Mahidon Nichiar Binte Mohd Ali and others *v* Dawood Sultan Kamaldin [2014] SGHC 207

Case Number : Suit No 251 of 2013

Decision Date : 17 October 2014

Tribunal/Court : High Court

Coram : Lee Kim Shin JC

Counsel Name(s) : Bernard Sahagar (Lee Bon Leong & Co) for the plaintiffs; Zhulkarnain Abdul Rahim and Jansen Aw (Rodyk & Davidson LLP) for the defendant.

Parties : Mahidon Nichiar Binte Mohd Ali and others — Dawood Sultan Kamaldin

Civil procedure – limitation

Contract – mistake – non est factum

Evidence – proof of evidence

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 112 of 2014 was allowed by the Court of Appeal on 28 July 2015. See [2015] SGCA 36.]

17 October 2014

Lee Kim Shin JC:

1 Disputes between family members over family assets are some of the most difficult cases to adjudicate for a number of reasons. The evidence is usually incomplete either because family members generally do not document their dealings unlike in a commercial environment, or because a long passage of time has passed between the events which give rise to the dispute and the commencement of proceedings, or both.

2 The veracity of the available evidence too is often difficult to assess, especially when much of the evidence comprises direct testimony from family members, most of whom are emotionally charged by the dispute and therefore prone to dramatising their recollection.

3 That was the exact scenario I struggled with in this unhappy dispute involving the administration of a Muslim estate. The dispute is between a mother ("Mother"), her eldest son ("Jahir") and two daughters ("Aysha" and "Noorjahan") on the one side (collectively "the Plaintiffs"), and another son as the sole defendant on the other ("Dawood"). I will sometimes refer to Jahir, Aysha and Noorjahan collectively as "the Plaintiff Siblings".

4 The sole family asset that was in dispute is a landed property at No. 4 Merryn Terrace ("the Property") which had been conveyed into the joint names of Mother and Dawood in 2005 following the death of the father ("Father") in 2000.

5 The Plaintiffs' principal claim was that Dawood had deceived them in a number of ways which caused the Plaintiffs to agree to the conveyance of the Property to him and Mother as joint tenants.

6 After considering the pleadings and the evidence in detail, I dismissed the Plaintiffs' claims on 8

July 2014. Whilst there were problems with the narrative from both sides, the burden ultimately was on the Plaintiffs to prove their case, which they did not do. I was not convinced that Dawood had, on a balance of probabilities, procured the conveyance of the Property through deceitful means.

7 I had intimated at the commencement of proceedings that the dispute was one that perhaps ought to have been mediated and settled. I repeated this hope that parties could settle their differences amicably to the parties' counsel in the course of delivering my oral judgment. I did this because I was convinced that a mutually beneficial settlement was a realistic possibility (particularly having regard to the fact that Mother remains a joint tenant), if only the parties could put aside their bitterness and prioritise the bond of family that they used to cherish.

8 Given that the Plaintiffs have appealed against my decision, it would appear that the parties are not able to resolve their dispute without a final decision of the Court of Appeal. These are my grounds of decision.

Facts

Background

9 The Property was purchased in cash by Father in June 1979 and registered in Father's sole name. The Property had been the family home since its purchase though, at the time of the proceedings, only Mother and a helper lived in the Property. The four children, all of whom are married, moved out of the Property at different times. The last of them to move out was Dawood in November 2011.

10 Father suffered a stroke sometime between 1989 and 1993 (the date was disputed but nothing turns on this) and was bedridden until he passed away in March 2000. Jahir and Dawood both took on the fatherly role in the household in maintaining the family, the home and Father's business from the time Father became bedridden.

11 Father's business in question is the sale of mutton at a stall in Tekka market. At that time, it was the sole source of income for the family. Jahir helped with the running of the business even before Father became ill, whereupon Jahir took over the running of the business and Dawood came on board to assist Jahir. It was agreed between all the parties that Jahir was the successor of the mutton stall business.

12 Dawood was then a first-year student studying accountancy at the Nanyang Technological University (NTU). He suspended his studies to help out with the mutton stall business which appeared to be facing some financial difficulty. He stopped helping with the business sometime in 1996 but he did not return to NTU to complete his studies. Instead, he enrolled as a cadet with Singapore Airlines (SIA) and eventually became a pilot. He is still a pilot with SIA.

13 The only family members who were living at the Property after 2001 were Dawood and Mother. Everyone else had moved out by then. Noorjahan moved out around 1992, Aysha in 1996, and Jahir in 2001. The Property was still in Father's name in 2001 even though he had passed away close to a year ago.

The Inheritance Certificates

14 The first attempt to administer Father's estate came about four months after the demise of Father, in July 2000. Dawood wrote to the Syariah court on 13 July 2000 seeking what is known as a

Certificate of Inheritance. The certificate was issued on 21 July 2000 ("the 1st Inheritance Certificate"). Curiously, it named Mother and himself as the only beneficiaries of Father's estate.

15 The 1st Inheritance Certificate only surfaced in the course of cross-examination. It was produced by Dawood in response to a question by the counsel for the Plaintiffs, Mr Bernard Sahagar ("Mr Sahagar"). But it was quickly ascertained and agreed to by all sides that the 1st Inheritance Certificate was erroneous. The Plaintiff Siblings were excluded under the 1st Inheritance Certificate because their names were omitted in the answer provided by Dawood to the staff officer who had asked who was living at the Property at the time the request was made for the 1st Certificate of Inheritance. Whatever the case, because the parties agreed that the 1st Inheritance Certificate had no evidential value, and that it was the later Inheritance Certificate obtained on 24 February 2004 ("the 2nd Inheritance Certificate") that was material, I did not think it was necessary to give any weight to the 1st Inheritance Certificate.

16 The 2nd Inheritance Certificate was obtained by Dawood (see [18] below), but this time as the properly appointed administrator of Father's estate. He was appointed by the Plaintiffs sometime in early 2004 (certainly before February 2004). There was some dispute as to why the family decided to appoint an administrator in 2004 when nothing had been done for *almost four years* after Father's death.

17 Again, this difference was immaterial to the outcome as the Plaintiffs had agreed that Dawood was to be appointed as administrator by the family to handle the administration of father's estate. That was not in dispute. Specifically, the Plaintiffs also agreed that Dawood was authorised to consult solicitors, that, after such consultation, he had reported to the family that they needed to apply for letters of administration, and that Dawood was authorised to apply for letters of administration on behalf of the family.

18 Dated 24 February 2004, the application for the 2nd Inheritance Certificate was not made by Dawood but by Messrs Harjeet Singh & Co, the firm of solicitors engaged by Dawood. The lawyers who dealt with Dawood were Mr Harjeet Singh and Ms Gurmeet Kaur (hereafter collectively referred to as "the Solicitors"). The Solicitors appeared as Dawood's witnesses in these proceedings.

19 The beneficiaries of Father's estate and their respective entitlement were listed under the 2nd Inheritance Certificate as follows:

(a) Jahir (son) – 14 shares

(b) Dawood (son) – 14 shares

(c) Mother – 6 shares

(d) Aysha (daughter) – 7 shares

(e) Noorjahan – 7 shares

The Plaintiffs' 2004 Agreement

20 The Plaintiffs claimed that they (or at least Aysha and Noorjahan) were shocked at how little of Father's estate Mother was entitled to under the 2nd Inheritance Certificate. For the purposes of these proceedings, the parties' interest in Father's estate was limited to the Property.

21 The Plaintiffs further claimed that it was then suggested – and all family members agreed – that the four children would "defer" their interest in the Property until Mother passed away (the "Plaintiffs' 2004 Agreement").

22 It was not clear what that meant, legally. Nevertheless, it was clear, on the Plaintiffs' case, that the consequence of the Plaintiffs' 2004 Agreement was that the Property would be transferred into Mother's sole name.

Dawood's 2004 Agreement

23 Dawood, however, had his own version of an agreement that was vastly different from the Plaintiffs' 2004 Agreement. In his version ("Dawood's 2004 Agreement"), Dawood asked all his siblings, in early January 2004, to gather at the Property to discuss the administration of Father's estate. At this meeting, which was also attended by Mother, Dawood informed the family that they needed to engage a lawyer to assist in the application for letters of administration. The family agreed that Dawood should be responsible for this.

24 Dawood claimed that the family also agreed, at the same meeting, that the Property should be registered in the joint names of Mother and him. Dawood said that the Plaintiffs agreed to this as he was the only unmarried child then, and was also the only one living with Mother at that time. As part of this agreement, Dawood would take care of Mother and pay all household and related bills. There was also a suggestion that this entire arrangement – the ownership of the Property and taking care of Mother – was in line with Father's wishes. I will return to this suggestion in due course (see [155] to [161] below).

