

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION



CIVIL ACTION NO.: HPP 08 OF 2006

BETWEEN:

DINESHWAR NARAYAN

*PLAINTIFF*

A N D:

PUSHPA WATI

*FIRST DEFENDANT*

THE REGISTRAR OF TITLES

*SECOND DEFENDANT*

Mr. G.P. Lala for Plaintiff

Mr. R.P. Singh for First Defendant

Mr. G. Bai for Second Defendant

Date of Hearing: 5<sup>th</sup> July 2006

Date of Judgment: 21<sup>st</sup> August 2006

## JUDGMENT

Savita Devi died testate on 12<sup>th</sup> December 2002. She owned a piece of residential property being Certificate ~~of~~ Title 7279 having an area of 1 acre, 1 rood and four perches. The land is situated at 322 Princess Road, Tamavua and therefore it would be quite valuable piece of property.



She made a Will on 25<sup>th</sup> September 2001 and appointed Pushpa Wati, the first defendant as executor and trustee. A probate was granted to Pushpa Wati on 18<sup>th</sup> July 2003.

Clause 3(a) and (b) of the Will is the center of dispute between the parties to these proceedings. It reads as follows :

***"I GIVE AND DEVISE AND BEQUATH whole of my real and personal properties after payment of all my just debts funeral and testamentary expenses as soon as after my death to my Trustee upon trust as follows :***

- (a) *My double storey concrete house at 322 Princess Road, Tamavua, Suva with portion of land which my said house is built on but not the whole land (more particularly described in schedule 'A' hereto and coloured green) to be given to HARDIP NARAYAN a.k.a. AJAY NARAYAN (father's name Rup Narayan) for his own use and benefit absolutely.*
  
- (b) *My three vacant blocks of land (more particularly described in Schedule 'A' hereto and coloured pink) at the back of my said house at 322 Princess Road, Tamavua, Suva to be sold and the sale proceed thereof to be distributed in the following manner :*
  - (i) *pay to my adopted son, Dineshwar Narayan 31% of the sale proceed.*
  - (ii) *pay to my nephew, Abhilash 25% of the sale proceed.*
  - (iii) *pay to my niece, Usha Narayan 15% of the sale proceed.*



- (iv) *pay to my sister in laws namely, SON KUAR, DEO KUAR and SANT KUAR each 3% of the sale proceed.*
- (v) *pay to other 2 nephews namely, SHALEND KANT SHARMA and YOGEN KANT SHARMA each 10% of the sale proceed."*

The Will gives the plaintiff Dineshwar Narayan 31% of the sale proceeds from three vacant lots. However, over the years he has purchased the shares of all the beneficiaries except shares of Abhilash who holds 25% interest in the sale proceeds of the three vacant lots. The plaintiff therefore now has 75% interest in the sale proceeds of the three vacant lots.

I was told from the bar table that Abhilash does not live in Fiji but the plaintiff does. The plaintiff is asking that the defendant administer the estate. He says that the three vacant lots should be sold and proceeds divided as per the Will so he will get 75% of the shares and Abhilash 25%. He says the land has to be subdivided before the sale.

The defendant on the other hand says she has decided to sell the three lots to Hardip Narayan who owns the front portion of the land. She believes it would be more convenient and less cumbersome to sell the balance to Hardip Narayan as it would save her from subdivision costs. She has obtained a valuation of the balance area at \$90,000.00.

The plaintiff says that he is interested in buying the three vacant lots at proper subdivided value or higher. His submission is that the testator did not intend to give Hardip Narayan the three blocks of land.

A testator's intention can be ascertained from the words he uses. The testator in this case has gone to the extent of attaching a plan of the land with lots marked. The plan shows the first lot adjacent to the Princess Road as the one with a dwelling on it. That obviously was given to Hardip Narayan. The testator is



very specific by specifying "but not the whole land". She must have considered that the front lot was adequate to meet the housing needs of Hardip Narayan. That for the testator was enough for Hardip as far as this land was concerned.

However she wished to give something to eight other members of family. To give three vacant lots physically to eight others as tenants in common is to create a problem especially when their interests in terms of percentages varied from 3% to 31%. In such circumstances it would be much easier to sell the property and divide the proceeds on basis of percentage. The defendant's suggestions run counter to the testator's intentions. The testator clearly did not intend to give Hardip Narayan more land in particular the three vacant lots.

On the basis of defendant's suggestion of sale to Hardip Narayan for \$90,000.00 Abhilash would receive only \$22,500.00 as his share.

Commonsense dictates that the trustee obtains the best price for the three vacant lots. I do not have adequate information on affidavits as to which proposal would fetch the best price –

- (a) sale to Hardip Narayan of three lots;
- (b) sale by tender of three lots with liberty to both the plaintiff and Hardip Narayan to bid and at close of tenders to reconsider their offers;
- (c) whether subdivision of the lots and sale of individual lots would get higher reward.

All I can say at this stage is that the sale of land to Hardip Narayan without consideration of other proposals was never the intention of the testator.

Accordingly the court asks for additional information as to which proposal will get the highest price and if possible views of Abhilash. In the event Abhilash



agrees to sell his share to the plaintiff, then the land obviously has to be given to the plaintiff and the proceedings can then be closed.

Caveat on the property can remain in force.

A handwritten signature in black ink, appearing to read 'Jiten Singh', written in a cursive style.

[ Jiten Singh ]  
JUDGE

At Suva

21<sup>st</sup> August 2006