

IN THE COURT OF APPEAL, FIJI  
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0071 OF 2019  
[Suva Probate Action No: HPP 0019 of 2019]

BETWEEN : ESTATE OF MAHENDRA PRATAP SINGH  
AND  
PRAKASHNI DEVI SINGH

*Appellants*

Coram : Dr. Almeida Guneratne, P  
Dayaratne, JA  
Morgan, JA

Counsel : Mr K. R. Prasad and Mr M. K. Fesaitu for the Appellants

Date of Hearing : 4<sup>th</sup> July, 2023

Date of Judgment : 28<sup>th</sup> July, 2023

**JUDGMENT**

Almeida Guneratne, P

- [1] By an ex parte notice of originating motion the abovenamed Prakash Devi Singh (hereinafter referred to as the Appellant) made an application to have a piece of land containing within it a dwelling house transferred to her on the basis that she was the surviving spouse of her husband (the deceased) who died intestate.

- [2] She made the said application as administratrix of the estate of the deceased. The deceased had left behind one child through a de facto relationship he had had with another woman and two children from the appellant. (The notice of originating motion is at page 9 of the Copy Record (CR) and the Appellant's supporting affidavit is found at pages 11 to 14 of the CR.
- [3] The appellant's claim placed reliance on the provisions of the Succession, Probate and Administration Act of 1970 (severally amended thereafter the last Amending Act being in 2018 though the provisions having a bearing on this matter being contained in the Amending Act of 2004).
- [4] After hearing submissions of counsel made on behalf of the appellant, the High Court refused the appellant's application and struck out the ex parte notice of originating motion. (The impugned Judgment/Ruling is at pages 5 – 8 of the CR).
- [5] Aggrieved by the judgment of the High Court the appellant preferred the present appeal to this Court. The grounds of appeal are contained at pages 1 – 2 of the CR which I reproduce as follows:

- “1. *The Learned Judge erred in law in requiring the Appellant to indicate the value of the matrimonial home to the Court whereas the requirement to do so is only when an Administrator/ix who is not the spouse of an Intestate has to fix the value to assist the spouse of an intestate to decide whether or not to acquire take the matrimonial home.*
2. *The Learned Judge erred in law in inferring that the issues of the intestate have an entitlement to the matrimonial home (and to consideration thereof) when no such entitlement to the matrimonial home is rendered in intestacy to any issues of an intestate in sections 6 and 6A-6F of the Succession, Probate & Administration Act 1970.*
3. *The Learned Judge erred in law by making a finding that section 6A(2) of the Succession, Probate & Administration Act 1970 does not have the effect of giving the matrimonial home free to the surviving husband or wife*

*depriving the issues of their right of succession when section 6A(2A) gives the right to acquire the matrimonial home only to the spouse and/or de facto and not the issues of a deceased intestate.*

4. *The Learned Judge erred in law in making a finding that the Appellant has to pay the into the Estate of the Intestate, the value of the interest of the Intestate in the matrimonial home in order to acquire the matrimonial home but no such provision is made in sections 6A-6F of the Succession, Probate & Administration Act 1970.*
5. *Such further grounds as may be added upon receipt of the Record and Judge's notes."*

### **The Issue that required to be determined**

- [6] That is, whether, upon the death of a person dying intestate, "*the dwelling house*" which the surviving spouse was occupying on the basis that it was her matrimonial home (the Appellant in the instant case) could have claimed it exclusively taking it out of reckoning from the estate of the deceased for purposes of administration of the said estate.
- [7] That was the pivotal issue which had to be determined.
- [8] The learned High Court Judge having analysed the provisions of the Succession, Probate and Administration Act (the Act) arrived at his findings and concluded as I have recounted at paragraph [4] above.
- [9] At the hearing before this court, the appellant's counsel, based on the grounds of appeal urged, sought to have the impugned Judgment/Ruling of the High Court set aside.
- [10] Thus, the matter for determination in this appeal stood placed within a narrow compass, namely, on the Appellant's claim as articulated in paragraph [6] above, whether she was entitled to succeed as against the findings made by the learned Judge in his Ruling/Judgment which findings he arrived at, on the basis of the specific provisions contained in "*the Act.*"

[11] That is the pivotal issue to be determined in this appeal.

### **Discussion**

[12] To begin with, the specific provisions of “*the Act*” make it clear that the legislature has drawn a distinction between a person who dies intestate as to how his estate is to devolve. If he had died without issue, the estate would have devolved on the Appellant absolutely. But where he became deceased leaving behind issues (as in the present case), the estate was to devolve in terms of the provisions of “*the Act*.” Even after a Law Reform Committee had made a study even presuming that it may have recommended changes to the existing legislation, the legislative intent had remained the same.

[13] The learned Judge having addressed those specific provisions contained in “*the Act*” observed as follows:-

*“On the provisions of Section 6(1)(c)(i) of “the Act,” the administrator “on intestacy” (of a deceased) “leaving issues” there is a duty cast on such administrator “to distribute” the property of a person dying intestate.”*

[14] Having made that observation, the learned Judge addressed the aspects of “*personal chattels*.” and “*prescribed amount*” as contained in Section 6A(2).

[15] Moreover, – the learned Judge observed “*for the purpose of enabling the surviving . . . . wife to decide whether or not to exercise the right conferred by Section (2) . . . . . the Administrator would be required to ascertain and fix the value of the intestate in the matrimonial home.*” (vide: paragraph 7 of the High Court Ruling/Judgment).