Transfer of the Property

25 Leaving aside for now whether and which of the two agreements reflected the true situation, the Property was eventually transferred to and registered in Mother and Dawood's names as joint tenants. This took place following the execution of various documents. The principal documents relating to the transfer are:

(a) the Deed of Renunciation of Beneficial Interest dated 27 February 2004 under which Jahir, Asyha and Noorjahan renounced all interest in the Property in favour of Mother and Dawood;

(b) the Transmission Application No IUA 72518P dated 29 March 2005 for the Property to be transmitted to Dawood as the sole administrator of Father's estate; and

(c) the Transfer Document No IA 72519A dated 29 March 2005 and registered on 15 April 2005 under which the Property was transferred from Dawood as the administrator to Mother and Dawood as joint tenants.

26 It appeared that the new certificate of title and the completed administration papers were returned by Messrs Harjeet Singh & Co to Dawood sometime in May 2005.

27 The Plaintiffs claimed that they were never given or shown the original certificate of title.

Discovery of the transfer

28 The Plaintiffs claimed that they only discovered that the Property had been transferred to Mother and Dawood as joint tenants sometime in the beginning of 2011; in other words, 11 years

after the demise of Father, and almost six years after Mother and Dawood became joint tenants of the Property. This was prompted, the Plaintiffs said, by Mother's request to see the title deed. Aysha then approached a friend who was a lawyer, one Mr Ibrahim, who did a search of the land registry and informed her that Mother and Dawood were joint tenants of the Property.

29 It was not clear what immediate steps the Plaintiffs took after they found out about the joint tenancy from Mr Ibrahim. In any event, according to Aysha, Mr Ibrahim told her (when she subsequently approached him for advice) that she should lodge a caveat.

30 Aysha thus suggested to Jahir and Noorjahan that they should lodge a caveat. They agreed.

31 On 15 November 2011, Mr Ibrahim filed a caveat on the Property on behalf of the Plaintiff Siblings ("the Caveat"). The Caveat alleged that Dawood, as the administrator of Father's estate, had no right to gift the Property to himself and Mother to the exclusion of the interests of the caveators (that is, the Plaintiff Siblings). Although Mother was not listed as a caveator, there was no dispute that she was aware and had implicitly consented to the filing of the Caveat.

32 Dawood was notified of the filing of the Caveat by way of a letter from the Singapore Land Authority (SLA) on 19 November 2011. However, he did not take steps to set aside the Caveat. Dawood said that he spoke to Aysha and Jahir and asked them why they had lodged the Caveat but they avoided giving him a proper answer.

33 Dawood said that he also asked Mother about the Caveat to which she said that the Plaintiff Siblings "just wanted some money". According to Dawood, Mother said she would talk to them.

These proceedings

34 On 13 February 2013, the Plaintiffs instructed solicitors to issue a letter of demand to Dawood alleging that he had breached the Plaintiffs' 2004 Agreement by registering the Property in the joint names of Mother and him. The letter gave Dawood until 20 February 2013 to remove his name as a joint owner.

35 After an initial holding letter, Dawood's solicitors responded on 14 March 2013 denying the existence of the Plaintiffs' 2004 Agreement.

36 Shortly thereafter, on 27 March 2013, the Plaintiffs commenced these proceedings.

The pleadings

The Plaintiffs' pleadings

37 In essence, the Plaintiffs claimed that by transferring the Property to Mother and himself as joint tenants "surreptitiously and/or in bad faith", Dawood had breached the Plaintiffs' 2004 Agreement which was an agreement between the four siblings to "waive all or any interest in the estate, particularly in relation to the Property and name [Mother] as the sole legal and beneficial owner of the Property".

38 The Plaintiffs also challenged the "authenticity of the probate papers", not so much that they were forged, but in the sense that irrespective of what the documents said, the Plaintiffs thought that the documents that they had signed were for the purpose of giving effect to the Plaintiffs' 2004 Agreement.

39 The Plaintiffs sought the following substantive reliefs:

(a) a declaration that Mother is the sole legal and beneficial owner of the Property;

(b) a declaration that Dawood has no legal or beneficial interest in the Property;

(c) Transfer Document No IA 72519A dated 25 March 2009 and registered on 15 April 2005 is null and void; and

(d) Dawood to deliver possession of all title deeds relating to the Property, sign all documents and deeds necessary to register Mother as the sole legal and beneficial owner of the Property.

Dawood's pleadings

40 Dawood's main defence was that the Plaintiff Siblings had, under the Deed of Renunciation of Beneficial Interest, waived all of their legal and beneficial interests in Father's estate in favour of Mother and himself. He claimed that their renunciation was in furtherance of Dawood's 2004 Agreement.

41 Dawood also claimed that to the extent that the Plaintiffs alleged that there was an implied contract, that is, the Plaintiffs' 2004 Agreement, the cause of action arising from the registration of the Property with Mother and Dawood as joint tenants accrued on 15 April 2005 (see [25(c)] above). Pursuant to s 6 of the Limitation Act (Cap 163, 1996 Rev Ed) – which limits the prosecution of contractual claims to six years from the date on which the cause of action accrued – the Plaintiffs' claim was therefore time-barred.

42 Thirdly, Dawood counterclaimed that the Plaintiff Siblings' lodgement of the Caveat was wrongful, vexatious or without reasonable cause. Dawood therefore sought damages for losses that he had incurred in relation to the lodgement of the Caveat, namely costs of obtaining legal advice and costs associated with obtaining a copy of the Caveat.

43 If however the court found that the Plaintiff Siblings did have a legitimate interest in the Property, Dawood counterclaimed for a declaration that the Plaintiff Siblings are liable, in proportion to their respective interests in the Property, for the costs and expenses related to the administration of Father's estate and the upkeep of the Property.

The issues

44 Based on the parties' respective pleadings and submissions, it was common ground that the Plaintiffs' entitlement to their reliefs, in particular the claims for declarations that Mother is the sole legal and beneficial owner of the Property and that Dawood has no legal or beneficial interest in the Property, were predicated entirely on my finding in relation to the issue of whether Dawood had, on the Plaintiff's case, breached the Plaintiffs' 2004 Agreement. Although the question of ownership and title to the Property was governed by the provisions of the Land Titles Act (Cap 157, 2004 Rev Ed), both sides were content to rest the dispute on the issue of whether Dawood had breached the Plaintiffs' 2004 Agreement. Both sides accordingly made no submissions on whether the provisions in the Land Titles Act had any bearing on the declarations sought. I proceeded on that same footing.

45 Thus, the issues before me were:

(a) whether the Plaintiffs' claim was time-barred by s 6 of the Limitation Act;

(b) if the Plaintiffs' claim was not time-barred, which of the two agreements – the Plaintiffs' 2004 Agreement or Dawood's 2004 Agreement – was concluded and binding;

(c) if the Plaintiffs' 2004 Agreement was concluded and binding, whether Dawood, in transferring the Property to Mother and his joint names, had breached the Plaintiffs' 2004 Agreement; and

(d) finally, whether the lodgement of the Caveat was wrongful, vexatious or otherwise without reasonable cause and if so, what were the consequences.

My decision

Whether the Plaintiffs' claim was time-barred

The applicable provision in the Limitation Act

46 Throughout their pleadings, the Plaintiffs' referred to the Plaintiffs' 2004 Agreement by a somewhat confusing description – "representation and/or understanding and/or agreement".

47 This description was all important because Dawood's defence was that the Plaintiffs' claim was time-barred by s 6 of the Limitation Act but s 6 only applies if the Plaintiffs' claim can be properly characterised as one founded in contract or tort (there are other categories but they clearly do not apply).

48 In my view, the cause of action disclosed by the pleadings was an action for breach of contract. The Plaintiffs' principal claim was that there had been a Plaintiffs' 2004 Agreement which Dawood breached by transferring the Property to Mother and himself under a joint tenancy. This was a plain vanilla contract claim. Although the Statement of Claim had used words such as "representation" or "understanding", these were used synonymously with the word "agreement" in the contractual sense and not as self-standing elements of a different cause of action. In any event, I did not think that the pleadings disclosed any other cause of action outside of contract or tort. For that reason, s 6 was applicable.

49 I did not agree with Mr Sahagar's submission that s 6 of the Limitation Act did not apply because the Plaintiffs' claim was an action to recover land (which under s 9 has a 12-year limitation period) or, alternatively, a claim to any share of Father's estate (which under s 23 has no limitation period).

50 First, s 9 of the Limitation Act applies to cases involving a cause of action for the recovery of land that is premised on an existing proprietary right. For example, Steven Chong J in the High Court case of *Teh Siew Hua v Tan Kim Chiong* [2010] 4 SLR 123 noted at [40] that s 9 is concerned with an action by a person with legal title to the land against an adverse possessor. In another High Court case, *Tay Tuan Kiat and another v Pritnam Singh Brar* [1985-1986] SLR(R) 763, L P Thean J considered a claim for an order to demolish an existing retaining wall and to build a new wall in its place but in a different location, as falling within s 9 because it gave the plaintiff possession of a portion of property that had been encroached upon.

51 A breach of an agreement over the administration and division of an estate is not a cause of action for the recovery of land premised on an existing proprietary right.

52 Accordingly, the Plaintiffs' claim was not governed by s 9 of the Limitation Act to the exclusion

of s 6.

