

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HPP 64 of 2018

Fiji National Provident Fund
First plaintiff

Sunil Prasad
Second plaintiff

In the matter of the estate of Anil Prasad
Third plaintiff

v

Vinod Prasad
First defendant

The Registrar of Titles
Second defendant

Counsel: Ms M. Bale for the plaintiffs
Ms S. Kapoor for the defendants

Date of Judgment: 18th November, 2022

Judgment

1. These proceedings relate to the estate of Chandrika Prasad, (Chandrika).

2. The supporting affidavit filed on behalf of the first plaintiff states that Chandrika became the sole owner of CT 13259, Lot 3 on DP 3457 (the property) in Suva on the death of his wife Ms Satya Wati. She died on 11th July, 1989. Chandrika died on 29th March, 1990. He bequeathed the property to his four sons Vinod, (the first defendant), Sunil, Anil, Sushil in equal shares. Probate was granted to Vinod and Sunil on 24th August, 1990.
3. On 14th June, 1999, Vinod renounced all his rights, titles, interests and shares to Anil and Sunil in consideration of \$20,000. On 29th July, 1999, Sushil renounced all his rights, titles, interests and shares to Anil and Sunil for natural love and affection. Copies of the Deeds of Renunciation of Vinod and Sushil are attached. Sunil and Anil used \$10,000 from their FNPF funds under the FNPF's Housing Assistance Scheme to meet the consideration. On 8th August, 2000, FNPF paid \$10,000 each from Sunil and Anil's accounts to Maharaj Chandra Associates Trust Account. The property was to be transferred to Sunil and Anil by the executors of Chandrika's estate. On 29th May, 2016, Anil died testate and Letters of Administration was granted to his wife Reshmi.
4. The affidavit continues to state that on 17th August, 2000, Charge No. 485165 was endorsed on the title at the Registrar of Titles, (ROT) office. Transmission by death No. 485163, Transfer No. 485164 and FNPF charge No. 458165 were also endorsed on the title, but not signed by the ROT. On 28th July, 2016, Sunil and Reshmi applied to FNPF to discharge FNPF from the title. Neither Satya's and Chandrika's death nor transmission to the executors of the estate of Chandrika have been registered on the property.
5. The supporting affidavit of the second plaintiff reiterates the averments in the affidavit referred to above. He states that Vinod has migrated and has declined to transfer the property to Anil and Reshmi
6. The plaintiffs in their originating summons seek the removal of Vinod as executor and trustee of the estate of Chandrika, an Order for Sunil to transfer the property to Sunil and Reshmi and to record the death of Satya Wati and transmission on Chandrika's death on the title.

7. The affidavit in response filed by the ROT states that the transmission by death, discharge of mortgage, Charge and transfer were lodged and endorsed at his office, but were not registered, as there was no record of death.

The determination

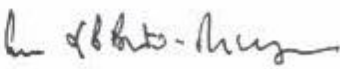
8. The plaintiffs seek that Vinod be removed as an executor of the estate of Chandrika in order that the other executor Sunil can transfer the property to Reshmi and himself.
9. I note that the other beneficiaries of the estate of Chandrika have renounced their rights in the property.
10. The affidavit of service provides that Vinod's whereabouts are unknown. The affidavit of the second plaintiff provides that he has migrated and has declined to register the transfer the property.
11. In the circumstances, I make order that Vinod be removed as executor of the estate of Chandrika, in order to effect the transfer to Sunil and Reshmi.

12. ***Orders***

I make Orders as follows:

- a) The death of Ms Satya Wati, who died on 11th July, 1989, and transmission to Chandrika Prasad and to Vinod Prasad and Sunil Prasad shall be recorded on CT13259, Lot 3 on DP 3457.
- b) Vinod Prasad is removed as executor and trustee of the estate of Chandrika Prasad.
- c) Sunil Prasad shall transfer CT 13259 Lot 3 on DP 3457 to Reshmi Prasad and himself.
- d) I make no order as to costs




A.L.B. Brito-Mutunayagam
JUDGE
18th November, 2022