AAG v Estate of AAH, deceased
[2009] SGCA 56

Case Number : CA 26/2009

Decision Date : 19 November 2009

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : George Pereira and Tan Thong Young (Pereira & Tan LLC) for the appellant; Lim Choi Ming (KhattarWong) for the respondent

Parties : AAG — Estate of AAH, deceased

Family Law – Legitimacy – Effects of illegitimacy

Family Law – Maintenance – Child

19 November 2009 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This is an appeal against the judgment of the High Court dated 11 February 2009 which refused an application by the appellant who was seeking, on behalf of her two illegitimate daughters, for maintenance from the estate of the Deceased, the respondent, under the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) ("the IFP (S) Act"). The sole issue before the court below, as well as before us, was whether an illegitimate child is entitled to claim for support under the IFP (S) Act.

2 The Deceased died intestate on 11 February 2008 and left behind a lawful wife and four legitimate daughters born out of that union. However, as mentioned above, he had also fathered two illegitimate daughters ("the two daughters"), born in 1999 and 2001, with the appellant. It is not in dispute that the Deceased was the biological father of the two daughters and his name appeared on both their birth certificates. It is also not challenged that prior to his death, the Deceased was financially supporting the appellant and the two daughters.

3 On 28 August 2008, and pursuant to s 3(1) of the IFP (S) Act, the appellant commenced proceedings by way of originating summons against the respondent estate, praying for, *inter alia*, an order that reasonable provision for the maintenance of the two daughters be assessed and granted.

The statutory provisions

4 We will, at this juncture, set out s 3(1) of the IFP (S) Act.

> **3**. —(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.

Section 2 of the IFP (S) Act defines "son" and "daughter" as follows:

2. In this Act, unless the context otherwise requires —

"son" and "daughter", respectively, include a male or female child adopted by the deceased by virtue of an order made under the provisions of any written law relating to the adoption of children for the time being in force in Singapore, Malaysia or Brunei Darussalam, and also the son or daughter of the deceased *en ventre sa mere* at the date of the death of the deceased.

As can be seen from these provisions, the IFP (S) Act does not state whether the terms "son" and "daughter" include an illegitimate child. Or, putting it another way, the definition in s 2 of the IFP (S) Act does not expressly exclude an illegitimate child.

5 Prior to the present case, there does not appear to be any previous decision of a Singapore court on this issue. The positions taken by academics are also not wholly certain or uniform. Professor Leong Wai Kum in *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 374 states that "It is *possible* that an illegitimate child cannot apply for maintenance from the parent's estate under the statute." [emphasis added]. *Halsbury's Laws of Singapore* vol 15 (LexisNexis Singapore, 2006 Reissue) at para 190.298 states that "it is *likely* that only legitimate sons and daughters may apply for maintenance under the Singaporean Inheritance (Family Provision) Act" [emphasis added]. However, the learned authors of *Butterworths' Annotated Statutes of Singapore* vol 10 (Butterworths Asia, 1999 Issue) at p 5 are more definitive when they state that "illegitimate children who have not been formally adopted will not be considered as son and daughter". On the other hand, Assoc Prof Debbie Ong in "Family Provision After Death" (1995) 7 SAcLJ 379 at 390 appears to assume that illegitimate children are entitled to maintenance under the IFP (S) Act.

The High Court decision

6 The High Court Judge dismissed the appellant's application, having ruled on the preliminary point that illegitimate children were not entitled to claim maintenance under the IFP (S) Act (see *AAG v Estate of AAH, deceased* [2009] 2 SLR 1087). His reasoning proceeded essentially as follows:

(a) The IFP (S) Act was enacted to introduce into Singapore the provisions of the Inheritance (Family Provisions) Act 1938 (c 45) (UK) ("the IFP (UK) Act 1938").

(b) The established interpretation of the IFP (UK) Act 1938 was that it excluded illegitimate children from making maintenance claims against the estate of a deceased natural parent. Whilst the Family Law Reform Act 1969 (c 46) (UK) ("the FLR Act 1969") and the Inheritance (Provision for Family and Dependants) Act 1975 (c 63) (UK) amended the IFP (UK) Act 1938 to allow illegitimate children to claim maintenance from the estate of a deceased parent, the IFP (S) Act had not been so amended. There was also nothing in the records of the debates of the Singapore Parliament regarding the enactment of the IFP (S) Act to support the contention that it was Parliamentary intention that illegitimate children could make a claim under the Act. *Prima facie*, the correct interpretation of the IFP (S) Act, in accordance with Parliamentary intention, should be the interpretation accorded to the IFP (UK) Act 1938 before it was amended by the FLR Act 1969.

