Ong Jane Rebecca v Lim Lie Hoa and Others (No 5)
[2004] SGHC 131

Case Number : OS 939/1991, RA 600022/2002, 600023/2003, 600024/2004, 600025/2005

Decision Date : 16 June 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Andre Arul (Arul Chew and Partners) for plaintiff; Khoo Boo Jin and Daniel Tan (Wee Swee Teow and Co) for first defendant; Arul Chandran and Ooi Oon Tat (C Arul and Partners) for second defendant; Vinodh S Coomaraswamy and Chua Sui Tong (Shook Lin and Bok) for third and fourth defendants

Parties : Ong Jane Rebecca — Lim Lie Hoa; Husni Sjamsudin also known as Ong Siauw-Tjoan; Ong Siauw Ping; Ong Keng Tong

Civil Procedure – Appeals – Appeal from inquiry into value of estate that was subject of action in High Court – Whether findings as to value of estate and second defendant's share therein were correct – Whether findings as to amount of money previously paid to second defendant were correct

16 June 2004 *Judgment reserved.*

Choo Han Teck J:

1 These appeals arose from the inquiry conducted by Assistant Registrar Phang Hsiao Chung ("AR Phang" or "the AR"). The judgment of AR Phang was delivered on 13 June 2003 (see [2003] SGHC 126). All parties appealed. The inquiry was conducted pursuant to an order of court dated 16 July 1996 in which the court directed an inquiry to determine:

(a) the assets of the estate of Ong Seng King, also spelt as Ong Keng Seng also known as Arief Husni, deceased (hereinafter called "the Estate") and their whereabouts;

(b) the share of the second defendant to the Estate;

(c) the amount or amounts which have been received by the second defendant from the Estate;

(d) the amount still due to the second defendant from the Estate as on 29 August 1991; and

(e) the quantum of the plaintiff's share in the second defendant's interest in the Estate under the deed of assignment dated the 19 August 1991 duly executed by the second defendant in favour of the plaintiff.

2 Ong Seng King ("the Deceased") died intestate in Jakarta, Indonesia on 22 October 1974 leaving much wealth in various jurisdictions. The precise value of his estate was not known. Jane Rebecca Ong, the plaintiff, was married to Ong Siauw Tjoan, the second defendant. The third and fourth defendants are the brothers of the second defendant. Lim Lie Hoa, the first defendant, is the mother of the second, third and fourth defendants. The Deceased was her husband, and the father of the second, third and fourth defendants. This action was commenced in 1991, initially in the name of the second defendant (until he was removed in 1992 as plaintiff, and made the second defendant). Jane Rebecca Ong then became the plaintiff in place of the second defendant. At that time, her

marriage with the second defendant was coming to an end. In seeking her rightful share of her husband's assets, the plaintiff had to know what he had, and that depended on what he was entitled to from his father's (the Deceased's) estate. The third and fourth defendants were not involved in the initial dispute, which was to seek the production of the accounts of the estate of the Deceased. The second defendant switched allegiance back and forth in the course of the protracted litigation. First, he was on the same side as the plaintiff, then he took sides with the first defendant. In the proceedings after the trial, that is, in the course of the inquiry, he reverted to the plaintiff's side. The third and fourth defendants were joined as parties only on 22 February 2002.

3 The action was finally heard and judgment delivered by Chao Hick Tin J (as he then was) on 16 July 1996. The two principal orders made by Chao J were first, a declaration that the deed of release given by the second defendant to the Estate was null and void; and second, an order for an inquiry into the Estate and the second defendant's share in the Estate. The full orders had been set out in [1] above. It took another seven years of squabbling before the inquiry could be held. On 13 June 2003 AR Phang delivered a lengthy judgment with the essential orders as follows:

(1) The Plaintiff shall have final judgment against the First Defendant for the sum of S$2,321,770.27 with interest as follows:

(a) Interest on the sum of S$2,321,770.27 at 6% per annum from the date of commencement of the action (21 September 1991) to 16 May 1998;

(b) Interest on the sum of S$2,271,770.27 at 6% per annum from 17 May 1998 to 19 June 1998;

(c) Interest on the sum of S$2,221,770.27 at 6% per annum from 20 June 1998 to 20 July 1998;

(d) Interest on the sum of S$2,171,770.27 at 6% per annum from 21 July 1998 to 17 August 1998;

(e) Interest on the sum of S$1,819,961.39 at 6% per annum from 18 August 1998 to 11 February 1999;

(f) Interest on the sum of S$1,444,961.39 at 6% per annum from 12 February 1999 to 9 April 1999;

