State of Johor and Another v Tunku Alam Shah ibni Tunku Abdul Rahman and Others [2005] SGHC 156

Case Number : OS 1359/2004

Decision Date : 31 August 2005

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Davinder Singh SC, Cheryl Tan and Tan Kok Peng (Drew and Napier LLC) for the plaintiffs; Lim Chor Pee and Sarah Tan (Chor Pee and Partners) for the first defendant; Timothy Tan Thye Hoe and Jeya Putra (AsiaLegal LLC) for the second to fifth defendants

Parties : State of Johor; Duli Yang Maha Mulia Sultan Johor Sultan Iskandar — Tunku Alam Shah ibni Tunku Abdul Rahman; Ungku Sulaiman Bin Abdul Majid; Tengku Ibrahim Bin Suleiman; Ungku A Rahman Bin Ungku Hassan; Daing Othman Bin Ibrahim; Ungku Rosiah Binte Abdul Rahman

Conflict of Laws – Choice of law – Succession – Property in Singapore forming subject matter of Malaysian testator's will – Whether lex domicile or lex situs governing validity of will – Whether Muslim law forming part of lex situs

Succession and Wills – Construction – Property bequeathed to beneficiary as "State property" – Whether property bequeathed to beneficiary in capacity as sovereign ruler or in personal capacity – Meaning of "State property"

31 August 2005 *Judgment reserved.*

Tan Lee Meng J:

1 The dispute between the parties, which has its roots in a will made by the late Sultan Abu Bakar of Johor on 14 April 1895, concerns competing claims to the compensation of $25m awarded by the Collector of Land Revenue for the compulsory acquisition of Lot 1049 of Mukim 2 ("Tyersall"). This property, on which stands an old palace built by the testator more than a century ago, is situated at 2 Cluny Road, Singapore.

2 The first plaintiff is the State of Johor. The second plaintiff, Duli Yang Maha Mulia Sultan Johor Sultan Iskandar, the present ruler of Johor, is a great-grandson of Sultan Abu Bakar.

3 The first defendant, Tunku Alam Shah ibni Tunku Abdul Rahman ("TAS"), is a great-great-grandson of Sultan Abu Bakar.

4 The second to fifth defendants are a group of claimants led by the second defendant, Ungku Sulaiman bin Abdul Majid, who is a descendant of Sultan Abu Bakar's sister, Ungku Khadijah binti Temenggong Ibrahim.

5 The sixth defendant, Ungku Rosiah binte Abdul Rahman, did not file any affidavit in support of her case and has not participated in these proceedings after filing her memorandum of appearance in February 2005.

Background

6 The relevant facts are as follows. On or about 14 April 1895, the then Sultan of Johor, Sultan

Abu Bakar, executed a will. The material part of the will concerning Tyersall is in the following terms:

> My royal son Tunku Ibrahim … shall be my successor as Ruler and possessor of the State of Johore and all its dependencies … And *for his use and possession as Sovereign Ruler*, I surrender to him all such properties, things, and objects as are said to be State heritage or belongings or *which I by my own will, and pleasure have declared and constituted as the property of the State and Country*, namely, my Istana together with all its gardens … all state buildings in Johore Bharu … the crown, and all the paraphernalia and things all complete as used in the State Ceremonials … And *similarly as State property* I leave and deliver to my royal son the Istana and lands, and grounds and garden named Tyersall, situated in the Island of Singapore in the district of Tanglin together with all house furnitures appurtenances and decorations all complete as it is now for his use … [emphasis added]

7 Sultan Abu Bakar died on 4 June 1895. His executor, Dato Jaafar bin Hadj Mohamed, died a year later. Twenty-eight years later, on 15 June 1923, Dato Mustapha bin Jaffar ("Dato Mustapha") obtained from the Supreme Court of the Straits Settlements letters of administration *de bonis non* with will annexed for the estate of Sultan Abu Bakar.

8 Tunku Ibrahim (hereinafter referred to as "Sultan Ibrahim") became Sultan after his father's death. More than 40 years after his father's death, Dato Mustapha finally conveyed Tyersall to him "as State property and upon the terms and conditions set forth in Sultan Abu Bakar's will". Sultan Ibrahim, who was the ruler of Johor for more than 60 years, passed away on 8 May 1959. Letters of administration were granted to his widow, Sultanah Marcella, and his son, Tungku Temenggong Ahmad, on 23 September 1959, and these were resealed in the High Court in Singapore in January 1965. By an indenture dated 17 May 1971, Sultanah Marcella and Tungku Temenggong Ahmad appointed Tan Sri Dato Abdul Hamid bin Mustafa and Dato Abdullah bin Mohamed as trustees of Sultan Abu Bakar's will in so far as it related to Tyersall. The indenture provided that Sultan Ibrahim's interest in Tyersall would vest in the trustees as joint tenants subject to the provisions of Sultan Abu Bakar's will. Both the trustees have since passed away and no new trustees were appointed to replace them. Sultanah Marcella Ibrahim and Tunku Temenggong Ahmad have also passed away.

