

Husain Safdar Abidally v Shiraz Abidally Husain alias Shiraz Abidally Abdul Husain and
Another
[2006] SGHC 174

Case Number : OS 573/2005
Decision Date : 29 September 2006
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Gopalan Raman (G Raman & Partners) for the plaintiff; Mirza Namazie and Chua Boon Beng (Mallal & Namazie) for the defendants; Pillay Mohan Reviendran (Wong Partnership) for the second defendant in her personal capacity
Parties : Husain Safdar Abidally — Shiraz Abidally Husain alias Shiraz Abidally Abdul Husain; Mrs Salma Moiz nee Salma d/o Abidally Abdul Husain

Muslim Law – Agreement between children of deceased Muslim man to honour deceased's wish to distribute part of his estate in equal shares between them – Whether agreement binding

29 September 2006

Judgment reserved.

Kan Ting Chiu J:

1 Abidally Abdul Husain alias Abidally Abdul Husain (son of Abdul Husain) (“the deceased”), a Muslim gentleman, died on 16 May 2003. He had made a will dated 13 January 1992, and executed a letter dated 5 November 2000 which was referred to as a “letter of wishes” in these proceedings.

2 By the will, the deceased made bequests of one third of his property to his grandchildren and some other persons. It is very likely that he had kept the bequests to that level because he was aware or was advised that under Muslim law, a person can dispose of up to one third of his property by his will.

3 In the handwritten letter of wishes, the deceased stated:

To all my Children

These are my wishes regarding my Estate

...

(2) All my Cash Balance in my POSB OUB and INDIAN BANK A/c to be distributed equally (& not according to Muslim law) amongs [*sic*] all my 6 Childrens [*sic*].

Those three accounts (“the joint accounts”) were held in the joint names of the deceased and the second defendant.

The parties

4 The deceased was a widower with six children, two sons and four daughters, and 13 grandchildren. The plaintiff Husain Safdar Abidally is the second son and fourth child. The first defendant Shiraz Abidally Husain, also known as Shiraz Abidally Abdul Husain, is the first son and first child, and the second defendant Mrs Salma Moiz nee Salma d/o Abidally Abdul Husain is the second

daughter and third child. The two defendants are the executor and executrix of the deceased's will. Although they and their siblings are referred to as the deceased's children, they are mature adults.

The dispute

5 When the action was commenced by the plaintiff, there were two issues in dispute:

- (a) whether the letter of wishes was null and void[\[note: 1\]](#), and
- (b) whether the money in the joint accounts belonged to the second defendant upon the death of the deceased.[\[note: 2\]](#)

The second issue arose because the second defendant took the position that the money in the joint accounts belonged to her as the surviving account holder.

6 The second issue was settled shortly before the hearing of the action when the second defendant made an offer to settle in her personal capacity to treat the money in the joint accounts as money belonging to the deceased's estate, and the offer was accepted by the plaintiff. By that settlement, that dispute was disposed of.

7 Counsel for the defendants informed me of the settlement on the first day of the hearing, and of the parties' agreement that the issue that remains to be determined is:

whether or not there was an agreement between the six children of the deceased (two sons and four daughters) that the joint accounts monies would be distributed between the six of them, at least to the extent of 2/3 now in equal shares and not in accordance with Syariah law.[\[note: 3\]](#)

8 Counsel for the plaintiff confirmed that and made it clear that:

The only contention --- bone of contention ... is whether there was an agreement to distribute the 2/3 equally between the siblings. ... I reiterate my client's position as far as payment of 1/3 of the 3 bank monies was concerned. There was never a concession that that 1/3 be deducted before the 2/3 was earlier distributed.[\[note: 4\]](#)

The agreed points under Muslim law

9 The hearing proceeded on the common ground that under Muslim law:

- (a) the deceased cannot dispose of more than one third of his estate by his will;
- (b) a letter of wishes is not binding on the beneficiaries, but they can agree to comply with it;
- (c) the beneficiaries to an estate under Muslim law can agree to vary the apportionment of their shares that are prescribed by Muslim law;
- (d) the deceased's children can agree to vary their shares to two-thirds of the money in the joint accounts, but they cannot agree to vary the distribution of all the money in the joint accounts; and
- (e) in the absence of any agreement, each of the deceased's sons would receive twice the share of each of the deceased's daughters in two thirds of the money in the joint accounts.

