

IN THE HIGH COURT OF FIJI
PROBATE JURISDICTION
AT LAUTOKA

Probate Action No. HPP 16 of 2018

IN THE ESTATE OF GURU
CHARAN SINGH late of Yalalevu,
Ba, Fiji, Retired Motor Mechanic,
Deceased.

BETWEEN : **ANIRUDH SINGH** of Flat 5, Gurukul Primary School Compound,
Saweni, Lautoka, Professor, **JAIWANT KUMAR SINGH** of 30B
Seacliffe Road, Auckland, New Zealand, **ASHEEL KUMAR SINGH** of
69 Brewster Street, Toorak, Suva, System Analyst as the Executor and
Trustee of Anil Kumar Singh late of 69 Brewster Street, Toorak, Suva,
Civil Servant, Deceased and **SUNIL KUMAR SINGH** of 8518 Ocotillo
CT Elk Grove, California 95624, United States of America.

PLAINTIFFS

AND : **NIRBHEY SINGH** of 259a Woodham Road, Linwood, Christchurch,
New Zealand, Retired Trade Unionist as the Executor and Trustee of
the Estate of Guru Charan Singh.

FIRST DEFENDANT

AND : **THE REGISTRAR OF TITLES**

SECOND DEFENDANT (NOMINAL)

Appearances : Mr V. Chandra for the plaintiff
Mr E. Maopa for the first named defendant
Mr J. Mainavolau for the second named defendant

Date of Hearing : 06 December 2018
Date of Oral Ruling : 06 December 2018
Date of Written Ruling : 21 January 2019

R U L I N G

[On preliminary issue]

[01] On 6 December 2018, after hearing the submissions made by both counsel concerning a preliminary issue, I announced that I would dismiss the claim with the cost of \$500.00 and that a written ruling would be given at a later date. This is the written ruling.

[02] The plaintiffs issued an originating summons supported by the affidavit of Anirudh Singh against the defendants and sought the following relief:

1. *An order that the first defendant within 30 days of the Orders granted herein, executes all papers in relation to the transfer of the Certificate of Title No. 6912 and Certificate of Title No. 7197 to the beneficiaries pursuant to the Last Will of Guru Charan Singh, failing which the Deputy Registrar be ordered to execute all necessary paper works for and on behalf of the first defendant.*
2. *An order that the first defendant files within 42 days or within such time as the Court may deem fit an inventory and accounts in the Estate of Guru Charan Singh as required under the provisions of sections 39, 40 and 41 of the Succession, Probate and Administration Act 1970.*
3. *An order that the Estate's property situated on Certificate of Title No. 6912 be repaired by the plaintiffs immediately for the benefit of the Estate utilizing the monies in the Bank Account operated by the plaintiffs for and on behalf of the Estate specifically, Account No. 9805601581 at Westpac Banking Corporation.*
4. *An order that the second defendant's caveats registered on Certificate of Title No. 6912 and Certificate of Title No. 7197 be removed forthwith;*
5. *Alternatively, the first defendant be removed as Executor and Trustee of the Estate of Guru Charan Singh and the second named plaintiff, Mr Jaiwant Kumar Singh be appointed as Administrator of the subject Estate.*
6. *Costs of this application be costs in the cause; and*
7. *Such further and/or other Orders as this Honourable Court deems fit.*

[03] The first defendant filed an affidavit in opposition and stated that the parties be allowed to carry on discussion on the distribution of the estate.

[04] The plaintiffs filed a reply to the affidavit in opposition filed by the first defendant.

[05] The hearing of the originating summons was taken before me on 6 December 2018, when Mr Moapa of counsel appearing for the first defendant brought to the

notice of the court that there has been an order made by Suva High Court in respect of the Will and Testament of Mr Guru Charan Singh. The distribution of the estate property has been ordered in the Suva Probate Action No. 31 of 2015 in September 2016. As such, the plaintiff cannot maintain this action. He accordingly submits that the current action should be struck out with costs.

[06] Mr Chandra, counsel appearing for the plaintiffs admits that there is an order made by Suva High Court for the distribution of the estate property, the subject matter of this action.

[07] I have carefully considered the affidavits filed by both parties and the submissions put forward by their counsel. In the current action the plaintiffs seek the distribution of the estate property, the subject matter of the action according to the Will of the deceased. However, in the Probate Action No. 31 of 2015 Suva High Court has directed that the estate property must be distributed in accordance with the Will of Guru Charan Singh. The Suva High Court order reads as follows:-

"1. THAT NIRBHAY SINGH also known as NIRBHAI SINGH, the sole Executor & Trustee of the Estate of Guru Charan Singh also known as Gurucharan Singh, Deceased is directed to distribute the Estate of the said Guru Charan Singh in accordance with the terms of his Will dated 17th December 1981."

[08] It is abundantly clear that the Suva High Court has made an order for the distribution of the estate property as per the Will in the previous action brought by the plaintiffs. The plaintiffs seek the same order in the current action as well instead of enforcing the order made by the High Court previously. The plaintiffs cannot obtain a second order for the distribution of the estate property for the purpose of enforcement of the previous order made by the court. Seeking a second order for the purpose of enforcement of the previous order would amount to abuse of process.

[09] The issue of the distribution of the estate property has been finalized by the Suva High Court in Action No. 31 of 2015 on 9 February 2016. In the current action also the plaintiffs seek the same order in respect of the same estate property. The proper course for the plaintiffs is to enforce the order made by the Suva High Court rather than initiating a fresh action seeking the same order again.

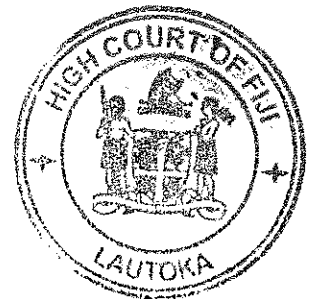
- [10] A party who obtains judgment is therefore estopped from bringing further similar claim. The plaintiffs are estopped by res judicata (a thing or matter which has been decided), which is the rule that the issues which were actually adjudicated upon by the court have been finally resolved between the parties to the claim.
- [11] The issue of the distribution of the estate property has been finally resolved between the parties by the Suva High Court order.
- [12] This is the second claim seeking the same relief the court had granted in the previous action brought by the plaintiffs. Therefore, the plaintiffs cannot maintain this claim. I would, therefore, strike out the claim with the costs of \$500.00 payable to the first defendant.

Final Orders

1. Claim dismissed.
2. Plaintiffs shall pay costs of \$500.00 to the first defendant.

M.H. Mohamed Ajmeer
21/1/19

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
21 January 2019

Solicitors:

For the plaintiffs: Messrs Bancod Chandra Lawyers, Barristers & Solicitors

For the first defendant: Messrs Babu Singh & Associates, Barristers & Solicitors

For the second defendant: Office of the Attorney General