# Murakami Takako v Wiryadi Louise Maria and Others
# [2007] SGHC 6

**Case Number** : Suit 291/2005, SUM 2966/2006

**Decision Date** : 12 January 2007

**Tribunal/Court** : High Court

**Coram** : Andrew Ang J

**Counsel Name(s)** : Devinder K Rai and Subramanian Pillai (Acies Law Corporation) for the plaintiff; Wilfred Choo (W Choo & Co) and Andre Yeap Poh Leong SC, Adrian Wong Soon Peng and Dominic Chan (Rajah & Tann) for the defendants

**Parties** : Murakami Takako — Wiryadi Louise Maria; Ryuji Murakami; Bahari Sjamsjur; Ryuzo Murakami

*Civil Procedure – Pleadings – Amendment – Defendants applying to court to amend defence by including counterclaims and adding fourth defendant to proceedings – Whether court should allow application – Whether amendments would cause injustice to plaintiff – Whether defendants' proposed counterclaims time barred*

*Conflict of Laws – Foreign judgments – Enforcement – Whether Singapore Court may enforce judgment in rem by Indonesian Supreme Court if subject matter of proceedings not situated in Indonesia when judgment given*

*Conflict of Laws – Foreign judgments – Recognition – Whether declaratory judgment by Indonesian court entitled to recognition wand giving rise to res judicata or issue estoppel*

*Conflict of Laws – Jurisdiction – Forum non conveniens – Defendants applying to court to amend defence by including counterclaim – Whether Singapore most appropriate forum to deal with counterclaim*

12 January 2007

**Andrew Ang J:**

1 The plaintiff, Takako Murakami, is the eldest daughter of Takashi Murakami Suroso, also known as Takashi Murakami ("the deceased"), and is the executrix of the deceased's estate pursuant to the deceased's last will dated 16 July 1993. The first defendant was the deceased's wife whom he married in 1968 shortly after the death of the plaintiff's mother (Yu Yun Hwa) with whom the first defendant were good friends. The deceased had two children, namely, the plaintiff and her brother, Takao Murakami, both of whom he formally adopted after the demise of Yu Yun Hwa.

2 From his marriage to the first defendant, the deceased also had two sons, one of whom was the second defendant, Ryuji Murakami, and the other being Ryuzo Murakami. The third defendant, Bahari Sjamsjur, was the brother-in-law of the first defendant.

3 The first defendant and the deceased commenced divorce proceedings in Indonesia in 1992. After the divorce between the deceased and the first defendant was formalised in 1994, the deceased commenced further proceedings in 1995 for the division of joint assets in the Indonesian courts ("the Property Proceedings") but he died in 1996 after which the plaintiff, as sole executrix of the estate of the deceased, continued with the action. By way of Judgment No 203 ("Judgment 203"), the Indonesian Supreme Court declared, *inter alia* ([20] of the re-amended statement of claim):

(a) that the will made by the deceased was valid and that the plaintiff has been properly appointed as executrix of the deceased's estate;

(b) that the doctrine of common property applied to the property acquired by the first defendant and the deceased during their marriage (*ie*, that both the deceased and the first defendant were entitled to an equal share in these properties) and that among other properties, the Faber Drive, Ardmore Park and Taman Serasi properties in Singapore formed part of the common property;

(c) that, among other deposits and bank accounts, the following bank deposits in Singapore are the common property of both the first defendant and the deceased:

(i) deposit confirmation from Daiwa Bank Ltd dated 30 December 1988; and

(ii) debit/credit advice from Banque Nationale de Paris dated 4 April 1994; and

(d) that the first defendant was to surrender to the plaintiff as executrix of the deceased's estate, half of all the common properties mentioned in the Judgment including the abovementioned bank accounts, the Faber Drive, Ardmore Park and Taman Serasi properties.

4 The present dispute between the parties involves the assets in Singapore forming part of the estate of the deceased. The plaintiff's claim was in relation to:

(a) five immovable properties situated in Singapore (including such proceeds of sale in so far as any of the said properties have been sold);

(b) rental income on any one or all of the said five immovable properties;

(c) moneys in various bank accounts;

(d) items of jewellery;

(e) a deposit held by the Singapore Economic Development Board; and

(f) any other asset(s) belonging to the estate of the deceased.

