Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi (Executrix) and Another [2000] SGCA 54

Case Number : CA 101/1997

Decision Date : 28 September 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Arthur Wang (Tan Kim Seng & Partners) for the appellant; Samuel Chacko (Colin Ng & Partners) for the respondents

Parties : Jigarlal Kantilal Doshi — Damayanti Kantilal Doshi (Executrix); Another

Probate and Administration – Grant of probate – Revocation – Probate granted both in principal jurisdiction of Malaysia and in Singapore – Executors and trustees not discharging duties properly in Malaysia – Grant of probate in Malaysia revoked – Whether grant of probate in Singapore should be revoked – s 32 Probate and Administration Act (Cap 251, 2000 Rev Ed)

(delivering the judgment of the court): This appeal arose from the proceedings in OM 39/96 taken out by the appellant, Jigarlal Kantilal Doshi, and his wife, Shobhana Jigarlal Doshi, against the respondents, Damayanti Kantilal Doshi and Jogesh Kantilal Doshi, as executors of the will of the late Kantilal Prabhulal Doshi. In these proceedings, the appellant and his wife sought an order to revoke the grant of probate of the will made in favour of the respondents by the District Court in Singapore. The application was dismissed by the High Court. Against that decision, the appellant appealed; his wife, however, decided not to appeal.

Background facts

The late Kantilal Prabhulal Doshi (`the deceased`) was a businessman and an industrialist and had lived in Malaysia for more than 50 years. He was tragically killed by an acid attack on 1 July 1991. Investigation into the cause of his death revealed that he had been murdered. Initially, his eldest son, the appellant, was charged with the murder before the court in Malaysia, but later the charge was reduced to one of voluntarily causing grievous hurt. It is unclear whether the criminal proceedings against the appellant are still pending. However, they are of no relevance to the issues at hand.

The deceased died domiciled in Malaysia. He was survived by his wife, the first respondent and three sons, namely, the appellant, his second son, Tilaklal Kantilal Doshi, who is not involved in these proceedings, and his youngest son, the second respondent. Prior to his death, the deceased made a will on 30 April 1991, whereby he appointed his wife and his youngest son as executors and trustees of the will. By his will, he bequeathed his entire estate as follows: 25% share to the first respondent; 25% share to the appellant and his wife jointly; 25% share to his second son; and 25% share to the second respondent.

The respondents, as executors and trustees of the will of the deceased, applied for and were granted probate of the will by the High Court of Malaya at Johor Bahru on 15 October 1991. However, subsequently no steps were taken by them to extract the grant. Since the death of the deceased, there had been initiated a number of suits involving on the one side, the appellant and his wife, and on the other, the rest of the members of the family, not only in Malaysia but also in Singapore.

The deceased left behind a substantial estate. The bulk of the estate comprised shares in various companies, most of which were in Malaysia, including shares in his family companies, such as Alu EOE Sdn Bhd, Doshi Holdings Sdn Bhd, Tino Industries Sdn Bhd and Overseas Industries Sdn Bhd. There are

only two assets in Singapore, namely, moneys in two bank accounts, one with Indian Bank (`Indian Bank`) and the other with Banque Internationale A Luxembourg BIL (Asia) Pte Ltd (`Banque Luxembourg`). These two assets were also the subjects of dispute between the parties.

In respect of the moneys in the account with Indian Bank, the respondents took out an action in Suit 2526/92 claiming, inter alia, a declaration that the moneys belonged to the estate. The appellant and his wife defended the claim, but their defence was struck out by GP Selvam J on the ground that they had acted contumaciously in refusing to obey various court orders. Judgment was then entered in favour of the respondents. The then solicitors for the appellant and his wife filed a notice of appeal, but the solicitors were discharged subsequently. Apparently the new solicitors for the appellant and his wife did not receive further instructions from them in respect of the appeal. There was no order for a stay of the judgment of GP Selvam J. Apparently, no further step has been taken in relation to the appeal.

The respondents also initiated a similar action in Suit 707/93 in respect of the moneys in the account with Banque Luxembourg, which were held in the joint names of the deceased and the appellant`s wife. That action was heard before Rubin J, who held that the sum of money in the account with Banque Luxembourg belonged to the estate: **Damayanti Kantilal Doshi & Anor v Shobhana J Doshi** [1998] 1 SLR 530 . There was no appeal against this judgment.

