

Chai Choon Yong v Central Provident Fund Board and Others
[2004] SGHC 65

Case Number : OS 173/2003/G
Decision Date : 31 March 2004
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Tan Chee Kiong (Seah Ong and Partners) for plaintiff; Andy Chiok (Michael Khoo and Partners) for first defendant; Chia Ti Lik (Chia Ngee Thuang and Co) for second defendant; Kamala Ponnampalam (Insolvency and Public Trustee's Office) for third defendant
Parties : Chai Choon Yong — Central Provident Fund Board; Lai Weng Kwong; The Public Trustee

Provident Fund – Beneficiary – Nomination – Failure to make nomination – Whether Public Trustee should dispose of CPF money in accordance with Intestate Succession Act or testator's will – s 25(2) Central Provident Fund Act (Cap 36, 2001 Rev Ed) – Intestate Succession Act (Cap 146, 1985 Rev Ed)

Provident Fund – Beneficiary – Nomination – Non-compliance with rules of attestation – Whether nomination null and void – Section 25(1) Central Provident Fund Act (Cap 36, 2001 Rev Ed), r 4 Central Provident Fund (Nominations) Rules (Cap 36, R 1, 1998 Rev Ed)

Provident Fund – Beneficiary – Nomination – Whether mother had standing to challenge daughter's CPF nomination

Succession and Wills – Power of disposition by will – Whether testator could dispose of CPF moneys in will – Whether CPF money payable to sole beneficiary under will if CPF nomination invalid

Words and Phrases – "Shall" – Use of the word "shall" in legislation – Test to be applied – Rule 4 Central Provident Fund (Nominations) Rules (Cap 36, R 1, 1998 Rev Ed)

Words and Phrases – "Written law" – Whether reference to "written law" in s 25(2) Central Provident Fund Act (Cap 36) includes Wills Act (Cap 352) – Section 25(2) Central Provident Fund Act (Cap 36, 2001 Rev Ed), Wills Act (Cap 352, 1996 Rev Ed)

31 March 2004

Belinda Ang Saw Ean J:

1 This originating summons concerns some moneys standing to the credit of the account of a deceased member, Wang Lee Jun ("Wang") in the Central Provident Fund ("the CPF Money"). The plaintiff, Chai Choon Yong, is Wang's mother and she seeks an order to declare as null and void Wang's Central Provident Fund ("CPF") nomination dated 2 August 1988.

2 Wang, a spinster, died testate on 15 April 2001. It is common ground that in her last will and testament dated 2 December 1996, she appointed the second defendant, Lai Weng Kwong ("Lai"), executor of her will. Probate was granted to Lai on 9 November 2001. It is also common ground that Lai is the sole beneficiary under her will. In her lifetime, Wang had on 2 August 1988 nominated Lai as recipient of the CPF Money.

3 Although the nomination was made on 2 August 1988, the parties proceeded on the basis that the current legislation, that is, ss 25(1) and 25(2) of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("CPF Act") and r 4 of the Central Provident Fund (Nominations) Rules (Cap 36, R 1,

1998 Rev Ed) ("the Rules") apply, as these provisions in the CPF Act and the Rules are substantially the same as those as at 2 August 1988.

4 The plaintiff's counsel, Mr Tan Chee Kiong, challenges the validity of the nomination of Lai on the ground that the nomination did not comply with s 25(1) of the CPF Act read with r 4 of the Rules in that Wang's signature was not witnessed in the presence of two witnesses. Neither did the witnesses sign the nomination form in each other's presence. Consequently, there was no nomination subsisting at the time of the member's death. Thus, by virtue of s 25(2) of the CPF Act, the CPF Money is to be paid to the Public Trustee for disposal in accordance with the Intestate Succession Act (Cap 146, 1985 Rev Ed). Since Wang died a spinster and her mother survived her, the plaintiff is entitled to a distribution of the CPF Money.

5 Lai opposes the originating summons. His counsel, Mr Chia Ti Lik, argues for the validity of the nomination. Even if the nomination were invalid, so the alternative argument runs, the CPF Money is payable to Lai as sole beneficiary under the will. And contrary to the plaintiff's contention, if a member died testate without making a nomination under the CPF Act, the CPF Money would be paid to the Public Trustee for disposal in accordance with Wang's will and not the Intestate Succession Act. Mr Chia argues that reference to "written law" in s 25(2) of the CPF Act includes the Wills Act (Cap 352, 1996 Rev Ed).