(g) Interest on the sum of S$1,404,961.39 at 6% per annum from 10 April 1999 to 11 May 1999;

(h) Interest on the sum of S$1,379,961.39 at 6% per annum from 12 May 1999 to 14 July 1999;

(i) Interest on the sum of S$1,279,961.39 at 6% per annum from 15 July 1999 to 4 August 1999;

(j) Interest on the sum of S$1,219,961.39 at 6% per annum from 5 August 1999 to 3 September 1999;

(k) Interest on the sum of S$1,159,961.39 at 6% per annum from 4 September 1999 to 5 October 1999;

(l) Interest on the sum of S$1,099,961.39 at 6% per annum from 6 October 1999 to 4 November 1999;

(m) Interest on the sum of S$1,069,961.39 at 6% per annum from 5 November 1999 to 11 February 2000;

(n) Interest on the sum of S$1,051,406.60 at 6% per annum from 12 February 2000 to 3 April 2000;

(o) Interest on the sum of S$701,406.60 at 6% per annum from 4 April 2000 to 28 April 2000; and

(p) Interest on the sum of S$101,406.60 at 6% per annum from 29 April 2000 to 12 April 2001.

(2) It is declared that the Plaintiff shall be entitled to a one-twelfth share of the Deceased's interest in the piece of land in Cibenong, a one-twelfth share of the Deceased's interest in the jute plantation in Lampung and a one-twelfth share of the Deceased's interest in a bank account in the United States of America.

The plaintiff and the second defendant were dissatisfied with the finding of the value of the Estate and the second defendant's share therein. The first, third and fourth defendants were dissatisfied with the AR's findings as to the amount of money previously paid to the second defendant. These thus constitute the appeals before me.

4 The plaintiff's counsel, in a lengthy submission, listed three broad grounds for her appeal with eight stated reasons in respect of the first ground. The three areas of appeal are – firstly, that AR Phang "wrongly valued the Estate as at 29 August 1991 at too low a figure"; secondly, he "wrongly construed the payments by the 1st Defendant to the Plaintiff of the monies under the 6 April 2001 Order of Court of Justice Lai Kew Chai as being an interim payment when it was in fact a payment to the Plaintiff out of the 2nd Defendant's share in the Estate"; and thirdly, that AR Phang "though more or less was correct on the issue of costs of the Plaintiff being borne by the 1st Defendant, he erred in that the Plaintiff was clearly entitled to more than 50% of the costs and/or disbursements she incurred in relation to the photocopying and binding of the bundles of documents (howsoever called) tendered in Court".

5 In addition to the above grounds, Mr Andre Arul, counsel for the plaintiff, also submitted that the assistant registrar was wrong to have "placed the onerous burden of having to prove that disputed assets do belong to the Estate on the Plaintiff". I shall deal with this point straightaway. Unlike a trial proper where there is both a legal and evidential burden to discharge, in an inquiry where the court or tribunal is charged with the duty of enquiring into the evidence with the objective of answering specific questions or terms of reference for or under which the inquiry was held, the duty of the court or tribunal is to receive such evidence as it thinks necessary and relevant. The notion of a legal burden does not exist, as conceptually, there is no partisan party to prove a cause. There is only the evidential burden and that rests with whoever has evidence that the court regards as relevant. In any other instance, the evidential burden of proof lies with he who asserts. That was the approach the assistant registrar adopted and I am of the view that he was correct. He had placed the burden of proving that assets which the plaintiff claimed to have belonged to the Deceased on the plaintiff. This burden should not be placed on any other party in such an inquiry. The first defendant, as administratrix, was of course obliged to produce the Estate's accounts, but an

assertion by any other party will have to be proved by that party, evidentially. If he (or she) had done enough, the administratix might then be obliged to adduce rebuttal evidence, and the court makes the final determination. That is how the process works.

6 Next, also as a preliminary point, Mr Andre Arul submitted that the plaintiff was prejudiced because the assistant registrar denied the plaintiff's application to put relevant documents into evidence. Counsel submitted that those documents were vital in proving that the disputed assets belonged to the Estate. Counsel's specific complaint concerned evidence which had been scanned and stored into six compact disks. He alleged that AR Phang had ordered that the plaintiff produce the documents in a single bundle the following day. All the evidence here related to documents seized pursuant to an Anton Piller order. Mr Andre Arul submitted that the AR's order was unfair to the plaintiff who was "a lay person and with rather limited resources, particularly being in another country". In the present case, the circumstances do not justify this criticism of the assistant registrar. The plaintiff was represented at the material time by Mr Andre Arul himself. Given the history of this long saga and Mr Andre Arul's experience and knowledge of the disputes connected to it, I do not think that it was right to say that the assistant registrar's orders in respect of the production of the documents were either unfair or as Mr Andre Arul argued, "in total disregard of [Justice Chao's orders] dated 29 October 1996".

