

Re Will of Shaik Ahmad bin Abdullah Wahdain Basharahil
[2002] SGHC 165

Case Number : OS No 1030 of 2000, OS No 600626 of 2001
Decision Date : 30 July 2002
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : T P B Menon (Wee Swee Teow & Co) for the 1st and 2nd applicants; Tan Kah Hin (Choo Hin & Partners) for the 1st and 2nd respondents; Mohan Das Naidu (Mohan Das Naidu & Partners) for the 3rd respondent; Ruby Tan (K C Abu Bakar & Partners) for the 4th respondent; Peter Chua Seng Hock (Peter Chua & Partners) for the 5th and 6th respondents; Stanley Wong Hoong Hooi (Jing Quee & Chin Joo) for the 7th respondent

Parties : —

Land – Sale of land – Application for sale of immovable properties freed from encumbrances – Whether court can order sale notwithstanding objections of caveators – Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) s 5 – Residential Property Act (Cap 274, 1985 Rev Ed) s 3

Muslim Law – Syariah court – Inheritance certificate – Where estate of deceased to be distributed according to Muslim law – Certification upon set of facts found by other court or authority – Administration of s 115 Muslim Law Act (Cap 3, 1985 Rev Ed)

Probate and Administration – Distribution of assets – Application to sell testator's properties free of encumbrances

Probate and Administration – Distribution of assets – Determination of beneficiaries of deceased's estate under Muslim law – Role of Syariah Court -s 115 Administration of Muslim Law Act (Cap 3, 1985 Rev Ed)

Judgment

GROUNDINGS OF DECISION

1 Shaik Ahmad bin Abdullah Wahdain Basharahil ("the Testator") died on 15 July 1953 in Madura, Indonesia leaving properties in Singapore. He had made a Will in Singapore on 3 September 1938, the terms of which are as follows:

I, SHAIK AHMAD BIN ABDULLAH WAHDAIN BASHARAHIL, at present residing at No. 26 Lorong 30, Geylang Road, Singapore, Trader, hereby revoke all former wills codicils and testamentary instruments heretofore made by me of and concerning my estate and effects moveable and immoveable in the colony of the Straits Settlements.

1. I appoint:-

(a) SHAIK SAYEED BIN AHMAD
WAHDAIN BASHARAHIL.

(b) SHAIK OMAR BIN ADMAD WAHDAIN
BASHARAHIL.

(c) SHAIK AWADH BIN AHMAD
WAHDAIN BASHARAHIL.

(d) SHAIK ALI BIN AHMAD WAHDAIN
BASHARAHIL.

my lawful sons at present residing in
Java to be the executors and trustees
of this my will and the guardians of my
infant children.

2. I devise and bequeath all my lands and houses in
Singapore and elsewhere in the Colony of the Straits
Settlements unto my trustees upon trust that my trustees
shall until the expiration of twenty-one years from the date
of my death stand possessed of the annual income thereof
in trust for the persons or person who would at my death
have been entitled according to Mohamedan Law to my
estate and effects if I had died intestate and upon further
trust that after the expiration of twenty-one years from the
date of my death my trustees shall sell call in and convert
into money all such parts thereof as shall not consist of
money with power "to postpone the sale calling in and
conversion of any part of my real and personal estate for
such period as they in their absolute discretion may deem
fit and shall stand possessed of the proceeds of such sale
and conversion upon trust for the person or persons who
would at my death have been entitled according to
Mohamedan Law to my estate and effects if I had died
intestate.

The words underlined above are indicative of the issue before me, i.e. a determination of the persons who, at the death of the Testator, were entitled to his estate according to Mohamedan Law if he had died intestate.

2 The Testator died leaving a large number of immovable properties. Probate to the Will of the Testator was originally granted to Shaik Sayeed bin Ahmad Waidin Basharahil, one of the Executors and Trustees named in the Will. Subsequently the Public Trustee was appointed trustee of the Will by an Order of Court dated 11 October 1976 in Originating Summons No. 80 of 1976 as the Court was satisfied that the original trustee was permanently residing out of the jurisdiction and was unfit to act as such trustee. By this order, 61 immovable properties belonging to the estate of the Testator became vested in the Public Trustee. Since then 32 of those properties had been compulsorily acquired by the State leaving only 29 immovable properties vested in the Public Trustee which are the subject matter of these proceedings.