On 17 September 1994, the appellant and his wife took out an originating motion against the respondents in the High Court of Malaya at Johor Bahru, seeking an order to revoke the grant. On 29 July 1995 the High Court revoked the grant and appointed the Official Administrator in place of the respondents to administer the estate of the deceased. The respondents appealed to the Court of Appeal of Malaysia. Pending the hearing of the appeal, the respondents obtained from the Court of Appeal, on 27 November 1995, a stay of execution of the order of revocation made by the High Court.

Having obtained a stay, the respondents applied to the District Court in Singapore (in District Court Probate 330/96) for a grant of probate of the will. However, in their application they did not disclose any information as to the revocation of the grant ordered by the High Court in Johor Bahru. No caveat then was filed by the appellant, and the grant was accordingly made on 18 March 1996. The appellant and his wife then filed various caveats against the grant of probate, and finally took out this originating motion in the High Court on 20 November 1996, seeking an order to revoke the grant. The High Court dismissed the application on 10 May 1997.

The appeal in Malaysia

When the appeal first came before this court on 21 October 1997, the appeal before the Court of Appeal of Malaysia was still pending. In view of that, this court decided that, pending the outcome of the hearing before the Malaysian Court of Appeal, the present appeal should be adjourned with liberty to either of the parties to apply to restore the appeal for hearing. In August 1998, the Malaysian Court of Appeal heard and dismissed the respondents` appeal, thus affirming the decision of the High Court in Johor Bahru, which revoked the respondents` grant of probate. The judgment of the Court of Appeal was reported: see **Damayanti Kantilal Doshi & Ors v Jigarlal Kantilal Doshi & Ors** [1998] 4 MLJ 268 . The court said at p 274:

> *[W]e agree with the finding of the learned judge that there is enough material to support at least four of the seven allegations levelled against the appellants, that they have not properly discharged their duties as executrix and executor in the interests and welfare of the beneficiaries. In the light of this, we also agree that the respondents had shown sufficient cause pursuant to s 34 of the Act for*

> *the court to interfere with the wishes of the testator. In the light of the evidence, we find that to allow the appellants to continue as executrix and executor would not solve the numerous problems which have plagued the estate. We agree with the learned judge that the official administrator would be able to act independently and expeditiously in all respects for the benefit of the beneficiaries. We see no reason to interfere with the exercise of the discretion by the learned judge.*

In dismissing the appeal, the court also said at p 274:

> *[W]e had proposed that both parties suggest a mutually agreed candidate or candidates who is or are willing to be appointed in place of the first and second appellants. The court would be prepared to make such appointment or appointments. For this purpose, we gave the parties a period of 14 days, failing which the order of the High Court stays subject to the variance that pursuant to the Public Trustee Corporation Act 1995, the Public Trustee Incorporated be appointed instead.*

Apparently no candidate had been mutually agreed by the parties, and in accordance with what the court had said, the Public Trustee Incorporated (Amanah Raya Berhad) was appointed to replace the Official Administrator in the administration of the estate of the deceased.

Notwithstanding that the decision of the Court of Appeal of Malaysia was given in August 1998, neither the appellant nor the respondents had since then applied for the appeal to be restored for hearing. Eventually this court, on its own motion, directed that the appeal be restored for hearing.

The issue

The main issue in this appeal is whether there is `sufficient cause` to revoke the respondents` grant of probate in Singapore under s 32 of the Probate and Administration Act (Cap 251, 2000 Ed). Section 32 of the Act provides as follows:

> *Any probate or letters of administration may be revoked or amended for any sufficient cause.*

The Act does not define what constitutes `sufficient cause`. However, `sufficient cause` has been explained in the authorities to mean `undue and improper administration of the estate in total disregard of the interests of the beneficiaries`: **Fazil Rahman & Ors v Nachiappa Chettiar** [1963] MLJ 309 at 310, and **Re Khoo Boo Gong, deceased** [1981] 2 MLJ 68 at 69; **Tan Khay Seng v Tan Kay Choon & Anor** [1990] 1 MLJ 51 . There must be evidence of misconduct or fraud on the part of the executors or immediate danger of loss, and the test is an objective one.

