

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 327 of 1979

BETWEEN: RAMSEWAK SINGH Plaintiff  
f/n Vikrama Singh

A N D : THE PUBLIC TRUSTEE OF FIJI Defendant

Mr. Verma  
Mr. B. C. Patel

Counsel for the Plaintiff  
Counsel for the Defendant

R U L I N G

The defendant is the administrator (apparently with will annexed) of the estate of one Vishwa Nath Singh (hereinafter called the deceased) who died on 5/1/79. The deceased was the sole executor of his mother Narbada who died on 28/6/60.

The plaintiff is one of the beneficiaries of the estate of Narbada and his claim is in respect of the administration of the estate of Narbada. It is to be noted that no action was taken against the deceased during his life time, and yet now 20 years after the death of Narbada the plaintiff seeks to pursue his claim through the defendant, although he has not made it clear exactly in what capacity he sues the defendant.

The defendant seeks to have the claim struck out as disclosing no reasonable cause of action.

Presumably the plaintiff is relying on a chain of representation through the deceased to the defendant, but if so his statement of claim not only fails to show clearly the existence of such a chain, but seems to indicate a break in the chain.

A chain of representation is broken by an intestacy, by a failure to appoint an executor, or the failure of an executor to obtain probate (see Halsbury 4th Edn Vol. 17 para. 750 and Tristram and Coote 23rd Edn. paras. 112, 113) and the chain does not devolve upon the administrator of an executor (Halsbury supra).

Although nothing on the matter appears in the various affidavits filed, it seems that the Public Trustee took out letters of administration because the executors refused to prove the will of the deceased.

Counsel for the plaintiff did not argue on the question of the break in the chain of representation but appeared to be arguing that nevertheless the defendant should be held to be the executor of Narbada's estate, presumably, because in reply to enquiries by counsel for the plaintiff, the defendant seemed to be considering the plaintiff's claims against the estate. However, considering claims is not the same as accepting their validity, and after due consideration the defendant has clearly rejected them and has filed an affidavit stating that he is not administering the estate of Narbada, nor is he assuming the administration of the estate, and that he has not intermeddled, nor has he any intention of intermeddling in the estate of Narbada.

The statement of claim has not suggested that the defendant should be held to be executor de son tort and there is clearly no reason why he should be so held.

The statement of claim therefore discloses no proper or reasonable cause of action against the defendant, and will be dismissed with costs.

LAUTOKA,  
4th July, 1980

(sgd.) G. O. L. Dyke  
JUDGE