

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**

**Civil Action No. HBC 346 of 2018**

BETWEEN

**NILESH PRASAD**

**PLAINTIFF**

AND

**UGESH PRASAD MAHARAJ** of Laucala Beach Estate, Suva, Fiji

**DEFENDANT**

**Counsel** : Mr. Kumar S. for the plaintiff  
Ms. Lutu I. for the Defendant

**Date of Hearing** : 23<sup>rd</sup> January, 2020

**Date of Judgment** : 25<sup>th</sup> February, 2020

## JUDGMENT

- [1] The plaintiff filed the originating summons seeking an order that the defendant be compelled to comply with the court order dated 11<sup>th</sup> September, 2017 incorporating terms of settlement executed on 22<sup>nd</sup> November, 2016 and to comply with the Will of his late father Mahesh Prasad or in the alternative the court could appoint someone at the defendant's expense to designate a place from where the plaintiff will reside and operate his garage from.
- [2] Mahesh Prasad, father of the plaintiff and the defendant died leaving a last will appointing Ramesh Prasad, Sneha Lata and Binay Lata Maharaj as Executors and Trustees of his estate.
- [3] The defendant in this matter filed HPP 47 of 2015 against the executors and trustees of the estate and that matter was settled on the following terms:
1. All trustees will resign and the Public Trustee is appointed as the Trustee of the estate of Mahesh Prasad until Ugesh Prasad Maharaj Returns to Fiji in June 2017.
  2. The cost of the Public Trustee is to be shared equally between the plaintiff and the beneficiaries of the estate of Mahesh Prasad equally.
  3. Nilesh Prasad is permitted to reside on the property on a place to be designated by the plaintiff for to reside upon and operate a garage from.
  4. Neither party shall interfere or abuse any party.
  5. Each party shall bear its own costs of this proceedings.
- [4] When the terms of settlement were filed in court Hamza J. made the following order:
- The matter is settled and concluded as per the terms of settlement.

- [5] The court has not made orders on the terms of settlement but it has only concluded the proceedings on the basis that the dispute between the parties has been settled.
- [6] In the probate action No. HPP 47 of 2015 two of the trustees of the estate that is Binay Lata Maharaj and Ramesh Prasad who were the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in that action filed summons seeking an order compelling the plaintiff in that action who is the defendant in the present action, to comply with the terms of settlement and the High Court dismissed the summons on the ground that there was no basis in law to file the summons. In the present action the plaintiff is seeking specifically to compel the defendant the term of settlement 3 that is Nilesh Prasad is permitted to reside on the property on a place to be designated by the plaintiff for to reside upon and operate a garage from.
- [7] The question here is whether the plaintiff has *locus standi* to bring this action. The plaintiff in this action is not a party the settlement sought to be enforced. It is a settlement between the defendant and Sneh Lata Prakash who is one of the executors of the estate. Settlement is also an agreement between the parties to it and only the parties to the agreement are bound by its terms.
- [8] There are exceptions to this rule. In English Law the a beneficiary of an agreement to which he is not a party is entitled to bring an action for enforcement under the Contracts (Third Party Rights) Act 1999. There is no such legislation in Fiji.
- [9] Even if the plaintiff in this matter is entitled to institute these proceedings as a beneficiary he must bring the correct party to the court.
- [10] The defendant is not authorised to deal with the property of the estate. The agreement was to appoint the Public Trustee as the executor. The defendant in this matter has not been authorised by the testator to deal with the property in question. The defendant in this matter is only a beneficiary of the estate. He has not been conferred any power to deal with the properties of the estate. The other parties to the settlement sought to be enforced by the plaintiff are the trustees and the executors of the estate. Therefore, defendant does

not have the power or authority to enforce the settlement even if the court makes the orders sought by the plaintiff.

[11] There is provision in the last will permitting the plaintiff to stay on the property and there is no provision in the last will permitting the plaintiff to operate a garage on the property. Any agreement outside terms of the last will cannot be enforced. It is the primary duty of the executors or administrators as the case may be, to give effect to the intention of the testator.

[12] For the foregoing reasons the court makes the following orders.

### **ORDERS**

- (1) The Originating Summons of the plaintiff is struck out.
- (2) There will be no order for costs.



  
Lyone Seneviratne

**JUDGE**

25<sup>th</sup> February, 2020