

Lal Hiranand v Kamla Lal Hiranand
[2006] SGHC 98

Case Number : Suit 541/2004
Decision Date : 06 June 2006
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Kenneth Tan SC (instructed), Murugaiyan Sivakumar and Parveen Kaur (Sant Singh Partnership) for the plaintiff; Michael Hwang SC (instructed), Roslina Baba and Constance Tay (Ramdas & Wong) for the defendant
Parties : Lal Hiranand — Kamla Lal Hiranand

Contract – Duress – Undue influence – Whether deed of settlement executed by plaintiff in the absence of independent advice – Whether deed of settlement procured by actual or presumed undue influence or duress

Contract – Formation – Certainty of terms – Whether clauses too uncertain to be enforced – Whether uncertain terms could be severed from rest of deed

Succession and Wills – Formalities of will – Whether will was a forgery and therefore defective and unenforceable – Whether forged will enforceable in contract

6 June 2006

Tay Yong Kwang J:

1 The plaintiff was the husband of the defendant. They were married in a traditional Hindu ceremony in 1969. They have two sons (Shaon, aged 35 and Ravine, aged 29) and a daughter (Priya, now 31). The plaintiff commenced divorce proceedings in Hong Kong and has been granted a decree *nisi* by the court there.

2 Both parties have been involved in numerous disputes over the estate of the plaintiff's late father, Manghanmal Hiranand Ramchandani ("MHR"), who passed away on 30 August 1994. In the present action, the plaintiff sought an order that a deed of settlement executed by him on 28 May 1999 ("the 1999 deed"), purporting to settle all disputes between him and the defendant, be set aside and/or declared invalid and/or unenforceable on the grounds of duress and/or undue influence on the part of the defendant, her servants and agents, in particular, one Easwar Srikumar ("Srikumar"), said to be a spiritual guide and advisor. The plaintiff also wanted a sum of US\$700,000, paid out to the defendant's mother under the deed, to be returned to him by the defendant.

The plaintiff's case

3 The plaintiff, who was born on 21 April 1947 and who spoke several languages, including Japanese, French, Hindi, Arabic and the Cantonese dialect, resided in Hong Kong. Shortly after the honeymoon and upon his return to the family home there, his relationship with the defendant began to deteriorate. Despite his marital woes, the plaintiff was determined to fulfil his duties as a husband and father. He was also aware that his late father, MHR, was a very traditional Hindu and was strongly opposed to divorce.

4 After MHR (referred to by the family as "Dada") passed away in August 1994, the defendant, who was accustomed to a lavish lifestyle, made even more financial demands on him. She was also very suspicious about the plaintiff's eldest sister ("Padma"), whom she believed was trying to cheat

her and her children of their perceived entitlements under MHR's estate. She also believed that Padma and the plaintiff were conspiring to hide the estate's assets from her. As Padma and her husband, Hari Harilela ("Hari"), were the executors of MHR's estate, the defendant's relationship with both of them deteriorated.

5 In early 1995, the plaintiff was introduced to Srikumar in Singapore. Srikumar claimed to be a Hindu priest and spiritual head of the Sri Saktivilas Mission, a society registered here. The plaintiff was then in Singapore frequently as he had to close down one of the companies here and sell the 14 office units owned by that company. Over the next five to six years, Srikumar became an advisor and teacher to the plaintiff's entire family and was addressed as *guruji* by everyone in question. *Guruji* is a term of great respect used by Hindus. It means teacher, guide or advisor in the Hindi language. From then on, Srikumar played a pivotal role in all matters.

6 Srikumar was a charming, confident and eloquent man. He was always well-groomed and he had the ability to put others at ease. His manner inspired trust and confidence in others. During one of the meetings that the plaintiff had with Srikumar, the latter told him of his power to send spiritual force to those who were troubled or who were suffering physical ailments. The plaintiff did not disbelieve him although he did not experience such force personally. Srikumar also conducted special prayers for the family on several occasions, thereby enhancing the plaintiff's belief in his spiritual powers.

7 One incident of such special prayers was on the occasion of the first anniversary of MHR's death. The prayers were to be held at the family home at 8 Purves Road, Jardine's Lookout, in Hong Kong by a Hindu priest from Hong Kong. When Srikumar found out about this, he offered his services because, according to him, the prayers were very important and had to be performed properly. The plaintiff accepted his services and paid for his expenses in having to travel to Hong Kong. During the prayers, it started to rain and that was regarded as a shower of blessings. Everyone was very impressed by Srikumar. The plaintiff's three children were also "enchanted" by Srikumar, who appeared to be able to gain their trust and confidence almost immediately. From then onwards, everyone in the family addressed Srikumar as *guruji* and he became virtually a part of the family.

8 Looking back, the plaintiff believed that Srikumar capitalised on his respect for such spiritual men and that "this was all part of the psychological game that [he] played to portray himself as a powerful person and gain influence over [his 'disciples']".

9 In 1995 and 1996, the plaintiff began to spend more and more time in Singapore because of the uncertainties concerning the hand-over of Hong Kong in July 1997. He contemplated moving his businesses and his family to Singapore. The defendant and the children were also putting pressure on the plaintiff regarding money and their shares in MHR's estate. All this stress caused the plaintiff to feel emotionally and physically drained. Further, as he was not in Hong Kong, he did not have the emotional support of his friends and relatives.

10 Srikumar must have sensed the plaintiff's troubles and loneliness as he began to visit the plaintiff's flat in Cairnhill Plaza and his office at Circular Road more frequently. The plaintiff confided in Srikumar and told him about his family difficulties. He told the plaintiff that he should consider him (Srikumar) as a replacement for Dada and that he would take care of everything and help the plaintiff and his family get over their problems. The plaintiff found this very soothing and reassuring.

11 At around the same time, Srikumar was also assisting the defendant. He travelled to Los Angeles in the US, where the plaintiff and the defendant owned a house, at the request of the defendant to help her overcome her bad dreams. Srikumar also asked the plaintiff for US\$7,000 for

another trip to Hong Kong to help the defendant do some special prayers. The plaintiff gave him the money as he believed in Srikumar's spiritual abilities. Srikumar was also engaged to perform prayers at the opening of various offices and businesses in Singapore and in Chicago in the US.

12 MHR left a will dated 24 April 1986 and a codicil dated 16 October 1987. ("the 1986 will"). The beneficiaries under the 1986 will were the plaintiff and his mother but, as his mother had predeceased MHR, the plaintiff became the sole beneficiary. He began taking out probate in the various jurisdictions in which MHR had assets, starting with California in the US. Until he was misled to believe otherwise by the defendant and Srikumar, the plaintiff believed that the 1986 will expressed the true wishes of MHR.

13 The plaintiff returned to Hong Kong in June 1997 just before the hand-over of the former British colony to China. By this time, he had given up plans of moving his corporate headquarters to Singapore as a director did not wish to do so. The plaintiff was also focusing on the Middle East. He applied for probate of the 1986 will in Hong Kong, which he obtained in May 1998. During this time, the defendant and the children were constantly harassing the plaintiff for money. The defendant went to the law offices of the plaintiff's solicitors in Hong Kong to demand a copy of the 1986 will. Under instructions from the plaintiff, she was not given a copy thereof as it was not appropriate for her to be shown the 1986 will at that time. She was also not a beneficiary under the said will. The defendant made a scene and accused the plaintiff of cheating her.

14 It was also around this time that the defendant alluded to a competing will of MHR for the very first time. The plaintiff, who was at his desk at home, was surrounded by the defendant and his sons. The defendant held a folded document in her hand and flashed it at the plaintiff, threatening to put Padma in jail. The defendant claimed that the document was MHR's true will but did not let the plaintiff read it.

15 On another occasion, during the defendant's birthday dinner in November 1997, she made a scene and complained loudly to all present that Padma and the plaintiff had hidden MHR's assets and was not being fair to her and the children.

16 On 28 November 1997, the plaintiff's primary legal advisor, Christopher Sly ("Sly"), had a meeting with the defendant and her three children in his office in London. The plaintiff waited outside but could see through the glass partition that the defendant and Shaon were getting visibly agitated. Sly went out to inform the plaintiff that Shaon had demanded a copy of the 1986 will. The plaintiff told him that a copy thereof could be given to the defendant and the children.

17 In December 1997, the plaintiff left Hong Kong owing to the incessant disputes that he was having with the defendant and the children. From early 1998 to the middle of 1999, he spent most of his time in the Middle East or in Singapore. During this period, he continued to meet Srikumar in Singapore for counsel and advice. However, he continued to receive calls and letters from the defendant and the children, with Shaon as the spokesman.

18 The executors of the 1986 will wanted to take out probate in Singapore but were prevented from doing so by a caveat lodged by the defendant's solicitors here. In August 1998, the plaintiff's solicitors wrote to the defendant's solicitors to ask about the interest that the defendant was claiming in MHR's estate. Her solicitors replied that she was claiming an interest "as a beneficiary and a member of the family of the deceased". There was no mention of a competing will even when the plaintiff's solicitors asked for the basis of her claim as a beneficiary.

19 The defendant then commenced an action in Singapore (DC Suit No 51362 of 1998,

subsequently transferred to the High Court as Suit No 349 of 1999) ("the Singapore probate action") against the two executors and the plaintiff to dispute the validity of the 1986 will. She claimed that a trust in MHR's estate had been set out or evidenced in a will made by MHR on 22 November 1988 in California ("the 1988 will"). A copy of the 1988 will was handed over to the plaintiff's solicitors during a hearing in the District Court in October 1998. That was the first time that the plaintiff saw the alleged competing will. Under the 1998 will, the plaintiff and the defendant would receive 25% each while the three children would receive 15% each. The remaining 5% in MHR's estate was to go to MHR's business managers who had served for ten years or more. The executors named in the 1988 will were Padma and the plaintiff's cousin, Ram Hiranand.

