

JERSEY / JUDGMENT

Gheewala v Compendium

[2005] JRC 039 (07 April 2005)

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judgment

the COMMISSIONER: 1. This is an appeal from an order of the Master striking out an order of Justice dated 21 st January, 1986. 2. The reasons are dated 16 th September 2003, and in them the Master sets out the facts of the case, but for the sake of coherence, it is right that the Court should rehearse at least the general outline. 3. There are three sets of proceedings relating to the Estate of Mr Chandrakant Gheewala, who died on 26 th February, 1984; and there are it appears questions of Hindu law relating to the interests of members of the family either as co-parceners or as a Hindu joint family in addition to any complications or disputes which may arise under any will of the deceased if and when one has been admitted to Probate. 4. The Court was advised that the Estate, despite the quite extraordinary delay has not yet been opened, nor is there anything before the Court to show where the deceased was domiciled, though it was generally thought to be in Kenya. 5. The first step would appear to have been that Mukta, the widow of the deceased, appointed Compendium Trust Company Limited as her special Attorney to take out a Grant of Letters of Administration in Jersey. 6. This led to Mahesh Gheewala (the Plaintiff) seeking and obtaining the Order of Justice dated st January, 1986, claiming that the Defendant, (Compendium) as Special Attorney of Mukta sought Letters of Administration of the deceased; and though these were issued they were not then released by the Judicial Greffier. 7. There follows a claim of intermeddling and intermingling by the deceased in his father's Estate, and a further claim: (see paragraph 6) that the Deceased left a Will dated 18 th August, 1974 appointing the Plaintiff as his Executor, thought to be among the papers of the deceased; and a request for an injunction in the following terms: "(a) restraining the Party Cited from releasing into the hands of the Defendant or any other person the said Letters of Administration which were granted on the seventeenth day of December One thousand nine hundred and eighty-five until further order of the Court; (b) restraining the Defendant from acting, dealing with or administering or attempting to act, deal with or administer in any manner whatsoever with any of the Deceased's estate until further order of the Court; (c) ordering the Defendant immediately to deliver up or obtain for the Plaintiff if such be in the Defendant's possession or control the said Will dated the twenty-eighth day of August One thousand nine hundred and seventy-four so that the Plaintiff may apply to the Court for a Grant of Probate of the Will as Executor thereof; (d) restraining the Defendant from removing, disposing of or other dealing with any documents or papers relating to the Deceased's

estate as shall be in the Defendant's possession or control. 8. In its answer, the Defendant claims the 1974 Will was revoked by a later one of 4 May 1976 (para 7) of which a copy was produced and shewn, the Original not then having been found. 9. This action was then left. In 1994 (v. Mr C. G. Miller's affidavit of 5 th April, 2005) Mukta applied for a Grant of Probate for the 1976 Will to which the Plaintiff has objected, as have other brothers of the deceased. 10. In 2001 it appears orders were made by the Kenyan Courts that both the Plaintiff and Mukta should give evidence. 11. In the meantime, in 1997, further proceedings had been filed in Jersey in which the Defendant was sued in its capacity as Attorney of Mukta and referring to the 1986 proceedings, inter alia claiming that the Defendant had adopted a partisan and hostile position in that dispute (paras 22 and 23). In effect it claims that the Defendant holds the assets of the deceased as a constructive trustee for the family, seeks disclosure of assets held and seeks an order dividing the assets in accordance with Hindu law. 12. In its answer at para 10 (ii) and para 11 the defendant pleaded as follows: "10. (ii) The First Defendant will aver that throughout the proceedings mentioned at paragraph 22, the First Defendant was acting as specially appointed Attorney of the Second Defendant and not as a professional trustee. That of paragraph 23 it is admitted that the First Defendant as specially appointed Attorney for the Second Defendant filed an Answer and Counterclaim in the proceedings at paragraph 22 of the Order of Justice together with a Request for Further and Better Particulars of the Plaintiff's case. It is admitted that the particulars were provided and that the Plaintiff filed a Reply and Answer to counterclaim. The First Defendant was, as stated, not acting as professional trustee in those proceedings, but was acting as a specially appointed attorney of Mukta. It is strenuously denied that the First Defendant has adopted a partisan and hostile position in the current dispute. The first Defendant will aver that such an allegation is unsustainable. The First Defendant is not aligning itself with any of the other Defendants in the action, but instead will be obtaining directions from the Royal Court seeking, inter alia, its removal from the current proceedings. 13. In his affidavit of 20 th June 2003 Mr J. Perkins for the Defendant claims that the Defendant is taking a neutral position in the 1997 proceedings. In full paragraph 10 claims: "10. of course, the only parties to the present proceedings are the Plaintiff and Compendium. The other extant proceedings involve a large number of other parties. The Plaintiff in the present proceedings is also the plaintiff in the 1997 Jersey proceedings, in which Compendium is one of the several defendants. Compendium is taking a neutral stance in the 1997 proceedings. It should be noted, however, that Compendium is not a party to the Kenyan proceedings. The outcome of the Kenyan proceedings should be a decision as to who is the proper party to administer the Deceased's estate. That will in any event most certainly not be Compendium, so that I cannot conceive of circumstances in which Compendium will seek to procure letters of administration from the Greffier. It is inconceivable that any party will seek a grant of letters of administration, since the Kenyan proceedings will result in the appointment of an executor, whomever that may be. Furthermore compendium is willing to undertake to the Court that it will take no steps to obtain such letters of administration. The present proceedings are in these circumstances redundant. Indeed, the present proceedings became redundant as soon as the Plaintiff issued the citation in Kenya in 1986. I believe that this is why in truth the Plaintiff has not considered it necessary to prosecute these proceedings in Jersey. I am puzzled, therefore, why the Plaintiff seeks unnecessarily to continue the present

