Vaswani Lalchand Challaram and Another v Vaswani Roshni Anilkumar and Another [2005] SGHC 110

Case Number : OS 387/2004, RAS 68/2004

Decision Date : 29 June 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Sunil Singh Panoo (Dhillon Dendroff and Partners) for the plaintiffs; Ramesh Appoo (Just Law LLC) for the first defendant

Parties : Vaswani Lalchand Challaram; Lalitabai w/o Vaswani Lalchand — Vaswani Roshni Anilkumar; The Great Eastern Life Assurance Co Ltd

Contract – Privity of contract – Whether exception to privity rule arising – Whether beneficiaries named in insurance policies precluded from suing on contracts of insurance

Insurance – General principles – Claims – Deceased taking out insurance policies prior to marriage and naming parents as beneficiaries – Deceased's widow objecting to parents' request for payment from insurer – Whether policies amounting to gifts forming part of deceased's estate – Whether policy moneys belonging to estate of deceased to be distributed in accordance with laws of intestate succession

Insurance – General principles – Claims – Deceased taking out insurance policies prior to marriage and naming parents as beneficiaries – Whether insurer obtaining valid discharge from liability by paying out insurance moneys to parents – Whether parents proper claimants to insurance proceeds – Sections 61(1), 61(6) Insurance Act (Cap 142, 2002 Rev Ed)

29 June 2005 *Judgment reserved.*

Choo Han Teck J:

1 Anilkumar Vaswani was an insurance agent in the employ of the second defendant. He died on 25 February 2003, at the age of 30. His widow is the first defendant in this originating summons. The plaintiffs are his parents. His father is 75 years old and his mother is 73. The deceased married the first defendant in 1999. The assets of the deceased comprised mainly the moneys due under three insurance policies taken out by the deceased from the Great Eastern Life Assurance Co Ltd, the second defendant in this originating summons. All three policies were contracted before the deceased married the first defendant. His parents were the named beneficiaries in all three policies.

2 The first policy (Policy No 1680799-8) is an 18-year "Golden Lion Endowment" policy purchased on 28 September 1994 for an annual premium of $2,247. The second policy (Policy No 1924575-4) is a "12-year Capital Assurance Plan" for which a single, one-off premium of $50,000 was paid on 26 April 1996. The third policy (No 1995137-5) is a "Living Assurance Policy", with a monthly premium of $227.35 commencing from 31 December 1996. The plaintiffs joined the second defendant in this originating summons on the ground that the contracts of insurance were made between the deceased and the second defendant. The Originating Summons was brief in its content and only pleaded as follows:

> By this Summons, the Plaintiff seeks the following orders:-
>
> 1. That the Contest of the 1st Defendant over the monies payable under the 2nd

Defendant's Policy Nos. 16807998, 19245754 & 19951375 be declared null and void.

2. That the 2nd Defendant pays the monies due under the 2nd Defendant's Policy Nos. 16807998, 19245754 & 19951375 to the Plaintiffs forthwith.

3. That the 1st Defendant pays the Plaintiffs the costs of these proceedings.

4. There be no order as to costs as to the 2nd Defendant or in the alternative, the 1st Defendant pays the costs of the 2nd Defendant.

5. Such further or other relief as this Honourable Court thinks fit.

3 The hearing in the district court below concerned principally the three issues identified in the grounds of the court ([2005] SGDC 11) as follows:

(1) Who were the persons entitled to the payments under the [three] policies of insurance?

(2) Could the insurer [the second defendant], have obtained a legal discharge by making payment to the Plaintiffs?

(3) Does the doctrine of privity apply to the facts of this case to deny the Plaintiffs their rights as conferred on them by the policies?

4 The plaintiffs claim to be entitled to the insurance moneys by virtue of the fact that they were the nominated beneficiaries in the three policies. The first defendant claims that the moneys belong to the estate of the deceased as part of his assets, and hence, as his widow, she would be entitled under the Intestate Succession Act (Cap 146, 1985 Rev Ed) to half the assets of the estate, and thus, half the sum of the moneys under the three policies. The first defendant contends that the plaintiffs were not privy to the contracts of insurance and, therefore, precluded from the privity rule in contract to sue on them.