3 As the Testator died on 15 July 1953 the estate of the Testator was to be wound up 21 years from the date of death of the Testator i.e. immediately after 15 July 1974 ("date of distribution"). The date of distribution had long passed by some 26 years as of the date of filing of the first summons, OS 1030/2000.

Originating Summons 1030 of 2000

4 The first Applicant in OS 1030/2000 is the Public Trustee. The second Applicant ("Quraishj") is the attorney of six persons who claim to be some of the beneficiaries under the Will. The Applicants applied for the following substantive order (prayer 2):

2. That the 1st Applicant as the current trustee of the Will of the abovenamed Testator be empowered to sell the properties described in the Schedule hereto by public or private tender,

public auction or private treaty at such prices and on such terms and conditions as the 1st Applicant may in his absolute discretion determine (but having regard to the valuation prices as set out in the Valuation Reports attached to the 1st Affidavit of the 1st Applicant in support of this application) freed from all encumbrances including:

(a) the equitable interests of the beneficiaries under the Will of the Testator; and

(b) the interest claimed by the Caveators against the properties set out in the Schedule hereto,

and as from the date of this Order all the claims of the beneficiaries and the Caveators who have lodged Caveats against the properties set out in the Schedule hereto shall be deemed to be cancelled or withdrawn.

5 This application for sale was objected to by the fifth Respondent ("Musa") and sixth Respondent ("Salim") objected. They claim to represent another group of beneficiaries. More than this, they claim that the persons that Quraisj represents are not beneficiaries under the Will. Musa and Salim claim that the people they represent constitute all the beneficiaries under the Will.

Originating Summons 600626 of 2001

6 To prosecute their claims, Musa and Salim filed OS 600626/2001 as Plaintiffs and named the Public Trustee and Quraisj as Defendants. In that summons they seek a determination of *"the true and lawful beneficiaries of the Estate of [the Testator] and their respective shares and proportions"*.

Joinder

7 On 28 September 2001, after hearing the parties, I made the following orders:

1. The Public Trustee as the current Trustee of the Will of the Testator be and is hereby empowered to take all steps in preparation for the sale of the Testator's properties described in the Schedule hereto provided that no sale or disposal of the properties shall be made without the prior approval of the Court and that at least seven (7) days' prior notice shall be given by the Public Trustee to the Respondents of such sale;

2. An inquiry be conducted by this Honourable Court to ascertain who are the persons entitled to the properties of the Testator as set out in the Schedule hereto;

3. Originating Summons No. 600626 of 2001 be consolidated with Originating Summons No. 1030 of 2000 and that the Inquiry be held on a date to be fixed by this Honourable Court and that for the purposes of the Inquiry:

(a) Affidavits filed in both the above Originating Summons Nos. 600626 of 2001 and No. 1030 of 2000 are to stand as

evidence-in-chief;

(b) Leave be and is hereby granted to all persons to file further Affidavits by 28th November 2001;

(c) Leave be and is hereby granted to all persons to file any reply to the Affidavits by 28th December 2001;

(d) No further Affidavits are to be filed after 28th December 2001 without the leave of this Honourable Court.

Inquiry as to beneficiaries

8 The inquiry pursuant to Order 2 above was conducted on 3 July 2002. The Public Trustee was not a party to that inquiry as he is merely a trustee and is not concerned with the outcome. Quraisj admits the claim by Musa and Salim that the people they represent are beneficiaries under the Will, but not to their claim that they constitute all the beneficiaries. So the only issue is whether the persons that Quraisj represents, and any others, are also beneficiaries under the Will.

9 The agreed facts are as follows: The Testator had, in accordance with Indonesian law, married one Saimih who bore him six sons, and also a daughter who predeceased him. Saimih died in or about 1928. Those six sons married and had children. All six died between 1973 and 1987. Musa and Salim are the sons of two of them and claim to represent the branch of beneficiaries arising from Saimih's children. Apart from Saimih, the Testator also had children by four other women and what is under contest is whether they were legally married to him under Muslim law. The second wife (this term being used without prejudice) is Maimunah, who bore the Testator a son and a daughter. The third wife is Aisyah who bore him two sons. The fourth wife is Samani who bore him a daughter. The fifth wife is Maria who bore him two sons. The Testator had at various stages, divorced his second, third and fourth wives. At the time of his death, he was survived by:

- (a) six sons by Saimih, the first wife;
- (b) a son and a daughter by Maimunah, the second wife;
- (c) two sons by Aisyah, the third wife;
- (d) one daughter by Samani, the fourth wife;
- (e) Maria, his fifth wife; and
- (f) two sons by Maria.