The compulsory acquisition of Tyersall

9 On 30 November 1990, a Notice of Acquisition of Tyersall, pursuant to s 10 of the Land Acquisition Act (Cap 152, 1985 Rev Ed), was published in the Government Gazette. On 2 March 1991, the Collector of Land Revenue ("the Collector") held an inquiry to determine the appropriate amount of compensation for the acquisition of Tyersall and to apportion the compensation among all the persons with an interest in the said property. The inquiry was adjourned a number of times and many years passed without the matter being resolved.

10 On 28 April 2004, the Collector placed an advertisement in the *The Straits Times* to state that the inquiry would resume on 20 May 2004. The Collector required all claims and statements of interest with respect to Tyersall to be submitted by 27 May 2004. On 1 June 2004, the sum of $25m was awarded as compensation for the compulsory acquisition of Tyersall. On 9 June 2004, the Collector obtained an order of court to pay the said compensation into court because there was a "dispute as to the title to receive the compensation".

The plaintiffs' originating summons

11 On 14 October 2004, the plaintiffs filed the present Originating Summons, seeking, *inter alia*, an order that the compensation in question be paid out to the second plaintiff or alternatively to the

first plaintiff. The plaintiffs applied for the following:

> 1. (a) A declaration that the Second Plaintiff is lawfully entitled to receive the compensation sum of Singapore Dollars Twenty-Five Million (S$25,000,000.00) awarded by the Collector of Land Revenue, Singapore pursuant to Section 10 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("***the Act***") which was paid into Court by the Collector of Land Revenue pursuant to Section 40(2) of the Act and an Order of Court dated 9 June 2004 in Originating Summons 719 of 2004/Q in relation to the compulsory acquisition of land known as Lot 1049 Mukim 2, together with interest thereon under Section 41 of the Act.
>
> (b) In the event that this Honourable Court grants the declaration under prayer 1(a) above, an order that the sum which was paid into Court by the Collector of Land Revenue pursuant to Section 40(2) of the Act and the Order of Court dated 9 June 2004 in Originating Summons 719 of 2004/Q be paid out to the Second Plaintiff.
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> 2. (a) Alternatively, a declaration that the First Plaintiff is lawfully entitled to receive the compensation sum of Singapore Dollars Twenty-Five Million (S$25,000,000.00) awarded by the Collector of Land Revenue, Singapore pursuant to Section 10 of the Act which was paid into Court by the Collector of Land Revenue pursuant to Section 40(2) of the Act and an Order of Court dated 9 June 2004 in Originating Summons 719 of 2004/Q in relation to the compulsory acquisition of land known as Lot 1049 Mukim 2, together with interest thereon under Section 41 of the Act.
>
> (b) In the event that this Honourable Court grants the declaration under prayer 2(a) above, an order that the sum which was paid into Court by the Collector of Land Revenue pursuant to Section 40(2) of the Act and an Order of Court dated 9 June 2004 in Originating Summons 719 of 2004/Q be paid out to the First Plaintiff.
>
> 3. A declaration that the Defendants are not "persons interested" for the purposes of Section 23 of the Act and are therefore not entitled to appeal to the Appeals Board as constituted under section 19 of the Act.
>
> 4. That the costs of and occasioned by this Summons be paid by the Defendants to the Plaintiffs.

12 The plaintiffs' case is that by constituting Tyersall as "State property" in his will, Sultan Abu Bakar had intended that the said property was to pass with the throne of Johor upon the death of a reigning ruler and that it should not devolve to the estate of any ruler upon his death. On this basis, the compensation of $25m should be paid to the present Sultan of Johor. The first plaintiff's position was summarised by the Johor State Secretary, Dato Haji Mohd Razali bin Mahusin, in para 35 of his affidavit as follows:

> The First Plaintiff has always recognized that while the Land was declared as "State property" by the late Sultan Abu Bakar under the terms of the Will, it belonged beneficially to the ruling Sultan. For this reason, the First Plaintiff has joined itself as a party to these proceedings in support of the application for the payment of the Compensation to the Second Plaintiff as the ruling Sultan of the State of Johor as at the date of the compulsory acquisition.

13 Both the plaintiffs also asserted that the only other party with a conceivable claim to Tyersall was the State of Johor since Tyersall was constituted as "State property" by Sultan Abu Bakar. They thus contended in the alternative that the compensation for the acquisition of Tyersall should be paid

to the State of Johor.