[16] Subsequently followed the learned Judge’s final reasoning and conclusion reflected at paragraphs [8] to [11] of his Ruling/Judgment which I reproduce below:

*“[8] In this application the applicant is seeking to have the matrimonial home transferred in her name relying on the above provisions. On a careful*

*reading of section 6(2)(a) with section 6A(8) it appears that the applicant has to satisfy all the requirements contained in these sections for her to become qualified to have the matrimonial home transferred in her name. What these sections say is that the surviving husband or wife of an intestate has the right to acquire the matrimonial home for an amount equal to the value of the matrimonial home after ascertaining and fixing the value of the interest of the intestate in the Matrimonial home. It cannot be said that the legislature intended in enacting these provisions to deprive the children of the intestate from their interests in their father's estate and give the matrimonial in its entirety to the wife.*

[9] *In the affidavit in support of the applicant there is no averment indicating that she has already ascertained the value of the matrimonial home or at least she would ascertain its value if the court makes orders as prayed for in the ex-parte notice of originating motion.*

[10] *In paragraphs 24 and 25 of her affidavit the applicant states that the Registrar of Titles had informed her counsel that she must execute a deed of trust in favour of her children, however, she does not have to execute a deed of trust since the law gives her the exclusive right to the matrimonial home. As I have said earlier in this ruling section 6A(2) does not have the effect of giving the matrimonial home free to the surviving husband or wife depriving the issues of their right to succession from the father.*

[11] *Therefore the applicant cannot have the matrimonial home transferred in her name to the detriment of the other heirs of the deceased without paying into the estate the value of the house. For the above reason the motion of the applicant is liable to be struck out."*

[17] That analysis showed that the appellant had no absolute right to claim the dwelling house which she had been occupying as her matrimonial home to take it out of the estate of the deceased.

[18] That analysis by the High Court Judge stood fortified by a question which my brother Justice Morgan interjected during the hearing before this Court in asking the Appellant's counsel, "*if the appellant was to be regarded as being entitled to claim the dwelling house*" she was in occupation as her matrimonial home then what interpretation was to be put when the legislature employed the words "*the right to acquire*" in "*the Act.*?"

[19] Justice Dayaratne who was associated with me on the bench pointed out to the following provisions of “*the Act*” – viz:

- (i) Section 6A(2) speaks of “. . . . *the right to acquire the matrimonial home under Sections 6B to 6F for an amount equal to the value of the matrimonial home and fixed . . . .*” and,
- (ii) Section 6F(2), which refers to the wife being one of the administrators is not prevented from **purchasing** the matrimonial home.

[20] If I were to pause at this point, it is to be noted that the Appellant went before the Court claiming to be the sole administrator. However, the material on record revealed from the appellant’s own claim, the deceased who died intestate had had another de facto relationship having had an issue (child) from that relationship as well.

[21] None of them had been put on notice, the appellant’s application being an “*ex parte notice of motion.*”

[22] Be that as it may, the crunch considerations as envisaged in the provisions of the Act, are, the criteria of having to “*acquire the property*” and “*purchase*” the matrimonial home as being part of the deceased’s estate who died intestate.

[23] Whatever may be the legal position in other jurisdictions, this court needed to go no further than to look at “*the Act*” and give its mind to the well-established principles of statutory construction contained in the maxim:

***“ut res magis magis valeat quam pereat.”***

[24] That maxim propounds the pre-dominant principle that “*a court should avoid interpretations which would leave any part of the provision(s) to be interpreted without effect.*” (Maxwell, “*the Interpretation of Statutes*, 12<sup>th</sup> Ed., p.45).

[25] Indeed, if the appellant’s submissions were to be accepted, this Court would leave the provisions of “*the Act*” to be interpreted without effect.

**The resulting position and conclusion**

[26] On the basis of the aforesaid reasoning, this Court concludes that:

- (a) upon the death of the appellant’s spouse, “*the dwelling house*” which the appellant claimed absolutely *ipso facto* as her entitlement as being her matrimonial home was not to be and the same became part of the deceased’s estate which the appellant was obliged to put a value and purchase the same and seek a court order as the Administratrix of the said deceased’s estate to enable the court (the High Court) to make appropriate orders thereon.
- (b) In the absence of those essential steps being taken by the appellant, I could not find any basis to disturb the judgment of the High Court as urged in the grounds of appeal for which reason I reject the same.

**Dayaratne, JA**

[27] I have read in draft the judgment of His Lordship the President and agree with his reasons and conclusions.

**Morgan, JA**

[28] I have no comments and agree with the draft judgment.



**Orders of Court:**

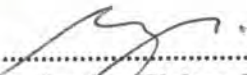
- 1) *The Appeal is dismissed.*
- 2) *The Appellant may advise herself as to what steps she ought to take in consequence of the judgment of this Court.*
- 3) *In the circumstances where the proceedings in the High Court as well as in this Court were "ex parte," there will be no order as to any costs.*



.....  
**Hon. Justice Almeida Guneratne**  
**PRESIDENT, COURT OF APPEAL**



.....  
**Hon. Justice Viraj Dayaratne**  
**JUSTICE OF APPEAL**



.....  
**Hon. Justice Walton Morgan**  
**JUSTICE OF APPEAL**

**Solicitors:**

Office of the Legal Aid Commission for the Appellants