

Shafeeg bin Salim Talib and Another (administrators of the estate of Obeidillah bin Salim bin Talib, deceased) v Fatimah bte Abud bin Talib and Others
[2009] SGHC 100

Case Number : OS 1749/2007
Decision Date : 24 April 2009
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Andre Yeap SC and Kelvin Poon (instructed), Aloysius Leng (AbrahamLow LLC) for the plaintiffs; Daniel John and Marc Wang (Goodwins Law Corporation) for the first defendant; Tan Jing Poi (Lim Ang John & Tan LLC) for the second and third defendants
Parties : Shafeeg bin Salim Talib and Another (administrators of the estate of Obeidillah bin Salim bin Talib, deceased) — Fatimah bte Abud bin Talib; Ben Gibran (formerly known as Obood Bin Obeidillah Bin Salim Bin Talib; Ruth S Telyb

Muslim Law – Matrimonial assets – Harta sepencarian (jointly-acquired property) – Whether common law right of survivorship in joint tenancy applied to Muslims – Whether Muslim-owned jointly-tenanted property distributable under s 112(1) Administration of Muslim Law Act (Cap 3, 1999 Rev Ed)

24 April 2009

Judgment reserved.

Lee Seiu Kin J :

1 The plaintiffs are the administrators of the estate of Obeidillah bin Salim bin Talib (“the deceased”). The first defendant, Mdm Fatimah bte Abud bin Talib, is the widow of the deceased. The second and third defendants, Mr Ben Gibran and Ms Ruth S Telyb respectively are the children of the deceased and the first defendant.

2 The deceased and the first defendant jointly purchased a property at 1 Farrer Road #10-06 Tulip Garden, Singapore 268817 (“the Property”) and registered it in the Singapore Land Registry (“SLR”) in their names as joint tenants on 6 April 1998. The deceased died intestate on 5 May 2005.

3 Both the deceased and the first defendant are Yemeni Arabs by origin. At all material times, the deceased and the first defendant were Muslims of the *Shafiee* school of Islam. At the time of the deceased’s death, the second and third defendants were not Muslims.

4 On 12 May 2005, the Syariah Court issued the inheritance certificate for the deceased’s estate (“the Estate”). The first defendant, having prior rights to apply for letters of administration for the Estate, renounced her rights to the letters of administration in a renunciation signed on 21 June 2005. As the second and third defendants were no longer Muslims when the deceased died they were, under Muslim law, excluded as beneficiaries under the inheritance certificate. The first defendant was declared as having 10/40 shares in the Estate, the deceased’s sister 20/40 shares, and the deceased’s 10 paternal nephews collectively 10/40 shares.

5 The first defendant filed the notice of death of the deceased at the SLR on 5 July 2005 and thereafter became registered as the sole proprietor of the Property. On 26 September 2005, by a transfer by way of gift, the first defendant transferred the Property to herself and the second and third defendants as joint tenants. This was registered at the SLR on 24 October 2005. According to

the plaintiffs, the other beneficiaries of the deceased's estate were not aware of this transfer.

6 After the issue of the grant of letters of administration for the Estate on 22 March 2007, the plaintiffs, through their solicitors, requested a ruling from the legal committee of Majlis Ugama Islam ("the Majlis") to determine the status of the Estate's share of the Property. In the request, the plaintiff's solicitors argued that the difference between common law and Muslim law in this regard was as follows:

(a) Under common law, there is a right of survivorship, pursuant to which the surviving joint owner would become the owner of the entire property when the other joint tenant dies intestate.

(b) Under the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed) ("AMLA"), the intestate deceased's half share in the property upon his death devolves onto his beneficiaries under the inheritance certificate and is to be distributed to his beneficiaries under the inheritance certificate in accordance with Muslim law of inheritance ("*faraid*"); the first defendant does not take the deceased's half share in the property as a surviving joint owner under *faraid*. It is also contrary to *faraid* for the first defendant to make a gift of this share to her children who are not Muslims.

7 On 17 July 2007, the legal committee made a ruling (the "Majlis ruling") that "the estate is considered as a matrimonial property (*harta sepencarian*) as the deceased and his wife had jointly owned it. Therefore, half of the Estate is considered as inheritance and should be distributed according to Islamic Inheritance Law (*faraidh*)".

