

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

High Court Probate Action No. HPP 41 of 2024

IN THE MATTER of the ESTATE OF MANI RAM late of Coloma, Vatukoula, Fiji Islands, Retired, Deceased, Testate

AND

IN THE MATTER of the within action seeking a decree pronouncing against the validity of the alleged false Will of the above named Deceased dated 31 July 2023. And for the recall and revocation of Probate No. 72978

BETWEEN: **SATYA PRAKASH** only son of late Mani Ram, of Brisbane, Australia, Fitter and **PREM LATA**, of San Francisco, USA and **SARAS WATI** of Melbourne Victoria, and **TARA WATI** of Loloma Vatukoula

PLAINTIFFS

AND: **PUSHPA LATA a.k.a PUSHPA LATA RAM** of Vatukoula, Domestic Duties

DEFENDANT

For the Plaintiff: Mr. Daveta. F

For the Defendant: Mr. Prasad. A

Date of Hearing: 13th November 2024

Date of Ruling: 12th February 2025

RULING ON INJUNCTION

1. This is a claim instituted by the Plaintiffs via Writ of Summons filed on the 25th of April 2024 against the Defendant. The parties are all siblings, and the cause of action arises from the Plaintiff's allegations that the Defendant is now benefiting from a Will that was forged.

2. The particulars of the Claim are as follows: -
- (a) All the parties are siblings, and all are the children of Mani Ram, deceased Testate.
 - (b) The Plaintiffs contend that they were always aware that their later father had made provisions for all of them under his Will dated 1989 and they were not aware that there was another will, a will that they now challenge as being fraudulent.
 - (c) The new Will is dated 31st July 2023, and in it the Defendant is appointed as the sole Executrix and Trustee over their late father's Estate.
 - (d) The Plaintiffs submit that their late father's Estate comprised the following: -
 - (i) Land and House at Loloma, Vatukoula (Instrument of Tenancy)
 - (ii) Fixed deposits and cash at ANZ Bank Accounts number 98542 and 98553 and 98531- term deposit total \$109, 000 (one hundred and nine thousand dollars) and cash amount to \$20, 000 (twenty thousand dollars).
 - (iii) Bank of Baroda Account numbers 91030100006440 and 91020200002087 amounting to \$100, 000 (one hundred thousand dollars.)
 - (e) The Plaintiffs contend that the Defendant coerced their late father into executing a new Will appointing her as the sole executrix and beneficiary, thereby denying them of their proper entitlements to their late father's Estate.
 - (f) The Plaintiffs therefore prays for the following remedies from the Court: -
 - (i) That the monies held in the respective ANZ and Baroda Bank accounts in Ba be frozen/cessation of any withdrawals until the case is finally determined.
 - (ii) An order that the Defendant do pay the costs of this action and be ordered to return all monies taken from the deceased's Estate other than what was necessary for his upkeep.
 - (iii) An order that the Defendant do pay the Plaintiff for damages caused to the Testator's Estate, if any to be assessed.
 - (iv) Any other such order that the Honourable Court may deem fit just and equitable.
3. The Plaintiffs have filed two separate Notices of Motion filed firstly on 12th June 2024 and later on 2nd July 2024 seeking the following orders: -

- (a) That the Defendant lodges at the Registry of the High Court the Letters of Administration-De Bonis Non/Probate No: 72978;
- (b) That the Monies/Funds which were withdrawn from the late testator's bank account and was later deposited into the Defendant's personal ANZ Bank account be frozen until the final determination of this action.
- (c) That the Defendant his servants or agents be restrained from using or withdrawing any further funds from the monies that had belonged to the late Testator named Mani Ram.
- (d) That the costs of this application be costs in the cause.
- (e) That any other orders the Honourable Court deem just and expedient.
- (f) The Plaintiff will rely on the affidavit sworn by **TARA WATI** one of the named Plaintiffs sworn and filed herein. The application is made under the Succession Probate and Administration Act and pursuant to the inherent powers of the High Court.
- (g) The evidence relied on is basically what has been pleaded in the Writ of Summons.

The applications for interlocutory Injunction

- 4. The first Notice of Motion was called on the 20th of June 2024 and the Court directed the Plaintiffs to give evidence of their means to meet any judgment as the affidavit in support had not contained any such undertaking.
- 5. Counsel undertook to provide the same and sought a short adjournment to file a supplementary affidavit. The matter was therefore adjourned to the 24th of June 2024, the Court granted an interim injunction valid till the 24th of June for the Plaintiffs to give an undertaking as to damages, and for the Court to give further directions.
- 6. On the 24th of June, the Plaintiffs failed to appear therefore the Court found that the interim injunction had lapsed and would not be renewed and directed that the substantive matter take its own course. The Plaintiffs were also ordered to pay \$500 in costs.