7 Mr Andre Arul also argued that the plaintiff was prejudiced because AR Phang did not allow the plaintiff sufficient time to cross-examine the witnesses. He also argued that "AR Phang had adopted an unnecessarily strict approach of insisting that every point be specifically put to [the first defendant] and that she be questioned as regards every document relied on by the Plaintiff and relying unduly on the rule in *Browne v Dunn* [(1893) 6 R 67] to disregard any evidence not so put before [the first defendant]". Mr Andre Arul then made the point that "a great many of the assets the Plaintiff contended belonged to the Estate were excluded from AR Phang's final computation simply because AR Phang chose to close one eye to the evidence adduced by the Plaintiff". If this part of the submission is to be understood in its ordinary meaning, AR Phang was being accused of "wilful bias" in deliberately ignoring the plaintiff's evidence. I find that AR Phang had dealt with all the issues, evidence, and submissions carefully, thoroughly and evenly. I do not detect any hint of bias. I would, therefore, assume that Mr Andre Arul only meant that AR Phang had not properly considered the plaintiff's evidence. It behoved counsel to be precise in his choice of words, so as to avoid any misunderstanding.

8 Having perused the relevant portions of AR Phang's judgment in the light of Mr Andre Arul's arguments above, notably [50] to [51] and [83] to [85] for example, it appears to me that Mr Andre Arul's submissions must fail. It was manifest in [50] that AR Phang was right in saying that the plaintiff had the burden of proving those assets which she alleged to belong to the Estate. The burden for this cannot rest with anyone else. How AR Phang actually applied the rule in *Browne v Dunn* was clearly explained in [83] and [84] of his judgment. I need not set out and comment on these passages because (lengthy as they are) they are clear. I would only quote one sentence which is relevant to a specific complaint by Mr Andre Arul that the plaintiff was being asked, effectively, to put each and every point to the witnesses in cross-examination. At [84], this was what the assistant registrar ("the AR") held:

> [W]hile the rule [in *Browne v Dunn*] does not mean that every point should be put to a witness, if the point sought to be made goes to the heart of the matter, it should be put to the witness.

9 Mr Andre Arul then criticised the AR's "inconsistent approach towards the evidence". This ground is expanded at length in Part V of the plaintiff's submissions. After reviewing every specific allegation against the judgment of the AR and, where relevant, the evidence, I am of the view that

there is no merit in this ground. Several paragraphs, namely [135], [269] and [318] of his judgment were choice passages for such undue criticism. I am of the view that the AR applied a balanced and reasonable approach whenever he was required to draw any inference.

10 Mr Andre Arul appears not to be able to accept that AR Phang was a good judge of character and evidence. Whether the second defendant deserved any "benefit of doubt", in the present circumstances, was really a matter of the court's exercise of its judgment as to the credibility or reasonableness of a particular point. No witness may be entirely truthful or entirely untruthful, especially in such a long and complicated case. Some witnesses, however, may be generally reliable and others, generally unreliable. And yet, on other occasions or circumstances, the roles might be reversed. In short, witnesses can be reliable (and *vice versa*, unreliable) for or on different points. Sorting the evidence and evaluating them for the reliability of each asserted fact is the grave responsibility of the AR as a finder of fact.

11 As to counsel's argument that it was "unreasonable to allow [the first defendant] to get away with non-disclosure of relevant documents", I am satisfied that AR Phang had adopted a cautious and acceptable approach. One cannot just draw "an adverse inference" simply because documents were no longer available. Any such inference must refer to specific reasons and be in the context of the circumstances. It would be wrong to speculate as to missing figures or make unsupported assumptions as to the ownership of an asset merely to fill voids in the evidence. Counsel alleged that the AR accepted a "grossly low sale price" as "conclusive evidence of the value of the asset" and criticised him for being inconsistent in his treatment of the evidence – just because he had stated that he would not "take into account issues of breaches of trust". This criticism seems to have been made without understanding the context. In this regard, counsel's allegation that the AR was "prepared to surcharge the Estate where there was apparently a shortfall in the amount actually received by the Estate from the sale of Estate assets" (para 117 of plaintiff's submissions) was entirely inaccurate. A perusal of [75] of the AR's judgment will show that his conclusion cannot be faulted:

> In the absence of an explanation for the glaring shortfall of $783,140.08, the estate must be deemed to have received the full sum of $8,000,000 as the proceeds of the sale of No 45/47 Robinson Road.

