

IN THE HIGH COURT OF FIJI  
WESTERN DIVISION AT LAUTOKA, FIJI  
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 215 OF 2023

**BETWEEN** : **SUMAN LATA** of Kavika Street, Tavua, Fiji Domestic Duties  
**PLAINTIFF**

**AND** : **SUNITA DEVI** of Kavika Street, Tavua, Domestic Duties.  
**DEFENDANT**

**BEFORE** : A. M. Mohamed Mackie-J.

**COUNSEL** : Mr. S. Nair with Ms. V. Mudaliar, for the Plaintiff  
Mr. S. Luvena, for the Defendant.

**DATE OF W/SUBMISSION:** Filed by the Plaintiff on 16<sup>th</sup> May 2024  
Filed by the Defendant on 18<sup>th</sup> July 2025 Re the initial Application.  
Filed by the Plaintiff 19<sup>th</sup> August 2025 (Supplementary)

**DATE OF JUDGMENT** : 3<sup>rd</sup> October 2025.

**JUDGMENT**

**A. INTRODUCTION:**  
**Summons:**

1. The Plaintiff on 25<sup>th</sup> September 2023, by appearing in person, filed her Summons seeking the following reliefs against the Defendant. This Summons was issued returnable on 3<sup>rd</sup> October 2023.
  - i. *An order that a grant of administration **pendente lite** be issued to the Plaintiff as an Administratrix in the estate of Ram Prashad also known as Ram Prasad also known as Brijlal.*
  - ii. *The Plaintiff after the grant of pendente lit will render the quarterly accounts to the Deputy Registrar on the rent received as kept in the bank account for the purpose of distribution of the estate.*
  - iii. *That the purpose of grant of pendente lite is only for the purpose of administration and not distribution of the estate property*
  - (iv) *Any further order(s) and/or relief(s) as this Court may deem fit.*
2. The said Summons stated that it was being filed pursuant to Orders 76 rule 14 of the of the High Court Rules 1988, section 29 of the succession & Probate Act Cap 60 and inherent jurisdiction of this Court.

3. The above Summons was supported by an Affidavit of the Plaintiff, **Suman Lata**, sworn on 22<sup>nd</sup> September 2023 and filed along with annexures marked as “SL-1” to “SL- 14”.

#### **Inter-Parte Summons**

4. Simultaneously, on 25<sup>th</sup> September 2025, the Plaintiff also filed an Ex-parte Summons, seeking the following reliefs against the Defendant. This Summons was converted inter-parte and was also issued returnable on 3<sup>rd</sup> October 2023.
  - i. *An injunction restraining the Defendant from receiving the rental proceeds from the estate property located at Kavika Street Tavua, Crown Lease number 147462 Lot 22 on DP. 4144 in Tavua with an area of 32.3 perches.*
  - ii. *The Defendant file an Affidavit of a full inventory of the monies received from the rental property from the time she had given the estate property on rent within fourteen (14) days of service of the order and in the said Affidavit disclose the bank details in which the proceeds are held in her own name or jointly or by nominees such as her children or any Trust.*
  - iii. *That an order that the Plaintiff has no authority to give the estate property located at Kavika Street Tavua, Crown Lease number 147462 Lot 22 on DP. 4144 in Tavua with an area of 32.3 perches on rent without the consent of the surviving beneficiaries.*
  - iv. *Any further order(s) and/or relief(s) as this Court may deem fit.*
5. This Summons stated that it was being filed pursuant to Order 29 of the High Court Rules of 1988 and the inherent jurisdiction of the Court.
6. This Summons also was supported by an Affidavit sworn by the Plaintiff **SUMAN LATA** on 22<sup>nd</sup> September 2023 and filed together with annexures marked as “SL-1” to “SL-14”.
7. The Defendant, having appeared through her Solicitors on 3<sup>rd</sup> October 2023, filed her Affidavit in opposition to both the applications by the Plaintiff on 11<sup>th</sup> November 2024 and 24<sup>th</sup> November 2024 respectively, together with annexures marked as “SD-1” to “SD-8” to both the Affidavits.
8. The plaintiff filed her reply affidavit only in relation to the Defendant’s Affidavit in opposition filed on 24<sup>th</sup> November 2023, which was for the Plaintiff’s Inter-Parte summons filed seeking injunction order. Notably, no reply Affidavit was filed in relation to the Defendant’s Affidavit in opposition filed on 11<sup>th</sup> November 2023 for the Plaintiff’s Summons seeking the purported substantive relief for the grant of ***letters of Administration Pendente Lite*** .

#### **B. BACKGROUND IN BRIEF:**

9. The Plaintiff is the daughter of one RAM PRASAD also known as RAM PRASHAD, who was married to one PRITOM KOUR also known as SHANTHI SHEELA, PRITAMKOR and SHANTI SHILA, who had 6 children namely, VINOD KUMAR, ANUP KUMAR, RAJESH KUMAR, VIJEND

KUMAR, KISHRE KUMAR and the Plaintiff SUMAN LATA. Out of these children, only the Plaintiff and one of her brother, namely, RAJESH KUMAR are said to be surviving now , while others have passed away, including the both parents.

