

In the High Court of Fiji

Probate Jurisdiction

Probate Action No. 29 of 2011

At Suva

Between: Arun Prasad Sharma

Plaintiff

And: Ranjila Devi

And: Reshmi Devi Sharma

Defendants

Appearances: The plaintiff in person

Mr G. O'Driscoll for the first and second defendants

Date of hearing: 28th May, 2014

Judgment

1. This is a probate action. The plaintiff is the son of the late Jasoda Devi Sharma. She passed away on 2nd March, 2010. The defendants are trustees and executors of her will. The plaintiff disputes the will. He lodged a caveat against the grant of probate. The plaintiff seeks to : revoke the will due to undue influence and/or fraud and the testatrix being of unsound mind, memory and understanding when she executed her will; remove the defendants as executors and trustees; appoint new executors and/or administrators; and revoke two testamentary bequests made. He also seeks declarations that he has an interest in several properties of the estate and that the transfer of four properties to the deceased was done fraudulently. The defendants filed acknowledgement of service, but did not file statement of defence.
2. The plaintiff in his amended statement of claim states as follows:
 - a. He has interest in the estate through his personal contributions for the development and accumulation of her estate, as he "*assumed the role of shop assistant (and security guard) at his late father's liquor shop*". He also has interest in a sum of \$40,000.00 promised by the deceased to him.

- b. His late father promised to give him a residential property at Toorak, Lot 4, CT 21980 on DP No. 5132 for all his contributions.
- c. In 1970, the plaintiff laboured for the construction of a building on Lot 2 on DP No. 5132, CT 21978 and contributed monies to construct a one bedroom flat for himself adjoining to that building for his own enjoyment, but has been denied access to that flat by the deceased, the defendants and/or his other siblings.
- d. The statement of claim continues to state that his late father gave Lot 3, CT 21979 on DP No. 5132 to the plaintiff to operate his Acupuncture Centre. Devendra Prasad Sharma and/or the plaintiff's other siblings objected.
- e. The defendants cannot be trusted with the duty of administering the estate as they are:(i) deceptive in not providing details of monies held in bank accounts of the deceased,(ii) not residents of Fiji and cannot administer the estate properly, fairly and honestly,(iii) denying the plaintiff's rightful interest, and (iv) together with some of the plaintiff's siblings were aware of the fraudulent transfer of CT 21980, CT 21978, CT 21979 and Lot 1 on DP No. 5132 to the deceased without the authority of the registered proprietor, the plaintiff's father by the forging of transfer documents.
- f. In 1991, the defendants and the plaintiff's siblings assisted and/or were aware of the fraudulent transfer of CT 21980, CT 21978, CT 21979 and Lot 1 on DP No.5132 to the deceased.
- g. The deceased was not of sound mind, memory and understanding.
- h. The deceased executed her will under undue influence and/or through fraud.
- i. Gyaneshwar Prasad Lala, a witness to the will had at the time of witnessing the will interest in DAV Girls College as patron and trustee of the College.
- j. The plaintiff claims:
 - i) *A declaration that the Plaintiff has interest in the Estate..for his personal contribution from on or about 1960 to on or about 1982.*
 - ii) *A declaration that the Plaintiff has interest in the bottom one bedroom flat adjoined to the building on Lot 2 on DP No. 5132, CT 21978 and that the Plaintiff be registered as Tenants in Common on the title of the property.*

- iii) A declaration that the Plaintiff has interest the Estate..for loss of enjoyment of the bottom one bedroom flat adjoined to the building on Lot 2 on DP No. 5132, CT 21978 from 1991 until judgment at \$300 per month plus interest of 13.5% per annum on the total sum from 1991.*
- iv) A declaration that the Plaintiff has interest in the Estate.. for the sum of \$38,500.00 plus interest of 13.5% per annum from the date when Demand for the monies were made.*
- v) An order that the Defendants account for all monies that are part of the Estate ...*
- vi) An order revoking gift to DAV Girls College under the ..will.*
- vii) An order revoking gift made to Devendra Prasad Sharma's son under the .. will.*
- viii) An order revoking the will .. due to undue influence and/or fraud and/or due to the testatrix being of unsound mind memory and understanding.*
- ix) A declaration that transfer of CT 21980, CT 21979, CT 21978 and Lot 1 on DP No. 5132 to (the deceased) was done fraudulently.*
- x) An order for the removal of the Defendants as Executors and Trustees of the Estate ...*
- xi) An order appointing new Executors and Trustees or Administrators of the Estate ..*
- xii) .An order restraining Executors and Trustees or Administrators appointed to administer the Estate ..from dealing with the properties contained in the Estate until the determination of the High Court Civil Action No. 165 of 2011.*

3. The hearing

- (i) PW1(Ashish Narayan, Director Mid City Eye Care Clinic) testified at the hearing. The plaintiff showed this witness medical reports of Jasoda Devi Sharma addressed to “*Jamnadas & Rathod Eye Centre*”. PW1 said that the reports were not issued by his clinic, but by Auckland Eye Centre, New Zealand. The plaintiff had taken it without his knowledge. It was in his storage, since he used to work with “*Jamnadas & Rathod Eye Centre*”, which closed down. PW1 said that he leased their machines and was asked to keep their files.

