

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC No. 266 of 2016

BETWEEN: **RAMESH KUMAR AND SUNIL KUMAR** of Toko Fiji both Trustees of the Estate of Ram Asre, Purchase Manager and Freight Operation Co-ordinator both of 57/A Bestic Street, Rockdale, New South Wales, Australia.

PLAINTIFF

AND: **ANJILA WATI** of Toko Tavua Fiji engaged in Domestic Duties and widow/beneficiary of Estate of Hari Nand.

FIRST DEFENDANT

AND: **ASHIKA NAND**, Clerk of Toko, Tavua, Fiji and **AVITESH NAND** fitter of Toko Tavua, Fiji and **ASHMIKA NAND** of Canada address and occupation not known to the Plaintiffs, beneficiaries of the Estate of Hari Nand as the children of the late Hari Nand pursuant to Succession Administration & Probate Act, Cap 60, of Laws of Fiji.

SECOND DEFENDANT

Appearances : Mr V. Mishra for the Plaintiff
 Defendants in Person
Date of Hearing : 21 September 2018
Date of Ruling : 30th May 2019

R U L I N G

1. If the scheme being proposed by the plaintiffs is to be allowed for the final distribution and settlement of the estate matter in question in this case, the plaintiffs would stand to gain some 6 ½ acres or so of some agricultural land to which the defendants, are beneficially entitled.

2. The estate in question is that of the estate of Ram Asre. It is the beneficial owner of some 22 acres of freehold agricultural lease. I say "freehold" agricultural lease to emphasize that this is not a state agricultural lease or an *i-taukei* agricultural lease. It is all comprised in Lease No. 26833. The land has a Sugar Cane Contract No. 3377 Yaladro Sector.
3. The 6 ½ acres to which the defendants are beneficially entitled is actually part of the 22 acre freehold agricultural lease which I have mentioned above. The 22 acre land is the main asset in the estate of Ram Asre.
4. The defendants' beneficial entitlement to the 6 ½ acres in question derive from their being beneficiaries in the estate of one Hari Ram. The late Hari Ram was the husband of the first defendant and the father of the second defendant.
5. The 22-acre land was leased to the late Ram Asre for a term of **966 years 10 months and 13 days** from **01 January 1941** on a rental of \$400-00 (four hundred dollars per month).
6. This lease was valued at \$145,600 on 26 July 2016 by Trumarket Valuations & Property Consultant Limited, a registered valuer which the plaintiffs had engaged.
7. The balance of lease on this land to date is 888 years or so (eight hundred and eighty eight years).
8. The defendants are not represented in these proceedings. It appears that they cannot afford a lawyer.

9. I am concerned that the effect of the Orders which the plaintiffs seek will effectively deprive and disentitle the defendants from a proprietary leasehold interest in the 6 ½ acres which has a remaining lease balance long enough to last fifteen to twenty more generations to come.
10. Undoubtedly, the value of this 6 ½ acres will escalate in years and decades to come. One can only imagine the rate at which this will be so in centuries to come.
11. At some point during the last hearing of this matter, it appeared that the defendants were willing to settle the matter by selling their share to the plaintiffs for a sum which, one might think, is a very modest one considering all that is at stake for them.
12. I am not convinced that the defendants have had the benefit of proper legal advice. They would benefit tremendously if they did.
13. I am of the view that the ideal solution is for the defendant to be able to keep the 6 ½ acres which they are entitled to as beneficiaries of the estate of Hari Ram which has a 1/3 interest in the estate of Ram Asre.
14. If the estate of Hari Ram owes money to the plaintiffs, as alleged, then the parties should be able to work out a scheme by which that money is to be paid back, and that is assuming that the sum owing is already agreed.
15. The parties had tried to settle this between themselves at some point but to no avail.

16. The defendants have since obtained a valuation of their share of the 22 acres also from Trumarket Valuation. I observe that the valuation is only with regards to 7 acres of the 22 acres. Only a copy of the said valuation is produced. No agreement is shown. I note also that Trumarket is the same value where valuation for the entire 22 acres the plaintiff relies on.
17. Trumarket has valued the 7 acres at \$65,000-00 (sixty five thousand dollars only).
18. It appears to me that this is the figure at which the defendants are willing to settle if they are to sell their 1/3 share of the 22 acres.
19. I have yet to receive a response from the plaintiffs. The best thing to do in the circumstances is to adjourn this case to another date to enable the parties to consider settlement based on the latest valuation and based on my observations above.
20. If the parties are not able to settle, I shall then further adjourn this case to a Ruling date. Case adjourned to Friday 30 August 2019 for mention at 10.30am to see if parties will settle. If they are not able to settle, I will make a Ruling on final distribution based on what is available before me. Parties at liberty to apply.




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Anare Tuilevuka
JUDGE
Lautoka