(c) Section 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) prescribed that an interpretation of a statutory provision which would promote the purpose or object of the statute in question was to take precedence over any other interpretation. The clear and unambiguous purpose of the IFP (S) Act was to introduce the provisions of the IFP (UK) Act 1938 as it stood then (*before* the 1969 amendment) and the court was constrained to hold that an illegitimate child could not apply for maintenance under the Act.

(d) It was up to the Legislature to revise the law if it thought it necessary. He noted that legitimacy had become an inconsequential factor in many aspects of the law today and this aspect might well be the next.

Principles of interpretation

7 It is an established principle of common law that the courts should adopt a purposive approach in the interpretation of a statute: see *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 617 (*per* Lord Griffiths). This is now specifically mandated by s 9A(1) of the Interpretation Act which expressly provides that an interpretation that would promote the purpose or object underlying the written law shall be preferred to an interpretation that would not promote that purpose or object. The words of a statute are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament (see *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201, *per* Yong Pung How CJ). However, even in applying the purposive approach, the court must bear in mind the parameters set by the literal text of the provision and should assiduously guard against inadvertently re-writing legislation (see *PP v Low Kok Heng* [2007] 4 SLR 183).

Origin of the IFP (S) Act

8 As stated before, the IFP (S) Act was enacted to introduce into our law the provisions of the IFP (UK) Act 1938. The IFP (UK) Act 1938 was interpreted by the English High Court in the case of *Makein v Makein* [1955] Ch 194 ("*Makein*"). Harman J adopted a restrictive sense to the terms "son" and "daughter" and his reasoning was as follows (at 208–209):

> Before 1938 a man might by his will disinherit his whole family, whatever sense be given to that word. At first sight, it seems to me that an Act intended to cut down this freedom should not have a meaning given to the class of persons who may take advantage of it more extensive than its plain meaning warrants, because every person included among the dependants is a person

having a right to question the testator's freedom to dispose of his own. Is there, then, any compelling reason for extending the class of dependants? It is said that there is, because a man has a moral obligation towards those he has brought into the world who, as Farwell, J. said in [*In Re Joslin* [1941] Ch 200], are none the less his children for having been born on the wrong side of the blanket. On the other hand, while a man is free to honour his moral obligations, it may be said the law is going quite far enough in compelling him to honour his legal obligations, that is to say, obligations towards those to whom he is legally bound, and that to extend the obligation is no part of the duty of society or the policy of the law. *In re Harrington* [[1908] 2 Ch 687] shows that a putative father's liability ends with his death. It was pointed out to me that legislation on these lines in English-speaking countries originated in New Zealand: see *Bosch v. Perpetual Trustee Company* [[1938] AC 463] for a general description. My attention was drawn to the New Zealand statute of 1908, entitled "The Family Protection Act," by section 2 of which "family" is defined as including wife and children, and under section 33 children are the objects of the protection. It appears that it has never been suggested that "children" in this Act meant anything but legitimate children; and I was referred to *"E." v. "E."* [(1915) 34 NZLR 785, 794, 801, 804] where it was assumed that an illegitimate child had no claim but a moral one: see the judgment of Stout C.J. This case was followed in *Pulleng v. Public Trustee* [(1922) 41 NZLR 1022, 1028].

Similar legislation has been passed in New South Wales— see *In re Pritchard* [(1940) 40 NSWSR 443], where it was assumed that legitimacy was necessary in order to have a claim as a child under the New South Wales Act of 1916 called the Testator's Family Maintenance Act. It is true apparently, that the point has not been argued in either jurisdiction. Counsel for the plaintiff asked me to hold that the word "son" was a broader word than the word "child," but this I reject altogether. In my judgment, a son means merely a male child.

9 Harman J further held that an illegitimate child was not entitled to maintenance under the IFP (UK) Act 1938 on the grounds that the Legislature could not have contemplated applications by illegitimate offspring competing with the claims of legitimate dependants whether under a will or intestacy as this would place an odious and impossible burden on the courts which could not know what other dependants might enter the list to make further claims to a share (see *Makein* at 209).