7. The Defendant filed her Affidavit in opposition on the 24th of June.
8. The Plaintiffs then filed a fresh Notice of Motion on the 2nd of July 2024, seeking the same remedies as the first Motion filed.
9. The Plaintiffs now additionally submit that the undertaking as to damages be dispensed with and they further propose that the value of the Estate serve as their undertaking as to damages, to be paid once the outcome is in their favour.
10. The Defendant filed her affidavit in opposition and supplementary affidavit in opposition and she opposes the application on the following grounds: -
 - (a) The application is defective as the Motion is deemed to be made pursuant to the Succession, Probate and Administration Act. This act does not provide for injunctions therefore the Motion before the Court is defective and should be struck out.
 - (b) She denies that allegations made by the Plaintiffs and states that they have not provided any evidence in support of their allegations against her. The Plaintiffs have not even provided a copy of the Will that they are challenging.
 - (c) She submits that she was granted Probate after due process of law, the relevant Probate action number is Probate number 72978. This current action is only brought out of spite as their late father had not included them in his last Will.
 - (d) She states that three of the Plaintiffs live overseas and must provide an undertaking as to damages.
 - (e) She submits that if the injunction is issued against her then her personal bank account will be frozen leading to personal difficulties for her as she is elderly and has no other means of supporting herself.
11. The application was heard on the 13th of November 2024. Both parties made oral submissions and they also filed written submissions to supplement their oral arguments. I am grateful to counsel for their helpful submissions.
12. The matter is now adjourned for the Ruling on this Interlocutory application.

Analysis

13. The Motion before the Court is made pursuant to “the Succession, Probate and Administration Act 1970 (there is no longer any reference to Chapters when citing statutes,) The preliminary objections made by the Defendant relates to the fact that the Act has no provisions to grant interim injunctions and this is fatal to the application before the Court.
14. In ruling on this preliminary objection, Order 2 Rule 1 provides that the effect of non-compliance with the High Court Rules will not nullify the application however and must be considered as an irregularity. I therefore find that the failure to cite the proper basis for the application is an irregularity and the application will be decided on its merit.
15. Applications for interim injunction are normally made pursuant to Order 29 rules 1 and 2 of the high Court Rules 1988, which provides as follows: -

“Application for injunction (O.29, r.1)

1.-(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the Plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made *ex parte* on affidavit but except as aforesaid such application must be made by Notice of Motion or Summons.”

16. The leading authority on such applications is the case of American Cyanamid vs Ethicon Ltd [1975] AC 398 and Lord Diplock’s pronouncement of the law at pages 408 and 409 of the judgment as follows: -

“As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider

whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the plaintiff's undertaking would not be sufficient to compensate him fully for all of them. The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies, and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case."

17. The principles that have been distilled from the above authority is as follows: -

- Is there a serious question to be tried?
- Are damages an adequate remedy?
- Where does the balance of convenience lie?

18. In addition to the above, the authorities are also clear that there is a corresponding obligation on applicants for such Ex Parte orders to disclose all the relevant facts frankly and fully (Sequitur Hotels Pty Ltd vs Satori Holdings Pte Ltd [2021] FJHC 276; HBC 270 of 2019 (3rd April 2020).
19. It is clear from the affidavits that have been filed that the Plaintiff has not provided any evidence to support their allegations that the Defendant is depleting their late father's Estate. The affidavit of Tara Wati filed in support of the application makes a lot of allegations without providing any evidence to support the same.
20. The Plaintiffs have also failed to provide any undertaking as to damages, although recent jurisprudence has indicated that this is not a mandatory requirement (Ali vs Ali [2016] FJHC 379; HBC 179 of 2015(6th May 2016).
21. In this case the Plaintiffs have offered the value of the Estate to meet any damages order. In other words, the Plaintiffs are telling the Court "look we are confident of winning therefore there is no need to provide an undertaking as to damages."
22. This is despite the fact that they have not offered any evidence at all in the affidavits before the Court. In addition three out of the four Plaintiffs are foreign residents therefore any awards of damages against them might have to be registered in their jurisdiction before it can be enforced.
23. The Defendant has also submitted that if the application is granted then she would suffer disproportionate harm as her personal accounts will be frozen for however long the substantive application takes to be concluded.
24. After considering the above factors I answer the three questions as follows
 - a) **Is there a serious question to be tried?** The Plaintiffs have failed to provide any evidence in their application therefore there is no serious question to be tried. The Plaintiffs have made serious allegations with nothing to back it up.

- b) **Are damages an adequate remedy?** The Plaintiffs have not offered any proper undertaking as to damages, especially since three of them are overseas residents and any order of the Court will be hard to enforce.
- c) **Where does the balance of convenience lie?** After considering the above factors, I find that the balance of convenience lies with the status quo remaining in place.

This is the order of the Court: -

1. **The application for interlocutory injunction is refused.**
2. **The parties are to expedite this matter towards Trial.**
3. **The Plaintiffs will pay costs summarily assessed at \$700**

There is a right of appeal.



Mr. Justice U. Ratuveli
Puisne Judge

cc: - Anil Prasad Lawyers
- Daveta Advocates