

In the High Court of Fiji

At Labasa

Civil Jurisdiction

Civil Action No. HPP 89 of 2020

In the Estate of Ajay Pal Singh

Randhir Singh

Plaintiff

v.

Heer Singh

Defendant

Counsel : Ms R. Raj for the plaintiff  
Mr Sarju Prasad for the defendant

Date of hearing: 17 June,2022

Date of Judgment: 2<sup>nd</sup> November,2022

### **Judgment**

1. The plaintiff, in his originating summons filed on 19 November,2020, seeks that:
  - a. The defendant be removed as the sole executor and trustee of the estate of the late Ajay Pal Singh,(the deceased) or in the alternative, he transfers his half share in Crown Lease No. 11040,(CL).
  - b. The defendant immediately surrenders Probate grant No. 52653 to Court.
  - c. Heer Mati Lal be appointed as the sole administratrix and trustee of the estate.

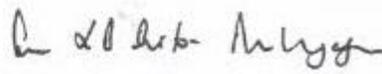
2. The plaintiff, in his supporting affidavit states that the deceased in his Will of 28<sup>th</sup> June, 2011, appointed the defendant, his son, and the plaintiff's brother as his sole executor and trustee. The deceased bequeathed CL comprising 16 A 2 R 15 to the plaintiff and the defendant's son in equal shares. On 14<sup>th</sup> December, 2013, the defendant registered a transmission of death on the CL. The plaintiff states that the defendant refuses to transfer his share of the CL and deprived him of his share of cane proceeds for the past 5 years. The defendant forced him out of the land. The defendant and his son want to sell the lease and are forcing him to sign documents and accept \$10,000 as his share.
3. The defendant, in his affidavit in opposition states that any dealing in the CL is void by reason of section 13 of the State Lands Act. The CL expired on 31<sup>st</sup> December, 1994. On 9<sup>th</sup> February, 1996, it was extended for a further period of 20 years from 1<sup>st</sup> April, 1995. The lease expired on 31<sup>st</sup> March, 2015. He applied for a renewal to the Director of Lands. The application is in process. After the grant of probate and during the term of the lease, he offered to transfer the lease to the plaintiff. The plaintiff declined stating that if the lease is in his name, his wife would apply for a share in the lease. The defendant states that he will transfer the lease after it is renewed.
4. The plaintiff, in his affidavit in reply states that cane was cultivated and harvested to-date. The defendant received bonuses. The lease has not been renewed for the past 4 years 11 months. He never told the defendant not to transfer the lease to him. His wife said that she does not want a share from his matrimonial lease He denies that he wanted to deprive his wife's share of the lease.

***The determination***

5. The plaintiff seeks that the defendant be removed as executor. Alternatively, that his half share of the CL, ( as bequeathed by his father) be transferred to him.

6. At the hearing, Ms Raj, counsel for the plaintiff produced a letter dated 26<sup>th</sup> October,2021, from the Ministry of Lands & Mineral Resources to the defendant advising that the outstanding rental on State lease no 23558-Lot 4, M2853 is \$ 4340.93 has to be paid for the release of the lease document to the Bank as per mortgage. Mr Prasad, counsel for the defendant had no objection to the letter being produced. He stated that he gave the letter to Ms Raj.
7. I note that the CL comprising of Lot 4, M2853 Lot 1, M2853 and Lot 2, 20513 expired in 31<sup>st</sup> March,2015. The defendant states that he made an application for extension in 2015.
8. The deceased died on 14<sup>th</sup> December,2011. The defendant was appointed as executor on 18<sup>th</sup> July,2012.
9. For a period of three years before the lease expired, the defendant failed to transfer the plaintiff's share in the CL for no legally acceptable reason.
10. In my judgment, the defendant has failed to discharge his duties as executor and trustee.
11. I make order that the defendant be removed as the sole executor and trustee of the estate and he surrenders Probate grant No. 52653.
12. **Orders**
  - a. The defendant is removed as the sole executor and trustee of the estate of the late Ajay Pal Singh.
  - b. The defendant immediately surrenders Probate grant No. 52653 to Court.
  - c. Heer Mati Lal is appointed as the sole administratrix and trustee of the estate
  - d. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 750.



  
A.L.B. Brito-Mutunayagam  
JUDGE  
2<sup>nd</sup> November,2022