TAS's counter-notice

14 TAS, who claims a share of the compensation awarded for the acquisition of Tyersall on the ground that he is one of the beneficiaries of the estate of Sultan Ibrahim, did not accept that Tyersall became "State property" as a result of Sultan Abu Bakar's will. The essence of TAS's case is that the bequest of Tyersall by Sultan Abu Bakar was invalid because it contravened Muslim law.

15 On 15 February 2005, TAS filed a counter-notice, in which he sought the following relief:

(a) a declaration that prior to the death of Sultan Abu Bakar of Johor on 4 June 1895, Sultan Abu Bakar was the absolute ruler of Johor, and the immovable properties situated in Johor and Singapore, vested in his name, belonged to him absolutely as legal owner; and

(b) an order that the proceeds of the award of the Collector paid into the court pursuant to the Order of Court dated 9 June 2004 (see [10] above) made in Originating Summons No 719 of 2004, be paid to the Public Trustee for distribution to the beneficiaries of the estate of Sultan Ibrahim in accordance with the Inheritance Certificate dated 21 October 2004 relating to the estate of Sultan Ibrahim and issued by the Syariah Court of Singapore.

Position of the other defendants

16 At the hearing of the present Originating Summons on 2 May 2005, the court was informed that in order to save time and costs, the second, third, fourth and fifth defendants would not take an active part in the proceedings and would await a ruling with respect to the plaintiffs' prayers before deciding on their next course of action.

17 As for the sixth defendant, she informed the plaintiffs' solicitors, Drew & Napier LLC, in a letter dated 19 February 2005, that she was not interested in Tysersall and would not be making any claim in respect of the said property. She did not appear at the hearing of the Originating Summons.

18 In view of the positions adopted by the second to sixth defendants, only the plaintiffs and the first defendant, TAS, presented arguments to the court at the hearing of the Originating Summons.

Validity of the bequest as governed by the *lex situs*

19 As the crux of TAS's case is that Sultan Abu Bakar's will is governed by Muslim law, I will first consider whether this assertion is correct.

20 In truth, TAS's case as to why Muslim law applies to Sultan Abu Bakar's will is rather confusing. At first, he asserted that Muslim law was applicable because Johor law was applicable. In contrast, his counsel, Mr Lim Chor Pee, conceded at the hearing that the validity of the will was governed by the *lex situs* although he added that the Muslim law of inheritance was still relevant because it was part of the *lex situs*. Both assertions will be considered.

21 To support his assertion that Johor law is applicable to the bequest of Tyersall by Sultan Abu Bakar, TAS relied on the view of Mr Pawancheek bin Marican, the author of a book on Islamic Inheritance Laws in Malaysia, who stated in para 25 of his affidavit filed on 7 January 2005 as follows:

As the law applicable in Johore at the material time governing the estates of Muslims was the

Muslim law of succession and inheritance, the Will of Sultan Abu Bakar must be decided in accordance with Islamic law.

22 Mr Pawancheek next explained in para 30 of his affidavit the restrictions imposed by Muslim law on the disposal of a testator's property as follows:

> Muslim law imposes two principal restrictions upon testamentary power. The first rule is that the testator cannot make a bequest in favour of a legal heir unless the other legal heirs give their consent. The second restriction is that the testament is invalid if the testator purports to bequeath more than a third of his estate.

23 TAS also relied on the opinion of Dr Suwaid bin Tapah, an Associate Professor at the Academy of Islamic Studies, University of Malaya, who, like Mr Pawancheek, concluded that Muslim law governed Sultan Abu Bakar's will.

24 Neither Mr Pawancheek nor Dr Suwaid considered the effect of the laws of the colony of Singapore prevailing in 1895 before concluding that Muslim law was applicable to the will. Under English law, as applied in the colony of Singapore, the effect of a bequest of immovable property is governed exclusively by the *lex situs* and not by the *lex domicile*. Whether a testator has the capacity to make a will and whether the will complies with relevant formal requirements are governed by the *lex situs*. Choice of law rules are also governed by the *lex situs*.

25 The relevance of the *lex situs* has been confirmed in innumerable English cases. In *In re Miller* [1914] 1 Ch 511, the testator, who made a will in a Scottish form, devised lands in England and Scotland under terms which would have created estates with different legal consequences depending on whether the law of England or of Scotland was applicable. Warrington J held that the incidents of the estate which could be created in English land had to be determined by the law of the country where the land was situated and not by the law of the country where the testator was domiciled.

