Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and Others
[2007] SGCA 43

Case Number : CA 111/2006

Decision Date : 30 August 2007

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA

Counsel Name(s) : Alvin Yeo SC and Jaclyn Neo (WongPartnership) and Devinder Rai and Subramanian A Pillai (ACIES Law Corporation) for the appellant; Andre Yeap SC and Adrian Wong (Rajah & Tann) for the respondents

Parties : Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) — Wiryadi Louise Maria; Murakami Ryuji; Sjamsjur Bahari; Murakami Ryuzo

Civil Procedure – Pleadings – Counterclaims based on foreign judgment withdrawn under court order subject to condition that no action for same cause of action be brought in Singapore – Effect of condition – Whether condition barring amendment to introduce counterclaims for different assets under foreign judgment

Conflict of Laws – Foreign judgments – Judgment of foreign court affecting immovable and movable properties situated outside that country – Whether foreign judgments in personam or in rem – Whether proceeds of sale of immovable property personal

Conflict of Laws – Natural forum – Whether place where bank account opened considered natural forum – Whether Singapore convenient forum to decide title to money in foreign bank account

Limitation of Actions – Extension of limitation period – Acknowledgment – Whether effective acknowledgement existing – Section 26(1) Limitation Act (Cap 163, 1996 Rev Ed)

30 August 2007 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of Andrew Ang J ("the trial judge") in Suit No 291 of 2005 in which he allowed the first and second respondents' application to amend their pleadings to include, *inter alia*, counterclaims ("the proposed counterclaims") as well as to add one Ryuzo Murakami as the fourth respondent to the proceedings (collectively "the Application").

2 The present appeal is but one chapter in a long history of litigation between the parties spanning the past 12 years in relation to the assets of one Takashi Murakami Suroso ("the testator") which were situated in various parts of the world.

Background of previous proceedings

3 The appellant is the eldest (and adopted) daughter of the testator. The testator had been married to the appellant's mother up till her death in 1968. After the death of the appellant's mother, the testator married one Louise Maria Wiryadi, the first respondent. This second marriage bore two children, namely Ryuji Murakami (the second respondent) and the fourth respondent. The third respondent is the brother-in-law of the first respondent (*ie*, the husband of the first respondent's

sister) but is not concerned with this appeal.

4 On 30 July 1994, the testator and the first respondent divorced. Pursuant to the divorce, the testator commenced ancillary proceedings in Indonesia against the first respondent sometime in April 1995 for the division of their matrimonial assets. However, before this issue could be resolved, the testator died sometime in June 1996. The appellant was then appointed as the executrix of the estate and took over conduct of the proceedings on behalf of the testator's estate in Indonesia. The proceedings eventually culminated with the Supreme Court of Indonesia delivering its judgment in Judgment 203/PK/Pdt/1998 on 23 February 2000 ("Judgment 203").

5 Under Judgment 203, the Supreme Court of Indonesia declared, *inter alia*, that: (a) the will of the testator was valid; (b) the appellant had been properly appointed as the executrix of the testator; and (c) by virtue of Art 35 of the Indonesian (Marriage) Law 1 of 174, all assets that had been acquired during the marriage were, in law, joint assets. The joint assets that were listed in Judgment 203 included not only 13 plots of land situated in Indonesia but the following assets situated outside Indonesia, *viz*:

(a) three immovable properties in Singapore ("the Singapore properties");

(b) a house and plot of land in Tokyo ("the Japanese property");

(c) a time deposit with Daiwa Bank Tokyo ("DT Time Deposit");

(d) a bank account with Daiwa Bank Trust Company in New York ("Daiwa NY Account"); and

(e) the contents of a safe deposit box with PT Daiwa Perdania Bank ("the DPB safe deposit box").

6 Judgment 203 also ordered that the first respondent deliver to the appellant possession of six plots of land together with their documents of title as well as one half of all the joint assets to the appellant. It is unnecessary to list the details of the plots of land that were ordered to be delivered by the first respondent: suffice it to say that they were immovable properties situated in Indonesia that do not constitute the joint assets which the first respondent is claiming under the proposed counterclaims.

7 On 29 April 2005, the appellant commenced the present proceedings against the first respondent to claim recovery of not only the Singapore properties of which the testator had been awarded a half-share under Judgment 203 and of the income therefrom, but also various other assets of the testator that had not been adjudicated upon under Judgment 203. The claim was made on the basis that those other assets were held by the respondents on a constructive and/or resulting trust for the testator for various reasons unconnected to Judgment 203. The second and third respondents were made parties to the proceedings as recipients of the said assets on the basis that they had knowingly assisted the first respondent to transfer the assets to themselves.

8 In the alternative, the appellant made a claim for recovery of a half-share of the assets identified in Judgment 203 and for the full recovery of the assets in Singapore not disclosed by the first respondent in the property proceedings in Indonesia in Judgment 203. Finally, and in the further alternative, the appellant made a claim for a half-share in all assets located in Singapore.

9 It is relevant to note that Judgment 203 is only one of several court judgments that had been given by the Indonesian courts in relation to the rights of the parties over the testator's assets.

Of especial importance for the purposes of the present appeal are two other decisions of the Supreme Court of Indonesia. The first is Judgment 1265/K/Pdt/1996 dated 14 January 1998 ("Judgment 1265"), in which the Supreme Court of Indonesia held that the second and fourth respondents were heirs of the testator, even though it refused to grant a declaration sought by them that the testator's will was invalid and that they were entitled to exercise control over part of the testator's estate. The second is the decision of the Supreme Court of Indonesia in Judgment 2696/Pdt/2003 dated 2 March 2005 ("Judgment 2696"), where the court declared once more that the second and fourth respondents were the heirs of the testator, and further ruled that they were, as heirs, entitled under Indonesian law to a one-quarter share of the estate of the testator, notwithstanding the existence of the will of the testator. We should highlight that at the time of the hearing of this appeal, the latter decision remains subject to revision by the Supreme Court of Indonesia, a point relevant to a legal argument advanced by the appellant that we will examine later on in this judgment.