20 The plaintiff spoke to Padma about the 1988 will and was informed that it could not be a genuine will. The plaintiff was also subsequently advised by his Californian lawyer that the 1988 will was defective as it did not comply with the formalities of Californian law. However, the defendant persisted in the legal dispute and this caused the plaintiff to be depressed and to suffer from insomnia. He resorted to taking sleeping pills and alcohol. His mental and physical health deteriorated. In March 1999, he saw a doctor in Singapore and was prescribed medication. On 27 April 1999, an assistant registrar of the High Court of Singapore ruled in the probate action taken out by the defendant that the 1988 will was not capable of being a will and dismissed the action. By May 1999, Srikumar and the defendant were able to cause him to doubt whether the 1988 will represented MHR's wishes. Because of his depression and severe mental stress together with the side effects of the medication and alcohol, his recollection of events in 1999 and 2000 was a little unclear.

21 In the meantime, from the end of 1997 onwards, the defendant and the three children were spending extravagantly despite the plaintiff's explanation to them that the 1997 economic crisis had affected his wealth adversely. The plaintiff was afraid that he would become bankrupt if he allowed them to continue spending in the same way. He therefore terminated their supplementary credit cards. This caused such a strong reaction that he had to restore them a few months later. He asked his Hong Kong solicitors to work out a suitable arrangement with the defendant regarding her expenses.

22 During this time, the plaintiff continued to see Srikumar once in a while. He thought that Srikumar would be able to help him persuade the defendant and the children about their foolish ways. He did not realise then that Srikumar was instead helping the defendant to fight, rather than to help, him.

23 The plaintiff's mental health suffered because of the unreasonable financial demands made by the defendant and the children. They were also constantly threatening to take legal action against him and Padma which they claimed would result in their imprisonment because of certain incriminating evidence that they claimed they possessed. The plaintiff was verbally abused and relentlessly harassed by them.

24 Ravine would be graduating on 8 May 1999 from his studies in Geneva while Priya would be graduating on 15 May 1999 from her studies in London. The plaintiff wanted very much to be with his family on these happy occasions and hoped to reconcile with them although he knew that he would be put under tremendous pressure again by their financial demands. His solicitors agreed with the defendant's solicitors that the family, together with the legal advisors, would meet in London to resolve their differences. It was also agreed that Srikumar attend the meeting to help both sides.

25 On 5 May 1999, the plaintiff arrived in Geneva from the Middle East. Ravine and his guardian met him at the airport. Ravine was very quiet but looked extremely angry. The plaintiff travelled to the Beau Rivage Hotel in the guardian's car while Ravine drove his own car. As soon as the plaintiff

entered the hotel room, Ravine literally exploded, shouting furiously at and abusing him. He accused the plaintiff of ill-treating his family and claimed that Priya was living in London like a beggar because she had no money. This, the plaintiff claimed, was untrue as he had just agreed to buy his daughter a Mercedes Benz sports car costing some £39,000. Ravine also accused him of preventing his mother and Shaon from attending his graduation by not allowing them to return to the family home in Hong Kong should they leave it. The plaintiff tried to explain to Ravine that that was not the case but he refused to listen.

26 Ravine then showed a document which he said the plaintiff had to sign before the defendant and Shaon would leave Hong Kong. He said that Shaon would be faxing a copy of the same to him. Ravine then left the hotel, leaving the plaintiff deeply distressed by the emotional blackmail.

27 Ravine returned to the hotel that evening and asked whether the plaintiff had received the document from Shaon. When Ravine was told that he had not received it, Ravine telephoned Shaon. The plaintiff and Ravine then went for dinner together. After dinner, the plaintiff returned to his room and found a draft "Affidavit/Guarantee" faxed over by Shaon. In the said draft, the plaintiff was to affirm his willingness to settle the dispute concerning MHR's estate out of court and to carry out the wishes of MHR according to the 1988 will. He was also to establish a new family trust for his "direct family" and would instruct his solicitors worldwide to comply with the undertakings set out in the draft. He was also to bear the expenses of his family's visit to Geneva to attend Ravine's graduation and to agree never to cancel his family's credit cards without proper explanation and advance notice. He would also ensure that his family could continue to use the family home at 8 Purves Road in Hong Kong. The plaintiff was not willing to sign the draft because, apart from the last stated obligation, the other terms had not been discussed. He spoke to Sly who advised him on the implications of signing the draft. He was aware that the court in Singapore had already ruled that the 1988 will was invalid in law. He therefore did not sign this document.

28 The next day, the plaintiff spoke to the defendant and to Shaon over the telephone. He told them to go to Geneva for the graduation ceremony on his undertaking that they could return to the family home in Hong Kong. He also asked Sly to confirm in writing to them that Padma had no authority over the said family home. That was not acceptable to the defendant and the two sons. The plaintiff's decision not to sign the draft "Affidavit/Guarantee" infuriated Ravine, "as a result of which the pressure and emotional blackmail escalated exponentially". The harassment continued unrelentingly over the day and into the night and the plaintiff was completely worn down and extremely depressed by his family's tirade. In this "debilitated state", he was pressurised into signing a modified version of the said draft on 7 May 1999 without the benefit of legal advice. He felt he had no choice but to sign. To get some respite, he therefore went before a notary public in Geneva and signed the document, believing that it merely expressed an intention to reconcile with his family and an assurance that they would not be prevented from returning to the family home in Hong Kong. This "Affidavit" declared the following:

1 I ensure absolute security to all of my members of my family, & bear all costs for the trip to Europe & back to Hong Kong.

2 I direct all my Lawyers, & all other agents Worldwide to take note of my intention to settle the dispute arising out of the Will of my Late Father, Manghanmal Hiranand Ramchandani, out of the courts.

3 I will restore all assets & wealth held under my control after my Fathers [sic] death into a family trust comprising of all my immediate members of my immediate family as "Life Trustees".

4 With this affidavit, I declare that I Promise to settle all matters to the satisfaction of my immediate family, in the matter of the Estate of The Late Manghanmal Hiranand Ramchandani, as indicated in his Will & testamentary deposition of 22nd Of November, 1988 out of the courts.

5 I declare & confirm that no action or steps will be taken by myself or any other trustees to restrict or prevent any of my family from returning, to live & use 8 Purves Road, Jardines Lookout, Hong Kong.

6 This Affidavit is made with sound condition of mind, without any duress & prejudice in my attempt to settle this dispute arising out of my Late Fathers [sic] Estate.

7 I declare Under perjury & penalty under the laws worldwide that the forgoing facts are true & correct, Sworn on this 7th day Of May, 1999, At Geneva, Switzerland.

The plaintiff signed this document, with Ravine also signing as a witness, before a notary public in Geneva.

29 After this document had been executed by the plaintiff, the defendant, Shaon and Priya went to Geneva to attend Ravine's graduation. The plaintiff was in a very depressed state. The whole family then left for London on 13 May 1999. Although the plaintiff had a reservation in the Conrad Hotel in London, he agreed, after some persuasion by the defendant and the children, to stay with them in Priya's flat in Gloucester Park. He was still hopeful that his relationship with them would improve.

30 In London, the plaintiff was told that the defendant's solicitor from Singapore could not go to London and the proposed meeting involving the family and the respective lawyers therefore could not take place as planned. Gulu Lalvani ("Gulu"), the former husband of Vimla, the defendant's sister, then contacted the plaintiff and invited him to his home so that he could try to resolve the differences between the plaintiff and the defendant. The plaintiff was reluctant to go but relented due to Gulu's persistence.

31 On 16 May 1999, the plaintiff went to Gulu's house. The defendant was already there. The defendant kept insisting that the 1988 will was the real will of MHR, made for the benefit of the entire family, and that it expressed MHR's wishes. Gulu repeated what the defendant said. The plaintiff agreed under cross-examination that the defendant did not talk much at that meeting. Gulu then scribbled some notes on a piece of paper and handed it over to the plaintiff. Despite Gulu's request that the plaintiff and the defendant sign the handwritten note, both of them declined to do so as they did not agree with the contents which read (with the plaintiff being referred to as Lal and the defendant as Kamla):

Points agreed between [Kamla] and Lal on 16/5/99

1) Lal will disclose all his personal and business assets to Kamla and Shaon during the week beginning 17/5 at Christopher Sly's office with a view of distributing the assets according to the 1988 Will and Testamentary disposition.

2) It is the wish of both Kamla and Lal who both love each other to be together like the way they were on the day they got married on July 17th '69.

3) Both Kamla and Lal agree to never bring up the past problems they have had with each other and have an open communication with each other, better than ever before.

- 4) Both sides agree to implement the above point 1 into a legal agreement by 30/5/99 and points 2 & 3 to be implemented with immediate effect.

32 After the fruitless half-hour meeting, Gulu proceeded to have his lunch. The plaintiff stayed on as Gulu said Vimla, his former wife, was on her way there. When Vimla arrived, she appeared intoxicated and shouted loudly at the plaintiff. The defendant still wanted the family to meet Srikumar to try and reach a solution. The plaintiff agreed to meet Srikumar as he had already asked Sly to correspond with the defendant's solicitors to work out a draft agreement and did not want to jeopardise the negotiations. The plaintiff was hopeful that a solution could be found so that he could be with his family again.

33 The plaintiff added that he had legal advisors in London, Hong Kong, Los Angeles and Singapore, with Sly being the one he had the longest association with. The plaintiff would always consult his legal advisors on important matters and would not normally make any important decision or sign any document without consulting them, especially Sly. Therefore, although he had agreed to meet Srikumar without Sly's presence, he had every intention of consulting Sly. When the plaintiff arrived in London, he updated Sly on the events in Geneva and the proposed meeting without the presence of legal advisors.

