

Introduction

Application By the Plaintiff

- (1) The Plaintiff filed an Originating Summons together with an Affidavit In Support and sought for the following orders:-
- (a) That the Defendant be removed as Executor and Trustee of the Estate of Gulam Ali Din aka Alidin, the Deceased, under the Will of the Deceased dated 15 October 1999 (the said Will) in the Grant of Probate dated 11 June 2009 (No 46435);
 - (b) That the sureties as required under section 20 of the Succession Probate and Administration Act be dispensed with;
 - (c) That Letters of Administration (with Wil Annexed) in the Estate of the said Deceased be granted to the Plaintiff;
 - (d) That the said Grant and the records be noted to this effect;
 - (e) That Alternatively the Defendant execute the said Will by transferring the real estate
 - (i) Certificate of Title No 16427 being Lot 2 of deposited plan 3204 containing an area of 2 roods, 2 perches and 4/10 perches and situated at Grantham Road, Raiwai, Suva Sheik Jamal-Ud-Dean Sheik Feroz-Ud-Dean with equal shares; and
 - (ii) 50% of the Deceased's interest in Certificate of Title No 8337 being Lot 10 Deposited plan 1963 Containing an area of 33 perches and 4/10 perches situated at Ratu Mara Road, Nabua, Suva to Sheik Jamal Ud Dean and Sheik Feroze-Ud-Dean in equal shares being the beneficiaries named in the Will with all necessary and proper accounts, directions and enquiries.

- (f) That alternatively the sale of Certificate of Title No 7786 being Lot 1 of deposited plan 1814 containing an area of 149 acres and located at Galoa be conducted under the Direction of the court.
- (g) An order that the Defendant do pay all the costs incurred by the Plaintiff and incidental to this action; and
- (h) Any relief deemed just by this Honourable Court

On the grounds contained in the Affidavit of Sheik Feroze-Ud-Dean sworn and filed herein.

And that the costs of and occasioned by this application be paid by the Defendants.

Application by the Defendant

- (2) Summons and Affidavit in Support by the Defendant for an Order that Leave be granted to Ahmed Riyaz-Ud-Dean to be added as parties to these proceedings with costs.

Plaintiff's Contention

- (3) The Testator Gulam Ali Din aka Alidin, died on 18th May, 2001.
- (4) The Testator's estate distribution according to his Will were as follows:
 - (a) Property comprised in Certificate of Title 7786 (Galoa property) to be sold. The proceeds of the value of 10 acres are to be held in trust by the Fiji Muslim League for the purposes to construct an Orphans and Widows home. The balance of the proceeds of sale be divided equally amongst the testators 8 children.
 - (b) Remainder and residue of his properties which are
 - i) Certificate of Title No 12497 (Grantham property) and 50% interest in Certificate of Title No 8337 (Nabua property) were to be distributed as follows;

- i. **Life interest to the testator's wife; and upon her death to**
- ii. Sheik Jamal-Ud-Dean and the Plaintiff for their use and benefit absolutely in equal shares and shares alike.

- (5) The testator's wife, Noor Un Nisha, died on 21 May 2002.
- (6) Probate for Gulam Ali Din aka Alidin was taken out on 11 June 2009.
- (7) The Plaintiff is a beneficiary of the said Will. The Defendant is the executor and a beneficiary of the said Will. Both parties are brothers, the Defendant being the elder of the two.

Defendant's Contention

- (8) That he had taken steps to administer the Estate of the Deceased by advertising the property in Galoa for sale and also have held discussion and meetings with the beneficiaries concerning a Family Deed dated 19th November 2007 which was signed by them before grant of Probate Grant. However, the Plaintiff was not corporating and refuses to comply with the Family Deed.
- (9) During the Family Deed being signed, there were discussions with regards to the property comprised in CT 8337 being Lot 10 on DP 1963 held as one undivided half share by my brother Ahmed Riyaz-Ud-Dean and other half share held by the late father.
- (10) Ahmed Riyaz-Ud-Dean advised him that the Plaintiff and his other brothers Sheik Jamal-Ud-Dean, named as beneficiaries of his late father's half share in the property comprised in CT 8337 had agreed to renounce their shares in his favour so that Ahmed Riyaz-Ud-Dean could have his property CT 8337 wholly under his name.
- (11) After Grant of Probate, Ahmed Riyaz-Ud-Dean showed him a Deed of Renunciãtion in 2009 for the share in CT 8337, which he said he will have the signed by the Plaintiff and Sheik Jamal-Ud-Dean.
- (12) The Plaintiff refused to sign the Deed of Renunciation, however, the other brother Sheik Jamal-Ud-Dean signed the Deed.

