Chng Heng Tee (alias Cheng Kim Tee) and Another v Estate & Trust Agencies (1927) Ltd (Ho Hong Bee Christina (executrix of the estate of Koh Tek Heng, deceased), intervener) and Another Matter
[2009] SGHC 241

Case Number : OS 1351/2007, 1460/2007

Decision Date : 23 October 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Kee Lay Lian and Nigel Pereira (Rajah & Tann LLP) for the plaintiffs in Originating Summons No 1351 of 2007; Ponniah James Leslie and Leong Sue Lynn (Wong & Lim) for the plaintiff in Originating Summons No 1460 of 2007; Ranjit Singh (Francis Khoo & Lim) for the defendant; Lai Kwok Seng (Lai Mun Onn & Co) for the intervener

Parties : Chng Heng Tee (alias Cheng Kim Tee); Chng Kim Choo alias Chuan Heng Choo — Estate & Trust Agencies (1927) Ltd (Ho Hong Bee Christina (executrix of the estate of Koh Tek Heng, deceased), intervener)

Probate and Administration – Intestate succession

23 October 2009 Judgment reserved.

Choo Han Teck J:

1 This dispute concerns the interpretation of the rules of distribution in the Intestate Succession Act (Cap 146, 1985 Rev Ed) ("ISA"), in particular, whether an aunt/uncle who is a half blood sibling of a deceased's parent is a beneficiary of a deceased's estate pursuant to s 7 r 8 of the ISA when the deceased has surviving aunts and uncles who are full blood siblings of the deceased's parents. Miss Lim Chhui Ngor, deceased ("the Deceased") died intestate on 29 June 2006. The Administrator of her Estate ("Administrator"), Estate & Trust Agencies (1927) Limited, is the defendant in both Originating Summons No 1351 of 2007 and Originating Summons No 1460 of 2007. The Deceased has no surviving spouse, descendants, parents, brothers and sisters or their children, or grandparents. Koh Tek Heng ("KTH") is the Deceased's maternal aunt and has the same parents as the Deceased's mother. KTH passed away on 17 May 2008, after the death of the Deceased. The sole executrix of the estate of KTH ("KTH's executrix") is the intervener in both Originating Summons No 1351 of 2007 and Originating Summons No 1460 of 2007. Chng Heng Tee ("CHT") and Chng Kim Choo ("CKC") are the paternal aunts of the Deceased. They have the same father but different mother from the Deceased's father. CHT and CKC are the plaintiffs in Originating Summons No 1351 of 2007. Koh Sim Tian ("KST") is the Deceased's maternal uncle and has the same father but different mother from the Deceased's mother. KST is the plaintiff in Originating Summons No 1460 of 2007. In Originating Summons Probate No. 197 of 2007, KTH was named as the only beneficiary of the Deceased's estate. In this action, KST, CHT and CKC contend that pursuant to s 7 r 8 of the ISA, they are beneficiaries of the Deceased's estate. The Administrator seeks the decision of the Court as to whether CHT/CKC and/or KST are entitled to the Deceased's estate. The Administrator has taken the position that KTH is the only beneficiary to the Deceased's estate.

2 The sole issue is whether KTH, KST, CHT and CKC are entitled to benefit from the estate of the Deceased in equal shares, or whether KTH has priority over the other three claimants on the basis that she is a full blood aunt, while KST is a half blood uncle and CHT/CKC are half blood aunts of the Deceased. This depends on whether s 7 r 8 of the ISA should be read in light of and subject to s 6(b)

of the ISA such that a "whole blood" uncle/aunt takes in priority to a "half blood" uncle/aunt. KST's position was that under the ISA, the question of "half blood" and "whole blood is confined to siblings of the person deceased and children of deceased siblings of the person deceased. On the other hand, KTH submitted that the rules of distribution under s 7 rr 1 to 8 of the ISA ought to be read in the light of and subject to s 6(b) of the ISA. Section 6 of the ISA states:

> **Persons held to be similarly related to deceased**.
>
> 6. *For the purpose of distribution* —
>
> (a) there shall be no distinction between those who are related to a person deceased through his father and those who are related to him through his mother nor between those who were actually born in his lifetime and those who at the date of his death were only conceived in the womb but who have subsequently been born alive; and
>
> (b) those related to a person deceased by the half blood shall rank immediately after those of the whole blood related to him in the same degree.
>
> [emphasis added]

And s 7 of the ISA states:

> **Rules for distribution**.
>
> 7. *In effecting such distribution* the following rules shall be observed:
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> Rule 1
>
> If an intestate dies leaving a surviving spouse, no issue and no parent, the spouse shall be entitled to the whole of the estate.
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> Rule 2
>
> If an intestate dies leaving a surviving spouse and issue, the spouse shall be entitled to one-half of the estate.
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> Rule 3
>
> Subject to the rights of the surviving spouse, if any, the estate (both as to the undistributed portion and the reversionary interest) of an intestate who leaves issue shall be distributed by equal portions per stirpes to and amongst the children of the person dying intestate and such persons as legally represent those children, in case any of those children be then dead.
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> Proviso No. (1) — The persons who legally represent the children of an intestate are their descendants and not their next-of-kin.
>
> Proviso No. (2) — Descendants of the intestate to the remotest degree stand in the place of their parent or other ancestor, and take according to their stocks the share which he or she would have taken.