53 As for Mr Sahagar's alternative submission that the Plaintiffs' claim was a claim for a share or interest in Father's estate, I did not agree with this submission either because the pleadings plainly did not disclose such a cause of action. Although the Property concerned was at one point part of Father's estate, there was no averment to the effect that the Plaintiffs were entitled to a general or specific share of Father's estate either by way of a will or under relevant intestacy laws. Mr Zhulkarnain Abdul Rahim, counsel for Dawood ("Mr Zhulkarnain"), rightly pointed out that there could not be a claim to Father's estate because, on the Plaintiffs' own case, they already each had an interest in Father's estate; it was those very interests which they had given up to Mother (on the Plaintiffs' case) under the Deed of Renunciation of Beneficial Interest. The remedies sought by the Plaintiffs (see [39] above) were also inconsistent with a claim to a share of Father's estate.

54 Accordingly, the Plaintiffs' claim was not governed by s 23 of the Limitation Act to the exclusion of s 6.

Further reasons against time-bar

55 Mr Sahagar gave two further reasons why the claim was not time-barred, notwithstanding the operation of s 6 of the Limitation Act. First, equity will not allow a statute to be used to further a fraud. Secondly, the commencement of the limitation period was postponed by s 29 of the Limitation Act because there was fraud involved which could not have been discovered with reasonable diligence. I will discuss these two reasons in turn.

(1) Equity will not allow a statute to be used to further a fraud

56 Mr Sahagar had misunderstood the application of the maxim which he had taken from *Halsbury's Laws of Singapore* vol 9(2) (LexisNexis, 2003) ("*Halsbury's*") at para 110.014.

57 The purpose of the rule that equity will not permit a statute to be used as an engine of fraud, as stated in the same paragraph of the same volume of *Halsbury's*, is to provide a means of escape for a deserving plaintiff who has failed to comply with prescribed formalities, a failure which would ordinarily render the transaction unenforceable at law. Prescribed formalities refer to rules requiring, for example, a declaration of trust over land to be evidenced by a memorandum signed by the person able to declare it; an assignment of an equitable interest to be effected in writing by the person disposing of it; or a contract for the sale of land to be evidenced by writing.

58 Ostensibly, the maxim had no application to the present case, and certainly not in the way that Mr Sahagar submitted it should apply, that is, to preclude the application of s 6 of the Limitation Act.

59 In summary, save for s 29 of the Limitation Act, all the other exceptions raised by Mr Sahagar to postpone the limitation period under s 6 of did not apply.

(2) Postponement of the commencement of the limitation period by s 29 of the Limitation Act

60 The argument here was that because of Dawood's surreptitious transfer of the Property, his breach of the Plaintiffs' 2004 Agreement remained concealed until 2011 when Aysha learnt of the ownership of the Property from Mr Ibrahim. Accordingly, pursuant to s 29(1)(*b*) of the Limitation Act, which postpones the limitation period in cases where the right of action is concealed by the fraud of the defendant, the six-year limitation period only started running from the time the Plaintiffs discovered the fraud, that is, 2011. On this basis, the Plaintiffs' commencement of proceedings in

2013 was therefore well within the limitation period.

61 It is a prerequisite of s 29(1)(*b*) of the Limitation Act that the "right of action is concealed by the fraud of [the defendant]". In other words, at the minimum, the Plaintiffs had to show that Dawood had "knowingly or recklessly committed a wrongdoing in secret without telling [the Plaintiffs]" (see *Bank of America National Trust and Savings Association v Herman Iskandar* [1998] 1 SLR(R) 848 ("*Bank of America*") at [73]–[75] which was cited with approval by the Court of Appeal in *Chua Teck Chew Robert v Goh Eng Wah* [2009] 4 SLR(R) 716 ("*Goh Eng Wah*") at [27]).

62 To address this issue, it was necessary to descend into the facts. Unlike most of the other pleas of limitation periods which are typically disposed of as a preliminary issue by way of a summary judgment application (see Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 2005) ("*McGee*") at para 21.007), the specific issue of the postponement of the limitation period because of fraud and concealment is, in some cases, unsuitable for preliminary determination. This is because the question of fraud and concealment, which further brings into question the plaintiff's diligence in discovering the fraud or concealment, often turns on the proving of a myriad of facts which are hotly contested: see for *eg*, *Bank America* and *Goh Eng Wah*.

63 Less apparent are situations where the issue of postponement of the limitation period may be moot as a result the court's findings and holdings in relation to the cause of action which is said to be infected by the same fraudulent conduct that concealed the cause of action from the plaintiff. The present case is one such example. Here, the very basis of the postponement of the limitation period, Dawood's alleged fraudulent conduct in relation to the transfer of the Property, was founded on the same alleged factual matrix supporting the Plaintiffs' claim for breach of the Plaintiffs' 2004 Agreement.

64 My findings on the evidence in relation to that factual matrix were therefore determinative of both the main cause of action, as well as the limitation period issue. Notwithstanding, it is important to note that in such cases, both the merits and the limitation period issues have been determined. This distinction is important because generally, the effect of a holding that an action is time-barred by a limitation period is the action may not be brought in *that* court, even though the right to bring the cause of action is not extinguished (see *McGee* at para 1.008), whereas the holding that the cause of action is dismissed on the merits renders that cause of action determined and hence subject to the usual *res judicata* principles.

65 Although Mr Sahagar's submissions refer specifically to s 29(1)(*b*) of the Limitation Act. I noted that the factual matrix alleged by the Plaintiffs may also fall within s 29(1)(*a*) of the Limitation Act, which similarly postpones the limitation period where the cause of action is based on fraud of the defendant. For the avoidance of doubt, the views that I have expressed above (at [61] to [64]) apply to an argument based on s 29(1)(*a*) as well.

66 For the above reasons, I shall reserve articulation of my decision on the postponement of the limitation period on account of s 29(1) of the Limitation Act until after I have described the factual controversies and given my findings in relation to those controversies (see [163] to [168] below). I turn to these now.

Which of the two agreements was concluded and binding

67 There were three possibilities: (a) the Plaintiffs' 2004 Agreement was concluded and binding; (b) Dawood's 2004 Agreement was concluded and binding; or (c) there was no agreement concluded on the terms of either agreement. These were all mutually incompatible options. Largely due to the

paucity of consistent and credible evidence, it was difficult to determine which of the three options reflected the true situation in 2004.

68 In the end, the decision on the existence and validity of the various agreements came down to a rather technical (and some might say, unpalatable principle) – he who alleges bears the burden of proof. I was not convinced that either side had proven that their version of the agreement was the true agreement. In my view, it was more likely that agreement on the ownership of the Property was never properly discussed and concluded. All that can be said – and all that matters as far as the present proceedings were concerned – was that the parties executed certain documents which in their nature had the effect of transferring of the Property to Dawood and Mother as joint tenants.

69 I shall explain the reasons for my conclusion, beginning with the problems with the Plaintiffs' 2004 Agreement.

The Plaintiffs' 2004 Agreement

(1) Lack of particulars of the Plaintiffs' 2004 Agreement

70 As alluded to above, I found several aspects of the Plaintiffs' 2004 Agreement troubling. The first concerned the details of the formation of this agreement.

71 The cornerstone of the Plaintiffs' 2004 Agreement was a meeting in which the Plaintiffs and Dawood consented to the arrangement for the Property to be conveyed into Mother's sole name. Yet, despite the importance of this meeting, none of the Plaintiffs gave or could give particulars of the meeting, including for instance, when the meeting took place.

72 All four affidavits of evidence-in-chief ("AEICs" or "AEIC") by the Plaintiffs only provided vague references to the Plaintiffs' 2004 Agreement being formed four years after Father's death. It is apposite to mention, here, that the combined length of all four of the Plaintiffs' AEICs (excluding exhibits) was a measly 39 pages.

73 Nevertheless, because the reason given by the Plaintiffs for the Plaintiffs' 2004 Agreement was their surprise at how small Mother's share of the Property was under the 2nd Inheritance Certificate (which was issued on 24 February 2004), it can be inferred that this meeting which led to the conclusion of the Plaintiffs' 2004 Agreement took place only on or after 24 February 2004.

74 The fact that a meeting took place was not even mentioned in the Plaintiffs' affidavits. It only came to light during Aysha's cross-examination, though she could not recall the date of the meeting. She said that the Plaintiffs' 2004 Agreement "took place" during a meeting one afternoon at the Property. By "took place" I understood her to mean "was formed".

(2) Parties present at this meeting

75 When asked who amongst the parties were present, she said "Dawood, myself, my mum". She could not remember whether Jahir was there; she was certain, though, that Noorjahan was not. In his own testimony, Jahir said that he was not present at this meeting. Jahir claimed that he had not seen Dawood throughout the relevant time. In fact, Jahir's evidence was that he did not have sight of the 2nd Inheritance Certificate at the time that he allegedly agreed to the Plaintiffs' 2004 Agreement.

76 Therein lay the problem. For the Plaintiffs' 2004 Agreement to have been concluded, Jahir, Dawood, Aysha and Noorjahan must have offered to waive their interests in favour of Mother and

simultaneously accepted the offer by the others to do the same. Aysha said she called Noorjahan during the meeting to inform Noorjahan of the contents of the 2nd Inheritance Certificate, and that according to the lawyer that Dawood consulted, if the children wanted Mother to be the sole owner, each child had to give up his or her respective interest to Mother.

