

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

CIVIL ACTION NO.: HBC 338 of 2019

BETWEEN : NISCHAL NARAYAN
PLAINTIFF

AND : FERUZ FAIYAZ ALI
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. S. Naidu [AP Legal]
DEFENDANT : Mr. Lomaloma appeared on instruction [Sairav Law]
RULING BY : Master Ms Vandhana Lal
DELIVERED ON : **01 August 2023**

INTERLOCUTORY RULING
[Application for summary judgment]

1. The Plaintiff seeks orders for summary judgment in respect of its claim. An application is made pursuant to Order 14 Rules 1, 2 and 3 of the High Court Rules.
2. The Plaintiff is said to be Administrator of the Estate of his father Virend Chand via Letters of Administration De Bonis Non 56792 granted on 18th June 2015. The surviving beneficiaries are the Plaintiff and his 2 siblings. Lands comprised in Certificate of title 23154 and 22679 was and is part of the Estate property. Since Virend Chand died intestate the entirety of the Estate is not fully known. Prior to the Plaintiff, one Sneh Lata Devi was the initial Administratrix of the Estate who died leaving Estate unadministered.

3. The Defendant is the Executor of the Estate of Sneh Lata Devi who has placed caveats on the land preventing the Plaintiff from exercising his right to sell the land and distribute the proceeds.
4. The Defendant has acknowledged service of the writ of summon and statement of claim on 23rd October 2019 but failed to file/serve a statement of defence within the prescribed time under the Rules.

The writ was served on his counsel on 09th October 2019.

5. According to the Plaintiff, the Defendant has no defence as the Plaintiff was appointed as Administrator of the Estate of Virend Chand via letters of Administration De Bonis Non No. 56792.

Upon passing away of Sneh Lata Devi the only living beneficiaries are the Plaintiff and his two siblings.

Sneh Lata Devi was the second wife of the deceased.

Upon a proper audit of the Estate the Estate property is to be distributed to beneficiaries and proceed to winding up the Estate.

6. The Defendant opposing the application states, he agrees for the Estate be properly distributed under the law.

He placed the caveats to protect his right and interest and ensure the property is sold at current market rate. He fears that the Plaintiff will dispose the Estate property without giving the Defendant his share.

7. There is no dispute that the beneficiaries to the Estate of Virend Chand are: Estate of Sneh Lata Devi, the Plaintiff and his two siblings.

8. The Plaintiff is now the administrator of the Estate of Virend and the Estate has not been fully administered since 2005 when the initial grant was made to Sneh Lata Devi.
9. There is no bona-fide defence or issue raised which ought to be tried.
10. The Defendant's only concern is the sale value of the property not being realized at the market value. To ensure that properties are sold at market value appropriate orders can be made.
11. On the Plaintiff's application dated 26th November 2019 following orders are made:
 - (a) *Caveat number 806410 registered on 28th November 2014 on certificate of title 23154 and certificate of title 22679 are to be removed forthwith;*
 - (b) *The Defendant to surrender original Duplicate titles for certificate of title 23154 and certificate of title 22679 to the Plaintiff's solicitors by 12 noon on 11 August 2023;*
 - (c) *Audit of the assets to be conducted by an auditor appointed by the Plaintiff and a report is to be submitted to Defendant's solicitors accordingly;*
 - (d) *Current market valuation of both properties on certificate of title 22679 and certificate of title 23154 to be submitted to the Defendant's solicitors;*
 - (e) *The Plaintiff to sell properties being certificate of title 23154 and certificate of title 22679 by way of tender at the current market value and distribute proceeds of the sale to the beneficiary thereafter;*

(f) *Remaining assets of the Estate to be distributed amongst all beneficiaries;*

(g) *Parties to bear own costs.*



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Vandhana Lal [Ms]
Master of the High Court
At Suva.

01 August 2023

TO:

1. **Suva High Court Civil File No. HBC 338 of 2019;**
2. **AP Legal, Solicitors for the Plaintiff;**
3. **Sairav Law, Solicitors for the Defendant.**