Kamla Lal Hiranand v Harilela Padma Hari and Others
[2000] SGHC 17

Case Number : Suit 349/1999

Decision Date : 31 January 2000

Tribunal/Court : High Court

Coram : Tay Yong Kwang JC

Counsel Name(s) : Syed Almenoar (Tan Rajah & Cheah) for the plaintiff; Jeffrey Beh (Lee Bon Leong & Co) for the second defendant; Davinder Singh SC (Drew & Napier) for the first and third defendants

Parties : Kamla Lal Hiranand — Harilela Padma Hari

Probate and Administration – Grant of probate – Foreign grant of probate – Whether will unimpeachable in Singapore court – ss 43 & 46 Evidence Act (Cap 97, 1997 Rev Ed)

Probate and Administration – Grant of probate – Foreign grant of probate – Evidence – Whether necessary to prove will when petitioning for grant of probate – Whether fraud or collusion alleged – ss 43 & 46 Evidence Act (Cap 97, 1997 Rev Ed)

Succession and Wills – Formalities of will – No witnesses to deceased's will – Will not validly executed – Whether will creating and/or evidencing a trust in deceased's estate

Succession and Wills – Formalities of will – Document testamentary in character – Document not complying with Wills Act – Whether document can become virtual will by regarding it as declaration of trust

Succession and Wills – Conditions – Probate – Wills – Petition for grant of probate – Evidence of due execution of will – O 71 rr 9-13 Rules of Court 1997

: This was an appeal by the plaintiff against the decision of the learned assistant registrar in SIC 300556/99 where she made determinations on certain questions of law and made orders flowing therefrom.

The parties

The plaintiff is the daughter-in-law of Manghanmal Hiranand Ramchandani @ Manghanmal Hiranand (`the deceased`) who died on 30 August 1994 at Mt Elizabeth Hospital in Singapore. The deceased was domiciled in Hong Kong. The first defendant is a daughter of the deceased. The third defendant is the husband of the first defendant. The second defendant is the son of the deceased, husband of the plaintiff and brother of the first defendant.

The first and third defendants are the executors of the deceased`s estate under a will dated 24 April 1986 and a codicil dated 16 October 1987 (to be collectively referred to as `the 1986 will`).

The second defendant is the sole beneficiary named in the 1986 will.

The claim

The Hong Kong High Court has granted probate of the 1986 will to the first defendant with leave to the third defendant to apply for and obtain a like grant. In 1998, when the first defendant petitioned for probate in Singapore, she discovered that the plaintiff had filed a caveat against the grant of

probate here. Pleadings were then ordered to be filed.

The plaintiff claimed that the 1986 will was not executed by the deceased and that he did not execute and could not and would not have executed the said will in the presence of the alleged witnesses, one Raymond Lee (a solicitor) and Sandy Yung (a clerk) where the will was concerned and the said Raymond Lee and Betty Yip (a clerk) in the case of the codicil.

The deceased had executed a will in December 1983 (`the 1983 will`) at Los Angeles, California, wherein the first and third defendants were also named as executors. The deceased was then of ill health and had executed that will in urgent circumstances. It did not truly reflect his wishes and concerns and was revoked by him shortly thereafter.

On 22 November 1988, the deceased executed a document entitled `The Last will of Manghanmal Ramchandani` (`the 1988 will`) which he declared therein to be his last irrevocable will and testament which cancelled all previous wills and codicils. In the 1988 will, said to have been executed at Los Angeles, provision was made for the deceased`s wife but she predeceased him. That will also provided that upon the second defendant attaining the age of 45, the trustees appointed therein would distribute the principals of the trust together with their undistributed income to the second defendant (25%), the plaintiff (25%), their three children (15% each) and to all managers of the deceased`s business worldwide who had served him for ten years and more at the date of his death (5%).

The 1988 will, described therein as `an undisclosed will`, nominated the first defendant and one Ram G Hiranand as executors and trustees. It bore the apparent signature of the deceased but was not witnessed by anyone. However, all three pages of the 1988 will contained the stamps of `Berris Seton & Bishton`, law offices in Los Angeles.

The plaintiff averred that the defendants were well aware prior to the deceased`s death of his intention to distribute his estate in the manner stated in the 1988 will. Alternatively, the defendants were said to be aware of the declared intention and wishes of the deceased amounting to the creation of a trust.