Proceedings in the High Court

10 The genesis of the present appeal before us was an application by the appellant on the first day of the trial to expunge certain parts of the affidavit as well as the opinion of the respondents' expert on Indonesian law on the basis that such Indonesian law had not been pleaded and was therefore irrelevant to the issues before the court. Rather than allowing the said application, the trial judge stood down the application for the first and second respondents to seek leave to file a rejoinder out of time and/or to amend the defence as they deemed appropriate. As a result, the first and second respondents made the Application to not only make certain amendments to the defence but also to plead counterclaims against the appellant, *qua* executrix, for the following reliefs:

(a) an account of assets of the testator's estate (which included assets listed in Judgment 203 as well as assets which, it is alleged, the testator did not disclose to the court in those proceedings); and

(b) consequential orders that such assets be delivered to the second respondent and the proposed fourth respondent in accordance with their entitlements to the estate as heirs, based on Judgment 1265 and/or Judgment 2696.

In addition, as already mentioned, the respondents also applied to add the fourth respondent as a party to the proceedings.

11 The appellant objected to the Application on various grounds that were rejected by the trial judge for the reasons set out in his grounds of decision in *Murakami Takako v Wiryadi Louise Maria* [2007] 1 SLR 1119 ("the GD"). In allowing the application, the trial judge followed the established principle that, as a matter of law, pleadings could be amended at any stage of an action if disallowing it "might … result in an unfair trial to the applicant seeking the amendments if the application [were] refused": see the GD at [10], citing the observations of Choo Han Teck J in *Wishing Star Ltd v Jurong Town Corp* [2006] SGHC 82 ("*Wishing Star*"). This is a convenient stage to examine briefly the reasons given by the trial judge for rejecting the objections of the appellant to the Application.

The appellant's first argument

12 The first argument advanced by the appellant was that the addition of the proposed counterclaims pursuant to the Application would be in breach of an order of court made earlier by the Senior Assistant Registrar ("the SAR") in allowing the first and second respondents to withdraw certain counterclaims ("the original counterclaims") against the appellant. In the original counterclaims, the first respondent had claimed a half-share of certain but not all assets listed in

Judgment 203, *viz*, the DT Time Deposit and the DPB safe-deposit box. Similarly, the second respondent had claimed (on behalf of himself and the fourth respondent, who was, at the time, not a party to the suit) only a two-eighths share for both of the said assets and of the contents of the DPB safe-deposit box. No claim was made by either the first or second respondent to the money in the Daiwa NY Account.

13 The SAR, in allowing the said application, made the following order:

> [T]he [first, second and third respondents] are not to bring in Singapore in these or subsequent proceedings *any action for the same, or substantially the same causes of action* as those made in the Counterclaim … [emphasis added]

The said respondents did not appeal against this order which remains binding on them.

14 The appellant argued that by reason of this order, the first and second respondents were barred from adding the proposed counterclaims by way of the Application as they were based on "substantially the same causes of action" as those that had been made in the original counterclaims. The trial judge rejected this submission and held that the SAR's condition was only intended to preclude the first and second respondents from advancing further claims in Singapore against the appellant with respect to the *particular assets* claimed under the original counterclaims. Accordingly, as the proposed counterclaims did not encompass assets not claimed under the original counterclaims, it was not inconsistent with the SAR's order.

The appellant's second argument

15 The second argument advanced by the appellant against the Application was that as more than six years had passed since Judgment 203 had been delivered, the first respondent's counterclaim (which was, for all intents and purposes, an action on a debt) was time-barred under s 6 of the Limitation Act (Cap 163, 1996 Rev Ed). The trial judge also rejected this argument. In his view (at [17]), given that Judgment 203 was a "pronouncement that certain assets were the joint property of the [first respondent] and the [testator] under Indonesian law", it was a judgment *in rem* and was, accordingly, not subject to any time bar.

The appellant's third argument

16 The third argument of the appellant was that the first respondent's proposed counterclaims under the Application, in particular, the proposed counterclaim in relation to the Japanese property and the claim for other movables outside Indonesia, should not be allowed as enforcing those claims would amount to a breach of the principle that a Singapore court should not enforce a foreign judgment *in rem* if the subject matter of the judgment was not situated in such foreign country at the material time.

17 The trial judge rejected this argument on two grounds: first, in relation to the Japanese property, he noted that although the courts of the state where the immovable property was situated would be seised of exclusive jurisdiction, such a principle would be of little applicability in the circumstances given that the claim by the first respondent related to the *proceeds of the sale* of such property as opposed to the *title* to the property. Turning next to the proposed counterclaim in relation to movable properties outside the jurisdiction, the trial judge relied on Rule 138 as stated in *Dicey, Morris and Collins on The Conflict of Laws*, (Sweet & Maxwell, 14th Ed, 2006) ("*Dicey & Morris*") vol 2 at p 1234 and the supporting decisions cited therein, including *Doglioni v Crispin* (1866) LR 1 HL 301 and *In re Trufort* (1887) 36 Ch D 600, as being determinative of the issue. Rule 138 reads

as follows:

> The courts of a foreign country have jurisdiction to determine the succession to all movables wherever situated of a testator or intestate dying domiciled in such country.
>
> Such determination will be followed in England.

