

IN THE HIGH COURT OF FIJI
AT LAUTOKA
WESTERN DIVISION

HBC 170 of 2011L.

BETWEEN : **SHIVA NAND** of Waqadra, Nadi, Driver.

PLAINTIFF

AND : **SATENDRA PRASAD** of Ellington, Rakiraki, Farmer.

DEFENDANT

Appearances : Mr. DS Naidu for Shiva Nand
Ms. Natasha Khan for Satendra Prasad

R U L I N G

1. One of the issues ongoing between the lawyers in this case is whether or not Civil Action HBC No. 170 of 2011 was in fact amalgamated with, or should be amalgamated with, Civil Action HBC No. 43 of 2011. The defendant's lawyer is also arguing that the defendant's section 169 application should be prioritised, and dealt with separately, because it was filed first and also because it seeks to invoke the summary jurisdiction of this court.
2. Shiva Nand is the only surviving issue of the estate of the late Padma Nand who died intestate on 12 October 2005. Satendra Prasad is the brother of the late Padma Nand. At the time Padma Nand died, Shiva Nand was only nineteen (19) years of age. Satendra Prasad somehow obtained Letters of Administration over the Padma Nand estate.
3. In HBC 170 of 2011, it is there alleged by Shiva Nand that his uncle, Satendra Prasad, obtained the said Letters of Administration on 12 May 2006 without the consent or knowledge of Shiva Nand. Shiva Nand also alleges that Satendra Prasad, upon obtaining the said Letters of Administration, then fraudulently transferred title of various estate properties to his (Satendra Prasad's) name and also converted estate monies and chattels for his own personal benefit.
4. These alleged fraudulent dealings are pleaded as follows:
 - (a) fraudulently transferred the Housing Authority Sub-Lease No 260960 to his personal name on 20th day of May, 2009 and has also collected rental from the said flats and converted to his own use.
 - (b) fraudulently converted moneys from the deceased bank account to his own use.
 - (c) fraudulently converted the proceeds from the life insurance policies to his own use.
 - (d) converted vehicle No. BW 585 to his own use and benefit.

5. In HBC 43 of 2011, Satendra Prasad (the uncle) is applying by a section 169 Land Transfer Act summons for a Court Order to evict Shiva Nand out of Housing Authority Sub Lease No. 260960 Lot 46 on D.P 5850 at Uci Road in Nadi. That application is obviously premised on the fact that he is now the registered proprietor of the property in question, which property, as stated above, once belonged to the estate of Shiva Nand's late father.
6. There is, in my view, a very strong *prima facie* case of impropriety against Satendra Prasad. I say that because section 6(1)(d) and (h) of the Succession, Probate and Administration Act (Cap 60) , when read together, stipulate that if an intestate leaves issue (Shiva Nand), but no wife or husband (late Padma Nand's wife had pre-deceased him), the issue (Shiva Nand) shall take per stirpes and not per capita the whole estate of the intestate absolutely. The brother (Satendra Prasad) only gets to have a share if the intestate leaves no husband or wife and no issue and no parent (not the case here).

6.-(1) Subject to the provisions of Part II, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Act on trust to distribute the same as follows:

- (a)
 - (b)
 - (c)
 - (d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take *per stirpes* and not *per capita* the whole estate of the intestate absolutely;
 - (e)
 - (f)
 - (g)
 - (h) if the intestate leaves no husband or wife and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking *per stirpes* and not *per capita*;
7. Hence, by law, it would appear that Shiva Nand is entitled to all the estate property as the sole beneficiary. With that in mind, it would appear that Shiva Nand has a very strong case. And if he were to succeed in his HBC 170 of 2011 case, the result would be to undermine the very foundation on which Satendra Prasad's whole section 169 case in HBC 43 of 2011 is premised i.e. his title and its indefeasibility. Having said that, even if I was to proceed to determine the section 169 application first and separately, I would be inclined to find that

Shiva Nand has a strong arguable case to remain in possession of the land in question and accordingly, dismiss the section 169 application.

ORDERS

8. The two proceedings are hereby amalgamated. I also dismiss the application in 170 of 2011 by the defendant (Satendra Prasad) to strike out the plaintiff's (Shiva Nand's) claim. Costs in the cause. Both cases are now adjourned to **15 October 2013** before the Master.

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Anare Tuilevuka
JUDGE
24 September 2013