- (13) The Plaintiff is not incorporating and evading compliance with the Family Deed Arrangement.
- (14) Plaintiff should comply with the Family Deed arrangement so that all beneficiaries receive their benefit in the Deceased's Will and in accordance with the Family Deed Arrangement.
- (15) The Deed of Family Arrangement was not sought to any grant of Probate, rather made independently and therefore is legally binding.

Determination

- (16) There are two (2) substantive issues and one (1) issue on summons seeking for an Interlocutory order to join a party to the proceedings for this Court determines:

(i) Issue I

Whether the Defendant as the Executor/Trustee of the Estate of Gulam Ali Din aka Alidin, the Deceased, under the Will of the Deceased dated 15th October 1999 in the Grant of Probate of 11th June 2009 be removed due to his failure in distributing and disposition of the Testator's Estate?

(ii) Issue II

Whether the Deed of Family Arrangement dated 19th November 2007 is valid?

(iii) Issue III

Whether Ahmed Riyaz-Ud-Dean to be added as a party to these proceedings?

- (17) According to the Deceased's Will, the Estate was to be distributed as follows by the Executor/Trustee Ahmed Aftab-Ud-Dean [Defendant] -

- a) .Property comprised in Certificate of Title 7786 (Galoa property) to be sold. The proceeds of the value of 10 acres are to be held in trust by the Fiji Muslim League for the purposes to construct an Orphans and Widows home. The balance of the proceeds of sale be divided equally amongst the testators 8 children.

b) Remainder and residue of his properties which are Certificate of Title No 12497 (Grantham property) and 50% interest in Certificate of Title No 8337 (Nabua property) were to be distributed as follows;

- (i) Life interest to the testator's wife; and upon her death to
- (ii) Sheik Jamal-Ud-Dean and the Plaintiff for their use and benefit absolutely in equal shares and shares alike.

(18) It will be noted that the Executor/Trustee Ahmed Aftab-Ud-Dean [Defendant] was given a Grant of Probate No. 46435 by the High court of Fiji on 11th June 2009. He was empowered by the Probate Grant to complete the administration, distribution and transfer of the Assets as per the wish of the Deceased, Gulam Ali Din aka Alidin expressed in his Will Executed and dated on 15th October 1999.

(19) To the current, the Defendant in his capacity is the Executor/Trustee of the Deceased's Estate has failed to carry out his duties as was required of him under the Succession, Probate and Administration Act.

(20) However, the Defendant as the Executor/Trustee has only sought a Grant of Probate, granted to him on 11th June 2009 and has miserably failed to take the necessary steps in the Estate:

(a) The Testator died in 2001, grant of probate granted to the Defendant in 2009 and nothing has been done to complete the administration of the Estate.

(b) The Defendant has failed to register the Testator's death and his interest as the Executor and Trustee on all 3 property Titles being Certificate of Title Nos. 7786, 12497 and 8337 respectively. These properties belonged wholly or in part to the Testator.

(21) The failure by the appointed Executor/Trustee Ahmed Aftab-Ud-Dean [Defendant] to obtain the Grant of Probate only and thereafter not complete the administration of the Deed's Estate to the current, has prompted him to lodge the current application and seek the Removal of the

Plaintiff as the Executor/Trustee and/or that alternatively the Defendant to Execute the Deceased's Will by transferring the Real Estate and/or sale of Certificate of Title No. 7786 being Lot 1 on DP No. 1814 and other relief.