The appellant's fourth argument

18 The appellant's fourth argument was that the proposed amendment in relation to the first respondent's counterclaim *vis-à-vis* the Daiwa NY Account should not be granted as New York, and not Singapore, was the most appropriate forum to determine that claim. The trial judge, whilst agreeing with the appellant that *forum non conveniens* was a relevant consideration in the context of an application to amend a pleading, rejected the argument as the appellant had adduced no evidence whatsoever to show that New York was a more convenient forum than Singapore.

The appellant's fifth argument

19 The appellant's fifth argument was that, in relation to the second and fourth respondents, the proposed counterclaims were based on a judgment, *ie*, Judgment 2696, that was under review by the Supreme Court of Indonesia and which was therefore not final and binding against the appellant or the testator's estate. The trial judge accepted the argument that, in the circumstances, Judgment 2696 could not be regarded as final and binding and, accordingly, it could not form the basis of the second and fourth respondents' counterclaims. Nonetheless, he noted that the respondents' counterclaims were not based solely on Judgment 2696, but on Judgment 1265 as well. In this respect, while the trial judge was of the view that Judgment 1265 could not typically be given effect to via the usual mode of enforcement (as it was merely declaratory in nature), he thought that it could give rise to a *res judicata* or to an issue estoppel. For these reasons, the trial judge also rejected this argument.

20 Having rejected the appellant's five arguments, the trial judge allowed the Application, permitting the proposed amendments by the first and second respondents to their pleadings which included the proposed counterclaims and the addition of the fourth respondent to the proceedings. The appellant, being dissatisfied with the decision of the trial judge, has appealed to this court.

Issues and arguments on appeal

21 In this appeal, the issues raised by the appellant and the arguments made in support of her contentions were substantially the same as those that were made before the trial judge (as elaborated upon in [12] to [19] above). We should add that the appellant had, in fact, canvassed an additional argument before the trial judge, namely that the Application should have been disallowed on the further ground of inordinate delay causing the appellant prejudice, but this was not dealt with by the trial judge in the GD.

Meaning of "cause of action" in the SAR's order

22 The first issue that arises for our determination is the scope of the SAR's order, and this raises the question of whether the SAR intended to preclude the first and second respondents from claiming other assets that were not claimed in the original counterclaims. In our view, the answer to this question would depend on what is meant by the words "not to bring in Singapore … any action for the same, or substantially the same causes of action" in the SAR's order. The appellant's argument is

that the trial judge was wrong to construe the phrase "causes of action" to mean a claim for specific property or relief, and, in particular, failed to place sufficient reliance on the existence of the words "in Singapore" in the SAR's order, contending that such words were intended to bar all claims under Judgment 203 from being brought in Singapore. In support of this contention, counsel for the appellant referred us to the observation of Diplock LJ (as he then was) in *Letang v Cooper* [1965] 1 QB 232 at 242–243 that "[a] cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person". It was further argued that any ambiguity in the phrase "cause of action" should be construed against the respondents as they were the parties attempting to circumvent the condition that had been imposed by the SAR. Reference was also made to the decision of this court in *Lim Yong Swan v Lim Jee Tee* [1993] 1 SLR 500 where the court concluded that in considering whether it would be just to allow an amendment, the burden of persuasion would lie on the party applying for leave. In this context, it was suggested by the appellant that since the first and second respondents had failed to discharge this burden, the Application should have failed (and this appeal consequently allowed).

23 The respondents' reply to this argument was that when the SAR imposed the condition, he was only concerned with the bringing of fresh actions or claims by the first and second respondents in relation to the assets that had been claimed under the original counterclaims. There was no reason for the SAR to have intended to bar their claims on assets which had not been claimed before. In support of this argument, the respondents relied on the *dictum* of G P Selvam JC (as he then was) in *Multi-Pak Singapore Pte Ltd v Intraco Ltd* [1992] 2 SLR 793, where he observed (at 801, [28]) that:

> ["Cause of action"] may mean one thing for one purpose and something different for another. *The meaning depends on the context in which it is used*. [emphasis added]

With respect to the fourth respondent, it was pointed out that he could not be barred by the SAR's order from making the claims since he was not a party to the original counterclaims.

24 In our view, the appellant's argument has no merit for two reasons. The first is that the appellant's argument gives an unjustifiably narrow and technical meaning to the phrase "cause of action" in the SAR's order and fails to take into account the context in which the order was made. Indeed, a cursory reading of the order *as a whole* indicates that when the SAR used the words "bringing … causes of action", he clearly meant to refer to "claims". Claimants bring claims, not causes of action. A cause of action forms the legal basis of the claim. It was simply a wrong choice of words. As to the appellant's emphasis on the words "in Singapore", we do not think that these qualifying words were intended to broaden the scope of the preclusion order. Rather, they were meant to do no more than to emphasise that the condition applied only to the first and second respondents with respect to the same claims being made in Singapore and not elsewhere. The reason is that the SAR's order was binding on the first and second respondents personally, and, if the qualifying words were omitted, the order could leave it open to the appellant to argue that the said respondents could not claim against the appellant with respect to the assets, the subject matter of the original counterclaims, in any jurisdiction. There is no reason for the SAR to regulate the parties' disputes outside Singapore.