10 The sole issue is therefore whether the Testator had been married under Muslim law to the second to fifth wives. If he had not, then the beneficiaries are just the six sons by Saimih and consequently their descendants would be entitled to the entire estate under the Will. If he did, then the number of beneficiaries would be 14, with the six sons by Saimih being collectively entitled to only 84/192 or 43.75% of the estate.

11 Musa and Salim have filed two affidavits in both summons. The first affidavit is their joint affidavit filed 1 November 2000, in which they relate the following

- (a) the persons represented by Quraisj are not beneficiaries and therefore not entitled to claim any share or interest in the estate of the Testator;
- (b) there was "in fact no statement of marriage between the Testator and the said Madam Maria", bearing in mind that in Indonesia all marriages (including Muslim marriages) are valid and recognisable by the State only if they are registered and not otherwise;

(c) the Inheritance Certificate from the Surabaya Inheritance Property Administration Office dated 7th February 1992 certified that the following six children are the heirs of the Testator:

- (i) Said bin Achmad Wachdin Basjarahil
- (ii) Umar bin Achmad Wachdin Basjarahil
- (iii) Asad (Awad) bin Achmad Basjarahil
- (iv) Ali bin Achmad Basjarahil
- (v) Hassan bin Achmad Basjarahil
- (vi) Saad (Asad) bin Achmad Wachdin

12 However in an earlier Affidavit affirmed by Salim and filed on 14 July 1995 in an earlier action, OS 473/1995, he had stated that:

- (i) that the Testator had "four other wives one of whom is one Maria";
- (ii) that OS 473 of 1995 was a fraudulent attempt by the Plaintiff in that summons (Abdul Rachman bin Abdullah Wahdin, one of Saimih's grandsons) to cheat the rest of the beneficiaries of the estate of the Testator including Quraisj.

13 Salim deposed in an affidavit filed on 27 August 2001 to explain the contradiction. He said as follows:

- (a) the contents of the Affidavit in OS 473/1995 was "*not interpreted*" to him and the "*legal niceties and implications were not fully comprehended*" by him;
- (b) he is "*illiterate in the English language*";
- (c) there was "*no intention*" on his part "*to acknowledge Maria or her children as having any beneficial interest in the Testator's estate notwithstanding her claim as a wife of the deceased*".

14 However if there had been such glaring errors in his earlier affidavit, Salim should have taken steps to rectify them as its contents could have misled the Court in arriving at the decision that it did in those proceedings. Neither Salim nor the solicitors who acted for him in OS 473/1995 had filed affidavits explaining whether:

- (a) Salim was in fact illiterate in the English language;
- (b) Salim gave his instructions for the Affidavit in the Indonesian or some other language;
- (c) the contents of the Affidavit filed by him in OS 473/1995 were in fact the instructions given by him to his former solicitors;
- (d) the contents of the Affidavit filed in OS 473/1995 were explained to him and whether he fully understood and acknowledged the contents thereof.

In the absence of such Affidavit by Salim's former solicitors I cannot place much reliance on that aspect of the joint affidavit of Musa and Salim.

15 In OS 473/1995, Quraisj had filed an affidavit on 13 July 1995 in which he stated that there were fourteen principal beneficiaries of the

Testator under Muslim law. Salim had, in his affidavit filed on 14 July 1995 in that summons, made the following statement in 4:

My Father Hasan bin Achmad bin Abdullah Wachdin Basharahil . . . is entitled to a 14/192 share of the estate of the Testator. Annexed and marked SH2 is a translated copy of a Certificate of Inheritance from the office of the Public Trustee of Surabaya

The share of 14/192 that he asserts is consistent with Quraisj's position and inconsistent with his and Musa's.

16 I should add further that the joint affidavit of Musa and Salim is devoid of any assertion that Maria was not married to the Testator in accordance with Muslim law. All that the deponents have said is as follows, at 17(1):

KHM No. 1/BA was used in Originating Summons No. 80 of 1976 to obtain relief from the High Court of Singapore when Madam Maria and her Co-Plaintiffs in the Originating Summons proceedings had absolutely no locus standi for the simple reason she had no proof of marriage to the Testator. **In Indonesia all marriages (including muslim marriages) are valid and recognisable by the State only if they are registered and not otherwise.**

The words in bold only assert that the State does not recognise the marriage if it was not registered in accordance with Indonesian law. It does not assert that the marriage was not conducted in accordance with Muslim law. If anything, from the words "*including muslim marriages*", there is an implication that the marriage was conducted in accordance with Muslim law.