8 On 28 November 2007 the plaintiffs took out this originating summons for a declaration that a half share in the Property belongs to the Estate, and other consequential relief. The defendants contested the plaintiffs' application and challenged the Majlis ruling. The issue in this appeal is whether the Estate has a half share in the Property.

9 It is not disputed that prior to his death, the deceased had held the Property as joint tenant with the first defendant. The nature of a joint tenancy is set out in Megarry and Wade, *The Law of Real Property* (Sweet & Maxwell, 7th Ed 2008) as follows (at paras 13-002 and 13-003):

"A gift of lands to two or more persons in joint tenancy is such a gift as imparts to them, with respect to all other persons than themselves, the properties of one single owner." Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single owner. The intimate nature of joint tenancy is shown by its two principal features, the right of survivorship and the "four unities".

1. The right of survivorship. This is, above all others, the distinguishing feature of a joint tenancy. On the death of one joint tenant, his interest in the land passes to the other joint tenants by the right of survivorship (*jus accrescendi*). This process continues until there is one survivor, who then holds the land as sole owner. A joint tenancy cannot pass under the will or intestacy of a joint tenant. In each case the right of survivorship take precedence. It is often said therefore that each joint tenant holds nothing by himself and yet holds the whole together with the other. Whether he takes everything or nothing depends upon whether or not he is the last joint tenant to die. ...

The right of survivorship does not mean that a joint tenant cannot dispose of an interest in the land independently. He has full power of alienation *inter vivos*, though if, for example, he conveys his interest, he destroys the joint tenancy by severance and turns his interest into a tenancy in

common. But he must act in his lifetime, for a joint tenancy cannot be severed by will.

[emphasis in original]

10 It is not in dispute that in a joint tenancy, upon the death of one joint tenant, his interest passes to the other joint tenants. The deceased's interest cannot pass by will or intestacy and therefore it does not form part of his estate. In the present case, if the deceased and first defendant were non-Muslims, there would not be any dispute that the deceased's interest in the Property had passed to the first defendant upon his death. The question is whether the fact that the deceased and first defendant were Muslims changes the law.

11 The plaintiffs submit that under the AMLA, the intestate deceased's half share in the property upon his death devolves onto his beneficiaries under the inheritance certificate and is to be distributed strictly in accordance with *faraid*. They also aver that the first defendant is not entitled to the deceased's "half share", and that it is also contrary to *faraid* for the first defendant to make a gift of this share to her children who are not Muslims. To support this proposition, the plaintiffs obtained the Majlis ruling dated 17 July 2007 (see [7] above). To decide the validity of this submission, it would be necessary to consider the position of the AMLA in the law of Singapore.

12 Article 12 of the Constitution of Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") states:

Equal protection

12. —(1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) This Article does not invalidate or prohibit —

(a) any provision regulating personal law; or

(b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion.

[emphasis in original]

13 Article 12(3)(a) of the Constitution states that Art 12 does not invalidate or prohibit any provision regulating personal law. There are a number of primary and subsidiary legislative provisions relating to personal law. Some of these provisions are (See *Halsbury's Laws of Singapore* vol 1 (2008 Reissue) at [10.573]):

(a) the AMLA and the Civil Law Act (Cap 43, 1999 Rev Ed) s 27 which provides that *bona vacantia* does not apply to the disposal of property according to Muslim law;

(b) the Legitimacy Act (Cap 162, 1985 Rev Ed) which does not apply to Muslim marriages;

- (c) the Intestate Succession Act (Cap 146, 1985 Rev Ed) which does not apply to Muslims;
- (d) the Wills Act (Cap 352, 1996 Rev Ed) made inapplicable to Muslims by AMLA s 111;
- (e) the Oaths and Declarations Act (Cap 211, 2001 Rev Ed) s 5(a) which allows Muslims and Hindus to make affirmations;
- (f) the Women's Charter (Cap 353, 1997 Rev Ed), ss 3(2) and 3(4) which make its provisions on marriage and divorce inapplicable to Muslims;
- (g) the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) s 17A which excludes jurisdiction of the High Court over any civil proceedings within the jurisdiction of the Syariah Court;
- (h) the Subordinate Courts Act (Cap 321, 1999 Ed) s 19(5) which excludes jurisdiction of the district court over any civil proceedings within jurisdiction of the Syariah Court;
- (i) the Singapore Armed Forces (Leave) Regulations (Cap 295, Rg 12, 2001 Rev Ed) reg 9(d) which empowers the Director of Manpower to grant pilgrimage leave to Muslim servicemen; and
- (j) the Prisons Regulations (Cap 247, Rg 2, 2002 Rev Ed) reg 103(2) which provides that Jewish prisoners may not be compelled to work on Saturdays if they claim exemption and they may also keep such festival days as may be allowed by the government, and reg 103(3) of which allows Muslim prisoners to observe the fast of Ramadan and to labour at reduced task during the fast.

