

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

Civil Action No. **HBC 157 of 2019**

**IN THE MATTER** of application for  
eviction under Section 169 of the Land  
Transfer Act Cap 131.

**AND IN THE MATTER** of an application  
for partition proceedings under Section 119  
of the Property Law Act Cap 130

**AND IN THE MATTER** of an application  
for sale under Section 23 of the Trustee Act  
Cap 65

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**BETWEEN:** **NAREND** aka **NARENDRA** of 400 Summer Garden Way, Sacramento CA 95833, USA as the  
Administrator and Trustee in the **ESTATE OF MOHAN** late of Lot 26 Maqbool Road, Nadera, Fiji  
Retired, Deceased, Testate.

**APPLICANT**

**AND:** **ROHIT SHALENDRA** of Lot 9 Maqbool Road, Nadera, Self Employed.

**FIRST RESPONDENT**

**AND:** **ROHIT SHALENDRA** of Lot 9 Maqbool Road, Nadera, Nasitu, Fiji, Sales Assistance as the  
Executor and Trustee in the **ESTATE OF RAJENDRA** late of 9 Maqbool Road, Nadera, Nasitu,  
Fiji, Printer, Deceased, Testate.

**SECOND RESPONDENT**

**AND:** **SASHI LATA DUTT** of 3/36 Malone Road, Mount Wellington High Way, Auckland, New Zealand.

Customer Care Officer as the Executor & Trustee in the **ESTATE OF JAMES SURENDRA PRASAD** aka **JAMES SUREND PRASAD** aka **SURENDRA** late of Nasole, Nasinu, Carpenter, Painter, Deceased, Testate

**THIRD RESPONDENT**

**AND:** **SUMINTRA DEVI** of Lot 26 Maqbool Road, Nadera, Fiji, as the Administrator and Trustee in the **ESTATE OF MAHENDRA** late of Lot 26 Maqbool Road, Nadera, Fiji Self Employed, Intestate.

**FOURTH RESPONDENT**

**AND:** **BHAN MATI** of Lot 26 Maqbool Road, Nadera, Nasinu, Fiji, Domestic Duties as Sole Executrix and Trustee in the **ESTATE OF AJENDRA** late of Lot 26 Maqbool Road, Nadera, Nasinu, Fiji, Self Employed, Testate

**FIFTH RESPONDENT**

**AND:** **SUNILA WATI** of Lot 26 Maqbool Road, Nadera, Nasinu, Fiji, Domestic Duties as Administrator and Trustee in the **ESTATE OF JOHN SATENDRA** late of Lot 26 Maqbool Road, Nadera, Nasinu, Fiji Intestate

**SIXTH RESPONDENT**

**BEFORE :** **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:** **Ms. Singh A for the Plaintiff**

**Respondents in Person.**

**DATE OF JUDGMENT: 17<sup>th</sup> February, 2023 @ 9.30am**

**JUDGMENT**

*[Vacant Possession, Appointment of a Valuer and Real Estate, Sale, Transfer and Distribution of the Property]*

## **Introduction**

[1] The Applicant filed the Originating Summons coupled with an Affidavit in Support on 24<sup>th</sup> May 2019 and subsequently filed an **Amended Originating Summons** on 1<sup>st</sup> November 2021 and sought for the following orders:

- (i) An Order that the 1<sup>st</sup> Respondent namely Rohit Shalendra, 4<sup>th</sup> Respondent namely Sumintra Devi and 6<sup>th</sup> Respondent namely Sunila Wati to give vacant possession of the property comprised in the Certificate of Title Number 28129 being Lot 26 on DP No. 5070 situate in the District of Naitasiri containing an area of one rood five perches and four tenths of a perch to the Applicant.
- (ii) The property comprised in the Certificate of Title Number 28129 being Lot 26 on DP No. 5070 situate in the District of Naitasiri containing an area of one rood five perches and four tenths of a perch be sold.
- (iii) The Applicant to appoint a reputable valuer, to carry out valuation of the property.
- (iv) The Applicants' Solicitor to appoint suitable Real Estate Company to sell the property at a price above and or equal to the current market value of the property.
- (v) The Applicants' Solicitors to attend to the transfer of the said property on behalf of the Respondents.
- (vi) Proceeds received from the sale of the said property be used to clear the arrears of city rates (if applicable) utility bills; costs associated with the sale of the said property including the legal fees of transfer and real estate commission after which proceeds are to be shared equally.

## **Background to Case**

[2] The Applicant Narend aka Narendra is the Administrator of the Deceased's Estate of Mohan.