Before us, counsel for the appellant relies mainly on the decision of the Malaysian Court of Appeal. Counsel submits that there is only one estate with the bulk of its assets in Malaysia, and there are only two assets in Singapore consisting of moneys in the two bank accounts. It is common ground that the deceased was domiciled in Malaysia at the time of his death. Thus, Malaysia is the principal jurisdiction for the administration of the estate of the deceased. The courts in Malaysia, as the courts

in the principal jurisdiction, have definitively found that there was sufficient cause for the removal of the respondents as executors of the estate of the deceased in Malaysia. The Singapore court, as the court in the ancillary jurisdiction, should give due recognition to the findings and determination of the courts in the principal jurisdiction. In particular, the behaviour and conduct of the respondents as the executors, as found by the Malaysian courts, are strongly indicative of their attitude towards the interests of the other beneficiaries with respect to the assets in Singapore. In view of the hostility observed by the Malaysian courts, the respondents cannot be expected to discharge their duties as executors fairly and impartially in respect of these assets.

On the other hand, counsel for the respondents argues that the allegations made by the appellant against the respondents pertained to the respondents` administration of the assets of the estate in Malaysia and not their administration of the assets in Singapore. Counsel points out that despite the appellant`s allegations, there is no evidence that the respondents have not been discharging their duties properly in administering the estate in Singapore. On the contrary, the respondents had taken active steps to preserve the assets of the estate in Singapore by taking out Suit 2526/92 and Suit 707/93. Counsel informs us that the administration of the estate was almost completed in Singapore. The moneys in the account with Indian Bank had been paid into court to await the outcome of the appeal, which the appellant and his wife had filed, and the appeal is still pending. As for the moneys with Bank Luxembourg, they are still with the bank, and the estate had obtained judgment in respect of these moneys declaring that they belonged to the estate. All that remained to be done by the executors in Singapore is to hand over the assets (less the expenses incurred) to the Public Trustee in Malaysia. Therefore, at this stage, it would make no sense to revoke the grant of probate and appoint someone else to replace the respondents.

Our decision

We accept the submissions of counsel for the appellant that there is only one estate with the bulk of its assets in Malaysia and, as the deceased died domiciled in Malaysia, the principal jurisdiction for the administration of the estate is Malaysia. We also accept that generally the court in an ancillary jurisdiction would give recognition to the findings and determination of the court in the principal jurisdiction. ***Williams, Mortimer and Sunnucks on Executors, Administrators and Probate*** (1993 Ed) states as follows at p 662:

> *... the English courts, in the course of an English action, will not allow proceedings to be carried further than is convenient according to the comity of courts, and will adopt the proceedings of the courts of the country of the domicile of the deceased according to the necessities and exigencies of the case. The English court could, if there was a pending suit in the courts of the country of the deceased`s domicile, in which all questions which would arise in the course of the administration could be decided, stay the English action and prevent it from going on here vexatiously and unnecessarily.*

In the same way, the Singapore court would, as far as is necessary and expedient, give effect to and adopt the findings and determination of the court in the principal jurisdiction, where similar questions or issues arise in both jurisdictions with respect to the administration of the estate in the respective jurisdictions. There could, of course, be circumstances in which the issues to be determined in the different jurisdictions are unconnected, in which case the court in each jurisdiction is free to make its own findings and determination regardless of the litigation in the other jurisdiction. However, where, as in this case, the issues to be determined by the courts in the different jurisdictions are inextricably linked, the court in Singapore would give due recognition to and adopt the findings and determination

of the court in the principal jurisdiction.

Both the High Court and the Court of Appeal in Malaysia found that the respondents had not discharged their duties properly as executors with reference to the assets of the estate in Malaysia and that there was sufficient cause for the revocation of the respondents` grant of probate in Malaysia. We respectfully accept these findings. That having said, it is still necessary to consider whether in the circumstances of the case it would be in the interest of the beneficiaries to revoke the grant of probate made in favour of the respondents in Singapore. Clearly, in exercising its power under s 32 of the Probate and Administration Act (Cap 251), the court has a discretion: **Re Shaik Abdullah, deceased** [1941] MLJ 6 .

