

IN THE HIGH COURT OF FIJI
NORTHERN DIVISION
CIVIL JURISDICTION

Civil Action HPP 23 of 2021

BETWEEN: **ASHINI DEVI**

PLAINTIFF

AND: **SARENDRA SINGH**

DEFENDANT

Date of Hearing : 23 September 2025

For the Plaintiff : Ms R Raj

For Defendants : Not Present

Date of Decision : 9 December 2025

Before : Waqainabete-Levaci, SLTT, Puisne Judge

JUDGMENT

PART A – BACKGROUND

1. The Plaintiff and the Defendant are biological parents of the late Ravneel Singh who passed away on 18 December 2013 in Lautoka Hospital.
2. The Defendant was granted Letters of Administration Probate Number 55210 and filed a Civil Action 156/2014A for which he was awarded, on behalf of the deceased, by settlement, a total sum of \$35,000 (Thirty Five Thousand Dollars).
3. The Plaintiff now claims half of the total sum settled for the benefit of the Estate of their late son, Ravneel Singh amounting to \$17,500 and therefore alleged that the

Defendant failed in his fiduciary duty as the Administrator of the Estate of their Son to distribute the half share to her.

4. The Plaintiff claims that the Defendant was fraudulent causing her not to benefit from the settled sums by hiding the facts of obtaining the Letters of Administration. She claimed for the judgment sum of \$17, 500 (Seventeen Thousand Five Hundred Dollars), general damages and interest.
5. Thereafter the Defendant's Statement of Defence and Counterclaim was struck out for failing to file their Affidavit Verifying List of Documents.
6. The Trial proceeded on an undefended basis in Court.

PART B: EVIDENCES

7. The Applicant had a physical disability disadvantage with eye sight and hence the Court was mindful to ensure that she was given proper assistance when giving evidence.
8. She gave her sworn evidence that her son, the late Ravneel Singh went to Nadi after completing Form 7 to reside with his uncle. He was in police custody in Sabeto in 2013 and passed away on the 2nd night of his police custody. At that time the late Ravneel Singh was not married and aged 20 years 6 months. He eventually died whilst in police custody. Her husband, the defendant separated from her in 2021 and she resides with a defacto for the past 8 years. The defendant applied for and was granted Letters of Administration on behalf of the Estate of their son. She was informed by probate registry that she was entitled to 50% of the benefits from her late son's settlement monies. The settlement monies were from a court case in Lautoka Court for his untimely death during his period in custody in the police station in Sabeto, where a settled amount of Thirty Five Thousand (\$35,000) was awarded to her son's Estate. The Plaintiff claims for the settled sum, general damages and interest. Tendered were the following documents:

P Ex 1 - Request for medical report;

P Ex 2 - Medical Report of PI dated 6 March 2024;

P Ex 3 - Medical Report of PI dated 15 March 2024;

P Ex 4 - Birth Certificate of late Ravneel Singh dated 1 June 1993;

P Ex 5 - Death Certificate of late Raneel Singh dated 18 December 2013;

P Ex 6 - Letters of Administration of the late Ravneel Singh dated 9 May 2014;

P Ex 7 - High Court No 156.2014 sealed Consent Orders;

P Ex 8 - Letter to High Court probate requesting for Oath of Shalendra Singh as Administrator of the Estate of Ravneel Singh;

P Ex 9 - Letter from High Court Registry on 13 August 2014 confirming her as a beneficiary.

P Ex 10 - Oath of Administration for Estate of Ravneel Singh;

P Ex 11 - Demand Notice issued by counsel on 11 May 2020;

PART C: LAW, SUBMISSIONS AND ANALYSIS

9. The cause of action relied upon by the Plaintiffs is for Fraud in failing as the Administrator of the Estate of her late Son, Ravneel Singh, to properly dispense of his Fiduciary Duty for the Estate to devolve half of the shares arising from monies obtained from a settled court proceedings.

10. In the case of Pradeep Singh -v- Rajendra Singh & Another [2016] FJSC 48; CBV 006.2015 (25 June 2016) Supreme Court discussed in great length the principles for Fraud in Wills and Estates and Fiduciary duties. In that case the Plaintiffs were the beneficiaries of the Estate of their father which they disputed with the Defendant, their brother who was also the Administrator for the Estate of their mother. The mother was appointed the Executrix and Trustee for the Estate of their father for properties both in Fiji and India, which their father purchased whilst being an officer of the British Army. The Supreme Court, sitting as the full bench, stated:

