

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 34 of 2014

BETWEEN: **MISHRI PRASAD JAS**

PLAINTIFF

AND: **SANTRAM and SHIU RAM**

DEFENDANTS

BEFORE: Hon. Acting Chief Justice Kamal Kumar

COUNSEL: Mr A. Sen for Plaintiff
 Ms M. Tikoisuva for Defendants

DATE OF RULING: 10 June 2020

RULING
(Application for Leave to Appeal)

1.0 Introduction

1.1 On 18 July 2018, Plaintiff filed Application for:-

“(i) *Leave to substitute Plaintiff by replacing the name as Plaintiff as Roshni Bala as administratrix of the Estate of Ram Jas;*

(ii) *The Leave be granted for Plaintiff to appeal Justice Alfred's decision delivered on 4 July 2018."*

1.2 On 1 October 2018:-

- (i) Roshni Bala as Administratrix of Ram Jas was substituted as Plaintiff by consent;
- (ii) Court noted that Plaintiff was at liberty to file Application for Leave to join Estate of Mishri Prasad as Plaintiff and to amend Statement of Claim;
- (iii) Court ruled that there was no need for Plaintiff to seek leave of Court to appeal decision of Justice Alfred and that Plaintiff should file Notice of Appeal and Grounds of Appeal in Court of Appeal;
- (iv) At the request of Plaintiff's Counsel, Court was to give reason on notice.

2.0 Chronology of Events

2.1 On 30 June 2014, Plaintiff filed Originating Motion seeking following declaration and Orders:-

- “1. A declaration that the late Ram Baran and late Ram Jas had held the freehold land comprised in the CT 21230 as tenants in common and not as joint tenants.
- 2. A declaration that the Plaintiff is entitled to one-half undivided share in the said CT 21230.
- 3. An Order against both defendants to hand over the Title of the said CT 21230 to the Plaintiff within 7 days from the date hereof to enable him to register the transmission by death and the transfer of one - half undivided share in the CT 21230.
- 4. In the Alternative an Order against both defendants to execute the necessary documents, sub-divisional plan, Transfer or any other

documents required for obtaining of the Titles over various Lots which he is sub-dividing.

AND that the costs of an incidental to this application be paid by both Defendants.

(“Originating Motion”)

- 2.2 On 11 July 2014, parties were directed to file Affidavits and Originating Motion was adjourned to 1 August 2014, for mention.
- 2.3 On 1 August 2014, the then Master directed Plaintiff to file Affidavit in Reply and for parties to file Submissions and adjourned the Originating Motion for Ruling on Notice.
- 2.4 Ruling by the then Master was delivered on 11 March 2015, when he dismissed the Application to sever joint tenancy with costs.

3.0 Application for Leave to Appeal

- 3.1 In **Goundar v. Minister for Health** [2008] FJCA 40; ABU0075.2006S (9 July 2008), Court of Appeal at paragraph 37 stated as follows:-

“37. This is the position. Where proceedings are commenced in the High Court in the Court’s original jurisdiction and the matter proceeds to hearing and judgment and the judge proceeds to make final orders or declarations, the judgment and orders are not interlocutory.”

- 3.2 Even though this action was commenced in High Court; in Court’s original jurisdiction Justice Alfred dealt with Application for Leave to Appeal Master’s decision not in his Original jurisdiction but Court appellate jurisdiction.
- 3.3 It obviously means that for decision to be Interlocutory decision it should be delivered in respect to Application filed after the action has commenced.

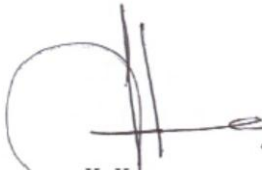
3.4 Applying this to Application for Leave to Appeal Master's decision, it is certain that Justice Alfred's decision in respect to Application for Leave to Appeal Master's decision is not interlocutory and as such Leave of Court is not required to appeal Justice Alfred's decision delivered on 4 July 2018.

3.5 If Justice Alfred:-

- (i) Granted that Leave to Appeal Master's decision and Plaintiff filed Notice and Grounds of Appeal; and
- (ii) Defendant then filed Application to Strike Out Appeal then any decision on Application to Strike Out Appeal would be an Interlocutory decision because Application to Strike Out Appeal is filed after the **Appeal has commenced** and **before Appeal is finely determined by the Court.**

3.6 This Court thus holds that no Leave is required to appeal decision of Judge in respect to Application for Leave to Appeal Master's interlocutory decision and the Plaintiff is at liberty to file Notice and Grounds of Appeal in Court of Appeal.

3.7 Each party is to pay their own legal costs in respect to Application for Leave to Appeal filed on 18 July 2018.


K. Kumar
ACTING CHIEF JUSTICE



At Labasa

10 June 2020

MAQBOOL & CO. for the Plaintiff

MITCHELL KEIL LAWYERS for the Defendants