Thus, subsequently at para 425 of the plaintiff's submissions, counsel accepted this finding of AR Phang. The AR appeared to have the conduct of the first defendant kept in close scrutiny, and the allegations of the first defendant's misconduct in respect of the Estate's money and assets, appeared to have been carefully considered. Mr Andre Arul's criticisms merely reflected a difference of opinion and judgment. Counsel's submissions were replete with arguments that because of one omission or another, the first defendant "should not be given the benefit of the doubt". In a major fact-finding exercise such as this inquiry, the individual pieces of evidence will have to be considered not only individually, but also collectively, and in relation to other evidence.

12 I have addressed the preliminary and general arguments of Mr Andre Arul at some length because his arguments in respect of the specific issues and assets are rooted in those preliminary and general arguments. It is also useful to set out those broad arguments more fully so that the plaintiff's and, to a large extent, the second defendant's appeals before me can be considered in the context of AR Phang's judgment, to which I shall now refer. The AR had methodically separated the assets according to the various jurisdictions where they are found, namely, Singapore, Hong Kong, Malaysia, Indonesia, and what he had referred to as "other jurisdictions", which were, more specifically, Taiwan and Europe.

13 In respect of the Singapore assets, the first sub-category covered those assets that were "undisputed". Even so, Mr Andre Arul is presently challenging the finding as to the rentals derived from the Robinson Road property during the periods where no documentary proof of rental was available. Counsel submitted that the AR ought to have drawn an adverse inference from the absence of documents bearing on the rental situation during certain periods. The question is whether the AR erred in differing from the opinion of the plaintiff's accountants (PriceWaterhouseCoopers) that, without proof, it is more natural to assume that the property was still being rented out (especially when the property was, at all materially proved times, rented to the same tenant). Counsel urged me to reverse the AR's refusal to infer as a fact that the Estate continued to collect rentals during the periods where tenancy agreements were not produced. Inferences such as this might in some cases be properly made, but where, as in this case, the court having examined the documentary evidence, heard all the witnesses, considered lengthy and forceful arguments of counsel, and nonetheless decided against drawing the inference sought, that decision should not be too readily disturbed. Given the nature and circumstances of this case, I am of the view that the AR's decision should not be disturbed.

14 Next, the AR considered seven properties purchased by the first defendant prior to her husband's death. The properties were 31 Ford Avenue, 17 Leng Kee Road, 251 Tanglin Road, 73-N Cairnhill Road, 69 Cairnhill Mansion, 16 East Sussex Lane, and 20D Norfolk Road. Mr Andre Arul's main contention in respect of these properties was based on the allegation that AR Phang refused to find that the first defendant was in breach of trust of the Estate's assets. There are two important factors that I had to consider in this respect. First, an allegation of breach of trust is a serious allegation that normally requires the claimant to initiate a writ action in which the particulars of trust and the breaches of it are properly set out so that the defendant might be able to answer the allegations. The inquiry in question was already a difficult one given the matters raised, the number of assets to be covered and all the myriad details that were being disputed. It would be to his folly had the AR embarked on a trial as to whether there were indeed such breaches of trust – a trial that would have, by necessity, to be conducted without proper pleadings. On the other hand, the court had a duty to examine the evidence to determine whether assets had been properly accounted for. I am satisfied that AR Phang had discharged that duty admirably. I accept AR Phang's reasons for finding that there was no evidence that the Deceased "had ever asserted an interest in any of these properties". He was entitled to make a specific finding that the properties were not assets of the Estate given the evidence (or lack of it). He need not, as Mr Andre Arul had so strenuously maintained, draw an inference adverse to the trustee or one that is favourable to the beneficiaries. If, as it appears in this case, there were reasonable grounds for making a specific finding, then it would be his duty to do so, and he had done so. His grounds are amply set out in his judgment.

15 In respect of the Singapore properties purchased after the first defendant's husband had died, the AR's finding was that the funds of the Estate were not used. The properties were #18-01 Horizon Towers, #10-02 Lucky Tower, 30D Leonie Tower, #17-02 Beverly Hill, #07-02 The Claymore, 19 and 19A Balmoral View, and 2,000 shares in Tunas (Pte) Ltd. In respect of these properties, it was also a question of fact whether estate funds were used towards their purchase. In forming his views, the AR took into account all that was relevant, including the apparent difficulty the first defendant had in giving evidence through an interpreter. Reviewing the evidence against his written judgment, I find that the AR's opinion as to those parts of the first defendant's evidence that Mr Andre Arul says were untruthful had been carefully formed. It is true that if the Deceased had used the first defendant as his nominee in some instances, the inclination to conclude that he must have done so in others is especially great. The AR, however, did not do so. He appeared to have weighed all the evidence and given credit where it was due, and did not appear to have accepted the evidence lightly, or rejected any carelessly. Reviewing the notes of evidence is some distance removed from actually appraising the evidence live, and I am not sufficiently persuaded that in this case I ought to

