

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

Civil Action No.: HPP 44 of 2018

**BETWEEN** : **EWELL PAL** of Nagigi Labasa, Bowser Attendant.

**PLAINTIFF**

**AND** : **CAMPBELL PAL** aka **CHAMPBELL PAL** of Korovatu, Labasa, Farmer

**DEFENDANT**

**Counsel** : Plaintiff: Mr Vananalagi R  
Defendant: Mr Ram A & Ms Manyam. V

**Date of Hearing** : 17.07.2019

**Date of Judgment** : 29.11.2019

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff who is one of the beneficiaries of the estate of late Chandra Pal had instituted this action by way of originating summons to remove Defendant as the administrator of the estate. Defendant is a brother of Plaintiff. The main estate property in issue was an agricultural land belonging to state. Plaintiff has instituted this action with the blessings of other siblings, indicating that all of them are not happy with Defendant's conduct as administrator of estate. Plaintiff in this application alleges that agricultural lease over the land belonging to estate, issued from Land Department was not uplifted by Defendant, there was arrears of sum 2,861.26 relating to lease statement of the land. Plaintiff also alleges that Defendant does not share cane proceeds from estate, which produce approximately 500 tonnes of cane per annum. There are allegations of Plaintiff not obtaining assistance by way of funds to reduce cost of production. Plaintiff in affidavit in opposition had denied the facts and stated that he had collected the agricultural lease but

it was given to mortgagee since late father had mortgaged it. He also said he had repaid all the debts but yet to receive agricultural lease. He had not explained what steps he had taken to obtain lease document wrongfully held by former mortgagee. He also stated that arrears of lease rentals were settled by him but there was an outstanding amount of \$995.54 Defendant states that all the beneficiaries should contribute to lease rental. He said that proceeds of sugar cane harvest were shared between the beneficiaries.

## FACTS

2. Plaintiff is one of the beneficiaries of estate of late Chandra Pal. Plaintiff and Defendants are siblings.
3. All siblings consented to allow Defendant to be granted letters of administration and Letters of Administration for the estate of late Chandra Pal was accordingly granted to the Defendant on 15.6.2016.
4. Plaintiff was granted an authority to file an action for removal of Defendant, by other siblings who are also beneficiaries of the estate. This is annexed to affidavit in support as EP-2.
5. Plaintiff is alleging that Defendant is not acting in the best interest of the beneficiaries.
6. Plaintiff in the affidavit in support alleges *inter alia*;
  - a. Defendant had failed to uplift Agricultural Lease for the land belonging to estate from Land Department and it was lying since last year.
  - b. Lease statement show arrears of \$2,861.26 in respect of lease rentals.
  - c. Defendant does not share cane proceeds, and refuses to show the receipts of the proceeds.
  - d. Failed to apply for government subsidy when it was available despite being reminded by other beneficiaries.
7. Defendant in his affidavit in reply denied the allegations contained in the affidavit in support and stated;
  - a. He had uplifted Agricultural Lease from Lands Department.
  - b. Arrears of lease needs to be paid by other beneficiaries as they request share from sugar cane proceeds.
  - c. Substantial amount of lease rental was paid and as of 1.4.2019 , arrears remained 995.54
  - d. All cane proceeds were shared with the beneficiaries of Estate.

- e. *Balance sheets were shown to beneficiaries.*
- f. *Beneficiaries have received more than the share they are entitled from estate.*

## ANALYSIS

8. Defendant raised a preliminary objection that intuition of action in his name was wrong hence action should be dismissed. This was a curable defect and if raised through proper application would have dealt accordingly. In my judgment, without such an application raising such a technical objection at hearing is not proper. At the hearing I was not given any case authority that had dismissed an action because of wrongful description of a Defendant. So I reject preliminary objection that due to wrongful description of Defendant this action must be struck off.
9. Section 35 of Succession Probate and Administration Act, 1971 states;  
*“35. The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made-*
  - (a) make an order removing any executor of the will of such deceased person from office as, such executor and revoking any grant of probate already made to him; and*
  - (b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and*
  - (c) make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and*
  - (d) make such further or consequential orders as it may consider necessary in the circumstances.”*
10. In terms of said provision there is judicial discretion to be exercised and this should be exercised on affidavit evidence.
11. It is admitted that siblings have consented to the Letters of Administration being granted to Defendant, but he had failed his duties. The trust imposed on to him by his siblings as not honoured as all of them are now supporting Plaintiff’s application for removal, of Defendant.
12. Plaintiff is yet to produce any credible estate accounts or any account as to income and expenses from estate property. He had failed to state even quantity of sugarcane

harvested in each season and income and expenses incurred for the land. He said that he had shown that to his siblings. If so why he failed to produce such accounts to courts, or state these facts to court.

