

B & Another v D
[2002] SGHC 210

Case Number : OS No 477 of 2002/S
Decision Date : 12 September 2002
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Kesavan Nair (as counsel) for Wee Raayah & Partners for the plaintiffs; Shanker and Thangavelu (Rajah Velu & Co) for the defendant
Parties : —

Judgment

GROUND OF DECISION

The background

1. D (the defendant) is the natural father of A (the infant) who is presently about 2 years of age, having been born on 2 December 2000. The infant's mother was E, daughter of B and C (the first and second plaintiffs respectively. Besides E, the plaintiffs have two (2) other children/daughters, namely F and G who are both married and residing in Perth. The first and second plaintiffs left Singapore for Australia on 1 February 1983, became Australian citizens in 1988 and are aged 62 and 56 respectively; they have been married for 32 years. The plaintiffs reside at No. 5 Doyle Street, Morley, Perth, Western Australia. Besides their two (2) daughters, the plaintiffs have relatives residing close to them at Perth. Whenever they visit Singapore (which is about once a year), the plaintiffs would live with the first plaintiff's mother at No. 10B Jubilee Road. The terrace house is also occupied inter alia, by the family of a paternal uncle H (who is the property's joint owner) of E. By all accounts, the plaintiffs, their daughters and relatives are a close knit family.

2. Ea was two years older than the defendant, who is an Indian national now 27 years of age. The defendant has a younger brother and an older sister, both living in Chennai, Tamil Nadu, South India. The couple met through the defendant's mother I (the defendant's mother) whom E consulted on her thyroid disorder and an earlier failed relationship. The defendant's mother has been variously described by the plaintiffs as a soothsayer or religious person, who performs religious rituals and does fortune telling. This has been denied and the defendant's mother says (in para 6 of her affidavit) that she devotes her life to spiritual pursuits and pursuit for the truth, that she does not make predictions or tell fortunes but, she prays for the wellbeing of all who come to her. The defendant's mother (aged 46) also resides in Tamil Nadu but she visits Singapore and Malaysia often as she has disciples in both countries. Indeed, one such 'disciple' J filed an affidavit on the defendant's behalf, describing the defendant's mother as a 'guru' whose blessings resulted in her having a son (and another) after 4 years of childless marriage. Another disciple K deposed in her affidavit that the defendant's mother recites prayers and chants mantras. J affirmed that whenever the defendant's mother visits Singapore, she stays at J's flat at St George's Lane and many people (Chinese, Indian and foreign) would seek her blessings. The defendant's mother accepts no payment from her disciples but states in her affidavits that she owns three (3) properties in India which yields her monthly rental income of Rupees 42,000 (approximating S\$1,520-\$1596 @ S\$3.62-\$3.80 to Rupees 100).

3. Ea and the defendant were married at the Registry of Marriages Singapore, on 9 March 2000. The Registry marriage was followed by a Hindu temple wedding on 15 May 2002. The defendant used to work at the State Bank of India before he came to Singapore, while E was a customer's relations

officer of Qantas Airline, stationed at Changi Airport. The defendant was unable to obtain an employment pass since coming to Singapore in February 2000 despite repeated attempts. Contrary to his claim, the plaintiffs discovered that the defendant was not a degree holder as he did not complete his course in business administration at the University of Madras. He has never been gainfully employed in Singapore.

4. The plaintiffs filed the above proceedings on 5 April 2002. This was followed by an amended OS filed on 17 April 2002 wherein they prayed inter alia, for the following reliefs:-

- (1) the infant be made a ward of court;
- (2) the plaintiffs herein be appointed the sole guardians of the infant and that the plaintiffs shall have sole care custody and control of the infant;
- (3) further or alternatively, that the plaintiffs, L and or M be appointed sole guardians of the infant and that the plaintiffs, L and or M shall have sole care, custody and control of the infant;
- (4) the plaintiffs be granted leave to bring the infant with them to Australia to reside at 5 Doyle Street, Morley, Perth, Western Australia.