25 The second reason for rejecting the appellant's construction of the SAR's order is that, in our view, where an order of court which seeks to bar or limit a party from pursuing existing legal rights is ambiguous, the order should be construed narrowly rather than broadly as existing rights should not be allowed to be abrogated or reduced by unclear and ambiguous language. A party who claims that a court order has abrogated the existing rights of the other party must show from the words used by the court that that is clearly its intention. Conversely, a party who claims that a court order has given him certain rights against the other party must show from the words used by the court that

that is clearly its intention. In this appeal, the appellant has failed the applicable test.

Are the respondents' counterclaims under the application time-barred?

26 The next issue before us is whether the Limitation Act applied to bar the respondents' proposed counterclaims under the application. In this context, the relevant issue would be whether Judgment 203 is a judgment *in personam* or a judgment *in rem*; as mentioned above, the trial judge had decided that the Limitation Act did not apply by virtue of his determination that Judgment 203 was a judgment *in rem*.

The parties' arguments

27 Judgment 203 was delivered on 23 February 2000. It is not a judgment that is registrable under the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) as that Act does not apply to Indonesian judgments. However, it may form the basis of an action and may be sued upon under the common law. The appellant argued that such an action was merely an action on a simple debt, citing *Halsbury's Laws of England* vol 8(3) (LexisNexis UK, 4th Ed Reissue, 2003) at para 140 and the decision of the Supreme Court of Nova Scotia in *Pollier v Laushway* [2006] NSJ No 215, and, as such, was subject to s 6 of the Limitation Act which provides for a six-year limitation period. Accordingly, as the proposed counterclaims were founded on Judgment 203, they were time-barred as they were made only on 4 July 2006, more than six years after the date of the judgment. The trial judge disagreed with such a submission. As mentioned above, in his view, Judgment 203 decided that certain assets were the joint property of the first respondent and the testator under Indonesian law and was a judgment *in rem* and therefore not subject to any limitation period under the Limitation Act. In support of his holding, the trial judge referred to *Halsbury's Laws of England* vol 8(1) (Butterworths, 4th Ed Reissue, 1996) at para 1019, in which it was noted as follows:

> A judgment in rem may be defined as the judgment of a court of competent jurisdiction when it determines the status of a person or thing, or the disposition of a thing, as distinct from the *particular interest that a party to the litigation has in it*. Thus the *judgment in rem vests in a person the possession of or property in a thing* or decrees the sale of a thing in satisfaction of a claim against the thing itself, or is a judgment as to the status of a person. [emphasis added]

28 Before us, counsel for the appellant contended that this passage did not apply to Judgment 203 as it did not vest and did not have the effect of vesting any property in the appellant or the respondents: indeed, if Judgment 203 had such an effect, there would have been no need for the appellant, or indeed the first respondent, to sue on Judgment 203 to recover the assets whether situated in Indonesia, Singapore and Australia. Instead, Judgment 203 merely decided that the matrimonial assets listed therein were the joint property of the testator and the first respondent and ordered the parties to distribute the assets accordingly. From the perspective of Singapore law, Judgment 203 was a judgment *in personam.* Accordingly, the respondents' proposed counterclaims were time-barred.

29 By way of response, counsel for the respondents contended that Judgment 203 was a judgment *in rem* as it decided the ownership of the joint assets under Indonesian law. Alternatively, it was contended that even if Judgment 203 were a judgment *in personam*, the proposed counterclaims would still not be time-barred as the appellant had claimed against the first respondent in her statement of claim that she was entitled to a half-share of the assets in the testator's estate, thereby implicitly acknowledging that the first respondent was still entitled to the other half-share. This argument, although canvassed before the trial judge, was not considered by him in the GD.

Is Judgment 203 a judgment in personam or in rem?

30 In our view, in order to determine whether Judgment 203 is a judgment *in personam* or a judgment *in rem*, it is necessary to consider the nature of the judicial proceedings that led to Judgment 203 and the intention of the Supreme Court of Indonesia as to the effect of the order on the parties to the proceedings. In this connection, it is not relevant to this court whether Indonesian law recognises the concepts of a judgment *in rem* and a judgment *in personam.* What is relevant to this court is the substance of Judgment 203 and its effect or intended effect on the parties thereto.

31 Judgment 203 was made pursuant to divorce proceedings between the testator (the executrix of whose estate is the appellant) and the first respondent in which the testator sought a judgment of the Indonesian courts as to the respective rights of the parties to the matrimonial assets. In this context, we are of the view that Judgment 203 merely declared the respective rights of the parties. The judgment also ordered the first respondent to transfer one-half of the assets to the appellant as executrix of the testator's estate, but in our view that did not amount to a disposal of the assets so as to constitute it a judgment *in rem*.

32 In *Pattni v Ali* [2007] 2 WLR 102 ("*Pattni*"), an appeal from the Isle of Man, the Privy Council had to consider similar arguments in relation to a judgment and order made by a Kenyan court declaring the contractual rights of the parties to certain shares in an Isle of Man company called World Duty Free Co Ltd ("WD"). The Privy Council stated the principles as follows (at [21]):

> For present purposes, a judgment in rem in the sense of rule 40 [of *Dicey & Morris*] is thus a judgment by a court where the relevant property is situate, adjudicating on its title or disposition as against the whole world (and not merely as between parties or their privies in the litigation before it). The distinction is shortly and accurately put in *Stroud's Judicial Dictionary,* 7th ed (2006), p 2029 …:
>
> > "A judgment in personam binds only the parties to the proceedings, as distinguished from one in rem which fixes the status of the matter in litigation once for all, and concludes all persons …"
>
> *Jowitt's Dictionary of English law*, 2nd ed (1997), pp 1025–1026, contains fuller definitions to the same effect:
>
> > "A judgment in rem is an adjudication pronounced upon the status of some particular subject matter by a tribunal having competent authority for that purpose. Such an adjudication being a solemn declaration from the proper and accredited quarter that the status of the thing adjudicated upon is as declared, it precludes all persons from saying that the status of the thing or person adjudicated upon was not such as declared by the adjudication. … So a declaration of legitimacy is in effect a judgment in rem. A judgment of divorce pronounced by a foreign court is in certain cases recognised by English courts, and is then a judgment in rem…"