77 I was not sure whether such a conversation took place but there were other problems even if I could accept that the conversation did take place. The most obvious problem was the continued absence of Jahir. It was never established when or how Jahir came to be part of this Plaintiffs' 2004 Agreement. He was not present at the alleged meeting, and neither was he informed through a call in the same way that Noorjahan apparently was.

78 Jahir agreed to the suggestion put to him by Mr Zhulkarnain that he did not "know whether Dawood agreed to the [Plaintiffs' 2004 Agreement]". At minimum, there was no offer and acceptance as between Jahir and Dawood. It is worth pausing here to note that if there was no agreement between Jahir, who is one of the Plaintiffs, and Dawood, it was difficult to find in favour of the Plaintiffs' submission that there was a Plaintiffs' 2004 Agreement.

79 Jahir seemed to me to be ignorant of the salient features of his own case, in particular, details of the Plaintiffs' 2004 Agreement. He even candidly admitted that much of what he had allegedly "agreed" to, or knew about (in relation to the Plaintiffs' 2004 Agreement) came from Aysha and Noorjahan. That admission could be read in a number of ways. Suffice to say, I did not think Jahir had any material or significant part to play in this Plaintiffs' 2004 Agreement.

80 More than that, Jahir even made statements that contradicted what the other Plaintiffs were saying. For example, in direct opposition to Aysha's evidence (see [74] above), he said that the Plaintiffs' 2004 Agreement was reached "following several conversations between the siblings and our mother". Just on the basis of Jahir's involvement (or the lack thereof) and his evidence on what transpired alone, I thought that the Plaintiffs' case for the existence of the Plaintiffs' 2004 Agreement was rather weak.

(3) Problems with Aysha's testimony

81 There was a more serious issue. Aysha's testimony (at [76] above) was internally incoherent. According to her, Dawood produced the 2nd Inheritance Certificate for the first time in the same meeting where the Plaintiffs' 2004 Agreement was formed. She testified that it was *only then* that the Plaintiffs – or at least Mother and her – found out about the respective interests each person was entitled to under Syariah law. If this meeting was the first time that Mother and her knew about the shares that each family member was entitled to, and hence there could not have been any understanding prior to this meeting that the children were going to give their shares to Mother, why would Dawood have sought legal advice as to how Mother could inherit the entire Property? This part of Aysha's testimony simply did not make sense.

82 Given that the Plaintiffs' 2004 Agreement was only formed at this meeting at the earliest, Dawood had no reason to take pre-emptive steps to find out how the children could transfer their interests to Mother to enable her to be the sole owner of the Property during her lifetime, as Aysha claimed. Mother had not known of her relatively small share before she was shown the 2nd Inheritance Certificate at this meeting. Jahir, Aysha and Noorjahan, too, did not know how much their respective shares would be. Dawood therefore could not have known before this meeting that the Plaintiffs wanted to transfer their shares to Mother because her share was the smallest compared to theirs. Accordingly, Dawood did not have any reason to and would not have asked Mr Singh how Mother can be the sole owner of the Property notwithstanding the 2nd Inheritance Certificate.

(4) Problems with Mother's testimony

83 There was also Mother's testimony which went against the Plaintiffs' 2004 Agreement. Although some leeway ought to be given to Mother's ability to recall events given her advanced age, I could not ignore or discount her positive assertion during cross-examination that she had told Dawood to transfer the house to her name after Father passed away, and that Dawood had agreed to her request.

84 If this were true, then it was Mother's idea that the Property be transferred to her sole name. This was not in any of the Plaintiffs' AEICs, nor was this alluded to in the Statement of Claim. Mother made no mention of this in her own AEIC. To the contrary, her evidence there was significantly more passive – "[f]rom what I recall, the children agreed to defer the division of the house [until] after I pass[ed] away". This can also be interpreted uncharitably as a point of inconsistency between her affidavit and oral evidence regarding the source of the instruction for the transfer of the Property.

85 There were a few other different motives given in the AEICs of the Plaintiff Siblings, chief of which was that the children had out of filial piety agreed to give up their interests to Mother because she had received the smallest share under the 2nd Inheritance Certificate. This was also the reason given by Noorjahan in her oral testimony. Aysha's affidavit evidence suggested yet another reason for the transfer – transferring ownership of the house into everyone's respective shares required much more paperwork and would have incurred unnecessary stamp fees and legal costs.

(5) Problems with Noorjahan's testimony

86 Apart from the discrepancy relating to the motives for the transfer of the Property between the testimony of Noorjahan and that of Mother (compare [83], [84] and [85] above), Noorjahan's testimony departed from the others in at least one other material aspect. When asked how she knew that all the siblings had agreed to the terms of the Plaintiffs' 2004 Agreement, she said that that was what Aysha had communicated to her in the phone call that was made in that meeting with Dawood where everyone first found out about the shares under the 2nd Inheritance Certificate (see [76] above). Noorjahan specifically said that she agreed to give up her share to Mother as well because Aysha had told her that "[the] brothers were okay with it".

87 This was incorrect. Jahir was not at the meeting. This was in Jahir's testimony and the testimony of Aysha, and there was no suggestion by Aysha that she had called Jahir to ask him for his opinion. In fact, Aysha's own evidence was that on the day that Dawood showed Mother and her the 2nd Inheritance Certificate, she could not recall whether Jahir had agreed. It was therefore not likely that Aysha would have said that the brothers, that is, Jahir and Dawood, had approved of the Plaintiffs' 2004 Agreement.

(6) The Deed of Renunciation of Beneficial Interest

88 Perhaps most critical of all, the Plaintiffs had to explain away the Deed of Renunciation of Beneficial Interest which flatly contradicts the Plaintiffs' 2004 Agreement.

89 At this juncture, it has to be emphasised that the Plaintiffs acknowledged that they had signed this deed. At no point did the Plaintiffs dispute the authenticity of their signatures on any of the relevant documents that they had signed.

90 The Plaintiffs' sole dispute in relation to the documents was the manner of execution.

91 On that premise, the Plaintiffs had to explain why the Plaintiff Siblings had signed the Deed of Renunciation of Beneficial Interest which clearly stated that they were waiving their interest in favour of Mother and Dawood. Another discrepancy that required explanation was why the Plaintiffs did not consider it odd that Dawood did not sign the same document if it were clearly their agreement that the four children were to waive their interests in favour of Mother.

92 The Plaintiffs' explanation for both discrepancies was essentially the same, which is that Dawood had deceived them into signing the Deed of Renunciation of Beneficial Interest. In the main, the Plaintiffs' claimed:

(a) they had signed various documents at different times and at different places – some in the Solicitors' office, but others at home;

(b) they were mostly only given – either by Dawood or the Solicitors – the signature pages of each document to sign;

(c) there was never any explanation by anyone, including the Solicitors, as to the nature and contents of the documents; and

(d) they had signed whatever that was presented to them unquestioningly because they had assumed that Dawood was carrying out the Plaintiffs' 2004 Agreement.

93 All of the above were of course denied by Dawood, as well as the Solicitors. The Solicitors asserted that the Plaintiffs had signed the relevant documents in the Solicitors' office, and only after the contents and implications of the documents had been explained by Mr Singh to the Plaintiffs. Dawood corroborated this assertion with further evidence that he had accompanied the Plaintiffs at various times to the Solicitors' office to sign the documents.

94 Specifically, in the case of the Deed of Renunciation of Beneficial Interest which was signed on 27 February 2004, the evidence of the Solicitors was that the Plaintiff Siblings had attended at their office, were informed by Mr Singh in English of the nature and implication of this deed, and that they had signed this deed only after Mr Singh's explanation.

95 Another deed was also signed on 27 February 2004. This was the Deed of Renunciation of Persons with Equal Rights. Under this deed, the four Plaintiffs agreed to renounce their right to letters of administration of Father's estate, which effectively meant that Dawood was solely responsible for the administration of Father's estate.

96 Ms Kaur was very clear in her evidence that Mr Singh and she had explained to the Plaintiffs that the Deed of Renunciation of Beneficial Interest and the Deed of Renunciation of Persons with Equal Rights were two different documents. She said there was "no hint of disharmony or dissent of any sort between the family members" and that the Plaintiffs simply agreed and nodded.

97 Limiting the issue to the signing of the Deed of Renunciation of Beneficial Interest (as this was the most crucial document), the diametrically opposed evidence from both sides could in my view be resolved by the determination of just one question: whose testimony – that of the Plaintiffs on one side or that of Dawood and the Solicitors on the other – relating to the Plaintiffs' visit to the Solicitors' office on 27 February 2004 was more credible?

98 This was the lynchpin of both sides' evidence because either the Plaintiffs were right and that not all of them were present on 27 February 2004 (in which case Dawood and the Solicitors were all

lying and everything thereon could not be believed), or conversely, the Plaintiffs were all present on 27 February 2004 (which meant that the Plaintiffs were all lying about signing single signature pages at home, with the corollary that Dawood and the Solicitors were telling the truth).