17 As for the matter of the Inheritance Certificate from the Surabaya Inheritance Property Administration Office, it recites in the Certificate that the Office only took into consideration the children by the first wife, Saimih. It is significant that the Certificate states that Saimih was the "*first wife*", implying that she is not the only wife. In Salim's affidavit filed in OS 600626/2001 on 27 April 2001, he relied on two additional documents as follows:

- (i) an Order of the Religious Court of Pamekasan, Madura, Indonesia dated 16 October 2000 that there are only six lawful beneficiaries of the Testator namely the six children by the Testator's first wife Saimih.
- (ii) the Inheritance Certificates issued by the Shariah Court in Singapore on the basis of the facts disclosed in the Order of the Religious Court.

18 Quraisj points out in his second affidavit that the Order of the Religious Court, on its face, reveals that the only persons who appeared and furnished information before the Religious Court were Musa and Salim. The Order was made on the erroneous basis that the Testator had only one wife, namely Saimih, and six children. Musa and Salim did not reply to this affidavit although they had the opportunity to do so.

19 As for the Inheritance Certificates issued by Shariah Court, Singapore, they are based on the Order of the Religious Court which is itself spurious. In any event it is for this Court to make the relevant findings of fact. Section 115 of the Administration of Muslim Law Act (Cap. 3) states as follows:

(1) If, in the course of any proceedings relating to the administration or distribution of the estate of a deceased person whose estate is to be distributed according to the Muslim law, any Court or authority shall be under the duty of determining the persons entitled to share in such estate or the shares to which such persons are respectively entitled, the Syariah Court may, on a request by the Court or authority or on the application of any person claiming to be a beneficiary and on payment of the prescribed fee, certify upon any set of facts found by such Court or authority or on any hypothetical set of facts its opinion as to the persons who are, assuming such facts, whether as found or hypothetical, entitled to share in such

estate and as to the shares to which they are respectively entitled.

(2) The Syariah Court may, before certifying its opinion, require to hear the parties on any question of law, but shall not hear evidence or make findings on any question of fact.

(3) In any case of special difficulty, the Syariah Court may refer the question to the Legal Committee of the Majlis for its opinion and shall, if such opinion be given, certify in accordance therewith.

This section provides that the Shariah Court may, at the request of the Court, "*certify upon any set of facts found by such Court or on any hypothetical set of facts its opinion*" as to who are entitled to share in the estate of a deceased person. The role of the Shariah Court is to provide a ruling as to Shariah law on facts determined by the Court. The Inheritance Certificates in question were therefore not made on the correct set of facts.

20 Quraisj had filed two Affidavits in which he had set out the case on behalf of the beneficiaries he represented, who were the offsprings of the third to fifth wives of the Testator. In his first affidavit filed on 17 August 2000, he stated that, under Power of Attorney No. 10162 of 1999 executed in Singapore, he was appointed attorney of the following persons:

- (i) Maria Binti Musa
- (ii) Abubakar bin Achmad bin Abdullah Wachdin Basjarahil
- (iii) Abdulazis bin Achmad bin Abdullah Wachdin Basjarahil
- (iv) Wahdin bin Achmad bin Abdullah Wachdin Basjarahil
- (v) Harith bin Achmad bin Abdullah Wachdin Basjarahil
- (vi) Fetum binti Achmad bin Abdullah Wachdin Basjarahil.

None of the other Respondents have questioned the authenticity or validity of this Power of Attorney at any time during these proceedings.

21 In Quraisj's 2nd Affidavit filed on 24 September 2001, he sets out the family history of the Testator and the names of the 14 principal beneficiaries and a list of secondary beneficiaries along with a family tree. Neither Musa nor Salim has filed any affidavits to challenge or refute this.

22 In view of the above, I conclude that the beneficiaries are the ones set out by Quraisj in his evidence. On the basis of this finding their shares are not in dispute and I would declare that the fourteen persons listed below are the principal beneficiaries, with their respective shares in the Testator's estate shown after each name:

Widow:

- (1) Maria Janda Achmad b. Abdullah Wachdin Basharahil 24/192

Sons

- (2) Said b. Achmad b. Abdullah Wachdin Basharahil (deceased) 14/192
- (3) Umar b. Achmad b. Abdullah Wachdin Basharahil (deceased) 14/192