5 Thus, it would be useful to first consider s 61(1) of the Insurance Act (Cap 142, 2002 Rev Ed). Section 61(1) provides that:

> In any case where the policy owner of any life policy or accident and health policy of an insurer dies, and the policy moneys are payable thereunder on his death, the insurer may make payment to any proper claimant a prescribed amount of the policy moneys of all such policies issued by the insurer on the deceased's life without the production of any probate or letters of administration; and the insurer shall be discharged from all liability in respect of the amount paid.

A "proper claimant" is defined by s 61(6) of the Insurance Act to mean "a person who claims to be entitled to the sums in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased".

6 Section 61(1) empowers the insurer to make payment under a policy and such payments made under the terms of this section shall discharge the insurer. This section does not indicate who shall lawfully be entitled to the beneficial interests under the policy. In the present case, the deceased died intestate and letters of administration have not been granted. Counsel stated that neither party really wanted to administer the estate since the main assets of the deceased were the

moneys due under the three policies. In the circumstances, neither party could have claimed payment from the second defendant under the first limb of s 61(6), *id est*, as executor or administrator (although the latter was not specified in
sub-s 61(6). It is, however, necessary to explain that the words "claims to be entitled" – which are not defined in the Act – must refer to a *prima facie* entitlement only. The Act does not, in my opinion, require the claimant to be legally entitled since the legal entitlement might, as in this case, be pending determination by litigation. Therefore, had the second defendant paid out the moneys to the plaintiffs it would have obtained a valid discharge under s 61(1) of the Act. The second defendant decided that because of the competing claims, it would not make the decision to pay. If it had a valid reason to decline making payment, then it must accept the responsibility of meeting any challenge in court. It was thus joined initially, as the second defendant, but the plaintiffs withdrew the action against it, even though they have a substantive prayer for an order that the second defendant pays over the insurance moneys to them. It was recorded by the district court judge, at the hearing below, that the second defendant agreed to be bound by any decision that the court might make. The wisdom of withdrawing the action against the second defendant (and the second defendant's own eagerness to be out of the action) at this stage may be questionable since it means that the court would not be able to hear evidence and submissions on its behalf, nor might any substantive or specific orders be made against it now that it is no longer a party in this action, including orders in respect of costs for this action in court. Secondly, it is also questionable whether this action ought to have been commenced by way of an originating summons. Both sides appear to be in some hurry to get a court decision, and consequently, some evidence was not tested by cross-examination. The third unsatisfactory aspect of this Originating Summons is that, in view of the assertion made that the moneys belong to the estate, neither the first defendant nor the plaintiffs applied to be made the administrator of the deceased's estate. Counsel informed me that neither party was interested because the estate consisted of virtually nothing else other than the insurance moneys. The interests of the first defendant as widow (and beneficiary) are not necessarily the same as the interests of the administrator. Neither are the interests of the plaintiffs, as direct beneficiaries of the policies (as they claim), necessarily coincidental to that of the administrator's. Hence, there was no representative of the interests of the estate in these proceedings.

7 There are some incontrovertible facts that can be gathered from the affidavits. First, the deceased purchased the three policies before his marriage to the first defendant. Second, the plaintiffs were named beneficiaries in all three policies. Third, although the contracts entitled the deceased to revoke his nominations and nominate some others (such as his widow) as the beneficiaries, he never did so. The evidence also suggested strongly that in respect of the second policy, the plaintiffs paid the full premium of $50,000 in one sum at the time that policy was purchased. The first plaintiff claims to have paid the first premium in respect of the first policy. This assertion was corroborated by affidavits from the colleagues of the deceased, namely Peter Koh Teck Keng ("Koh") and Richard Ng Yik Soon ("Ng"). Koh deposed that he attended to the deceased in 1994 (when the latter was still in national service) to complete the purchase of the first policy. He deposed that the first plaintiff paid the first premium. Both Koh and Ng also deposed to instances when the deceased confided in them about his matrimonial problems with the first defendant. Koh and a colleague called Chevi brought the deceased to the Institute of Mental Health in January 2003 for depression and alcoholism. The deceased was warded for ten days, during which Koh and Chevi visited him often, and not once did they see the first defendant.