99 Although I am cognisant of the firm rule of evidence that the evidence of a witness ought not to be rejected completely simply because the witness was unreliable or untrue in some parts, recently emphasised by the Court of Appeal in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [59]–[61], both sides had organised their case and mustered their evidence on an all-or-nothing basis – the entire case theory put forward by either side on the circumstances surrounding the signing of the Deed of Renunciation of Beneficial Interest had to be accepted or rejected in full. There was no room for any middle ground.

100 In my judgment, for the following reasons, I found Dawood, Mr Singh and Ms Kaur's combined testimony that the Plaintiffs were all present in the Solicitors' office on 27 February 2004 to be more credible.

(A) Inconsistencies in the Plaintiffs' version of events

101 Mother's evidence was that she had only been to the Solicitors' office once, and that she was accompanied by Aysha and Dawood on that single visit. She could not recall the date but she could recall very clearly that she arrived at the Solicitors' office in the afternoon, specifically, at 2pm.

102 Dawood's evidence was that the appointment was at 3pm. Mother and Aysha both said that it was Dawood who brought them to the Solicitors' office on 27 February 2004.

103 Mother could remember certain things but not others. For example, she recalled the following: she had signed only one document that day; she was the first to sign that document; the signing took place in a room in the office; and she left the room after signing. When asked if Mr Singh was in the room, her response was "there were a few girls[,] similar to what it is here in the room". I understood her to mean that the number of people present in the Solicitors' office was similar to what she was seeing in court at that time.

104 Pausing here, at least two of her above recollections were curious. The first was the number of documents that she remembered signing. In her AEIC, her evidence was that she had "signed *some* documents" during the sole visit she made to the Solicitors' office. Apart from that, it was also strange that Mother remembered that there were "a few girls" in the room where she signed the document(s). Although Aysha did not say whether there were others in that room where the signing took place, her testimony was that she had stood outside the room when Mother was signing as the "room was small". If Aysha was outside, and Noorjahan was not present, who were these girls that Mother was referring to? Even accounting for Ms Kaur's presence, Mother's recollection that there were "a few girls" in the room did not accord with the other parts of hers and/or Aysha's testimonies.

105 I could not rule out the possibility that Mother was describing the main office where some other secretaries were seated and not the room where the signing took place but that would only lend weight to the suggestion that Mother's recollection was, at best, hazy.

106 Moreover, despite being able to remember certain details, Mother was unsure of a number of other details, including key details such as whether Aysha had signed the document at all, where Aysha was when she (Mother) signed and after she (Mother) had signed, whether Mr Singh was present in the room; and whether it was the Deed of Renunciation of Beneficial Interest or the Deed of Renunciation of Persons with Equal Rights that she had signed.

107 In the light of the above, I found Mother's evidence to be, on the whole, unhelpful and unreliable.

108 There was no basis for me to accept only evidence that she could recall and to dismiss the fact that she was unable to recall other important details as inconsequential. If the details that she had forgotten were incidental to the execution of the documents, I might have considered her memory lapses unimportant. However, the details that she could not remember were vital. Her inability to recall vital details immediately called into question her reliability as a witness of fact.

109 I was mindful of my role which was to separate the wheat from the chaff but there are situations when the wheat and chaff are so inextricably intertwined that it would be unwise and unsafe to attempt to distil fact from fiction. Mother's evidence was one such instance.

110 I turn now to Aysha's evidence since she claimed that she was the only other of the Plaintiffs to have been present in the Solicitors' office on 27 February 2004. Aysha confirmed that Mr Singh was in the room when she and Mother signed the document(s). However, she and Mother were not in the room at the same time when the other was signing. Aysha only signed after Mother had signed and left the room. This was at least consistent with Mother's testimony the day before. Aysha also confirmed – both in her AEIC and during cross-examination – that she had signed on more than one sheet of paper; in other words, she signed on at least two (if not more sheets) of paper.

111 As only two documents – the Deed of Renunciation of Beneficial Interests and the Deed of Renunciation of Persons with Equal Rights – were signed and dated 27 February 2004, Aysha must have signed those two documents when she attended the Solicitors' office even if she could not recall or claimed not to know what she had signed.

112 Hence, the only remaining question that was relevant was whether Aysha's evidence that she was only given single pages to sign without any accompanying explanation from either Mr Singh or Ms Kaur was credible. Even leaving aside evidence to the contrary from Mr Singh, Ms Kaur and Dawood, I did not think that it was likely that Aysha had only been given the signature page of the relevant documents to sign, nor was it likely that she had signed single pages without inquiring both as to the earlier pages of the documents as well as the nature and implications of what she was signing. I shall explain.

113 First, it did not make sense for Mr Singh (he had primary carriage over the matter) to only show the signature page to Mother and Aysha – why would he do that? Just from a common sense perspective, it seemed more troublesome to separate a two-page document only to recombine the pages after the signature page had been signed by the relevant signatories. Mr Singh had no reason to inconvenience himself in this manner. Factor in Mr Singh's professional standing as a senior lawyer with more than 30 years in practice and as a Commissioner of Oaths, it would have been extremely risky for him to have only presented the signature pages to Mother and Aysha without the accompanying first page, which sets out the gist of the document that was being signed. In the absence of any ulterior motive – there was no suggestion of a conspiracy between Dawood and the Solicitors to cheat the Plaintiffs – I found that scenario most improbable.

114 Second, the signature page of both deeds begged questions to be asked. The signature page of the Deed of Renunciation of Persons with Equal Rights began with:

> right and title to Letters of Administration of the Estate of the said deceased.

Signed by the said)

[Mother])

[Jahir])

[Aysha])

[Noorjahan])

…

115 On their own, the words at the beginning of the signature page made no sense whatsoever. The normal, reasonable reaction would be to either ask to see the previous page to verify that the words were part of a sentence in the previous page, or to have asked for an explanation from the person who prepared the document what that sentence meant.

116 On Aysha's evidence, she did neither of those. On her evidence, Mother too did neither of those. Perhaps one person might have been lax, but two people failing to do what was the most logical and natural thing to do, beggared belief.

117 Likewise, the first words on the signature page of the Deed of Renunciation of Beneficial Interest were complete nonsense on their own:

[Mother] and the said Dawood.

IN WITNESS WHEREOF we have hereunto set our hands and seals the 27th day of February 2004.

Signed sealed and delivered by)

[Jahir])

[Aysha])

[Noorjahan])

…

118 In fact, "[Mother] and the said Dawood" was clearly even more meaningless than "right and title to Letters of Administration of the Estate of the said deceased" (see [114] above). No person who had enough mental faculties to know that she was in a lawyer's office signing legal documents would have signed either, much less both, pages without any attempt to find out more about the documents, unless of course the documents had already been explained by someone.

119 Furthermore, the signatures required in the Deed of Beneficial Interest were palpably different from the Deed of Renunciation of Persons with Equal Rights. The absence of Mother's signature or the need for it was glaringly obvious. Aysha must have known this. She knew that Mother was the first to sign the Deed of Renunciation of Persons with Equal Rights which meant that she must have noticed Mother's signature there. She ought therefore to have noticed the absence of Mother's signature in the Deed of Renunciation of Beneficial Interest, and that would have been of some interest to her, at the very least: why did Mother not sign this other document?

120 Thirdly, even if Aysha had not paid attention to the incomprehensible words at the beginning, she must have wondered what this other document, one that did not require Mother's signature, was about. This would have prompted her to at least ask for the previous page, or perhaps more directly, to ask Mr Singh or Dawood for clarification. Again, on her own case, she did neither. She simply signed.

121 It is apposite to address a point made persistently by Mr Sahagar in his submissions. He harped on the fact that Father's name had been misspelt in a number of the documents executed in the course of the administration of the estate. In relation to the Deed of Renunciation of Beneficial Interest, the mistake was a missing "Mohamed" in the first page of the document. The Father's name was wrongly written as "Kamaldi Bin Aboobabkar @ Mohamed Aboobakar Kamaldin" instead of "Kamaldi Bin Mohamed Aboobakar @ Mohamed Aboobakar Kamaldin". Mr Sahagar submitted that if the Plaintiffs did have sight of the first page of this deed where the error was initially made, they would certainly have spotted the error. Hence, the fact that the error was not spotted supported the assertion that the Plaintiffs were not given the first page of the deed before being asked to sign.

122 Mr Sahagar's argument was, to me, an exercise in creating a mountain out of a molehill. I was not as sure as he was that the Plaintiffs would have spotted the error. On the Plaintiffs' own case, for the reasons that I have mentioned at [114] to [120] above, Mother and Aysha were not exactly the most observant or inquisitive people. If they could miss the numerous red flags that were screaming to be discovered (on their own testimony they were only shown the signature pages), I very much doubt that they would have spotted the error in the spelling of Father's name. Father's name is neither simple nor short.

123 Even on my finding that the Plaintiffs were present in the Solicitors' office, I was not convinced that just because there was an error, it must be inferred that the Plaintiffs did not see the first page. They could have seen it but thought nothing of it because it was evidently clear that notwithstanding the misspelt name, the person referred to was Father and no one else. After all, Father's NRIC number was written on the same page, and more importantly, the only interests that they could possibly renounce was their interest in Father's estate.