26 In the colony of Singapore, the relevance of the *lex situs* was conclusively settled by the Straits Settlements Court of Appeal in *Sheriffa Fatimah binte Aboobakar bin Mahomed Al Mashoor v Syed Allowee* (1883) 2 Kyshe (Eccles) 31 ("the *Sheriffa Fatimah* case"), which pre-dates Sultan Abu Bakar's will. The facts in this case, which concerned the disposition by will of immovable property in Singapore, will be discussed later on in this judgment. All that needs to be noted at this juncture is that Wood J said at 33 that it was "clear law, that the incidents to real estate, the right of alienating and limiting it, and the course of succession, depend entirely upon the law of the country where the estate is situated". That a decision of the Straits Settlements Court of Appeal is binding on the High Court was reiterated by the Court of Appeal in *Ng Sui Nam v Butterworth & Co (Publishers) Ltd* [1987] SLR 66. In view of this, it is clear that the law of Johor does not govern the validity of Sultan Abu Bakar's will.

Whether Muslim law was part of the lex situs in 1895

27 I will next consider Mr Lim's assertion that while the validity of Sultan Abu Bakar's will is governed by the *lex situs*, Muslim law is applicable to the will because it is part of the *lex situs*. In his written submissions, he summarised his client's position as follows:

> (a) Whether the will is interpreted according to Johor law or Singapore law, it must be interpreted according to Muslim law as the testator was a Muslim.
>
> (b) The testator was not above Muslim law even if he was a sovereign.

(c) If a Muslim testator makes a bequest of his property (in Johor or Singapore) to his eldest son that contravenes Muslim law, that bequest is invalid.

(d) In considering the will of a Muslim, whether domiciled in Johor or Singapore, the court cannot simply ignore Muslim law.

28 Mr Lim cited a number of Malaysian cases to support his assertions. Regrettably, these Malaysian cases are not relevant for whatever may have been the position of Muslims in the Malay states in the 19th century, the position of Muslims in the Straits Settlements, of which the colony of Singapore was a part, must be viewed in the context of the Second Charter of Justice 1826, which set up the Court of Judicature of Prince of Wales Island, Singapore and Malacca, and required the Court of Judicature to "give and pass judgment according to Justice and Right". In *Regina v Willans* (1858) 3 Kyshe 16 at 25–26, Sir Peter Benson Maxwell R explained the implications of the phrase "Justice and Right" in the following oft-cited terms:

> Now the Charter does not declare, *totidem verbis*, that [the law of England] shall be the territorial law of the Island; but all its leading provisions manifestly require, that justice shall be administered according to it, and it alone. … [A] direction in an English Charter to decide according to justice and right, without expressly stating by what body of known law they shall be dispensed, and so to decide in a Country which has not already an established body of law, is plainly a direction to decide according to the law of England.

29 Admittedly, the law of England was "taken to be the governing law, so far as it is applicable to the circumstances of the place": see *Ong Cheng Neo v Yeap Cheah Neo* (1872) 1 Kyshe 326 at 344. However, the fact that English law may be adapted to the circumstances of a particular colony is not a *carte blanche* for applying all aspects of native law. Indeed, in *In the Goods of Abdullah* (1835) 2 Kyshe (Eccles) 8, Malkin R rejected counsel's suggestion that the Second Charter of Justice should be interpreted so as to give the inhabitants of the colonies the full benefit of their own laws, religions and customs. He said (at 10) that "the introduction of the King's Charter into these Settlements had introduced the existing Law of England … and had abrogated any law previously existing". Note should also be taken of *Regina v Willans* where Maxwell R took the view that the Second Charter of Justice provided for the exclusion of native law and that it did not seem that the Charter had in any respect modified the law of England by any exceptional adaptation of it to the religions and usages of the East.

30 The courts were very clear as to when English law might be adapted to local circumstances. In *Khoo Hooi Leong v Khoo Chong Yeok* [1930] AC 346 at 355, Lord Russell of Killowen explained that "[t]he modifications of the law of England which obtain in the Colony in the application of that law to the various alien races established there, arise from the necessity of preventing the injustice or oppression which would ensue if that law were applied to alien races unmodified". It is for this reason that Chinese and Malay polygamous marriages were recognised in the Straits Settlements: see, for instance, *In the Matter of the Estate of Choo Eng Choon* (1911) 12 SSLR 120; *In the Goods of Lao Leong An* (1867) 1 SSLR 1 and *Cheang Thye Phin v Tan Ah Loy* [1920] AC 369. In *Re Loh Toh Met, Decd* [1961] MLJ 234 at 242, Thomson CJ reiterated that such marriages were recognised "not by reason of the religious beliefs of any particular individual but because it would be unjust to apply it to him in this country as a member of the race to which he belongs".