5 The plaintiff's claim against the first defendant was founded principally on Judgment 203. The plaintiff also claimed damages in conspiracy against the first and second defendants (in relation to the Ardmore Park property) and the first and third defendants (in relation to the Taman Serasi property) on the basis that the second and third defendants had knowingly assisted the first defendant to commit breaches of trust by allowing the first defendant to transfer the properties to them. In so far as there are Singapore properties and assets not specifically covered by Judgment 203, the plaintiff avers that the Supreme Court of the Republic of Indonesia would have made an order in terms similar to Judgment 203 in respect of such Singapore properties and assets, had they been properly brought to the attention and notice of the Supreme Court. The plaintiff's alternative claim against the second and third defendants is for a return of half of the legal interest in the properties (or an equivalent amount thereof in monetary value) pursuant to Judgment 203.

6 Before proceeding any further, it would be necessary to trace the development of the entire proceedings. Suit No 291 of 2005 was initially scheduled for a ten-day trial before me commencing on 26 June 2006. On that day, I heard an application by counsel for the plaintiff in Summons No 2737 of

2006 for certain parts of the affidavit and opinion of the defendants' expert on Indonesian law to be expunged. This was on the ground that those parts related to Indonesian law which had not been pleaded. Rather than allow the application, I stood it down for the defendants to seek leave to file a rejoinder out of time and/or to amend the defence as appropriate. The matter was adjourned to the next day for the defendants to submit their application.

7 On 27 June 2006, Mr Jimmy Yim of Drew & Napier LLC attended the hearing, having been briefed by the defendants to appear as counsel. He indicated that his firm had previously advised the plaintiff in regard to certain work and that he was happy to leave it to the plaintiff to decide whether or not to object. The next day, on 28 June 2006, Mr Andre Yeap of Rajah & Tann appeared before me on behalf of the defendants, Mr Jimmy Yim having failed to secure the plaintiff's consent to his representing the defendants. Mr Yeap requested an adjournment for him to consider appropriate amendments to the pleadings.

8 I directed that the defendants' application be filed and served on 3 July 2006 so that the plaintiff could consider consequential amendments (if any) to her pleadings and that the matter be heard on 4 July 2006, whereafter the trial could immediately proceed. The defendants not only sought to make amendments to the defence but also sought to add Ryuzo Murakami as the fourth defendant to these proceedings by way of Summons No 2966 of 2006. In the proposed amendments, the defendants also sought to mount counterclaims against the plaintiff. The proposed amendments included:

(a) a counterclaim against the plaintiff for, *inter alia*, an account of the assets of the estate of the deceased; and/or

(b) consequential orders that such assets be delivered to the second and/or proposed fourth defendants in accordance with their respective entitlements to the estate.

This applied especially to properties that the defendants contended had been declared as joint property under Judgment 203, and which the defendants alleged the plaintiff had not accounted for or delivered to the second and/or proposed fourth defendants in accordance with the Indonesian decisions which, they maintained, recognised the second and/or proposed fourth defendants' entitlement to the deceased's estate.

9 On 13 September 2006, I allowed the defendants' application by way of Summons No 2966 of 2006 to amend their defence and to add Ryuzo Murakami as the fourth defendant. Being dissatisfied with my decision, the plaintiff appealed by way of Civil Appeal No 111 of 2006 against my decision. I now set out the reasons for my decision.

**The decision**

10 It is trite law that pleadings can be amended at any stage of an action [Order 20 r 5 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("the Rules")] and it is in the discretion of the court hearing the application to allow or dismiss it. The general principle is that all amendments as would permit the true issues in dispute between the parties to be raised or disposed of would be allowed provided that this can be done without injustice to the other party. As Choo Han Teck J in *The Wishing Star Ltd v Jurong Town Corp* [2006] SGHC 82 observed, whether amendments to the pleadings should be allowed is always determined by the question, "Would it be fair to allow the amendment?" Or, in other words, how might it result in an unfair trial to the applicant seeking the amendments if the application was refused?

11 The plaintiff objected to the addition of the counterclaim on the basis that it was a breach of an order of court made by the learned Senior Assistant Registrar Kwek Mean Luck ("SAR Kwek") on 19 December 2005 ("Order of Court"). The *original* defence contained a counterclaim by the first and second defendants and they had applied for leave to amend the defence by deleting certain paragraphs of the defence and withdrawing their counterclaim.

12 The first defendant's original counterclaim was based on Judgment 203 of the Indonesian Supreme Court which granted the first defendant a half share of the joint marital assets. On this basis, the first defendant claimed a half share of the time deposits in Daiwa Bank (Tokyo) and Daiwa Bank (New York). The first defendant also claimed a half share of the contents of a safe deposit box with PT Daiwa Perdania Bank which was allegedly valued at US$900,000.