6 The Central Provident Fund Board ("the Board") is sued as first defendant. The Board's position as put forward by its counsel, Mr Andy Chiok, is that there is a subsisting nomination at the time of Wang's death and, hence, the Board is obliged to make payment of the CPF Money to Lai as nominee.

7 It is not disputed that the Board received Wang's nomination form in August 1988. Upon receipt of the nomination form, the Board sent Wang a "NOM 22" letter. In that letter, Wang was asked to consider including in her nomination form her dependants or next-of-kin. It was the Board's practice back then, and even now, to send such a letter when a member nominates a non-family member. Wang replied on 22 September 1988 to confirm the nomination of Lai as the sole nominee. The Board received her letter on 24 September 1988. Upon receipt of Wang's written confirmation, Alice Tan Lee Hua, the CPF officer handling the file, spoke to Wang. She explained the implications of Wang's nomination. Essentially, Wang understood what she was doing and the effect of her decision. Alice Tan made a contemporaneous note of the conversation on Wang's letter.

8 The third defendant is the Public Trustee whose involvement in the proceedings is for the sole purpose of making representations, if any, on the Public Trustee's position on such matters in general.

The issues

9 An issue before me is whether in a situation where Wang died testate leaving her residuary estate to the second defendant, the plaintiff has, as a matter of law, an interest in the CPF Money to enable the latter to challenge the nomination dated 2 August 1988. If the answer is no, the parties agree that the second defendant is entitled to the CPF Money. On the other hand, if the answer is yes, a second question that arises for determination is whether a nomination subsisted at the time of death.

Section 25(2) of the CPF Act

10 In dealing with the first issue, it is necessary to consider what is meant by the words “for disposal in accordance with any written law” in s 25(2) of the CPF Act. In the context of this case, would Lai, as sole beneficiary of Wang’s estate under her will, have a free-standing right to the CPF Money? It is convenient to begin by setting out the relevant provisions of the CPF Act.

15(5) After the death of a member of the Fund, a person nominated by that member in accordance with section 25(1) shall be entitled to withdraw such portion of the sum standing to the credit of that member in the Fund as is set out in the memorandum executed in accordance with that section.

24(3A) All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of —

(a) the person or persons nominated under section 25(1) by the deceased member, if any; or

(b) the person or persons determined by the Public Trustee in accordance with section 25(2) to be entitled thereto,

but shall, without prejudice to the operation of the Estate Duty Act (Cap 96), be deemed not to form part of the deceased member’s estate or to be subject to his debts.

25.—(1) Any member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under section 20 (1) or of any shares designated under section 26(1) as the memorandum shall indicate.

(2) If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force.

11 In *Saniah bte Ali v Abdullah bin Ali* [1990] SLR 584, the CPF member died intestate. During his lifetime, he nominated his stepsister to receive in her own right the entire amount in his account with the CPF payable on his death. Upon his death, the stepsister withdrew the money and that amount under s 23(3) (now s 24(3A) of the CPF Act) was deemed to be impressed with a trust in her favour. However, the deceased’s brother under Muslim law would be entitled to the whole estate of the deceased. The question before L P Thean J (as he then was) was whether the nominee’s right to the CPF money was subject to the law governing succession to a deceased’s estate, and in that particular case, Muslim law under s 112(1) of the Administration of Muslim Law Act (Cap 3, 1985 Rev Ed). His Honour, in ruling in favour of the stepsister, said at 590, [11]:

I now come to s 24 [s 25 of the current CPF Act]. The intention of this section is this. It is to enable a member of the Fund by an instrument to nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund on his death as indicated in the instrument and to give to such person or persons so nominated a right to receive such amount or amounts. The instrument of nomination signed by a member is not a will; nor does s 24 say that it operates as a will. Nonetheless, it is intended by that section to be an effective direction by a member (until it is revoked or varied by him) to the CPF Board to pay to the person or persons nominated by him moneys payable out of the Fund on his death. It is also intended by that section that such person or persons receive the moneys in his or their own right and not as trustee or in any other representative capacity. The words “in his or their own right” appearing in s 24(1) are

