

Kamla Lal Hiranand (m.w.) v Lal Hiranand
[2003] SGHC 171

Case Number : OS 1893/1999, SIC 601562/2002, 600208/2003, Suit 354/2003
Decision Date : 08 August 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Michael Hwang SC with Roslina Baba and Constance Tay (Ramdas & Wong) for the plaintiff; Kenneth Tan SC with Siva Murugaiyan and Parveen Kaur Nagpal (Sant Singh Partnership) for the defendants
Parties : Kamla Lal Hiranand (m.w.) — Lal Hiranand

Civil Procedure – Summons in chambers – Proper mode of application – Whether further applications may be made by way of summons-in-chambers where originating summons has been fully heard and finally disposed of or where there are material facts in dispute

Civil Procedure – Judgments and orders – Consent order – "Liberty to apply" clause in the consent order – Whether the plaintiff can rely on the liberty to apply clause to make an application by way of summons-in-chambers under an earlier originating process

Civil Procedure – Originating processes – Function of originating summons – Whether originating summons suitable where material facts in dispute

1 The plaintiff in this originating summons is the wife of the defendant. There were two summons-in-chambers before me, one taken by the plaintiff (Summons-in-Chambers No 601562 of 2002), and the other by the defendant (Summons-in-Chambers No 600208 of 2003). The plaintiff was seeking by her application to compel the defendant to take an account of the 'Trust Property' defined in a document entitled 'Last Will of Manghanmal Hiranand Ramchandani ('MHR') dated 22 November 1988 (the '1988 Will'). MHR is the father of the defendant and by the 1988 Will he purportedly bequeathed his estate in trust for the benefit of the plaintiff to the extent of 25% and the defendant 25%. The remaining portions were distributed in varying percentages to his grandchildren and the managers of his world-wide business. Padma Harilala and Ram Hiranand were named as the trustees and executors.

2 Originating Summons No 1893 of 1999 was filed on 7 December 1999, after the plaintiff had sued the two trustees and executors in Suit No 349 of 1999. The defendant in this originating summons was also named as the third defendant in Suit No 349 of 1999. The three defendants in the suit applied by way of O 14 r 12 for a final determination on a point of law, namely whether the 1988 Will was capable of creating a trust. The assistant registrar held that it could not. The plaintiff appealed and the High Court judge dismissed her appeal. She appealed to the Court of Appeal and her appeal there was also dismissed. The judgment of the Court of Appeal is relevant to the present proceedings and I shall revert to it shortly.

3 It is essential at this point to note that the High Court judge dismissed the plaintiff's appeal immediately after recording a consent order in respect of this originating summons. In short, on 8 December 1999 the plaintiff and defendant recorded a consent order before the High Court judge who, after recording the consent order, dismissed the plaintiff's appeal in Suit No 349 of 1999, thus, affirming the assistant registrar's finding that the 1988 Will was not capable of creating a trust. The said consent order which has now given rise to the fresh disputes in the form of the two summons-in-chambers before me is in the following terms:

'1. This Court DOTH DECLARE that in respect of the estate of Manghanmal Hiranand

Ramchandani @ Manghanamal Hiranand, deceased, the Defendant is bound by the trusts as set out in the document intituled the "Last Will of Manghanamal Hiranand Ramchandani" subscribed to by the said Manghanamal Hiranand Ramchandani @ Manghanamal Hiranand, deceased, on the 22nd day of November 1988;

AND IT IS ORDERED THAT:-

2. The Defendant do all and such acts as is necessary to carry out the said trusts;

3 There be liberty to apply in respect of other reliefs not sought for in this Originating Summons arising from the Deed dated 28th May 1999 made between the Plaintiff and the Defendant;

4. There be liberty to apply;

5. Costs be fixed at \$2,000.00 to be paid by the Defendant to the Plaintiff.'

4 Reverting now to the plaintiff's summons-in-chambers, I am of the view that there is no merit in it at all. To begin with, a summons-in-chambers is the wrong procedure to seek relief of the sort that is being made here. Originating Summons No 1893 of 1999 is spent. Orders have been made disposing of the summons, save for two liberty to apply clauses, which for reasons that I now give, do not apply. Generally, a 'liberty to apply' clause is meant to enable the parties to work out the actual terms of the orders. See *Christel v Christel* [1951] 2 KB 725 and *Koh Ewe Chee v Koh Hua Leong & Anor* [2002] 3 SLR 643.