14 It is clear from Art 12 that the laws of Singapore apply equally to all persons in Singapore, save only for any provision in primary or secondary legislation that regulates personal law. In the absence of specific provisions (such as, for example, those listed above) which carve out special rights or obligations for certain groups of people, the laws of Singapore will apply equally to everyone. This is the essence of the principle of equality enshrined in the Constitution.

15 The AMLA contains provisions regulating the personal law of Muslims and its long title states as follows:

"An Act relating to Muslims and to make provision for regulating Muslim religious affairs and to constitute a council to advise on matters relating to the Muslim religion in Singapore and a Syariah Court."

Part II of the AMLA contains provisions to establish the Majlis and for its powers and operations. Part III establishes the Syariah Court and provides for its powers and for appointments to the Syariah Court. The Appeal Board to which orders of the Syariah Court may be appealed against is also established in this Part. Part IV contains financial provisions for financial administration of the Majlis as well as establishes the General Endowment Fund and provides for the regulation of various other funds and charities. Part V contains financial and regulatory provisions for mosques and religious schools. Part VA provides for matters relating to halal certification and regulating Haj. Part VI contains provisions for marriage and divorce. Part VII deals with distribution of property in the estate of a Muslim. Part VIII concerns conversions and establishes a register of converts. Part IX establishes offences pertaining to the operation of AMLA, with s 129 providing that this part is to apply only to Muslims.

16 In relation to distribution of the estate of a Muslim person, s 112 of the AMLA provides as follows:

Distribution of Muslim estate to be according to Muslim law

112. —(1) In the case of any Muslim person domiciled in Singapore dying intestate, the estate and effects shall be distributed according to the Muslim law as modified, where applicable, by Malay custom.

(2) This section shall apply in cases where a person dies partly intestate as well as in cases where he dies wholly intestate.

(3) In the case of a Malay dying intestate, the court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court seems fit.

[emphasis in original]

It is clear therefore that in the case of the deceased, s 112 applies to him as he was a Muslim person domiciled in Singapore. His estate is therefore to be distributed according to the Muslim law. Although this is not really relevant for the purpose of my decision, I should for completeness point out that the deceased was not a Malay; the affidavit of the first defendant, who is his widow, states that he was of Turkish Yemeni Arab descent. The plaintiffs in their affidavits also do not assert that he was a Malay nor do they deny the first defendant's assertion of his Yemeni Arabic lineage. Therefore the provisions in s 112 relating to a Malay person are not relevant to him.

17 What s 112 provides in relation to the deceased is that his Estate shall be distributed according to Muslim law. The defendants do not dispute the plaintiffs' position that the Estate is to be distributed in the following manner: 10/40 shares to the first defendant, 20/40 shares to the deceased's sister and 10/40 shares to his paternal nephews. The pertinent question is whether the deceased's interest in the Property forms part of his Estate.

18 The plaintiffs' position is that it does and they rely on the Majlis ruling that "the [Property] is considered as a matrimonial property (*harta sepencarian*) as the deceased and his wife had jointly owned it. Therefore, half of the [Property] is considered as inheritance and should be distributed according to Islamic Inheritance law (*faraidh*)". However this ruling does not pertain to a determination of the distribution of the estate of a Muslim person which is what s 112(1) provides for. The ruling purports to determine that half the Property belongs to the Estate. The question is whether, in relation to the Property which, during the deceased's lifetime, was held by him as joint tenant with the first defendant, s 112 (or any other provision in AMLA or any other written law) has altered the common law right of survivorship. In order for the law on joint tenancy to be modified in the case of the deceased by virtue of his being a Muslim, it is necessary for the plaintiffs to show that there is a provision in written law that does so. There is, of course, no such provision and the plaintiffs can only cite s 112(1) of the AMLA.