13. This indicates that Defendant is not transparent in his dealings with the estate. There was no evidence of any income derived from the estate from 2016 till October, 2018. This action was instituted on 26.6.2016
14. After institution of this action Defendant had paid money to beneficiaries from October, 2018. Whether that was their proper entitlement cannot be ascertained without the accounts for estate or vital facts to ascertain share. Defendant is not even submitting these facts to court. Plaintiff is alleging that when they asked about their share of estate Defendant quarrel with them.
15. There was domestic violence restraining order issued due to breach of peace between Plaintiff and Defendant. This indicates the reluctance of Defendant to work closely with other siblings including Plaintiff.
16. Though Plaintiff had stated he had collected the title from Lands Department and given to mortgagee, why he failed to collect it when debt was fully paid is not explained. This show lack of interest on the part of administrator to have title with him. So on his own admission Defendant is not keen to act swiftly to obtain title from mortgagee, even after settling dues. According to accounts of late Chandra Pal's account with Sugar Cane Growers Fund, there was an outstanding sum of a loan given to late Chandra Pal, amounting \$4,973.22 and presently that had been cleared on 18.12.2017.
17. So though more than one an half years after settlement of debt, still trustee in his affidavit sworn on 17.5.2019 stated that he is yet to collect the title to land. This show that he had neglected his duties as trustee of estate.
18. Defendant had paid lease rentals after allowing it to accrue more than \$3,681.49 but it was yet in arrears of \$995.54. This statement of account also show that Defendant was not paying rentals periodically but allows to accrue.
19. Defendant had not replied to allegation of not obtaining government assistance in the affidavit in reply.

## **CONCLUSION**

20. Court can remove an administrator of estate but that needs to be done only when there are sufficient grounds for removal. In this case siblings have consented to allow Defendants

to obtain letters of administration. All beneficiaries trusted Defendant as the suitable person to obtain Letters of Administration for their late father's estate. But since obtaining Letters of Administration Defendant had not acted in best interest of estate. He had failed to distribute any income till October 2018. He failed to produce any receipts of proceeds from sugar cane. He obtained letters of administration 15.6.2016, but failed distribute any income till this action was filed. He had failed to pay lease rentals in timely manner. This may result in estate losing a source of valuable income. Defendant through his own action had created a barrier with other beneficiaries and had broken the trust they had with him in consenting to Letters of Administration given to him. Defendant failed to distribute any share of proceeds to any beneficiary before this action was instated, but within four months of this action started some distribution of sugar cane proceeds from the estate. The animosity due to non distribution of proceeds to beneficiaries had resulted even domestic violence restraining orders being issued. In my judgment Defendant had neglected his duties as administrator and was not in acting the best interest of estate. On the evidence submitted by Defendant had shown that he had neglected to pay even lease rentals timely and had failed to distribute any income derived from estate. He had also failed to produce receipts of his income and expenses for last three years. There are sufficient grounds to exercise my discretion to remove Defendant as Administrator of Estate of Chandra Pal with immediate effect. Defendant is ordered to surrender Letters of Administration No 58631 issued on 15.6.2016 immediately to Probate Registry in Suva. Plaintiff is appointed as administrator of the estate of Chandra Pal in terms of last will of late Chandar Pal. Cost of this action is summarily assessed at \$2000.

#### **FINAL ORDERS**

- a. Defendant is remove from administrator of the estate of late Chandra Pal, with immediate effect.
- b. Defendant is directed to surrender the Letters of Administration No 58631 issued on 15.6.2016. to Probate Registry immediately.
- c. Plaintiff is appointed as administrator of the estate of late Chandar Pal.
- d. Cost of this action is summarily assessed at \$2,000 to be paid within one month.

**Dated at Suva this 29<sup>th</sup> day of November, 2019.**



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**Justice Deepthi Amaratunga**  
**High Court, Suva**