- (4) Awat b. Achmad b. Abdullah Wachdin Basharahil (deceased) 14/192
- (5) Ali b. Achmad b. Abdullah Wachdin Basharahil (deceased) 14/192
- (6) Hasan b. Achmad b. Abdullah Wachdin Basharahil (deceased) 14/192
- (7) Saad (Asad) b. Achmad b. Abdullah Wachdin Basharahil 14/192
- (8) Muhsin b. Achmad b. Abdullah Wachdin Basharahil (deceased) 14/192
- (9) Abubakar b. Achmad b. Abdullah Wachdin Basharahil 14/192
- (10) Abdulaziz b. Achmad b. Abdullah Wachdin Basharahil 14/192
- (11) Wachdin b. Achmad b. Abdullah Wachdin Basharahil 14/192
- (12) Harith b. Achmad b. Abdullah Wachdin Basharahil 14/192

Daughters

- (13) Selum (Salum) bte. Achmad b. Abdullah Wachdin Basharahil (decd) 7/192
- (14) Futum bte. Achmad b. Abdullah Wachdin 7/192

Order for sale

23 Once the determination as to the beneficiaries is made, it follows that the order for sale would be made in accordance with substantively the terms of prayer 2 of OS 1030/2000. After hearing the parties as to costs, I made the following declarations and orders:

1. The Beneficiaries of the estate of the Testator under Muslim law are the fourteen (14) persons set out in the 2nd Applicant's 3rd Affidavit affirmed on the 21st September 2001 and filed herein on the 24th September 2001 namely

- (i) Maria (only surviving widow)
- (ii) Said
- (iii) Umar
- (iv) Awad
- (v) Ali
- (vi) Hassan
- (vii) As'ad
- (viii) Mushin
- (ix) Salum
- (x) Abu Bakar

(xi) Abdul Aziz

(xii) Fetum

(xiii) Wachdin

(xiv) Harith

2. (i) That the 1st Applicant as the current trustee of the Will of the abovenamed Testator be empowered to sell the properties described in the Schedule hereto by public tender, public auction or private treaty at a price not less than the reserved price of \$17,970,000-00 on such terms and conditions as the 1st Applicant may in his absolute discretion determine freed from all encumbrances including:

(a) the equitable interests of the beneficiaries under the Will of the Testator; and

(b) the interest claimed by the Caveators against the properties set out in the Schedule hereto,

and as from the date of this Order all the claims of the beneficiaries and the Caveators who have lodged Caveats against the properties set out in the Schedule hereto shall be deemed to be cancelled or withdrawn.

(ii) If the 1st Applicant is unable to sell the Testator's properties within six (6) months from the date thereof the parties are at liberty to apply.

3. The 1st Applicant as such trustee aforesaid be empowered to execute such assurances or transfers of the properties in favour of the purchasers or their nominees thereof and to receive the purchase price and to give good and valid discharges for the same.

4. The 1st Applicant shall not make any payment of the proceeds of sale to the beneficiaries without the leave of the Court.

5. The costs of the 1st and 2nd Applicants and the 5th and 6th Respondents are to be taxed on an indemnity basis and to be paid out of the proceeds of sale of the Testator's properties. There be no order as to the costs of the 1st to 4th and 7th Respondents.

6. All parties are to have liberty to apply.

THE SCHEDULE ABOVE REFERRED TO

1. Lot 273-8 TS 16 - area 769 square feet with house No. 46 Clive Street, Singapore.
2. Lot 120-8 TS 16 - area 1,204 square feet with house No. 61 Dickson Road, Singapore.
3. Lot 237-1 Mukim 26 - area 2,394 square feet with houses Nos. 273 and 275 Joo Chiat Road, Singapore.
4. Lot 24-14 Mukim 26 - area 12,138 square feet with houses Nos. 136, 138, 140, 142, 144, 146, 148 and 150 Joo Chiat Road, Singapore.
5. Lot 237-16 Mukim 26 - area 2,069 square feet with house No. 25 Koon Seng Road, Singapore.
6. Lot 107 TS 18 - area 3,781 square feet with houses Nos. 32, 34, 36, 38 and 40 Kinta Road,

Singapore.

7. Lot 61 TS 14 - area 4,937 square feet with houses Nos. 18, 19, 20, 21, 22, 23 and 24 Pahang Street, Singapore.
8. Lot 173-4 TS 18 - area 6,556 square feet with houses Nos. 515, 517, 519 and 521 Serangoon Road, Singapore.

Sgd:

LEE SEIU KIN

JUDICIAL COMMISSIONER

SUPREME COURT

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