5. On 6 August 2002, I granted orders in terms of prayers 2 and 4 of the amended OS, made no order for costs, gave the parties liberty to apply and directed that the infant should not be taken back to Australia for the next ten (10) days until the defendant's mother had been given access.

6. The defendant has appealed against my above orders (in Civil Appeal No. 79 of 2002). On 16 August 2002, on an application filed in summons-in-chambers no. 2995 of 2002 by the defendant, I granted the following orders:-

- (a) that execution and all proceedings to enforce the terms of the Order of Court dated 6 August 2002 be stayed pending outcome of Civil Appeal No. 79 of 2002;
- (b) the plaintiffs be restrained from taking the infant out of Singapore pending the outcome of the defendant's appeal;
- (c) the infant's passport be handed over to the plaintiffs' solicitors pending the outcome of the defendant's appeal;
- (d) the defendant's mother be given access to the infant in the interim pending the defendant's appeal;

with prayers (a) to (b) being subject to the defendant expediting his appeal filed on 15 August 2002. Civil Appeal No. 79 of 2002 has now been fixed for hearing on 21 October 2002.

The facts

7. The proceedings herein arose out of a tragedy. After a quarrel between them at the matrimonial flat (at Block 12 Pine Close #12-87) on 29 September 2001 (which the defendant claimed

was started by E), the defendant stabbed E in the abdomen from which injuries (and resultant haemorrhaging) she eventually died. The defendant was originally charged (in Criminal Case No. 10 of 2002) with murder. Subsequently, the charge was amended to manslaughter under s 304(a) of the Penal Code Cap 224 to which the defendant pleaded guilty. He was sentenced on 13 March 2002 to 10 years' imprisonment (backdated to 20 September 2001) and 15 strokes of the cane. He is presently serving his sentence and is tentatively scheduled to be released on 3 June 2008 (on the assumption there is remission of his sentence for good behaviour).

8. Not only did the plaintiffs file a lengthy first affidavit for their application but supporting affidavits were also filed by relatives which included their two (2) daughters, the wives of E's paternal uncles (2), a paternal aunt and even by the staff nurse (N) on duty at the emergency department of Tan Tock Seng Hospital where E was taken to on 29 September 2001 after she was stabbed, and where she eventually succumbed to her injuries.

9. The affidavits filed by and on the plaintiffs' behalf detailed how the defendant and Ea met, her family's reservations of their relationship, the events surrounding the parties' Registry marriage and subsequent Hindu ceremonial wedding, the defendant's short temper and quarrelsome nature and narrated incidents witnessed by the deponents, where the defendant's propensity to violence manifested, in particular in assaults on E. The affidavits of the relatives concluded that the plaintiffs would be the best persons to have custody of the infant.

10. The defendant's mother as well as the defendant filed affidavits to oppose the plaintiffs' application. The defendant objected to the plaintiffs having custody of the infant on the basis that it would mean the (permanent) loss to him of the child as the plaintiffs had deposed in their affidavits that they intended to take the infant to and make him a permanent resident of, Australia; the plaintiffs well knew it was beyond the defendant's means to commence proceedings in Australia for the return of the infant years later. The defendant pointed out that the plaintiffs as the infant's grandparents are '*aging*' (he surmised they were probably in their 60s) and their alternative prayer 3 (that their two (2) daughters be appointed the infant's guardians and custodian of the infant) showed that they had no confidence of taking care of the infant themselves in the future. The defendant alleged that since the birth of the infant, the plaintiffs and other residents at No. 10B Jubilee Road had denied him quality/any time with his son. Indeed, they kept him away from the infant (to the extent that the plaintiffs took the infant away to Australia to live without his consent) and there was friction between the family members of E and him which worsened after the infant's birth.

11. The defendant did not deny the allegations made by E's family members of disputes between himself and her but dismissed them as minor tiffs which took place between husband and wife '*just like any other couple*' and alleged that the tiffs were made worse when the family members interfered. He accused the deponents of painting a picture of him as temperamental while on the other hand they had been very kind and accommodative towards him and alleged it was their interference which led to his present state, not to mention disparaging his mother to whom they had once turned to, when they had problems and needed help. The defendant described the allegations regarding his demeanour and behaviour as totally unsubstantiated and malicious lies.

