

IN THE HIGH OF FIJI AT SUVA
PROBATE JURISDICTION

Action No. HPP 13 of 2017

IN THE MATTER of Caveat No. 42 of 2016

AND

IN THE MATTER of **THE ESTATE OF RAMEND DUTT** also known as

RAMEND CHAND late of Maro, Sigatoka, Fiji, Cultivator,

Deceased, Intestate.

BETWEEN

NIL VIKASH DUTT of Maro, Sigatoka, Fiji, Driver.

PLAINTIFF

AND

ASHOK CHAND of Maro, Sigatoka, Fiji, Carpenter.

DEFENDANT

Counsel : Mr. K. Gosai for the Plaintiff
The defendant is absent and unrepresented

Date of Hearing : 03rd October, 2017

Date of Judgment : 20th October, 2017

JUDGMENT

[1] The plaintiff filed this originating summons [Expedited Form] seeking the following orders:

1. The defendant's caveat No. 42/2016 lodged in the High Court of Fiji against the grant of Letters of Administration affecting the estate of Ramend Datt also known as Ramend Chand be removed.
2. The letters of administration in the estate of Ramend Datt also known as Ramend Chand be granted to the plaintiff.
3. Costs of this application in the cause.

[2] In the affidavit in support of the plaintiff he has averred that his father Ramend Dutt was the sole owner of the land comprised of in Crown Lease No. 8381 and annexed a copy of the said lease marked as "NVD-4". The defendant does not dispute the fact that Ramend Dutt was the owner of the said land.

[3] The beneficiaries of the estate of Ramend Dutt are Suruj Kumari who is his lawful wife, the plaintiff and his daughter Sharleen Lata Dutt.

[4] On 22nd November, 2016 when the plaintiff applied for letters of administration he had been informed by his solicitor that the defendant had lodged a caveat against the grant of the letter of administration.

[5] The defendant's position is that he constructed a house on this property and living there for the last 25 years and that there was an agreement between him and Ramen Dutt that he would be given portion of land to construct a house. A copy of the said agreement dated 02nd December, 1993 is annexed to his affidavit in reply.

[6] Sections 46 and 47 of the Succession, Probate and Administration Act 1970 provide:

46(1) Any person may lodge with the Registrar a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under the provisions of this Act, at any time previous to such probate or administration being granted or sealed.

(2) Every such caveat shall set forth the name of the person lodging the same, and an address within the city of Suva at which notices may be served on him.

47(1) In every case in which a caveat is lodged, the court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be, remove the same.

(2) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.

(3) Such application may be heard and order made upon affidavit or oral evidence, or as the court may direct.

[7] Whether the defendant has an interest in the property or not is in my view immaterial in deciding whether the plaintiff is entitled to be appointed as the administrator of the estate of his deceased father.

[8] The grounds on which the defendant is opposing the application by the plaintiff for letters of administration are;


1. that he has been living in this property since his birth and has constructed a dwelling house on the property.
2. that an agreement had been entered into by and between the defendant and Ramend Dutt where the Ramend Dutt promised to give him a portion of land out of this property to construct a house and a piece of land to cultivate his own sugar cane.

- [9] Section 46 of the Succession, Probate and Administration Act 1970 does not provide for the grounds on which a party can lodge a caveat. The question is whether a person who claims to have interest in the estate of the deceased can lodge a caveat on that ground alone.
- [10] Without administering the estate the heirs has no other way of getting their respective shares of the estate. The administrator or the executor as the case may be, of an estate of a deceased person does not become entitled to the entire estate by reason of his appointment as the executor or the administrator. He is appointed for the purpose of administering estate and dividing the properties of the estate among the beneficiaries according law of succession if there is no last will left by the deceased. From the grounds averred in the affidavit in opposition of the defendant it appears that he has lodged the caveat thinking that once the plaintiff is appointed as the administrator he will lose his rights in the property of the estate which is a total misconception. For the defendant to claim his part of the estate there must be an administrator or executor as the case may be, appointed. He cannot lodge a caveat and enjoy the benefits of the property depriving the other beneficiaries of their respective shares in the estate. If the administrator or executor refuses to give the defendant his entitlement from the estate, he can always sue the administrator for his rights in the estate.
- [11] The defendant to show that he has interest in the property of the estate of the deceased relied on the agreement entered into between him and Ranend Dutt by which the Ramend Dutt had agreed to give certain portions of the property to the defendant. This agreement is dated 02nd December, 2003. In 2008 Ram Hansa, the father of Ramend Dutt filed action No. 53 of 2008 in the Magistrate Court of Sigatoka for the eviction of the defendant from the property. The learned Magistrate by his order dated 08th February, 2011 ordered the defendant to give vacant possession of the land to Ram Hansa the plaintiff in that action and also to remove the house which the defendant had built. The defendant therefore, cannot be said to have any interest in this property and the lodging of the caveat is gross abuse of the provisions of section 46 of the Succession, Probate and Administration Act 1970.

[12] For the reasons stated above the court makes the following orders:

1. The caveat No. 42 of 2016 lodged by the defendant on 17th October 2016 be removed.
2. The letters of administration be granted to the plaintiff.
3. Costs in the cause.




Lyone Seneviratne

JUDGE

20th October, 2017