The Public Trustee Incorporated (Amanah Raya Berhad) (`the Public Trustee`) was appointed by the Malaysian Court of Appeal to administer the estate of the deceased. Up to the date of the continued hearing of the present appeal before us, there has been no indication from the Public Trustee as to the stand it proposes to take in this appeal. In particular, it has not raised any objection to the continued administration of the estate in Singapore by the respondents. Nor has it come forward to support the application for revocation of the respondents` grant of probate and seek an order for itself to be appointed as the administrator of the estate in Singapore. It seems to us that the Public Trustee must have been aware that the estate has assets in Singapore, and that there is pending the present appeal. We expect that either the appellant or the respondents would have informed the Public Trustee accordingly.

The jurisdiction of the Public Trustee in Malaysia does not extend to Singapore. Up to this moment, the Public Trustee has not filed the necessary application for letters of administration to be taken out in respect of the estate in Singapore. In so far as we are aware, the Public Trustee has not taken any steps to involve itself in the affairs of the estate in Singapore.

The practical consequences of revoking the respondents` grant of probate as sought by the appellant cannot be ignored. In support of the application for revocation of the grant, the appellant did not show or in any way indicate that there is a suitable party, who should be appointed to take over the administration of the estate in Singapore. Clearly, the most suitable party to take over the administration of the estate in Singapore is the administrator of the estate in the principal jurisdiction, namely, the Public Trustee. The main difficulty in this regard is that up to this moment, the Public Trustee has not given any indication of its intention or willingness to take over the administration of the estate in Singapore from the respondents. In the absence of such indication, we cannot make an order appointing the Public Trustee to replace the respondents.

It is only obvious that if the respondents` grant of probate in Singapore were revoked, a suitable party would have to be appointed in their place to take over the administration of the estate in Singapore, including conducting the ongoing litigation in or arising out of Suit 2526/92. If the grant were revoked without the appointment of a suitable party as the administrator, there would be no one to administer and take charge of the assets in Singapore. This would adversely affect the administration of the assets of the estate in Singapore. It is clearly not in the interest of the beneficiaries to revoke the grant leaving a vacuum. Nor is it in their interest to appoint the appellant or his wife as the administrator in place of the respondents.

Turning to the administration of the estate by the respondents in Singapore, we note that the appellant has not made any allegation that the respondents had in any way mismanaged the assets of the estate in Singapore or had in any way acted improperly in the discharge of their duties in relation to these assets. On the contrary, the institution of the two actions, Suit 2526/92 and Suit 707/93, showed that the respondents had taken the necessary steps to get in and preserve the assets of the

estate.

As of the present moment, according to the respondents, the administration of the estate in Singapore is almost completed, and the only outstanding matter is the litigation in or arising out of Suit 2526/92. In respect of that litigation, apparently the appellant and his wife had filed an appeal against the judgment of the High Court given in that suit, but had not taken any further step. If that is so, we are surprised that the respondents have not been advised to take out an application to strike out the appeal. Apart from this litigation, it appears that all that the executors need to do is to hand over the assets of the estate, less the expenses, to the Public Trustee. It seems to us that, at this stage, it serves no practical purpose to revoke the respondents` grant of probate. Moreover, the Public Trustee has not raised any objections against the continued administration of the assets in Singapore by the respondents and has not supported the appellant`s application to revoke the respondents` grant of probate in Singapore.

Lastly, the respondents, in an affidavit affirmed and filed by the second respondent on 18 August 2000, said that they had fully co-operated with Public Trustee since the appointment and would continue to do so, and would render to the Public Trustee such information and assistance as may be required. They recognize the Public Trustee as the principal administrator of the estate and wholly accept their obligations to account to the Public Trustee in respect of their administration of the estate in Singapore.

Conclusion

In the circumstances, we are not disposed to revoke the grant unless a suitable party is at hand to take over the respondents` role in administering the estate in Singapore. Accordingly, we dismiss the appeal, but would make the following order. We direct that the respondents as the executors and trustees of the will of the deceased -

(a) furnish a full report of all the assets of the estate in Singapore within one month from the date hereof, and

(b) give full and complete account of the administration of the estate in Singapore at regular intervals, to the Public Trustee.

Costs

On the question of costs, we see no reason why the costs of the appeal should not follow the event. Accordingly, the respondents will have their costs of the appeal, and the deposit in court, with interest, if any, is to be paid to the respondents or their solicitors to account of costs.

Outcome:

Order accordingly.