer to a Privy Council ruling from the Supreme Court of the Federation of Malaya (vide: **Thamboo Ratnam v. Thamboo Cumarasamy and Another** (Privy Council Appeal No. 41 of 1962).

[53] There, Lord Guest delivering the opinion of the Privy Council opined thus:

> *"The principles upon which a Court will act in reviewing the discretion exercised by a lower Court are well settled. There is a presumption that the judge has rightly exercised his discretion (**Charles Osenton & Co. v. Johnston** [1942] AC 130 Lord Wright at 148). The Court will not interfere unless it*

*is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage (**Evans v. Bartlam** [1937] AC 473). Upon questions of procedure the Board is slow to interfere with the discretion exercised by a local court (**Mayor of Montreal v. Brown and Another** (1876) 2 App. Cas. 168."*

Another aspect that remains to be addressed

[54] It is that:-

in addition to Anwar Ali, there had been another attesting witness to the Will dated 28th December, 1995. (namely, one Prishilla Devi). She was not called to give evidence.

Who had the burden to call her?

[55] It was the burden of the 1st Respondent for it was the 1st Respondent who had put in issue the validity of the Will dated 28th December, 1995. The 1st Respondent failed to do that and in my view which ought to have been held against him on the principle that, where evidence is required by law to be adduced by a party, upon such failure, the presumption that ought to be drawn is that if such evidence had been adduced it would have been adverse to such party.

One who asserts must prove – a basic principle of evidence

[56] Indeed, it is another allied principle of evidence that, one who asserts must prove a party adverse to such assertion not having to do anything until that is done.

[57] In my view, the 1st Respondent (the Plaintiff) had failed in that regard and I may add, the Appellant unnecessarily taking on a burden to put in issue the validity of the Will dated 21st December, 1995, which the learned Judge appears to have found against the Appellant (2nd defendant at the trial) in as much as all what the Appellant had to do was to rely on the said Will of 28th December, 1995 relying on Section 15(b) of the Wills Act, the said Will being subsequent in point of time to the earlier dated Will of 21st December, 1995.

[58] For the aforesaid reasons I hold that the 1st Respondent had failed to prove that the Will of 28th December, 1995 was not a validly executed Will and accordingly I am of the view that, the impugned judgment of the High Court dated 7th March, 2014 must be set aside and this appeal be allowed.

Kumar, JA

[59] I agree with the reasons and conclusion of His Lordship Justice Guneratne.

Orders of Court

1. *The appeal is allowed and the judgment of the High Court dated 7th March, 2014 is set aside.*

2. *The Will dated 28th December, 1995 shall stand as a validly executed last Will of Sahadeo.*

3. *The 1st Respondent shall pay as costs of this appeal a sum of $5,000.00 to the Appellant.*

W. Calanchini

Hon. Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL

Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL

Hon. Justice K. Kumar
JUSTICE OF APPEAL