12. The defendant wanted his mother to have interim custody of the infant until his release from prison, describing himself as '*the father who is temporarily separated from [the infant]*'. He said he/his mother are not paupers and have income which would enable them to give the infant a decent upbringing. At the very least, his mother would take the trouble to bring his son to see him while he was in prison.

13. In her affidavit, the defendant's mother deposed that her husband had left her (apparently

for another woman for whom he converted to a Muslim) with three (3) children when the defendant was only five (5) years old. She had raised her children single handedly thereafter and brought them up well. Whilst admitting that her son had done wrong (and for which he was being punished), the defendant's mother deposed that she saw no reason why her grandson ought to be punished by being deprived of his father for the rest of the infant's life. She added that if Ea's family had been kind and humane, the tragic event which took place could have been averted.

14. The defendant's mother pointed out that the plaintiffs wanted to take the infant to Australia even though he is a Singapore citizen by birth; she questioned why the infant should be deprived of his citizenship rights. However, she admitted that she herself intended to raise the infant in India but gave her assurance that the infant's Singapore citizenship would not thereby be jeopardized and, that upon his release from jail, the defendant would also maintain the infant's Singapore citizenship. She described herself as not poor by the standards of living in India (due to her rental income) and with her simple lifestyle, her needs were modest. Consequently, every cent of her income would be applied to the well being of the infant.

15. Unbeknownst to the plaintiffs, the defendant's mother and the defendant had separately filed Originating Summons 650089 of 2002 (the second OS) on 11 April 2002, a week after these proceedings were commenced. The present plaintiffs were named the defendants in the second OS wherein the defendant and the defendant's mother applied for joint custody of the infant. I would point out that the second OS should have been consolidated with this OS or at least, dealt with at one and the same time. However, this was not done by either side even though

(i) the defendant and the plaintiffs were represented by the same firms of solicitors in both proceedings;

(ii) the defendant's solicitors entered an appearance to this OS on 15 April 2002;

(iii) the plaintiffs' solicitors entered an appearance to the second OS on 30 April 2002 and

(iv) the first hearing for this OS was on 8 May 2002 followed by a second and final hearing on 6 August 2002.

It was a highly unsatisfactory situation with the result that when the second OS was brought to my notice and eventually fixed before me for hearing on 5 September 2002, I had no alternative but to dismiss it, in view of the orders I had already made in these proceedings.

16. In the second OS, the defendant's mother had filed an affidavit in which she deposed she had a rental income of rupees 12,000 (S\$434-\$456) from her home in India; there was no mention of her income of rupees 30,000 from two (2) other properties although she did depose there was additional income derived from her son's own properties. In that affidavit, the defendant's mother alleged that from the date of his arrest to the date of his conviction and subsequent incarceration, neither the second plaintiff nor any of her family members had shown the infant to the defendant. Further, attempts she made through intermediaries (one of whom was her 'disciple' O according to the second plaintiff's second affidavit) to be allowed to see the infant were rebuffed by the second plaintiff.

17. The affidavit which the defendant filed in these proceedings was essentially a rehash of the earlier affidavit he had filed in the second OS; there was nothing new save that in his affidavit for the

second OS, the defendant deposed that his married sister who lives in Tamil Nadu would help him to take care of the infant. However, unlike the plaintiffs whose daughters affirmed on affidavit their willingness to take care of the infant if the court should choose to appoint them guardians, neither the defendant's sister nor his brother filed any affidavits in his support. One other additional fact which the defendant deposed to (see para 19) in his affidavit for the second OS was that as a Hindu, he wanted the infant to be brought up by his mother in Indian cultures and traditions. He did not wish the infant to be taken away to Australia and be brought up in a westernised environment.