13 The second defendant based his claim to the deceased's estate on Indonesian Judgment No 2696 ("Judgment 2696") where the court had apparently declared the second defendant and his brother as heirs and beneficiaries to the deceased's estate. Based upon Judgment 2696, the second defendant claimed (for himself and the proposed fourth defendant) a two-eighths share of the time deposits with Daiwa Bank (Tokyo), Daiwa Bank (New York) and the US$900,000 in the safe deposit box at PT Daiwa Perdania Bank.

14 The defendants' application to withdraw their counterclaim was allowed by SAR Kwek who imposed a condition that "the defendants are not to bring in Singapore in these or subsequent proceedings any action for the same, or substantially the same causes of action as those made in the counterclaim". The plaintiff argued that in the light of the condition imposed by SAR Kwek, the defendants were in breach of the order of the court made and were in contempt of court since the defendants' present application to add the counterclaim was clearly based on Judgment 203 (in respect of the first defendant) and on Judgment 2696 (in respect of the second defendant). In addition, the plaintiff argued that to allow the defendants to add the fourth defendant at this stage of the proceedings would be to allow the defendants to circumvent the order of court made by SAR Kwek and was an abuse of process.

15 This argument can be easily disposed of. It seems clear to me that in ordering the defendants not to bring in the present or subsequent proceedings, the same "causes of action" as those made in the counterclaim, SAR Kwek intended that the defendants be precluded from bringing a claim in respect of the time deposits with Daiwa Bank (Tokyo), Daiwa Bank (New York) and the contents of safe deposit box with PT Daiwa Perdania Bank; he did not intend to preclude the first and second Defendants from bringing other claims based on Judgment 203 or Judgment 2696.

16 The second argument made by the plaintiff in opposing the defendants' application was that the first defendant's claim for a half share of the joint marital assets was time barred. The plaintiff argued that the first defendant's proposed counterclaim for a half share of the joint marital assets arose from Judgment 203 (delivered on 23 February 2000) and was a simple action on a debt. As such, it was subject to the limitation period of six years under s 6 of the Limitation Act (Cap 163, 1996 Rev Ed).

17 I agree with the submission made by counsel for the defendants however, that Judgment 203 is a judgment *in rem* and is not affected by the 6-year time bar since it was a pronouncement that certain assets were the joint property of the first defendant and the deceased under Indonesian law. A "judgment in rem" is defined in Halsbury's Laws of England, vol 8(1) (Butterworths, 4th Ed Reissue, 1996) at para 1019 as:

> [T]he judgment of a court of competent jurisdiction when it determines the status of a person or thing, or the disposition of a thing, as distinct from the particular interest that a party to the

litigation has in it. Thus the judgment in rem vests in a person the possession of or property in a thing or decrees the sale of a thing in satisfaction of a claim against the thing itself, or is a judgment as to the status of a person.

18 I had indicated at the hearing that even if I was wrong in holding that Judgment 203 was a judgment *in rem* and therefore not time-barred, I would exercise my discretion under O 20 r 5(1) of the Rules to allow the defendants' application to add the counterclaim. However, I am now satisfied that I am bound by the Court of Appeal's decision in *Lim Yong Swan v Lim Jee Tee* [1993] 1 SLR 500 which held, *inter alia*, that the discretionary power under O 20 r 5(1) was subject to r 5(5) which requires that the new cause of action sought to be introduced must arise out of the same facts, or substantially the same facts, as a cause of action in respect of which relief has already been claimed in the action by the party seeking leave to amend.

19 But for the first and second defendants' withdrawal of their counterclaim before SAR Kwek, the requirement of r 5(5) would have been met. The amendment not being unjust to the plaintiff who, after all, was similarly relying on Judgment 203, this would have been an appropriate case for judicial discretion to be exercised in favour of the defendants. Fortunately for the defendants, in view of my holding that Judgment 203 was a judgment *in rem*, the point is of no great moment here.