10 This interpretation given by Harman J in *Makein* appears to be in line with the views expressed by the then Minister in Parliament at the Second Reading of the Inheritance (Family Provision) Bill (UK). Mr Holmes stated (United Kingdom, House of Commons, *Parliamentary Debates* (5 November 1937) vol 328 at col 1292):

A living married person has a financial responsibility by law to the marital partner and to the children, and the Bill presented to-day seeks in a reasonable way to continue that responsibility after decease.

11 It may be of interest to note that in the earlier case of *Re Joslin* [1941] Ch 200, where an application was made by the widow under the IFP (UK) Act 1938 and where her deceased husband had provided in his will not for her but for his mistress and his two children by that mistress, Farwell J assumed that illegitimate children did not come under the Act. He referred (at 202) to the obligations of the deceased to his mistress and her two children as "moral … obligations".

Parliamentary intention

12 At this juncture we shall examine if our Parliament had given any indication as to its intention behind the enactment of the IFP (S) Act. While Minister Yong Nyuk Lin in his Second Reading speech

on the Bill (which became the Act) did not expressly state that the Bill would not apply to illegitimate children, he did say that "[t]he provisions relating to family provision appear to have worked well in England and it is proposed to introduce them into Singapore" (*Singapore Parliamentary Debates, Official Report* (21 April 1966) vol 25 at col 78 (Yong Nyuk Lin, Minister for Health)). What sense should one reasonably give to this part of the Minister's statement that the provisions "have worked well in England"? It must be borne in mind that at the time the IFP (S) Act was enacted in 1966, the IFP (UK) Act 1938 had already been interpreted in *Makein* (see [8]–[10] above) and that was the law in England. Therefore, it seems to us that by the Minister stating that the English provisions had worked well in England, it must necessarily mean that the Minister agreed with the restrictive interpretation put to the terms "son" and "daughter" by the English court. It is reasonable to, and one must, assume that the Minister was fully apprised of the state of the law in England when he made the statement. This is clearly a fundamental point. It is thus a clear indication of what the intention of Parliament was.

13 The Appellant has sought to give a narrower sense to what the Minister said was the object of the Bill, *ie*, to prevent the "evil" of a man devising or bequeathing his whole estate to charity or to a complete stranger, leaving his widow and children with no means of sustenance. That was all. The Minister could not have intended to also import the English courts' interpretation of "son" and "daughter". But to construe the statement in this narrow sense would be to suggest, wholly without basis, that the Minister, and in turn Parliament, had enacted the Act blissfully ignorant of its scope, or as to how it was interpreted and applied in England at the time. While we recognise that in 1966, there were probably differences in the social norms of the Singapore society and those of the English society, and the Minister would have been aware of that, he did not indicate that it mattered in so far as this Act was concerned.

14 It is true that before the enactment of the Women's Charter in 1961, which introduced monogamous marriages in Singapore, a man, following Chinese customs, could have more than one wife and, children of his, from any of his wives, had always been regarded as his legitimate children – see *In the Matter of the Estate of Choo Eng Choon, deceased* (1908) 12 SSLR 120 (*The Six Widows Case*). Thus when the IFP (S) Act was enacted, such children, if they were not adequately provided for by their father on his death, would have been entitled to invoke the Act to ask for maintenance from his estate.

15 We agree generally with the argument of the Appellant that the mere fact that a Singapore Act adopted the provisions of an English Act should not mean that we would automatically follow all previous English court decisions on those provisions. It would necessarily depend on the specific issue and the circumstances. We also agree that, in general, nothing should fetter the discretion of the local courts in their interpretation of a provision to suit the local social and economic conditions. Having said that, we have to highlight two relevant considerations. First, it is important to bear in mind what was stated by the Minister in explaining the Bill, as that would indicate the underlying purpose or object of the Act. Second, while the Singapore courts are not bound by the previous English court decisions, those decisions are undoubtedly of strong persuasive authority unless there is some alteration in the wording of the Singapore Act which may indicate that something different was intended, or that interpretation conflicts with established local social norms, thus requiring our courts to further examine the issue.

