

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

Civil Action No. HPP 12 of 2022

IN THE MATTER of the **ESTATE** of **RAM RAJI** late of Nabau, Ba, Domestic Duties, Deceased, Testate.

AND

IN THE MATTER of Probate No. 19462 granted on the 24th day of March 1988.

BETWEEN:

ROSERIN NITA aka **ROSERINE NITA DEVI** of Navau, Ba, Fiji, Domestic Duties as the Sole Executrix and Trustee of the **ESTATE** of **SUNIT KUMAR LAL** late of Navau, Ba in the Republic of Fiji, Cultivator, Deceased, Testate as beneficiary of the **ESTATE OF RAM RAJI** late of Nabau, Ba, Domestic Duties, Deceased, Testate.

FIRST PLAINTIFF

VIMLESH KUMAR of Navau, Ba, Fiji, Businessman as the beneficiary in the Estate of Brij Lal which estate is the beneficiary of the **ESTATE OF RAM RAJI** late of Nabau, Ba, Domestic Duties, Deceased, Testate.

SECOND PLAINTIFF

AND:

VIJAY KUMAR LAL of Navau, Ba, Cultivator as the surviving Trustee of the **ESTATE OF RAM RAJI** late of Nabau, Ba, Domestic Duties, Deceased, Testate.

DEFENDANT

Appearance:

Mr R. Charan for the Plaintiffs. (Ravneet Charan Lawyers)
Ms Bilivalu for the Defendant. (Legal Aid, Ba)

Date of Hearing: 27th June 2023

JUDGMENT

1. The Plaintiffs seek to remove and discharge the Defendant as the surviving Trustee of the Estate of Ram Raji. They filed an Originating Summons with an Affidavit in Support on 16th February 2022. On 15th March 2022 the Defendant filed an Affidavit in Opposition. A second Affidavit in Opposition of Kusum Lata aka Kusum Lata Lal was filed on 15th March 2022. Kusum Lata aka Kusum Lata Lal is the wife of Late Rohith Kumar Lal, a beneficiary under the Estate of Ram Raji.
2. The Plaintiff's application is pursuant to **Section 35 of the Succession, Probate and Administration Act 1970** and Order 85 Rule 2 (2) (a) (c) and **Order 85 Rule 2 (3) (e)** and **Order 85 Rule 4 of the High Court Rules** and the inherent jurisdiction of the High Court.
3. The parties are not in dispute that Ram Raji passed away on 4th March 1983. She had executed a will on 17th June 1982. Brij Lal was the sole Executor and Trustee of the Estate of Ram Raji. The asset to be administered under the Estate is Certificate of Title No. 17383, having an area of sixteen acres one rood and twenty perches together with sugar cane farm and residential dwellings of the beneficiaries.
4. Under her will Ram Raji gave six and half acres of land from CT 17383 to her son, Brij Lal. The balance and residue of her property, including the sugar cane contract number 8623 (Varako Sector) was to her grandsons, **Rohith Kumar Lal aka Rohith Kumar** and **Sunit Kumar Lal aka Sunith Kumar** in equal shares and shares alike.
5. Through a Deed dated 16th March 1994, Brij Lal, the Sole Executor and Trustee of the Estate of Ram Raji appointed Vijay Kumar Lal (the Defendant) and Sunit Kumar Lala aka Sunith Kumar as the Trustees of the Estate of Ram Raji. Brij Lal retired as a Trustee. Brij Lal passed away testate. His son, Pradeep Kumar obtained Probate as his Sole Executor and Trustee. Brij Lal in his will gave his share of the six and half acres of land from CT 17383 (which he was bequeath by his mother, Ram Raji) to his son, Vimlesh Kumar. Vimlesh Kumar is the Second Plaintiff. The Second Plaintiff and the Defendant are sons of Brij Lal.
6. The First Plaintiff, Roserin Nita aka Roserin Nita Devi is the wife of Sunit Kumar Lal aka Sunith Kumar. Sunith Kumar Lal passed away on 17th August 2010. Roserin Nita

aka Roserin Nita Devi has obtained Probate No 51122 and is the Sole Executor and Trustee of the Estate of Sunith Kumar Lal.