34 Srikumar arrived in London a few days later. The plaintiff claimed that his recollection of the events in the next one week was not very clear although he recalled having several long meetings with Srikumar together with his family at the flat in Gloucester Park. Srikumar visited often and would counsel the plaintiff in front of the family. He told the plaintiff that he should retire and let Shaon run the businesses and that he should ensure that his family was happy and well taken care of. The plaintiff was still very disturbed and depressed at that time. He had a lot of conflicting emotions. While he wanted to be with his family and be happy, he knew that handing over the businesses to his extravagant and inexperienced sons would result in financial disaster. This caused him further emotional distress and he had trouble sleeping.

35 Srikumar also told the plaintiff that he should respect MHR's wishes set out in the 1988 will which was a fair distribution of the estate. He repeatedly told the plaintiff that the 1988 will was MHR's real will. The plaintiff was very confused and remained silent most of the time. The defendant would reinforce what Srikumar had said about the 1988 will. Further, the defendant and the children continued to pressurise and harass him by reminding him that they had incriminating evidence against him. Whenever he wanted to consult Sly, Srikumar would tell him that it was a family matter which should be resolved without outsiders. Srikumar also told him that he should regard Srikumar as a replacement for Dada (MHR) and listen to him. The plaintiff's mind became so clouded by the "brainwashing" by Srikumar and the family that he began to think that the 1988 will might indeed represent MHR's wishes. After all, the assistant registrar of the Singapore High Court had not made a ruling on the authenticity of the 1988 will.

36 In the evening of 27 May 1999, Srikumar produced a deed which he had apparently drafted but later claimed was drafted by the defendant's solicitors. He told the plaintiff that he would have to sign it the next day, after which everything would be resolved. The plaintiff was allowed only a quick glance at the deed before Srikumar took it back. He could not remember or understand its terms. He asked to speak to Sly but was told by Srikumar that there was no need to do so as he had made sure that the deed covered every aspect. In his emotionally-drained state, the plaintiff agreed to sign the deed without legal advice, something he would not have done but for the relentless pressure from his family and Srikumar.

37 On 28 May 1999, all of them went to a law office where the plaintiff executed the 1999 deed, which was one between him and the defendant. When Srikumar discovered that the lawyer who had witnessed the signing was not a notary public, he insisted that the deed be re-executed. They therefore proceeded to another law office where the plaintiff re-executed the 1999 deed. The plaintiff testified that he did not even have the opportunity to review the terms of the deed. He claimed that he had been tricked into believing at that time that the 1988 will expressed MHR's wishes, given his physical and mental state then. His family was shouting at him, telling him that the matters contained in the deed were what MHR wanted.

38 Under the 1999 deed, the plaintiff and the defendant were said to have reached a "full and final settlement of all matters arising out of" Suit No 349 of 1999, in which an appeal against the assistant registrar's decision was then pending, and "of all their present differences". The plaintiff agreed to instruct his solicitors not to proceed with the divorce proceedings and to settle all matters in dispute out of court. He also undertook:

... to implement and faithfully carry out all the wishes of [MHR] as manifested and executed by the deceased in the 1988 Will both in substance and according to the spirit of the 1988 Will notwithstanding that the 1988 Will may in any way be defective or unenforceable in law.

He further agreed to remit US\$1m each to the bank accounts of his three children and US\$2m to the defendant's account before 10 August 1999. He also agreed to remit US\$700,000 into the bank account of the defendant's mother "towards the reimbursement to her of all costs and expenses incurred within ten days".

39 Under cl 6 of the 1999 deed, the plaintiff agreed to have Shaon appointed as the managing director of all Hiranand family companies, listed out in "Schedule 1", as soon as possible. To achieve this, he agreed to transfer shares in the family business to Shaon. The plaintiff claimed that he only realised recently that the said "Schedule 1" was not even annexed to the deed.

40 Clause 8 of the 1999 deed required the plaintiff to remove Padma and her husband as the trustees and executors of the 1986 will and codicil and Padma and Ram Hiranand as the trustees and executors of the 1988 will. He would appoint in their place such person(s) as would be approved in writing by the defendant. He would also ask Padma and her husband to return to him all the assets and money belonging to him. He would further revoke all his wills and codicils and make a fresh will leaving his entire estate to the defendant and the three children in such proportions as he deemed fit.

41 The 1999 deed concluded as follows:

For the removal of doubts, the parties hereto agree that nothing in this Deed shall be construed as an admission by [the defendant] for whatever purpose of proceedings that:-

- (a) the 1986 Will and codicil was executed by [MHR];
- (b) the 1988 Will is legally defective or unenforceable; and
- (c) the 1983 Will has not been revoked and remains valid and enforceable.

42 Some two weeks later, Srikumar and the defendant told the plaintiff to transfer the agreed amount to the defendant's mother in Hawaii. He complied under their influence. He then returned to Hong Kong while the defendant remained in Europe. He was still very depressed and emotionally distraught. His condition deteriorated to the extent that his employees had to send him to the

Adventist Hospital in Hong Kong. He was admitted on 19 June 1999 and discharged two days later.

43 Padma was very upset with the plaintiff for signing the 1999 deed and they became estranged. Padma's husband was also very upset with him. This caused the plaintiff to be even more depressed as Padma had stood by him while he was having difficulties with his family. He was re-admitted to hospital on 6 July 1999 and remained there for four days during which he was attended to by a psychiatrist, Dr Eileen Feeney ("Dr Feeney"). The plaintiff was feeling suicidal and, upon his discharge from the hospital, his doctors insisted that he have home nursing care.

44 Padma and her husband decided to obtain a discharge and an indemnity in relation to their administration of MHR's estate. Thus, on 12 July 1999, the plaintiff attended before a solicitor and signed a "Form of Receipt and Discharge" which was explained to him.

45 In mid July 1999, the defendant, the three children and Srikumar arrived in Hong Kong. They wanted the plaintiff to implement the terms of the 1999 deed quickly despite his mental and physical condition. Srikumar and Shaon would sit in his room and talked to him for hours, reminding him to respect MHR's wishes expressed in the 1988 will. The defendant and Srikumar decided to terminate his home nursing, with Srikumar claiming to be able to cure him with music therapy. This was denied by the defendant who claimed that the plaintiff discharged his nurses as he was feeling better and that he did not visit Dr Feeney for follow-up treatment because she was on maternity leave then.

46 Towards the end of July 1999, the plaintiff and his family were in Madrid attending a wedding. After that, the plaintiff decided to leave for a resort to rest and to recover from his depression and ill health. However, the defendant and Priya followed him there and badgered him about the wills again. Between July 1999 and February 2000, Srikumar claimed that he had incurred a lot of expenses on behalf of the plaintiff and his family and asked for reimbursement. The plaintiff paid him a total of US\$875,000 and \$112,550 during that period. He said he would not have done so if Srikumar had not exerted such strong influence over him during his weak and depressed state of mind.

47 Srikumar told the plaintiff that he would be taking him (the plaintiff) to a notary public to sign a statutory declaration confirming the provisions of the 1999 deed. He also told the plaintiff that the statutory declaration could be used against Padma if necessary and that it would strengthen the family's position against Padma.

48 On 18 August 1999, Srikumar brought the plaintiff to the office of a notary public in London. The plaintiff had not seen the document that he was supposed to sign. Shaon and Ravine went with them. At the said office, the plaintiff felt very intimidated by the presence of his sons and Srikumar. When the notary public asked the plaintiff whether he understood the document that he was about to sign, he felt he had no choice but to answer in the affirmative when that was not true. He was afraid of what might happen if he refused to sign. He therefore signed the document that day ("the 18 August 1999 statutory declaration"). In this statutory declaration, the plaintiff referred to the Singapore probate action and stated that he had sent a facsimile dated 6 October 1994 to Sly in London, a copy of which was annexed to the statutory declaration. He affirmed that the contents of the said facsimile were true. He also stated that the 1986 will was not the will of MHR as it was "organised" by the executors in September 1994 and MHR had passed away on 30 August 1994. He went on to state that he had been in a confused state since the demise of MHR and that Padma had been domineering, controlling his affairs and poisoning his mind against the defendant and the three children. He also claimed that he had no intention of defending the Singapore probate action but Padma went ahead nevertheless to instruct solicitors, insisting that he left everything to be decided by her. He said he was "completely under her influence and her domination" and was trying to rectify what had happened but found it difficult to do so as he was still under her control and influence from

time to time. He also confirmed having signed the 1999 deed and that he had every intention to carry out his obligations under that deed.

49 When he signed the statutory declaration, he believed that the 1988 will reflected the true wishes of MHR. He did not have the benefit of independent legal advice then. The statutory declaration contained a facsimile dated 6 October 1994 purportedly sent by the plaintiff to Sly. The plaintiff claimed that this facsimile was a forgery because it was unsigned and did not have a date/time stamp. He did not recall having written such facsimile. In any event, Sly, the supposed recipient of the facsimile, had no record of having received it from the plaintiff. The plaintiff claimed that he had a system of marking all documents faxed or posted by him. In this case, "fx/LH4" would mean that that was the fourth facsimile sent by the plaintiff that day. However, there was another facsimile of the same date, also addressed to Sly, bearing the same reference number. That second document, according to the plaintiff, was the genuine facsimile. It had the transmission time recorded at the top of the page together with the facsimile number of the plaintiff's office in New India Emporium in Singapore. The allegedly forged document spoke of the executors of MHR's will having earlier organised another will prepared in September 1994, which the plaintiff was nervous about taking out probate on. It also showed that the plaintiff said that he was following the advice given by Sly and another on US tax issues "if I insist on the 1988 'will'". It was clear to the plaintiff now that the 18 August 1999 statutory declaration had been designed for him to affirm the allegedly forged facsimile, which the defendant could then use to show that the 1988 will was genuine. After all, he was made to affirm the said statutory declaration after the defendant had lost in her application before the assistant registrar in the Singapore action.

50 Srikumar also asked the plaintiff to sign a power of attorney appointing Srikumar to carry out the terms of the 1999 deed. The plaintiff signed it in the office of the notary public without having read it. Srikumar did not say that the power of attorney was linked to his carrying out of the terms of the 1999 deed. He merely said that he would be able to take care of things for the plaintiff. Srikumar also made the plaintiff sign a letter addressed to his Singapore lawyers to discharge them from acting for him in the Singapore probate action.