20 The plaintiff's next argument was that even if the defendants were not time-barred from bringing a counterclaim based on Judgment 203, the first defendant's proposed counterclaim was still unsustainable and the defendants' application to amend the defence should be dismissed because a Singapore court will not enforce a foreign judgment *in rem* if the subject matter of the proceedings, whether movable or immovable property, was not situated in that foreign country when that judgment was given. In support of this argument, the plaintiff cited Dicey, Morris and Collins on *The Conflict of Laws*, vol 1 (Sweet & Maxwell, 14th Ed, 2006) ("*Dicey & Morris*") which states as follows at para 14R-099:

> Rule 40 – (1) A court of a foreign country has jurisdiction to give a judgment *in rem* capable of enforcement or recognition in England if the subject-matter of the proceedings wherein the judgment was given was immovable or movable property which was at the time of the proceedings situate in that country.
>
> (2) A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country.

21 The plaintiff argued that r 40 of *Dicey & Morris* provides implicit support for the view that a foreign court lacks jurisdiction to deal with movable property situated outside its country. Rule 40(1) is couched in positive terms, and states that a foreign court has jurisdiction to give a judgment *in rem* in respect of both movable and immovable property, where these are located in the foreign country at the time of the proceedings. The plaintiff reasoned that the corollary is that a foreign court therefore does not have jurisdiction to give a judgment *in rem* in respect of property (whether movable or immovable), where these are located outside the foreign country at the time of the proceedings.

22 The plaintiff contended that pursuant to r 40 of *Dicey & Morris*, a Singapore court should not enforce Judgment 203 in Singapore with respect to the first defendant's proposed counterclaim for a half share of the moneys in the Daiwa Bank Trust Account in New York and the sale proceeds of the apartment situated in Tokyo, Japan, since these assets were not situated in Indonesia at the relevant time.

23 The plaintiff further contended that, by virtue of the Mocambique rule[note: 1], a Singapore court will not enforce Judgment 203 with regard to the Tokyo apartment. The first defendant's proposed counterclaim was therefore unsustainable and her application to amend the defence ought to be dismissed.

24 I will first comment on the plaintiff's objection to the enforcement of Judgment 203 in relation to the apartment situated in Tokyo, Japan, as this can be easily disposed of. It must be noted that the first defendant's proposed counterclaim was for the *sale proceeds* of the apartment and was not in relation to title to the said apartment. Accordingly, the Mocambique rule does not apply.

25 I return to the question whether a foreign court has jurisdiction to adjudicate upon the title to movable property situated outside the country. I do not accept the plaintiff's contention that the corollary to r 40(1) is that a foreign court does not have jurisdiction to give a judgment *in rem* in respect of *both* movable and immovable property located outside the foreign country. If that were so, r 40(2) would have expressly included movable property instead of being limited to immovable property.

26 The reason why r 40(2) stops short of including movable property is provided in *Dicey & Morris* itself at para 14-106 as follows:

> English courts recognise that the courts of a foreign country have jurisdiction to determine the succession to all movables wherever situate of a testator or intestate dying domiciled in such country. For this reason clause (2) of Rule 40 is limited to immovables.

Rule 138 in *Dicey & Morris* (vol 2) is even more to the point. It states as follows:

> The courts of a foreign country have jurisdiction to determine the succession to all movables wherever situated of a testator or intestate dying domiciled in such country.
>
> Such determination will be followed in England.

This is illustrated in *Doglioni v Crispin* (1866) LR 1 HL 301. In that case T died domiciled in Portugal leaving an illegitimate son, A. The Portuguese court gave judgment that A was entitled to T's movables. T left movables in England. The judgment of the Portuguese court was held to be conclusive that A was entitled to T's movables in England.

27 As was stated in *Re Trufort* [1887] 36 Ch D 600, 611:

> [A]lthough the parties claiming to be entitled to the estate of a deceased person may not be bound to resort to the tribunals of the country in which the deceased was domiciled, and although the Courts of this country may be called upon to administer the estate of a deceased person domiciled abroad, and in such case may be bound to ascertain as best they can who, according to the law of the domicil, are entitled to that estate, yet where the title has been adjudicated upon by the Courts of the domicil, such adjudication is binding upon, and must be followed by, the Courts of this country.

The position in Singapore is the same. It is surprising that neither counsel referred to this rule.

28 Where the movable assets of the deceased's estate are concerned, it is clear that the governing law would be Indonesian law, the law of the deceased's domicile. This being so, it is untenable for the plaintiff to say that a Singapore court will not enforce Judgment 203, a decision of

the Indonesian Supreme Court applying Indonesian law, with respect to the first defendant's proposed counterclaim for a half share to the Daiwa Bank Trust Account in New York and the sale proceeds of the apartment situated in Tokyo, Japan, simply because these assets were not situated in Indonesia. The plaintiff's objections based on r 40 therefore fail.