31 As far as English law on the validity of wills is concerned, the courts did not find it unjust to apply it to everyone in the Straits Settlements. In the *Sheriffa Fatimah* case ([25] *supra*), a Muslim merchant, who owned immovable property in Singapore, executed a will in Arabia that was in conformity with the laws of Singapore but was contrary to Muslim law, which was applicable in Arabia,

where he was domiciled. After his death, the plaintiff sought to set aside his will on the ground that its provisions were contrary to Muslim law. The Court of Appeal of the Straits Settlements, which affirmed the decision of the court below, held that the will was valid. Ford Ag CJ stated at 33 that "the plaintiff cannot invoke her rights under the Mahomedan Law of a foreign state, to limit the devolution of land in these Settlements, made within the limits allowed, and under the forms required by its laws, which in this particular are identical with those of England". As has been mentioned earlier on, this decision of the Straits Settlements Court of Appeal is binding on the High Court.

32 A similar approach was adopted in an earlier case in Penang, to which the Second Charter of Justice 1826 also applied. In that case, namely *In the Goods of Abdullah* ([28] *supra*), the issue before the court was whether letters of administration that had been granted to the widow of the deceased, a Muslim, should be revoked on the ground that the deceased had in fact executed a will. The widow contended that the will was inoperative because it was not in accordance with Muslim law. This contention was rejected by Malkin R, who held that a Muslim could, by will, alienate the whole of his property even though this contravened Muslim law.

33 The Straits Settlements cases referred to above dispose of Mr Lim's argument that Muslim law was part of the *lex situs* in 1895. All the same, for a more complete picture of the development of the law in Singapore on wills that are executed by Muslims, a brief reference ought to be made to the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed) ("AMLA"), which now requires a Muslim domiciled in Singapore to dispose of his property by will "in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim law professed by him". It is crucial to note that s 111(2)(*c*) of the AMLA, which came into force in 1968, provides that nothing in the Act shall affect the will of a Muslim dying before 1 July 1968. If Muslim law had governed the wills of Muslims domiciled in Singapore before the AMLA came into force, s 111(2)(*c*) of the Act would not have been necessary. That the AMLA effected a "major change" in the law affecting the making of wills by Muslims was stressed by the then Minister for Culture and Social Affairs, Mr Othman bin Wok, on 30 December 1965 during the second reading of the Administration of Muslim Law Bill when he informed Parliament as follows (see *Singapore Parliamentary Debates, Official Report* (30 December 1965) vol 24 at cols 772–773):

> Part VII deals with property and in the main re-enacts the provisions of the Muslims Ordinance, 1957. *One major change* is the provision that the Muslim law shall apply to dispositions by will by Muslims. The effect will be that a Muslim can only freely dispose of one-third of his property by will; the balance must be distributed to the persons entitled to take [on] intestacy. [emphasis added]

34 If the relevant provisions of the AMLA are compared with those of the Muslims Ordinance (No 25 of 1957), the "major change" referred to by the Minister becomes very apparent. Unlike the AMLA, the Muslims Ordinance did not place any restrictions on the making of wills by Muslims domiciled in Singapore. The Ordinance merely empowered the court to vary a will to make provision for an heir of a testator whose will did not make provision or sufficient provision for that person in accordance with the school of Islam to which the deceased belonged at the date of his death. The Ordinance required an heir who wished to apply to the court for such a variation to do so within six months from the date of extraction of probate or letters of administration in regard to the testator's estate.

35 To sum up, for reasons already stated, including the fact that this court is bound by the decision of the Court of Appeal of the Straits Settlements in the *Sheriffa Fatimah* case ([25] *supra*), Muslim law with respect to the disposition of immovable property by will was not part of the *lex situs* in 1895. It follows that Sultan Abu Bakar's will is valid regardless of whether or not it contravened Muslim law.

Construction of the will

36 The next task of the court is to construe the provisions of Sultan Abu Bakar's will. The main issue before the court concerns the nature of the bequest of Tyersall to Sultan Ibrahim.

37 The plaintiffs asserted that as Sultan Abu Bakar bequeathed Tyersall to Sultan Ibrahim as "State property", the said property was bequeathed to the throne of Johor and is not part of Sultan Ibrahim's estate. On the other hand, TAS contended that Sultan Ibrahim was the absolute beneficial owner of Tyersall in his personal capacity and that the property devolved to the latter's estate. How TAS could take this position when part of his case is that Sultan Abu Bakar was not entitled under Muslim law to dispose of more than a third of his property by will cannot be fathomed, and especially so since he stated in para 9 of his first affidavit that he intended to seek a declaration that "any bequest by Sultan Abu Bakar in his Will … to his eldest son … solely to the exclusion of his other children … is voidable, unless they give their subsequent consent to the bequest".