51 In August 1999, Srikumar and the plaintiff's family wanted the plaintiff to go to Jersey, Channel Islands, as they believed that he had hidden away assets in trust companies managed by Quorum Trust there. Feeling suicidal and entirely helpless, the plaintiff arranged for Srikumar, Shaon and himself to go to Jersey so that Srikumar and Shaon could inspect the trust accounts. There, they were attended to by Stephen Fitzgerald, a trust officer employed by the Quorum Trust Group. They spent two hours going through all the relevant trust accounts. Srikumar seemed the most interested and was the one calling the shots. The plaintiff was silent most of the time, even when Srikumar shouted at him (something denied by Shaon). The next day, all of them went to Banque Nationale de Paris's Jersey branch where US\$40,000 was transferred from one of the companies in the trust to Srikumar's bank account. Again, the plaintiff was very subdued and it was Srikumar who was giving him instructions.

52 After the trip to the United Kingdom, the plaintiff came to Singapore and remained here until 22 December 1999. During that time, Srikumar would go to see him often to tell him what to do. Srikumar was concerned that the plaintiff should not resist the appeal against the assistant registrar's decision, invalidating the 1988 will. Srikumar wanted the plaintiff to appoint Mr Aziz Tayabali as his lawyer but after the plaintiff had met Aziz Tayabali, Srikumar said that he was not happy with that lawyer and wanted the plaintiff to appoint Mr Jeffrey Beh instead. The plaintiff agreed to do so.

53 One or two days before the appeal against the assistant registrar's decision was heard, Srikumar, the plaintiff, the defendant and Shaon were in Jeffrey Beh's office. Srikumar told the lawyer

that the family had reached a settlement. When the lawyer asked the plaintiff whether that was so, he felt he had no option but to agree. Srikumar also told the lawyer that the plaintiff was not well and the lawyer was to inform Srikumar about all developments and consult him.

54 The plaintiff was still undergoing severe depression at that time. A few days later, Srikumar told him to confirm to Jeffrey Beh that he would consent to an order being made against him in Originating Summons No 1893 of 1999. The plaintiff did as instructed. When the lawyer asked the plaintiff whether Srikumar, the defendant and Shaon had explained everything to him, the plaintiff said they had. The consent order recorded by me on 8 December 1999 provided:

1 This Court DOTH DECLARE that in respect of the estate of [MHR], deceased, the [plaintiff] is bound by the trusts as set out in the [1988 will].

AND IT IS ORDERED THAT:-

2 The [plaintiff] 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 [1999 deed];

4 There be liberty to apply;

5 Costs be fixed at \$2,000.00 to be paid by the [plaintiff] to the [defendant].

In the quotation above, I have referred to the parties in the capacity in which they appeared in this suit.

55 In October 2002, the defendant sought to enforce the above consent order against the plaintiff in the High Court in Singapore. Choo Han Teck J held (in *Kamla Lal Hiranand v Lal Hiranand* [2003] 3 SLR 198) that the consent order was not enforceable. On appeal by the defendant, that decision was upheld by the Court of Appeal.

56 On 18 December 1999, due to pressure from Srikumar and the family, the plaintiff made a will appointing Srikumar and Srikumar's wife as executors and trustees and naming the defendant and the three children beneficiaries of his estate. When the plaintiff recovered from his depression, he revoked that will.

57 On 22 December 1999, the plaintiff returned to Hong Kong with Srikumar. Upon arrival there, Srikumar took away the plaintiff's passport, purportedly for safekeeping. Srikumar never returned the passport to him. The defendant and Shaon continued to put pressure on the plaintiff to transfer assets to them. The situation got so intolerable that the plaintiff moved out of 8 Purves Road in February 2000. He was reported to be a missing person but returned home a few days later as he still wanted to be with his family. However, things got worse. The harassment to execute documents and to carry out the terms of the 1999 deed and the 1988 will continued. The plaintiff suffered from insomnia and was acutely depressed.

58 In March 2000 in Hong Kong, Shaon showed the plaintiff a document, which he said, was an inventory of items taken out from MHR's safe deposit box with Hongkong and Shanghai Banking Corporation ("HSBC") shortly after MHR's death. The defendant, Ravine and Srikumar were also present. This inventory dated 14 November 1994, signed by the plaintiff and representatives from the Hong Kong Estate Duty Office, showed that the 1988 will was one of the items in the safe deposit

box. The plaintiff said he was not aware that the 1988 will was inside and that the inventory did not appear to be the one he had signed in 1994. However, as his mind "was in disarray", he did not pursue the matter. He has since verified from the Hong Kong Estate Duty Office that the copy of the inventory in its possession did not have any reference to the 1988 will and that the one shown to him by Shaon must therefore have been tampered with, probably by Shaon or by Srikumar. Further, Part B of the inventory form had not been signed to acknowledge the receipt of any will and the form indicated that removal of a will of a deceased was permitted only if the person requesting it was the named executor in the will.

59 In April 2000, the defendant and Srikumar made the plaintiff sign a statement disputing again the validity of the 1986 will and acknowledging the authenticity of the 1988 will. The plaintiff did not have legal advice before he was made to sign the statement. Srikumar told him that the statement would protect his family and assist in the family's fight in court against Padma. Although the statement referred to 19 pages of attachments, none was attached when the plaintiff signed it.

60 In May 2000, the plaintiff moved out of his home in Hong Kong. This, he said, was precipitated by two incidents. The first was when Priya, leaving for the airport, said that the defendant had told her to tell the plaintiff that she (the defendant) was waiting for him to die as she needed the money. The second was when Ravine returned home intoxicated one night and verbally abused the plaintiff in the presence of the defendant and threw a credit card in his face. By that time, the plaintiff decided that he could not tolerate the abuse any longer and decided to leave his home. It was clear to him then that his family was only interested in his money.

61 After leaving home, the plaintiff's condition improved and he began the "long and continuing journey to put right all the mistakes that [he] had made whilst [he] was suffering under the influence of Srikumar, the defendant and [his] children". One of the first things he did was to commence divorce proceedings against the defendant in Hong Kong on 29 July 2000 on the ground of her behaviour. In August 2000, he revoked the power of attorney given by him to Srikumar. In 2001 and 2002, he assisted the Hong Kong police in its investigations into the forgery of the inventory relating to the safe deposit box.

62 Having recovered from his depression, the plaintiff was now certain that the 1988 will was a forgery and therefore not an expression of MHR's wishes for the following reasons:

- (a) The original was never produced in court.
- (b) His mother's name was misspelt, with the "i" missing from her first name, Bhagwanti.
- (c) MHR was not in Los Angeles on 22 November 1988, the date of the purported will.
- (d) The partners of the law firm which purportedly drew up the 1988 will had given evidence in the Singapore probate action that the said will was a forgery.
- (e) The Court of Appeal in the Singapore probate action (in *Kamla Lal Hiranand v Harilela Padma Hari* [2000] 3 SLR 696) referred to "compelling evidence" that the 1988 will was indeed a forgery.
- (f) The High Court in Hong Kong, in proceedings disputing the validity of the 1986 will, referred to the Singapore judgment and concluded that the 1988 will was undoubtedly a forged document.

(g) MHR was a strong and forthright man and would not have kept the 1988 will a secret from his family members and have it hidden with his medicine as suggested by the defendant in the Singapore probate action. He was also an experienced businessman who would have instructed lawyers to draft a proper will instead of the botched-up 1988 will. He was also a very traditional Hindu who believed that only sons inherited from their fathers, certainly not a daughter-in-law or grandchildren.

63 In the present action, Norris Bishton, Jr, an attorney who has been practising in the US for some 45 years, testified much along the same lines as he did in an affidavit filed in the Singapore probate action (see the decision of the High Court at *Kamla Lal Hiranand v Harilela Padma Hari* [2000] 2 SLR 479 at [21] and [22]). He concluded that the 1988 will was not drafted by his former law firm in California, that it did not comply with the requirements of California law in respect of wills and it was a forgery.

64 Dr Feeney, a psychiatrist, saw the plaintiff in Hong Kong when he was hospitalised between 7 and 10 July for major depression. She then examined him on a daily basis until 17 July 1999 when he appeared to be coping and managed to go to his office briefly on a few occasions. The plaintiff was having 24-hour nursing supervision. When she was going on maternity leave, she passed on the plaintiff's care to her colleague but the plaintiff did not go for follow-up treatment. In her opinion, 80% of patients who suffered from major depression recovered within one year while the other 20% could suffer recurrent bouts of illness and would require a longer period of treatment. She was of the view that the plaintiff's condition had developed over a two-year period and that it was linked to his family problems. His major depression impaired his ability to make decisions and to function. He appeared also to have a vulnerable and somewhat childish character which made him prone to being unable to cope with the stress he was under. His actions at times were not rational and he was not fit to sign any legal documents while under the effects of the depression.

65 Dr Patricia Miach, a clinical psychologist working in Monash Medical Centre, Australia, saw the plaintiff in June 2003 and administered several psychological tests on him. She was of the opinion that the plaintiff was psychologically immature with a child-like personality and a strongly-felt need to be taken care of. He was socially isolated, thus making him more prone to be unable to cope with stress. The plaintiff also suffered from features of a schizotypal personality disorder and was prone to develop a transient psychotic episode under stress and those personality features would likely make him unfit to make sound decisions if he was under significant stress. In her opinion, for a patient to fake the test results, he would have to be very intelligent and know something about psychology.

66 Adisheshappa Rao, a retired professor and former head of the Department of Botany in the National University of Singapore, said that he had gained some experience and knowledge over the years in studying the Hindu religion. He was asked for his opinion on the role and influence of a guru in Hindu ethos and society. In his opinion, a guru was the manifestation of God in human form and he shed light to dispel the ignorance of his disciples. A disciple completely surrendered to his guru without question as obedience to the guru was the law of life for a disciple. A disciple could cease to be one if he ceased believing.