It was further alleged that all three defendants had intermeddled with the deceased`s properties and their incomes since the death of the deceased and had failed to distribute the estate in accordance with the trust stated in the 1988 will.

The plaintiff therefore prayed that the petition for probate be dismissed, for a declaration that the 1983 will stand revoked and that the estate be subject to the said trust. In the alternative, if the 1983 will or the 1986 will be admitted to probate, a similar declaration that the estate be subject to the trust in the 1988 will was sought. The plaintiff also asked for an inquiry and account of the alleged intermeddling by all three defendants.

The defence and counterclaim

The defendants averred that the 1986 will had been duly executed by the deceased who was domiciled in Hong Kong. The High Court of Hong Kong has granted probate to the first defendant on 6 May 1998 and it was therefore the plaintiff`s burden to prove the matters alleged by her. The plaintiff was also said to be estopped from challenging the validity of the 1986 will or the grant of probate by the Hong Kong High Court since she did not protest against the grant of probate by the Superior Court of California, County of Los Angeles, on 18 July 1996.

The defendants denied any awareness of the existence or execution of the 1988 will and averred that no trust existed in law or in fact. They also denied any intermeddling with the estate as the acts of administration by the first defendant were validly done pursuant to the Hong Kong grant.

The defendants counterclaimed that the court pronounce against the 1988 will, that the plaintiff`s claim be dismissed, that probate of the 1986 will be granted to the first defendant with leave given to the third defendant to come in and prove the same and that the second defendant was the beneficiary under the 1986 will.

The reply and defence to counterclaim

This, in essence, denied any estoppel against the plaintiff challenging the grant of probate under the 1986 will as she claimed she was under the mistaken impression that the defendants or any of them was taking steps to administer the estate in accordance with the 1988 will in the various jurisdictions in which the properties were located.

The assistant registrar`s order dated 27 April 1999

The order appealed against is in the following terms:

> *1 Pursuant to O 14 r 12 of the Rules of Court, the following questions of law be determined:*
>
> *(a) whether the 1988 will is valid for the purposes of creating and/or evidencing a trust in the estate of Manghanmal Hiranand Ramchandani @ Manghanmal Hiranand, deceased (`the deceased`); and*
>
> *(b) whether the defendants have to prove the will dated 24th April 1986 read with the codicil dated 16 October 1987 (`the 1986 will and codicil) notwithstanding the fact that the 1986 will and codicil has been filed, proved and registered in the High Court of Hong Kong and Grant of Probate No HCAG010147/97 has been obtained thereof.*
>
> *And this court doth determine the abovementioned questions of law as follows:*
>
> *(a) that the 1988 will is not valid for the purposes of creating and/or evidencing a trust in the assets of the estate of the deceased; and*
>
> *(b) that the defendants do not have to prove the 1986 will and codicil as the 1986 will and codicil has been filed, proved and registered in the High Court of Hong Kong and Grant of Probate No HCAG010147/97 has been obtained thereof;*
>
> *And it is further ordered that:*
>
> *2 the plaintiff`s claim herein do stand dismissed;*

3 Judgment be entered for the defendants on their counterclaim such that:

(a) the court pronounces against the force and validity of the 1988 will propounded by the plaintiff;

(b) the court pronounces for the force and validity of the 1986 will and codicil and declares that:

i probate of the 1986 will and codicil be granted to the first defendant upon her petition filed on 4 September 1998 in Probate No 1641 of 1998 (leave being reserved to the third defendant to come in and prove the same as may be); and

ii the second defendant is the beneficiary under the 1986 will and codicil;

4 all caveats filed by the plaintiff in the Subordinate Courts and in the High Court be removed forthwith; and

5 the plaintiff do pay to the defendants their costs of this application and the action herein, fixed at S$9,500.

The application was taken out by all three defendants who were then represented by the same firm of solicitors.

The affidavits

All three defendants filed affidavits stating that the 1986 will was the only testamentary script of the deceased within their possession and knowledge and their belief that the 1986 will was prepared at the instructions of the deceased by his Hong Kong solicitors, Messrs Woo Kwan Lee & Lo, whose solicitor and employees witnessed the execution thereof.

The first defendant also affirmed an affidavit to state that he had sought legal advice from lawyers practising in Hong Kong (the deceased`s domicile), India (the deceased`s nationality) and California (where the 1988 will was purportedly made) as he had been advised that the laws of these three countries with which the deceased had a nexus could validate the 1988 will, which was obviously invalid in Singapore because of non-compliance with our Wills Act. All the lawyers consulted concluded that the 1988 will was invalid as a will in the respective jurisdictions.