clear and effect must be given to them. Section 24(2) by implication makes this point even clearer: it provides that if there is no person so nominated, the moneys shall be paid to the Public Trustee for disposal in accordance with the written law for the time being in force, and the written law must mean the Act or enactment governing succession to the estate of the deceased member. Certainly, the intention is that the moneys are to be paid to a person or persons entitled to the same under sub-s (1) or failing that under sub-s (2). This is reinforced by s 23(3) which expressly creates a trust on such moneys in favour of such persons or persons and also expressly keeps the moneys out of the estate of the member or from being subject to a payment of any debt. *It seems to me that the general scheme of the CPF Act, and in particular ss 23 and 24, is to treat a member's moneys in the Fund as a species of property separate and distinct from his other property and having the following characteristics: it cannot be disposed of by a member by any instrument inter vivos or by will; it can only be disposed of by an instrument of nomination made by a member under s 24(1), which unless it is revoked or varied, takes effect on his death; it is not subject to any levy, sequestration or attachment or payment of any debt of the member; it does not pass to the Official Assignee upon the bankruptcy of the member, and on his death it does not form part of his estate; nor is it then subject to his debts.* [emphasis added]

12 In that case, there was a valid nomination and the CPF money was paid out accordingly. Whilst the issue in the present case is different, the outcome of the issue before Thean J nevertheless turned on the construction of the then ss 24 and 25 of the CPF Act. Mr Chiok for the Board said that under s 25(2) of the CPF Act, the Public Trustee is to dispose of Wang's CPF money in accordance with the Intestate Succession Act. The plaintiff's contention is also the same. Both of them submit that the legal position is clear from the decision of Thean J in *Saniah bte Ali v Abdullah bin Ali*. Ms Ponnampalam on behalf of the Public Trustee confirmed that since that decision, CPF moneys paid to the Public Trustee pursuant to s 25(2) of the CPF Act have been distributed in accordance with our rules of intestacy. She submits that the Public Trustee is not empowered to make a distribution under a will. If the member makes a nomination, the CPF money will be paid out according to his wishes. If a member fails to make a nomination, he cannot be allowed to choose his beneficiary of the CPF money through a will and circumvent the requirements of the CPF Act on nomination.

13 The judgment of the Court of Appeal in *Central Provident Fund Board v Lau Eng Mui* [1995] 3 SLR 109 was delivered by his Honour as Judge of Appeal. His Honour's earlier analysis of the special nature of CPF money with the characteristics stated in the passage I have emphasised above were referred to without demur in the judgment.

14 In *Saniah bte Ali v Abdullah bin Ali*, the words "in accordance with written law in force" in s 24(2) (now s 25(2) of the CPF Act) were construed to mean "the Act or enactment governing succession to the estate of the deceased member". Thean J's construction of the subsection appears to be substantially identical to the provision the construction of which is at issue in the instant case. That construction, which must have taken into account the definition of "written law" in s 2 of the Interpretation Act (Cap 1), rightly excludes a testamentary disposition of any CPF money by a will executed in compliance with the requirements of the Wills Act. Incidentally, I had in *Lim Boon Ming v Tiang Choo Yong* [2002] 2 SLR 183 pointed out that a CPF nomination is separate and distinct from a testamentary disposition of the residue of a member's estate.

15 It is clear that the CPF Act restricts a testator's freedom of testamentary disposition where CPF money is concerned, and the testator's will is, therefore, subject to the potential effect of that

statutory restriction. The effect of the legislative restriction on freedom of testamentary disposition cannot be avoided by a promise to make certain dispositions of CPF money. A construction of the CPF Act that permits a testator to nullify its operation by agreeing in advance to dispose of his CPF money in a will or in a certain fashion outside the provision of the CPF Act would defeat the purpose of the legislation.