“[24] The court will always relieve against the fraud which infects unconscionable bargains made with heirs, reversioners or expectants on the security of their expectant or their reversionary interests in property and fraud always is presumed in such cases from the circumstances of the partiesnamely weakness on the one side and on the other usury, extortion or advantage taken of their weakness. Fraud does not in these cases mean deceit; it means an unconscionable use of the powers arising out of the attendant circumstances and conditions and where the relative position of the parties is such as prima facie to raise this presumption the transaction cannot stand unless the person claiming the benefit of it can prove it to be in fact fair, just and reasonable” (P. 345 Halsbury’s Laws of England 4th Edi. Vol.18) (emphasis is mine)

[29] This court is unable to comprehend as to how the trial court came to the conclusion that there was a fraud without sufficient evidence elicited at the trial. The petitioner has not given any evidence on the

issue of fraud. The law says for there to be presumption of fraud there must be weakness on the side of one party and advantage is taken of that weakness by other party. Can we conclude that the petitioner had a weakness . He was a young man of 22 years old studying medicine in a foreign country at the time of signing the deed of renunciation and educated in English. We would reproduce paragraph 26 of the Court of Appeal judgment which is relevant to mention.

“What was the “*artful device*” on the part of the first defendant , the late Balwant Singh and Channan Kaur (deceased mother) practised on the appellant respondent in getting him to sign the deed of renunciation of his proprietary rights under the last will of Battan Singh.?”

[35] What are the tests that are commonly applied to determine any breach of fiduciary duty as constituting fraud on the part of the deceased mother? Where is the evidence to establish that the mother made unconscionable use of her power arising out of attendant circumstances of trusteeship? Mr. Mishra’s contention was that, by the conduct of the respondents it could be presumed that their design of the deed of the renunciation and the transfer of the property in the name of the first respondent was to achieve unconscionable bargains towards the petitioner who was an heir which amounted to a breach of fiduciary duty. What is fraud? It consists of a false statement which is made by “C” to “D” (Bissett v Wilkinson (1927) AC 177). What is the false statement the mother made to the petitioner. There was no evidence of such a false statement.

[36] In paragraph 93 of the trial court judgment, the learned trial Judge has agreed with the submission made by the counsel for the petitioner that the deceased mother had acted in breach of the fiduciary duties as the trustee which I reproduce as follows:

“I agree with the submission of Mr. Mishra as supported by the legal texts and judicial precedents, that the late Ms. Channan Kaur (deceased mother) acted in breach her fiduciary duties as the sole trustee and the executrix of the late will of the late Battan Singh towards the plaintiff when she transferred the property absolutely in the name of the first defendant notwithstanding the shares that the plaintiff was entitled to under the Last Will.”

[37] A fiduciary must not profit from his or her position as a fiduciary. What is the profit the deceased mother obtained on account of the

impugned deed of renunciation? (Please see Keech v Stanford (1726), in Snell's "Equity, John McGhee, 30th Ed. Sweet & Maxwell. There was no evidence that the mother made any profit out of the transfer of property".

[38] Furthermore, In Bristol West Building Society v Mothew, (1998) Chancery Div. P.1 The court observed that the following tests should be applied in determining any breach of fiduciary duty:

i) Failure to act in good faith

ii) Acts, omissions or concealments which may be deemed to constitute constructive fraud.

From the evidence elicited in the trial court we find that none of the above tests are applicable to the mother of the petitioner.”

11. Taking into consideration of these principles the Court considered the application before it.

Failure to Act in good faith

12. Letters of Administration Number 55210 appointed the Defendant as the Administrator for the Estate of the late Ravneel Singh.
13. On the basis of this Letters of Administration, the High Court entered Consent Orders in Civil Action 156/2014A for the Defendant as the Administrator for the Estate of Ravneel Singh pursuant to section 18 of the Succession, Probate and Trusts Act of Fiji Cap.
14. The Consent Orders granted the sum of \$35,000 as full and final settlement.
15. In his application for Letters of Administration, the Defendant had deposed in his Affidavit on Oath as Administrator that the other beneficiary to the Estate of the deceased Ravneel Singh, was the Plaintiff.
16. Since the grant of Letters of Administration on 18 December 2013 and the grant of Consent Orders by the Court on 28 November 2018, the Plaintiffs evidence is that the Administrator has failed to distribute the settled monies to the Plaintiff.