The deceased continued to hold an Indian passport although he had been a Permanent Resident of Hong Kong since 1950. The entries in that passport showed that the deceased was in Hong Kong from 20 November 1988 until he left for the USA on 4 May 1989. It was therefore impossible for the deceased to have executed the 1988 will in Los Angeles on 22 November 1988.

The defendants also obtained an affidavit by Norris J Bishton, an attorney practising in California. From 1980 to 1982, he was a partner with the law firm of Berris, Seton & Bishton practising in Los Angeles.

Mr Bishton stated that the said law firm was not in existence since 1982. The law firm did not use any

of the two stamps appearing in the 1988 will. The purported Notary Public stamp bearing the law firm`s name was not one used in California as only individuals, not firms or corporate bodies, could be notaries. There was also no signature beside the stamps to verify the person who allegedly placed the stamps on the 1988 will. He confirmed that he did not place the stamps on that will and neither did he prepare nor witness the execution thereof. To the best of his belief, no one in that law firm prepared or witnessed that will. The law firm used various standardized provisions in wills, none of which appeared in the 1988 will, which was invalid anyhow in California as there were no two witnesses as required by law.

Norman Berris, another former partner in Berris, Seton & Bishton, said in his affidavit that he was a partner in the law firm of Berris & Seton from 1970 to 1987 located in Los Angeles. From about 1984 to 1985, the firm changed its name to Berris, Seton & Bishton. (From the latter portion of his affidavit, it would appear that Mr Berris meant changed `from` rather than `to`).

Mr Berris confirmed that he was not the one who placed the stamps on the 1988 will and he did not prepare or witness the execution thereof. To the best of his belief, no lawyer from the firm prepared or witnessed the said execution. He stated that the stamps were forgeries as the Notary Public stamp was not one used under the laws of California where only individuals could be notaries. The typewriter or computer font found in the 1988 will was not a type used by his former law firm. The name Berris, Seton & Bishton had not been used since approximately 1985 and in 1987 (about one year before the 1988 will was purportedly executed), the entire law office of Berris & Seton closed down. All stationery and stamps bearing the name of Berris, Seton & Bishton were destroyed in approximately 1985 when the firm`s name changed back to Berris & Seton.

In his opinion, the 1988 will was therefore a forgery. It was invalid in any event because of non-compliance with Californian law requiring at least two witnesses to the execution by the testator.

In her affidavit, the plaintiff explained how she came to know of the 1988 will. She was the only daughter-in-law of the deceased and lived in the same household as he did in Hong Kong. They were extremely close to each other. She cared for and attended to his needs like a daughter. The deceased and the plaintiff`s three children loved one another dearly.

In late 1988 or early 1989, the deceased requested the plaintiff, as he often did, to get his medicine kept in his personal drawer for him. This drawer also contained his personal items, documents, expensive pens and many gold coins. While getting the medicine, the plaintiff saw the original 1988 will. She glanced through it and seeing that it made provisions for her, her husband (the second defendant) and their three children, she was very grateful to the deceased although she did not speak to him about the will. Thereafter, whenever she was asked by the deceased to get something from that drawer, she would see the 1988 will there.

Sometime after the deceased`s wife died in 1989, he gave the plaintiff a copy of the 1988 will. At that time, the relationship between the deceased and the second defendant was strained.

The plaintiff produced copies of faxes exchanged between August to October 1994 between the second defendant and a firm of solicitors in London and a family friend, which, she claimed, would show that the defendants were well aware of the existence of the 1988 will. She did not elaborate. The faxes talked about transfer of the deceased`s properties, avoidance of USA tax and the deceased deciding to form a trust for his grandchildren and a proposed power of attorney to be made by the deceased in favour of the first defendant.

She reiterated that her claim was not to admit the 1988 will to probate and that all the affidavits of

the lawyers regarding the validity of that will in the various jurisdictions were therefore completely irrelevant. As for the allegation that the deceased could not have executed the 1988 will on 22 November 1988, she said from the abovementioned documents exhibited and `other evidence which I have in this matter but which is not appropriate to adduce in detail at this juncture, including several meetings held and telephone conversations, it is evident that the deceased executed the 1988 will, intending the contents thereof to be effected and believing that the 1988 will would be valid as a will; and the defendants were aware of the 1988 will`. Even if 22 November 1988 was not the date the deceased executed the 1988 will, that was irrelevant so long as it was executed by him. The important matter was whether it evidenced a trust.