16 Significantly, CPF money can only be disposed of through a nomination by the member (see s 25(1) of CPF Act). The CPF Act enables a member during his lifetime to nominate another to receive on his death a particular sum of money standing to the credit of his account in the CPF, with the result that the sum will not pass under his will. The power given by the CPF Act to a member to nominate a person to whom his property in the CPF will be transferred on his death is a revocable power. It is revocable in the way provided by the CPF Act or the Rules; for instance, by the marriage of the member or by written notice to the CPF Board. Until death, the CPF money is that of the member. The nomination has no operation and is not intended to have any operation until the death of the member. Whether or not it then operates depends upon whether or not the member has during his lifetime either revoked it or withdrawn the money in some other way authorised by the CPF Act. Another illustration is where a proprietary order under s 106 of the Women's Charter (Cap 353, 1997 Rev Ed) is given to the spouse of the member in respect of a portion of the money in the member's CPF account. A proprietary order takes effect straightaway and consequently the amount apportioned to the spouse can no longer be said to be standing to the credit of the member's account (see *Central Provident Fund Board v Lau Eng Mui*). A nominee would have no right to complain of, nor could he take any steps to prevent, the member making authorised withdrawals during the member's lifetime. In the case of a nomination under the statute, the CPF money forms no part of the member's estate but passes directly to the nominee by force of the nomination made under the statute. The CPF money would not come to the deceased and then pass on from him: it would go directly from the CPF fund to the nominee. Upon payment out, the money is impressed with a trust so that it forms no part of the estate of the deceased nor is subject to his debts. Other than that, the CPF money is still subject, in a proper case, to payment of estate duty (see s 24(3A) of CPF Act).

17 A testator can only make a testamentary disposition of assets of which he dies possessed (see s 3 of the Wills Act). In other words, a testamentary disposition can only be made out of property which is beneficially owned by the deceased at the time of death and which passes to the deceased's legal personal representative. CPF money is outside this equation. I have already explained that where there is a nomination of CPF money, it will not pass to the legal personal representative. Furthermore, I agree with Mr Tan's argument that there is no separate and independent statutory provision in the Wills Act that operates and takes effect as a testamentary disposition of the deceased. A beneficiary's entitlement to claim a benefit is by reason of the deceased's testamentary disposition that is in compliance with the requirements of the Wills Act. Where the will fails to comply with the Wills Act, it is invalid and the testator dies intestate. A will that is properly executed in accordance with the Wills Act is hardly an "enactment governing succession to the estate of the deceased member".

18 Unless and in so far as CPF money is disposed of by nomination, it will be paid out to the Public Trustee for distribution to those entitled under the Intestate Succession Act or in the case of Muslims, in accordance with Muslim law by virtue of s 112 of the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed). In the latter case, the Public Trustee will make payment in accordance with the Certificate of Inheritance issued by the Syariah Court.

19 For these reasons, I conclude that the CPF Money payable on death of the member operates by force of the provisions of the CPF Act and not as a testamentary disposition under Wang's will.

Accordingly, the plaintiff as Wang's surviving parent has an interest in the CPF Money. She therefore has *locus standi* to bring these proceedings to challenge Wang's nomination dated 2 August 1988.

Nomination dated 2 August 1988

20 I now turn to the question whether a nomination subsisted at the time of the member's death. On its face, the nomination was in a form provided by the Board that identified the nominee and was signed by Wang and two witnesses. I have to consider whether the presumption of due execution is rebutted. If the presumption of due execution is rebutted, would the nomination fail because it did not satisfy the prescribed rule on nomination?

21 The mainstay of the plaintiff's case is s 25(1) of the CPF Act read with r 4 of the Rules. Rule 4 reads:

Every nomination shall be made in Form A, IA, 2A or 3A set out in the Schedule and shall be signed by the member in the presence of 2 witnesses who shall attest the signature of the member.

22 Yeo Chow Wah ("Yeo") is Wang's sister-in-law and Wong Jee Koh alias Wee Jee Koh ("WJK") is her brother. The witnesses are giving evidence on a matter that happened some 14 years ago. I am equally mindful that they are people who may benefit directly or indirectly from a failed nomination. Their evidence is to be viewed with caution, and is not generally accepted without corroboration.

23 The statutory declarations of Yeo and WJK are by and large identical. The plaintiff's son, Wong Jee San, in his letter dated 8 July 2002 to the Board said that the witnesses signed the form in the belief that the plaintiff was named as nominee. In that case, the witnesses were aware at the time that Wang had handed to them a CPF nomination form. It was already signed but they did not see Wang's signature or the name of the nominee as she had folded the form to cover her signature and the name of the nominee. In my judgment, the plaintiff has not rebutted the presumption. I have doubts as to the veracity of the allegation that the form was folded to cover Wang's signature. It is difficult to see from the photocopy of the nomination form, which is exhibited in Alice Tan's affidavit, how the form could have been folded in the manner described, especially as Yeo's signature had encroached into the place for the member to sign. In addition, WJK claimed to have signed the form after Yeo. It was not explained why Yeo signed at the place meant for the second witness and WJK signed at the place meant for the first witness when ordinarily it would have been the other way around following the usual order or sequence of events. Both witnesses also claimed that Wang folded the form to cover up the name of the nominee. The witnesses were required to sign under Section A of the nomination form. Alice Tan in her affidavit explained that the name of the nominee was in Section B of the nomination form found on the reverse page. Why was then the need to fold the nomination form? In these circumstances, the court is chary of their evidence. In my judgment, there is no clear and cogent evidence of non-compliance with the rule of attestation to be observed.