38 Although it is often said that the common law requires the provisions of a will to be construed according to the system of law intended by the testator and that this is presumably the law of his domicile, the court's primary task is to ensure that the testator's intentions, as expressed in his will, are not thwarted. The position is summed up in *Cheshire and North's Private International Law* (Butterworths, 13th Ed, 1999) at p 995, in the following terms:

> The province of construction is to ascertain the expressed intentions of the testator … [T]he duty of any court, no matter in which country it may sit, is to give effect to the expressed intentions and, *if these are clear, there can be no occasion to test the language of the will by reference to any particular legal system.* If, however, the language of the will leaves the intention doubtful, or if it uses expressions which are ambiguous or equivocal … a problem of choice of law arises, for it is essential that the doubtful intention of the testator should be ascertained by reference to rules of construction obtaining in one particular system of law. [emphasis added]

39 Sultan Abu Bakar's will is very clear and unambiguous. It reveals that he was fully aware of the concept of "State property". He referred to two categories of "State property" that were intended for his successor's "use and possession *as Sovereign Ruler*" [emphasis added]. The first category concerned:

> all such properties, things, and objects as are said to be State heritage or belongings … namely, my Istana together with all its gardens and surroundings and furnitures of every description, kind and use; all state buildings in Johore Bharu and in any other dependencies of the State of Johore; the crown, and all the paraphernalia and things all complete as used in the State Ceremonials …

40 The second category concerned properties that Sultan Abu Bakar had "by [*his*] *own will, and pleasure* ... declared and constituted as the property of the State" [emphasis added]. These properties are by their nature and character not the property of the State. Tyersall was expressly designated as such a "State property". If Sultan Abu Bakar had intended to bequeath Tyersall to Sultan Ibrahim as the latter's personal property, he would not have used the words "for his use and possession as Sovereign Ruler" and "similarly as State property" to describe the nature of the bequest. These critical words put beyond doubt his intention that Sultan Ibrahim was to hold Tyersall and all other State properties in his capacity as the sovereign ruler of Johor and not in his personal capacity. The plaintiffs' counsel, Mr Davinder Singh SC, rightly pointed out that if, as TAS contended, the compensation for the compulsory acquisition of Tyersall should be distributed to all the lawful beneficiaries of Sultan Ibrahim's estate, then all these beneficiaries would be entitled to claim an

interest in the Istana and all other state buildings in Johor as well as in the State of Johor's crown, weapons and firearms. This would be absurd and was not Sultan Abu Bakar's intention, as expressed in his will.

41 It is also evident that Sultan Abu Bakar's expressed intention was for Tyersall to become "State property" after his death because he drew a distinction between Tyersall and his other private properties in Singapore. He bequeathed a property known as "Woodneuk", which is adjacent to Tyersall, absolutely to his wife, Sultanah Khadijah. In his will, he provided as follows:

> And I give and bequeath to my wife, Sultana Khadijah … the ground, house, furniture, and garden situated in the district of Tanglin in Singapore called "Woodneuk" … which is near by the Istana Tyersall.

42 As for his remaining properties in Singapore, he arranged for them to be divided among his heirs. He provided as follows in his will:

> And with regard to my other lands … and properties in the Island of Singapore, namely, the land at Teluk Blanga, the godowns in the Town of Singapore, Cairn Hill Estate, Mount Victoria Estate … and the land house and garden in Thomson Road, I leave them all under the superintendence and charge of my said Executor, on behalf and for the benefit of my heirs whom I shall name each one separately.

43 For the reasons stated above, I hold that it is absolutely clear from Sultan Abu Bakar's will that he intended that Tyersall would no longer be private property after his death but would become "State property" in the hands of the reigning Sultan of Johor. In view of this, there is, to use the words of *Cheshire and North,* ([38] *supra*), "no occasion to test the language of the will by reference to any particular legal system". There is thus no need to consider the *lex loci* for the purpose of construing the words chosen by Sultan Abu Bakar with respect to the bequest of Tyersall.

The armchair rule

44 The plaintiffs' counsel, Mr Davinder Singh, invited the court to take into account the so-called "armchair rule", which enables the court to put itself in a testator's shoes and consider the circumstances and knowledge of the testator. In *Perrin v Morgan* [1943] AC 399, Lord Romer explained at 420:

> [A] will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. To understand the language employed the court is entitled, to use a familiar expression, to sit in the testator's armchair. When seated there, however, the court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said …

45 It was pointed out that Sultan Abu Bakar was influenced by English concepts as he was educated in Keasberry's Academy, a boarding school run by an Englishman, and had frequently travelled to England and Europe. He retained a firm of solicitors in Singapore, M/s Rodyk & Davidson, as his personal advisers, and was advised by English lawyers when he sought to rely on sovereign immunity after he was sued for breach of promise to marry in England: see *Mighell v Sultan of Johore* [1894] 1 QB 149. In *A History of Johore (1365–1941)* (MBRAS Reprint No 6, 2nd Reprint, 1992), R O Winstedt shed some light on how English habits influenced Sultan Abu Bakar when he stated at pp 135–136 as follows:

> Sultan Abu-Bakar played cricket and billiards, kept a stud of horses and was a lavish host. In 1882 he entertained Prince Albert Victor and Prince George of Wales. The royal princes found the "huge drawing-room like one of the state-rooms at Windsor and furnished from London" … In the afternoon the Sultan drove a four-in-hand to the Singapore races, with His Majesty the present King beside him on the box:— the Sultan won four out of five races, his best horse being an Australian 'Lord Harry'. A few years later the Sultan entertained the Duke of Sutherland for several days … The Palace Library preserved the Victorian atmosphere, contained many of Wilkie Collins' novels and volumes of *Punch* and the *Art Journal*.

46 Sultan Abu Bakar, who spent long periods in England and died in London, appeared rather pleased with the warmth with which he was received by the British royal family. R O Windstedt elaborated on this at p 136 of his book as follows:

> On 2 August 1878, [Sultan Abu Bakar] wrote from 62 Queen's Gate South Kensington, to Colonel Anson at Penang:— "I intend, if possible, to visit Paris, Vienna and perhaps Italy. … Her Majesty the Queen has honored me with an audience, and I have had the honour of meeting the Prince and Princess of Wales and attending a State Ball at Buckingham Palace". … For her jubilee in 1887, he had presented Queen Victoria with a silver model of the Albert Memorial, which she treasured at Windsor. On 25 February 1891, he was invited to dine and stay at the Castle… The ruler … dined seated at the right hand of the Queen, heard Her Majesty propose his health … and was carried off to another apartment to talk for hours with her whose words the East held sacred. In March the Queen wrote in her own hand a letter to the Sultan thanking him for a walking-stick and signing herself his "affectionate friend." In the summer the Queen sent the Sultan her bust in marble.

47 The plaintiffs contended that having absorbed English culture and ideas extensively, Sultan Abu Bakar must have wanted Tyersall to be handed over to his heir in the same manner that Crown property passes in England. Their counsel, Mr Davinder Singh, summed up the position in para 112 of his submissions as follows:

> It is clear … that Sultan Abu Bakar was heavily influenced by and imbibed English concepts and ideas. He incorporated it into almost every aspect of his life – personal and political. Given that Sultan Abu Bakar frequently used English legal advisers (he retained Messrs Rodyk & Davidson as his confidential advisers) and given the terms of the Will, it is extremely likely that the Will was drafted with the advice of, if not by, someone extremely knowledgeable in English law.

48 In my view, there is no need to consider the armchair rule for the simple reason that Sultan Abu Bakar's intention with respect to the bequest of Tyersall was clear. All the same, had it been necessary, the armchair rule would have supported the assertion that Tyersall was bequeathed to Sultan Ibrahim as "State property" and not to him personally.

Whether the bequest of Tyersall is invalid for any other reason

49 Whether Sultan Abu Bakar's bequest of Tyersall to Sultan Ibrahim as "State property" is invalid for any other reason will next be considered. According to TAS, a bequest of Tyersall to the reigning Sultan of Johor would be invalid because it infringes the rule against perpetuities. He also argued that the bequest of Tyersall to Sultan Ibrahim as "State property" did not make sense because the State of Johor did not exist in 1895.

The rule against perpetuities

50 While the rule against perpetuities was applicable in the Straits Settlements, TAS's contention that the bequest of Tyersall infringed this rule is misconceived. The effect of the rule against perpetuities is explained in *Williams on Wills* (Butterworths, 7th Ed, 1995) vol 1 at p 820 as follows:

> The rule is directed to ensure that interests shall vest within the period allowed by the rule, and if an interest is immediately vested or must necessarily vest within the period allowed, its validity cannot be questioned so far as this rule is concerned. An interest becomes vested when, first, the person or persons or corporation or body of persons to whom or to which it is limited is or are ascertained and in existence and capable of taking, secondly, the quantum of the interest is ascertained, and thirdly, all other events have happened to enable the interest to come into possession at once, subject to the determination at any time of the prior interests.

51 The bequest of Tyersall as "State property" did not offend the rule against perpetuities because it is a bequest to a "corporation sole". *Black's Law Dictionary* (West Group, 7th Ed, 1999) defines a "corporation sole" as follows:

> A series of successive persons holding an office; a continuous legal personality that is attributed to successive holders of certain monarchical or ecclesiastical positions, such as kings, bishops, rectors, vicars, and the like. This continuous personality is viewed, by legal fiction, as having the qualities of a corporation.

52 It follows that a sovereign in his political capacity is regarded as "immortal". The person who is sovereign may change but the sovereign is always present. As the beneficial title to Tyersall vested immediately in the corporation sole, the question of infringement of the rule against perpetuities does not arise.

