

Tan Kok Ing v Tan Swee Meng & 3 Others
[2002] SGHC 166

Case Number : M C Suit No 12116 of 2000/N
Decision Date : 31 July 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Cosmas Gomez (Hoh & Partners) for the plaintiff; Linda Phua (Lee & Lee) for the 1st and 2nd defendants; Adeline Chong (Harry Elias Partnership) for the 3rd and 4th defendants
Parties : —

Civil Procedure – Jurisdiction – O 89 r 4 Rules of Court (Cap 322, R 5, 1997 Rev Ed) – Whether quantum in itself constitutes "important question of law or fact" -s 53 Subordinate Courts Act (Cap 321, 1999 Rev Ed)

Courts and Jurisdiction – Magistrates' courts – Jurisdiction – Transfer from Magistrate's Court to District Court – Quantum exceeding jurisdiction of Magistrate's Court – s 53 Subordinate Courts Act (Cap 321, 1999 Rev Ed)

JUDGMENT

GROUND'S OF DECISION

Background

1. The Plaintiff is one Tan Kok Ing.
2. Mr Tan's claim arises from a road traffic accident on 11 July 1997 involving two motor vehicles. He sued various defendants for damages for personal injuries and loss suffered as a result of the motor accident. He was a passenger in one of these vehicles. His claim was filed in the Magistrate's Court on 7 July 2000.
3. On 31 January 2002, Mr Tan filed an application in the Magistrate's Court to transfer the action from the Magistrate's Court to the District Court. The grounds in support of his application were that when his action was commenced, it appeared that his injuries were less serious in nature and the general and special damages which he might reasonably expect to be awarded would not exceed the Magistrate's Court limit. But since his action was commenced, Mr Tan alleged that it became apparent that his injuries were more severe than he had thought. In this regard, he relied on several medical reports. Consequently, his claim might exceed the Magistrate's Court limit.
4. It was further alleged by Mr Tan that the transfer of proceeding would not prejudice the defendants.
5. Mr Tan's application was dismissed by a Deputy Registrar of the Subordinate Courts. He then appealed to a District Court and that appeal was dismissed. Thereafter, he appealed to the High Court and that appeal came before me. After hearing arguments, I dismissed the appeal. I now give my written reasons.
6. The relevant provision is s 53 of the Subordinate Courts Act (Cap 321). Section 53 states:

'Transfer from Magistrate's Courts to District Courts

53. A Magistrate's Court may, either of its own motion or on the application of a party to an action, transfer the action to a District Court on the ground that some important question of law or fact is likely to arise.'

7. I was of the view that in the light of this provision, there was no inherent jurisdiction in the Magistrate's Court to transfer an action commenced in the Magistrate's Court to the District Court and any such transfer must meet the requirement in s 53, that is, (a) some important question of law, (b) or fact, is likely to arise. Otherwise s 53 would be otiose.

Order 89 rule 4 of the Rules of Court

8. Before I deal with the requirements in s 53, I refer to O 89 r 4 of the Rules of Court, on which some reliance was placed by Mr Cosmas Gomez, Counsel for Mr Tan. This rule provides:

'Transfer of proceedings within the Subordinate Courts (O.89, r.4)

4. (1) Where a Subordinate Court is satisfied that any proceedings in that Court ought to be tried in some other Subordinate Court, it may order the proceedings to be transferred to the other Court.

(2) Any order under paragraph (1) may be made by the Court on its own motion or on the application by summons of any party to the proceedings.

(3) Where an order under paragraph (1) is made by the Court on its own motion, the Registrar must give notice of the transfer to every party to the proceedings.'

Mr Gomez was suggesting that this provision would enable the Magistrate's Court to effect the transfer without Mr Tan having to satisfy the requirements in s 53.

9. On the other hand, Ms Linda Phua, Counsel for the First and Second Defendants, submitted that rule 4 provides the procedure for a transfer only if one of the requirements in s 53 is satisfied and that rule 4 should not be read in isolation.