67 The evidence of Jeffrey Beh, the plaintiff's former solicitor, was admitted without calling him as a witness. Jeffrey Beh confirmed that it was Srikumar who introduced the plaintiff to him. The plaintiff signed a warrant to act, faxed it to Jeffrey Beh and subsequently went to his law office to confirm the said warrant. The oral and written instructions given by the plaintiff were clear. The lawyer had met the plaintiff together with Srikumar and Shaon but had also taken instructions from the plaintiff directly and alone on a few occasions. Srikumar did not tell Jeffrey Beh that the plaintiff was unwell or that he was to inform Srikumar of all developments and consult him. Jeffrey Beh

confirmed that he was acting for the plaintiff and took instructions from him at all times. The plaintiff also did not tell the lawyer that he had a medical condition. When the plaintiff went to the law firm to execute a transfer of a half share in an apartment in Cairnhill Plaza to the defendant in December 1999, Jeffrey Beh was satisfied that the plaintiff executed the transfer voluntarily. On 7 August 2000, his law firm handed over the plaintiff's files to another law firm which had written to say that it had taken over as the plaintiff's solicitors.

The defendant's case

68 The defendant said that MHR loved his grandchildren very much and treated her like a daughter. The plaintiff, however, had frequent quarrels with MHR on the way the family business was run and on the plaintiff's extravagance. The plaintiff was incensed over how MHR wanted to provide for the defendant and the three children. He went to the extent of doing a deed poll to remove the family surname (Ramchandani) from his name in September 1986. Due to the frequent quarrels with MHR, the plaintiff moved his family (the defendant and the three children) to Singapore around 1991.

69 MHR told the defendant that he was going to make provisions for her and the children because he wanted to protect them from the plaintiff's extravagance and his failed business ventures. In late 1988, MHR told the defendant that he had made a will (the 1988 will) to provide for her and her children. A copy of the will was subsequently given to the defendant who was deeply touched by MHR's generosity. MHR even discussed the 1988 will with the defendant, asking her if it was fair. MHR became very ill in August 1994 when he was in Singapore. The defendant looked after him until his demise at the end of that month.

70 The plaintiff knew about the 1988 will. In December 1988, he established a family trust for the benefit of himself, the defendant, the children and the spouses of the children after MHR told him about the 1988 will. The plaintiff explained that as the defendant and the children were US citizens, they would be subject to heavy US inheritance tax when they inherited MHR's estate. The trust would avoid or reduce such tax.

71 After the demise of MHR, the plaintiff said there would be a reading of MHR's will but that never took place. The defendant did not press him about this as she was with Priya and Ravine who were studying in Europe and Shaon was then working in Dubai.

72 In March 1997, the defendant found out that the plaintiff had agreed with one of the managers working in the family business to pay the manager US\$1m in full and final settlement of any claim that the manager might have against MHR's estate. The manager was supposed to be entitled to a share of the 5% of the estate to be given to employees under the 1988 will. In November 1997, the defendant found out that Padma and Hari had applied for probate of the 1986 will in California. In December 1997, the plaintiff left the family home in Hong Kong.

73 The defendant and the children found out subsequently that Padma and Hari had also applied for probate of the 1986 will in Hong Kong. They then instructed solicitors to lodge a caveat against the grant of probate but were told that it was too late to do so as probate had been granted on 6 May 1988.

74 When Padma and Hari sought probate of the 1986 will in Singapore, the defendant started the Singapore probate action against them and the plaintiff. In February 1999, before the case was heard, the plaintiff's solicitors wrote to the defendant's solicitors to enquire about the possibility of settling the case. The plaintiff also expressed his wish to be reconciled with his family. In April 1999, an assistant registrar of the High Court here ruled that the 1988 will was incapable of being a will and

did not create or evidence a trust in MHR's estate. The defendant appealed.

75 Although the defendant and Shaon wanted to attend Priya's and Ravine's graduation ceremonies in May 1999, they were afraid to leave the family home in Hong Kong because Padma had threatened to evict them. It was in that context that after Ravine had spoken with the plaintiff in Geneva, he called to tell them not to worry about being barred from the family home. Concerned that the plaintiff would not keep his word, they asked the plaintiff for his written assurance and Shaon drafted the affidavit to reflect the discussions on a settlement with the family. The plaintiff subsequently affirmed the 7 May 1999 affidavit in Geneva. The defendant and Shaon then left for Geneva and, from there, went to London with the plaintiff and Ravine to meet Priya.

76 At the 16 May 1999 meeting at the home of Gulu in London, Gulu informed them that he had spoken to Simon Rae, the plaintiff's solicitor in Hong Kong, to discuss the legal proceedings going on between the plaintiff and the defendant. Gulu showed the plaintiff a copy of the 1988 will and asked him if that was MHR's will. The plaintiff confirmed that it was and that he would honour it and carry out its terms. Gulu took some notes during the meeting and an agreement was reached on the main points. The plaintiff behaved normally. No one put any pressure or harassed the plaintiff. Gulu suggested that a deed or official agreement be done to set out the points of agreement formally. They all then had lunch together. The plaintiff also hosted a dinner to celebrate Priya's graduation.

77 The defendant first met Srikumar in Los Angeles in 1995 when the plaintiff introduced him to her as his *guruji*. The plaintiff had called her earlier from Singapore to say that Srikumar was going to their house in Los Angeles to perform some prayers and to ask the defendant send the driver to pick Srikumar up at the airport. After that first meeting, the defendant would meet Srikumar when the plaintiff brought her along for his meetings with Srikumar. She did not meet Srikumar by herself and did not have much dealing with him. It was only after the plaintiff had left the family home in December 1997 that her mother, who had also been introduced to Srikumar by the plaintiff, sought Srikumar's assistance in trying to locate the plaintiff. They knew that the plaintiff regarded Srikumar as his spiritual advisor.

78 When the defendant was in London, her mother wanted Srikumar to go there to help the family resolve the dispute. She asked the plaintiff whether Srikumar could go to London and he agreed. The defendant then telephoned her mother, who was in Hawaii, to make funds available to Srikumar so that he could go to London.

79 In London, the family met Srikumar as a mediator several times. Srikumar advised the family to look to the future and advised the plaintiff to start taking his sons into the family business so that they could take over when he wished to retire. Srikumar, who was aware that the family dispute related to MHR's estate, showed the plaintiff a copy of the 1988 will and the plaintiff confirmed that that was MHR's will. Srikumar returned to Singapore after the plaintiff had confirmed the points of agreement reached at Gulu's home. He met Syed Almenaar, the Singapore solicitor who drafted the 1999 deed.

80 On 25 May 1999, the defendant's then solicitors, M/s Tan Rajah & Cheah, wrote to the Registrar of the Supreme Court to withhold the extraction of the grant of probate pending the outcome of the appeal against the assistant registrar's decision or the negotiations between the parties. The next day, the family went to a solicitor's office to formalise the agreement by signing the 1999 deed. Upon realising that the solicitor who had witnessed the execution of the deed was not a notary public, they looked for one in the Yellow Pages directory. They then proceeded to the notary public and re-executed the 1999 deed. Srikumar was with them. The plaintiff asked for a copy of the said deed. He then asked the driver to send it to Sly's office immediately. Sly confirmed in an affidavit

filed in the Singapore court proceedings that he met the plaintiff before the 1999 deed was executed.

81 After that, the plaintiff left for Dubai while the defendant and the children went to Hawaii to visit the defendant's mother before returning to Hong Kong. In June 1999, the plaintiff paid the defendant's mother US\$700,000 pursuant to the 1999 deed, which was a reimbursement for the legal and other expenses advanced by the mother to the defendant during the time that the plaintiff left home. He had earlier remitted US\$50,000 to the mother, making a total of US\$750,000. Sometime in July 1999, the plaintiff subscribed to some therapy suggested by Srikumar to relieve his stress. The defendant believed that was the time during which Padma made persistent complaints to the plaintiff about the 1999 deed.

82 Around 22 July 1999, the plaintiff told the defendant and Shaon that he would be distributing the shares in public companies held in a HSBC account. A few days later, the plaintiff transferred shares in various companies to the defendant. The plaintiff had also instructed the defendant, Priya and Ravine to open a joint account in HSBC to facilitate the receipt of funds under the 1999 deed. On 28 July 1999, the plaintiff granted a power of attorney to Shaon to act on his behalf in carrying out the terms of the 1999 deed. On the same day, he also granted a power of attorney to the defendant to carry out his intention to set up the family trust to provide for his immediate family.

83 Both the defendant and Shaon did not exercise the powers granted to them respectively. They were informed in late 2000 or early January 2001 that the said powers of attorney would be revoked on 4 January 2001. Similarly, both of them were to have been made signatories of the Bank of America (Hong Kong) accounts which handled the rentals for the India Emporium but the plaintiff subsequently revoked the authorisation. Shares in a Singapore company were transferred to the defendant and Shaon in December 1999 and the two of them were appointed directors of the company. The plaintiff also transferred a half share in an apartment in Cairnhill Plaza to the defendant. The plaintiff had also arranged to have shares in various US companies transferred to Shaon but that was held back pending tax advice. The plaintiff also removed Padma as a signatory to a joint bank account in BNP Paribas. Subsequently, the plaintiff signed the 18 August 1999 statutory declaration (see [48] above).

84 On 3 December 1999, the appeal in the Singapore probate action came before me. Jeffrey Beh informed the court that the plaintiff was agreeable to comply with MHR's wishes as stated in the 1988 will although it might not be valid as a will. Counsel for Padma and Hari objected to a consent order being entered in that action. It was therefore agreed later between the plaintiff's and the defendant's solicitors that a separate application be filed in court (Originating Summons No 1893 of 1999). On 8 December 1999, at the conclusion of the appeal against the assistant registrar's decision (which was dismissed) in the Singapore probate action, a consent order (see [54] above) was recorded as between the plaintiff and the defendant in the said originating summons. The defendant had proceeded with the appeal at that time because she believed that Padma and Hari were controlling some of the assets of the estate and she wanted them to be bound by the 1988 will as the plaintiff had already affirmed in his 18 August 1999 statutory declaration that the 1986 will was a forgery.

