

In the High Court of Fiji at Suva

Civil Jurisdiction

Civil Action No. HPP 30 of 2011

Between

Chandra Wati

Plaintiff

And

Hari Pal

Defendant

Counsel: Mr P. Kumar for the plaintiff
Mr Shelvin Singh for the defendant

Date of hearing: 2nd May, 2018

Date of Judgment: 27th June, 2018

Ruling

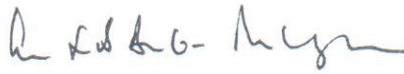
1. By summons filed on 9th March, 2018, the defendant, (Administrator of the estate of Bodh Mati) moves that the consent of the plaintiff to sell the estate property in CT no.10483 be dispensed with and the net sale proceeds be deposited in Court.
2. The affidavit in support states that the parties compromised this action by signing a deed of settlement on 29th June, 2016. The defendant's agent found a buyer to sell the property within 3 months, as provided in the deed of settlement, but the plaintiff "*wanted to buy the property herself and dragged on the proceedings*". In March 2017, the plaintiff's solicitors advised his solicitors that she will not purchase the property. On 25 July, 2017, his solicitors forwarded a deed of consent of beneficiaries to sell to the plaintiff's solicitors. The document was not returned. The plaintiff sought unilateral variation to the terms of settlement and asked for the agreement for the rental repayment by her to be waived or she will not consent to the sale. If the sale is delayed, the purchaser may file an action for specific performance against the defendant.

3. The plaintiff, in his affidavit in response states that defendant failed to sell the property within 3 months, as provided in the consent order.. The plaintiff proposed to purchase the defendants share, as the Deed of Settlement has expired and has no legal effect. The defendant failed to secure a buyer within the time frame stipulated in the Deed of Settlement.

The determination

4. The plaintiff seeks that the consent of the plaintiff to sell the estate property be dispensed with.
5. The Deed of Settlement filed by the parties on 29th June, 2016, provided inter alia that the “*the property shall be sold ..within 3 months or such other date as agreed between the parties*”.
6. The property has not been sold within three months.
7. The duty of the defendant, as Administrator of the estate is to administer the estate. He has statutory power to sell the estate property, in terms of section 23 of the Trustee Act and section 11 (3) of the Succession, Probate and Administration Act.
8. In *Ashwani Devi Singh v Pratima Devi and Registrar of Titles*, (HBC 319 of 2014) as cited by Mr Shelvin Singh, counsel for the defendant it was held that there was no necessity for the Administratrix to seek the consent of a beneficiary to exercise the power of sale of estate property.

9. The plaintiff as “*residuary legatee or devisee, however, has no claim to any of the deceased’s estate in specie nor to any part of that estate until the residue is ascertained. His right is to have the estate administered and then applied for his benefit*” - **Parry’s Law of Succession** (4th Edition) at page 225 as cited by Tuivaga J(as he then was) in **Sher Mohamed Khan Sherani v Manohar Jagroop and Others**,(1973) 19 FLR 85 at pg 89.
10. In my view, there is no requirement in law for the defendant to obtain the consent of the plaintiff, to sell the property. The defendant was not bound to sell the property within 3 months, although that term has been incorporated in the Deed of Settlement.
11. This summons for dispensation of the plaintiff’s consent is redundant. For that reason, I dismiss the summons.
12. **Orders**
- (a) The plaintiff’s summons is declined.
- (b) I make no order as to costs.



A.L.B. Brito-Mutunayagam
Judge
27th June,2018