7. The Plaintiffs contention is that the Defendant has neglected and refused to distribute the estate of Ram Raji to the beneficiaries. They also state that the despite numerous requests by them to subdivide, costs of which will be borne by them. The Defendant has failed to cooperate. To protect his interest the Second Plaintiff placed a Caveat on the property in 1996. The caveat was extended by the Court.
8. The Defendant for his part states that he instructed a surveyor to do a sub-division of the land provided the beneficiaries pay the costs. The Defendant is seeking that the Plaintiffs pay him for his services. Which is travelling, attending to bank, Fiji Sugar Corporation, gang meetings, bank charges, fuel expenses and other incidental expenses. He is seeking that the Plaintiffs pay him \$1000.00 per annum from 1994 to the date of removal. He is seeking not to be removed unless that payment is made. Upon the payments he is willing to hand over everything.
9. Kusum Lata in her affidavit supports the Defendant. She is happy for the Defendant to carry on as a Trustee. She is seeking that the beneficiaries compensate the Defendant. She further seeks that upon satisfactory remuneration, allowances and compensation the Defendant be allowed to be removed and she be joined as a Trustee with the Plaintiffs.
10. **Section 35 of the Succession, Probate and Administration Act 1970** gives the High Court wide powers to deal with the removal of an executor. It provides that *“The Court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its own motion on the report of the Registrar and either before or after a grant of probate has been made –*
 - (a) *make an order removing any executor of the will of such deceased person from office as such executor and revoking any grant of probate already made to him or her;*
 - (b) *By the same or subsequent order appoint an administrator with the will annexed of such estate;*
 - (c) *Make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and*

(d) *Make such further or consequential orders as it may consider necessary in the circumstances.*”

11. It has long been recognised that the Court has a general jurisdiction to remove trustees and substitute others where the welfare of the beneficiaries and of the trust estate requires such a remedy, that is where the Court considers that the continuance of the trustee in the trust would prevent the proper execution of the trust: **Letterstedt v. Broers (1884) 9 A.C. 371.**
12. The High Court of Australia in **Miller v. Cameron and Others [1936] 54 C.L.R 572** affirmed and relied upon **Letterstedt** (supra) and Dixon J stated that *“The jurisdiction to remove a trustee is exercised with a view to the interests of the beneficiaries, to the security of the security of the trust property and to an efficient and satisfactory execution of the trusts and a faithful and sound exercise of the powers conferred upon the trustee. In deciding to remove a trustee the Court forms a judgment based upon consideration, possibly large in number and varied in character, which combine to show that the welfare of the beneficiaries is opposed to his continued occupation of the office. Such a judgment must be largely discretionary. A trustee is not to be removed unless circumstances exist which afford ground upon which the jurisdiction may be exercised. But in a case where enough appears to authorize the Court to act, the delicate question whether it should act and proceed to remove the trustee is one which the decision of a primary Judge entitled to especial weight.”*
13. The Defendant in this matter is acting as a Trustee by virtue of a Deed of Appointment dated 16th March 1994. Brij Lal who was the Sole Executor and Trustee of the Estate of Ram Raji through the Deed retired due to old age and being incapable of performing his trust duties. The Defendant and Sunith Kumar Lal assumed the role of the Trustees. Since then, Sunith Kumar Lal has passed away. The Defendant thereafter remained as the sole surviving trustee. It is almost a period of 30 years that the Defendant was appointed a Trustee. This is considerable period of time. He had a task to perform. This involved the administration and distribution of the property under the Estate of Ram Raji.
14. This Court is of the view that the property under the Estate of Ram Raji should have been long distributed. It mainly comprises of Freehold land. The land should have been

transferred in the names of the beneficiaries. Sub-division of the said land within a reasonable period of time should not have been difficult. It was incumbent upon the Trustees to see that they performed their duties in a timely manner. The directions in the will of Ram Raji were clear. It was uncomplicated.