Should a different interpretation be adopted in light of other statutory provisions

16 The appellant has pointed out, and the Judge below had noted, that legitimacy has gradually become an inconsequential factor in many aspects of Singapore law today. For example, s 68 of the Women's Charter (Cap 353, 2009 Rev Ed) imposes an obligation on a parent to maintain his or her

children, irrespective of whether the children are legitimate or illegitimate. We should point out that the Women's Charter was not the first statutory provision which imposed a duty to maintain an illegitimate child on the part of the natural parents. The earliest statutory provision would appear to be the Straits Settlements Summary Criminal Jurisdiction Ordinance (SS Ord No XIII of 1872) which provided that the court, on proof that a man had neglected or refused to maintain his illegitimate child, could order him to make such monthly allowance not exceeding ten dollars. Such a statutory duty to maintain was in contrast to the position at common law where a natural father was not under any legal obligation to maintain his illegitimate children.

17 Section 20 of the Civil Law Act (Cap 43, 1999 Rev Ed) enables a dependant of a person whose death was caused by a wrongful act or neglect of another to recover damages from the latter and the term "dependant" is expressly defined by s 20(9)(*b*) to include an illegitimate child. Section 61 of the Insurance Act (Cap 142, 2002 Rev Ed) also expressly provides that an illegitimate child shall be treated as the legitimate child of his parents thus enabling an illegitimate child to claim the moneys arising from his parent's insurance policy without the production of any probate or letters of administration.

18 The Pensions Act (Cap 225, 2004 Rev Ed), First Schedule, para 21, grants an officer, who is killed on duty and who does not leave a widow or where no pension is granted to the widow, a pension in respect of each child until such child attains the age of 18 years. The Act further defines a child to include an illegitimate child born before the date of the injury and wholly or mainly dependent upon the deceased officer for support. Finally, s 10(1) of the Legitimacy Act (Cap 162, 1985 Rev Ed) provides that an illegitimate child will be entitled to the property of his intestate mother if she does not leave behind any legitimate issue.

19 The one common feature in all these legislation is that, where Parliament intended a statutory provision to apply to an illegitimate child, it had expressly so provided. However, this is not so with the IFP (S) Act. We do not think that the existence of those legislation are really helpful in interpreting the IFP (S) Act.

20 Moreover, we should also point out that even under the Legitimacy Act (see [18] above), there is a difference in status between a legitimate child and an illegitimate child of a married woman. Section 10(1) of the Legitimacy Act expressly provides that upon the death of a mother without a will, an illegitimate child of hers would only be entitled to succeed to her property if she does not leave behind a legitimate child.

21 Section 1(2) of the IFP (S) Act expressly excludes its application from the estates of deceased Muslims. This was because there was already in existence s 41 of the Muslims Ordinance 1957 (No 25 of 1957) which enabled the court to vary the will of a Muslim testator to make provision for his heirs (see Mr Yong Nyuk Lin's Second Reading speech – *Singapore Parliamentary Debates, Official Report* (21 April 1966) vol 25 at col 78). Nothing in this fact is germane to the interpretational issue at hand.

22 At this juncture, it may be pertinent to refer to the Intestate Succession Act (Cap 146, 1985 Rev Ed) where s 3 provides that a "child" means a "legitimate child". Thus, the Intestate Succession Act excludes an illegitimate child from succeeding to his or her parent's intestate estate, unlike his or her legitimate siblings. The respondent has contended that should an extended meaning be given to the IFP (S) Act so as to enable an illegitimate child to seek support from the estate of his or her biological father, it would have the effect of circumventing the provisions of the Intestate Succession Act so that such an illegitimate offspring stands ultimately to receive a portion of his or her intestate parent's estate. In our opinion, there is much force in this argument. Section 68 of the Women's Charter only imposes a duty on a parent, for so long as he or she lives, to maintain an illegitimate

child.

The significance of reform legislation post the IFP (UK) Act 1938

23 As would be apparent from the above, the law seems in general to discriminate against illegitimate children. Obviously, this flows from the perception that the family within marriage was considered to be the only acceptable social grouping in which to raise children. We do not think that as far as Singapore society is concerned, our values in this regard has in any way changed. Andrew Bainham and Stephen Cretney, *Children – The Modern Law* (Family Law, Jordan Publishing Ltd, 1993) at p 152, have observed that:

> The history of the gradual reform of the illegitimacy laws in England is the story of an attempt to equalise the positions of children born in and out of wedlock by removing the legal disadvantages suffered by the latter but to do so in a way which did not unnecessarily weaken the institution of marriage.

