Hou Wa Yi *v* Yap Kiat Cheong (Yap Chai Ling and another, interveners) [2012] SGHC 66

Case Number : Divorce No 2201 of 2005 (RAS No 182 of 2011)

Decision Date : 27 March 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Koh Tien Hua (Harry Elias Partnership LLP) for appellants/ interveners; Dorothy Chai Li Li (Tan Leroy & Chandra) for respondent/petitioner.

Parties : Hou Wa Yi — Yap Kiat Cheong (Yap Chai Ling and another, interveners)

Family Law – Divorce – Decree absolute and decree nisi – Death of party to marriage after decree nisi and before decree absolute – Whether court has power to make decree nisi absolute after death of party to the marriage – Section 7 Women's Charter (Cap 353, 1997 Rev Ed)

27 March 2012 Judgment reserved.

Choo Han Teck J:

1 This is an appeal by the executors of Yap Kiat Cheong ("Yap"). The executors are also Yap's niece and nephew. Yap married Hou Wa Yi ("Hou"), a Chinese national, on 30 September 1992. Hou filed for divorce and was granted a decree nisi on 26 September 2006. The ancillary matters were concluded on 5 November 2009 and Hou being dissatisfied appealed against the District Court's ancillary matters orders. Yap died on 8 February 2011. The appeal was adjourned part-heard by Justice Philip Pillai on 22 March 2011.

2 Probate was granted on 29 March 2011. The appellants were appointed as executors under a will made by Yap on 26 January 2002. They applied to intervene and sought an order to make the decree nisi absolute. The district judge dismissed the application on the ground that s 7 of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Women's Charter") specifically provides —

> **7**. Every marriage solemnized in Singapore after 15 September 1961, other than a marriage which is void under the provisions of this Act, shall continue until dissolved —
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> (a) by the death of one of the parties;
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> (b) by order of a court of competent jurisdiction; or
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> (c) by a declaration made by a court of competent jurisdiction that the marriage is null and void.

Yap's death thus dissolved the marriage and the court no longer had the jurisdiction or power to make the decree nisi absolute. This appeal thus raises this sole issue: does the court have the power to make absolute a decree nisi after the death of one of the parties to the divorce proceedings?

3 There is no reported case in Singapore on this point but the issue was raised in the English case of *Stanhope v Stanhope* (1886) 11 PD 103 ("*Stanhope*"). In that case, the husband died after the decree nisi was granted and before it was made absolute. The husband's executor subsequently

applied for the decree nisi to be made absolute. The Court of Appeal held that the executor could not revive the suit for the purpose of applying to make the decree nisi absolute. Bowen LJ held at 108:

> A man can no more be divorced after his death than he can after his death be married or sentenced to death. Marriage is a union of husband and wife for their joint lives unless it be dissolved sooner, and the Court cannot dissolve a union which has already been determined.

4 *Stanhope* was applied by the English Court of Appeal in *In re Seaford, Decd* [1968] 1 P 53 ("*Seaford*") and the Malaysian court in *Suci Mathews v Thomas Mathews* [1985] 2 MLJ 228. I agree with the decision in *Stanhope* and the cases that followed. As Wilmer LJ held in *Seaford at 6*9 —

> The death of the husband not only caused the suit to abate; it destroyed the cause of Action, and there was no longer any subject-matter to which the purported decree absolute could apply.

5 The decree nisi is an inchoate order and, until it is made absolute, may be overtaken by the event of death. The proper reading of s 7 of the Women's Charter is that a marriage is dissolved on the occurrence of any of the three events stipulated in s 7(a)–(c). Death of a party to the marriage and a court order are two such events. The court order finally dissolving a marriage is the decree absolute and not the decree nisi because the decree nisi will not dissolve the marriage if the court has reasons not to grant the decree absolute, rare as that may be.

6 Counsel for the appellants submitted that under s 99(3) of the Women's Charter, it was incumbent on Hou to apply for the decree absolute but she failed to do so, such that the appellants were entitled to apply for and obtain the decree absolute as the decree nisi could and should be made absolute, particularly since the ancillary matters orders were already made. Section 99(3) does not assist the appellants because it applies only if the death of a party to the marriage had not intervened. Section 99 concerns applications to make decree nisi absolute and the powers of the court after hearing the parties, which include rescinding the decree nisi or making it absolute.

7 Counsel for the appellants also submitted that the case of *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") makes it clear that a decree nisi legally terminates the marriage. Counsel's reliance on *Sivakolunthu* is misplaced. The court in *Sivakolunthu* did not say that a decree nisi legally terminates a marriage. The court only held at [24]–[25] that the decree nisi practically terminates the marriage. Furthermore, the court was not considering the same issue presently raised. Instead, the issue before the court there was whether an order for the division of matrimonial assets made under s 106(1) of the Women's Charter (Cap 353, 1970 Rev Ed) was valid and enforceable when made upon a decree nisi. The court had to interpret s 106(1) of the Women's Charter (Cap 353, 1970 Rev Ed), not s 7 of the Women's Charter which is the Section in issue here. *Sivakolunthu* must not be read out of context to stand for more than it Actually does.

8 What effect this decision would have on the ancillary matters and the part-heard appeal are not issues before me and I thus express no opinion in that regard. For the reasons above, this appeal is dismissed.