5 Mr Michael Hwang, SC appearing as counsel for the plaintiff made a spirited submission that the plaintiff was relying more on the 'specific' liberty to apply clause than the general one. But I am of the opinion that the so-called 'specific' liberty to apply clause also has no application. The part of the order of 8 December 1999 that counsel relied on has no substance upon which the liberty to apply can apply. What does 'liberty to apply in respect of other reliefs not sought for in this originating summons' mean? Mr Hwang placed his focus on the words following the above, namely, 'arising from the Deed of 28 May 1999'. It appears to me that counsel was compelled to place the emphasis there because the order of court was a total and verbatim recital of the entire originating summons itself. There were no 'other reliefs' specified in the originating summons. So an emphasis on 'other reliefs not sought' would be wrong. But if there are reliefs to be obtained by virtue of the Deed of 24 May 1999 then this present summons-in-chambers was the wrong mode of action. The summons-in-chambers prayed for a large number of reliefs that were not even remotely contemplated in the originating summons itself. The said made provisions for various matters including the pending appeal before the Court of Appeal, the divorce, and payment of diverse monies to various parties. There appears to be some ambiguity in the text, but that is not a matter before me as the terms of the Deed were not pleaded, and therefore there was no joinder of issues. And, that compounded the problems for the plaintiff, who sought to obtain reliefs in respect of Trust Property 'referred to and defined in the document intituled the "Last Will of Manghanamal Hiranand Ramchandani" subscribed to on the 22nd day of November 1988'.

6 On this point, we need to refer to the judgment of the Court of Appeal reported in [2000] 3 SLR 696 to appreciate why the present summons-in-chambers was hopeless from the start. At ¶ 27 Thean JA precisely identified the root of the problem. He said that, 'the difficulty in the way is that the existence of such a trust hinges on the efficacy of the 1988 document, and the question is whether that document is capable in law of creating or evidencing a trust. The document is certainly

incapable of creating a trust.’ The learned Judge of Appeal expanded on this point in ¶ 29:

‘The question then is: how or in what manner was such a trust created? There is no averment or allegation, either in the pleadings or in the affidavit – not to say any evidence – of any other instrument or document creating such a trust or of any mechanism by which such trust was said to have been created. The appellant cannot rely on the declaration contained in the 1988 document as creating a trust. If she relies on that document as evidence, she must show where the trust is and how or by what mechanism it was created. Mere intention of the deceased and not expressed in any document is not enough.’

7 Hence, the plaintiff is now asking for an orders to compel the defendant into performing obligations which are not clearly or sufficiently set out in the originating summons. If, however, I accept that the reliefs that she now seeks are in the Deed of 28 May 1999, then her claim is a claim for breach of contract. A claim of that kind must be commenced by way of a writ and the contract and breach must be specifically pleaded. The submissions in the present hearing bear out the clearest indications that the defendant does, *prima facie*, have various valid and serious defences, but all that require a determination by trial. Duress and undue influence is hardly a matter for a summons-in-chambers hearing, even more so, on a summons-in-chambers arising from a vague and obscure order under a ‘liberty to apply’ clause.

8 For all the valid and persuasive arguments in favour of a common originating process, this application stands as an illuminating example of some of the short comings of a single mode of commencing legal action. The originating summons serves a useful function if lawyers abide by the purpose it is intended to serve, that is, where the material facts are not in dispute and the matter is one in which the court may make a clear and final order disposing of the dispute between the parties. Such disputes usually concern the interpretation of a clause in a contract, or the effect of a statutory provision, or rule of common law. Some matters are most efficiently dealt with through the originating process and such cases should not be burdened by the more ponderous writ action. But where material facts are disputed, short cuts via the originating summons route should be avoided and parties ought properly to begin the action by writ.

9 From the issues of fact and law that were raised before me in the present hearing, including the defendant’s counter-summons-in-chambers to set aside the order of court of 8 December 1999 on the basis of duress and undue influence, and the assertion that the 1988 Will was a forgery, it seems to me that too many issues are hazily expressed, and relevant ones have not been particularised with precision. What is the nature of the trust that the plaintiff is entitled to? Is the defendant a trustee, and if so, what are his obligations? If, as counsel for the plaintiff argued, that the defendant ‘is contractually bound by the settlement Deed of 28 May 1999’ then what are the terms and what are the breaches? These questions cannot be answered without taking the judgment of the Court of Appeal into account. Furthermore, there are important questions regarding the status and validity (let alone the import) of the Deed of 28 May 1999. It was a deed made months before the orders of the High Court on 8 December 1999, in respect of the originating summons as well as the appeal on a point of law under Suit No 349 of 1999. It is also important to note that the Deed of 28 May 1999 expressly provided that ‘for the removal of doubts, the parties agree that nothing in this Deed shall be construed as an admission by the [plaintiff] for whatever purpose of proceedings that:- (a) the 1986 Will and codicil was executed by the deceased; (b) the 1988 Will is legally defective or unenforceable; and (c) the 1983 Will has not been revoked and remains valid and unenforceable’. Is this provision still valid after the parties had proceeded with the appeal in the Court of Appeal concerning the validity of the trusts under the 1988 Will? I do not think so, but if the plaintiff has grounds to assert otherwise then, as I have said, those grounds must be pleaded fully; and she had not done so. For the above reasons, the consent order was somewhat of a red-herring because in

itself, there are no substantive matters upon which I can make any meaningful order save to dismiss the application itself.

10 The plaintiff's application by way of Summons-in-Chambers No 601562 of 2002 was therefore dismissed. I made no orders in respect of Summons-in-Chambers No 600208 of 2003 as the issues there have been rendered irrelevant by reason of the disposal of the plaintiff's summons-in-chambers.

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