Perhaps, this could be due to the fact that in England and Wales there is a relatively high incidence of children born out of wedlock. In the House of Commons debate on the Children Bill in 1979, there was the suggestion that as many as three million people living in Britain had been born illegitimate. In 1980 alone, 77,400 children were born illegitimate in England and Wales (see Law Commission of England and Wales, *Family Law: Report on Illegitimacy* (Law Com No 118, 1982) at para 2.1).

24 For our present purposes, we need only refer to the following English reform legislation. Under the FLR Act 1969, important changes have been effected. Illegitimate children and their parents are granted reciprocal rights to share on each other's intestacy as if the child had been born legitimate. The FLR Act 1969 also reversed the old rule of construction (see *Hill v Crook* (1873) LR 6 HL 265) whereby a gift by will or settlement to children was construed as referring only to legitimate children. It further enables an illegitimate child to apply for maintenance under the IFP (UK) Act 1938 as in the case of a legitimate child. Prior to this Act, maintenance of an illegitimate child could only be obtained by special proceedings known as affiliation proceedings, which application could only be made by the child's mother in a magistrate's court and subject to certain special requirements. However, the FLR Act 1969 does not seek to equate the position of an illegitimate child with that of a legitimate child.

25 Next, there is the Inheritance (Provision for Family and Dependants) Act 1975 (c 63) (UK) which defines a child to include an illegitimate child and thus enables an illegitimate child to claim financial provision from the deceased parent's estate. Finally, we should refer to the Family Law Reform Act 1987 (c 42) (UK) which has made even more extensive changes to the law affecting an illegitimate child, changes which we need not go into. Suffice it for us to mention that the Act, by s 1(1), provides that for all legislation and instruments made after 4 April 1988:

> … references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time.

26 What the enactment of these subsequent reform statutes in England shows is that as at 1969 (a) *Makein* was the law in England, and (b) it was decided that the law be amended to give an illegitimate child the right to claim for maintenance from the estate of a deceased parent under the IFP (UK) Act 1938.

27 As far as the Singapore legislation, which we have referred to in [16]–[18] above, are

concerned, they do not seek to do away with the distinction between legitimate and illegitimate children. The object of each of those statutes was mischief specific. Each statute sought to address what was considered to be a specific social ill or problem. Of course, due to such mischief-specific legislation, the practical difference in the statuses of legitimacy and illegitimacy has been considerably reduced.

28 Again, taking s 68 of the Women's Charter as an example, a legal duty to maintain an illegitimate child is imposed on the natural parents. This is to ensure responsibility on the part of the person who has brought the child into this world. If he or she does not bear the responsibility, society would have to bear it. This is also very much the perception of Prof Leong Wai Kum who (in *Halsbury's Law of Singapore* vol 11 (LexisNexis, 2006 Reissue) at paras 130.529 and 130.592) has observed that over the years, statutes have tempered the substantive common law rules on legitimacy significantly by (a) progressively removing the effect of a child being determined illegitimate; and (b) reducing the incidence of a child being determined illegitimate. She notes that the legitimacy status of a child has become much less important today than it used to be and that the law of legitimacy in Singapore is increasingly becoming less meaningful.

29 In line with this trend, s 4(4) Adoption of Children Act (Cap 4, 1985 Rev Ed) recognises the rights of the natural father of an illegitimate child by requiring his consent before that child may be given away for adoption. The basis for according him this right to object to the proposed adoption is that he is a person who is "liable to contribute to the support of the infant" and thus has an interest in the child. Again, this minimises the difference between the treatment of legitimate and illegitimate children.

Statutes as speaking documents

30 It is a settled principle that a statutory provision should be construed in a manner which will take into account new situations which may arise and which were not within contemplation at the time of its enactment. Such an approach is illustrated by the case of *Victor Chandler International Ltd v Customs and Excise Commissioners* [2000] 1 WLR 1296, where the English Court of Appeal held that although when enacting a provision about advertisements in 1952 Parliament could not have contemplated the means by which advertisements could now be distributed electronically, in order to prevent the provision being undermined, it was necessary and appropriate to give the expression "advertisement" an "always speaking" or ambulatory construction to take into account developments since the provision was originally enacted. The court is to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (see Francis Alan Roscoe Bennion, *Bennion on Statutory Interpretation – A Code* (LexisNexis, 5th Ed, 2008) at p 889 (on s 288(2)). A statutory provision should not be regarded as a historical document but a document written with an eye to the indefinite future, *ie*, that it will be applied not only to facts in existence at the time it came into force but also to conditions and circumstances which may surface in the future (see Ruth Sullivan, *Driedger on the Construction of Statutes* (Butterworths, 3rd Ed, 1994) at p 139).

