

IN THE HIGH COURT OF FIJI  
AT SUVA  
PROBATE JURISDICTION

Probate Action No. 60935  
Caveat No. 36 of 2017

In the Matter of the ESTATE OF  
MASLA MANI late of Raviravi, Ba  
Cultivator, Deceased, Testate.

AND

In the matter of the CAVEAT NO.  
36 OF 2017 by SRI SANJAY MANI  
of Raviravi, Ba, Farmer.

BETWEEN : SRI SANJAY MANI of Raviravi, Ba, Farmer.

APPLICANT

AND : LARJENDRA MANI of Mangere, Auckland, New Zealand, bus Driver, VIJENDRA MANI  
of Sydney, Australia, Truck Driver and LATCHMI of Raviravi, Ba, Domestic Duties, the  
Executors and Trustees of ESTATE OF MASLA MANI late of Raviravi, Ba, Cultivator,  
Deceased, Testate.

RESPONDENTS

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSELS: Applicant in Person  
Mr Gosai S. P - for the Respondents

Date of Ruling: 30<sup>th</sup> January, 2019 @ 9.30 am

DECISION

*[Whether Caveat filed by the Applicant to be removed, Whether Deceased's Will and or Deed are valid and  
Respondent's pending application seeking for a Probate Grant be approved in the Deceased's Estate]*

1. The Respondents in the Deceased's Estate of Masla Mani instituted proceedings within the Principal Probate Registry seeking the Grant of Probate in terms of the Deceased's Will dated 14<sup>th</sup> day of January, 2015.
2. Subsequently, the Applicant Sri Sanjay Mani filed a Caveat on 3<sup>rd</sup> October, 2017, seeking that "No Grant of Probate" be issued in the Estate of Masla Mani who died on 01<sup>st</sup> May, 2017, without notice to Sri Sanjay Mani having interest in the Deed dated 21<sup>st</sup> day of December 2005 duly executed by the Deceased in favour of the Caveator.
3. A Warning to Caveat was filed by the Respondents on 31<sup>st</sup> October, 2017 and subsequently an Appearance to Warning was filed by the Applicant on 14<sup>th</sup> November, 2017.
4. The Applicant further questioned the 'Validity of the Deceased's Will' dated 14<sup>th</sup> January 2015 alleging that the Deceased's signature on the Will was forged and appeared different from that on the Deed.
5. The Applicant's contention was that the Deed executed by the Deceased Masla Mani should be given the validity and not the Deceased's Will dated 14<sup>th</sup> January, 2015.
6. It is noted that the Applicant did not file and or institute any Writ of Summons in terms of Order 76 of the High Court Rules, 1988 to show his interest in the Deceased's Estate rather filed a motion asking court to determine his Caveat No. 36/17 and not to issue Probate Grant to the Respondents accordingly.
7. However, on the other hand, the Respondents filed an Affidavit in Response on 22<sup>nd</sup> of May, 2018 and sought orders for the removal of the caveat and Grant of Probate in the Deceased's Estate to the Respondents.
8. The Applicant appeared in person and chose to represent his own case whereas the Respondents were not present in Court, were represented by a Counsel.
9. Both parties filed their simultaneous respective written submissions in the matter.
10. The Background to this case can be summarised as follows:

The Testator Masla Mani took demise on 11<sup>th</sup> May, 2017. He left behind a 'Will' dated 14<sup>th</sup> January, 2015 where he appointed his sons 'Lajendra Mani, Vijendra Mani together with his daughter Latchmi to be the Executors/Trustees of his last Will. On 21<sup>st</sup> September, 2017, the Executor(s) and Trustees filed an application in the Principal Probate Registry and sought for the "Probate Grant" in the Deceased's Estate. The Applicant Sri Sanjay Mani, his mother Amra Wati and brother Sri Niwasan Mani were not named as the beneficiaries in the Deceased's Will but were named as beneficiaries in the Deed executed on 21<sup>st</sup> December, 2005.

Subsequently, the Applicant Sri Sanjay Mani filed a Caveat No. 36/17 on 04<sup>th</sup> October 2017 stopping the issue and sealing of the Probate Grant in the Deceased's Estate on the grounds that-

"He has interest in the Deceased's Estate of Masla Mani in terms of the Deed executed by the Deceased on 21<sup>st</sup> December 2005 in the Caveators' favour."

The Applicant further stated that the Deceased's Will dated 14<sup>th</sup> January, 2015 is forged since the signature was not the same as that made on the Deed Executed by the Deceased in his presence.

11. The issues that this Court now needs to deliberate upon and determine on are the following-
- (a) Whether the Caveat number 36/2017 filed by the Applicant on 4<sup>th</sup> of October, 2017 be removed?
  - (b) Whether the Deed Executed by the Deceased on 21<sup>st</sup> December, 2005 should be given the validity?
  - (c) Whether the Will dated 14<sup>th</sup> January, 2015 is a valid Will and a grant of probate should be granted to the Respondents as Executors and Trustees?

12. The Law with regards to **Caveats** is provided for at **Section 47(1) of the Succession Probate and Administration Act** which states-

*"(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."*

It is noted that apart from filing the appearance to warning within the timeframe, in terms of the non-contentious Probate Rules, the Caveator Sri Sanjay Mani had not taken any procedural steps to file and serve a Summons for Directions and no contrary interests was disclosed in his appearance.

