

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

PROBATE ACTION NO. HPP 081 OF 2024

**IN THE ESTATE OF BHUPENDRA SINGH aka
JAINENDRA SINGH** late of Woolloongabba,
Brisbane, Australia, Deceased, Testate.

IN THE MATTER of an application by **NIRMALA PRASAD**, Executrix and Trustee, in the Estate of **BHUPENDRA SINGH aka JAINENDRA SINGH** seeking rectification of the Testator's will.

Counsel : **Ms S Lodhia for the Applicant**

Hearing : **29 August & 6 September 2024**

Judgment : **6 September 2024**

EX TEMPORE JUDGMENT

(Ex – Parte application to Rectify Will)

- [1] The Estate has filed an ex-parte application seeking orders for a particular property that was not identified in the last will of Bhupendra Singh ('the testator').
- [2] The testator passed away on 13 July 2023. He was then divorced and had two adult children.
- [3] On 19 June 2023, the testator executed his last will before his death. The will was probated in Fiji on 26 January 2024 and is annexed to the affidavit of Nirmala Prasad in support of the present application.
- [4] According to the will, the testator's sister, Nirmala Prasad, was to be appointed the executor and trustee of the Estate. The will specifically disposes of two properties. The proceeds from the first property are to be distributed to his two children and other relatives. The proceeds from the second property are to be distributed to his two children,

his nephew and the testator's ex-wife. There is no general clause in the will for non-specified property.

[5] The testator inadvertently overlooked disposing of another property, being CT 3913 located at Wainimulu in the district of Rewa ('the property'), of which he has a one sixth share. As such, the Estate has filed the present proceedings. The Estate seeks orders that this property is included in the estate under the intestacy provisions in the Succession Probate and the Administration Act 1970. There were two questions that I asked Ms Lodhia to address, being:

1. Whether property not specifically dealt with in a probated will is to be treated as being distributed on intestacy.
2. If the answer to 1. is yes, then is the testator's ex-wife entitled to a distribution under s 6(1)(c) of the 1970 Act.

[6] On the first question, Ms Lodhia referred me to the definition of 'intestate' under s 2 of the 1970 Act, which reads:

includes a person who leaves the will but dies intestate as to some beneficial interest in his or her real personal estate;

[7] The property in question here falls within this definition and, therefore, the answer to the first question is in the affirmative.

[8] As to the second question, s 5 of the 1970 Act provides that the property of an intestate shall be distributed in accordance with the provisions in that Act. Section 6 specifically deals with the distribution of intestate property, Section 6(1)(c) provides for distribution where the testator had a surviving wife, husband or defacto partner. The question here is whether an ex-wife is a wife. I should think the answer is obvious and that there are sound policy reasons why an ex-wife should not come within this provision. To be certain, Ms Lodhia refers me to the decision of *Naidu v Devi* [2017] FJHC 509 (11 July 2017) wherein Tuilevuka J stated at 24:

As a starting point, one can safely say under the intestate provisions section 6, a legally divorced woman can claim no share in the estate of the deceased or former spouse. In this regard, the thing that operates to disentitle her is the legal divorce which effectively severs their relationship and, with that, any entitlement that she may have over his estate.

[9] I respectfully agree with His Lordship's statements.


[10] As the testator has no surviving spouse, s 6(1)(d) operates, which reads:

if the intestate leaves issue, but no wife or husband or defacto partner, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;

[11] For the above reasons, I make the following orders:

- i. Mr Bhupendra Singh's one sixth share in CT 3913 located at Waimulu in the district of Rewa is to be included in the estate of Bhupendra Singh aka Jainendra Singh.
- ii. The share is to be distributed by the Estate pursuant to s 6(1)(d) of the Succession Probate and the Administration Act 1970.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Lex Connect Legal for the Applicant