- [3] He was given a Letters of Administration De Bonis with will Grant No. 59506 on 17<sup>th</sup> March 2017.
- [4] The Deceased Mohan owned a Property comprised in Certificate of Title No. 28129 being Lot 26 on DP No. 5070.
- [5] Upon demise of the Deceased Mohan, he devised and bequeathed the whole of his real estate to his wife Suruj Kuar for life time and upon her death to his six (6) sons namely, Rajendra, Surrendra, Narendra, Mahendra, Ajendra and John Satendra.
- [6] Subsequently, Suruj Kuar took demise and therefore respective Letters of Administration De Bonis non with Will grant was issued in succession to Surendra, Ajendra, Mahendra, Rajendra, John Satendra and finally to the Applicant, Narend aka Narendra.
- [7] The Applicant in his capacity as the Administrator of the Deceased Estate then registered the transmission by death on the said property on 26<sup>th</sup> April 2017 with the Registrar of Titles and Extracted a Provisional Title to the said property.
- [8] The Applicant is the only sole surviving beneficiary remaining in the Deceased Estate of Mohan according to him.
- [9] The Applicant wishes to fully administer the Deceased Estate of Mohan and equally distribute the sale of the proceeds of the property to the six (6) mentioned beneficiary's hereinabove.
- [10] That 1<sup>st</sup> Respondent Rohit Shalendra is currently occupying the said property who is a beneficiary in the Estate of Rajendra, who in turn is one of the beneficiaries of the Estate of Mohan in succession.
- [11] That without a Court Order for Vacant Possession, valuation of the said property and sale of the Deceased's Estate property, the Applicant cannot sell the property and distribute the sale proceeds equally to the six (6) beneficiaries as the Applicant in his capacity as the

Administrator intends to carry out the duties of the administration in terms of the law accordingly.

**Determination**

- [12] Foremost, the Applicant Narend aka Narendra is asking for an order for Vacant Possession only against the 1<sup>st</sup> Respondent, Rohit Shalendra , 4<sup>th</sup> Respondent namely Sumintra Devi and 6<sup>th</sup> Respondent namely Sunila Wati and not against the remaining Respondents namely Sashi Lata Dutt and Bhan Mati respectively.
- [13] This Court fails to understand why then the Applicant has also named the 3<sup>rd</sup> Respondent namely Sashi Lata Dutt and the 5<sup>th</sup> Respondent namely Bhan Mati if no order for Vacant Possession and other orders were sought against them.
- [14] The Plaintiff has sought for the orders enumerated at paragraph 1 hereinabove of my judgment in terms of the provisions of the law under *Section 169 of the Land Transfer Act 131, Section 119 of the Property Law Act 130 and Section 23 of the Trustees Act 65* respectively.
- [15] Further, the 1<sup>st</sup> Respondent during the hearing raised the issue that he has a beneficial interest in the Deceased's Estate of Mohan in succession and therefore, the Applicant should not have sought for an order for Vacant Possession and other orders against him to allow for the sale and valuation of the property and the proceeds of sale to be equally distributed to the beneficiaries of the Estate.
- [16] The 1<sup>st</sup> Respondent was also of the contention that although he wants the said property to be sold and has a share be given to him, however, until the property is sold, he should be allowed to reside on the said property.
- [17] The Applicant all along stated in his Affidavit and the submissions that he is the only sole surviving beneficiary remaining in the Deceased Estate of Mohan according to him and wishes to wind up the Deceased's Estate by sale. In the event if this Court grants the orders

sought herein, then the priority for purchase of the property will be given to the beneficiaries at the market value.

[18] I find that there are some other tribal issues that needs to be ironed out first at the trial before the Court can be satisfied and then determine the orders sought herein.

[19] Bearing above in mind, it is too late in the day for this Court to invoke the provisions of *O.28, r.9* of the High Court Rules, 1988 *that deals with the Continuation of proceedings as if cause or matter begun by writ*, since the matter has been heard and concluded.

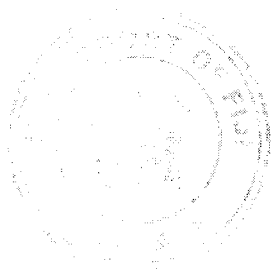
[20] Therefore, it is only appropriate and proper that the Applicant files a proper application and seeks for the respective orders herein accordingly.

[21] For the aforesaid Rational, in all fairness, there will be no order as to costs at the discretion of this court against the Plaintiff.

### **ORDERS**

- (i) The Amended Originating Summons seeking for Vacant Possession, Sale, Transfer and Distribution of the property is hereby accordingly dismissed.
- (ii) There will be no order as to costs at the Discretion of this court.

**Dated at Suva this 17<sup>th</sup> day of February , 2023.**



A handwritten signature in black ink, appearing to read 'Vishwa Datt Sharma', written over a horizontal dotted line.

**Vishwa Datt Sharma**

**JUDGE**

*CC KOHLI & SINGH SUVA  
RESPONDENTS NASIMC*