Lee Mei-Chih *v* Chang Kuo-Yuan
[2012] SGHC 180

Case Number : Divorce No 4945 of 2011 (RAS No 56 of 2012)

Decision Date : 03 September 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Sim Bock Eng and Lam Shen Lin (WongPartnership LLP) for the plaintiff; L Kuppanchetti and Wong Kum Fu Vincent (ATMD Bird & Bird LLP) for the defendant.

Parties : Lee Mei-Chih — Chang Kuo-Yuan

Family Law – Matrimonial Proceedings – Jurisdiction

3 September 2012 Judgment reserved.

Choo Han Teck J:

1 This is an appeal against the District Judge's decision dismissing Divorce Suit No 4945 of 2011 on the ground that the Singapore courts do not have jurisdiction to hear the matter. The plaintiff-appellant (wife) and the defendant-respondent (husband) are not Singaporean citizens. They are also not domiciled in Singapore. The plaintiff is a citizen of both Taiwan and New Zealand, while the defendant is a citizen of Taiwan. The parties were married in Taiwan in 1994 and the marriage was also registered in New Zealand in 1995. There is a child to the marriage, a 16-year old daughter, who was born in New Zealand. The daughter is a citizen of both Taiwan and New Zealand. She is currently residing in New Zealand and attends school there. The only matrimonial asset in Singapore is a condominium property located at Grange Road.

2 Pursuant to s 93(1)(b) of the Women's Charter (Cap 353, 1985 Rev Ed), the Singapore courts will have jurisdiction to hear the matter if either party to the marriage was "habitually resident in Singapore for a period of three years immediately preceding the commencement of the proceedings". Since it is not disputed that the defendant was never habitually resident in Singapore, it falls on the plaintiff to prove that she was "habitually resident" in Singapore specifically from 14 October 2008 to 14 October 2011 (*ie*, the date that the divorce petition was filed) ("the Qualifying Period").

3 To understand what constitutes habitual residence, it is necessary for me to firstly briefly trace the development of s 5(4) of the English Domicile and Matrimonial Proceedings Act 1973, which is *in pari materia* with s 93(1)(b) of the Singapore Women's Charter. Section 5(4) of the English Domicile and Matrimonial Proceedings Act 1973 provides as follows:

> (4) The court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner —
>
> (a) is domiciled in England and Wales on the date when the proceedings are begun; or
>
> (b) was *habitually resident* in England and Wales throughout the period of one year ending with that date.

[emphasis added]

Before s 5(4) of the English Domicile and Matrimonial Proceedings Act 1973 was enacted, the governing law on this jurisdictional issue was as originally enacted in s 1 of the Law Reform (Miscellaneous Provisions) Act 1949 and re-enacted in s 18 of the Matrimonial Causes Act 1950 and s 40 of the Matrimonial Causes Act 1965:

> 1.— The High Court in England shall have jurisdiction in proceedings by a wife for divorce, notwithstanding that the husband is not domiciled in England, if –
>
> (a) the wife is resident in England and has been *ordinarily resident* there for a period of three years immediately preceding the commencement of the proceedings;
>
> (b) the husband is not domiciled in any other part of the United Kingdom ...
>
> [emphasis added]

4 I agree with the view of Thorpe LJ in *Ikimi v Ikimi* [2001] EWCA Civ 873 at [21] to [23], that the change in the terminology from "ordinarily resident" to "habitually resident" in the English provisions was in effect merely cosmetic:

> 21 In the late 1960s the court's jurisdiction in divorce still depended largely upon the domicile of the husband. How to further extend it was the subject of the Law Commission's Report on Jurisdiction in Matrimonial Causes (1972) (Law Com No 48). In introducing the problem the report drew attention to the increase of cases with a foreign element resulting from greater international mobility. The report defined the task thus:
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> > "The job of law reform is therefore to formulate bases of jurisdiction which meet the interests of the state and of those who genuinely 'belong here', without allowing access to our courts to transients, 'forum-shoppers', and others with no real connection with the country."
>
> 22 Having concluded that residence should be an additional foundation of jurisdiction the report considered what kind of residence should be sufficient to justify the assumption of divorce jurisdiction. The answer proposed was residence which establishes "belonging" which might continue despite limited periods of absence and was more than occasional or casual. The report then cited the decision in *Stransky v Stransky* [1954] P 428 as a good illustration of the kind of connection with this country which the authors thought important. *However the report preferred to substitute the adverb "habitually" for "ordinarily" in order to achieve a uniform test throughout the field of family law and to conform with the language of international conventions. The change of language did not change the test.*
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> 23 The Law Commission's proposals were subsequently adopted and enacted by the Domicile and Matrimonial Proceedings Act 1973 which, of course, continues to define the jurisdiction of our courts in divorce.
>
> [emphasis added]

5 Since the phrase "habitually resident" is for all intents and purposes the same as the phrase "ordinarily resident", the principles in the leading case of *R v Barnet London Borough Council, Ex p Nilish Shah* [1983] 2 AC 308 ("*Nilish*") which discussed the meaning of the phrase "ordinarily resident" should therefore also apply to s 5(4) of the English Domicile and Matrimonial Proceedings Act 1973.

