Ong Jane Rebecca v Lim Lie Hoa and Others (No 5)
[2004] SGHC 188

Case Number : OS 939/1991, CA 58/2004

Decision Date : 27 August 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Andre Arul (Arul Chew and Partners) for appellant; Khoo Boo Jin (Wee Swee Teow and Co) for first respondent; Arul Chandran (C Arul and Partners) for second respondent; Vinodh S Coomaraswamy and Stanley Tok (Shook Lin and Bok) for third and fourth respondents

Parties : Ong Jane Rebecca — Lim Lie Hoa; Sjamsudin Husni also known as Ong Siauw-Tjoan; Ong Siauw Ping; Ong Keng Tong

Civil Procedure – Production of documents – Objections – Whether documents produced before registrar but not admitted forming part of record of appeal – Whether to exclude such documents from record of appeal – Paragraph 53 Supreme Court Practice Directions (1997 Ed)

27 August 2004

Choo Han Teck J:

1 This is an application by the first, third and fourth respondents, who were the respective defendants in an inquiry ordered under Originating Summons No 939 of 1991. They sought to expunge a number of documents from the index of the record to be filed by the appellant who was the plaintiff in the originating summons. The documents in question were identified as items 77 to 79, 97 to 99, 100, 104, 105 to 121, 182, 183, 209 and 221, as well as 82 (in particular, items 28, 29 and 37 thereunder) and 135. The appellant was represented by Mr Andre Arul. Her ex-husband, who is the second respondent, was represented by Mr Arul Chandran who stated that his client was not participating in the present application.

2 The objection by the first, third and fourth respondents to the documents, was that these documents were not in evidence before Assistant Registrar Phang Hsiao Chung ("AR Phang"), who conducted the inquiry, nor were they before me on appeal. Mr Vinodh Coomaraswamy appeared on behalf of the third and fourth respondents and Mr Khoo Boo Jin appeared on behalf of the first respondent.

3 In order to appreciate the arguments of counsel, it will be useful to first note that when Chao Hick Tin J (as he then was) delivered his judgment in the originating summons, he ordered (at [4]) that:

> [t]he Estate's books, vouchers, records and other documents shall be evidence of the matters contained therein with liberty to the parties to take such objections as they think fit.

When the inquiry commenced, the documents that were brought to court were voluminous. Counsel for all the parties had referred to them as numbering in the "tens of thousands". Many of these documents were obtained in the execution of an Anton Pillar order.

4 At the commencement of the inquiry, Mr Andre Arul sought to admit all the documents in the form of compact discs but AR Phang refused and ordered that a core bundle be admitted. However,

he subsequently gave leave to the plaintiff to produce a further bundle so as to put an end to documents being introduced one by one as the inquiry proceeded. This was done and a bundle was accordingly produced. Counsel for the plaintiff continued to present more documents apart from those in the bundles already admitted. AR Phang then ordered the plaintiff to produce one final bundle, after which no further document was to be introduced.

5 In the appeal before me against the findings of AR Phang, counsel for the plaintiff produced various bundles of documents. They included documents that were not part of any bundle produced before the assistant registrar. These were "produced" in the sense that they were brought into chambers but no application, and thus no order, was made to admit any such document for the appeal. Mr Andre Arul thus made the following points. First, he argued that the documents that the first, third and fourth respondents object to were documents that were produced in the bundles brought to chambers. Therefore, he argued, they must be part of the record, and, pursuant to the Supreme Court Practice Directions (1997 Ed) ("the Practice Directions") at para 53, they must be included in the record of appeal. Paragraph 53(1) identifies "[a]ll such exhibits and documents as they were tendered in the Court below, but which did not form an exhibit to any affidavit" and "[t]he Agreed Bundle (if any) in its original physical form as it was tendered in the Court below" to be recorded in separate volumes in the record of appeal. It is also useful to note that sub-para 53(1)(b) states that "[w]here there are no exhibits or documents referred to in sub-clause 53(1)(a)(iv), Volume IV need not be produced, and Volume V shall be renumbered as Volume IV".

6 Second, Mr Andre Arul argued that the impugned documents were all in the assistant registrar's chambers although they were not referred to. He submitted that this did not mean that they were not documents produced or admitted at the inquiry because these were documents from the estate of the plaintiff's former father-in-law ("the Estate") mentioned in the order of Chao J, referred to at [3] above.

7 It is necessary at this stage, to address a misunderstanding by counsel of Chao J's order. Contrary to Mr Arul's impression, Chao J did not order that the Estate's books, vouchers and any other documents be admitted in evidence at the inquiry. His order was that they would be "evidence of the matters contained therein", and he ensured that whether the documents could be relied upon was a matter that had to be argued before the court at the inquiry. That was what was meant when he ordered that there be "liberty to the parties to take such objections as they think fit". Thus, there could be no predetermined inclusion of any of those documents. The objections by the respondents at the inquiry which led to the assistant registrar directing that the two final bundles be prepared, underlined the fact that only such documents that had been admitted were to be used at the inquiry. If counsel thought that the assistant registrar was wrong to have made such orders (adopting counsel's interpretation of Chao J's order), then the proper recourse was to appeal against that order (*ie* the registrar's refusal). However, there was no appeal before me against the restrictions placed by the assistant registrar in respect of the plaintiff's attempted reliance on the excluded documents.

8 There is no requirement that a record of appeal be filed in respect of an appeal from a registrar's decision to the High Court. Therefore, the documents to be included in the record of appeal to the Court of Appeal would be those that had been admitted as agreed bundles, or referred to but not included in any exhibit, that is to say documents under sub-cll 53(1)(a)(iv) and (v) of the Practice Directions. There were no documents admitted in the appeal before me. Mr Andre Arul announced that he had the impugned documents for reference but the first, third and fourth respondents objected. No formal application was made and, consequently, no order was made in respect of those documents. The result is that those documents cannot be part of the record of appeal. It may be true, as Mr Andre Arul submitted, that those documents were brought physically

into my chambers, but unless the additional documents are identified and admitted, the High Court hearing an appeal against a registrar's decision can only rely on the papers filed and/or admitted before the registrar. It is no help to say that the documents were lying in the court's chambers because the court cannot examine the "tens of thousands" of documents just because they are there.

9 I will therefore order that the documents objected to by the first, third and fourth respondents and set out above, be excluded from the index of the record of appeal. Only those documents admitted before AR Phang would be included. The plaintiff is to pay costs of $400 to the first respondent and $600 to the third and fourth respondents jointly, as well as reasonable disbursements to all three.

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