Rule 4

If an intestate dies leaving a surviving spouse and no issue but a parent or parents, the spouse shall be entitled to one-half of the estate and the parent or parents to the other half of the estate.

Rule 5

If there are no descendants the parent or parents of the intestate shall take the estate, in equal portions if there be two parents, subject to the rights of the surviving spouse (if any) as provided in rule 4.

Rule 6

If there are no surviving spouse, descendants or parents, the brothers and sisters and children of deceased brothers or sisters of the intestate shall share the estate in equal portions between the brothers and sisters and the children of any deceased brother or sister shall take according to their stocks the share which he or she would have taken.

Rule 7

If there are no surviving spouse, descendants, parents, brothers and sisters or children of such brothers and sisters but grandparents of the intestate the grandparents shall take the whole of the estate in equal portions.

Rule 8

If there are no surviving spouse, descendants, parents, brothers and sisters or their children or grandparents but uncles and aunts of the intestate the uncles and aunts shall take the whole of the estate in equal portions.

Rule 9

In default of distribution under the foregoing rules the Government shall be entitled to the whole of the estate.

[emphasis added]

3 In my opinion, s 7 r 8 of the ISA must be read in the context of s 6(b) of the ISA. The concept of an aunt/uncle of "half blood" or "whole blood" exists at law in the context of intestate succession. Whilst there may be no judicial definition of a "half blood" aunt/uncle in Singapore, we may adopt the description in s 46(1)(v) rr 4 and 5 of the English Administration of Estates Act 1925 ("the English Act"), s 4(8) of the Hong Kong Intestates' Estates Ordinance (Cap 73) ("the Hong Kong Ordinance") and s 61B(6) of the New South Wales Wills, Probate and Administration Act 1898 ("the New South Wales Act") such that a "half blood" aunt/uncle is the brother or sister of the half blood of a parent of the intestate whilst a "whole blood" aunt/uncle is the brother or sister of the whole blood of a parent of the intestate. Unlike the English Act, the Hong Kong Ordinance and the New South Wales Act which spell out the priority of a whole blood relation over a half blood relation individually for each rule of distribution, s 6(b) of the ISA lays down a general rule for the priority of whole blood relations over half blood relations of the same degree. This interpretation of the ISA would give effect to the phrases "for the purposes of distribution" and "[i]n effecting such distribution" in the preambles to

s 6(b) and s 7 of the ISA, respectively.

4 The plaintiffs' counsel, Mr Ponniah and Miss Kee, claimed that there is no such thing as a "whole blood" uncle/aunt. They pointed out that in *Black's Law Dictionary* Vol 1 (West Group, 7th Ed, 1999) at p 164, "whole blood" is defined as "[t]he relationship existing between persons having the same two parents; unmixed ancestry" and "half blood" is defined as "the relationship existing between persons having the same father or mother, but not both parents in common". The counsel argued that persons related in "whole blood" to the Deceased must have the blood of *both* the Deceased's parents. Even the mother of the Deceased is not a "whole blood" relative of the Deceased. Hence, the counsel asserted that the "whole blood" sister of the Deceased's mother (i.e. KTH) also cannot be a "whole blood" relative of the Deceased. The counsel argued that the operative phrase in s 6(b) of the ISA is the phrase "those related to the *persons deceased*" [emphasis added] such that absent express reference to those related to *parents* of the persons deceased, the application of s 6(b) is confined to siblings of the person deceased and children of deceased siblings of the deceased.

5 Counsel for KTH's executrix relied on Harman J's reference to the concept of a "surviving uncle or aunt of the half blood" in *Re Lockwood (deceased) Atherton v Brook and Another*, [1958] Ch 231 ("*Re Lockwood*"). *Re Lockwood* concerned the distribution of an intestate's estate to the issue of her uncles and aunts when her uncles and aunts did not survive her. The Crown contended that the estate of the intestate was *bona vacantia* under the English Act on the ground that the intestate's uncles and aunts must survive in order that their issue could claim in intestacy. Harman J held that the construction for which the Crown contended would have the effect of preferring the remoter to the nearer in blood and could not have been intended by the legislature when laying down the rules for ascertaining next-of-kin. Harman J explained his decision (at p 234–235):