substitute my findings for that of the AR. In respect of 19A Balmoral View, the AR accepted that the third defendant was the true owner. I agree with him that just because he had bought the property with money from the Estate does not mean that it was purchased on trust for the Estate. That would have been the easy route. Finding that it was purchased by him with his share of the estate funds is the more onerous and difficult alternative. Reviewing the submissions of counsel in this light, I am of the view that the findings below are correct. Counsel criticised the AR for "drawing the wrong inferences from the facts and evidence" (para 456). Then in the next paragraph he submitted that "[i]t was also established by [the second defendant] that the Deceased and [the first defendant] were estranged and large gifts were unlikely to have been given by the Deceased to [the first defendant]". If the couple were estranged, it would be more unlikely that the Deceased would have placed so much property, as the plaintiff claimed, in the first defendant's name, or, having done so, made no effort to reclaim them. There were useful pieces of evidence that indicated that the first defendant was not acting like a mere nominee, but as an owner in her own right. Some of that evidence came from Mr Tan Kok Quan who testified that the first defendant once went to instruct him for an injunction because her neighbour Mr Harry Lee Wee was piling up earth next to her Chatsworth Road home.

16 I would briefly mention the claim in respect of the 2,000 Tunas (Pte) Ltd shares. Counsel relied chiefly on disparaging the evidence of the first defendant's witness, Mr Tam, and therein sought to persuade me that the first defendant had not discharged her burden of proof in explaining the ownership of those shares. The AR, however, took the same issue but relied more on the evidence of the first defendant herself. I am of the view that the primary evidence having been accepted by the court below, the burden of proof shifted to the plaintiff, and the AR was correct in holding that she had not discharged that burden.

17 In respect of the Hong Kong properties, Mr Andre Arul relied extensively on the evidence of his expert, Mr Paul Varty. In this case, the first defendant did not call any expert witness. I agree with counsel that a court must be slow to disagree with an expert opinion unless there are very strong grounds for doing so. But the court must first accept that the case required an expert. Secondly, the expert's credentials must be accepted. Thirdly, his evidence must be credible and there must be no room for the court to disagree or refuse his evidence. In this regard, the *nature* of the expert evidence is very relevant. Evidence of nuclear fission, for example, has to be given and explained by an expert in nuclear physics. I cannot imagine a lay person refusing or challenging that evidence. But if the nuclear expert's evidence was that, if A, then explosion follows, and the opposing party can prove A, but no explosion followed, then what follows may be an error on the expert's part. In such a case, the court may reject the expert view. The question before me was whether the AR was wrong in his findings as to the value of the Hong Kong properties. In this case, the subject matter was not nuclear physics but property valuation. A valuation of this sort is not a precise science. It attracts as many charlatans as it does experts, and many more who are somewhere in between. It is also a subject where acknowledged experts can be wrong, or where a layman's analysis could be as sensible or as wild as that of an expert. I cannot say that the experts called on behalf of the plaintiff lacked expertise, but I would not accept that the AR had no alternative but to accept their evidence. He was right to examine the evidence – not only the oral account, but also historical and other evidence (such as the computation of the figures) – and conclude as to what extent the evidence was to be accepted or rejected. I would uphold his findings in respect of these properties, that is, 17 Shouson Hill Road West, and 24 Ice House Street. These were assets the evidence of which he had analysed in great detail from [160] to [200] and [208] to [223] of his judgment.

18 The issues concerning moneys in the Sin Hua bank accounts provided some confusion and difficulty. This was due partly to the fact that there was more than one account with the bank, and not all bank records were available at the inquiry. The accounts at the Sin Hua bank included a