Whether Johor was a state in 1895

53 As for TAS's assertion that Sultan Abu Bakar's bequest of Tyersall to his successor in his capacity as sovereign ruler of the State of Johor or to the State of Johor was not valid because the State of Johor was not in existence in 1895, reliance was placed on the opinion of a historian, Dato' Khoo Kay Kim, who stated as follows in para 8 of his affidavit:

> [T]here was no separate body as the "State of Johor" that was distinguishable from the Sultan of Johor before the 1957 Constitution of Malaya (now Malaysia) constituting the Federal Government and eleven States (Negeri) with their respective jurisdictions and powers separate from the Rulers.

54 This line of argument is flawed because what is more relevant in this case is whether or not there is a distinction between the Sultan of Johor's private property and "State property". In this context, it is useful to note that Dato' Khoo accepted in para 6 of his affidavit that in general, "it should be possible to find several examples of Malay rulers in the other Malay kingdoms who owned private property". In any case, reference should be made to *Mighell v Sultan of Johore* ([45] *supra*). In this case, Sultan Abu Bakar sought to set aside an order of substituted service of a writ of summons in an action against him for breach of promise to marry on the ground that the English court had no jurisdiction over him. As the answer to the question whether Sultan Abu Bakar was a sovereign was crucial to the determination of the case, Wright J requested the Colonial Office to ascertain Sultan Abu Bakar's status. The Colonial Office informed the court that Johor was an independent state in the Malay Peninsula and that Sultan Abu Bakar was the sovereign ruler of that territory. It pointed out that he raised and maintained armed forces on sea and land, organised a

postal system, founded orders of knighthood, conferred titles of honour and exercised the usual attributes of a sovereign. In view of this, in the Divisional Court, Wills J had occasion to state at 153:

> We are told by that letter that the Sultan, "generally speaking, exercises without question the usual attributes of a sovereign ruler." … There can be no doubt that he is still an independent ruling sovereign, and this case must be decided upon exactly the same considerations as if the ruler of some undoubted great Power – such as the King of Italy, or the President of the French Republic – had been sued in the Courts of this country.

55 The decision of the Divisional Court was affirmed by the Court of Appeal. It follows that TAS's contention that the bequest of Tyersall in 1895 failed because the State of Johor did not exist at that time does not rest on a firm foundation.

Miscellaneous points raised by TAS

56 I will now consider some miscellaneous points raised by TAS. To begin with, in paras 18 and 19 of his first affidavit, he stated as follows:

> The titles also show that the Land or part of it was mortgaged to third parties to raise loans. These records will show that the Land was treated as personal property by Sultan Ibrahim and not as State property.
>
> There are also Deeds of Assignment in 1938 whereby Sultan Ibrahim purchased the interests of his three sisters in the Land. It is submitted that if the Land had become "State" Land in 1895, why was it necessary for Sultan Ibrahim to purchase the interests of his sisters in the Land in 1938?

57 What Sultan Ibrahim did in relation to Tyersall is not relevant for the purpose of construing what the testator intended. It may be recalled that Tyersall was conveyed to Sultan Ibrahim on 4 August 1934 as "State property and upon the terms and conditions set forth in Sultan Abu Bakar's will". In any case, as far as the alleged mortgage is concerned, the evidence before the court was that Tyersall is free from encumbrances. As for the deeds of assignment executed by Sultan Ibrahim's sisters in October 1938, it appears that Sultan Ibrahim arranged for the execution of these deeds out of an abundance of caution. Apart from furnishing a nominal consideration of $10, the deeds referred to an "*alleged* entitlement" to certain rights with respect to Tyersall.

58 Finally, the reliance by TAS on the Inheritance Certificate of the estate of Sultan Ibrahim issued by the Syariah Court of Singapore on 21 October 2004 merits comment. As I have found that Tyersall was not a part of Sultan Ibrahim's personal estate, the Inheritance Certificate in question does not concern the disposition of this property.

Conclusion

59 For reasons already stated, I hold that as Tyersall was bequeathed by Sultan Abu Bakar to the throne of Johor in 1895, the second plaintiff is, as the reigning Sultan, entitled to receive the compensation sum of $25m awarded by the Collector for the compulsory acquisition of Tyersall. I thus order that the compensation sum paid into court by the Collector, together with any interest under s 41 of the Land Acquisition Act, be paid to the second plaintiff.

60 In view of my decision on the validity of the bequest of Tyersall, it follows that the defendants are not "persons interested" for the purposes of s 23 of the Land Acquisition Act and

have no standing to appeal to the Appeals Board constituted under s 19 of the said Act.

Costs

61 As far as the dispute between the plaintiffs and the first defendant is concerned, the plaintiffs are entitled to costs.