In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HPP 58 of 2020

In the estate of Mahadeo

Roshni Devi Singh

Plaintiff

v

Deo Sharma Mishar

Defendant

Counsel: No appearance for the plaintiffs
                  Mr N Nambiar for the defendant
Date of hearing: 31st March,2021
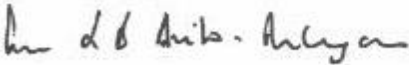Date of Judgment: 3rd May,2023

Judgment

1.   The plaintiff, in her originating summons seeks that the defendant, the sole Executor and Trustee of the estate of Mahadeo, (deceased) be directed to distribute the estate of the deceased in terms of his Will of 26 September,1986. Alternatively, she seeks a declaration that the defendant has failed in his duty as sole Executor and Trustee and that he be removed and replaced by her.

2. The plaintiff in her affidavit in support states that she is the Administratix and sole beneficiary of the estate of her late husband, Vijendra Deo Sharma, son of the deceased and one of the beneficiaries of his Will. She has no children nor did her husband have any children. Vijendra Deo Sharma was bequeathed shares in Crown Land, Lot 1 known as "*Naocau and Cibaciba*" no 4/9/131. Since Probate was granted to the defendant, he has not made any attempts to transfer the land to her husband's name. She states that she is entitled to his interest in the land. The iTaukei Land Trust Board has been sending her notice of arrears. The defendant has not made any attempts to clear the arrears nor transfer the land.

3. The defendant, in his response states that he and his late brother had equal shares in the estate property. The plaintiff has disposed and retained monies of several other properties of the estate. The plaintiff ought to clear her share of arrears in order for him to facilitate any transfer, as otherwise he would be solely paying for all costs. The plaintiff's action is statute barred under of section 9 of the Limitation Act. It has been approximately 30 years since Probate was granted to him.

4. The plaintiff, in her reply states that she is not statue barred under section 10 of the Limitation Act. She only became a beneficiary to the estate of the deceased when her husband passed away in 2012.

The determination

5. The plaintiff complains that the defendant, the sole Executor and Trustee of the estate of the deceased has failed to distribute the assets of the deceased.

6. On 3rd February,1992, the defendant was granted probate in the estate of the deceased, as provided in the copy of the grant attached to the plaintiff's affidavit in support.

7. The plaintiff's late husband, Vijendra Deo Sharma was a son of the deceased and a beneficiary under his Will.

8. Vijendra Deo Sharma died intestate on 28th September,2012. The plaintiff was granted probate of his estate.

9.   The plaintiff states that she has no children nor did her husband have any children.

10.   The defendant contends that the plaintiff's action is statute barred in terms of section 9 of the Limitation Act, as it has been approximately 30 years since Probate was granted to him.

11.   Section 10 of the Limitation Act provides that the period of limitation is twelve years from the date when share to the estate accrued.

12.   In my view, this action is not statue barred, as the plaintiff became a beneficiary to the estate of the deceased on the death of her husband Vijendra Deo Sharma on 28th September,2012.

13.   It is not disputed that the defendant has not cleared the arrears nor transferred the estate property for over 30 years since he was granted probate.

14.   I make order that the defendant, the sole Executor and Trustee distribute the estate in terms of the Will of the deceased of 26 September 1986, within a period of six months.

15.   ***Orders***
        a. The defendant, the sole Executor and Trustee of the estate of Mahadeo shall distribute the estate of Mahadeo to the beneficiaries in terms of his Will of 26 September 1986, within a period of   six   months from the date of this judgment.
        b. I make no order as to costs.

A.L.B.Brito-Mutunayagam
JUDGE

3rd May,2023