29 The plaintiff also argued that a parallel to r 40 of *Dicey & Morris* can be found in ss 5(1)(a)(ii) read together with 5(2)(b) of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ("REFJA"). Section 5(1)(a)(ii) of the REFJA provides that the registration of a foreign judgment will be set aside in Singapore if "the courts of the country of the original court had no jurisdiction in the circumstances of the case". Section 5(2)(b) of the REFJA further provides that, for the purposes of s 5, a foreign court is deemed to have jurisdiction if "in the case of a judgment given in an action of which the subject-matter was immovable property or in an action *in rem* of which the subject-matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court".

30 Since Indonesia is not a country recognised for enforcement purposes under the REFJA, the plaintiff argues that to allow the enforcement of Judgment 203 with respect to the Daiwa Bank Trust Account in New York and the sale proceeds of the apartment in Tokyo, Japan, would be to accord Judgment 203 a wider recognition at common law than what it would have enjoyed if it was a registrable judgment under the REFJA. Hence, Judgment 203 should not be enforced in Singapore as it would cause a disparity between the common law and the statutory position.

31 The plaintiff's argument is premised on a misreading of the REFJA provisions. At best, ss 5(1)(a)(ii) and 5(2)(b) merely provide a parallel to rule 40(1). Reference may also be made to s 5(3)(a) which states that a foreign court would lack jurisdiction if the subject-matter of the proceedings were immovable property outside the country of the original court, which appears to be the equivalent of r 40(2) of *Dicey & Morris*. For the same reason that I rejected the plaintiff's argument with regard to r 40, I am unable to agree with the plaintiff's submission that the provisions in the REFJA stand for the unqualified proposition that a foreign court does not have jurisdiction to give a judgment *in rem* in respect of movable property located outside the foreign country at the time of the proceedings.

32 The plaintiff also argued that New York was the most appropriate forum in which the first defendant's proposed counterclaim in respect of the Daiwa Bank Trust Account should be adjudicated. In response, the defendants contended that *forum non conveniens* is not a relevant consideration in the context of an amendment application. Pleadings are never struck out even if proceedings have been commenced in an inappropriate forum; they are merely stayed. In addition, the test as to whether pleadings can be amended should be simply whether the amendment is plainly or obviously unsustainable. In any event, the defendants contend that it is well established that a stay of the proceedings will only be granted on the ground of *forum non conveniens* where the court is satisfied that another forum is the appropriate forum for the trial of the action.

33 I am of the view that it is necessary for a court to determine whether it is the appropriate forum even when pleadings are amended to mount a new claim. In determining whether to grant leave of court for service out of jurisdiction under Order 11 of the Rules, it is necessary for the court to determine whether there is some other forum which would be a more appropriate forum to adjudicate on the claim. The test should apply whether the court is considering whether to allow a party to mount a new claim by amending the pleadings or to grant leave for service out of jurisdiction; the party seeking to make a new claim by way of amending his pleadings would have had to surmount the *forum non conveniens* argument if he had commenced the action by way of service out of jurisdiction.

34 However, apart from a bare assertion, the plaintiff has not adduced any evidence to show that the New York court would be a more appropriate forum than the Singapore court to deal with the first defendant's proposed counterclaim. I am therefore not persuaded by the plaintiff's argument that New York is a more appropriate forum to determine the first defendant's proposed counterclaim in respect of the Daiwa Bank Trust Account.

3 5 Another objection raised by the plaintiff to the proposed amendments to the defence was that the second and proposed fourth defendants' counterclaim was based on Judgment 2696, which being the subject of a judicial review of the Indonesian Supreme Court, was not final and conclusive.

36 The test of finality is the treatment of the judgment by the foreign court as a *res judicata*. A foreign judgment which is liable to be abrogated or varied by the court which pronounced it is not a final judgment: *Nouvion v Freeman* (1889) 15 AC 1, 13; *In re Macartney* [1921] 1 Ch 522, 531, 532. This is to be contrasted with a foreign judgment in respect of which an appeal is pending. At common law:

> [i]n order to its receiving effect here, a foreign decree need not be final in the sense that it cannot be made the subject of appeal to a higher Court; but it must be final and unalterable in the Court which pronounced it; and if appealable the English Court will only enforce it, subject to conditions which will save the interests of those who have the right of appeal: *Nouvion v Freeman* (at p 13).