(B) The documentary evidence

124 The Deed of Renunciation of Beneficial Interest was accompanied at the end by a declaration by Mr Singh that the signatories had voluntarily signed the documents in his presence.

125 Similarly, the Deed of Renunciation of Persons with Equal Right ended with Mr Singh acknowledging with his signature that the signatories had signed the document before him.

126 Therefore, on the face of the two documents, the relevant Plaintiffs had signed them in the presence of Mr Singh. The only theory that accommodates this fact is Dawood's theory – that all the Plaintiffs had attended at the Solicitors' office. On the Plaintiffs' case, Mr Singh's declaration and

acknowledgement in the two deeds were misleading because Mr Singh was not present at all times when the documents were signed.

127 All the Plaintiffs had by way of supporting evidence was their oral testimony that Jahir and Noorjahan were not present when Mother and Aysha signed the documents, and that Jahir and Noorjahan had signed the documents in the Property at other times when Mr Singh was not around. At the same time, the Plaintiffs could not give direct and clear evidence of the circumstances surrounding Jahir and Noorjahan's signing of the documents.

128 For example, Jahir said he could not recall whether the others had signed the Deed of Renunciation of Persons with Equal Rights before he signed it, nor could he recall whether Mr Singh had already pre-acknowledged that the signatories had signed the document in his presence.

129 Noorjahan was slightly better. She recalled being the last to sign both the Deed of Renunciation of Persons with Equal Rights and the Deed of Renunciation of Beneficial Interest. She also recalled not seeing Mr Singh's signature acknowledging that the signatories had signed in his presence in both documents.

130 But her credibility took a big hit, in my judgment, in her response to Mr Zhulkarnain's query whether Noorjahan had asked Mother for the first page of both documents. Noorjahan replied:

> First of all, we never knew there was pages attached to this signature page, so how are we to know what page – how many pages is – we – we are supposed to have for this sign document and how many pages we are supposed to have for this signatory page?

131 It was almost as if Noorjahan had been rehearsing her lyrics for a song. The only snag, though, was that she had sung at a wrong time. It was incredible, in my view, that she could genuinely have thought that the signature page was the only page of the two documents that she had appended her signature to. I have already made the same observation in relation to Mother and Aysha above, but this was even more egregious. Here we have a sibling who had all the time during her visiting of Mother to look through the documents before signing. Yet, her evidence was that it did not occur to her that the two signature pages (see [114] and [117] above) were part of a document which had more than one page. That view was simply not credible.

132 The shift in Noorjahan's testimony which occurred just moments later was also telling. Now, instead of saying that she could not have known if the signature page was preceded by other pages, Noorjahan essentially said that she had signed because all her family members had signed. To my mind, Noorjahan recognised that she had misspoken. Again, the exchange merits full reproduction:

> Q: Okay. But would you agree that there should be something in front of this [signature] page?
>
> …
>
> A: Because at that point, it didn't matter to me who has signed the document. It was all my family members who have sign the documents.
>
> Q: Yes.
>
> A: Whether my mum have sign, or Dawood has sign, I wouldn't know who – only the lawyers would know what are the – who are the people who should be signing this document. So we went ahead with that.

133 Accordingly, I was not persuaded that the oral testimony of the Plaintiffs did enough to contradict the documentary evidence that Mr Singh was present when the Plaintiffs signed the Deed of Renunciation of Persons with Equal Rights and the Deed of Renunciation of Beneficial Interest.

(C) The Solicitors' evidence

134 I turn then to the evidence by the Solicitors. Both were consistent in their evidence that the Plaintiffs were all present at the Solicitors' office on 27 February 2004, were informed by Mr Singh in English of the nature and implications of the various documents that the Plaintiffs were about to sign, and the Plaintiffs signed these documents voluntarily and without demur. I did not have any good reason to disbelieve their evidence, especially in the light of the significant issues that I had with the coherence and reliability of the Plaintiffs' evidence.

135 The Solicitors' evidence appealed more to me partly because of their ability to recall specific details. For instance, Mr Singh recalled that Mother understood English which was why he did not have to explain the documents in Tamil. Mother denied that she understood English but based on my own observations after her cross-examination, notwithstanding that a translator was present, I was convinced that she could understand basic English. From Mr Singh's brief re-enactment of the explanation of the documents, I was satisfied that his explanation was simple enough even for lay people with a very basic command of the English language to understand. Mr Singh also recalled that the atmosphere in the office was "very friendly and cordial".

136 But it was the Solicitors' recollection of the personalities of the various Plaintiffs that struck me most. Mr Singh said that Aysha, Noorjahan and Dawood were the "chattier ones" whereas Jahir was rather "quiet" and "simple". What was more impressive was Mr Singh's specific recollection that Noorjahan and Ms Kaur were talking about Punjabi dresses, and also, that Aysha and Mother had not donned the Muslim attire.

137 When asked by Mr Sahagar how he could remember the Plaintiffs' traits after all these years, Mr Singh replied that he just did, but also because he found the family interesting, in that Dawood looked different from Jahir. Dawood was suave, authoritative and a tad showy while Jahir was simple and quiet even though Jahir was the eldest son. That stuck in his mind.

138 Ms Kaur too gave evidence that Aysha and Noorjahan were chatty and that Jahir was "a bit quiet". Ms Kaur also said that when the Plaintiffs first arrived, she spoke to Mother, Aysha and Noorjahan. They exchanged the usual pleasantries and Ms Kaur offered her condolences, all in English. At one point, Ms Kaur said that "the ladies" – that is, herself and Mother, Aysha and Noorjahan – chatted about "a lot of other things" that she could not reveal because of legal privilege. In contrast, Jahir was extremely quiet. That was how she remembered the family.

139 I had no reason to doubt the Solicitors' evidence which seemed wholly credible. Mr Sahagar missed the point in his submissions when he stressed that loquaciousness and talking about Punjabi dresses were not so distinctive that the Solicitors had any special reason to remember this set of clients.

140 Distinctiveness may lend special reason to remember an event or persons, but the absence of it cannot be a positive reason for inferring that a recollection was not possible. My assessment was that the Solicitors could remember pockets of what happened because there were things about the Plaintiffs, both individually and collectively, that caught their attention. Moreover, the Solicitors continued to interact with some of the Plaintiffs thereafter in subsequent meetings to sign further documents. The Plaintiffs were therefore not just clients who came only once and left in a matter of

minutes.

(D) The allegation of multiple stapling

141 I have to deal with a technical evidential point that Mr Sahagar raised. He stressed that the top left corner of the original Deed of Renunciation of Beneficial Interest was in a relatively damaged state because it had been stapled, unstapled then re-stapled a number of times. Mr Singh confirmed during cross-examination that was the case from the looks of the original copy.

142 The inference that Mr Sahagar was inviting me to draw was that the damaged corner of the pages supported his submission that the Plaintiffs only saw the signature page; the damage had occurred because the pages had been separated then recombined a number of times.

143 I declined to draw that inference for two reasons. The first is that Mr Singh's explanation for the damaged state of the pages was plausible. He said that because the amendment to Father's name was typed into the first page by a typewriter (it seems), the pages had to be separated. They were therefore unstapled. Once the amendment was completed, they were re-stapled together for safekeeping – there would be no missing pages if all of them were stapled together.

144 In addition, the three pages of the Deed of Renunciation of Beneficial Interest were unstapled when copies were made by Mr Sahagar during inspection of Mr Singh's client files for the purposes of these proceedings. Again, the pages were re-stapled after all the necessary photocopying was completed. I had no basis to doubt or disagree with Mr Singh's explanation.

145 The second wrinkle in Mr Sahagar's argument was that his argument was, to some extent, self-defeating. Taking his argument at its highest, if Dawood had intended to deceive the Plaintiffs by only showing them the signature page of the Deed of Renunciation of Beneficial Interest and not the other pages, and that he had done so on each of the different occasions that he presented the document to each of the Plaintiffs for their signature, why would the corners of the pages be damaged?

146 The only explanation for that is after each signing by one of the Plaintiffs, Dawood would take the document back and staple it with the rest of the pages, despite knowing that he would have to remove the pages again for the next person to sign. If Dawood had intended from the outset to deceive the Plaintiffs by only presenting them with the signature pages, he would simply have kept the signature pages of the respective documents separately until all the Plaintiffs had signed. There was no reason for him to remove the staple, let one of the Plaintiffs sign, re-staple, and repeat the process until everyone had signed.

147 I am not saying that Dawood could not have done that. Of course he could. But it was far more inconvenient and unnecessary and hence more implausible than Mr Singh's explanation, which was both logical as well as credible. Indeed, it did not go unnoticed that Mr Sahagar's response to Mr Singh's explanation was "I accept that's a very fair explanation".