33 In *Pattni*, the Privy Council, in applying these principles to the case, said at [29]:

> While the Kenyan order may be regarded as irregular in its width in certain respects, their Lordships do not consider that [the judge] can for a moment have thought that he was determining any issue as against the world at large or any third party in relation to the shares or affairs of [WD]. … The obvious aim and effect of his orders was to establish and give effect to [the parties'] rights inter se with regard to such shares and affairs. If some third party emerged

> subsequent to the Kenyan judgment and decree, and claimed that [one party] had, prior to [the relevant date], agreed to on-sell the [WD] shares to him, nothing in the Kenya[n] judgment and decree could, or could have been intended to, preclude the third party from showing this. …The Kenyan judgment and decree do not constitute or involve any form of adjudication or purported adjudication in rem relating to the shares in [WD]. Nor were the Kenyan judgment and order even purporting actually to transfer or deal with the shares, as opposed to determining the parties' rights and duties relating to them.

In our view, the above passage describes Judgment 203 to a T. A divorce decree may be a judgment *in rem*, in so far as it determines the status of the parties, but an order obtained in ancillary proceedings declaring the interests of the parties to the matrimonial assets, as is the case with Judgment 203, binds only the parties *personally* and is therefore a judgment *in personam*. In Judgment 203, the Supreme Court of Indonesia did not decide or purport to decide that no one else might have a claim in those assets. For these reasons, we are of the view that the trial judge was in error in holding that Judgment 203 was a judgment *in rem*.

34 It therefore follows that unless the first respondent's rights under Judgment 203 have been acknowledged by the appellant, her claim would be time-barred and the application to, *inter alia*, plead the proposed counterclaims should have been rejected. We turn now to consider this question.

Has the appellant acknowledged the rights of the first respondent under Judgment 203?

(1) Re-amended statement of claim

35 The respondents' argument under this head is premised on para 20(b) of the re-amended statement of claim dated 15 March 2006 ("the RSOC"), which pleads as follows:

> On 23 February 2003, it was adjudged by the Supreme Court of the Republic of Indonesia in [Judgment 203] in relation to proceedings brought in Indonesia by the [appellant] against the [first respondent]:-
>
> …
>
> b. that the doctrine of common property applied to the property acquired by the [first respondent] and the [testator] during their marriage (*ie. that both the [testator] and the [first respondent] were entitled to an equal share in these properties*) and that among other properties, the … Properties in Singapore formed part of the common property;
>
> …
>
> [emphasis added]

It was argued by the respondents that para 20(b) of the RSOC constituted a clear admission by the appellant that Judgment 203 had the effect of creating an entitlement between the testator (and therefore, the appellant) and the first respondent of each party to a half-share of the properties in question. Counsel for the appellant, in reply, denied that this pleading amounted to a direct admission of the first respondent's entitlement that is being sued for in these proceedings.

36 Our view of the effect of para 20(b) of the RSOC is this. First, it is not necessary that to operate as an acknowledgement, an admission has to be direct or explicit so long as the statement or act constitutes a "*sufficiently* clear admission of the title or claim to which it is alleged to relate"

[emphasis added]: see Terence Prime & Gary Scanlan, *The Law of Limitation* (Oxford University Press, 2nd Ed, 2001) at para 2.7.6. Nonetheless, it is important to stress that an acknowledgement of a claim or a debt must stem from a voluntary desire to admit such claim or debt: see *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR 205 ("*Chuan*") at [18]. Second, a mere reference in subsequent proceedings to the rights of a party under an existing judgment may be nothing more than that, *ie*, a mere reference. Indeed, it may be a prelude to and for the purpose of denying the existence of such rights on account of limitation: see, for example, *In re Flynn*, *decd (No 2)* [1969] 2 Ch 403. It is therefore necessary to consider whether para 20(b) shows a desire to admit the first respondent's claims under Judgment 203. In our view, para 20(b) is not an admission of the first respondent's rights nor does it have that effect.

37 In our view, in the context of the subsequent paragraphs in the RSOC, it is clear that the appellant intended the opposite, *ie*, to implicitly deny that the first respondent had any subsisting rights under Judgment 203. Paragraph 20(b) is itself no more than a prelude to paras 22, 24 and 25 of the RSOC which plead that the first respondent had failed to "transfer title" of the three properties in Singapore to the appellant and had also failed to account for the rents collected from those properties. Paragraph 25 pleads that the property at Faber Drive was purchased with the testator's moneys and that therefore the first respondent was holding it on a constructive or resulting trust for the testator's estate. Paragraph 26A makes the *alternative claim* that under Judgment 203, the Faber Drive property is the common property of the first respondent and the testator but that the first respondent has failed to surrender half of the property to the appellant. Paragraph 26B makes a similar claim to Para 25 but with respect to the Ardmore Park property.

38 In our view, paras 22, 24, 25, 26A and 26B of the RSOC clearly evidence the appellant's intention to claim the *entire beneficial interest* in these assets. They are not intended to acknowledge the first respondent's rights under Judgment 203 but are to have the *opposite effect* by claiming the entire beneficial title to all these assets.