In cross-examination, Mr O'Driscoll, counsel for the defendants asked the witness if he had anything to do with the treatment of Jasoda Devi Sharma. His answer was in the negative.

- (ii) PW2, (the plaintiff) in evidence in chief sought to produce a certified copy of an affidavit filed in Probate Action No 24 of 2010. Mr O' Driscoll objected on the ground that it was not a certified copy. I made order that the plaintiff file a certified copy of the affidavit with his closing submissions.

The plaintiff in cross-examination said that he was not present when his mother signed the will.

The determination

4. The plaintiff seeks to set aside the will of the deceased, due to undue influence and/or fraud and and/or due to the testatrix being of unsound mind, memory and understanding.

5. The particulars of unsound mind, memory and understanding pleaded read:
 - i) *(She) Attained only class 6 level education only.*
 - ii) *Was partially blind.*
 - iii) *Suffered from hypertension.*
 - iv) *Suffered from post surgery complications.*
 - v) *Was ill and not in good health.*
 - vi) *Was easily manipulated.*
 - vii) *Lived in fear and was controlled by Devendra Prasad Sharma and/or the Defendants and/or the Plaintiff's other siblings.*
 - viii) *Was not aware that Lot 1, 2 and 4 on DP No. 5132 were amalgamated. She was told by Devendra Prasad Sharma and/or by the Plaintiff's other siblings that the lots that were amalgamated with Lot 2 on DP No. 5132, CT 21978 had been sold.*
 - ix) *Was under duress and undue influence.*
 - x) *Jasoda Devi Sharma executed her will under undue influence and/or through fraud.*

6. The only documentary evidence placed before me was medical reports pertaining to the eyesight of the deceased. In evidence in chief, PW1 said that the medical report of Jasoda Devi Sharma were not issued by his clinic. In cross examination, he confirmed that he had not treated the deceased.

7. In any event, the reports only state that the deceased had lost sight of her left eye.
8. The plaintiff also relies on an affidavit filed by the first defendant in Probate Action No 24 of 2010. In that case, the first and second defendants,(as plaintiffs) had sought an order that the caveat filed by the plaintiff and Sashi Prasad against the grant of probate in the estate of the deceased be removed. Calanchini J(as he then was) granted the application.
9. I have perused the affidavit of the first defendant in that case. She states that the deceased lost sight in one eye, had “*complicated stomach surgery*” in 2007 and “*high blood pressure*” .
10. In my judgment, the plaintiff has not established that the deceased was of unsound mind, memory and understanding when she executed her will.
11. The particulars of undue influence/fraud pleaded in the statement of claim read:
 - a. (She was) *elderly, illiterate and ill... Lived in fear;*
 - b. *Devendra Prasad Sharma controlled (her).*
 - c. *Devendra Sharma deceived (her)believing that lots 1 and 4 on DP No. 5132 were sold.*
 - d. *Devendra Prasad Sharma took advantage of (her)reliance on him and influenced her into executing her will.*
 - e. *Devendra Prasad Sharma managed the properties which are now part of (her) Estate .*
 - f. *The relationship between Devendra Prasad Sharma and (her)usually became strained when it came to the management of the properties.*
 - g. *Devendra Prasad Sharma’s son receives Lot 2 on DP No. 5132, CT 21978 which has been amalgamated with Lots 1 and 4 on DP No. 5132.*
12. The plaintiff did not lead any evidence in support of the allegations of undue influence and fraud that properties were transferred without the authority of his father, to the deceased, nor that Gyaneshwar Prasad Lala, a witness to the will had at the time of witnessing the will interest in DAV Girls College as patron and trustee of the College or that the defendants cannot be trusted with the duty of administering the estate.

13. The plaintiff seeks several declarations that he has an interest in properties of the estate. No evidence was led in support of that claim too.
14. On the application of the plaintiff, I made order that the present case be consolidated with Probate case no. 49781 of the estate of the deceased.
15. The plaintiff avers that the defendants “*are deceptive in not providing details of monies held in bank accounts of the deceased*”.
16. Clause 6 of the will of the deceased of 19th December, 2008, bequeaths one sixth share of her monies to the plaintiff.
17. In my view, the defendants, as executors are required to give an account to the plaintiff of monies of the estate of the deceased.

18. **Orders**

I make orders as follows:

- (a) The defendants shall provide an account to the plaintiff of all monies of the estate of the late Jasoda Devi Sharma within 30 days of this judgment. The defendants may apply to Court for an extension of time, in this regard.
- (b) I decline the reliefs prayed for in i) to iv) and vi) to xii) of the statement of claim of the plaintiff.
- (c) No order as to costs.

29th February, 2016



A.L.B. Brito-Mutunayagam

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Judge