current account (no 14064), a deposit account (no 031-349-020456-8) and a foreign deposit account (no 031-349-5756545). Mr Andre Arul asserted that since the Sin Hua bank accounts contained trust moneys mixed with the first defendant's own money, the burden of proof lay with the first defendant. The AR found as a fact that a sum of NZ$447,000 in the foreign deposit account belonged to the Estate and the remaining NZ$1,861,869.07 belonged to the first defendant. On the face of it, counsel's argument is a persuasive one. Essentially, he submitted that if the court finds a sum of trust money in an account, and there being no evidence of how much of the money in that account belonged to the account holder personally, then the law must presume that all the money belonged to the trust. The law on this point has been stated in *Caltong (Australia) Pty Ltd v Tong Tien See Construction Pte Ltd* [2002] 3 SLR 241, a case that the AR had kept firmly in view. If these were the only considerations, I would incline to the view that all the money in the foreign deposit account belonged to the Estate. However, that would result in unravelling more than I ought to. It does not seem to be disputed that the AR was not wrong to find that the money (NZ$2,308,869.07) in the foreign deposit account was placed there on the first defendant's instructions at a time when she realised that the interest rates were more favourable. I am unable to ascertain from the submissions, judgment and the notes of evidence as to where the NZ$2,308,869.07 came from. It may have come from the 031-349-020456-8 account. The AR's finding in respect of that account (031-349-020456-8) was that it was not an estate account. It is true that not many reasons were given to support this finding, but this would have been too obvious a matter to be missed by AR Phang especially when he had considered the accounts one after the other in his judgment. It also seems clear to me that all the objections and problems relating to the tracing and tracking of the Estate's money, as well as maintaining the court's role to inquire the extent of the Estate's assets had otherwise been considered by him. There is a fine but subtle difference between such a purpose and that of examining the conduct of the parties with the view of ascertaining whether there was a trust created and, if so, whether there were breaches of that trust. Consequently, given the many factors that have to be taken into account (not all of which could possibly be set out because that would have involved the connection of all the factors and how they weighed in the fact-finder's mind in the context of his evaluation of the oral testimonies before him), I would not disturb the AR's finding that part of the money (NZ$447,000) belonged to the Estate and the balance to the first defendant.

19 I have much less difficulty with the Indonesian assets as these involved straightforward findings of fact. The plaintiff had relied on the evidence of an English accountant by the name of Mr Christopher Jerome Walton. It was plain and obvious that AR Phang was not impressed by the evidence of Mr Walton, and he was, therefore, perfectly entitled to rely on the other evidence including that of the first defendant. So far as the plaintiff's claim that various Indonesian properties (such as the house at Jalan Batu Tilis and the Cibenong factory) belonged to the Estate, the AR was right in stating that the burden of proof (by which he meant the evidential burden) lay with the plaintiff. The first defendant had given her account as to the status and history of those properties. Thus, any party who claimed otherwise was entitled to challenge her evidence to show that the properties were not hers. But that alone does not prove that the properties must consequently have belonged to the Estate. If no presumption can be raised in that respect or, if raised, the presumption is rejected by the court on a direct finding of fact, then the onus of proof would have shifted to that party.

20 The only known asset in Taiwan was a flat which was not in the name of the Deceased. Hence, I have no reason to upset the finding by the AR, on the basis of the evidence before him from the first defendant (and her Singapore lawyer), that the cost of recovering the property would have exceeded the value of that property. In the circumstances, he was entitled, for the purposes of the inquiry, not to take the asset there into account, although he ought perhaps to assign a value to it and deduct the notional costs of recovery from that sum.

21 Similarly, the money deposits in the bank accounts of the European banks were accounted for by evidence from the banks' statements and other evidence. The AR was not convinced by what he considered to be weak allegations (letters written by the Deceased) that the banks owed him more money than was apparent. In respect of the Midland Bank accounts, I am of the view that the AR cannot be faulted for declining to accept the accountants' valuation on counsel's argument that their reports did not take into account the double-counting of various funds. I accept that even if the court appreciated the relevant accounting principles, it would usually be more prudent to accept one accountant's view over that of another than to reject both. But in this case, the question of double-counting was seen from the viewpoint of the law rather than that of accounting. Mr Andre Arul relied extensively on his "commingling" argument in respect of the European assets (as he had throughout his submissions in the entire appeal), namely, that the first defendant had not proved which were her funds and which were the Estate's, and accordingly, the AR ought to have assumed that all the money belonged to the Estate. The evidence was clearly before the AR and he was entitled to make the finding he did.