- (22) The beneficiaries of the Estate are aging and have not received their share from the Testator's Estate since his death in 2001.
- (23) The Testator's wishes were clearly conveyed through his Will. However, no Administration and Distribution have been made to the current to the beneficiaries entitled thereunder.
- (24) An application for vesting order was made in 2020 on Certificate of Title No 7786 (Galoa Property) as per the annexure B in the Plaintiff's affidavit. The likely basis for this vesting order is that of an adverse possession and this would comprise the beneficiaries' interest.
- (25) The vesting order application as per the evidence annexed as 'B' within his affidavit would not have been made if the Estate properties had been dealt with.
- (26) The Plaintiff had deposed in his affidavit at paragraphs 8-10 inclusive that he endeavored to take to his siblings about the distribution of the Testator's Estate in the past, however, there was no response from the Defendants.
- (27) However, the Defendant's contention is that the Plaintiff is not cooperating and is coming up with Technicalities to evade himself from complying with the Family Deed Arrangement dated 19th November 2007.
- (28) That the Defendant is ready and willing to distribute the Deceased's Estate properties but the Plaintiff has to perform and comply with the Deed of Family Arrangement which is a valid and Legal Document irrespective of whether the probate in the Estate was granted or not.
- (29) The Deceased's Will dated 15th October 1999 was at no time challenged by any of the beneficiaries of the Estate, even, when the application by the Defendant was made seeking the Probate Grant.
- (30) Further, there was never ever any issues raised with regards to any allegation (if any) whether the deceased's Will was forged.

- (31) Therefore, since the Deceased left believed the Will in his Estate, *Ab-Initio* the provisions of the Will stood valid and a grant of Probate given to the Defendant on 11th June 2009 accordingly.
- (32) The Deed of Family Arrangement does not bear the Probate Grant Number at paragraph B. It cannot be given any recognizance when the Deed's Will existed which ought to be granted recognition in terms of contents therein.

In Conclusion

- (33) The Defendant has since the grant of Probate of 11th June 2009, has failed to carry out his duties as that of an Administrator and to complete the administration in terms of the Deceased's Will. The Plaintiff and the other beneficiaries have waited for 22 years to obtain their benefits and entitlement from the Testator's Estate.
- (34) Further, delay and disposition in the distribution of the properties in the Estate Will greatly compromise their interests and entitlement in the Testator's Estate.
- (35) It is only proper and appropriate that the defendant is forthwith removed as the Administrator and Executor and Trustee of the Estate. The Defendant to forthwith deposit the Probate Grant No. 46435 into the Principal Probate Registry.
- (36) The Plaintiff is at liberty to lodge an application for a Letters of Administration Grant and upon the Grant has to take necessary steps to fully administer and dispose off the deceased's Estate in terms of the Deceased Will.

Summons [Order 15 Rule 6]

- (37) Ahmed Riyaz-Ud-Dean sought for him to be granted leave and joined as an intended party as a Plaintiff for the reasons deposed by him in his Affidavit in Support.

- (38) However, the application firstly was made too late bearing in mind that as a Beneficiary, Ahmed Riyaz-Ud-Dean for the past 22 years had not put in any effort to intervene and endeavor to resolve the matter with regards to the administration and disposition of the Estate properties as per the Deceased's Will.
- (39) For the above reasons, his application for joinder to the Court proceedings and not be acceded to one way or the other.
- (40) The summons filed in terms of Order 15 Rule 6 of the High Court Rules 1988 is accordingly dismissed.

Costs

- (41) The matter proceeded to full hearing and parties filing Documentations and Written Submissions.
- (42) The Defendant to personally pay from his pocket a sum of \$1,000 within 21 days timeframe for delaying and failing to fully administer and dispose off the property for 22 years now in terms of the deceased Will.

Orders

- i. The Defendant [Ahmed Aftab-Ud-Dean) is forthwith removed as the administrator of the Deceased's Estate.
- ii. The Defendant to Forthwith Deposit the Probate Grant No. 46435 into the Principal Probate Registry.
- iii. The Defendant is ordered to pay the Plaintiff personally from his pocket a summarily assessed costs of \$1,000 within 21 days timeframe.

- iv. The summons for joinder in terms of Order 15 Rule 6 of the High Court Rules 1988 is dismissed.

Dated at Suva this 26th day of October, 2023.



Vishwa Datt Sharma

JUDGE

CC: Prem Narayan Legal Practitioner, Suva
Nands Law, Suva