The plaintiff maintained that all along she was under the impression that probate was sought for the 1988 will. The first and third defendants had given her that impression by mentioning after the deceased`s death that the deceased had wished to give all his properties to her family and that the estate would be distributed according to his wishes. It was only in November 1997 at a meeting with the second defendant and his (London) solicitor in London that she became aware of the 1986 will. On 6 May 1998, her then Hong Kong solicitors attempted to file a caveat in the Hong Kong High Court but were told that it was too late. When the defendants took out probate in Dubai, USA and Hong Kong, she was led to believe that it was the 1988 will that was being submitted.

In respect of the 1983 will, that was also made in or by the office of Berris, Seton & Bishton on 30 December 1983 and one of the three subscribing witnesses and his wife were and remained very close friends of the first and third defendants. The witness would have at least mentioned the 1983 will to the First and third defendants, who must have been the ones who arranged for the 1983 will to be prepared by the said Californian law firm and for their good friend to be one of the witnesses.

Where the 1988 will was concerned, the plaintiff believed that the deceased must have relied on some person(s) who misled him into believing that the 1988 will was valid as a testamentary document. There was therefore obviously more than met the eye in this case.

About a week before the appeal finally came up for hearing before me, the plaintiff`s solicitor filed an affidavit enclosing a statutory declaration made by the second defendant on 18 August 1999 together with a deed dated 28 May 1999. Both of these documents were made after the learned assistant registrar`s decision in this matter.

In this surprising turn of events, the second defendant turned the tables on the first and third defendants. He annexed a copy of a fax dated 6 October 1994 to his solicitor in London (which also appeared in the plaintiff`s affidavit) wherein he agreed with the solicitor that both the 1983 and the 1988 wills would attract USA tax problems and that in view of this, the executors (the first and third defendants) had `earlier organised another will prepared last September and since then I was very nervous to inform you`. This, according to the second defendant, was the 1986 will. The 1986 will could not have been made by the deceased since he had passed away on 30 August 1994 before that will was `organised in September 1994`. The signature of the deceased in the 1986 will was therefore a forgery.

In the statutory declaration, the second defendant went on to explain that since his father`s death, he had been in a confused state and the first defendant, who knew about his confused state, had been domineering and was controlling his affairs and instigating him to divorce the plaintiff and to forsake the three children. He had no intention of defending this action but was completely under the influence and domination of the first defendant who refused to listen to his protests. He had recently begun to realize the folly of allowing his sister to dominate him in this manner and had been trying to rectify what had happened since then.

The deed dated 28 May 1999 between the plaintiff and the second defendant stated that it was to be the full and final settlement of all matters arising out of this action. The second defendant agreed not to proceed with divorce proceedings, to remit certain amounts of money to his children by certain dates and to `implement and faithfully carry out all the wishes of the deceased as manifested and executed by the deceased in the 1988 will both in substance and according to the spirit of the 1988 will notwithstanding that the 1988 will may in any way be defective or unenforceable in law`. The second defendant also agreed to discharge and/or remove the first and third defendants as trustees and executors of all three wills in question and to appoint in their place such person(s) to be approved in writing by the plaintiff. The parties further agreed that nothing in the deed was to be construed as an admission by the plaintiff that the 1986 will was executed by the deceased, that the 1988 will was legally defective or unenforceable and that the 1983 will had not been revoked. The deed was witnessed by a Notary Public in London.

The decision of the court

Before the learned assistant registrar and before me, the parties agreed that the 1988 will was not validly executed and was not a will in Singapore or in any of the other relevant jurisdictions. It was of course a misnomer to call it a `will` but I think everyone concerned fully appreciated that and continued to use that term for the sake of simplicity.

I agreed entirely with the learned assistant registrar`s determination that the 1988 will was not valid for the purposes of creating and/or evidencing a trust in the deceased`s estate.