22 I have not set out each and every item disputed by the plaintiff nor each and every argument advanced by her counsel where these can be addressed by the overall general review of her appeal and her counsel's submissions in writing. I would include the alleged assets of the Grand Trading Company, the matters relating to estate duty, PT Gunadjaja Indah Plantation, Lampang Plantation, Bank Mees & Hope, *etc* (indirectly dealt with as part of other issues) in this category of complaints not specifically dealt with. I am satisfied that AR Phang was fully alert to the dangers of dealing with mixed funds. Throughout his judgment, he had explained with great care and detail the basis upon which he made a finding as to whether any given asset was an asset of the Estate. In reciting the *Caltong* case ([18] *supra*) as well as *In re Tilley's Will Trusts* [1967] Ch 1179 at 1182, the AR was clearly reminding himself that presumptions may apply only where no evidence leads the court to a contrary view. Thus, he had relied, where he could, on evidence as to whether an asset belonged to the first defendant or the Estate. He applied the presumptions where no satisfactory evidence was available. Mr Andre Arul's failing, in his great and sweeping challenge to the correctness of AR Phang's judgment, lay in the shared belief he had with the plaintiff that first, the Estate had an incredibly large store of money and other assets, and second, that the first defendant was dishonest, and had deceived everyone in her declaration as to the true value of the assets or had hidden them away. The history of this family is long and complex. The court may not have been given the full and true account. So, the plaintiff may be entirely right, partially right, or entirely wrong in her beliefs. The court, in conducting an inquiry into the value of an estate as complicated as this, can only act on evidence. Some are more irrefutable than others; some require inferences to be drawn; and some merely appear as necessary but not critical pieces that help to give shape and form to the narrative. The judge who conducts such an inquiry has to form his views on each individual aspect and yet conceive them together as a coherent whole. It is always open to an appellate court to differ from the court below in matters concerning inferences from facts, but in this case, I exercised a careful restraint (as opposed to a cautious restraint) against interfering in the inferences drawn (or the refusal to draw inferences, as the case may be) by AR Phang.

23 Finally, the plaintiff also appealed against the AR's determination that the fifth interim payment of S$1,170,297.75 (made on 6 April 2001) was an interim payment out of the plaintiff's portion of the second defendant's share in the Estate. The plaintiff contended that it should be from the second defendant's share. There was no dispute concerning the previous four interim payments which parties accept as payments under O 29 r 9 of the Rules of Court (Cap 322, R 5, 1997 Rev Ed). Mr Andre Arul submitted that it was clear that the fifth payment must be from the second defendant's share because the latter had no money to pay the plaintiff maintenance. The money was paid out of the law firm of M/s Thio Su Mien & Partners who were holding the money as stakeholders pending the resolution of the disputes. Counsel criticised AR Phang for consulting the judge who made the order.

He further submitted that the judge was *functus officio* and had no power to declare the payment to be an interim one, contrary to the express wording of the orders as extracted. This objection is not a valid one because the judge was asked for a clarification of his own order. The request for such clarification is normally made by the parties, but in this unusual case the AR decided to resolve the dispute by the swiftest means, thus sparing the parties cost and effort. He properly concluded the exercise by setting it out in his judgment. Furthermore, I agree with counsel for the third and fourth defendants, Mr V Coomaraswamy, that if the plaintiff's interpretation is correct, then what was an interim payment order would be converted into a garnishee order. A garnishee order would have required a different mode and process than that which the parties had adopted in this case.

24 The second defendant's appeal was largely a refrain of the plaintiff's. As with the plaintiff's appeal, the second defendant's appeal was concerned almost entirely with findings of fact. I need, however, to deal with the question as to whether the AR was wrong to hold that the issue of the fourth defendant's status as a legitimate son of the first defendant and the deceased was outside the scope of the inquiry. Mr Arul Chandran, counsel for the second defendant, submitted that the fourth defendant's legitimacy "was raised in the Statement of Claim", and because it was not resolved by Chao J at the trial of Originating Summons No 939 of 1991, it was therefore of great importance to have it resolved at the inquiry. The point is relevant to the parties in that their shares in the Estate would be increased proportionately if the fourth defendant was not included by reason that he was not a legitimate son. The relevance of this issue to the parties does not mean that it had a concomitant relevancy to the case; the case that we are concerned with presently is the inquiry, not the trial. The challenge of a person's status in the manner Mr Arul Chandran had in mind requires a properly and appropriately drawn up set of pleadings. The terms of the inquiry in question merely required the court to inquire into the size and value of the Estate and the second defendant's share in the Estate. Although his share would have depended on how many persons were entitled to the Estate, the extent to which the court would allow the inquiry to wander lies at the discretion of the court. The AR would be entitled not to pursue any point if, in his discretion, it would be wanton and unreasonable. He need not, for instance, carry out an inquiry into how many other children the deceased might have in Taiwan based on tenuous allegations. In the present case, Mr Arul Chandran argued that the oral evidence of one Mr Chan would tend to prove that at the material time the Deceased was incapable of fathering children. He submitted that this evidence came late and, in fact, surfaced only during the inquiry. Not only was this submission contrary to Mr Arul Chandran's case that it was raised at the trial but not decided upon, s 114 of the Evidence Act (Cap 97, 1997 Rev Ed) provided that the birth of a child within 280 days of the dissolution of a marriage shall be "conclusive proof" that the child was a child of the marriage. This presumption may be disproved by evidence that the parties did not have access during the material time. The point was made in the statement of claim but not pursued at trial (where it ought properly to have been pursued). The AR was thus justified in dismissing the question of the fourth defendant's legitimacy as an issue in the inquiry. He was justified in the circumstances in regarding the fourth defendant as a legitimate son for the purposes of determining the second defendant's share in the Estate. The plaintiff had also appealed against the order allowing only 50% of certain disbursements such as copying charges. There is no persuasive argument why that order ought to be reversed. The AR was the best person to decide how much of the copying charges were justifiable because he had first-hand appraisal of the documents produced and was best placed to determine how much of those were relevant. I am not inclined to disturb orders relating to disbursements.