In the light of the fact that Judgment 2696 can be rescinded, varied or altered by the Indonesian Supreme Court, I was of the view that Judgment 2696 could not be regarded as final and conclusive.

37 The defendants, however, argue that their proposed counterclaim was premised not only on Judgment 2696, but also on Judgment 1265 of the Indonesian Supreme Court ("Judgment 1265"). By way of Judgment 1265 which is final and binding, the second and proposed fourth defendants were declared as heirs of the deceased. I should add, however, that Judgment 1265 did not rule on or declare the second and proposed fourth defendants' actual share in the deceased's estate.

38 The defendants also contended that their entitlement as heirs to the deceased's estate was recognised by the Australian court in *Murakami v Murakami* [2005] NSWSC 953 ("*Murakami*"). In *Murakami*, the question before the Supreme Court of New South Wales was whether an ex parte order appointing the plaintiff as the administrator *ad litem* of the deceased's estate should be revoked in light of the non-disclosure or misstatements by the plaintiff in her affidavit in support of the grant of probate or letters of administration *ad litem* which gave the impression that there were no other persons, other than the plaintiff and her brother, Takao Murakami, who were interested in the deceased's estate. I agree with the plaintiff that the issue before Windeyer J in *Murakami* was whether there was non-disclosure in the ex parte application for grant of letters of administration *ad litem* and it was clear that Windeyer J was not determining whether the second and proposed fourth defendants were heirs to the deceased's estate.

39 It is necessary to examine Judgment 1265 more closely. In Judgment 1265, the Indonesian Supreme Court dismissed the second and proposed fourth defendants' application for a declaration that the deceased's will was invalid. However, the Indonesian Supreme Court also affirmed the lower courts' declaration that the second and proposed fourth defendants were to be considered as heirs to the deceased's estate. The plaintiff argued that Judgment 1265 could not be enforced since it was a mere declaratory judgment and did not rule on the second and proposed fourth defendants' entitlement to the deceased's estate. In support of this contention, the plaintiff cited *Dicey & Morris*

at para 14-003 where the authors write as follows:

> In the first place, the person in whose favour such a [foreign] judgment is pronounced may seek to have that judgment executed or otherwise carried out as against the person against whom it is given. The claimant is then seeking to *enforce* the judgment. The case is not different when the plaintiff in the original or foreign proceedings, being subsequently made a defendant in English proceedings in the same or related matter, sets up the foreign judgment by way of counterclaim or other cross-proceedings of a positive sort. Not every type of judgment is capable of enforcement in this way. A judgment dismissing a claim or counterclaim is obviously not capable of enforcement, unless it orders the unsuccessful party to pay costs, as it frequently does; nor is a declaratory judgment, e.g. one declaring the status of a person or the title to a thing; nor is a decree of divorce.

40 It is true that a declaratory judgment cannot be given effect to by the usual mode of enforcement since it is not a money judgment. However, this is not to say that a declaratory judgment would not be recognised or relied on. As *Dicey & Morris* writes at para 14-101, "foreign judgments *in rem* are freely recognised in England but rarely call for enforcement". Rule 35(2) in *Dicey & Morris* states:

> A foreign judgment given by the court of a foreign country with jurisdiction to give that judgment … and which is final and conclusive on the merits, is entitled to recognition at common law and may be relied on in proceedings in England.

Accordingly, a foreign judgment entitled to recognition may give rise to a *res judicata* or to an issue estoppel.

41 Thus, in *Doglioni v Crispin* ([26] *supra*), the respondent, who was the illegitimate son of the deceased, applied for a grant of administration in the English Probate Court. The appellant, who was the sister of the deceased, contested the grant. The House of Lords held that a previous declaration made by the courts of Portugal as to the respondent's entitlement to the inheritance of the deceased (domiciled in Portugal) as well as his status as natural son (albeit illegitimate) bound the English courts as well as the appellant (who participated in the proceedings in Portugal). This decision was cited with approval in *Re Trufort* ([27] *supra*) where the court held that where the title to the estate of a deceased person has been adjudicated upon by the courts of the country in which the deceased person was domiciled, the English courts would be bound by such decision and would follow it.

42 For all of the foregoing reasons, I allowed the amendments proposed by Mr Andre Yeap on behalf of the defendants.

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[note: 1] Named after the leading case *British South Africa Company v Companhia De Mocambique* [1893] AC 602 which held that the courts of the country where the immovable property is situate have exclusive jurisdiction.

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