The decision

18. In the light of the allegations and cross allegations raised in the affidavits by both sides, I informed counsel for the parties that I would be directing the social welfare authorities to investigate into the backgrounds of both parties to help me in my determination. After the social welfare report was ready, the hearing was then restored before me on 6 August 2002, when I made the orders in favour of the plaintiffs.

19. Social welfare reports made at the court's behest are confidential and the findings are never revealed to parties so as to maintain the impartiality and independence of the investigators/department. Consequently, I cannot/will not reveal the findings of the report made for this case. However, what I can say and which is in any event known to the parties is, that both plaintiffs as well as the defendant's mother were interviewed for the report and, visits were made by welfare officers to No. 10B Jubilee Road and the St George's Lane flat of J.

20. I awarded custody to the plaintiffs after perusing the social welfare report and taking into consideration s 3 of the Guardianship of Infants Act Cap 122 (the Act) which states:

Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, **the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration** and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.

The highlighted portion of section 3 places the emphasis on the infant's welfare as the main consideration in custody proceedings.

21. I noted from the plaintiffs' lengthy first affidavit that they had taken care of the infant almost continuously since 6 December 2000, three (3) days after his birth. E left the infant with the plaintiffs at Perth after she visited them in May 2001 and the infant only returned Singapore when the plaintiffs brought him back for the housewarming ceremony of E's matrimonial flat on 26 September 2001. Indeed, the infant was so attached to them that when the plaintiffs left him with E and the defendant for a visit to Malaysia between 17-24 September 2001, E telephoned them to return immediately as the infant cried often, looked for them, she had to work and the defendant was unwilling/unable to look after the infant notwithstanding he was unemployed. Thereafter, due to her untimely death three (3) days later, they have (by default) become the infant's sole caregivers albeit with help from loving relatives of their extended family; there is no question that the plaintiffs are

totally devoted to the infant. The plaintiffs deposed they bore the expenses of the infant's upkeep when he was in their care and when she was alive, they settled E's debts and the recurrent outgoings of her matrimonial flat. Even if they did not look down on him (as the defendant alleged), it was clear from all the affidavits filed by or on the plaintiffs' behalf, that the defendant as an in-law, did not meet with the approval of either the plaintiffs or their relatives or their extended family.

22. I should also point out that in their and in the supporting affidavits, the plaintiffs (and other deponents) dwelt unnecessarily on the background of the marriage of E to the defendant, his behaviour and ill-treatment of E (even when she was pregnant), why the couple was a mismatch and what happened on the day she died. Without meaning any disrespect, dredging up the past will not bring E back to life, nor ease the plaintiff's pain of her loss nor is it relevant for purposes of the present proceedings, save for the defendant's disposition,

23. What was relevant was/is the stable relationships and close-knit immediate family of the plaintiffs as well as their extended family and the physical and emotional support they offered one another, both in Singapore and in Perth. I compared the plaintiffs' situation with the defendant's. Being incarcerated until at least June 2008, he was in no position to exert any rights to custody as the natural father of the infant. Further, I was concerned by the fact that the defendant did have a propensity to violence and that the infant may one day be on the receiving end of that violence. A secondary consideration which I found worrying was his lack of remorse for stabbing E to death, albeit unintentionally. If he/his mother were to have custody/guardianship of the infant, what would he tell the boy when the infant was old enough to realise and asked, why he did not have a mother like other children. Would the defendant explain or be able to explain to the infant how his mother met her demise and would the child be able to come to terms with the tragedy? My misgivings are based on the following paragraphs in the trial judge's grounds of decision in Criminal Case no. 10 of 2002:-

29. Even if all the things he alleges about the treatment he received from the deceased and her family are true, do they justify or mitigate his conduct on 29 Sep 2001 in the new matrimonial home? By then, he had already left 10B Jubilee Road some time ago. He and his wife had a place of their own to call home. The fact that his wife wanted to go alone to Serangoon Road to meet her mother was no great import and would certainly not cause a man to fly into an implacable rage unless he is an extremely unreasonable and suspicious sort of person and it is quite apparent from the events of that day that the Accused is indeed such a person.