15. The Defendant is seeking from the Plaintiffs \$1000.00 per year of service to the Estate. This would equate to around \$39,000.00. No records or statements have been provided by the Defendant. He is in charge of the Estate. The Defendant is in charge of the distribution of the cane proceeds. It is incumbent upon him to keep all proper accounts (income and expenditure) and records. He cannot after 29 years seek compensation from the beneficiaries, who have had no say in the management of the Estate.
16. This Court notes that the relationship between the Plaintiffs and the Defendant has strained and is hostile. The Defendant is neither a person appointed by the deceased nor a beneficiary in the Estate. The current situation shows that the welfare of the beneficiaries is opposed to the continued occupation by the Defendant as a Trustee. The Court cannot disregard the significant time period that has gone by and the Trustees failing to carry out the duties which involved land being distributed to the beneficiaries. The Second Plaintiff placed a caveat on the land in 1997. There was no need for the protracted litigation. The proposed subdivision drawing of 2015 annexed by the Defendant in his affidavit does not show any allocation for 2 beneficiaries, namely Sunith Kumar Lal aka Sunith Kumar and Rohith Kumar Lal aka Rohith Kumar. As for the beneficiaries it is in their interest that they combine and promptly carry out the sub-division and distribute the Estate.
17. This Court notes that Kusum Lata aka Kusum Lata Lal has not obtained grant of probate/letters of administration for the Estate of her Late Husband, Rohith Kumar Lal aka Rohith Kumar. She is also desirous of being included as a trustee in the Estate of Ram Raji. Kusum Lata needs to promptly get the Estate of her late husband in order and work together with the Plaintiffs. It is in her interest.
18. Costs in this matter is allowed in favour of the Plaintiffs as the Trustee refused to give up the trusteeship and is removed by the Court, he is usually ordered to pay the costs for his removal: **Palaiet v. Carew (1863) 32 Beav 564, 55 E.R 222**. The cost of this

application is summarily assessed at \$3000.00. The Defendant is to pay these costs within 45 days.

19. For the reasons given herein. This Court Orders as follows:

- (a) That the Grant of Probate issued to initial Executor/Trustee, Brij Lal in the Estate of Ram Raji is revoked.
- (b) That **Probate Grant No. 19462** be returned and deposited in the High Court of Suva immediately.
- (c) The Defendant, **Vijay Kumar Lal** is removed as a Trustee in the Estate of Ram Raji.
- (d) That **ROSERIN NITA aka ROSERINE NITA DEVI** of Navau, Ba, Fiji, Domestic Duties as the Sole Executrix and Trustee of the Estate of Sunit Kumar Lal late of Navau, Ba in the Republic of Fiji, Cultivator, Deceased, Testate as beneficiary of the Estate of Ram Raji and **VIMLESH KUMAR** of Navau, Ba, Fiji. Businessman as the beneficiary in the Estate of Brij Lal which estate is the beneficiary of the Estate of Ram Raji are appointed as the Trustees of the Estate of Ram Raji.
- (e) That upon **KUSUM LATA aka KUSUM LATA LAL** obtaining and being granted Probate/Letters of Administration in the Estate of Ronith Kumar aka Ronith Kumar Lal, she be included as a Trustee in the Estate of Ram Raji.
- (f) That **ROSERIN NITA aka ROSERINE NITA DEVI, KUSUM LATA aka KUSUM LATA LAL** and **VIMLESH KUMAR** shall jointly forthwith administer and distribute the property in accordance with the will in the Estate of Ram Raji without any delay.
- (g) The costs of this application are summarily assessed at \$3000.00. The Defendant is to pay these costs to the Plaintiffs within 45 days.

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Chaitanya Lakshman

Acting Judge

21st July 2023