> This, if it be right, would be surprising enough, but when it is realised that a further result of this construction of the amending statute is that if there were a surviving *aunt or uncle of the half blood* (as possibly there may be), descendants of uncles and aunts of the half blood would take in preference to *similar relations of the whole blood*, it is clear that so anomalous a result cannot have been intended by the Legislature…
>
> If the intestate had died in any of the years between 1926 and 1952 the position would have been clear enough. Under section 46 of the Administration of Estates Act, 1925 subs (1)(v), there being no issue or parent, brother or sister or descendants of theirs, *uncles and aunts of the whole blood would come next… Thus, the plaintiffs and the defendant would be members of the class to take, to the exclusion of uncles and aunts of the half blood and their issue*.
>
> [emphasis added]

KTH's executrix also referred to my Judgment in *Re Estate of Lim Yew Teok, deceased* [2008] SGHC 128 at [1] where I stated:

> [CHT and CKC] were the daughters of Chng Phee Lam from his second marriage, and were thus *the half-blood paternal aunts* of [the Deceased]. [emphasis added]

6 In my opinion, the concept of a half blood aunt/uncle exists at law, as exemplified by Harman J's decision in *Re Lockwood*. I also note that *Halsbury's Laws of Australia* Vol 24 (Butterworths, 1996) at para 395–1915 refers to relatives of the whole blood as "relatives who share the same ancestors" and relatives of the half blood as "relatives who share only one ancestor". In this sense, KTH can be said to be a whole blood relation of the Deceased since she shares the same

blood as both grandparents of the Deceased whereas each of the plaintiffs only shares the blood of one grandparent of the Deceased. Whilst counsel for the plaintiffs have pointed to the definition of "uncle" in *Stroud's Judicial Dictionary of Words and Phrases* Vol 3 (Sweet & Maxwell, 17th Ed, 2006) at p 2849 as "the brother or half-brother of a person's parent", this definition was given with express reference to s 27 of the English Sexual Offences Act 2003. That is a different context from the rules of distribution of an estate on intestacy.

7 At the second reading of the Intestate Succession Bill (see Singapore Parliamentary Debates, Official Report (12 December 1966) Vol 25 at col 565), the then Minister for Law and National Development, Mr E.W. Barker stated that:

> For the purpose of distribution under the Bill, it is provided that there shall be no distinction between those related to the deceased person through his father and those related through his mother nor between those who are related to him by the full blood and those related to him by the half-blood.

The plaintiffs claimed that this statement makes it clear that Parliament's intention, when enacting the ISA, was not to give those of full blood priority over those of half blood in the distribution of the estate. Counsel for the plaintiffs relied on a passage from Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, (Malayan Law Journal, 1978) at pp 174–175 wherein the learned author confirmed the position that there is *no distinction* between those related to the deceased by the full blood or those who are related by the half-blood and referred to s 6 of the ISA in support of this. It is to be noted that this claim by the plaintiffs does not distinguish between aunts/uncles and brothers/sisters. Yet, it is clear from s 6(b) of the ISA and the decision in *Re Fenton* [1994] 1 SLR 448 at 450 (which I accept was only concerned with the issue of distribution under s 7 r 6 of the ISA) that those related to a person deceased by a half blood should rank immediately after those of the whole blood related to him in the same degree. I would adopt the interpretation of s 6(b) of the ISA in the commentary to it in *Butterworths Annotated Statutes of Singapore* Vol 10 (Butterworths Asia, 1999 Issue) where it is stated (at p 20) that:

> *Though the section states that there is no distinction between persons of the full blood and persons of the half blood, it is persons of the full blood who have priority in the distribution of an intestate's estate*. Paragraph (b) of the section sets out the priority between persons of full blood and that of half blood. It is only after exhausting the persons of the full blood who may not be alive at the time of the death of the deceased, that persons of the half blood have any right to succeed. [emphasis added]

Hence, whilst section 6(b) of the ISA does not distinguish between persons of the full blood and persons of the half blood with regards the manner of distribution, it affects the *priority* of distribution amongst relations of the same degree such that persons of the half blood will only have a right to succeed if there are no persons of the full blood (or their children) surviving at the time of death of the deceased.