The events leading to the distribution

10 The deceased died on 16 May 2003. Two days later on 18 May, the deceased's letter of wishes was discovered. All the children became aware of its contents and decided that the deceased's wish was to be complied with.

11 On the following day, 19 May, the deceased's will was discovered and its contents were made known to the children. On the same day, the second defendant took steps to distribute the money in compliance with the letter of wishes. There is some disagreement on the exact sequence of events on 19 May, but nothing turns on it.

12 On 7 August 2003, the plaintiff objected to the equal distribution of the money and asserted his right to his entitlement under Muslim law.

The plaintiff's case

13 In para 7 of his affidavit of 26 July 2005 the plaintiff deposed that:

As an heir to the estate of the deceased I have not consented to the equal distribution of the bank moneys amongst the male and female children.

adding in para 30 that:

Everyone thought on 18th that the letter of wishes was his testament and was *compliant*.
[emphasis added]

a term he used again under cross-examination [\[note: 5\]](#) by which he was probably referring to the point in [9(d)] hereof, and reiterating in para 33:

I totally disagree ... that the siblings had unanimously agreed or consented to the equal distribution of the bank moneys amongst themselves.

14 The position taken by the plaintiff in his affidavit is repeated in the opening statement: "The Plaintiff has and still denies this alleged consent of the equal distribution by him, or anyone else as far as he knows."[\[note: 6\]](#)

15 The plaintiff's position shifted slightly during the hearing. At that stage, he explained that he had agreed to comply with the deceased's letter of wishes because he thought he had to obey the wishes [\[note: 7\]](#), and that he had subsequently changed his mind when he realised that the deceased's wishes could not be carried out without his consent. [\[note: 8\]](#)

16 At the close of the case, counsel for the plaintiff stated:

[T]he only issue before the Court for trial was whether there was ... an alleged agreement on 18 May 2003 excluding the application of the Muslim law ... and accepting instead the equal distribution as desired by the deceased. [\[note: 9\]](#)

17 The plaintiff's submissions did not take up the point that the plaintiff thought the letter of wishes was binding on him. The closest it came to that was that "he [the plaintiff] took the equal share because he took the Letter of Wishes as the deceased's *directive*, not because of any

agreement”[\[note: 10\]](#) [emphasis in original] but nothing turned on that in the end.

The defendants’ case

18 The defendants’ position is set out in the closing submissions:

8. The Defendants assert that the Plaintiff had given his consent for the Bank Monies to be distributed equally among the Deceased’s 6 children according to the Letter of Wishes and he is bound by that consent under the applicable Muslim law.

9. The Defendants’ position is that the Plaintiff gave his consent to take a 1/6 share of the Bank Monies in issue, not at a single point in time, but over a period of time, beginning on 18 May 2003 (when the Letter of Wishes was found and read), through to 19 May 2003 (when the Deceased’s Will was found and read and the Plaintiff did not object), through to the afternoon of 19 May 2003 (when the Plaintiff physically received his share of the Bank Monies and did not object), and ending a few days after that ...

The critical events and developments

19 The major events to the distribution and the dispute are:

(a) 18 May 2003 – the discovery of the letter of wishes, and the children’s decision to comply with it and distribute the money in the joint accounts equally;

(b) 19 May 2003 – the discovery of the will and the distribution of the money in the joint accounts; and

(c) 8 May 2006 – when counsel informed me on the first day of the hearing that any agreement to distribute can only apply to two thirds of the moneys in the joint accounts. The parties may have come to this conclusion earlier, but no earlier date was mentioned to me. There was no suggestion that any of the siblings was aware of that on 18 or 19 May 2003.

