

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HPP 41 of 2017

BETWEEN : **PRAVEETA PRATAP** of Lot 5 Bowai CT, Nakasi, Domestic Duties as
the Administrator of the Estate of Samson Lal late of Lot 5 Bowai CT,
Nakasi, Deceased, Intestate

PLAINTIFF

AND : **PRATISHMA POOJA LATA** of Address unknown.

1ST DEFENDANT

AND : **REGISTRAR OF TITLES**

2ND DEFENDANT

Counsel : **Plaintiff: Mr M. Young**

Defendants:

Date of Judgment : **21 February, 2019.**

JUDGMENT

INTRODUCTION

1. The Plaintiff filed the originating summons on 13.7.2017 seeking an order to register a property in her name. The property belonged to her deceased husband and Plaintiff is the administrator of the property. The beneficiaries are the Plaintiff, and two children of the deceased. Deceased had one child from his previous marriage (1st Defendant) whose whereabouts not known to the Plaintiff. The Plaintiff in the originating summons seeks an order of the court to deprive the child of previous marriage though an order of the court. When the Plaintiff was asked to cite the law that allows such deprivation of property from a beneficiary two amendments to originating summons was sought. First the Plaintiff sought to amend the originating summons to include Public Trustee as a party and this was abandoned. So Public Trustee is not added as party as erroneously show in amended originating summons. Next the Plaintiff had filed amended originating

summons seeking 'the interest of 1st Defendant be divided as per the Laws of Succession and kept in trust with 3rd Defendant 'and for an order that the Plaintiff be registered as owner of the land known as Nakasi being CT 25794 Lot 5 DP5888'. There is no affidavit of service of amended originating summons or originating summons filed 13.7.2017.

ANALYSIS

2. The Plaintiff states that she is unaware of the whereabouts of the 1st Defendant. She is child of her late husband from previous marriage. The deceased had another child from the marriage to the Plaintiff and she had renounced her rights to the Plaintiff. There is no notice of this action to 1st Defendant. Even with notice her rights cannot be denied.
3. The property comprised in CT 25794 is a freehold property and Plaintiff is the administrator of the said property as the previous owner was her late husband. She lives in the said property.
4. The beneficiaries of the property are the Plaintiff, 1st Defendant (and Plaintiff's child who had renounced her rights to her mother).
5. The counsel was unable to show to me any law that allows his client (the Plaintiff) to be pronounced as the sole beneficiary of the property so as to register her as the sole owner of the said land.
6. So, the order seeking her to be registered as the sole owner of the property needs to be rejected. The property rights of a person is not extinguished only because Plaintiff states that person cannot find.
7. The other, order is to divide the property in terms of Succession Probate and Administration Act and to keep it in trust of the beneficiary with 3rd Defendant. The application to add 3rd Defendant was abandoned and there is no 3rd Defendant in this summons.
8. There is no need for the Administrator to seek a court order to distribute the property in term of Succession Probate and Administration Law. The administrator is obliged in law to do that, but in the guise of that Plaintiff cannot convert the share of the 1st Defendant. The 1st Defendant can be transferred an undivided portion of CT 25794 by the administrator.
9. Section 62 of the Trustees Act deals with the distribution of missing beneficiaries, but this originating summons is not made in terms of the said provision. There are certain

prerequisites for an order under said provision, and without that it cannot apply to this action.

CONCLUSION

10. The orders sought in the amended originating summons are declined. There is no need of an order this court to distribute estate of deceased in terms of law and that is the duty of the administrator. Considering the circumstances of this case no costs awarded.

FINAL ORDERS

- a. Amended originating summons filed on 8.11.2018 is struck off.
- b. No costs.

Dated at Suva this 21st day of February, 2019.




Justice Deepthi Amaratunga
High Court, Suva