

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. 328 of 2019**

**IN THE MATTER OF AN INTENDED ACTION BETWEEN**

SHALVINDRA KUMAR SINGH AND SUSHILA WATI SINGH

AND

**IN THE MATTER OF** Section 10 of the Inheritance (Family Provision) Act 2004

BETWEEN

**SHALVINDRA KUMAR SINGH** Lot 2, Rosi Street, 6 ½ Miles, Nasinu.

**APPLICANT**

AND

**SUSHILA WATI SINGH** Previously Lot 2, Rosi Street, 6 ½ Miles,

Nasinu but now of 1052E, 6<sup>th</sup> Street, Unit 20

Ontario CA 91764, USA.

**RESPONDENT**

**Counsel** : Mr. S. Kumar for the Applicant

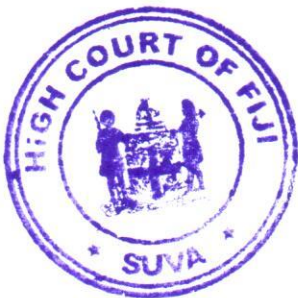
**Date of Hearing** : 11<sup>th</sup> October 2019

**Date of Ruling** : 18<sup>th</sup> October 2019


## RULING

- [1] The applicant filed this ex-parte summons pursuant to section 10 of the Inheritance (Family Provision) Act 2004 (the Act) seeking enlargement of time to institute an inheritance action after the lapse of the period of nine months.
- [2] There is no section 10 in the Act and the correct provision pursuant to which this application should have been made was section 3(10) of the Act. However, this is a defect that is curable.
- [3] Section 3(10) of the Act provides:
- Unless the court otherwise directs, no application shall be heard by the court at the instance of a party claiming the benefit under this Act unless the proceedings for such application be instituted within 9 months after the death of the person; but the court may at its discretion hear and determine an application although a grant of probate or letters of administration has not been made.
- [4] The provisions confers a discretion on the court to grant an extension of time. In my view the applicant who seeks the court to exercise its discretion in his favour must justify the delay.
- [5] The facts of this matter are briefly as follows; the applicant's father died in 1998 leaving a last will by which he gave his entire estate to his wife, the respondent to this application who is the mother of the applicant.
- [6] The respondent has executed a last will giving all her properties to her children including the applicant. This last will only come to effect upon the death of the testator.

- [7] The applicant has averred in his affidavit in support he helped the respondent to administer the estate of the father and to transfer the title of the land to the mother. So, admittedly the respondent is the legal owner of the land in question.
- [8] The applicant's position is that his deceased father while preparing his will said that whoever stayed with the mother and took care of her shall be given the said property. This statement, even if it is true, has no force or avail in law. It cannot be enforced because the present registered owner of the land is the respondent.
- [9] If the applicant is intending to file an action on the estate of his father, in my view, it will be a futile exercise since the father's estate has already been administered. On the other hand the father died in 1998 and the applicant was aware of his last will.
- [10] The applicant came to court almost 21 years of the death of his father but failed to explain the delay.
- [11] For the above reasons, I refuse the application for enlargement of time to institute an inheritance action.



18<sup>th</sup> October 2019

  
Lyone Seneviratne

**JUDGE**