(2) The statement of claim

39 Accordingly, the argument of counsel for the first respondent has to be rejected. However, all is not lost. The first respondent may rely on the *original* paras 22, 24, 25 of the statement of claim which had pleaded (and here we have to observe that counsel has, disappointingly, failed to notice) a claim to only *one-half* of the Faber Drive and the Ardmore Park properties. These paragraphs were amended on 1 March 2005 to delete the words "half-share" appearing in them, with the effect of converting them into claims for the entire beneficial interests. Following this, paras 26A and 26B were then inserted as alternative claims in the RSOC. In our view, paras 22, 24 and 25 of the statement of claim dated 29 April 2005 (in which the appellant had claimed only *one-half* of the Faber Drive and the Ardmore Park properties) had the effect of acknowledging the first respondent's rights to the other one-half of the same properties. In this connection, s 26(1) of the Limitation Act extended the period of limitation with respect to this claim as it provides that the "right shall be deemed to have accrued *on ... the date of the acknowledgment*" [emphasis added]. Accordingly, there was an effective acknowledgement at the time the statement of claim was served on the first respondent: see the comments of Stuart-Smith LJ in *Horner v Cartwright* (Court of Appeal, 11 July 1989) and Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 5th Ed, 2006) at para 18.020).

40 In view of our conclusion that there was an acknowledgement of the first respondent's counterclaims as early as 29 April 2005, thus extending the limitation period for reliance on Judgment 203 from that date, it would not be necessary for us to consider, and we express no view on, whether the alternative claims of the appellant under paras 26A and 26B of the RSOC are, in themselves, capable of constituting an acknowledgement of the first respondent's claims under

Judgment 203.

Jurisdiction of Indonesian court on judgments in rem on movables and immovables situated outside Indonesia

41 The next issue which counsel raised is the jurisdiction of the Indonesian court on a judgment *in rem* on movables and immovables situated outside Indonesia. Following from the above, this is a question we do not need to consider in relation to Judgment 203, given our conclusion that it is a judgment *in personam.* However, as the trial judge has given his opinion on this question in relation to the Japanese property, it is proper that we should address it as well since we do not agree with it. It may be recalled that the appellant's argument before the trial judge was that even if Judgment 203 were a judgment *in rem*, a Singapore court would not enforce a foreign judgment *in rem* if the subject matter, whether movable or immovable property, was not situated in that foreign country when the judgment was given. Counsel relied on Rule 40 in *Dicey & Morris* ([17] *supra*) vol 1 at p 611 which reads:

> Rule 40—(1) A court of a foreign country has jurisdiction to give a judgment *in rem* capable of enforcement or recognition in England if the subject-matter of the proceedings wherein that judgment was given was immovable or movable property which was at the time of the proceedings situate in that country.
>
> (2) A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country.

42 The trial judge accepted that Rule 40 set out the law correctly. As was said by the Privy Council in *Pattni* ([32] *supra*) at [26]: "Immovables fall into a different and special category in private international law." Further, para 137 of *Spencer Bower, Turner and Handley: The Doctrine of Res Judicata* (Sweet & Maxwell, 3rd Ed, 1996) ("*Spencer Bower*") states:

> No foreign court may give a judgment, valid in this country, directing or recognising the disposition of land or a chattel outside its jurisdiction. An action *in rem* being concerned with status or the disposition of property within a foreign country, its courts will be recognised as having jurisdiction. [emphasis added]

However, the trial judge ruled (see [17] above) that Rule 40(1) *of Dicey & Morris* had no application to the claim with respect to the Japanese property because the claim was for *the proceeds of sale thereof* as opposed to the *title to the property*. In our view, the ruling confuses *the claim* with the *legal basis of the claim*. Rule 40 is concerned with jurisdiction. If, under Singapore law, a foreign court has no jurisdiction to pronounce on the title of immovable property in Singapore, the fact that the property has been turned into proceeds of sale does not change the legal basis of the claim which remains the foreign judgment itself. Indeed, we are not aware of any decision that the absence of jurisdiction on the part of a foreign court in making such an order can be fed and satisfied by the proceeds of sale of the immovable property concerned. The claim for the proceeds of sale of the Japanese property is a derivative claim arising from Judgment 203 and if that judgment were a judgment not *in rem*, then it could not be turned into one by selling the property and converting it into cash.

43 The trial judge also disagreed with counsel's interpretation that the corollary to Rule 40(1) would apply, *ie*, that a foreign court would not have jurisdiction to grant a judgment *in rem* on both movable and immovable properties outside its jurisdiction. He held that since Rule 40(2) expressly mentioned only immovable property, it was not intended to cover movable property. He held that the

reason why Rule 40(2) stopped short of including movable property was found in para 14-106 of *Dicey & Morris* ([17] *supra*) vol 1, which states as follows:

> … English courts recognise that the courts of a foreign country have jurisdiction to determine the succession to all movables wherever locally situate of a testator or intestate dying domiciled in such country. For this reason, clause (2) of Rule 40 is limited to immovables.

The trial judge also referred to Rule 138 (see [17] above) as being even more to the point and to *Doglioni v Crispin* ([17] *supra*) and *In re Trufort* ([17] *supra*) at 611 which reads:

> [A]lthough the parties claiming to be entitled to the estate of a deceased may not be bound to resort to the tribunals of the country in which the deceased was domiciled, and although the Courts of this country may be called upon to administer the estate of a deceased person domiciled abroad, and in such a case may be bound to ascertain as best as they can who, according to the law of the domicil, are entitled to that estate, yet where the title has been adjudicated upon by the Courts of the domicil, such adjudication is binding upon, and must be followed by, the Courts of this country.