8 The question turns on whether the phrase "related to (the intestate) in the same degree" in s 6(b) of the ISA is confined to siblings of the deceased. In my opinion, "degree" of kin includes aunts/uncles. The term "degree" in this context refers to the measure of removal from a particular person in the line of ascent or descent determining the proximity of a blood or marital relationship and applies to uncles/aunts of the deceased. The degree of relationship is ascertained by the number of steps that the relative was removed from the deceased, counting the generations down in the case of descendants (computing up to the common ancestor) and then down in the case of other relatives

(see Sherrin and Bonehill, *The Law and Practice of Intestate Succession*, (Sweet & Maxwell, 3rd Ed, 2004) at p 42) ("Sherrin and Bonehill"). An aunt/uncle, nephew/niece of a deceased would be related in the same degree (i.e. third degree) to the deceased (e.g. in the case of the aunt/uncle, the father grandfather, and aunt/uncle; in the case of the nephew/niece, the father, brother, and nephew/niece) (see also *Halsbury's Laws of England*, Vol X, (Butterworths, 2nd Ed, 1933) at p 604).

9 As recognised at the second reading of the Intestate Succession Bill in Parliament at col 563, the law relating to intestate distribution in Singapore, prior to the enactment of the ISA, followed the provisions of the English law as contained in the Statute of Distributions (1670, 22 & 23 Car. II, c10). It was also acknowledged at the second reading of the Intestate Succession Bill that the Statute of Distributions "has, in fact, been repealed [in England]". Under the Statue of Distributions, no priority was given to relations of the whole blood over the half blood. The manner of distribution on intestacy was as such (see Ahmad Ibrahim, "*The Status of Women in Family Law* in Malaysia, Singapore and Brunei" (1966) 8 MLR 233, at 250):

> (g) If there are no parents, but the next of kin (other than the widow) are brothers or sisters and children of deceased brothers or sisters, the estate goes to them per stripes but this is limited to the case where there is one brother or sister living; if all the next of kin are children of deceased brothers and sisters, the distribution among them is per capita.
>
> (h) In all other cases, subject to the rights of the widow, the estate goes to the next of kin, ascertained in accordance with the civil law rule, computing up from the intestate to the common ancestor and then down again to the claimant, the next of kin of equal degree sharing equally inter se and *no priority being given* to males over females or *to the whole blood over the half blood*.
>
> [emphasis added]

The Statute of Distribution was the applicable law in England and Hong Kong before the enactment of the English Act and the Hong Kong Ordinance. The English Act provides at s 46(1)(v):

Succession to real and personal estate on intestacy

46. (1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:-

(v) If the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the estate, and in the following order and manner, namely:-

First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Fourthly, on the statutory trusts for the *uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate)*; but if no person takes an absolutely vested interest under such trusts; then

Fifthly, on the statutory trusts for the *uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate)*; but if no person takes an absolutely vested interest under such trusts; then

Sixthly, for the surviving husband or wife of the intestate absolutely…

[emphasis added]

A similar provision is found in s 4(8) of the Hong Kong Ordinance and in s 61B(6)(d)–(e) of the New South Wales Act.

10 The plaintiffs claim that since the Statute of Distribution did not award priority to whole blood relations over half blood relations, express provision must be made to effect a change in the law. Counsel for the plaintiffs argued that the English Act and the Hong Kong Ordinance are differently worded from the ISA and that had the intention of Parliament been to extend the "whole blood" or "half blood" concepts to uncles and aunts, it would have phrased the ISA as in the English Act. Both the English Act and the Hong Kong Ordinance differentiate an aunt/uncle who is related to *the parent of the Intestate* by the whole blood with those related to *the parent of the Intestate* by the half blood. Counsel argued that s 6 of the ISA requires the claimant for priority to show full blood vis-à-vis *the intestate himself*. Sherrin and Bonehill notes (at p 43) that:

The modern scheme of intestate succession embodied in the 1925 Act rejects the degrees of relationship approach in favour of the identification of persons by descriptive name but, apart from the entitlement of a surviving spouse, the modern order of entitlement is not dramatically different to that provided by the 1670 Act.

Unlike the English Act and Hong Kong Ordinance which now identify persons by descriptive name and spell out the priority of whole blood relations over half blood relations individually for each rule of distribution (even where it concerns whole blood and half blood siblings of the intestate), the ISA retains the identification of persons by degree of relationship in s 6(b) wherein it lays down a general rule of priority but adopts the identification of persons by descriptive name in s 7. The preamble to s 6 of the ISA explicitly states that s 6 is "[f]or the purposes of distribution" and the preamble to s 7 of the ISA explicitly states that the rules laid down therein are for "effecting such distribution". Given that the concept of a whole blood and half blood aunt/uncle exists at law (see [15] above), s 6(b) applies to any distribution under s 7 r 8 of the ISA, and there is no need for explicit description of a whole blood or half blood aunt/uncle in s 7 r 8 of the ISA.

11 Section 7 rule 8 of the ISA must be interpreted in the light of and subject to s 6(b) of the ISA. KTH, being a whole blood aunt of the Deceased, is thus the sole beneficiary of the Deceased's estate to the exclusion of the plaintiffs, who are the half blood aunts and half blood uncle of the Deceased. I will hear party on costs at a later date.

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