

AOS v Estate of AOT, deceased
[2011] SGHC 23

Case Number : Originating Summons No 1128 of 2007
Decision Date : 26 January 2011
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Looi Teck Kheong (Edmond Pereira & Partners) for the applicant; John Tan Thong Young (Pereira & Tan LLC) for the respondent.
Parties : AOS — Estate of AOT, deceased

Family Law

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 102 of 2010 was dismissed by the Court of Appeal on 29 November 2011. See [\[2012\] SGCA 30.](#)]

26 January 2011

Lee Seiu Kin J:

Introduction

1 This is an application under s 3(1) of the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed)(“the Act”). The applicant, who is the widow of AOT (“the Testator”), sought provision for her maintenance as well as for [B], the eldest son of hers and the Testator. The respondent is the estate of the Testator and its executors are [C] and [D] (“the Executors”).

Extension of time

2 The respondent had a preliminary objection to this application as it was not filed within the 6-month time limit from the date of grant of probate (“the grant”) as provided in s 4(1) of the Act, which is the position taken by the English authorities. However in *Soh Siew Yoke v Ching Kwong Yew & ors* [1991] SGHC 37, Chua J took the position that time runs only from extraction of the grant rather than the date of the grant. Adopting that position, the application would have been made within time. However, even if this position were wrong (as I am inclined to hold), I was satisfied that the circumstances justified an extension of time under s 4(2) of the Act and granted an extension of time to the applicant.

The facts

3 The applicant and Testator were married on 12 May 1975 in India and they had three adult sons, [B], [E] and [F]. [B] suffered from cerebral palsy from young and also obsessive compulsive disorder. He is married to [G] and they have a son, [H], born in 2003. From about 2004, the marriage between the applicant and the Testator was marred by conflict, with both parties filing police reports of quarrels and family violence against each other. Personal protection orders were also taken out in the Family Court. On 29 March 2005 the applicant filed divorce proceedings against the Testator. The Testator had initially contested the divorce but it eventually proceeded on an uncontested basis. Decree nisi was obtained on 26 January 2006 but before the ancillaries could be finalised and the

decree nisi made absolute, the Testator passed away, on 22 August 2006. An order was made on 24 January 2007 to rescind the decree nisi and the applicant granted leave to withdraw the divorce petition.

4 The Testator made a will on 3 April 2006 in which he gave all his property to his grandson, [H]. The value of his estate, excluding two real properties, totalled \$935,000. The two real properties are the family residence – a detached house at [Property A] with an outstanding loan of about \$625,000 – and a condominium at [Property B] with an outstanding loan of about \$440,000. The respondent did not dispute the applicant's contention that the Testator did not make any provision for her in his will. Indeed the respondent suggested that the reason for this was the "intense intra-family conflict that embroiled his family at the time he made his Will". However the respondent contended that the Testator had, during his lifetime, made provision for both the applicant and [B] by purchasing a number of properties and vesting them in [B]'s name, or jointly with the applicant. These properties were mostly located in India with a total value of the equivalent of some \$2m. I did note that these are, in the main, vacant land. However the respondent exhibited documents that show that the applicant owned unit numbers [xxx] and [xxx] in [Property C]. Further she had entered into a "Leave and License Agreement" with a company known as "[J] Limited" for the period October 2008 to September 2013 for a monthly rent of 444,380 Rupees. According to the respondent, this was equivalent to some \$14,000, although I note that it might be closer to \$12,000. Finally, the applicant was receiving a monthly sum of \$5,000 from the family of the Testator in India.