10. The said RAM PRASAD aka RAM PRASHAD (father) who died on 16<sup>th</sup> August 1980 was the last registered proprietor of Crown Lease No- 1474,62 Lot 22 on DP.4144 in Tavua with an area of 32.3 perches in extent, which consists of a double story residential property. The Plaintiff claims that the top floor of the property, which is on rent now is generating income of approximately \$550.00 per month.
11. The deceased Father RAM PRASAD left the Estate property to his wife, the said PRITOM KOUR, who died without administering the Estate. Thus, one of her Son, namely, the said VINOD KUMAR (Plaintiff's Brother) took out Letter of Administration *De Bonis Non* on 23<sup>rd</sup> January 2012. VINOD KUMAR Resided in Australia, while the property was being occupied and looked after by another Son ANUP KUMAR and his wife, SUNITA DEVI, who is named as the Defendant hereof. The said ANUP KUMAR also said to be deceased now.
12. As per the Defendant, the top floor of the property was on monthly renting until 2016, being given on lease by the sad VINOD KUMAR, while the Defendant SUNITA DEVI (Late ANUP KUMAR's Wife) is said to be in occupation of the ground floor of the property pursuant to the permission granted by the late VINOD KUMAR.
13. The Defendant also admits that the top floor of the property was still on renting till the last Tenant vacated in 2024 and the rental income thereof was utilized to repair the property, which had been severely damaged by the Cyclone Winston, and to pay the taxes for the property. It is under these circumstances; the Plaintiff filed this action on 25<sup>th</sup> September 2023 seeking the purported reliefs in her both Summons.

**C. HEARING:**

14. When the hearing on the inter-parte summons for reliefs, inter alia, an injunctive Order, was to be disposed by way of written submissions, and accordingly when the matter came up for ruling on 11<sup>th</sup> December 2024, the parties informed that the possession of the top floor has been handed over to the Plaintiff. As such, there was no need to proceed with the relevant inter-parte Summons and pronounce the Ruling on it. Accordingly, the said application was terminated and the hearing on the main matter was fixed for 18<sup>th</sup> July 2025.
15. Accordingly, when the hearing on the Substantive Summons was to be taken up on 18<sup>th</sup> July 2025, parties having agreed to dispose the same too by way of written submissions, have filed their respective written submission, on which this Judgment is pronounced.

**D. DISCUSSION:**

16. With the disposal of the inter-parte Summons for injunctive relief as stated above, what remains for adjudication is the Plaintiff's Summons for the grant of the Letters of Administration Pendente Lite as prayed for in paragraph (i) of the Summons dated 25<sup>th</sup> September 2023.

17. The reliefs (ii) and (iii) thereto, as I find, are ancillary reliefs which can be considered and granted only in the event the relief (i) thereof is granted by this Court. Thus, the only issue to be considered is whether the Plaintiff is entitled to obtain the relief (i) to the Summons as prayed for.
18. In terms of prayer (i) of the summons, what the Plaintiff seeks is an Order for a Grant of Administration Pendente Lite as an Administratrix in the Estate of Ram Prasad, also known as Ram Prashad.
19. Section 29 of the Succession and Probate Act Cap 60 states as follows;

*Administration pendente lite*

*29.-(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the court and act under its direction.*

*(2) The court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the court thinks fit.*

20. Learned Counsel for the Defendant in his written submissions has drawn my attention to the legal position that the granting of Administration of the Estate of a Deceased to an Administrator by the Court is subject to one pre-condition being met, which states as follows;

*(i). "Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending..."*

21. The above position clearly shows that when the relief sought from the Court is for the grant of the letters of Administration pending the Litigation, there has to be a substantive relief sought in relation to the validity of the Will or for obtaining, recalling or revoking of any grant. The grant of letters of Administration pendent lite itself cannot be the only and the final relief in the action.
22. The above position is supported by the case of Re McHugh [2015] NZHC 1271 where the Court observed that for the Court to exercise its jurisdiction in granting the Letters of administration Pending Litigation ;
  - a. *There must be a legal proceeding touching the validity of the Will of a deceased person or the grant of administration.*
  - b. *It must be necessary to grant an order for interim administration to preserve and manage the assets of the estate pending the resolution of those proceedings; and*

c. *The proposed appointee must be suitably qualified to perform the tasks of an administrator and must have shown an affidavit to faithfully administer the estate.*

23. In the matter before this Court, there is no legal proceeding touching on the validity of the Will of the late Ram Prasad aka Ram Prashad . Therefore, due to this pre-condition not being met, this Court is not obliged to exercise its jurisdiction to grant an order for interim administration.
24. The only issue advanced by the Plaintiff was with regard to the rental proceeds from the property. However, after filing of this action, the top flat of the property which belongs to the Estate is no longer rented and the same is now being occupied by the Plaintiff. Thus, the necessity for an injunction order sought by the Plaintiff in relation to the top floor did not arise and the application for injunction was dismissed by the Court on an earlier occasion.
25. Apart from the above, there is no any other issue to be decided or reliefs to be granted by this Court through this action. The plaintiff's Summons (application) for Grant of Letters of Administration Pendente Lite does not warrant any further consideration and same has to be dismissed. Considering the circumstances, this Court decide to grant no costs and parties to bear their own costs.

**E. FINAL ORDERS:**

1. The Plaintiff's Summons filed on 25<sup>th</sup> September 2023, seeking for the grant of the Letters of Administration pending Litigation fails, and is hereby dismissed.
2. The Plaintiff's Inter-Parte Summons filed on 25<sup>th</sup> September 2023, seeking for the relief of Injunction Order also fails, and is hereby dismissed.
3. No orders for costs, and the parties shall bear their own costs.

  
A.M. Mohamed Mackie  
Judge



At the High Court of Lautoka on this 3<sup>rd</sup> day of October 2025.

**SOLICITORS:**

**For the Plaintiff:**

**Prikans Law, Barristers & Solicitors**

**For the Defendant:**

**Messrs. Howell & Associates, Barristers & Solicitors**