85 After the making of the consent order, the plaintiff arranged for the shareholding of India Emporium to be changed pursuant to the 1999 deed and the consent order. The defendant also filed an appeal against my decision in the Singapore probate action. That appeal was dismissed by the Court of Appeal in August 2000. The plaintiff did not contest the appeal in view of the settlement reached between him and the defendant.

86 In February 2000, the plaintiff left the family home and was declared a missing person. He

returned home shortly thereafter. However, in May 2000, he left again and in July that year, filed divorce proceedings against the defendant.

87 As the plaintiff had failed to perform the other terms of the 1999 deed and the consent order, the defendant applied in October 2002 for an order that he perform the terms of the consent order. Choo Han Teck J dismissed her application. Her appeal to the Court of Appeal was subsequently also dismissed. The defendant then decided to concentrate on reaching a resolution of her disputes with the plaintiff in Hong Kong in the divorce proceedings there. However, the plaintiff commenced the present action in Singapore, leaving her no choice but to defend it and to seek enforcement of the provisions of the 1999 deed by way of specific performance.

88 Shaon's evidence was in general agreement with the defendant's and Ravine's evidence. Where the 7 May 1999 affidavit (see [28] above) by the plaintiff in Geneva was concerned, Shaon said that it was drafted by him after speaking to the plaintiff. Shaon amended the draft at the plaintiff's request. The plaintiff did not sound like he was mentally ill or had problems understanding what he was doing. When Shaon was with him in Geneva and then London, the plaintiff behaved normally and appeared happy to be with his family.

89 At the meeting in Gulu's home, the plaintiff was apologetic and blamed a lot of his conduct on Padma who, he claimed, told him what to do from time to time. Shaon brought copies of certain documents with him to London for that meeting, among which was a copy of the 1988 will which Gulu showed to the plaintiff. After that meeting, Shaon faxed a copy of the notes of the meeting to Syed Almenoar in Singapore so that the lawyer could draft an agreement between the plaintiff and the defendant. The draft of the 1999 deed was modified during the discussions that took place after that meeting. The final draft was given to the plaintiff on 27 May 1999 so that he could look through it first. He was happy with all the terms after reading through it twice. The plaintiff never appeared like he was of unsound mind or under duress or undue influence and unaware of what he was doing. He took the initiative and was the primary force behind the affidavit of 7 May 1999 and the 1999 deed.

90 When Shaon returned home to Hong Kong in the middle of July 1999, the plaintiff was already there. The plaintiff did go to his office although he complained that his medication was making him very tired. The plaintiff went out for massage and dinners at night and also took the family out, like he used to do. At the meeting with Stephen Fitzgerald in Jersey in August 1999, the plaintiff behaved rationally and coherently. While Srikumar might have a high-pitched voice, he was by no means shouting at the plaintiff at that meeting. Stephen Fitzgerald was asked to produce a list of assets but has not done so to date.

91 The plaintiff and the defendant had quite a few meetings in November and December 1999 before the consent order of 8 December 1999 was made.

92 Ravine, in his testimony, confirmed the evidence of the defendant and Shaon in so far as he was personally involved in the events mentioned. He denied having harassed or abused the plaintiff in Geneva and London in May 1999. The plaintiff appeared to him to be his normal self and was happy to spend time with the family. The plaintiff was very apologetic and wanted to make things right with his family. He wanted the family to be at the graduation ceremony and therefore signed the affidavit (see [28] above) willingly as he wanted to reassure the defendant and Shaon that they could travel to Geneva. Ravine spoke to the plaintiff about his past mistreatment of the family and only became angry with him on account of the way he had mistreated Priya by cutting off all her allowances and living expenses and causing her to be taken to court by her landlord for failure to pay her rent. The plaintiff voluntarily gave him copies of the facsimiles that he had sent to Sly, so as to show the family that he was serious in making amends and that he would sign the said affidavit after obtaining legal

advice from Sly. The plaintiff remained in an apologetic and conciliatory mood in Geneva and in London and he signed the 1999 deed willingly, especially since he was the one who proposed the structure and the basic terms of settlement.

93 Gulu confirmed that it was he who asked the plaintiff and the defendant to take part in discussions in London on 16 May 1999 to try and resolve the differences in the family. Gulu spoke to Simon Rae, the plaintiff's Hong Kong solicitor, a few weeks prior to that meeting. The plaintiff, the defendant and Shaon attended the meeting. It was an amicable and constructive one. The plaintiff, whom Gulu had known for many years, was behaving normally and showed no sign of fear or distress. He participated actively during the meeting. Gulu took down some notes of the points of agreement, including the plaintiff's confirmation that the 1988 will was MHR's true will and that he would honour it. They then had lunch together. Vimla, his former wife and the defendant's sister, joined them later. Gulu had dinner with the plaintiff and his family on 17 May 1999 and attended the graduation dinner celebrations for Priya about a week later. The plaintiff appeared to be his normal self.

94 Vimla, who was divorced from Gulu in 1985 and had since remarried, was a witness to the Hiranand trust deed of 27 December 1988 which was meant to be a protective measure for tax avoidance for the defendant's and the three children's benefit. Vimla disagreed that this deed and the 1988 will had nothing to do with each other.

95 At the 16 May 1999 meeting, the plaintiff appeared completely normal and showed absolutely no sign of psychological problems. Although the plaintiff was not talkative, he was stating his grievances with the defendant and hence one of the points in the note by Gulu about open communication. The plaintiff also acknowledged a copy of the facsimile of 6 October 1994 from him to Sly as genuine. At the family dinner the next day and the graduation celebration for Priya a week later, the plaintiff also appeared normal and happy to be with his family.

96 In Vimla's opinion, the plaintiff, whom she had known for many years, tended to be quiet and even-tempered although he could be egotistical when with family and close friends. She was shocked by his behaviour towards his family in the late 1990s. When she remarried in July 1999, the plaintiff attended the wedding and behaved quite normally. When her mother passed away in Hawaii in August 1999, the plaintiff was at the funeral, too. In her opinion, Sly was more than a solicitor to the plaintiff. He was his friend and would often attend social functions with him in various parts of the world.

97 Lynette Levy Albuquerque ("Dr Levy"), a clinical psychologist, was requested by the defendant's Hong Kong solicitors to address the issues related to the plaintiff's mental state at the time of the 1999 deed. In her reports, prepared purely from perusal of documents and without assessing the plaintiff, she was of the opinion that while the plaintiff suffered from emotional distress when he was admitted to hospital in July 1999, it was impossible to extrapolate on his mental state in May 1999. According to her, there was no evidence to indicate that the plaintiff's reported emotional distress rendered him incompetent and irrational at the time the 1999 deed was signed. The documents showed that the plaintiff was still able to carry out certain daily activities, such as responding to telephone calls and mail, without apparent disorientation. She was unclear whether the plaintiff's major depression was caused by his heavy consumption of alcohol. Since the plaintiff did not return for follow-up treatment after July 1999, Dr Levy opined that this suggested he had made great progress in recovery. Further, as the report on the plaintiff by Dr Feeney was prepared only in May 2001, the significant amount of time between the evaluation (in July 1999) and the report raised concerns regarding Dr Feeney's impression and her ability to assess accurately the plaintiff's mental state retroactively.

98 Dr Lo Chun Wai, a psychiatrist, who also prepared reports on the plaintiff's mental state as at 28 May 1999 from his study of the relevant documents, came to similar conclusions as Dr Levy. He noted that a person having depression or anxiety-depression should be capable of understanding the nature of documents and know what he was doing unlike a patient suffering from delusional ideas or confusion of the mind.

The decision of the court

99 The plaintiff formulated the following four issues to be determined by the court:

- (a) Is the 1999 deed enforceable as a contract in the light of the court rulings in the Singapore probate action and in Originating Summons No 1893 of 1999 that the 1999 deed and the consent order were premised on the 1988 will creating or evidencing trusts and that the 1988 will did not create or evidence any trusts?
- (b) On the basis that the 1988 will was a forgery, is the plaintiff entitled to set aside the 1999 deed and, in any event, should the defendant be allowed to enforce the 1999 deed?
- (c) Is the plaintiff entitled to set aside the 1999 deed and, in any event, should the defendant be allowed to enforce the 1999 deed if the plaintiff signed it under duress or under the undue influence of the defendant, her servants and/or agents, in particular, Srikumar?
- (d) In any event, are cll 6 and 7 of the 1999 deed too uncertain to be enforceable in so far as they referred to "the Hiranand family companies" and "family business"?

The plaintiff originally pleaded misrepresentation in addition to duress and undue influence but decided not to pursue his claim on this ground "not because there were no misrepresentations, but as [the plaintiff] has accepted in his evidence, he did not believe that the [1988 will] was authentic" and therefore "he could not be said to have relied on the misrepresentations as to the authenticity of the [1988 will]" (see para 3 of the plaintiff's response to the defendant's closing submissions).

100 After considering the written submissions from both parties, I decided as follows:

- (a) The 1999 deed is enforceable as a contract notwithstanding the court rulings in the Singapore probate action and in Originating Summons No 1893 of 1999.
- (b) Even if the 1988 will is a forgery, the defendant is entitled to enforce the 1999 deed as her rights are conferred by the said deed, not by the 1988 will. It has not been proved, in any event, that the alleged forgery was perpetrated by or with the assistance of the defendant.
- (c) I do not accept that the plaintiff signed the 1999 deed under duress or undue influence of the defendant, her servants and/or agents, in particular, Srikumar.
- (d) Clauses 6 and 7 of the 1999 deed are not unenforceable because of uncertainty in their terms and, if I am wrong on this, these two clauses can be severed from the rest of the 1999 deed, anyway.