10. I was of the view that O 89 r 4 is not a provision on procedure only. However I agreed that it should not be read in isolation. If rule 4 were interpreted to mean that any Subordinate Court has an unfettered discretion to order a transfer of proceedings from a Magistrate's Court to a District Court so long as the court ordering the transfer is satisfied that the transfer ought to be effected, then s 53 would be otiose. It will then effectively override s 53. In my view, subsidiary legislation cannot override primary legislation and rule 4 must be read subject to s 53.

11. I found support in the Malaysian case of *Kee Chai Heng v Ketua Polis Daerah Kuala Muda* [1999] 2 MLJ 671. In that case, the plaintiff had filed an action against the defendant for negligence for failing to ensure that he was not harmed whilst under police custody. The action was commenced in the Sessions Court. The Sessions Court however, on its own initiative, was of the view that the claim was within the jurisdiction of a lower court, i.e the Magistrate's Court. It then ordered that the case be transferred to that court.

12. On appeal, the High Court (Alor Setar) ruled that the Sessions Court did not have the power to do so. This was because para 3(2) of the Third Schedule of their Subordinate Courts Act 1948 gave it power 'to transfer any proceedings to another court of co-ordinate jurisdiction' only.

13. However, O 47 r 1 of the Malaysian Subordinate Courts Rules 1980 provided that:

TRANSFER OF PROCEEDINGS

1. Where the Judge of any Court is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court he may order the proceedings to be transferred to other Court.'

14. Notwithstanding O 47 r 1, the Malaysian High Court concluded that this provision must be read subject to para 3(2) of the Third Schedule of their Subordinate Courts Act as the former was 'merely a subsidiary legislation whereas the SCA is an Act of Parliament' (see p 671 at I of the report).

Does the fact that Mr Tan's claim may exceed the jurisdiction of the Magistrate's Court show that some important question of law or fact is likely to arise?

15. Mr Gomez submitted that the mere fact that Mr Tan's claim may exceed the jurisdiction of the Magistrate's Court showed that an important question of law or fact was likely to arise. He relied on two cases.

16. In *Manakau City Council v Nicoll Management Co Ltd* [1998] DCR 722, the application to transfer a case from the District Court in Auckland to the High Court was based on s 43(2) of the District Courts Act 1947 which applies where the value or property or relief claimed in issue does not exceed \$50,000. Under that provision, a judge may order the proceeding to be transferred to the High Court, if in the judge's opinion, some important question of law or fact is likely to arise or a question of title to any hereditament is likely to arise otherwise than incidentally. In that case, the application was based on some question of law or fact. Judge R L Johnson enumerated various factors which he said must be taken into account in such an application:

- (a) The nature and complexity of the case;
- (b) The general or public importance of the case;
- (c) The amount in issue;
- (d) The likely length of the hearing and the financial resources of the parties;
- (e) Novelty of any point of law raised.

17. Mr Gomez relied on factor (c) and said that this factor alone could satisfy one of the requirements in s 53. There was no need to establish that Mr Tan's claim was complex.

18. The next case which Mr Gomez relied on was *Patterson and others v Ellis and another* [1957] 1 WLR 857. In that case, the relevant provision was s 44(2)(b) of the County Courts Act which allowed a transfer of proceedings in a County Court to the High Court if '(b) the judge certifies that in his opinion some important question of law or fact is likely to arise'.

19. In the court of first instance, Judge Gordon Clark held that 'important' must mean that the point affects a number of outside interests or a point of law which affects other cases.

20. However, the English Court of Appeal held that it was too narrow a construction to conclude that the point of law must affect other cases or that it must be something in the nature of a test case or that

outside interests must be affected. If the difficult question of law or fact arose as between the parties only, a court could still conclude that important questions of law or fact are likely to arise.

21. Mr Gomez argued that therefore it was not necessary for Mr Tan's claim to affect other cases and it was sufficient if an important question of law or fact is likely to arise as between the parties.

22. Ms Phua submitted that in both *Manakau* and *Patterson*, the application to transfer the proceedings was not based on the mere fact that the quantum may exceed the lower court's jurisdiction.