30. Even if it were true that his wife had taken the knives from the kitchen, she

was not threatening to harm him with the knives in any way. The statement of facts and even the Accused's statement to the psychiatrist show that all the wife wanted to do was to get her clothes and leave the flat. She was clearly not about to stab or slash him or herself. There was no reason at all for any fierce struggle to take place unless the Accused was the aggressor.

31. How could a man who, a few moments earlier, stood submissively clad in a towel while his wife clawed ferociously at his unprotected flesh suddenly become so

overcome by anger and rage over a cut inflicted unintentionally in the course of a struggle precipitated by himself that he would wrest the knife away and plunge it twice into his wife's abdomen? Why would a man determined to thwart any attempt at suicide stab his wife not once but twice in such a violent manner? The chain of events points to the Accused being the aggressor on 29 Sep 2001.

32. I am also not convinced that he experienced 'intense remorse' after the stabbing. He was more fearful and anxious about the consequences of his actions than he was remorseful. This is shown by the fact that he maintained that his wife had stabbed herself until confronted with the forensic report the next day.

24. So the question really was, should the maternal grandparents or his paternal grandmother be the infant's guardians? I decided that it should be the plaintiffs as I was certain they could offer the infant a better life (in all aspects) than the defendant's mother.

25. In contrast to the plaintiffs (the second plaintiff has operated a school in Perth for almost 20 years teaching classical Indian dancing and music while the first plaintiff is a classical musician who plays the 'tabla' and 'sitar' instruments), the defendant's mother can only be said to have an unorthodox vocation, whether one describes it as religious teaching, fortune telling or soothsaying. I cannot imagine that she can offer a better environment to the infant during his tender years than the plaintiffs; indeed it would be the opposite. As she and her disciples had deposed to in their affidavits, she visits Singapore and Malaysia often. What would happen to the infant during those frequent visits? Would she bring him along on her trips or would she leave him behind in India? If the latter scenario is to be the case, who would be taking care of the infant during her absence? It was not possible for our social welfare authorities to extend their inquiries and investigations to Chennai, Tamil Nadu, where the defendant's mother (and his two [2] siblings live). I have no inkling what her living conditions in India are like. Indeed, no information was forthcoming from the defendant or his mother in that respect. If, as the defendant's mother deposed in her affidavit, she rents out her property in India, where does she live? In the interests of the infant, I could not take a risk and allow the defendant's mother to raise the infant in conditions unknown.

26. Granted that the first and second plaintiffs are 62 and 56 years old respectively, whereas the defendant's mother is relatively younger at 46 years of age. Are the plaintiffs' older ages relevant to the issue of the infant's guardianship as the defendant had asserted in his affidavit? If that factor was taken in isolation I would agree but in this case, there were other considerations which compensated for that disadvantage as it were, namely, the support from and the closeness of the extended family which the plaintiffs had/have, both in Perth and in Singapore, which was sorely lacking on the defendant's side of the family. It is not possible for any court to look that far ahead and predict what would happen to the infant when the plaintiffs enter the twilight years of their lives; one can only determine what is best for the infant under current conditions and in the near future.

27. Finally, I did consider but dismissed, the defendant's objections that he did not want the infant to be brought up in a westernised environment (Perth). The plaintiffs were very much involved on a regular if not daily basis, with classical Indian music, dancing and instruments. What could be more traditional than those activities? They, their immediate and extended families came across as traditional Indians, as reflected in the fact that the defendant and E underwent a Hindu temple ceremony after the Registry wedding. The defendant's objections were totally baseless. Being

resident in a western country does not mean that a person automatically loses his culture and traditions, it all depends on an individual's personal beliefs.

28. Every case on custody/guardianship turns on its own facts. I decided that the facts in this case warranted that the plaintiffs, not the defendant or his mother, should have guardianship of the infant and raise him in Perth, bearing in mind the considerations set out in s 3 of the Act.

Sgd:

LAI SIU CHIU

JUDGE

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