The law

5 The long title to the Act provides that it relates to "the disposition of estates of deceased persons and for other purposes connected therewith". Section 3 provides as follows:

(1) Where, after the commencement of this Act, a person dies domiciled in Singapore leaving —

- (a) a wife or husband;
- (b) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;
- (c) an infant son; or
- (d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

then, *if the court* on application by or on behalf of any such wife, husband, daughter or son as aforesaid (referred to in this Act as a dependant of the deceased) *is of opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of that dependant:*

Provided that no application shall be made to the court by or on behalf of any person in any case where the disposition of a deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

(2) The provision for maintenance to be made by an order shall, subject to subsection (4), be by way of periodical payments and the order shall provide for their termination not later than —

- (a) in the case of a wife or husband, her or his remarriage;
- (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;
- (c) in the case of an infant son, his attaining the age of 21 years;
- (d) in the case of a son under disability, the cesser of his disability,

or in any case, his or her earlier death.

(3) Periodical payments made under subsection (2) to any one dependant shall not be at an annual rate which exceeds the annual income of the net estate, and, where payments are so made to more than one dependant in respect of the same period, the aggregate of the annual rates at which those payments are made shall not exceed the annual income of the net estate.

(4) Where the value of a deceased's net estate does not exceed \$50,000, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's net estate and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the deceased's dependants and of the person who, apart from the order, would be entitled to that property.

(6) *The court shall, on any application made under this Act, have regard to any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to persons interested in the estate of the deceased, or otherwise.*

(7) The court shall also, on any such application, have regard to the deceased's reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for refraining from disposing by will of his estate or part of his estate, or for not making any provision, or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

(8) The court in considering for the purposes of subsection (1), whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant shall not be bound to assume that the law relating to intestacy makes reasonable provision in all cases.

[emphasis added]

6 In considering an application under s 3(1) of the Act, the court takes into account the provisions made by the testator for the applicant during his lifetime, see *Jeanne Christine Monteiro v Ling Mie Hean & Anor* [1997] SGHC 296, where Choo JC had stated at [9]:

... In construing whether the testator had made a disposition of his estate without making reasonable provisions for persons entitled to such provisions under s 3 of the Act, the court is entitled, and indeed, ought to consider any *inter vivos* gift by the testator to such applicants. If a testator had made adequate *inter vivos* provisions for the persons entitled under s 3(1), the court should not interfere with his right to determine who should have the benefit of his estate.

...

Whether the Applicant may apply on behalf of [B]

7 The respondent objected to the applicant applying on behalf of [B]. I upheld the objection. [B] is an adult in his thirties and is married with a son. Although I accepted that he has some physical and even psychological problems, if he were unable to do so himself by reason of any disability, the proper person to apply on his behalf would be his wife. There was also no evidence that [B] was incapable of making this application on his own. For these reasons, I declined to make any order in respect of [B].

My decision

8 The Act was enacted not for the purposes of constraining a person's ability to dispose of his assets under his will but for the reasonable maintenance of that person's dependants during the lifetime of such dependants. This much is clear from the following provisions of s 3:

- (a) subsection (2), which provides that the maintenance shall, in the case of a spouse, cease upon remarriage;
- (b) subsections (3) and (4), which constrain the funds to come from the income of the net estate except where the net estate is less than \$50,000; and
- (c) subsection (5), which prohibits a realisation of any asset that would be disadvantageous to the beneficiaries under the will.

9 What the Act provides for is the reasonable maintenance of the Testator's dependants. To that extent, the applicant is a dependant and if the Testator's will does not make any provision for her, then the court has the powers to make such order as it deems reasonable for the maintenance of the dependant, out of the income of the net estate. I took into account that during his lifetime, the Testator had vested in the applicant a number of properties out of which she is presently deriving at least about \$12,000 in monthly income. This amount is more than the sum of some \$9,443 that she had stated in her supporting affidavit as her monthly expenses, apart from accommodation. Since she is residing with [B] and his family at [Property A], it appeared to me that the most expedient order in the circumstances would be to order that the Executors continue to provide her with accommodation with [H], provided she lives with him, until [H] attains the age of 21 years. If the Executors should decide to sell [Property A] and provide a replacement home for [H], then they are to provide suitable accommodation for the applicant as well in the replacement home. In my view such an order would satisfy the applicant's rights under the Act while preserving the rights of the beneficiary to the will.