

In the High Court of Fiji at Suva

Civil Jurisdiction

HPP Action No. 06 of 2010

Between

Arun Kumar and Adit Kumar

Second and Third Plaintiffs

And

Anoop Kumar

Defendant

COUNSEL: Mr A Singh for the second and third plaintiffs

Mr R Singh for the defendant

Date of hearing: 18th November, 2016

Judgment

1. The second plaintiff, the third plaintiff and the defendant are beneficiaries of the estate of their father, Surendra Prasad. Surendra Prasad died intestate on 2nd March, 1982. The defendant was appointed administrator of the estate on 9th September, 1982. The second and third plaintiffs by their originating summons sought several reliefs against the defendant.
2. On 15th July, 2015, I delivered judgment and made orders that:
 - (a) *The defendant shall provide the plaintiffs with full and complete accounts of the income and expenditure on the farm and all monies received on the sale of land within 14 days of this judgment.*
 - (b) *The distribution of the balance of the estate to the beneficiaries shall be completed within three months from the date of this judgment.*
3. By notice of motion, the second and third plaintiffs move that the defendant stand committed to Prison for his contempt :
 - A. *“in not paying obedience to a Judgment of this Honourable Court delivered on 15th July, 2015, ordering inter alia*
 - i) *The Defendant shall provide the Plaintiffs with full and complete accounts of the income and expenditure on the farm and all monies received on the sale of land within 14 days of this Judgment.*
 - ii) *The distribution of the balance of the estate to the beneficiaries shall be completed within three months from the date of Judgment.*
 - B. *Alternatively, that the above-named Applicants be at liberty to issue a Writ of Attachment against the above-named Anoop Kumar for his contempt aforesaid”.*

4. In an affidavit in support of the motion, the second plaintiff states that:
 - (a) The particulars and information requested by the plaintiffs have not been supplied by the defendant. The accounts supplied by the defendant do not comply with the judgment. The accounts are neither full, nor complete particularly as to the sub-division of the land.
 - (b) The accounts show that the total income generated from the sale of the sub-division as \$127,000.00 and a substantial portion of the income expended as sub-divisional costs. The defendant has been guilty of rendering false accounts to the beneficiaries.
 - (c) The defendant has not distributed the estate in terms of the judgment of the Court. The transfer can be done without a physical sub-division of the land.

5. On 25th August,2016, I granted the plaintiffs leave to make the application for committal proceedings.

6. The defendant in his affidavit in reply filed on 27th September,2016, states that he has provided the accounts of the estate on 24th August, 2015 He does not have the source documents required by the Accountants to properly finalise the accounts from 1999. In 2009, the first plaintiff took all the papers he had in relation to the sale of the lots. The plaintiffs authorized the defendant in writing to subdivide the land, sell the lots and use the proceeds. The first plaintiff approved the sale of the estate land and allotted the land to the purchasers. The plaintiffs have not responded to his proposed distribution of the estate, by him purchasing the share of the plaintiffs.

7. The second and third plaintiffs in their joint affidavit in reply reiterate that the accounts provided by the defendant accounts are incomplete. The second plaintiff states that no source material was handed or shown to him, as alleged by the defendant .

The determination

8. At the hearing, Mr R. Singh, counsel for the defendant raised a preliminary objection that there is no authority attached to the affidavit of the second plaintiff authorizing him to file the affidavit in support of the motion on behalf of the third plaintiff
9. I do not find merit in that contention for the reasons that the third plaintiff has sworn to the affidavit in support of the originating summons filed in this case and the affidavit in reply in these committal proceedings.
10. The first question that I have to determine is whether there has been a failure on the part of the defendant to comply with my order "*to provide the Plaintiffs with full and complete accounts of the income and expenditure on the farm and all monies received on the sale of land*".
11. It is not in dispute that the defendant provided the plaintiff with accounts and the plaintiffs thereafter sought further "*clarification*", as stated in their solicitors Singh & Singh Lawyers letter of 2nd September,2015, to Messrs Patel & Sharma, solicitors for the defendant.
12. In the circumstances, I do not find that the defendant has disobeyed my first order.
13. My second order was for the distribution of the balance of the estate to the beneficiaries to be completed within three months from the date of my judgment of 15th July,2015.
14. The defendant states that the plaintiffs have not responded to his suggestion that he purchases their interest, as conveyed by his solicitors by their letter of 14th October,2015,.
15. In my view, the defendant has failed to provide a cogent reason for failing to comply with my order.
16. In my judgment, the defendant has willfully disobeyed my order to distribute the balance of the estate to the beneficiaries within three months from the date of my judgment.
17. I am satisfied that a contempt of court has been committed.

18. I therefore find that the defendant has willfully disobeyed the Order of Court. I find the defendant guilty and convict him for contempt of court.

19. I will now hear the defendant on sentence.

A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

2nd February, 2017

