

IN THE COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Action No. HPP 31 of 2018

IN THE ESTATE OF SUKH RAJ late of Koronivia Road, Nausori Retired Farmer.

BETWEEN

SHIRLEY SINGH also known as **SHELLY SINGH** of Maleya Place, Koronivia Road,
Nausori, Domestic Duties as the sole Executrix and Trustee of the
Estate of Nand Lal.

PLAINITFF

BAL RAJ as the surviving Executor and Trustee of the Estate of Sukh Raj of
Koronivia Road, Nausori.

DEFENDANT

Counsel : Mr. P. Kumar for the Plaintiff.
Mr. S. Kumar for the Defendant

Date of Hearing : 16th November, 2018

Date of Judgment : 05th December, 2018

JUDGMENT

[1] By the amended originating summons filed on 20th September, 2018 the plaintiff sought the following orders against the defendant.

1. That the defendant distributes the estate property being certificate of title No. Vol 60 and Folio 5910 land known as Vunivesi (part of) situated in the District of Rewa and in the Island of Vitilevu having an area of ten acres two roods and twenty-nine perches being Lot 49-51 of DP No. 461 by transferring late Nand Lal's share in the said property to the Estate of Nand Lal in accordance with the Will dated 15th March 1997 of late Sukh Raj and as provided under the succession, Probate and Administration Act; and/or
2. An order against the defendant for the administration and distribution of the estate property being certificate of title No. Vol 60 and Folio 5910 of late Sukh Raj with all necessary and proper accounts and directions to give effect to the wishes of the deceased as per will dated 15th March 1997; and
3. Costs.

[2] Late Sukh Raj by his last will dated 15th March, 1997 devised and bequeathed the residue of his estate to his four sons namely, Prem Chand, Bal Raj, Khem Raj and Nand Lal. Nand Lal died on 28th October, 2014 leaving a last will and upon his death the plaintiff was appointed the executor of his estate.

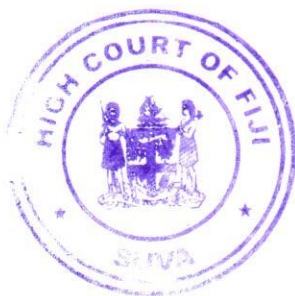
[3] The plaintiff alleges that the defendant who is the executor of the estate of late Sukh Raj has failed to transfer late Nand Lal's share to his estate. This fact is admitted by the defendant. The reason for his failure to administer the estate of Sukh Raj is that one Tara Wati has lodged a caveat prohibiting the defendant from dealing with Nand Lal's share of Suks Raj's Estate. This caveat has been registered on 09th August, 2012. The learned counsel for the defendant submitted that the plaintiff has so far not taken steps to remove the caveat.


[4] On this submission the only question arises for determination is as to whose duty it was to have the caveat removed. The defendant was appointed by the testator as the executor of his estate and therefore, it should be the prime concern of the defendant to give effect to the intentions of the testator. The executor or the administrator of an estate cannot place his responsibilities on its beneficiaries. It is the responsibility of the defendant to take necessary steps to have the caveat removed. Whatever, the costs incurred by him in this process can be charged as part of the costs of administration.

[5] For these reasons I make the following orders.

ORDERS

1. The defendant is ordered to distribute the estate property being certificate of title No. Vol 60 and Folio 5910 land known as Vunivesi (part of) situated in the District of Rewa and in the Island of Vitilevu having an area of ten acres two roods and twenty-nine perches being Lot 49-51 of DP No. 461 by transferring late Nand Lal's share in the said property to the Estate of Nand Lal in accordance with the last will dated 15th March 1997 of late Sukh Raj.
2. The defendant is also ordered to administer the estate and distribute the estate property being certificate of title No. Vol 60 and Folio 5910 of late Sukh Raj with all necessary and proper accounts.
3. The defendant is ordered to pay the plaintiff \$1000.00 as costs.




Lyone Seneviratne

JUDGE

05th December, 2018