

Lum Kai Keng v Quek Peng Chai and Others
[2001] SGHC 297

Case Number : Suit 600228/2000 , SIC 601480/2001
Decision Date : 05 October 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : KS Chung (Chung & Co) for the plaintiff; Benjamin Leong and Tan Cheng Han (Tan Jin Hwee, Eunice & Lim Choo Eng) for the first and second defendants; Alan Wong Hoi Ping (William Lai & Alan Wong) for the third defendants; Kelvin Tan and Suresh Divyanathan (Drew & Napier LLC) for the fourth to eighth defendants
Parties : Lum Kai Keng — Quek Peng Chai

*Civil Procedure – Summary judgment – Determination of action on preliminary point of law
– Whether proper to determine case when material fact in dispute – O 14 r 12 Rules of Court*

: The plaintiff is the widow of Quek Cheok Boon. The first and second defendants are their children and are also the executors of the estate of their father Quek Cheok Boon, deceased. The third defendant is one of the banks in which Quek Cheok Boon, deceased and the plaintiff held joint accounts, and is being sued by the plaintiff presently on allegations of complicity in fraud. The fourth defendant is the daughter-in-law of the plaintiff and wife of the fifth defendant. The sixth, seventh and eighth defendants are the grandchildren of the plaintiff and the children of the fourth and fifth defendants.

The plaintiff's claim in this suit is essentially for a declaration that she is solely entitled to the moneys in the four joint accounts opened by her deceased husband in their joint names. The will of Quek Cheok Boon, deceased was read on 28 February 1998. Through this will Quek Cheok Boon, the deceased declared that the funds in the joint accounts were to be used for various purposes set out in the will. The defendants (other than the third defendants) consequently assert that the money in these accounts belong to the estate and not to the plaintiff solely. The moneys had mostly been withdrawn by the plaintiff and paid to the estate account held by the executors. The plaintiff alleges that she did this under threat by one of the executors.

The plaintiff by her counsel Mr KS Chung, applied under O 14 r 12 to determine this action on a preliminary point of law. A court may proceed to hear the preliminary point if two conditions set out in r 12 are met. I now set out O 14 r 12 for convenience:

(1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

(a) such question is suitable for determination without a full trial of the action; and

(b) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

(4) Nothing in this Order shall limit the powers of the Court under Order 18, Rule 19, or any other provision of these Rules.

Mr Chung sought to impress upon me that there can be no defence to the plaintiff's claim simply because the plaintiff is entitled to the money as the right of survivorship cannot be challenged. Counsel referred me to the High Court decision in **Banque Indosuez v Sumilan Awal aka Aw Kim Lan** (Unreported) . In the present case, the proposition that a bank will honour the demand of a survivor in a joint account is not in dispute but that is not what the principal issue is all about. It is about the intention of the testator when he opened the joint accounts. In this respect the **Awal** case does not assist the plaintiff here. In **Awal** , the court made a finding of fact as to the intention of the testator there but did so only after a full trial. Mr Chung's reliance on **Kamla Lal Hiranand v Harilela Padma Hari** [2000] 3 SLR 696 is also misplaced because the facts and circumstances in this case are entirely different. In **Kamla Lal Hiranand** the court was satisfied that the issue was whether a particular document was:

valid for the purpose of creating and/or evidencing a trust in the estate of the deceased is one suitable for determination under O 14 r 12(1). The determination of this question will fully resolve the issue as to whether an unattested testamentary document can in law create and/or evidence a trust in the estate of the deceased. On the basis of the pleadings that have been filed, this is clearly a disputed point of law involved.

The affidavits filed by all parties concerned indicate clearly that there is a crucial issue of fact that must be tried, namely, what was the intention of Quek Cheok Boon and the plaintiff when they opened the four joint accounts. Even Mr Chung in his letter of 31 August 2001 requesting for further arguments to be heard, acknowledged the contentious nature of the affidavits. The material facts set out in the affidavit of the plaintiff are being challenged by the defendants and vice versa, and in the circumstances, I am of the view that this is not a proper case for determination under O 14 r 12. Mr Chung conceded that the intention of Quek Cheok Boon at the time of opening the joint accounts is 'a significant issue of fact' (para 12 of Mr Chung's reply to fourth to eighth defendants' counsel's submission). That concession itself is sufficient to defeat an application for a trial on a preliminary point of law, which point, in my view, was not stated in the plaintiff's application with sufficient clarity. It is not for me to evaluate the merits of the conflicting claims at this stage because it is not possible to make a conclusive determination based on affidavit evidence alone. The affidavits and submissions of counsel indicate that each side has its apparent strengths and weaknesses and these can only be explored fully at trial.

There is no doubt that the disputes as to facts are material. For example, plaintiff asserts in para 4 of her affidavit of 27 June 2001 that during her 'husband's lifetime, the monies in the above four joint accounts belonged to him and me to be used as a common purse and a pool of our resources and after his death, the monies would go to me as survivor and joint accountee of the above four accounts'. Indeed, that was the thrust of her case. The defendants' case is that the plaintiff's name was added into the account by her husband for convenience only. It is their case that the bequests made by Quek Cheok Boon, deceased, in his will would be rendered nugatory if he had intended the plaintiff to have all the money when he died. It is not necessary for me to deal with

each and every allegation and refutation in the affidavits. Furthermore, the allegations of fraud against the third defendant are allegations of fact that cannot be determined by affidavit alone. The affidavits present a rich foretaste of a contentious trial and it is wholly inappropriate presently to make a determination of the point of law. If the point is that a survivor of a joint account is entitled to the money in the account then the answer is a straightforward **yes** unless it can be shown that the survivor held the money as a trustee, as is central to the dispute in this case. What was presented as the point of law was crafted by the plaintiff's solicitor as follows:

The point of law is whether upon the facts pleaded in the Statement of Claim, the monies in the undermentioned four joint accounts held by the plaintiff and her late husband Quek Cheok Boon (the deceased) belonged to her or his estate upon his death upon her surviving the deceased ...

The material facts that form the bedrock of any claim by a survivor of a joint account are in dispute. The intention of the account holders as to the purpose of opening the joint accounts are also in dispute. Consequently, it is clear from the wording of the plaintiff's application which I had reproduced above that it cannot be determined at this stage.

In these circumstances, the application under O 14 r 12 must fail. There is no question that the intention of Quek Cheok Boon can only be determined 'from a careful assessment of the facts' as Prof Ellinger pointed out at p 230 of **Modern Banking Law** (2nd Ed), to which I would only add that such an assessment cannot be complete without the facts deposed being tested under the fire of cross-examination. Mr Chung is therefore incorrect to say that 'All that is necessary for the plaintiff to prove is the joint accounts and the fact of her survivorship' (para 25 of Mr Chung's reply to fourth to eighth defendants' counsel's submission).

For the reasons above, the application for a determination was dismissed.

Outcome:

Application dismissed.