

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 163 of 2014

BETWEEN : RESHIKA ASHWIN MALA of 86 Sukanaivalu Road,
Lautoka, Company Director.

APPLICANT

AND : PREMILA DEVI also known as PRAMILA DEVI as the
Executor and Trustee in the ESTATE OF CHANDAR LAL
SHANKAR father's name Shankar of Lovu, Lautoka, Priest,
Deceased.

DEFENDANT

Appearances: Mr Kaloulasulasu and Ms S. Khan for the Plaintiff
N/A for the Defendant
Date of Formal Proof: 11th July 2019
Date of Ruling: 12th July 2019

RULING

1. This matter proceeded by way of formal proof yesterday, Thursday 11 July 2019. The plaintiff is one of the beneficiaries under the Last Will and Testament of Chandra Lal Shankar dated 16 September 1992.
2. Chandra Lal Shankar was the plaintiff's late grandfather. He died on 03 December 1992.

3. Probate No. 28935 of the said Will was granted to Bed Wati and Premila Devi (defendants) on 20 January 1993. The said Probate, with Will annexed, was tendered and marked PEX EX2.
4. The plaintiff is one of the beneficiaries under the said Will. Under clause 4(b), the following testamentary bequests are made:
 - b) Thereafter I direct my trustees to pay \$6,000 (SIX THOUSAND DOLLARS) each to my two sons Mani Lal and Murari Lal, my two daughters in law, Shashi Kala father's name Bal Ram and Sarojini Devi father's name Hari Prasad, my granddaughters Reshika Ashwini Mala, Ashika Shivani Mala (both daughters of Mani Lal) and Arishma Shivani Lal, Devashna Prabhashi Lal (both daughters of Murari Lal) and my son in law Shanmugam Gounder father's name Deo Raj.
5. The plaintiff alleges that the defendants have failed to distribute the assets of the estate to the beneficiaries.
6. The court records will show that, at one point in time, the defendant had appeared in Court and promised to give accounts and to distribute the estate, but no avail.
7. This Court has a statutory jurisdiction as well as an inherent jurisdiction to order the appointment of new trustees.
8. The statutory jurisdiction is derived from section 35 of the Trustee Act.
9. On the other hand, the inherent jurisdiction is derived from equity. Equity gives this court a general supervisory power over trusts for the welfare of beneficiaries (see **Letterstedt v Broers** (1884) 9 App Cas 371, **Hunter v Hunter** [1938] NZLR 520; **Nizam v Shah** [2014] FJHC 218; HBC47.2009 (28 March 2014)). This is the jurisdiction to see that a trust or an estate is properly administered. Ancillary to this is the power to remove an executor and appoint a new one.

10. In deciding whether or not to remove an executor and appoint a new one, the primary consideration is the welfare of the beneficiaries. This applies whether the Court is exercising its jurisdiction under section 35 or its supervisory powers in equity.
11. In **Letterstedt**, Blackburn LJ said as follows at page 386:

It seems to their Lordships that the jurisdiction which a Court of Equity has no difficulty in exercising under the circumstances indicated by Story is merely ancillary to its principal duty, to see that the trusts are properly executed. This duty is constantly being performed by the substitution of new trustees in the place of original trustees for a variety of reasons in non-contentious cases. And therefore, though it should appear that the charges of misconduct were either not made out, or were greatly exaggerated, so that the trustee was justified in resisting them, and the Court might consider that in awarding costs, yet if satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed. It must always be borne in mind that trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.

At page 387:

In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries. Probably it is not possible to lay down any more definite rule in a matter so essentially dependant on details often of great variety. But they proceed to look carefully into the circumstances of the case.

12. In this case, the evidence of the plaintiff is that despite numerous requests and plea to the defendant, the defendant has simply failed to distribute the estate assets and neglected to provide a full account.
13. There is nothing before me to indicate that the said estate has been fully distributed and wound up.
14. Accordingly, exercising the inherent jurisdiction of this Court granted in equity and also the statutory jurisdiction conferred under section 35, I make the following final Orders:

- (i) that the plaintiff is forthwith appointed the executrix trustee of the estate in question.
- (ii) the plaintiff, upon sealing of the Orders, is forthwith to proceed with the distribution of the estate
- (iii) if after distribution, there is a surplus remaining, that surplus is to be applied towards the plaintiff's costs in instituting this action. (ie \$3,000-00)



.....
Anare Tuilevuka
JUDGE
Lautoka