23. She added that if an action could be transferred for that reason alone, that would require a mini-hearing first to establish the quantum, where the claim was for unliquidated damages like in the present case. She found support for this proposition in the Malaysian case of *Kee Chai Heng* which I have mentioned above. She cited p 671 where the High Court (Alor Setar) said:

'What I have just said above concerns a clear cut situation. It might be that in many case the situation is not one that is clear-cut (such cases might be common among claims involving unliquidated damages). In such cases, in order to avoid unnecessary delay and costs, it is, to my mind, prudent (*sic*) or the sessions court not to entertain the uncertainty and embark on an exercise - more so on its own motion - of determining, before the trial even begins, whether the total sum of the damages likely to be recovered by the plaintiff would be less than or exceed RM25,000. The sessions court should proceed with the trial of the case before it. After all, the sessions court is competent to hear such cases: as a general rule, what is within the civil jurisdiction of the magistrate's court is also within the jurisdiction of the sessions court. Moreover, in many such cases, the extent of the damages that should be awarded could only be determined with certainty after having the benefit of hearing the whole evidence and submissions.'

24. However, in that case, the action had been filed in the Sessions Court and the Sessions Court judge, on his own initiative, took the view that the claim was within the jurisdiction of a lower court i.e the Magistrate's Court and he was minded to transfer it to the Magistrate's Court. It was in that context that the Malaysian High Court said that the Sessions Court should not embark on an exercise to determine the quantum even before the trial begins. After all, the Sessions Court had jurisdiction to proceed with the trial.

25. In the case before me, Mr Tan wanted to do the opposite, i.e to transfer his case from a lower court, i.e the Magistrate's Court, to a higher court, i.e the District Court. Accordingly, the passage cited by Ms Phua did not apply to the case before me.

26. In any event, I was of the view that there is no question of making a mini-inquiry first. If a plaintiff subsequently takes the view that the quantum of his damages may exceed the jurisdiction of the court in which he has commenced his action, then he must apply to transfer his action to a higher court as soon as possible. So long as there is some reasonable basis for his view, it is not for the court hearing the application to embark on an inquiry to assess the quantum before deciding whether to transfer the action or not.

27. Whether the plaintiff succeeds in his application is another matter.

28. Ms Phua also submitted that the District Court did not make its decision on the basis that the parties must show some importance of law or fact to other parties. Hence, *Patterson* was not relevant.

29. Ms Phua also contrasted s 53 with s 24(1) of the Subordinate Courts Act. Section 24(1) states:

'Transfer of counterclaim from District Court to High Court

24. (1) Where, in an action founded on contract or tort in a District Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the jurisdiction of the District Court, any party to the action may apply to the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court.'

30. Ms Phua's point was that s 24(1) specifically enables a transfer to be made in the situation where the quantum in the counterclaim or set-off and counterclaim involves a matter 'beyond the jurisdiction' of the lower court, but no such words are found in s 53 when they could easily have been included if that was Parliament's intention.

31. As regards the question whether Mr Tan could use s 24(1), he could not because that provision applied to a transfer from the District Court to the High Court and not from the Magistrate's Court to the District Court. Secondly, it applied only where the amount in the counterclaim or set-off and counterclaim is beyond the lower court's jurisdiction and not where the amount in the main claim itself is beyond that jurisdiction. Thirdly, under s 24(1), the application is made to the High Court and not to the District Court.

32. Another provision that showed a contrast to s 53, was s 38 which states:

'General power to transfer from District Court to High Court

38. Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, is one which should be tried in the High Court, it may order the record to be transferred to the High Court.'

33. The words 'or for any other sufficient reason' do not appear in s 53. Also under s 38, the application is to transfer a civil proceeding in a District Court to the High Court. The application must also be made to the High Court.

34. Ms Phua also drew my attention to s 52(1) and the provisions referred to therein but it is not necessary for me to elaborate on them in my Grounds.

35. Ms Adeline Chong, Counsel for the Third and Fourth Defendants, submitted that when the court in *Manakau* raised the amount in issue as one of the factors to be taken into account, this was in the context of s 43(2) of their District Courts Act 1947 which applies where the value of the property or relief claimed in issue does not exceed NZ\$50,000.

My Decision

36. I was not certain whether the reference in *Manakau* to the amount in issue as being one of the factors to be considered was because of the limit to the jurisdiction of the District Courts Act under s 43(2) thereof. In any event, that is neither here nor there because there is a limit to the jurisdiction of our Magistrate's Court as well.

