Salleh Bin Awang and Another v Zakiah Bte Arshad
[2003] SGHC 90

Case Number : Suit 481/2002
Decision Date : 14 April 2003
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Ramalingam Kasi; Noor M Marican
Parties : Salleh Bin Awang; Zalipah Bte Arshad — Zakiah Bte Arshad

1 Arshad bin Awang ("Arshad") died on 26 May 2001 at Changi General Hospital at age 75. He had been admitted to the Hospital on 6 December 2000. The cause of death was cardio-respiratory failure. Arshad died intestate.

2 The beneficiaries of his Estate as certified by the Syariah Court were:

(a) Zabariah, daughter from first marriage 16 shares.

(b) Zalina, daughter from first marriage 16 shares.

(c) Zalipah, daughter from first marriage 16 shares.

(d) Salleh, his sole surviving brother 15 shares.

(e) Kapti, his widow 9 shares.

Arshad had, at the time of his death, two accounts – a Fixed Deposit Account and a Savings Account – with the Oversea-Chinese Banking Corporation ("OCBC"). Both were joint accounts in the name of Arshad and Zakiah bte Arshad (the defendant herein). The Savings Account was opened on 14 February 1995 whilst the Fixed Deposit Account was opened on 8 April 1995. It was not in dispute that the funds in these accounts came entirely from Arshad. In these proceedings, Salleh and Zalipah, as administrators of the Estate of Arshad, sought a declaration that the moneys in the said accounts are held by Zakiah in trust for the Estate of Arshad.

3 Zakiah was not a blood relative of Arshad. Arshad's mother – the late Mdm Mahara bte Hadje Arshad – had, when Zakiah was very young, taken Zakiah into the family and brought her up. Arshad, who was then in his early twenties and living with his mother, had adopted Zakiah. Zakiah's evidence that she treated Arshad as her adoptive father and that he treated her as his adoptive daughter was not disputed.

4 Mr Noor Marican, who appeared for Zakiah, conceded that as the funds in the accounts came from Arshad there was a presumption of a resultant trust in favour of Arshad. He submitted, however, that there was, in this case, a preponderance of evidence that showed that Arshad intended to gift the moneys in the accounts to Zakiah and that, in any event, since Arshad was in loco parentis with Zakiah, a presumption of advancement arose in favour of Zakiah.

5 Arshad in the later stages of his life needed the assistance of someone to help manage his moneys. In particular, he needed someone to periodically withdraw moneys so that he could meet his medical and other expenses. Towards this end, he had – in March 1994 – opened a joint Savings Account with his daughter Zalipah (one of the plaintiffs herein) but because of some misunderstanding with Zalipah, he had closed that account. Thereafter Arshad had maintained an account in his sole

name for some months before closing that account and opening instead the joint accounts with Zakiah that are the subject matter of these proceedings.

6 I am satisfied that in opening the joint accounts with Zakiah, Arshad was not making a gift of the moneys in those accounts to Zakiah. I am also satisfied that any presumption of advancement in favour of Zakiah by virtue of the fact that she was his adopted daughter was negated by the fact, as I find it to be, that Arshad had opened and maintained the accounts jointly with Zakiah only for his personal convenience in having someone make withdrawals on his behalf from these accounts. Zakiah was therefore not beneficially entitled to the moneys in the joint accounts and will have to account to the Estate of Arshad for those moneys.

7 Accordingly, I grant the following orders:

(a) A Declaration that all the moneies in Savings Account No 501-7-087254 and Fixed Deposit Account No 501-823082-501 with OCBC Bank are and were held by the Defendant upon trust for Arshad bin Awang (now deceased);

(b) An order that the Defendant render proper accounts before the Registrar of all moneys in both the said bank accounts; and for this purpose to trace all moneys belonging to Arshad bin Awang withdrawn and transferred by the Defendant from the said accounts;

(c) Judgment against the Defendant for the sum of monies found by the Registrar to be due from the Defendant in respect of the said accounts with interest at 6% per annum from date of writ; and

(d) Costs.

Plaintiffs' claim allowed.

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