

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Probate Action No. HPP 67 of 2020

IN THE ESTATE of SHANTILAL late of Nausori, Fiji, Deceased, Testate.

**EX-PARTE: JASUMATI BEN SHANTILAL aka JAISHREE and
PRAKASH CHANDRA both of Nausori, Fiji.**

APPLICANTS

Counsel : Ms. Singh A. for the Applicants.

Date of Hearing : 30th November 2020

Date of Judgment : 04th December 2020

JUDGMENT

[1] The applicants filed this ex-parte originating summons before the Master of the High Court which was later allocated to this court, seeking the following orders:

- a. That the court declare that the document dated 4th day of April 2018 is a will and testament of Shanti Lal late of Nausori, Fiji, Deceased.

- b. That the Letters of Administration with Will annexed be granted in the name of JASUMATI BEN SHANTILAL and PRAKASH CHANDRA.

[2] Section 6A of the Wills Act 1972 provides:

- (1) A document purporting to embody the testamentary intentions of a deceased person, even though it has not been executed in accordance with the formal requirements under section 6, constitutes a will of the deceased person if the court is satisfied that the deceased person intended the document to constitute his or her will.
- (2) The court may, in forming its view, have regard, in addition to the document, to any other evidence relating to the manner of execution or testamentary intentions of the deceased person, including evidence, whether admissible before or after the commencement of this section, of statements made by the deceased person.
- (3) A party that seeks a declaration under this section has the onus of proof.

Section 6 of the Wills Act 1972 provides:

A will is not valid unless it is in writing and executed in the following manner:-

- (a) it is signed by the testator or by some person in his presence and by his direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his will;
- (b) such signature is made or acknowledged by the testator in the presence of at least 2 witnesses present at the same time; and
- (c) the witnesses attest and subscribe the will in the presence of the testator,

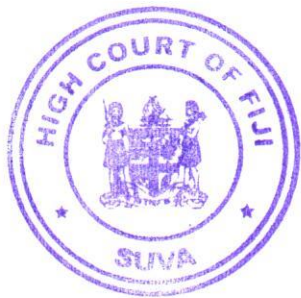
but no form of attestation is necessary.

[3] In this matter the testator has signed the will only in the presence of one witness. The witness to the will Paresh Parshotham has made a statutory declaration stating that the testator was duly advised of the document he was signing and he knew it was in respect of his properties that he would be giving after his death.


- [4] The testator has shown his clearly shown his intention to give shares of his estate to his two sons and the wife, in the will. It appears that there is no dispute as to the allocation of shares of the estate among the beneficiaries.
- [5] For the above reasons the court is satisfied that the last will embodies the testamentary intentions of the testator.
- [6] The applicants also seeks and order for the grant of letters of administration with the will attached. The court cannot make such an order until an application seeking the grant of probate or letters of administration is filed seeking the grant.

ORDERS

- (1) The court declares that the document dated 04th April 2018 is a last will and testament of Shanti Lal late of Nausori, Fiji, deceased.
- (2) The applicants are now at liberty to apply for the grant of probate.



04th December 2020


Lyone Seneviratne

JUDGE