(7) Noorjahan's subsequent attendance at the Solicitors' office in October 2004

148 Last but not least, I noted Mr Zhulkarnain's observation that Noorjahan had attended at the Solicitors' office in October 2004 to sign another document, the Consent to the Dispensation of Sureties of the Administrative Bond. This document was of markedly less significance than the Deed of Renunciation of Beneficial Interest. Mr Zhulkarnain referred to this fact to make the point that if the Solicitors had thought it necessary for Noorjahan to sign this document, which was of relatively less importance, in their presence, based on the same practice of theirs, they would not have allowed

the Deed of Renunciation of Beneficial Interest, a substantially more important document, to have been signed outside of their presence despite the Plaintiffs' declaration to the contrary.

149 Moreover, it was not disputed that Noorjahan had attended at the Solicitors' office in October 2004 to sign this document. Noorjahan admitted this freely during her cross-examination. She even explained why she was certain she had gone to their office in October 2004. Noorjahan took pains to explain this point because she had previously stated that she had signed some documents in the Solicitors' office on February 2004 but this version was clearly inconsistent with Mother and Aysha's (though it was consistent with Dawood and the Solicitors' version).

150 If the Plaintiffs were right, and the practice was that legal documents would be left by Dawood at home with Mother for the siblings to sign as and when they came to visit Mother, Noorjahan would not have paid a special visit to the Solicitors' office to sign the Consent to the Dispensation of Sureties of the Administrative Bond. Ironically, Noorjahan's insistence on correcting her erroneous recollection, that she had visited the Solicitors' office in October 2004 (and not February 2004), fortified my view that the Plaintiffs' case that most of the documents were not signed in front of Mr Singh was untenable.

151 To conclude on the manner of execution of the Deed of Renunciation of Beneficial Interest, I was satisfied first, that the deed was executed in a meeting at the Solicitors' office on 27 February 2004 that was attended by all the Plaintiffs and Dawood, and secondly, that the Plaintiff Siblings had only signed the deed after the nature and implications of the deed had been explained to them by Mr Singh.

152 For all of the foregoing reasons at [70] to [151] above, I could not safely conclude that there was a Plaintiffs' 2004 Agreement on a balance of probabilities. Without the Plaintiffs' 2004 Agreement, the Plaintiffs' case had nothing further to stand on. This reason was sufficient, on its own, to justify dismissing the Plaintiffs' claim.

Dawood's 2004 Agreement

153 Notwithstanding my decision on the Plaintiffs' 2004 Agreement, as mentioned right at the very outset, I did not accept Dawood's version of events in 2004, either. Mr Zhulkarnain acknowledged, in his submissions, that it was open to me to reject both the Plaintiffs' and Dawood's characterisation of the events. Mr Zhulkarnain referred to *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 in which the Court of Appeal said (at [21]):

> … The insufficiency of the evidence adduced to prove the fact asserted could also be a result of the adduction of evidence by the opposing party which undermines that assertion. For instance, a party may be seeking to prove the existence of a particular fact and has adduced evidence in support of it. The opposing party, however, may be able to adduce some evidence as to the *non-existence* of that fact. Such evidence may not be sufficient on its own for the court to conclude that, on a balance of probabilities, the fact does not exist so as to be "disproved". Such evidence may, nevertheless, sufficiently undermine the case of the party asserting the fact so as to cause doubt as to its existence with the result that the party is unable to discharge his burden of proving the fact. As a result, the fact concerned is "*not proved*". [emphasis in original]

154 Whilst the effect of the evidence given by Dawood, namely his testimony, when placed alongside the questionable evidence adduced by the Plaintiffs on the whole gave me sufficient cause to conclude that the existence of the Plaintiffs' 2004 Agreement was "not proved", that same evidence by Dawood was not so cogent that I could agree that there was an agreement that existed,

and that this agreement was Dawood's 2004 Agreement. The rule that he who asserts must prove also applied equally to Dawood as it did to the Plaintiffs.

155 The main issue I had with Dawood's 2004 Agreement was his reference to Father's wishes as the genesis and motivation for Dawood's 2004 Agreement.

156 This was first mentioned in Dawood's AEIC, where he stated that Father prior to his death had informed Dawood that "the Property was to be transferred to [Mother] and [Dawood] so that [Dawood] could look after [Mother]." Dawood was 29 years old then, unmarried, and had just been admitted as a cadet with SIA. According to Dawood, the second time Father mentioned this wish was in January 2004, at the meeting of the family members which resulted in Dawood's 2004 Agreement. Dawood claimed that the Plaintiffs agreed to transfer the Property to Mother and Dawood's joint names "in line with the wishes of [Father]".

157 Mr Zhulkarnain downplayed this in his submissions, to the point of almost making no mention of it. This was understandable. Nevertheless, as far as I was concerned, Father's wish was an integral element of Dawood's 2004 Agreement. On that count, I was doubtful that Father ever had such a wish and if so, that it meant what Dawood said it did.

158 First, apart from Dawood, none of the other Plaintiffs, including Mother, was aware of this wish of Father. This may not be surprising, given that the Plaintiffs and Dawood's interests are directly opposed. However, at the very least, it was evident that Dawood's oral testimony – which was unsupported by any other piece of objective evidence – was self-serving.

159 Secondly, it was strange for Father to specifically instruct one of his four children to transfer the Property to the child and Mother's joint names upon his death, just "so that" the child can look after Mother (see [156] above). Again, this seemed almost too convenient to be true. I would imagine that a child taking care of his parent is the norm; no further incentive or reward was needed to encourage the norm. And why Father would say that to Dawood, to the exclusion of Jahir, for example, required some explanation. There was none.

160 Third, there was hardly any cross-examination of the Plaintiffs on the existence of Father's wish. If this was the source of Dawood's 2004 Agreement which Dawood said was communicated to the Plaintiffs before they agreed to the terms of Dawood's 2004 Agreement, I would have expected Mr Zhulkarnain to have put this fact squarely to the Plaintiffs. This did not take place. It was as if Mr Zhulkarnain had deliberately avoided this elephant in the room.

161 Dawood tried to allude to the fact that Jahir inherited the mutton stall business. However, that would be comparing apples to oranges. Quite apart from the absence of any figures relating to the profitability or value of the mutton stall business, Jahir had to work to manage or operate the business while the Property was a value-accretive asset. Leaving aside taxes and other outgoings which were factors for both the mutton stall business and the Property, it would seem that inheriting the Property was, all things being equal, more valuable.

Whether Dawood had breached the Plaintiffs' 2004 Agreement

162 In the light of my decision that there was no Plaintiffs' 2004 Agreement, Dawood could not have breached the Plaintiffs' 2004 Agreement.

Whether the limitation period was postponed pursuant to s 29 of the Limitation Act

163 I return to the question of postponement of the limitation period that I had reserved comment on earlier (see [60] to [66] above).

164 On the basis of my assessment of the facts above, it should be evident that Mr Sahagar's argument in relation to s 29(1) of the Limitation Act – whether s 29(1)(*a*) or s 29(1)(*b*) – must fail.

165 As I have already explained above, the evidence did not support a finding that Dawood had procured the transfer surreptitiously. There was no "secret" act by Dawood. Although the transfer of the Property was executed by Dawood alone and without him informing the Plaintiffs, the basis of the transfer was in fact the Deed of Renunciation of Beneficial Interest executed by the Plaintiff Siblings, none of whom disputed that they had signed this deed (see also [88] to [152] above).

166 Nor did the evidence show that Dawood had fraudulently concealed the alleged breach. There was no evidence or indeed even any allegation by the Plaintiffs that there was concealment between 2005 and 2011, much less a fraudulent concealment. The fact that the Plaintiffs did not know of the true ownership until 2011 is not in itself proof of concealment.

167 In these circumstances, I could not see how it could be said that Dawood had somehow fraudulently concealed the events leading to the transfer of the Property to Mother and him as joint tenants.

168 Accordingly, in addition to my decision that the Plaintiffs' claim ought to be dismissed, their claim was in any event time-barred.

Whether the lodgement of the Caveat was wrongful, vexatious or without reasonable cause

169 Section 128 of the Land Titles Act permits compensation to any party who sustains pecuniary loss that is attributable to a person who had lodged a caveat wrongfully, vexatiously or without reasonable cause.

170 In *Ho Soo Fong and another v Standard Chartered Bank* [2007] 2 SLR(R) 181, the Court of Appeal held (at [35]) that "without reasonable cause" is present where the caveator has no honest belief based on reasonable grounds that he has a caveatable interest. A "caveatable interest" simply means an interest in land which, because it is recognised by the law as such, can be availed protection by way of a caveat. Hence, only persons who have an interest in land (as defined by s 4(1) of the Land Titles Act) may lodge a caveat over that land: see *Aamna Taseer v Shaan Taseer and others* [2012] 2 SLR 348 at [3].

171 On the basis of my decision that there was no Plaintiffs' 2004 Agreement, the Plaintiff Siblings could not claim to have any interest in the Property arising from Dawood's breach of the Plaintiff's 2004 Agreement. They could not even have held an honest belief that they had a caveatable interest from the very beginning because, on the Plaintiffs' own case, the terms of the Plaintiffs' 2004 Agreement was for the Property to be registered in Mother's sole name.