101 I shall deal first with the third finding on duress and undue influence as it is essentially factual in nature. J Beatson, *Anson's Law of Contract* (Oxford University Press, 28th Ed, 2002) ("Anson") at pp 285–286 and 288 states:

... Nevertheless, it is accepted that equity identified broadly two forms of unacceptable conduct, which Lord Nicholls [in *Royal Bank of Scotland plc v Etridge (No 2)* [2001] 3 WLR 1021] described as follows:

The first comprises overt acts of improper pressure or coercion such as unlawful threats. ... The second form arises out of a relationship between two persons where one has acquired over another a measure of influence or ascendancy, of which the ascendant person then takes unfair advantage. ... In cases of this latter nature the influence one person has over another provides scope for misuse without any specific overt acts of persuasion. The relationship between two individuals may be such that, without more, one of them is disposed to agree a course of action proposed by the other. Typically, this occurs when one person places trust in another to look after his affairs and interests, and the latter betrays this trust by preferring his own interests. He abuses the influence he has acquired.

The first type of case, the direct analogue of common law duress, has been called 'actual' undue influence. The second type of case, where the parties are in a relationship in which duties of care and confidence are imposed on one party towards the other, has been called "presumed" undue influence.

...

... It is not every fiduciary relationship that as a matter of law raises a presumption of undue influence. It must be one of a limited class which the Courts regard as suggesting undue influence. While it has been stated that the relations which fall into this category cannot be listed exhaustively, they include those between parent (or person *in loco parentis*) and child, solicitor and client, doctor and patient, trustee and beneficiary, spiritual adviser and any person to whom that person stands in that relationship, and, in certain circumstances, fiancé and fiancée.

102 The plaintiff went to Geneva willingly in May 1999 to meet Ravine after having had no direct contact with his family for some one and a half years between December 1997 and May 1999. Before that meeting in Geneva, he had initiated discussions through his solicitors with the defendant's solicitors to work out a solution acceptable to the family. He went with a conciliatory outlook and was eager to be with his entire family again. Initially, Ravine might have been angry and upset over the way the plaintiff had treated Priya but that was entirely understandable in the circumstances. How could a father just disappear and neglect his daughter who was alone overseas? Ravine was obviously pacified as they spent more time talking to each other.

103 The plaintiff had the presence of mind to consult his long-time solicitor, Sly, about the drafts before affirming the affidavit on 7 May 1999 before a notary public. If the plaintiff was under the purported tremendous pressure from Shaon and Ravine, he certainly gave no hint of it to the notary public, who would have been quite remiss in allowing him to execute the affidavit if he had appeared flustered and in a confused hurry when signing the affidavit. There was no evidence that the plaintiff was anything other than his normal self before the notary public. He was happy to be with his family again and there was merry-making, including a birthday party for his graduating son. I disbelieved the plaintiff's assertions about pressure and emotional blackmail being exerted on him to sign the affidavit.

104 Gulu's evidence was candid and forthright. He had already divorced the defendant's sister and there was no reason for him to take the side of the defendant in this matter. The plaintiff expressed his acceptance of the 1988 will as MHR's and confirmed again that he would honour the terms therein. In London, he had the opportunity to consult Sly in person and over the telephone. Sri Kumar was not

at that meeting. If the plaintiff had any disagreement over anything, there was nothing to stop him from walking out of Gulu's house. Instead, he remained there and had a family repast. There was no evidence at all of any harassment by the defendant or by anyone else.

105 The signing of the 1999 deed on 28 May 1999 was in conformity with the points of agreement noted by Gulu, *ie*, that the parties would formalise the settlement by a legal document by 30 May 1999 (see [31] above). Again, if the plaintiff was reluctant or had seemed under a lot of pressure to sign the 1999 deed, a solicitor and a notary public in London would have been remiss in their duties in not even noticing it when he signed it before one and then the other. I find it hard to believe that both of them had failed to notice that the plaintiff was executing the deed reluctantly and unhappily. The plaintiff's allegations about duress and undue influence from Srikumar and his family also did not sit well with the evidence that he immediately asked his driver to send a copy of the deed to his trusted solicitor, Sly, after it was perfected. Clearly, the plaintiff had affirmed all these legal documents with a willing heart and an understanding mind and was pressurised only by his own conscience to repent of his past mistreatment of his family so that they could all be reconciled. The documents expressed the truth of the matters stated therein.

106 The plaintiff's allegations were made even more startling by his own actions after the execution of the 1999 deed. He remitted money to the defendant's mother in Hawaii with the knowledge of Sly. He appointed the defendant and Shaon as directors of his tour company in Singapore and transferred shares to them and did many other acts which conformed to the terms of the 1999 deed. Could he have been doing all these acts in a state of stupor or under duress? I do not think so. His trusted lawyer was there to help him if he needed help at any time. His acts involved banks, lawyers in the US and legal matters. Further, about two and a half months later, the plaintiff made the 18 August 1999 statutory declaration before another notary public. In December 1999, he even joined his family as a plaintiff in the Hong Kong probate action against Padma and Hari (to revoke the grant of probate in respect of the 1986 will) although he withdrew from it subsequently, leaving the three children as plaintiffs.

107 In December 1999, the plaintiff instructed Jeffrey Beh to agree to the consent order in Originating Summons No 1893 of 1999. Jeffrey Beh, an experienced lawyer, was satisfied that the plaintiff knew what he was doing in giving him the various instructions without the intervention of Srikumar. The plaintiff then instructed his solicitors not to make any submissions in the defendant's appeal before the Court of Appeal in the Singapore probate action in the following year. In June 2002, the plaintiff sought only a variation of settlement in his divorce petition in the Hong Kong courts. He only disputed the 1999 deed when the defendant sought to enforce the consent order before Choo Han Teck J in 2003. It was only in late 2004 that he sought in this action to rescind the 1999 deed. All this evidence did not show a man trying to break free from the bonds of duress and undue influence after leaving home permanently in May 2000 and purportedly recovering from his depressed state. His freedom to choose was never fettered or taken away from him at any time.

108 Srikumar was the plaintiff's spiritual advisor. It was the plaintiff who introduced him to the family. Srikumar had nothing to do with the affidavit that was signed by the plaintiff in Geneva in May 1999. Srikumar also had nothing to do with the 16 May 1999 meeting in Gulu's home. Although Srikumar travelled to London upon the suggestion of the defendant's mother, he did not remain there all the time until the signing of the 1999 deed on 28 May 1999. If Srikumar did offer the plaintiff some spiritual advice about doing the right thing for his family, it was no different from what the plaintiff intended at that time anyway, *ie*, to put things right with his family and rectify the wrongs that he had done. Sly was available and could be reached for advice and help if the plaintiff had felt uncertain about any matter in the days leading up to the 1999 deed. The plaintiff was not being held captive or kept incommunicado in London. He could have easily changed his mind about signing the 1999 deed if

he wanted to, especially when he was before the notary public. Srikumar was doing nothing more than being a helpful advisor to all, running errands for one or the other, with his expenses paid by the plaintiff and his family.

109 It was strange that the plaintiff's behaviour would change so drastically whenever he returned to his home in Hong Kong. He acknowledged that Padma had found out about the 1999 deed and was very upset with him. This was a sister who was always seeking to place him under her protective wings and who could not get along with the defendant. It was highly likely that his encounter with his sister back home in July 1999 pierced his newfound equanimity and precipitated his depression and breakdown. His stay in hospital was no more than a few days in any event. He obviously had recovered well enough not to have to return for follow-up treatment. Towards the end of that month, he even travelled to Spain with the defendant and Priya to attend a wedding and then to a resort. He certainly had no difficulty travelling to Jersey to review the trust funds there. In my view, any lack of mental capacity on his part to execute a legal document would, at best, be confined to the period just before and during hospitalisation.

110 Although Srikumar offered to help the defendant in her legal action after the plaintiff had left home, there was no evidence to show that he was acting as her agent or at her behest before and during the signing of the 1999 deed. The plaintiff and the defendant looked to Srikumar as a spiritual man and probably trusted him to be an objective mediator to act as a bridge for a divided family. As far as the defendant knew, she was reimbursing Srikumar for expenses incurred on her and her family's behalf and was not paying him to act as her agent to get the best deal out of the plaintiff. It was only after the execution of the 1999 deed that Srikumar set up his management consultancy business and was paid a retainer fee for looking after the family's travel business company here.

111 The plaintiff considered Srikumar as his spiritual guide and continued making payments to him after signing the 1999 deed. Srikumar was therefore not the agent of the plaintiff or of the defendant. He was merely someone trusted by both parties who would mediate and help out whenever required by one or the other. The fact that his sympathy was with the defendant and the children was nothing exceptional as they had suffered from the capricious conduct of the plaintiff who would simply go into hiding, as it were, whenever he felt like it. Indeed, the plaintiff has demonstrated by his own conduct that he could walk away from Srikumar as a *guruji* when he wanted to. The children might have vocalised their unhappiness to the plaintiff about his past inexplicable conduct but they were not trying to harass him into doing anything that he was not willing to do. They were merely trying to talk sense into him and to implore him to do the right thing for his wife and offspring.

112 The 1999 deed resulted in the plaintiff distributing assets to the defendant and the children but that was also consonant with his belief that it accorded with MHR's wishes as reflected in the 1988 will, which the plaintiff asserted he never believed to be a true will, anyway. He wanted to comply with what he believed were his late father's wishes, notwithstanding the 1988 will's non-compliance with legal formalities and this was reflected in the terms of the 1999 deed.