Consequently, if they do, they should not have a different meaning to the words "habitually resident" in s 93(1)(b) of the Singapore Women's Charter.

6 As held by Lord Scarman in *Nilish* at p 341, the construction of the phrase "ordinarily resident" by the House of Lords in the tax cases of *Levene v Inland Revenue Commissioners* [1928] AC 217 ("*Levene*") and *Inland Revenue Commissioners v Lysaght* [1928] AC 234 ("*Lysaght*") were of general application and apply across the wide statutory field in which the phrases appear, unless the statutory framework requires a different meaning. Lord Scarman also approved the definition by Lord Denning MR "that the person must be habitually and normally resident here, apart from temporary or occasional absences of long or short duration" (at p 342). Lord Scarman continued that the significance of the verb "habitually" as used by Lord Denning MR is that it recalls two necessary features mentioned in *Lysaght*, namely residence adopted voluntarily and for settled purposes (at p342). To these two necessary features Lord Scarman returned, at p 344:

> There are two, and no more than two, respects in which the mind of the "propositus" is important in determining ordinary residence. The residence must be voluntarily adopted. Enforced presence by reason of kidnapping or imprisonment, or a Robinson Crusoe existence on a desert island with no opportunity of escape, may be so overwhelming a factor as to negative the will to be where one is.
>
> And there must be a degree of settled purpose. The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the "propositus" intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.

7 Returning now to the facts of the present case, I find that the plaintiff was habitually resident in Singapore. There is firstly no doubt that the plaintiff's residence in Singapore was voluntary. As for the element of settled purpose, the plaintiff's pattern of always returning to Singapore whenever she travelled demonstrated a certain degree of settled purpose. I do, however, note that the plaintiff did not have more concrete settled purposes such as education, family or employment.

8 However, the plaintiff has failed to establish the requisite degree of continuity of habitual residence throughout the Qualifying Period for the purposes of s 93(1)(b) of the Women's Charter. There is no fixed period as to what constitutes a brief absence. That is a question of fact for the individual case, but it would be sensible and fair to say that holidays abroad would not break an otherwise habitual residence as some courts have held. However, the principle is not merely about "holidays" but any brief period (or several brief periods) when the claimant was away. In considering whether the time away had broken the "habitually resident" requirement, the court has to consider not just the reason for being away, but also the length of time spent away. In the present case, the plaintiff had travelled out of Singapore and stayed in Taiwan for about eight months from 2 August 2010 to 15 April 2011. She claimed that she went to defend herself in her divorce proceedings there. Given the extended length of the trip and the fact that the plaintiff had returned to her home country, the Taiwan trip could not have been said to be within the acceptable exceptions of holiday trips or business trips. Although the Taiwan trip was necessitated by circumstances beyond the plaintiff's control and was brought about by the defendant's actions in instituting the Taiwan divorce proceedings, this was ultimately irrelevant for the purposes of ascertaining the requisite degree of continuity of habitual residence under s 93(1)(b) of the Women's Charter. To hold otherwise would

mean that had the proceedings in Taiwan kept the plaintiff away from Singapore for say two out of the three-year period, she could still have qualified as having been habitually resident here. That would plainly go against the spirit of s 93(1)(b) of the Women's Charter. In addition to the Taiwan trip, the plaintiff had also travelled to New Zealand for about four months from 29 January 2009 to 6 June 2009 to settle her daughter into her school there. As alluded to earlier, the plaintiff was, and still is a citizen of New Zealand as well. The plaintiff also made several other trips to other countries but I would place little weight on this fact because those trips were fairly short. In my view, the total of about 12 months extended absence for both the Taiwan and New Zealand trips was substantial when viewed against the backdrop of the mandatory three year Qualifying Period.

9 Accordingly, I find that the plaintiff was not habitually resident in Singapore for the Qualifying Period within the meaning of s 93(1)(b) of the Women's Charter. The Singapore courts thus do not have jurisdiction to hear the matter. Consequently, there is no need for me to further consider the defendant's argument in the alternative that the matter should be stayed on the ground of *forum non conveniens*. I therefore dismiss the plaintiff's appeal and will hear the parties on costs.