24 Even if I had come to the opposite view that the presumption has been rebutted, that conclusion would not have assisted the plaintiff. It is important to keep in mind the precise nature of a nomination under the CPF Act and that it is not a testamentary disposition requiring attestation in accordance with the statutory requirements for the execution of a will, failing which the will is invalid. Unlike in the case of a will, no specific consequence is stated. Generally, by s 58 of the CPF Act, non-compliance with any regulations or rules made under the CPF Act is at most an offence that could attract a fine under s 61. A penalty of a fine, being of a personal nature, must obviously not apply in the case of a deceased member. If any penalty is to be imposed on the estate, it must be explicitly

stated in the enactment. In my view, it is not the intention of Parliament that the same dire consequences of invalidity of the nomination should flow from non-compliance with s 25(1) of the Act read with r 4.

25 The word "shall" is used in r 4 of the Central Provident Fund (Nominations) Rules and it tends to show that something is required to be done. Often, one looks at whether the language used by the draftsman is mandatory or directory. Lord Woolf MR in *Regina v Secretary of State for the Home Department, Ex parte Jeyeanthan* [2000] 1 WLR 354 explained that the mandatory or directory test is at most a first step. A conventional approach that is solely dependent on dividing requirements into either mandatory or directory does not address the important question of what the legislator intended to be the consequence of non-compliance of the procedural rules. Such a conventional approach could lead to unjust and unintended consequences where there has been non-compliance with procedural requirements. To avoid such consequences, Lord Woolf MR formulated the following questions at 362:

1. Is the statutory requirement fulfilled if there has been substantial compliance with the requirement and, if so, has there been substantial compliance in the case in issue even though there has not been strict compliance? ...
2. Is the non-compliance capable of being waived, and if so, has it, or can it and should it be waived in this particular case? ...
3. If it is not capable of being waived or is not waived then what is the consequence of the non-compliance? ...

26 A CPF nomination is a unilateral instrument. It has no immediate effect and only the consent of the person signing such unilateral writing matters. Consent of the others will not arise. In my view, I am concerned with (and that is what r 4 is about as well) the intention of the deceased member.

27 Rule 4 is purely a procedural requirement. It is a procedural requirement introduced for the benefit of the Board. The Board explained in its letter dated 9 September 2002 the rationale for the nomination form to be witnessed by two witnesses. It is to enable the Board to verify the authenticity of the nomination, if required. In this particular case, the Board can be left in no doubt of Wang's intention and who she intended to be the nominee. I would add that Wang in all those years never sought to revoke her nomination. Her conduct is consistent with the August 1988 nomination form, her letter dated 22 September 1988 and her subsequent conversation with Alice Tan. I, therefore, accept Mr Chiok's submission that r 4 is a procedural requirement that can be waived for it is imposed for the benefit of the Board alone (see generally *Halsbury's Laws of England*, vol 44(1) (4th Ed reissue, 1995) at para 1238) and in this particular case, it should be waived by the Board.

28 In my judgment, the court should look to the substance rather than form. The member intended the nomination to take effect by her signature. Wang's brother and sister-in-law admitted to having signed the form as witnesses to the nomination and by their conduct intended Wang to make use of the nomination form and for the Board to give effect to it. I am satisfied that the witnesses signed on the form for the purpose of attesting Wang's signature. I would mention that unlike Form 3A, which expressly states that the form is to be signed in the presence of two witnesses, the form in use in 1988 was not so clear. Adopting Lord Woolf's approach, there is on the evidence before me sufficient substantial compliance with the requirements of the rule.

29 In my judgment, there was at the time of the member's death a valid and subsisting nomination in favour of Lai. I accordingly dismissed the originating summons with costs to all the

defendants.

Copyright © Government of Singapore.