Further, he failed to institute any probate proceedings in terms of the High Court Rules 1988 rather wanted his Caveat determined by this Court.

13. The **Applicant's contention** was that the Deceased's Will does not have the same signature as that of Masla Mani (Testator) as it appears on the Deed that was executed by his Deceased father in his presence. He further said that his mother Amra Wati was not included in the Deceased's Will as a beneficiary. However, the Applicant's contention further was that his mother Amra Wati and brother Sri Nivasan Mani were all included in the Deed executed on 21<sup>st</sup> December, 2005. He told the Court that he did not agree with the Will because upon carrying out a search at the High Court Civil Registry, it was revealed that the Will was not registered with the High Court Registry.

The Applicant whilst giving evidence also highlighted to Court that the Deceased's signature also appeared on the Lands Departments Documents but failed to show and identify to Court which document in particular he was mentioning.

This Court whilst deliberating on this matter perused the correspondences on the file marked as "SSM3" and examined the Deceased's signature therein. Therefore, according to the Applicant, the Deceased's Will was forged.

14. On the other hand, the **Respondents contention** in terms of the Affidavit in Response deposed by Respondent Latchmi on 16<sup>th</sup> May, 2018 was that her late father Masla Mani's Will was prepared on his instructions by a reputed law firm on 14<sup>th</sup> January, 2015. That the allegations made by the Applicant in respect of the Deceased's Will are false. Further, he does not have any merits to maintain the Caveat that he has lodged against the issuance of the Probate Grant in the

Deceased's Estate. Respondent Latchmi further added that the Applicant has not challenged the Deceased's Will.

15. The question that comes to mind is "whether the **Deed** executed between the Deceased/Testator Masla Mani and wife Amra Wati together with the son Sri Nivasan Mani on 21<sup>st</sup> December, 2005 overrides the subsequent **Deceased's Will** dated 14<sup>th</sup> of January 2015"
16. It will be noted that the Deed before the Court at Clause 3(i)-(iv) inclusive provides the shares in the Crown Lease No.13230 as follows-
  - i. "Shri Nivasan Mani shall cultivate four and half (4.5) acres of cane land which is being presently cultivated by him together with half acre of land for residential purposes delineated in red and marked "A" on the annexed plan.
  - ii. Shri Sanjay Mani shall cultivate four and half (4.5) acres of cane land which is being presently cultivated by him from Crown Lease Number 13230.
  - iii. Amra Wati shall cultivate the balance area of the land upon death of Masla Mani, which is being cultivated by Masla Mani.
  - iv. The residential dwelling which is being occupied by Masla Mani shall belong to Amra Wati upon the death of Masla Mani."
17. However, the Will before this Court was executed after the Deed, some Ten (10) years later on 14<sup>th</sup> January, 2015.
18. In my view, the contents of the Will are the expressed wishes and the Intention of the Testator as to how the Testator intended the disposition of his Estate. Any Court of Law will always give the effect to the intention of the Testator provided for in the Will accordingly.
19. On the other hand, if the Applicants intention was to challenge the Will dated 14<sup>th</sup> January, 2015 then, I reiterate that he should have initiated legal probate proceedings in terms of **Order 76** of the **High Court Rules 1988** rather than filing a Caveat to obstruct the issuance of Probate Grant in the Deceased's Estate of Masla Mani.
20. I also note the fact that the Applicant did not think necessary and failed in his bid to subpoena and call the two (2) witnessing officers of the Will- Savitri Narayan and Shaziya Gul to testify in court in this proceeding. These witnesses would have been the best witnesses to clarify the doubt of the Applicant in terms of the Deceased's (Testators) signature on the Will before this Court.
21. I find that the Applicant after filing the appearance to Warning within the time-frame in terms of the non-contentious Probate Rules, he had not taken any procedural steps to file and serve a Summons for Directions and no contrary interest was disclosed in his appearance filed herein. Further, I reiterate he had failed to institute any Probate Proceedings in terms of Order 76 of the High Court Rules 1988 which makes provisions for the set-out procedure rather the Applicant wanted his Caveat determined by this Court in the present form.
22. The Caveat filed herein will only prevent and delay the Administration of the Deceased's Estate of Masla Mani which may eventually result in the deterioration of the Deceased's Estate.

23. The Applicant must remember that the Caveat he had lodged with the Court is only a temporary measure in order to maintain the status quo of the matter until such time the rights and entitlements of the parties are eventually deliberated upon by the Court of Law.
24. Further, if the Applicant's contention is that he together with others named in the Deed dated 21<sup>st</sup> December, 2005 are entitled to any beneficial interest in the Deceased's Estate, then the Applicant must go ahead and sue the Executors and Trustees to claim for any rights and entitlements.
25. In light of the aforesaid rationale, I proceed to make the following Orders:

**FINAL ORDERS**

- i. That Caveat Number 36 of 2017 is removed forthwith.
- ii. The Respondents as Executors and Trustees may hereby proceed to finalise the issue of the Probate Grant in impending application No. P60935 in terms of the Deceased's Will dated 14<sup>th</sup> January, 2015.
- iii. The Parties to bear their own cost.

Dated at Suva this 30<sup>th</sup> day of January, 2019



VISHWA DATT SHARMA  
JUDGE  
SUVA

Cc. Sri Sanjay Mani, Raviravi, Ba  
Iqbal Khan & Associates, Lautoka