113 The evidence adduced did not show, on a balance of probabilities, that the plaintiff was unable to exercise his free and informed judgment and was merely following Srikumar's promptings. There was every reason for him to execute the 1999 deed – he wanted very badly to reconcile with his family whom he missed very much. On the facts here, actual undue influence was not proved. Where presumed undue influence is concerned, the most obvious way of rebutting the presumption is to show that the party reposing the confidence received independent legal advice and took it (see Anson at p 292). Clearly, the plaintiff had, at just one telephone call away, the services of lawyers from around the world, particularly Sly who was in London with him at the material time. He was in constant contact with Sly from the time he was in Geneva with Ravine and continued to be so when

he arrived in London with his family. He was also the chairman of India Emporium and the Hiranand Group at the material time and was already an established businessman with multiple interests in many areas of the world. It was highly improbable that he complied slavishly with whatever Srikumar wanted him to do. The evidence of all the people around him at that time showed quite clearly that he was very much in control of his senses and was completely rational.

114 Lord Nicholls in the passage cited above (see [101] above) speaks of the person in whom trust has been reposed abusing that trust and preferring his own interests over those of the person reposing such trust. Here, Srikumar did not appear to have benefited personally from the 1999 deed. The suggestion was that he was being paid by the defendant for being her agent in dealing with the plaintiff but that was not borne out by the evidence. The interesting issue then arises as to whether the presumption of undue influence applies to a situation where a spiritual advisor advised a follower of his to confer some benefit on a third party. If the third party was aware or put on notice of the undue influence exercised by the spiritual advisor on his follower, I see no reason in principle why the transaction should not be avoided on the ground of undue influence. Here, all that the defendant knew was that Srikumar was helping the family to reach an agreement on their long-standing disputes with the plaintiff. Even if Srikumar had been exerting undue influence on the plaintiff, and the evidence was not convincing on this point, there was nothing to show that the defendant was aware of it, much less a conniving party to it.

115 The result of a successful plea on the ground of undue influence is that the contract is voidable, not void. The right to rescind may be lost by affirmation, and so soon as the undue influence is withdrawn, the action or inaction of the party influenced becomes liable to the construction that he intended to affirm the transaction (Anson at p 294). By May 2000, according to the plaintiff, he had broken free from the domination over his will by making the conscious decision to leave the family home again, this time for good. In August 2000, he could revoke the power of attorney given to Srikumar (see [61] above). However, instead of seeking to set aside the 1999 deed, he took out an application in June 2002 in the divorce proceedings in Hong Kong to vary the settlement. This was despite knowing that he had actually implemented some of the terms already. It was only in October 2004 that he lodged the present claim for rescission of the 1999 deed. In my opinion, the plaintiff had affirmed the 1999 deed by his conduct and his inaction for almost four and a half years and, like the plaintiff in *Allcard v Skinner* (1887) 36 Ch D 145, was no longer entitled to the remedy sought. That was a case where a lady superior of a sisterhood was alleged to have exercised undue influence over a member and caused the member to transfer large sums of money and railway stock to the lady superior in trust for the sisterhood. The English Court of Appeal held that the member's claim for the return of her property was barred by laches and acquiescence as the member had left the sisterhood for six years before she launched her claim.

116 I now turn to the other issues raised by the plaintiff. I do not think the rulings by Choo Han Teck J in Originating Summons No 1893 of 1999 (see *Kamla Lal Hiranand v Lal Hiranand* ([55] *supra*)) barred the defendant from enforcing the 1999 deed as a contract. There were two applications before Choo J, one by the defendant here and the other by the plaintiff. The defendant's application was to compel the plaintiff to take an account of the "Trust Property" defined in the 1988 will while the defendant's application was to set aside the consent order. Choo J held that Originating Summons No 1893 of 1999 was spent and the "liberty to apply" clauses in the consent order did not apply to the matter before him. He stated that the consent order was "a total and verbatim recital of the entire originating summons itself" and that the consent order was "somewhat of a red-herring" because in itself, there were no substantive matters upon which he could make any meaningful order save to dismiss the application itself. He also referred to the Court of Appeal's decision in the Singapore probate action that the 1988 will was not capable of creating a trust and commented that the defendant was asking for an order to compel the plaintiff into performing obligations which were

not clearly or sufficiently set out in Originating Summons No 1893 of 1999. The judge further said that if the reliefs that the defendant sought were in the 1999 deed, then her claim was one for breach of contract which should be commenced by way of a writ action, with the contract and the breach thereof specifically pleaded. In the matter before him, the judge noted that the terms of the 1999 deed were not pleaded. He therefore contemplated that the defendant could still take out a writ action to enforce the terms of the 1999 deed. The Court of Appeal affirmed his ruling without rendering any grounds of decision. The result, therefore, is that the defendant could not enforce the consent order due to technicalities in pleading and in drafting but her rights under the 1999 deed remained alive.

117 The defendant has commenced action for negligence against her previous solicitors involved in drafting the consent order. However, that was merely a protective writ of summons to preserve her rights pending the ruling in this case. It was not a case of her trying to “reinvent her claim to suit her tactical advantage and abuse the process of court” (see para 67 of the plaintiff’s closing submissions).

118 The High Court in the Singapore probate action (see *Kamla Lal Hiranand v Harilela Padma Hari* ([63] *supra*)) made no express ruling that the 1988 will was a forgery. It did not need to do so as the question of law before it was whether the 1988 will was valid for creating and/or evidencing a trust in MHR’s estate. Similarly, the Court of Appeal (see *Kamla Lal Hiranand v Harilela Padma Hari* ([62] *supra* at [19])) said that it did not need to be concerned with the affidavit alleging that the 1988 will was a forgery and could not have been executed by MHR. Only the Hong Kong High Court in the Hong Kong probate action seemed to have decided that the 1988 will was, in all likelihood, a forged document although the culprit responsible for the forgery was not identified. On my part, in the present action, I hold that the 1988 will was in all likelihood a forged document. However, it has not been proved that the forgery was perpetrated by or with the assistance or knowledge of the defendant or the children, despite the plaintiff’s contention that “it was [Shaon] who concocted the bogus [1988 will]” (see para 48 of the plaintiff’s closing submissions). The validity of the 1999 deed was not inextricably linked to the validity of the 1988 will. The plaintiff’s testimony was that he did not believe in the authenticity of the 1988 will when he executed the 1999 deed, which was intended by the parties to resolve all the outstanding disputes within the family. One of the outstanding disputes then concerned the issue whether the 1988 will was genuine or not. The parties chose to overcome this dispute by providing in the 1999 deed that the plaintiff undertook “to implement and faithfully carry out all the wishes of [MHR] as manifested and executed by the deceased in the 1988 Will both in substance and according to the spirit of the 1988 Will notwithstanding that the 1988 Will may in any way be defective or unenforceable in law”. When the 1999 deed was made, the issue whether the 1988 will was genuine or not was completely erased. It was no longer necessary for the parties to debate the issue. They would proceed on the basis that the 1988 will contained MHR’s wishes whatever view the law may take of its authenticity or efficacy. The words “as manifested and executed by the deceased” were descriptive rather than prescriptive. In other words, it was not a pre-condition of the 1999 deed that the 1988 will must be proved to have been executed by MHR. Further, there were obligations in the 1999 deed which were totally unrelated to the 1988 will, such as the cash payments and Shaon’s participation in the family companies.

119 The defendant’s rights were conferred by the 1999 deed, not by the 1988 will. Clearly, the parties had compromised in good faith their disputes by way of the 1999 deed, which would have resolved the family’s problems and reconciled the members if the terms thereof had been faithfully complied with as intended. He cannot now ask the court to revisit any issues already compromised. As stated in David Foskett, *The Law and Practice of Compromise* (Litigation Library) (Sweet & Maxwell, 5th Ed, 2002) at paras 2-16 and 6-01:

The assertions, denials and counter-assertions comprising the dispute need have no foundation in fact or in law provided they are made in good faith.

...

An unimpeached compromise represents the end of the dispute or disputes from which it arose. Such issues of fact or law as may have formed the subject-matter of the original disputation are buried beneath the surface of the compromise. The court will not permit them to be raised afresh in the context of a new action.

Thus in *Binder v Alachouzos* [1972] 2 QB 151, the English Court of Appeal did not allow a defendant to reopen the question of illegal moneylending in the plaintiff's action on an agreement held to be a *bona fide* compromise of the question of fact whether the original loans were unlawful moneylending transactions.

120 The final issue concerned the alleged uncertainty of cll 6 and 7 of the 1999 deed. This allegation was not raised in the pleadings or in evidence. The defendant therefore had no opportunity to adduce evidence as to whether the parties knew what the terms meant. In any event, the plaintiff obviously knew what they meant as he had signed the 1999 deed with a view to furnishing the list of such companies but failed to do so. When he wrote to Syed Almenoar in November 1999, he referred to the 1999 deed and to the shares in the Hiranand companies in various parts of the world that would be transferred to Shaon. There was certainly no indication, six months after the execution of the 1999 deed, that there was uncertainty about the scope of the phrases in issue. Even if cll 6 and 7 had to be struck down for uncertainty, they were independent clauses that could be severed from and without affecting the validity of the rest of the 1999 deed.

121 Accordingly, I dismissed the plaintiff's claim that the 1999 deed be set aside or declared unenforceable and that the defendant pay him the US\$700,000 paid by him to her mother under the said deed. It should be noted that the claim for US\$700,000 was premised on misrepresentation, a ground which the plaintiff has now disavowed. I allowed the defendant's counterclaim for a declaration that the 1999 deed was valid and binding on the plaintiff and for specific performance thereof. I also allowed her counterclaim for all necessary accounts and inquiries to be taken of all the property and assets of MHR's estate and that the plaintiff pay her 25% of the assets of the said estate. Her final counterclaim for the payment to her of US\$2m under cl 4 of the 1999 deed was also allowed although it should be subsumed under the prayer for specific performance, anyway. In view of the complexity of this case, I granted a certificate for two counsel to both parties, which, in the case of the plaintiff, would apply only to solicitor-client costs. I also granted the parties liberty to apply for directions on working out the terms of my orders, if that should become necessary.

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