19 The plaintiffs submit that I should follow the Majlis ruling. I note that this was made by the legal committee of the Majlis pursuant to a request by the plaintiffs' solicitors. The legal committee of the Majlis is established under s 31 of AMLA and the status of its rulings is provided in s 32 which states as follows:

Ruling of Legal Committee (Fatwa)

32(1) Any person may, by letter addressed to the Secretary, request the Majlis to issue a fatwa or ruling on any point of the Muslim law.

...

(3) The Legal Committee shall consider every such request and shall, unless in its opinion the question referred is frivolous or for other good reason ought not to be answered, prepare a draft ruling thereon.

(4) If such draft ruling is unanimously approved by the Legal Committee or those members thereof present and entitled to vote, the chairman shall on behalf and in the name of the Majlis forthwith issue a ruling in accordance therewith.

(5) If in any such case the Legal Committee is not unanimous, the question shall be referred to the Majlis, which shall in like manner issue its ruling in accordance with the opinion of the majority of its members.

(6) The Majlis may at any time of its own motion make and publish any such ruling or determination.

(7) If in any court any question of the Muslim law falls for decision, and such court requests the opinion of the Majlis on the question, the question shall be referred to the Legal Committee which shall, for and on behalf and in the name of the Majlis, give its opinion thereon in accordance with the opinion of the majority of its members, and certify such opinion to the requesting court.

(8) For the purposes of subsection (7), "court" includes the Syariah Court constituted under this Act.

[emphasis in original]

20 Section 32(7) of AMLA allows for a court (defined in s 2 as a court of competent jurisdiction other than the Syariah Court) to request the Majlis for an opinion on any question of Muslim law that falls for decision before that court. The Majlis shall refer such question to the legal committee which shall provide its opinion on behalf of the Majlis.

21 Firstly, it can be seen that the Majlis ruling was one made pursuant to s 32(1) of AMLA, allowing any person to request the Majlis to issue a ruling on any point of Muslim law. It was not a request made pursuant to a request by the court. The plaintiffs urged me to make a similar request under s 32(7). I declined to do so because I am of the view that the issue I have to decide on, *ie* whether half the Property belongs to the Estate, is not a question of Muslim law and s 32(7) is invoked only where a question of Muslim law falls to be decided.

22 L P Thean J ("Thean J") had occasion to consider the operation of s 112(1) in *Saniah bte Ali and Others v Abdullah bin Ali* [1990] SLR 584 ("*Saniah*"). This pertained to the money in the Central Provident Fund Board ("the CPF Board") account of one Saleh, who had died intestate. During his lifetime Saleh had made a nomination under s 24(1) (now s 25(1)) of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("the CPF Act") naming the plaintiff, his stepsister Saniah, as sole nominee. The CPF moneys were duly paid to Saniah by the CPF Board. The defendant, Saleh's brother, Abdullah, subsequently obtained from the Syariah Court an inheritance certificate declaring that he, as Saleh's lawful brother, was entitled to the entire estate of Saleh. The inheritance certificate was

issued by the Syariah Court pursuant to an application under s 115(1) of the AMLA which provides as follows:

Inheritance certificate

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

23 The issue for determination before Thean J was whether, upon the true construction of ss 23 and 24 of the CPF Act (as they then stood; those provisions have subsequently been amended) and ss 112 and 115 of the AMLA, it was Saniah or Abdullah who was entitled to the moneys in the CPF Board, the subject of the nomination made by Saleh. The relevant parts of ss 23 and 24 of the CPF Act provide as follows:

23(1) Except as may be provided for in regulations made under section 56, no withdrawals made by the authority of the Board from the Fund under section 15 nor the rights of any member of the Fund acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.

...

(3) All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of —

(a) the person or persons nominated under section 24(1) by the deceased member, if any;
or

(b) the person or persons determined by the Public Trustee in accordance with section 24(2) to be entitled thereto,

but shall, without prejudice to the operation of the Estate Duty Act, be deemed not to form part of the deceased member's estate or to be subject to his debts.

...

24(1) Any member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under section 20(1) as the memorandum shall indicate.

(2) If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force, and if any person nominated, other than a widow, is under the age of 18 years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall similarly be paid to the

Public Trustee for the benefit of the nominated person.

(3) The receipt of a person or persons nominated under subsection (1) or of the Public Trustee shall be a discharge to the Board for such portions of the moneys payable out of the Fund on the death of a member as are payable to the person or persons or the Public Trustee under subsection (2).