8 The evidence appears to show that the deceased had taken out the three policies with the intention of benefiting his parents and no one else. It also shows that although he had the opportunity after marriage to revoke his nominations, as well as the knowledge that he could do so (he was an insurance agent with the second defendant), he never did so. So, the key question is, in these circumstances, were the moneys payable under the three policies assets of the deceased's

estate? In the case where a spouse or children are named as the beneficiaries in a policy of insurance, s 73 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) creates a statutory trust in respect of those policies, but that section does not provide for policies taken out for the benefit of parents. Section 73(1) reads as follows:

> A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.

It would only be reasonable to conclude that no statutory trust is created in the case of a parent beneficiary. But that is not to say that such a parent is not entitled to claim under the policy in question. Section 73(1) is intended to, and has the effect of, ensuring that where a policy is taken out for the benefit of a spouse or child of the policyholder, that benefit is not extinguished by revocation such as might be permitted under the policy terms: see *Eng Li Cheng Dolly v Lim Yeo Hua* [1995] 3 SLR 363. It does not address the question whether the moneys payable under the policy belong to the estate.

9 It was contended by counsel for the first defendant that if the policies for the benefit of the parents are not subject to a statutory trust, then they were at best gifts and would form part of the estate of the deceased if they were given less than five years before the death of the deceased. For that argument to succeed, the first defendant had to contend that the gift of the three policies was made between 22 February 1998 and 23 February 2003. In my view, the calculation of the dates of the gifts must be the dates on which the policies were purchased. The first policy was purchased in 1994 and the last in December 1996. On the evidence before me, I am of the view that the first and third policies were gifts by the deceased to his parents. The second policy at first glance appears to be the subject of a resulting trust in favour of the plaintiffs because they paid the large sum of premium. But it would be more coherent and consistent to regard that policy as a gift by the deceased to the plaintiffs although the plaintiffs might have, on their part, made a gift of the money for the premium to him. Either way, the result would be that the second defendant would be granted a legal discharge had it made payment to the plaintiffs. Consequently, I am of the opinion that the moneys payable under the three policies are not part of the estate of the deceased, and that the second defendant would have obtained a valid discharge should it make payment of the moneys due under the three policies to the plaintiffs. However, I do not think that an order can or should be made directly against the second defendant since this action has been discontinued against it, a step that has resulted in some procedural untidiness, and ought not to have been taken.

10 Finally, in view of the findings I make above, the question remains, peripherally, whether the plaintiffs were prevented by the privity doctrine in contract law from bringing this action. I accept that the doctrine of privity is one of the strictest rules in contract law, and it remains a useful rule, especially when we can distinguish between a *plain privity* rule and a *privity to the consideration* rule: see *Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) 62 ALJ 508 at 511, *per* Mason CJ and Wilson J. However, for my part, I am inclined to find a narrow exception to the privity rule, in either form, only in so far as it is in respect of a claim by the beneficiaries in the circumstances of this case. I am of the opinion that had the administrator of the deceased's estate been appointed, and had he asked for payment from the second defendant, these proceedings would not have been commenced – certainly not in this form. Consequently, such an important question of law as to the application of the privity rule would not have arisen. It is not necessary for me to elaborate here on that last point save to say that the administrator of the estate would be entitled to demand

payment, and distribute the policy moneys to the persons who were entitled to them; so the fact that in the present case the plaintiffs were entitled to the money as a gift would not prevent the administrator from receiving the money from the second defendant, nor re-distributing it subsequently. I would decline to comment further on the scope of the privity rule in a case such as the present where the two contracting parties (the deceased and the second defendant) are not parties to the proceedings.

11 Accordingly, I dismiss the first defendant's appeal in so far as the appeal was against the declaration of the District Court that the plaintiffs were entitled to receive the moneys payable under the policies from the second defendant. The first defendant could, as anyone could, make her objections known to the second defendant that it would be wrong, in her view, to make payment to the plaintiffs. The second defendant carried the responsibility of deciding whether to pay, or whether the objection was valid. Whatever decision it made, it must be prepared to defend it. That is the burden of responsibility. Therefore, in the circumstances, I am of the opinion that had the correct procedure been adopted, it would have been unnecessary to declare that the first defendant had no standing to object – bearing in mind that the objection in question was not an objection to the court but to a private party (the second defendant) who had the discretion and duty to consider the application. What legal proceedings might emanate thereafter, and in what form, would have depended on the second defendant's response. I will hear submissions on costs at a later date.

Appeal dismissed.