44 Applying the above principle to the testator's movable assets, the trial judge held that the governing law would be the law of the testator's domicile, *ie*, Indonesian law, and, that being the case, it was untenable for the appellant to say that a Singapore court would not enforce Judgment 203. Accordingly, the trial judge held that the appellant's objection based on Rule 40 failed.

45 In our view, the trial judge's analysis of the law in this respect would be correct if in Judgment 203 the Supreme Court of Indonesia was exercising testamentary jurisdiction. It was not. It was exercising matrimonial jurisdiction as it adjudicated on the rights of the parties pursuant to or as part of its divorce jurisdiction. Hence, neither para 14-106 of *Dicey & Morris* nor the authorities referred to are directly relevant. *Nevertheless*, as Judgment 203 is concerned with the rights of husband and wife *inter se*, and is binding on the parties, these circumstances bring the case under Rule 156 of *Dicey & Morris* vol 2 at p 1280 which states that in the absence of a contrary agreement, the law governing movables which are part of matrimonial assets is the law of the matrimonial domicile, *ie*, Indonesia in this present case.

46 Accordingly, the trial judge's decision is correct in that, but for the issue of limitation, there would be no reason why a Singapore court would not recognise Judgment 203 as binding on the parties in relation to movable properties situated outside Indonesia as a judgment made in matrimonial proceedings. In *Pattni* ([32] *supra*), the Privy Council said (at [27]):

> As presently advised … their Lordships would think it clear that, where a court in state A makes, as against persons who have submitted to its jurisdiction, an in personam judgment regarding contractual rights to either movables or intangible property (whether in the form of a simple chose in action or shares) situate in state B, the courts of state B can and should recognise the foreign court's in personam determination of such rights as binding and should itself be prepared to give such relief as may be appropriate to enforce such rights in state B.

This brings us back 360 degrees to the point that a court in Singapore will not allow a judgment *in personam* to be sued as a debt or a cause of action that is time-barred under Singapore law, an issue we have earlier addressed. We have decided that by virtue of the appellant's acknowledgment of the first respondent's counterclaims, these were not time-barred.

The issue of forum non conveniens

47 The next matter that arises for our consideration is the issue of *forum conveniens* with respect to the first respondent's claim to the money in the Daiwa NY Account. The trial judge held that considerations of *forum conveniens* are relevant in an application to amend pleadings but had dismissed the argument on the failure of the appellant to adduce evidence to show that New York was a more appropriate forum than Singapore. In this appeal, the appellant has again asserted that New York is the more convenient forum in relation to the claim for the Daiwa NY Account on the ground that the account is governed by New York law. However, apart from the bare re-assertion, the appellant has not explained how or why this factor is relevant to the issue as to who is entitled to the money in this account. It is clear that New York law is not relevant to this issue. In the circumstances, we agree with the trial judge's conclusion on this point.

48 Indeed, on the facts before us, we are of the view that Singapore is a more convenient forum than New York given that the appellant has chosen Singapore as the forum to sue the first respondent with respect to, *inter alia*, the assets under Judgment 203. The new counterclaim against the appellant is for an account of the money in the Daiwa NY Account held by her as executrix, the ownership or title to which has already been determined by Judgment 203. Thus New York law is not relevant to this counterclaim. The appellant has submitted to Singapore jurisdiction by commencing these proceedings against the first respondent to account for assets, the title to some of which have been adjudicated under Judgment 203, including the money in the Daiwa NY Account. The counterclaim seeks to enforce against the appellant Judgment 203 (which is binding on her as executrix of the testator's estate: see [45] above). That is all the more reason why the counterclaim for the Daiwa NY Account should not be dealt with in a separate forum: see *PT Hutan Domas Raya v Yue Xiu Enterprises (Holdings) Ltd* [2001] 2 SLR 49 at [24]. The only dispute is whether the claim under Judgment 203 is time-barred which, of course, is an issue essentially for a Singapore court to decide.

49 In our view, the relevant test as to which is the more suitable jurisdiction is really a simple and commonsensical one – namely, which is the forum that meets the ends of justice, having regard to the interests of the parties: see *Q & M Enterprises Sdn Bhd v Poh Kiat* [2005] 4 SLR 494 at [13]. For the reasons we have already given, there is absolutely no doubt that the ends of justice in this case would be served by having the issue tried in these proceedings.

50 This brings us to the first respondent's argument that the doctrine of *forum non conveniens* is not relevant to an application to amend pleadings since the appellant has already submitted to the jurisdiction. It was argued that the doctrine was relevant only where a party was applying for leave to effect service of the proceedings outside the jurisdiction under O 11 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) for the reason that such an application called upon the court to exercise an exorbitant jurisdiction, which the court should be wary of exercising when another forum might be the more appropriate jurisdiction to try the issue. As the parties herein had already submitted to jurisdiction, it was argued by the first respondent that any application that related to issues of *forum non conveniens* should be taken after the application (to amend) had been allowed, as to do otherwise would be to reverse the burden of proof as the applicant had to prove that the court hearing the claim included in the amendment was *forum conveniens*. In our view, this is a straw man's argument since the trial judge has ruled against the appellant on that very ground, that she had not adduced any evidence to show that Singapore was *forum non conveniens*. However, as a matter of principle, we see no reason to disagree with the trial judge that the doctrine of *forum non conveniens* is applicable to an amendment to pleadings in the same way that it applies to service outside the jurisdiction.