In **Cross v Cross** [1877] 1 LR Ir 389, a promissory note given by a daughter to her father was kept with the daughter as the father was dying. On his death, it was found that the promissory note was endorsed by the father with a direction that it was to be delivered up to be cancelled after his death so that the daughter would be exonerated from paying on the same. Unfortunately, the father`s signature was attested by only one witness. The court had this to say (at pp 400 to 402):

> *I cannot but say that it seems to me that some mischief has been caused by endeavouring to sustain the gifts of donors where they fail in the way they were intended to take effect, by making them valid in some other manner; for instance, by turning the donor into a trustee under an imputed declaration of trust. The law is placed upon a sound footing in **Richards v Delbridge**, and the passage in the judgment of Lord Justice Turner, in **Milroy v Lord**, quoted by Sir G Jessell in that case, clearly states the rule - `I think the cases go further, to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be effectual by being converted into a perfect trust.` That language applies with peculiar force here. Mr Cross, I think, plainly intended to keep the debt on the promissory note alive during his lifetime; he only intended that his daughter should be released therefrom on his death. That intention cannot be carried out in the manner he desired, as he made no valid testamentary disposition of the note in her favour. To hold that the note was a present gift **inter vivos**, or that Mr Cross constituted himself a trustee of it for his daughter, would appear to me to go not merely straight in the face of the endorsement, but to reverse all the acts and conduct of himself, and also of his daughter, bearing on the note itself ... In truth, Mr Cross endeavoured to make a testamentary gift of the note in a manner which the law does not permit. The gift must therefore fail.*

Similarly in **Towers v Hogan** [1889] 23 LR Ir 53, the court said:

> *... I decide this case solely on the second point, viz that the document relied on as a declaration of trust is a testamentary instrument, and not being executed as a will, is completely inoperative ... The language of the instrument and all the circumstances connected with it plainly indicate that the writer intended it should operate only after his death, and that he adopted this form of disposition only to avoid the payment of duty. If a document of this character, and executed as this was, were allowed to operate as the creation of a trust, the Statute of Wills would be practically repealed.*

Documents meant to be testamentary in character (ie having no effect during the life of the maker) which do not comply with the Wills Act cannot therefore become virtual wills by being regarded as declarations of trust. The 1988 will clearly fell within this category. To impose a trust by virtue of this document is to revoke the 1986 will by a process not sanctioned by law and thereby nullifying the Wills Act altogether.

The next issue is whether the first and third defendants have to prove the 1986 will notwithstanding the Hong Kong grant of probate. The first and third defendants relied on Section 43 Evidence Act which reads:

> *(1) A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.*
>
> *(2) Such judgment, order or decree is conclusive proof -*
>
> *(a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation.*
>
> *(b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person; ...*

Sarkar`s Law of Evidence*** (15th Ed, 1999) Vol 1 at pp 827 to 829 explains that judgments covered in the Indian equivalent of s 43 are usually referred to as judgments ***in rem*** which are conclusive not only against the parties involved but also against all the world. `Competent court` includes a foreign court and it is not in dispute that the Hong Kong High Court had the requisite jurisdiction to grant probate. ***Sarkar goes on to state that once probate has been granted, it is conclusive of the validity and the contents of the will and the appointment of the executors until the probate is revoked in proceedings for that purpose.

Section 46 Evidence Act provides that a judgment, order or decree under s 43 may be shown by a

party to have been delivered by a court not competent to deliver it or to have been obtained by fraud or collusion. Fraud or collusion in obtaining probate has not been pleaded in the statement of claim. However, in the plaintiff`s affidavit and the second defendant`s affidavit (where he did a volte-face), fraud or collusion in the 1986 will was alleged.

With the greatest of respect for ***Sarkar`s*** commentary, I am not prepared to go so far as to say that the Hong Kong grant of probate made the 1986 will unimpeachable in a Singapore court. I would have accepted that position if the Hong Kong grant had been made after contested proceedings challenging the validity of that will. As it turned out, the grant was made ex parte, the plaintiff being a little too late to stop it. I would also have accepted that the 1986 will was unimpeachable here if the proceedings here were for resealing of the Hong Kong grant. That is because any resealing here is solely dependent on the probate in Hong Kong and would fall if the probate there is revoked. In our case, the first and third defendants are seeking a grant of probate in Singapore and O 71 rr 9 to 13 of the Rules of Court would entitle the Registrar hearing the petition to require evidence as to the due execution of the will and other related matters. Accordingly, I called for affidavits to be filed by the attesting witnesses to the 1986 will since the second defendant had joined the plaintiff in impugning it.

An affidavit was filed urgently by Raymond Lee, formerly an assistant solicitor in Messrs Woo Kwan Lee & Lo of Hong Kong and now a partner in another Hong Kong law firm. He confirmed the due execution of the 1986 will before him and Sandy ST Yung and of the codicil before him and Betty Yip. He also confirmed that he had used a shorter signature in the codicil for convenience. Both Sandy and Betty were employees of Messrs Woo Kwan Lee & Lo at the material time. He was not aware of where Betty was at present.

