IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 164

Originating Summons No 1021 of 2015

Between

Haja Maideen s/o Mohd Ali Maricar

… *Plaintiff*

And

Roshan Begum Md Ali M

… *Defendant*

JUDGMENT

[Muslim Law] — [Gifts] — [HDB Flat]

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Haja Maideen s/o Mohd Ali Maricar
v
Roshan Begum Md Ali M

[2017] SGHC 164

High Court — Originating Summons No 1021 of 2017
Choo Han Teck J
25 August 2016, 24 April and 28 June 2017]

11 July 2017 Judgment reserved.

Choo Han Teck J:

1 The Housing and Development Board flat in dispute ("the HDB flat") was solely owned by Zohra Beebi @ Johara Beevi w/o A Mohamed Ali Maricar ("the Deceased"). She passed away on 16 June 2011 in India. The plaintiff is the Deceased's son. He successfully applied for a grant of the Letter of Administration in Singapore and is the administrator of the Deceased's estate ("the Estate")

2 The plaintiff also applied for and obtained an Inheritance Certificate issued by the Syariah Court in Singapore pursuant to s 115 of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed). The plaintiff, his brother, and his sister are certified by the Inheritance Certificate as the beneficiaries of the Estate. The plaintiff's sister is the defendant in this case. The plaintiff and his brother are to receive two shares of the Estate each and the defendant is to receive one share of the Estate under the Inheritance Certificate.

Version No 1: 27 Oct 2020 (22:40 hrs)

3 The plaintiff intended to sell the HDB flat and distribute the sale proceeds to the beneficiaries in accordance with the proportion set out in the Inheritance Certificate. The defendant is living in the flat and refuses to move out. She submitted that the HDB flat did not form part of the Estate as the Deceased had made an *inter vivos* gift of the HDB flat to her on 22 April 2011. The defendant adduced the deed of gift ("Hibah") executed in India in support of her submission. The plaintiff took the view that the gift was invalid as it concerned a HDB flat and required the prior written consent of the Housing Development Board ("HDB") under s 50 of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("HDA"). This was not obtained. The plaintiff therefore submitted that the HDB flat remained in the Estate and he is entitled to the orders prayed for.

4 The issue before me is whether the *inter vivos* gift made by way of the Hibah was valid and transferred ownership of the HDB flat to the defendant. In Singapore, the issue of whether a Muslim has made a valid *inter vivos* gift or *hibah* is within the jurisdiction of the civil courts, applying Muslim law to determine the issue (see *Shafeeg bin Salim Talib and another v Fatimah btw Abud bin Talib and others* [2010] 2 SLR 1123 at [47]). Muslim law governs, *inter alia*, the legal capacity of Muslim testators to dispose of property and the proportion of the assets that may be disposed. The question of whether the property was *properly* disposed has to be answered with reference to general law such as legislation and the common law. The determination of rights and interests in land in Singapore is governed by legislation, unless the legislation specifically provided that it did not apply to Muslims (*Shafeeg* at [28] and [44]).

5 Section 50 of the HDA makes it clear that no HDB flat shall be disposed of without the prior written consent of the HDB. It is not disputed that HDB's consent was not sought. The transfer is therefore void and the HDB flat formed

Version No 1: 27 Oct 2020 (22:40 hrs)

part of the Estate upon the death of the Deceased who was the sole owner. Equity cannot come to the rescue of the defendant in this case — the Deceased had to obtain HDB's approval for the transfer. She did not do so before her death. Even if her estate can do so on her behalf, it is unlikely to do so given that the administrator has brought this application before the court.

6 For completeness, I address MUIS' opinion in its letter dated 23 December 2016 that the Hibah is valid. It appears to me that the opinion of MUIS may be interpreted as an assessment of the validity of the Hibah in relation to its *form* rather than *substance.* It is clear that MUIS only considered the validity of the Hibah in accordance to Muslim law governing formal requirements. The HDA was not mentioned in its reply letter. It is unclear what MUIS position may be in relation to s 50 of the HDA. Be that as it may, MUIS' opinion is not binding on this court which has full jurisdiction to decide on the matter in issue. I hold that the true issue as to the validity of the transfer of the HDB flat is governed by the HDA.

7 For all the reasons above, I grant an order in terms of prayers one and two stated in the originating summons.

Choo Han Teck
Judge

Pereira George Barnabas (Pereira & Tan LLC) for the plaintiff;
Defendant in person.

Version No 1: 27 Oct 2020 (22:40 hrs)