31 But the present interpretational problem does not involve a new situation which was not in existence at the time the IFP (S) Act was enacted. The status of illegitimate children has been in existence for as long as the institution of marriage was in place. If the correct interpretation of the IFP (S) Act, as at the time of its enactment, was that it could not be invoked by an illegitimate child, then it is not for the courts to extend its scope by judicial interpretation. However, if, due to changing social mores, it is thought that the Act should now be made available to an illegitimate child, then that would be a matter within the province of Parliament to take the appropriate measure to amend the law.

32 We note that in *Regina (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687 at [9], Lord Bingham of Cornhill said:

> There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now.

33 There is no evidence whatsoever that there is a change in social norms in Singapore such that society has generally regarded or equated an illegitimate child with a legitimate child. All we see is that Parliament has seen fit to reduce the incidence of illegitimacy, or to treat an illegitimate child in the same way as a legitimate child for specific purposes. But that is far from saying that the two statuses are the same.

Reduction of incidence of illegitimacy

34 The Legitimacy Act has allowed a child who was illegitimate at birth to be legitimised when his or her parents subsequently marry each other. Parliament has also, through various amendments to the Women's Charter, reduced the incidence of illegitimacy. For instance, it no longer matters if either parent was married to someone else at the time of the child's birth provided that the parents subsequently legally marry each other; where a marriage is annulled (in the case of a voidable marriage), a decree declaring the marriage void operates only from the date of the decree (s 110, Women's Charter) and any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, shall be deemed to be their legitimate child, notwithstanding the annulment (s 111(1), Women's Charter). Even with regard to a void marriage, by virtue of the Statute Law Revision Act, 1969 (No 14 of 1969), "[t]he child of a void marriage [whether born before or after the commencement of the Women's Charter] shall be deemed to be the legitimate child of his parents if, at the date of such void marriage, both or either of the parties reasonably believed that the marriage was valid" (s 111(2), Women's Charter).

35 Again, while we acknowledge that the above provisions seek to reduce the incidence of illegitimacy, they do not do away with the distinction between a legitimate child and an illegitimate child. Indeed, they implicitly reaffirm the distinction.

36 Though counsel for the parties have not raised this, we note that Singapore has ratified the United Nations Convention on the Rights of the Child on 4 November 1995. Article 18(1) of the Convention requires States Parties to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. But nothing in this Convention compels Singapore to equate an illegitimate child with a legitimate child.

Our decision

37 We will now return to determine whether on the proper construction of s 3(1) of IFP (S) Act, an illegitimate child is entitled to seek maintenance under it. The *Cambridge International Dictionary of English* (Cambridge University Press, 1995) at p 226, in defining the word "child", gives this example: "The minister is reported to have fathered several *illegitimate* children." [emphasis added]. *The Oxford English Dictionary* vol III (Clarendon Press, 2nd Ed, 1989) at p 113, defines a "child" as the "offspring, male or female, of human parents". Both dictionaries define a daughter as a female child. Thus, the ordinary literal meaning of "daughter" would appear to have nothing to do with the legal state of legitimacy but with a biological fact. In this sense, the word "son" would include an illegitimate son

and "daughter", an illegitimate daughter.

38 In the context of the IFP (S) Act, it seems to us that the following considerations are germane to determining whether the ordinary literal meaning should or should not apply in interpreting the words "son" and "daughter" in s 3(1):

(a) It is vitally important to note that s 3(1)(*a*) itself refers to a person who dies "leaving a wife or husband". This would mean that the situation contemplated by the provision is one where the deceased and the person whom he or she leaves behind were married. The subsequent references in ss 3(1)(*b*), 3(1)(*c*) and 3(1)(*d*) to "daughter" and "son" must necessarily refer to a daughter or son of that marriage. The context would militate against reading the word "daughter" and "son" to encompass even an illegitimate child of the deceased with another woman or man to whom the deceased was never married. Such an extended interpretation would also be inconsistent with the title of the Act which refers to "family provision". In this regard, it bears noting that under the common law, reference in a statute to "child" or "children" would *prima facie* mean a legitimate child or legitimate children: see *Galloway v Galloway* [1956] AC 299 at 316 (*per* Lord Oaksey), at 318 (*per* Lord Radcliffe) and at 323 (*per* Lord Tucker).