Sandy Yung Sheung Tat, now a solicitor in the employ of the Sun Hung Kai Group in Hong Kong, also filed an affidavit verifying the due execution of the 1986 will. Betty Yip could not be contacted.

The plaintiff`s son, Shaon Lal Hiranand, also filed an affidavit in which he described a meeting he had with the abovesaid Raymond Lee on 29 April 1999 in the latter`s law office. That meeting began at about 3pm and lasted about 24 minutes. Shaon mentioned the deceased`s name to Raymond Lee and he said he did not recall that name. He also showed him four pictures of the deceased ranging from the 1980s to 1994 but after looking at them, the lawyer said he did not recall meeting the deceased. Shaon continually asked him to try to remember and suddenly, he said that he recalled having been asked to witness a will in Mount Butler Road for an Indian gentleman some time ago and that he only remembered that one instance clearly. He and a male colleague had gone to `a house with a big gate and a big driveway`. He could not recall when this event took place but stated that the male colleague was one Chow Han or something that sounded like that name. He and that colleague witnessed and signed a will on that occasion. Asked whether there was a codicil, he could not remember such an event.

Shaon then produced a copy of the 1986 will and asked Raymond Lee whether that was his signature in that document. Raymond Lee hesitated and reluctantly said that it appeared to be so. `When he reached the last page and realized that a female had allegedly signed as the other witness, he became very nervous and then quiet`. He then said he couldn`t remember and could not help him any more. Shaon thanked him and he gave Shaon his business card (which was exhibited).

As Raymond Lee `had earlier offered his assistance`, Shaon went on to state, Shaon arranged another meeting about seven to ten days later. Shaon went with Dr E Srikumar, their family advisor. At this meeting, Raymond Lee was very uncooperative. It was clear to him that Raymond Lee did not truly remember signing and witnessing the 1986 will and the subsequent codicil. Raymond Lee said

that the testator`s signatures appeared different between the will and the codicil, that he must have signed or his signatures would not be there and that the signatures appeared to be his. He could not however confirm that the signatures belonged to the testator and stated more than three times that he could not recall the witnessing and signing of the 1986 will and the codicil.

After that, Shaon tried to contact Sandy Yung for the same purpose but could not reach her. He ended his affidavit by saying that his family (including the second defendant here) had commenced an action in the Hong Kong High Court on 6 December 1999 seeking a declaration that the 1986 will is invalid and that the grant of probate be revoked.

I realize that by making the orders I did, I have enlarged the application beyond merely answering the question of law in issue. Looking at how the proceedings had evolved, I thought it appropriate and justifiable to go further into the question of the 1986 will as that would affect the consequential orders made by the learned assistant registrar. As the evidence stood, I saw no reason to doubt the validity of the 1986 will. It should not be surprising or alarming that a cold call to a solicitor asking him about events that happened some 12 or 13 years ago should elicit such replies as Raymond Lee was said to have given. To justify any suspicion that two solicitors of Hong Kong were lying on affidavit and were implicated in any fraud, I would require much more tangible evidence than a solicitor`s failure to recall having been an attesting witness more than a decade ago or another person`s perception of that solicitor`s reaction to questions. I would also add that if the first and third defendants thought it fit to `organise` another will, it seemed strange they did not have the presence of mind to have that concocted will dated later than the 1988 will in order to avert any issues such as those raised by the plaintiff and the second defendant here.

I therefore affirmed the assistant registrar`s order on all counts save for her determination on the second question of law. The proceedings having been initiated by the plaintiff and the proof of the 1986 will having been necessitated by her allegations, I was of the view that she should pay the first and third defendants $10,000 costs in respect of this appeal. The second defendant was not awarded any costs in view of the vacillations in his stand.

On 7 December 1999, the plaintiff took out OS 1893/99 against the second defendant for a declaration that he was bound by the trusts set out in the 1988 will, relying on the deed entered into by both of them on 28 May 1999. This originating summons was heard at the conclusion of this appeal and did not involve the first and third defendants in any way. The second defendant consented to the orders sought in the originating summons and I granted a consent order and ordered him to pay the plaintiff costs fixed at $2,000.

Outcome:

Plaintiff`s appeal dismissed.