25 For the reasons above, I am of the view that there were no merits in the plaintiff's and the second defendant's appeals against the orders of the AR in respect of the valuation of the Estate's assets and the second defendant's share (and consequently, the plaintiff's) in the Estate. The appeals of the plaintiff and the second defendant are therefore dismissed.

26 I shall now deal with the first, third and fourth defendants' appeals. Their appeals overlapped in that they concerned the AR's findings as to the amount distributed to the second defendant, and also as to the question of costs. The gravamen of their complaint lay with the findings that as at 29 August 1991, the first defendant had given the second defendant money amounting to £1,018,000 and US$150,000 and that of the money, only S$717,255 were distributed from the Estate to the second defendant as his share. The date of 29 August 1991 was the relevant date under the original order of Chao J that was to be used to calculate what further amounts were due to the second defendant. Mr Khoo Boo Jin, counsel for the first defendant, submitted a detailed account of money that should be treated as distributions and not, for example, as "advances" by the Estate or gifts by the first defendant to the second defendant. Mr Coomaraswamy for the third and fourth defendants made a similar submission. Counsel for these claimants relied on certain findings by PriceWaterhouseCoopers ("PWC"), the expert accountants engaged by the plaintiff, as the basis of their submissions. Mr Khoo submitted that while his client (as indeed so did Mr Coomaraswamy's clients) disputes much of PWC's report, she found their findings as to money received by the second defendant "instructive".

27 I need only refer to the judgment of AR Phang to show that he had approached this aspect of the inquiry correctly, and I find no reason to upset either his approach or conclusions. The AR's finding of fact that prior to 29 August 1991 the second defendant indeed received lots of money from his mother, the first defendant, was the bedrock of his judgment. He also found as a fact that some of the money might have come from the Estate. Concurring with Chao J, who had occasion to make a similar finding, AR Phang held that the second defendant had no knowledge whether he was receiving funds from the Estate as part of his share or plainly as a gift from his mother. I am not in a position to disturb the concurrent findings of fact at two levels where the relevant witnesses had testified. The general and overall approach of the AR sufficiently impressed counsel for the third and fourth defendants that in the course of replying to the plaintiff's and second defendant's submissions, he acknowledged the AR's "methodical forensic approach to the evidence and his wholly justified refusal to draw unwarranted and unjustified inferences". I am thus left only to consider whether the AR's approach was correct or erroneous. Given the mother and son relationship of the first and second defendant, and the family history as narrated at length in the judgments and submissions in this case, I am of the view that the AR's decision, to hold that payments by the first defendant to the second defendant would be treated as distributions of the latter's share only if the evidence had been sufficiently clear so as to distinguish between the making of a gift and the discharge of the former's lawful duties as the administratrix of her husband's estate, was correct. That is the only sensible way to approach the matter. If the court could not be convinced by the evidence that a payment was a distribution, then the inference must be that it was not. I therefore dismiss the appeals of the first, third, and fourth defendants.

28 Lastly, I shall now deal with the issue of costs. The first defendant's complaints as to the AR's orders on costs concerned matters related to the findings of fact at the inquiry, for example, issues concerning the conduct of the first defendant as administratrix and trustee. In respect of these I do not find any reason to vary the order on costs, save that the plaintiff is to present a composite bill for taxation. The inquiry had been a long and comprehensive one. In that regard, I find myself unable to agree with Mr Coomaraswamy that the costs of the third and fourth defendants be paid by the plaintiff because she was responsible for creating the length and complexity of the inquiry. I can see from the submissions that there is justification for this complaint, but I am of the view that the AR had already addressed his mind to these matters. Furthermore, the taxation between the plaintiff and the first defendant would address a large part of that complaint. The costs to the third and fourth defendants were correctly made in principle.

Appeals dismissed.