Whether Judgment 1265 and/or Judgment 2696 are binding

51 The next issue we have to decide is whether Judgment 1265 and/or Judgment 2696 which form the basis of the proposed counterclaims of the second and fourth respondents are binding. It may be recalled (see [9] above) that the Supreme Court of Indonesia in Judgment 1265 declared the second and fourth respondents as heirs of the testator and, in Judgment 2696, declared their status once more and ruled that they were entitled to a one-quarter share of the testator's estate. As the latter judgment is currently the subject of review by the Supreme Court of Indonesia, the appellant had objected to the proposed amendments with respect to the proposed counterclaims of the second and fourth respondents on the ground that the latter judgment is not binding on the appellant. The trial judge, citing *Nouvion v Freeman* (1885) 15 App Cas 1 at 13 and *In re Macartney* [1921] 1 Ch 522 at 531–532, accepted the submission. However, the trial judge also found that the second and fourth respondents were also relying on Judgment 1265 as the basis of the proposed counterclaims and that even though as a declaratory judgment it could not be enforced in these proceedings by way of a counterclaim (since there is nothing to claim), it was a judgment *in rem* which was freely recognised and which gave rise to a *res judicata* or to an issue estoppel, citing Rule 35(2) in *Dicey & Morris* vol 1 at p 575 ([17] *supra*), and the decisions of *Doglioni v Crispin* ([17] *supra*) and *In re Trufort* ([17] *supra*). We agree. There is no reason why the second and fourth respondents may not rely on Judgment 1265 alone to prove their entitlement to the estate of the testator if they also call evidence to prove what their shares of the testator's estate would be under Indonesian law. They do not have to rely on Judgment 2696 to prove their shares in the testator's estate.

52 In this appeal, the appellant has also made two further points. First, it was argued that Judgment 1265 was time-barred, just like Judgment 203. Second, it was argued that the court in Judgment 1265 had refused the very relief that the second and fourth respondents were seeking in their counterclaims. In our view, there is no substance in both points. First, Judgment 1265 cannot be time-barred because it merely declares the status of the two respondents as heirs of the testator. It is a judgment *in rem* good against the whole world. Second, Judgment 1265 did not deal with the relief that is being claimed by the said respondents in these proceedings. What was claimed in Judgment 1265 was their right "to exercise and control the legitimate portions according to the Laws, with respect to all real and personal estates of the [testator]". The claim was rejected because, presumably, the testator's estate was under administration by the appellant as executrix who had the prior right to control and possession.

53 In recognising Judgment 1265 for the purpose of these proceedings and in allowing the amendments for that reason, the trial judge has allowed the second and fourth respondents to claim against the appellant an account and inquiry of all the assets of the testator that have come into her hands, and an order for payment of such moneys and/or delivery of such assets to each of them as per their respective one-quarter share of the testator's estate. This implies that the non-binding quality of Judgment 2969 does not prevent the two heirs from suing the executrix for an account and to pay over to them whatever assets that are due to them as heirs. In this respect, when the appellant objected to Judgment 2696 as not being final and therefore not binding on her, it was an objection in law, but without a factual context. What cannot be denied is that the second and fourth respondents are heirs of the testator by virtue of Judgment 1265. But what does it mean to say that Judgment 2696 is under review and subject to alteration or reversal by the Supreme Court of Indonesia? In our view, it is highly improbable that it can mean that the judgment could be nullified by a declaration that the second and fourth respondents are not heirs of the testator (since Judgment 1265 is still a valid judgment) or that the court has somehow made a mistake of law in deciding that male heirs like the said respondents would not be entitled to a quarter-share of the testator's estate. It is simply not imaginable that Indonesian law is so unclear or flexible on heirship rights that the court may alter them on review. If this argument has any validity at all, it has to be directed against the assets of the testator listed in the judgment. In other words, what is reviewable would not be the heirship rights but the assets subject to such rights. Nevertheless, even if we are

wrong in our reasoning, the heirs are still entitled to call on the executrix to account to them the assets of the testator that have come into her possession or dealt with by her in the course of administration. The exact percentage of their entitlements, as we have indicated earlier, can be proved by calling evidence on what Indonesian law is.

Whether there is undue prejudice

54 The final issue we have to consider whether there had been inordinate delay on the part of the respondents in seeking to once more amend their pleadings and whether this has caused undue prejudice to the appellant. The appellant, in her written submissions, referred to Lord Griffiths' *dictum* in *Ketteman v Hansel Properties Ltd* [1987] AC 189 at 220 that prejudice could not be measured in monetary terms, and contended that in the present case, allowing the amendments sought for in the Application would put the appellant to much trouble in having to seek further and better particulars and extensive discovery (given that the assets were located in several jurisdictions), and to adduce further factual and expert evidence. It would also further delay the disposal of this case and impose more strain on the appellant, the disputes having gone on for the past ten years.

55 In our view, there is no substance in this argument. The appellant is the executrix of the estate of the testator. She is being asked to do no more than to account for the assets that have been under her administration. If any party were put to trouble to do the things she has alleged would put a strain on her, it would be the first, second and the fourth respondents, as the appellant has been in control and possession of the testator's assets all the time. There was certainly delay on the part of the first and second respondents in applying to amend their pleadings at this stage. But, there is no evidence, in the circumstances of this case, that the delay was inordinate and caused irreparable prejudice to the appellant which cannot be compensated in costs. Although speed and efficiency are primary considerations in our civil justice system – see *Lum Kai Keng v Quek Peng Chye* [2001] SGHC 61 at [30] – justice is ultimately what our courts dispense.

Conclusion

56 For the foregoing reasons, we would dismiss the appeal with costs and the usual consequential orders.