

Re Kornrat Sriponnok
[2015] SGHC 81

Case Number : Originating Summons No 842 of 2014
Decision Date : 30 March 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jason Peter Dendroff (J P Dendroff & Co) for the applicant.
Parties : Re Kornrat Sriponnok

Evidence—Proof of Evidence—Presumptions

30 March 2015

Judgment reserved.

Choo Han Teck J:

1 This is an *ex parte* application by Ho Kum Kok (“the applicant”) for a declaration that one Kornrat Sriponnok (“Kornrat”) be presumed dead. The applicant’s brother, Ho Kum Yuen, married Kornrat on 18 October 2001. Ho Kum Yuen died on 6 February 2012 leaving money in his Central Provident Fund account of about \$150,000 and without a nomination as to the beneficiary. This meant that in the absence of a will, the widow, Kornrat, will be entitled to the money.

2 The applicant deposed in his affidavit that his brother and Kornrat did not stay together after marriage and that his brother and Kornrat last met each other in May 2002. His brother wanted to divorce her but had no money, and on 2 May 2004 he lodged a police report. The full text of his report is as follows:

My wife is from Thailand. She is a Thai. Her particulars is as follow[s]: Kornpat [*sic*] Sriponnok, passport number, [XXX]. We got marry [*sic*] on 18.10.2001. The certificate of marriage number is 679440. After marriage, we do not stay together. We only met once or twice in a year. She only met up with me to renew her VISA.

I last saw her in the month May 2002. She want to borrow money from me, however I got not enough money to do so. We do not keep in contact at all during and after our marriage. I had no idea where she. There was no quarrel or dispute during our time of marriage.

I am lodging this report to file for divorce as instructed by my lawyer.

3 This application was made on the basis of the presumption of law set out in s 110 of the Evidence Act (Cap 97, 1997 Rev Ed) (“the Act”). For reasons that will be obvious, it is necessary to set out not just s 110 but also s 109 of the Act:

Burden of proving death of person known to have been alive within 30 years

109. When the question is whether a man is alive or dead, and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for 7 years

110. When the question is whether a man is alive or dead, and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

4 Section 109 of the Act is important because it provides that the burden of proving that a person is dead lies with the person asserting. In this case, the burden falls on the applicant since Kornrat was clearly alive within the past 30 years. However, the applicant is unable to prove that Kornrat has died.

5 What he hopes to do is to have the court presume her dead by the application of s 110. Section 110 only shifts the burden of proof from the person asserting death to the person asserting that the "alleged dead person" is alive. But in order to shift the burden of proof, two elements need to be satisfied – first, that the alleged deceased has not been heard of for seven years, and second, that the "alleged dead person" has not been heard of by those who would naturally have heard of him if he had been alive. This would include persons related to the "alleged dead person" either "by virtue of blood or marital ties", but would also depend on the nature of such ties (*Re Soo Ngak Hee* [2011] 1 SLR 103 at [20]).

6 In this case, s 110 does not apply because it has not been "proved that [Kornrat] has not been heard of for seven years by those who would naturally have heard of [her] if [she] had been alive." The person who would naturally have heard of Kornrat in the past seven years would *prima facie* be the applicant's brother who was Kornrat's husband. But all that we have from that brother, who has died, is that he and Kornrat though married, never lived together. They did not keep in contact during or after the marriage and he was unaware of her whereabouts since May 2002.

7 In fact, even if Kornrat's husband were to make the application, the court may not necessarily accept that Kornrat should be presumed dead. This is because, given the estranged nature of the marital ties between Kornrat and her husband, it is unlikely that the husband himself would fall into the category of persons "who would have naturally heard of" her, and the s 110 presumption cannot be invoked by him.

8 In this case, the applicant, being a third-party outsider wanting to prove that Kornrat is dead, and without the evidence of any person who would naturally have heard of her in the past seven years, now has to prove that she is dead. This requires the applicant to satisfy the court that all due and sufficient steps and inquiries have been made to establish whether Kornrat is alive. But the applicant has no evidence whatsoever. The fact that Kornrat cannot be contacted is not proof that she is dead. She is a Thai national and may still be alive somewhere in Thailand. The sole newspaper advertisement placed in a Thai local newspaper more than ten years after her disappearance is inadequate and might not even assist the husband if he were the one making this application.

9 This application is made by the applicant and the affidavits filed by him and Tan Sam Hin (the god-brother of the applicant's deceased brother), are of little assistance. The evidence relied upon in these affidavits are not based on direct evidence of the deponents. The applicant has only proven that Kornrat cannot be found in Singapore but there is insufficient evidence to prove that she is dead.

10 For the reasons above, this application is dismissed.

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