

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**HPP 10 of 2012**

**BETWEEN** : **SAILESH SHALENDRA SINGH** normally of Auckland,  
New Zealand

**PLAINTIFF**

**AND** : **SUMINTRA KUMARI** of Malolo, Nadi, Domestic Duties

**DEFENDANT**

Appearances: Mr D. S Naidu for the Plaintiff  
Ms Baleilevuka for the Defendant  
Hearing: 10 August 2016  
Date of Ruling: 24 May 2019

**JUDGEMENT**

1. The plaintiff, Sailesh Shailendra Singh (“PW1”) is challenging the purported Last Will and Testament of his late father, Jagdish Singh (“Singh”) dated 05 February 2010 (“2010 Will”). The statement of claim and writ of summons was filed on 09 May 2012.
2. The claim alleges in the statement of claim:
  - (i) *that the 2010 Will was not duly executed in accordance with the Wills Act (Cap 59)*
  - (ii) *alternatively, that the signature on the 2010 Will was forged.*

(iii) Singh's wife, Sumintra Kumari ("**Sumintra**") may have been responsible for the death of Singh.

3. **PW1** seeks the following relief:

- (i) that this Court pronounce against the force and validity of the 2010 Will propounded by Sumintra.
- (ii) that he (**PW1**) be allowed to apply for Letters of Administration in the estate of Singh.
- (iii) that this Court pronounce that Sumintra is not entitled to a share in the estate of Singh having regard to her conduct.

4. To address the allegation that the 2010 Will was not duly executed in accordance with the Wills Act, a Chief Clerk of Iqbal Khan & Associates, Nawaz Khan (**DW4**) and a Senior Secretary (**DW3**) gave evidence on this. **DW3** said that on the **DW4**'s instructions, she prepared a Will for Singh in 2010 when he came to their office. She said she typed it up and also witnessed it. **DW4** said he received Singh when he came to his office and took his instructions which he recorded on a piece of paper and then gave it to **DW3** to prepare the Will. He also witnessed Singh's signature.

5. On the allegation that the signature on the Will was forged, the plaintiff seeks from this Court a declaration that the said Will was false and forged. The onus is on he who alleges fraud to prove it.

6. On this allegation, **PW1** gave evidence that he does not recall of any occasion of his father (Singh) at any time telling him that he (Singh) was making a Will. **PW1** also said he is aware of his father's signature from the numerous documents on which Singh had signed in the past, in particular, his (**PW1**'s) travel documents which Singh signed more than twenty years ago when he sent **PW1** abroad for studies.

7. **PW1** said in chief that his entire extended family has always retained Pillay Naidu & Associates as their Solicitors for every legal matter. It was curious that on the occasion of giving instructions for the purported 2010 Will, Singh would all of a sudden, prefer to instruct Iqbal Khan & Associates. However,

as **PW1** conceded in cross-examination, Singh of course was free to instruct any lawyer he wished.

8. **PW1** also relies on the evidence of Mike Marran (**PW2**), a handwriting expert who gave sworn *viva voce* evidence via skype from Auckland, New Zealand and who also prepared a detailed Report which was tendered in evidence.
9. **PW2** is an expert in the field with tremendous experience.
10. On the allegation that Sumintra may have been responsible for Singh's death, the plaintiff relies on the following:
  - (i) *the picture he paints as to what the circumstances of Singh's death were, and*
  - (ii) *the police investigations*
11. Under the said 2010 Will, Sumintra is named as sole executrix and trustee as well as the sole beneficiary. **PW1** accentuates this fact in his evidence, as if to emphasize the probability that Sumintra had a hand in Singh's death because she stood to benefit solely and entirely from his estate pursuant to the forged 2010 Will.
12. Singh died on the night of 17 June 2010 in his home in Malolo from burns he sustained from a fire which completely engulfed and gutted his house.
13. Sumintra was with him at home on the fatal night in question. She escaped the fire. At the time of his death, Singh had been married to Sumintra for some twenty years or so as **PW1** confirmed in his evidence.
14. **PW1** referred to Tab 4 of the Plaintiff's Bundle of Documents which he tendered (**PEX3**). This was an email sent on 20 June 2011 from a Manasa Talala of the Fiji Police Force to Shiu Singh, Singh's younger brother. The email says inter alia as follows:

*We are now taking a rest, compiling evidence and hopefully in the next few weeks to bring the person responsible to justice.*

15. PW4 Detective Corporal 2019 Anil Kumar is based at CID Nadi. He said that he took over the investigation of the case following his return from a tour of duty from abroad. The previous Investigating Office had passed on whilst the file was still open. He said he had perused the file and scoured the material gathered during investigation. The circumstances of Singh's death are indeed highly suspicious. PW4 pointed out some specific details.
16. PW4 said Sumintra was a person of interest to the Police. However, the Police cannot interview her because she developed a mental condition after the fire following Singh's death.
17. I observe that the Police has not charged anyone in relation to the fire that killed Singh.
18. While the evidence given for and on behalf of the plaintiff has raised curiosity about the 2010 Will and about the circumstances surrounding the fire, there is nothing in the evidence that suggests that Sumintra had a hand in Singh's death.
19. It would be awkward for this Court to make a pronouncement against the force and validity of the 2010 Will based on a mere suspicion against Sumintra without concrete evidence, or to pronounce that the signature on the 2010 Will was forged, without evidence as to who perpetrator is. I accept that a beneficiary who has committed a murder or manslaughter cannot benefit from the estate of the deceased. In **Amos v Public Trustee of Fiji** [2006] FJCA 45; ABU0090U.2005S (28 July 2006), the Fiji Court of Appeal reiterated the point thus:

*This is also in accord with the authorities in the case of a beneficiary who cannot take by reasons of criminality. In the case of **In the Estate of Hall, Hall v. Knight and Baxter** [1914] P 1 the beneficiary had been convicted of manslaughter of the deceased. The Court of Appeal followed the earlier case of **Cleaver v. Mutual Reserve Fund Life Assoc.** [1892] 1 Q.B. 147 Swinfen Eady said (at p.8) "I am of*

*the opinion that the estate of the testator must go in the same way as if these were no benefit given to (the convicted person)."*

20. However, to make such declarations as the one the plaintiff seeks in this case before me now, based on the plaintiff's whims that "Sumintra may have been responsible for the death of Singh", and therefore, should be disentitled, is not what Amos is authority for.
  
21. Interestingly, the plaintiff is not propounding another Will as the true Will. All he is saying is that the 2010 Will is a false Will. I cannot make such a declaration. The plaintiff's case is dismissed. Costs to the defendant which I summarily assess at \$3,000-00 (three thousand dollars only).



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Anare Tuilevuka

JUDGE

Lautoka