(b) The terms "son" and "daughter" have been defined to include a legally-adopted son or daughter. Under general law, a legally-adopted son or daughter stands in precisely the same position as a son or daughter of a person born during wedlock. It seems to us that this definition is included presumably to remove any doubt that such an adopted child can seek maintenance under the Act. This is also the case for a son or daughter of a deceased *en ventre sa mere*.

(c) Under the Intestate Succession Act, only legitimate children are entitled to claim against their natural parent's estate. To permit an illegitimate child to claim for maintenance against his or her deceased parent's estate would be to indirectly allow that child to claim for a share in the intestate parent's estate, contrary to the provisions of the Intestate Succession Act.

39 It is therefore our opinion, and we affirm the ruling of the court below, that the IFP (S) Act is only available to legitimate children notwithstanding the fact that at the time the Act was enacted the equivalent to what is now s 68 of the Women's Charter had already obliged a natural parent to maintain his or her child. However, that obligation to maintain exists only while the natural parents are alive. It must be borne in mind that at common law, a natural parent has no legal obligation to maintain an illegitimate child and this strict rule is ameliorated by statute such as s 68 of the Women's Charter – see *Butterworth's Annotated Statutes of Singapore* vol 6 (Butterworths Asia, 1997 Issue) at p 218.

40 We are further fortified in this conclusion by what was stated by the Minister in Parliament at the Second Reading of the Bill (see [12] above), which eventually became the Act. We would reiterate that by the Minister stating that Singapore was adopting the IFP (UK) Act 1938 because it had worked well in England, he must necessarily mean the scheme of things under the Act as interpreted and applied by the courts there. That was Parliamentary intention, and under s 9A of the Interpretation Act, we are obliged to give effect to such intention.

Law reform

41 By reaching the conclusion which we have, we are by no means expressing a view that it would be inappropriate to extend the scope of the IFP (S) Act so as to enable an illegitimate child of a deceased person from invoking it. That is a policy call for the Legislature. But, as we have alluded to before, s 68 has already imposed a duty on a natural parent to maintain an illegitimate child. So the

question is whether the law should go one step further to provide that the duty of a natural parent to maintain an illegitimate child should not terminate with his or her death and that his estate should, where its resources permit, continue to be liable to discharge that duty. Logically, we are unable to see why the law should not be changed to take that further step. While we recognise that this issue does involve considerations of social policy, we would imagine that the balance should favour imposing a duty on the estate of the deceased natural parent. We would urge the Legislature to seriously consider making the necessary reforms in this regard so as to enable an illegitimate child to claim for maintenance under the IFP (S) Act.

42 As mentioned earlier (see [24] and [25] above), England has amended its law since 1969. Indeed, England has gone further to consider whether the handicaps presently suffered by an illegitimate child should be removed. The Law Commission of England and Wales, in its 1982 report *Family Law: Report on Illegitimacy* (Law Com No 118, 1982) at para 4.8, opined:

> We certainly cannot with any confidence deny the possibility that a change in the law might indirectly foster a trend away from formal marriage towards other less formal relationships, and we share the widely held anxiety lest the institution of marriage be further eroded by blurring the legal distinction between marriage and other relationships. In the end, however, these possibilities, disturbing though they are, must be balanced against the certainty that if the law is not changed those who have the misfortune to be born illegitimate will continue to suffer from legal handicaps which are now widely regarded as anomalous and unjustified. In our view, the scales tip decisively in favour of remedying the injustice of the present law.

This report caused the enactment of the Family Law Reform Act 1987 (c 42) (UK) which abandoned the distinction between legitimate and illegitimate children in this area of law.

43 Professor Leong Wai Kum opined that the conclusion of the Law Commission on the compelling need to change the law to remove any residual disadvantage to an illegitimate child, as of 1982, applies with as much force to us as well (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 634). As Prof Leong argued, no self-respecting society can lay the burden on the shoulders of innocent children to encourage the better behaviour of their parents of having children only during marriage. This argument is compelling. It would be unfair to punish innocent children by denying them maintenance which a legitimate child would receive upon his father's death, particularly where the father, as in the present case, had been supporting the child until his death.

Judgment

44 In the result, we have to, regretfully, dismiss the appeal. In view of the special nature of this case, we are inclined to make no order as to costs. We will hear the parties on it before making our decision on costs.

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