

IN THE HIGH COURT OF FIJI
AT LAUTOKA
(CIVIL JURISDICTION)
ACTION NO. 198 OF 2013

BETWEEN:

AMREET KAUR aka AMREET KUAR as the Administratrix of the Estate of Satnam Singh formerly of Votualevu, Nadi presently of EIK Grove, Sacramento, California, USA.

PLAINTIFF

AND:

RANJIT SINGH and SHANASHLESH KUAR SINGH as the Executrix and Trustee of the Estate of Prem Kaur formerly of Votualevu, Nadi presently of EIK Grove, Sacramento, California, USA.

DEFENDANT

Mr E. Maopa for the Plaintiff
Mr D. Naidu for the Defendant

RULING

1. When this matter was taken up for trial on 29th July, 2015 the Counsel for the Defendant submitted to Court that this Court has no jurisdiction to hear this matter and therefore should be struck out summarily with costs. He stated that this Writ should have been issued out of the principal Registry at Suva according to Order 76 Rule 2(i) of the High Court Rules and the Practice directions. He submitted further that a memorandum signed by the Registrar as per Order 76 Rule 2(b) is also not obtained, therefore the Plaintiff cannot proceed with this action.
2. The Plaintiffs' Counsel admitted that a memorandum signed by the Registrar is not obtained and that irregularity could be cured under Order 2 Rule 2 of the High Court Rules. He contended that this matter could be submitted to the Chief Registrar of the Court to rectify the irregularity without striking out.

3. From the submissions made by the Counsels it is apparent that there has been non-compliance with Order 76 Rule 1 and 2.
4. Practice direction number 2 of 1994 states:
- “All probate business, contentious and non-contention is dealt with in the Registry at Suva pursuant to an Order made by the Chief Justice.
Documents are not to be filed in any High Court Registry.
Transfer of probate cases to the High Court Lautoka/Labasa would be subject to proper application by Counsel for Order of transfer.
.....”*
5. It is clear from the aforementioned practice direction that this writ should have been filed in the Principal Registry at Suva.
6. I will now consider whether the failure to obtain the memorandum signed by the Registrar or failure to comply with Order 76 Rule 2(b) could be treated as an irregularity which could be cured under Order 2 Rule 2 of the High Court Rules.
7. *In Viveka Nand v Kavita Devi [2004] HPP 61/96L* it was held that non-compliance with Order 76 Rule 2(b), Court has the power to refer the matter to the Registrar to enable him to make necessary endorsement.

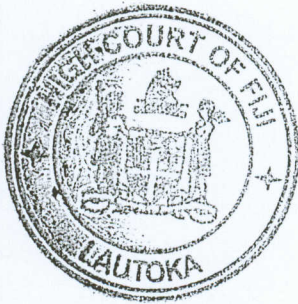
In the said case Byrne J said :


“In the present case clear issues of fact are raised and I consider it would not be in the interest of justice to allow the action to be struck out on what on one view, may be regarded as something of a technicality. However, in allowing the action to proceed as I now do by ordering that the Registrar endorse the writ retrospectively, it is only fair to the Defendant that this should be done at some cost to the Plaintiff. The order I therefore make is that the writ be submitted to the Chief Registrar of the Court for endorsement under Order 76 Rule 2 of the Rules of the High Court but the Plaintiff must pay the Defendant’s costs to-date which I fix at \$750.00. There will be orders accordingly.”

8. In the light of the said decision of Byrne J, I am of the view that the irregularity of not obtaining the Memorandum signed by the Registrar could be cured under Order 2 Rule 2 of the Rules of the High Court.

9. Accordingly I make the following Orders:

- (a) That this writ be submitted to the Chief Registrar of the Court for endorsement under Order 76 Rule 2 of the High Court and for further proceedings.
- (b) The Deputy Registrar is directed to take necessary steps to submit this matter to the Chief Registrar at Suva.
- (c) The Plaintiff to pay costs summarily assessed in a sum of \$1000.00 to the Defendant.




Lal S. Abeygunaratne
[Judge]

At Lautoka
29th July, 2015