24 Thean J held that upon death of a member, a trust was created under s 23(3) of the CPF Act in favour of the person or persons nominated under s 24(1) in respect of all moneys paid out by the Fund on his death. As for s 24, Thean J held that its intention was to enable a member of the Fund to nominate a person or persons to receive such portions of the amount payable out of the Fund on his death as indicated in the nomination. The judge held that the instrument of nomination signed by the member was not a will, but s 24 provides for a member to direct by way of nomination (until it is revoked or varied by him) the CPF Board to pay to the person or persons nominated by him moneys payable out of the Fund on his death. Thean J further held that it was also intended by s 24 to protect the CPF Board from the hazards of being embroiled in any dispute with anyone as to who is entitled to receive the member's moneys in the Fund. If a member under s 24(1) has nominated a person or persons to receive his moneys payable out of the Fund on his death, then upon the death of such member the CPF Board will pay the moneys to the person or persons so nominated. If no one has been so nominated by a member, then on his death the Board will pay the moneys (then payable) to the Public Trustee for disposal in accordance with the written law for the time being in force; and the receipt of such person or persons so nominated or the Public Trustee, as the case may be, shall operate as a discharge to the CPF Board.

25 The defendant in *Saniah* urged the court to find that s 112(1) of the AMLA prevailed over s 23(3) of the CPF Act. Thean J did not do so and gave the following reasons at [13] and [14]:

13 It was submitted by counsel for the defendant that the words 'estate and effects' in s 112(1) of the AML Act include, in the case of a member who is a Muslim domiciled in Singapore, the member's moneys in his account with the CPF Board, and, hence, there is a conflict between s 23(3) of the CPF Act and s112 of the AML Act. The AML Act was enacted in 1968 and came into effect on 1 July 1968, whilst s 23 of the CPF Act was enacted by an amending Act passed in 1957, and therefore by reason of this conflict the doctrine of repeal by implication applies and s 23 of the CPF Act is deemed to be repealed by implication by s 112 of the AML Act. I am unable to accept this argument. This doctrine of repeal by implication of an earlier Act by a later Act was set out clearly by AL Smith J in *Kutner v Phillips* [1891] 2 QB 267 at pp 271-272:

... Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim 'Leges posteriores contrarias abrogant' applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together: *Thorpe v Adams* LR 6 CP 125.

14 In this case, I do not find that s 23(3) is so inconsistent with or repugnant to s 112(1) of the AML Act that the two cannot stand together. As I have said, the provisions of ss 23 and 24 have by express provisions treated a member's moneys in the Fund as a species of property distinct and separate from the estate of the member; s 23(3) is clear: the moneys payable out of the Fund on the death of a member are specifically excluded from the estate of the deceased, and that being so, the moneys do not form part of the estate of the deceased member and are

therefore not subject to s 112(1) of the AML Act; in other words, that section does not apply to those moneys. Section 112(1) of the AML Act has the additional words 'and effects' tacked on to the word 'estate'; but, in my opinion, these words do not really add anything to the 'estate', and it has not been argued before me that they do. In my judgment, both s 23(3) of the CPF Act and s 112(1) of the AML Act can stand together, and there is no conflict or repugnancy between the two.

[emphasis added]

26 Thean J held that s 23(3) of the CPF Act explicitly excluded from a deceased member's estate all moneys payable out of the Fund upon his death and therefore s 112(1) of the AMLA does not apply to such moneys. The present case is analogous. The law on joint tenancy provides that the deceased's interest in the Property passes upon his death to the first defendant by the right of survivorship and consequently it does not form part of his Estate. As in *Saniah*, this brings it out of the operation of s 112(1).

27 Finally, I am unable to find anything in the AMLA, or any other primary and secondary legislation, which suggests that the common law right of survivorship in a joint tenancy should not apply to Muslims. Certainly there is nothing in the AMLA to suggest that Parliament had intended that this be so. Furthermore, there is nothing in the way of a Muslim, should he desire to ensure that his interest in any joint property be distributed in a manner other than the entire interest being vested in the surviving joint tenants, from holding such property as tenants in common with the other joint owners.

28 For the reasons above, I find that the deceased's interest in the Property had, upon his death, passed to the first defendant as the surviving joint tenant. Consequently it does not form part of the Estate and therefore the originating summons must be dismissed. As the plaintiffs have failed in this application, I order them to pay costs at the standard scale to the first defendant, and the second and third defendants.