Whether the distribution was made with the plaintiff’s agreement

20 The plaintiff’s evidence was that all the children “decided” (the word he used in distinction to “agreed”) to comply with the letter of wishes.[\[note: 11\]](#)

21 The plaintiff maintained that he had not given his informed consent to the distribution even though he conceded that he knew at that time that the distribution was not in accordance to Muslim law under which a male child would receive twice as much as a female child.[\[note: 12\]](#) He also alleged that he thought the letter of wishes was binding on him, although this was not stated in his affidavit or opening statement.

22 A lot of effort was put in by Dr Raman and Mr Namazie, counsel for the plaintiff and defendants respectively, to show or to refute the existence of an agreement. I will not recite the arguments put before me. It suffices for me to state that I find on the evidence that the distribution of 19 May was made with the plaintiff’s agreement and consent, *ie*, that he agreed on 18 May to comply with the deceased’s wish that the money be distributed equally between the siblings with the knowledge that the wish was not in conformity with Muslim law, and he had not done that in the mistaken belief that the letter of wishes was binding on him.

23 That finding, however, does not dispose of the matter. Another issue was to be addressed,

ie, is the agreement sufficient? It is common ground that the deceased's wish cannot be carried out even with the siblings' agreement because one third of the money in the joint accounts had been disposed of under the will to the deceased's grandchildren and some other persons.

24 In other words, there cannot be a valid agreement under Muslim law to comply with the deceased's wishes except by limiting the scope of the equal distribution. This is the cause for the restatement of the issue at the commencement of the hearing. Against the restated issue, the defence has to be that there is an agreement to distribute two thirds of that money equally between the siblings.

25 Here the defence runs into two difficulties:

(a) there was no agreement on the distribution of two thirds of the money in the joint accounts; and

(b) the agreement relied on by the defence was for the distribution of all the money in the joint accounts.

Review of the case

26 On the defence's evidence, the siblings agreed on 18 May 2003 to comply with the letter of wishes and accepted the equal distribution of all the money made on the next day. However the wish cannot be carried out in full even if the siblings had agreed to it, and any agreement must be limited to two thirds of the money.

27 The question then is whether the agreement to distribute all the money in the joint accounts equally is the same as an agreement to distribute two thirds of the money in the joint accounts equally.

28 The answer must be no. Inasmuch as all the money is not synonymous to two thirds of the money, an agreement to distribute all the money is not an agreement to distribute two thirds of the money. If one of the siblings had said on 18 May: "Although the letter of wishes says 'all my cash balance' let us change that to 'two thirds of the cash balance' instead", someone might have disagreed on the ground that that was not what the deceased had wished, or on the ground that he was not prepared to have his share reduced again after the *corpus* had been reduced. In fact at that time no one had thought of reducing the amount to be distributed.

29 In the event, although the plaintiff had agreed to the equal distribution of all the money in the joint accounts, he had not agreed to the equal distribution of two thirds of that money.

30 Since the defendants cannot rely on the agreement of 18 and 19 May to insist that two thirds of the money in the joint accounts be distributed equally between the siblings, the issue must be answered in the negative. The money in the joint accounts should be distributed in accordance to Muslim law.

[\[note: 1\]](#)Prayer 1 of the Originating Summons

[\[note: 2\]](#)Prayer 2 of the Originating Summons

[\[note: 3\]](#)Notes of Evidence at p 4, line 28 to p 5, line 2

[\[note: 4\]](#)Notes of Evidence at p 5, lines 18–23

[\[note: 5\]](#)Notes of Evidence at p 57, line 24

[\[note: 6\]](#)Plaintiff’s affidavit of 26 July 2005 at para 20

[\[note: 7\]](#)Notes of Evidence at p 57, line 30 to p 58, line 1

[\[note: 8\]](#)Notes of Evidence at p 83, line 31 to p 84, line 3; and p 86, lines 8–12

[\[note: 9\]](#)Plaintiff’s Closing Submissions at para 6

[\[note: 10\]](#)Plaintiff’s Closing Submissions at para 14

[\[note: 11\]](#)Notes of Evidence at p 52, lines 4–21

[\[note: 12\]](#)Notes of Evidence at p 108, line 32 to p 33, line 1

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