

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HPP No. 18 of 2015

BETWEEN : NAND KISHORE and VIDYA NARAYAN both of Meigunyah Nadi,
Handyman/Terminal Assistant and Taxi Driver respectively.

PLAINTIFFS

AND : KAMLA WATI of Meigunyah Nadi, Domestic Duties as the Sole Executrix and
Trustee of the Estate of Shiu Narayan late of Meigunyah, Nadi, Cultivator, Deceased,
Testate.

FIRST DEFENDANT

AND : ESTATE OF SHIU NARAYAN of Meigunyah, Nadi, Cultivator, Deceased.

SECOND DEFENDANT

BEFORE: Acting Master Vishwa Datt Sharma

COUNSELS: Mr. Bale on instruction of Anil J. Singh Lawyers for the Plaintiff
No appearance for the Defendant

Date of Hearing: 18th September, 2015

Date of Decision: 03rd November, 2015

RULING

INTRODUCTION

1. The Plaintiffs seeks to remove the First Defendant as the Executrix/Trustee of their late father's Estate.

2. They also seek a second order to appoint the Plaintiffs as the Administrators in the Estate of their father, Shiu Narayan.
3. Defendant 1 being the widow of the late Shiu Narayan was the appointed Executrix/Trustee named in the 'WILL' of the said deceased.
4. Defendant 1 obtained a Grant of Probate on 18th September, 1990.
5. The application is made pursuant to *Orders 7 and 28 of the High Court Rules, 1988* respectively.

ANALYSIS and DETERMINATION

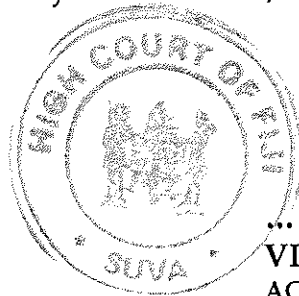
6. The application is commenced by an originating summons filed in terms of *Order 7 and 28 of the High Court Rules of 1988* seeking orders for the removal of the Executrix/Trustee of the Deceased Estate of late father of the Plaintiffs and appointment of the Plaintiffs as the Administrator of the Deceased Estate.
7. The Plaintiffs filed an affidavit in support of the application and annexed documents therein.
8. *Order 7 of the High Court Rules 1988* deals with ORIGINATING SUMMONSES and GENERAL PROVISIONS, whilst *Order 28* deals with ORIGINATING SUMMONS PROCEDURE.
9. It should be noted that the Section 35 of the Succession, Probate and Administration Act (Cap 60) deals with removal of the executor, appointed by will or administrator appointed by court with will annexed, which has no application to the present scenario.
10. Order 85 rule 4 of the High Court Rules of 1988 states that a Plaintiff can bring an action by way of Originating Summons for relief for any action referred in O.85 r.2.
11. Any questions arising in the administration of the estate of the deceased person or in the execution of a trust is one such question that is referred in O.85 r.2 of the High Court Rules of 1988.
12. In terms of the Section 73 of the Trustee Act (Cap 65) the court is entrusted with the removal of trustee 'whenever it is expedient' to do so. What constitutes 'expedient' may differ depending on the circumstances of the case.
13. The application herein has not been made under the correct provision of the Law as cited hereinabove.

14. This court has the Jurisdiction in the circumstances either to direct the Plaintiff to amend the application and reserve and or strike out the matter accordingly.
15. Since the application was served on the Defendant and the application was heard with written submissions furnished to court by the Plaintiff, and there being no appearance by the Defendant, I will proceed to strike out the matter accordingly.

FINAL ORDERS

- a. The application is hereby struck out.
- b. There will be no order as to costs.

Dated at Suva this 03rd day of November, 2015



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VISHWA DATT SHARMA
ACTING MASTER OF THE HIGH COURT
SUVA