172 In other words, the performance of the Plaintiffs' 2004 Agreement would have resulted in Mother being the only person with a caveatable interest in the Property.

173 This is consistent with the relief in the Plaintiffs' Statement of Claim for a declaration that Mother is the sole legal and beneficial owner of the Property. This foreclosed any possibility that the Plaintiff Siblings believed that they had a caveatable interest in the Property.

174 Accordingly, I held that the Plaintiff Siblings were liable for Dawood's loss of $807.98 which was caused by their lodgement of the Caveat without reasonable cause. The loss was the sum of Dawood's cost of obtaining legal advice and the amount that Dawood paid to obtain a copy of the Caveat.

Other observations – *non est factum* and mistake

The doctrine of non est factum

175 In his Opening Statement at the beginning of trial, Mr Zhulkarnain characterised the Plaintiffs as seeking to invoke the doctrine of *non est factum* to disavow the Deed of Renunciation of Beneficial Interest. This was peculiar because up to that point, as far as I could tell, *non est factum* was not an argument that had been mentioned by Mr Sahagar. This was later picked up by Mr Sahagar and was argued at some length in both sides' closing submissions.

176 In simple terms, *non est factum* operates as an exception to the general rule that a person is bound to the terms of a document which he has signed, whether or not he fully understood those terms. To successfully invoke the exception, the person signing the document ordinarily needs to show that he "had made a fundamental mistake as to the character or effect of the document" and that the mistake was not due to negligence or carelessness on his part: *Chitty on Contracts* vol 1 (H G Beale gen ed) (Sweet & Maxwell, 31st Ed, 2012) at paras 5-105 to 5-107.

177 It was in these circumstances that the issue of *non est factum* came to be addressed in both sides' closing submissions. Both Mr Zhulkarnain and Mr Sahagar were in agreement with this description of the *non est factum* doctrine.

178 Mr Zhulkarnain's point was that the Plaintiffs could not avail themselves of the doctrine because there was no fundamental mistake as to the character or effect of the documents, and further, the Plaintiffs were at least careless in the execution of the Deed of Renunciation of Beneficial Interest. Mr Sahagar submitted first, that the doctrine was made out on the facts, but alternatively, "in any rate", the doctrine had no application because (a) ss 93 and 94 of the Evidence Act (Cap 97, 1997 Rev Ed) applied; and (b) "no third party rights or interests were involved".

179 I shall briefly address Mr Sahagar's alternative submission first. To be candid, I did not comprehend the logic of Mr Sahagar's approach. The doctrine of *non est factum* was beneficial for his clients, in the sense that it gave the Plaintiff Siblings a legal basis to evade the consequences of their signing of the Deed of Renunciation of Beneficial Interest. Thus, an argument that the doctrine of *non est factum* did not apply runs counter to the Plaintiffs' interest. Nevertheless, in fairness to the Plaintiffs, I approached it on the footing that the doctrine could apply (since Mr Zhulkarnain accepted this).

180 On the principal question, then, of whether the twin elements necessary for a finding of *non est factum* were made out on the facts, I did not think that the Plaintiffs could succeed in the light of my findings above on the manner in which the Deed of Renunciation of Beneficial Interest was executed (see [88]–[151] above).

181 On the basis of my finding that Mr Singh had read out to and explained to the Plaintiffs the contents and effect of signing the Deed of Renunciation of Beneficial Interest, it was difficult to see how the Plaintiffs could prove that they had fundamentally misunderstood the nature and effect of the document. In my view, they did not.

182 Much of Mr Sahagar's submissions on *non est factum* were ineffectual because they flowed from his primary case which I rejected, that is, the relevant documents were not executed in the Solicitors' office but at home, and that the Plaintiffs had only been shown the signature pages and not the other pages that set out the nature and description of the document.

183 Moreover, if the person signing the document has had the document explained to him by someone with the proper qualifications and skills (as happened in this case), barring exceptional circumstances (and there are none in the present case), it is highly implausible that the signatory can subsequently claim that he was mistaken in thinking that the document was fundamentally different.

184 It was therefore not even necessary to determine whether the mistake was a result of the Plaintiff Siblings' negligence or carelessness. But if it came down to that, I would likewise have held that any mistake was attributable to the Plaintiff Siblings' negligence or carelessness in the execution of the Deed of Renunciation of Beneficial Interest.

185 The result, in my view, was not at all harsh. The doctrine of *non est factum* is not meant to give contracting parties an easy way out of a bargain, especially one that was entered into irresponsibly. Lord Wilberforce, in *Saunders v Anglia Building Society* [1971] AC 1004 ("*Saunders*"), the leading case on *non est factum* (at 1027) said:

> *In my opinion, the correct rule … is that … a person who signs a document, and parts with it so that it may come into other hands*, ***has a responsibility, that of the normal man of prudence, to take care what he signs*** *, which, if neglected, prevents him from denying his liability under the document according to its tenor*. …
>
> The preceding paragraphs contemplate persons who are adult and literate: the conclusion as to such persons is that, while there are cases in which they may successfully plead non est factum these cases will, in modern times, be rare.
>
> As to persons who are illiterate, or blind, or lacking in understanding, the law is in a dilemma. On the one hand, the law is traditionally, and rightly, ready to relieve them against hardship and imposition. On the other hand, regard has to be paid to the position of innocent third parties who cannot be expected, and often would have no means, to know the condition or status of the signer. I do not think that a defined solution can be provided for all cases. *The law ought, in my opinion, to give relief if satisfied that consent was truly lacking but will* ***require of signers even in this class that they act responsibly and carefully according to their circumstances*** *in putting their signature to legal documents*. …
>
> [emphasis added in italics and bold italics]

186 It bears repeating the origins of the doctrine of *non est factum*. It was made in favour of those who are permanently or temporarily unable, through no fault of their own, to have without explanation any real understanding of the purport of a particular document. This was a narrow class of persons who are typically unable to read owing to blindness or illiteracy and who therefore had to trust someone to tell them what they were signing.

187 Looking at the Plaintiffs and the circumstances surrounding the signing of the Deed of Renunciation of Beneficial Interest, I did not think that the Plaintiffs could avail themselves of the doctrine of *non est factum*.

188 There was a further problem with any reliance by the Plaintiffs on the doctrine: even if it were

successfully invoked, it was unclear how it would support their substantive relief that Mother is the sole legal and beneficial owner of the Property. All they would be able to do is to claim that the Deed of Renunciation of Beneficial Interest is void; that on its own does not entitle them to their relief. There is no need for me to express any further observations on this issue since it is now moot.

189 Before I leave this discussion, I should clarify that I thought Mr Sahagar's reliance on ss 93 and 94 of the Evidence Act to be misconceived.

190 The first and most important point to note about ss 93 and 94 is that they deal with *admissibility* of evidence. Section 93 thus provides how the terms of a document may be proved, and when evidence extrinsic to the document may be admitted for that purpose:

> 93. When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, *no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act*. [emphasis added]

191 If the terms of the instrument have been proved according to s 93, s 94 states that no evidence of any oral agreement or statement shall be admitted as between the parties to the instrument for the purpose of contradicting, varying, adding to, or subtracting from its terms. This general limitation is, however, qualified by six provisos in s 94. It is proviso (a) that Mr Sahagar referenced in support of his argument that the Deed of Renunciation of Beneficial Interest may be set aside without recourse to the doctrine of *non est factum*.

192 Proviso (a) reads:

> *any fact may be proved* which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law … [emphasis added]

193 From the opening words of the proviso, it was clear what the function of the proviso was. It provided an exception to the general limitation against admissibility of evidence of any oral agreement or statement. In other words, any fact that supports an argument that the instrument ought to be invalidated may be admitted, notwithstanding the general limitation. Thus, facts relating to fraud, intimidation, illegality, want of due execution, capacity, the date of the instrument, failure of consideration, and mistake in fact or law, all of which are explicitly mentioned in proviso (a), are admissible as evidence.

194 As provisions which merely govern the admissibility of evidence, ss 93 and 94(a) do not contain or manifest any principle of law that allows for the invalidation of an instrument. They therefore do not provide any substantive legal basis for the setting aside of the Deed of Renunciation of Beneficial Interest. It was for this reason that I considered Mr Sahagar's alternative submission, that the doctrine of *non est factum* did not apply, rather curious (see [179] above).

Mistake

195 On the basis of the foregoing, there is very little left to be said about the possibility of invoking the doctrine of unilateral mistake to void the Deed of Renunciation of Beneficial Interest. Simply put, I

did not think that as a matter of fact, the Plaintiffs were mistaken as to the nature and effect of their signature on the document.

Conclusion

196 For the foregoing reasons, I dismissed the Plaintiffs' claims in their entirety and allowed Dawood's counterclaim for damages of $807.98 from the Plaintiff Siblings in respect of their lodgement of the Caveat without reasonable cause.

197 In terms of costs, I limited the Plaintiffs' liability to 70% of Dawood's costs. This was to reflect my rejection of a major plank of Dawood's case theory, namely, the existence of Dawood's 2004 Agreement. I ordered that the Plaintiffs pay Dawood's costs, to be taxed if not agreed within 14 days of my oral judgment.