

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL NO. HBC 101 of 2009

BETWEEN : Jacqueline Paul

PLAINTIFF

AND : Eti Paul

1st DEFENDANT

AND : Sheila Paul

2nd DEFENDANT

COUNSEL : Mr. Nawaikula for the Plaintiff
: Ms. Devan R for the Defendants

Date of Judgment : 18 September 2013

JUDGMENT

1. By originating summons dated 25 March 2009, the Plaintiff is seeking following declarations and orders from this court pursuant to order 5 rule 4 of the High Court Rules:
 - (i) A declaration that the Plaintiff is entitled to one undivided third share of her husband's share in the property namely CL 5366;
 - (ii) A declaration that the Plaintiff is entitled to one undivided half share of her husband's share in the property namely CL 342080;

- (iii) An order for the sale by tender of CL 5366 and CL 34080;
 - (iv) An order apportioning the powers of sales and payment of $\frac{1}{3}$ of the sale proceeds in CL 5366 to the Plaintiff and payment of $\frac{1}{2}$ of the sale proceeds in CL 342080 to the Plaintiff.
 - (v) Costs of this action.
2. The application is supported by the affidavit of Jacqueline Paul sworn on 25 March 2009, filed on 29 March 2009.
 3. On behalf of the Defendants, affidavit in reply was filed on 8 May 2009 by Eti Paul, sworn on 5 May 2009.
 4. Although both parties had obtained several adjournments to settle this matter through negotiation as the material facts are not disputed by either party, it was informed subsequently that the negotiation failed and requested this matter to be listed for hearing.
 5. Both counsel made Oral Submissions on 20 June 2013, and filed Written Submissions as well.

The Facts

6. The salient facts are as follows:
 - (i) *The Plaintiff is the daughter in law of the first Defendant and the sister in law of the second Defendant. The Plaintiff is married to Edward Paul (Deceased). The Plaintiff has been granted Letters of Administration in her husband's estate on 21 June 2007. No grant has been applied for in the Estate of Thomas Paul.*

(ii) *Crown Lease No. 5366 is jointly owned by Vijendra Lal Prasad a.k.a Thomas Paul (the father in law of the Plaintiff/ husband of 1st Defendant), Edward Navindra Paul and the 2nd Defendant. All three hold 1/3 share each in the CL 5366. Both Thomas Paul and Edward Paul are deceased and their Estate is unadministered todate.*

(iii) *Housing Authority Lease No. 342080 is owned by Thomas Paul and Edward Paul in ½ shares each.*

7. The Plaintiff in her affidavit deposed that her late husband Edward Paul died on 16 April 2007 leaving her and the daughter and both continued to live in their matrimonial home on CL 5366 with the Defendants. The Plaintiff had made several requests to the Defendants either to purchase their shares in the properties in order to acquire one of the properties as home for the Plaintiff and her daughter.
8. Plaintiff further deposed that she, through her solicitors wrote to the 2nd Defendant to ascertain whether the 2nd Defendant would be interested in purchasing her late husband's share in both properties in order that she have an income to buy a separate house for her and her daughter. The response of the solicitor for the 2nd Defendant was that the Plaintiff to renounce all her rights and interest in CL 5366 infavour of the Defendants in consideration of renouncing their interest in CL 342080.
9. The Plaintiff had replied to the letter of the Defendants and stated that the intention of both parties is to acquire the Lot with the residential property and dispense with the vacant land which Plaintiff did not agree and proposed that each party to conduct a valuation in order to come to a settlement. Several negotiations had taken place between both parties but failed due to the fact that both parties could not agree as to who was to buy whose interest and what price.

10. She further stated that she had been living with relatives and rented premises since 2007 where as the Defendants are in occupation of the property and takes no interest in early resolution.
11. The application of the Plaintiff is founded upon the provision of Section 119 of the Property Law Act for an order of the court for a sale by tender of both properties in the open market and the distribution of the proceeds according to law.
12. Defendants in their submissions take up the position that the application of the Plaintiff for judicial sale of the two properties pursuant to Section 119 of Property Law Act is defective and premature on the following grounds.
 - i) That the second property (described as CL 342080) in respect of which an order of judicial sale is sought is wrongfully described on the originating summons. The said property is not a crown lease but is a Housing Authority sub-lease.
 - ii) The Plaintiff has not exhibited certified copies of the titles of any of the properties. On this basis the Court cannot proceed to make any orders in respect of the properties without the Court being satisfied that the Plaintiff can establish her legal and/or equitable interest in land and or without determination of ownership of the properties in question.
 - iii) The Originating Summons is further defective and irregular, in that the Plaintiff has indicated in its Originating Summons that the Plaintiff relies on Orders 20 and 18. There is no indication of the legislation that the Plaintiff relies upon to make the application.
 - iv) The Plaintiff is yet to have her husband's share in both properties transferred to her pursuant to the letter of administration obtained.

- v) The 2nd Defendant is unable to deal with the property in HA 342080, until the estate of Thomas Paul is administered.
- vi) The Plaintiff has not taken in to consideration of the beneficiary interest in her instant application before the court.

The Determination

13. At this outset, it is noted, that the Defendant in their submissions categorically submitted to court that they do not dispute the Plaintiff's entitlement to the share of the estate of Edward Paul and Thomas Paul. The Defendants admitted that the Plaintiffs entitlement of $\frac{1}{3}$ share of her late husband in the property in CL 5366 and the undivided $\frac{1}{2}$ share in the HL 342080, by operations of law.
14. It was also clear to court that the Plaintiff as an Administratrix of the late husband's estate has not administered in accordance with the law and the person who is entitled to administer the estate of Thomas Paul is yet to apply for the letter of administration.
15. Both parties in their affidavits and submissions admitted that the Plaintiff's daughter is also a beneficiary of the two estates. It is observed that the beneficiary's interest in both estates has not been addressed in the present application.
16. At the hearing, counsel for the Defendants informed court that she has no objections to the counsel for the Plaintiff tendering the copies of the title of the two properties along with the submission. It is observed that no such copies of titles have been tendered to court up to date.

17. In consideration of the preliminary objectives raised by the counsel to the Defendants, I am of the opinion that copies of the titles and the reference to the title to be annexed and stated in the affidavit of the Plaintiff to satisfy court the legal and equitable interest and the ownership of the land.
18. It is further noted that appointment of the administrator and the administration of the estate of Thomas Paul is important to transfer the shares to the beneficiaries. The Plaintiff can invoke the jurisdiction of the court pursuant to Section 119 of the Property Law Act only after the preliminary steps and statutory requirements are fulfilled.
19. In the event the person entitled for the letter of administration is not applying the letter of administration, procedure to be followed is clearly stipulated in the Act.
20. It is further noted that the descendants or the beneficiaries are not before the court. In my view they are necessary parties to the instant application before the court and failure to make them a party is critical and fatal to the proceedings.
21. In view of the above circumstances, I conclude that the Plaintiff's application for relief pursuant to Section 119 of the Property Law Act is defective and premature for this court to order a judicial sale of the two properties mentioned therein. The administration of the two estates of Thomas Paul and Edward Paul is a prerequisite to an application under Section 119 of the Property Law Act for this court to make the proper determination.

Orders

1. Plaintiff's originating summons dated 25 March 2009 is dismissed.
2. Costs summarily assessed in a sum of \$1,000.00 to be paid by the Plaintiff to the Defendants.

Susantha N. Balapatabendi
JUDGE