37. Besides, it was clear that the amount in issue was not the sole or the most important factor in *Manakau*.

38. In any event, it was my view that the amount in issue per se is not a relevant factor in determining whether 'some important question of law or fact is likely to arise' under our s 53. A fortiori, the quantum in itself does not constitute an 'important question of law or fact'.

39. I was of the view that in order for the question of law or fact to be 'important' for the purpose of s 53, it should affect more than the immediate interests of the parties. It should be applicable to others as well. A distinction should be drawn between 'important' and 'difficult'. Accordingly, I prefer the decision of Judge Gordon Clark and respectfully differ from the decision of the English Court of Appeal in *Patterson*.

40. Even if I were wrong on this point, I reiterate that even if the amount in issue may be beyond the jurisdiction of the Magistrate's Court, that in itself does not show that an 'important question of law or fact is likely to arise'.

41. I agreed that if that was Parliament's intention, s 53 would have used similar words as are found in s 24 i.e 'involves a matter beyond the jurisdiction' of the Magistrate's Court.

42. I also agreed that s 38 gives the High Court a wider discretion than s 53 gives to the Magistrate's Court. Hence, I have, on other occasions, applied the words 'or for any other sufficient reason' in s 38 to a situation in which the amount in dispute in the District Court may be beyond the jurisdiction of that court. However, those words are not found in s 53 which applies to an intended transfer from the Magistrate's Court to the District Court.

43. I would add that para 10 of the District Court's Grounds of Decision states, inter alia, that Mr Tan should apply to the High Court, as opposed to the Magistrate's Court, for the transfer of his action to a more appropriate forum. It also states that this view is supported by the Malaysian case of *Kee Chai Heng*.

44. It is true that the Malaysian High Court in *Kee Chai Heng* said that only the High Court has the power to transfer a civil case from a Sessions Court to a Magistrate's Court and vice versa. However, while reliance was placed by the court there on para 12 of the Schedule to the Courts of Judicature Act, the judgment did not elaborate in detail on the provisions of that Schedule vis--vis their Subordinate Courts Act. Accordingly, I was unable to derive more assistance from that case on this point.

45. On the other hand, I have recently ruled in Originating Summons No 687 of 2002 *Chiltern Park Development Pte Ltd v Ong Pang Wee & others* that the Singapore High Court has no power to transfer an action from the Magistrate's Court to the High Court, or, for that matter, from the Magistrate's Court to the District Court. I reached this conclusion after considering our Supreme Court of Judicature Act (Cap 322) and various provisions in our Subordinate Courts Act.

46. As I said in my judgment in the *Chiltern Park* case, the power given to the High Court in Clause 10 of the First Schedule of the Supreme Court of Judicature Act is to be read subject to any written law and the Subordinate Courts Act is such a written law. It seems to me that the only provision in respect of the transfer of an action from the Magistrate's Court to the District Court is s 53. I will elaborate.

47. One possible argument is that s 53 is an enabling provision for a Magistrate's Court to transfer an action in the Magistrate's Court to the District Court and does not circumscribe the powers of the High Court as given in Clause 10 of the First Schedule of the Supreme Court of Judicature Act. So, the High Court can order a transfer from the Magistrate's Court to the High Court or to the District Court.

48. While that is an attractive argument, it seems to me that that is not the scheme under the Subordinate Courts Act which envisages that an action in the Magistrate's Court can only be transferred to the District Court and only an action in the District Court can be transferred to the High Court. There is no question of a double-jump i.e the transfer of an action in the Magistrate's Court to the High Court.

49. As for the question whether the High Court has the power to order the transfer of an action in the Magistrate's Court to the District Court, I am of the view that it does not. Otherwise the requirements in s 53 would be otiose. The result would be that any litigant who seeks a transfer of an action in the Magistrate's Court to the District Court can by-pass s 53 and apply to the High Court instead and need not meet any of the requirements in s 53 about 'some important question of law or fact'.

50. The District Court also does not have such a power i.e to transfer an action in the Magistrate's Court to the District Court, for the same reason. It would render s 53 otiose.

51. I understand that my decision in the *Chiltern Park* case is on appeal to the Court of Appeal.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

SINGAPORE