17. The Plaintiff evidence was that when Estate of the deceased, Ravneel Singh obtained the settlement sum, the Administrator failed to devolve the monies equally for both their benefit despite obtaining Court Orders in 2014.
18. Section 9 of the Succession, Wills and Trusts Act of Fiji states that all property, whether real or personal vests on the Administrator on the Grant of Probate intestate.
19. Therefore it was upon the Administrator to administer the Estate for the benefit of all the beneficiaries, in this instance it was himself and the Plaintiff.
20. Section 6 (1) (e) of the Succession, Probate and Administration Act requires that an Administrator shall hold the property on trust to distribute the residue of the Intestate in equal shares.
21. The Plaintiff argued that the Administrator has failed to comply and has never distributed equally her portion of the settlement sum showing that the Defendant acted out of bad faith.
22. From the evidences of the Plaintiff, there is circumstantial evidences, when taken together, established that the Defendant intended that after receiving the settlement monies in 2014, that the Plaintiff would not benefit from such monies.
23. The Plaintiff admitted she was living separately together with a partner now for 8 years, since 2017, 3 years after the Consent Orders were granted and slightly a year or two from when payments were made into the Defendant's account as Administrator of the Estate of the late son, Raveen Singh.
24. In the case of Pungathi -v- Latchmi [2018] FJHC 316; HBC 70.2015 (16 April 2018), applying the tests in Singh -v- Singh [2018] FJSC (Supra) for breach of fiduciary duty, the Court found the Executor and Trustee had breached his fiduciary duties in bad faith by transferring the property under his name when according to the Will of Latchmaiya, it was required to be transferred to the beneficiaries.
25. The Court therefore finds that on a balance of probabilities, the Plaintiff established that the Defendant failed to act in good faith by distributing the settled sums on receiving the settlement sum into the Estate of their son.

(ii) Acts, omissions or concealments which may be deemed to constitute constructive fraud.

26. In the Plaintiff's evidence, she submitted correspondences between her and the High Court Registry which revealed for which she was later independently advised by Counsel, that she was entitled to half share from the proceeds of the Estate of her son.
27. She was never informed nor was it brought to her knowledge during the period of her marriage her entitlement as the beneficiary.
28. She admitted in evidence that the Defendant intended to conceal this information in order to personally benefit from all the shares once he received the monies as Administrator of the Estate of the late Ravneel Singh.
29. That even though the parties had separated, as biological parents of the deceased, they were entitled to the share in the Estate as per the provisions of section 6 (1) (e) of the Succession, Probate and Administration Act.
30. Given that the Defendant's Statement of Defence and Counter-Claim were struck out and since the Defendant was not present to defend or to cross-examine the veracity of the Plaintiffs evidence, the Court finds that the evidences of the Plaintiff was fully admissible.
31. The Court therefore finds that the Plaintiffs evidence is circumstantial, however it is credible and sufficient to establish her relationship and entitled under law as a beneficiary and to establish that the Defendant had committed constructive fraud by not distributing the Plaintiffs shares from the Estate of their deceased son, Ravneel Singh.
32. The Plaintiff has submitted evidences of her marriage to the Defendant, her relationship to their son through his birth certificate and confirmation of their son's death through the Death Certificate.
33. The Court is therefore satisfied that the two elements for breach of fiduciary duty by constructive fraud has been established.

PART D: RELIEFS

Sum claimed

34. The Plaintiff is claiming for specific damages for the sum she was entitled to for the sum of \$17,500. This sum is the equal sum of settled monies she was to be apportioned as the beneficiary of her late son's Estate.
35. The Court will grant the application for that sum to be paid by the Defendant.

General Damages

36. The Plaintiff is also claiming general damages for the sufferings as a result of his conduct.
37. She suffers from Diabetes and bilateral cataracts with bilateral blind eyes due to Tractional retinal detachment of advanced diabetic retinopathy. She also suffers from foot sepsis and underwent a left foot debridgment and later developed Charcot arthropathy. Medical Reports over a year was tendered in court showing her aggravated conditions.
38. She is unable to fully take care of her-self and requires assistance sometimes.
39. There is causal link that the medical conditions were slightly aggravated from the conduct of the Defendant when he acted in bad faith. The Court will award the Plaintiff \$3000 as general damages.
40. She had asked during evidences for expenses for travelling, accommodation and preparing documentations for the trial. These were not pleaded and cannot be awarded to her under special damages.

Costs


41. Lastly for costs purposes, given the court documents and the trial proceeded on undefended basis, the Court will award the Plaintiff costs of \$1000.

Orders of the Court:

- (a) ***That the Plaintiff has established breach of fiduciary duty by the Defendant in constructive fraud;***

- (b) ***That Plaintiff is awarded \$17,500 as her share of the Estate of her son, Ravneel Singh paid by the Defendant;***
- (c) ***General Damages of \$3000;***
- (d) ***Costs of \$1000 awarded to the Plaintiff.***




Ms Senileba LTT Waqainabete- Levaci
Puisne Judge