proceedings. 14. Furthermore on 7 th September, 2001, Mr Perkins had already stated, para 5 as follows: "I further undertake to the Royal Court on behalf of compendium that it will not apply to the Jersey Court for any letters of administration or grant of probate in relation to the estate of the late Chandrakant Shamjibhai Gheewala until such time as the Kenyan probate proceedings are concluded. For the avoidance of doubt I should make it clear that Compendium has no instructions to make such an application in any event." 15. It is sufficient to say at this stage that by Order of the Privy Council, the 1997 proceedings have been remitted to Kenya. 16. Meanwhile, as appears from Mr Miller's affidavit the Kenyan action has, it appears, reached the Kenyan Courts. It would seem (see para 8) that Mukta's advisers are seeking to close her case without calling her despite the Order of the Court v. para 12 (b) which reads as follows: 12. (b) Both the brother of the deceased Mahesh Gheewala and the widow of the deceased to be present in court and give evidence to assist the court in deciding who amongst the two should be issued with a Grant of Probate to the deceased's estate". Mr Miller then goes on to say: 28. That the Jersey proceedings cannot be divorced from the Kenyan proceedings for the following reasons among others: (a) Mukta through an attorney filed for letters of administration to the estate of the deceased in Jersey on the ground that her husband had died intestate whereas in reality she knew of the existence of the 1974 Will due to the fact that she had executed a will of her own at the same time as her husband in 1974. (b) In 1994, she filed for Letters of Administration to the Estate of the deceased in Kenya and stated that her husband had died testate and produced a will dated 1976. Mukta has since exhibited two other Wills said to be executed by the Deceased in the High Court of Kenya. (c) The 1976 Will has been found to be a forgery by a document examiner of the Kenya Police C. I. D. (Criminal Investigation Department) and evidence to the same is yet to be adduced. (d) The property Mukta sought to get letters of administration over in Jersey is family property of which the Deceased was a trustee and cannot be deemed to be the exclusive property of the family of the deceased and as such, the interests of the family represented by Mahesh Gheewala must also be protected in Jersey. 29. That the Jersey proceedings have a direct bearing on the interests of the entire estate of the deceased and it is therefore important to have the said Jersey proceedings maintained, due to the fact that they have so far acted as a barrier against the potential pillaging of the family assets, by Mukta, prior to the rights of the Objector and his brothers being determined either in Jersey or Kenya. 30. That it is of paramount importance to have the injunction in Jersey maintained due to the fact that if preservation orders are given to protect the assets of the deceased in Kenya, the same cannot be effected outside Kenya. 31. That the Kenyan proceedings have so far prevented the Petitioner from accessing most of the assets due to the fact that the Grant of Probate has not been issued or confirmed. 32. That the Jersey injunction is crucial due to the fact that the probate obtained in Jersey was obtained fraudulently by virtue of Mukta alleging that her husband died intestate." 17. Last on 1 st April, 2005, Mr Young for the Plaintiff wrote to Mr Speck for the Defendant as follows:- "Should your client be willing to:

- (i) revoke any and all powers of attorney held in respect to the estates of the late Chandrakant Shamjibhai Gheewala (the Deceased); (ii) agree not to distribute any of the assets in the name of the Deceased until the final determination of the Kenyan proceedings; (iii) agree not to destroy any document relating to the Deceased; my client will agree to drop the appeal". 18. This offer has been refused. 19. In his address Mr Young referred to Lord Diplock's remarks in *Birkett -v- James*

[1977] 2 All ER 801 dealing with inordinate and inexcusable delay in the following terms: "(2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party." 20. Mr Young's submission is in effect that there is no inexcusable delay, and if it is inexcusable there is no prejudice. There are allegations that the 1976 Will is forged and that there was a fraudulent obtention of Letters of Administration in Jersey. 21. In answer Mr Speck pointed out, fairly as it seemed to the Court, that the Defendant was not really a party to the 1997 action, and that Letters of Administration are one thing and the freezing of assets is another. 22. It is, he submitted, for the Plaintiff to justify proceedings. 23. The Defendant is a Trust Company, which has done nothing wrong. 24. Were the Defendant asked to do something which it thinks is wrong, then they would refuse and if they were in any doubt then they would come to the Court. 25. The Plaintiff wishes the injunctions to continue in a case where there is inordinate and inexcusable delay. The Defendant does not have to justify its conduct; rather it is for the Plaintiff to justify his when he seeks the indulgence of the Court. 26. With inordinate and inexcusable delay there is prejudice to the Defendant. It is its position which the Court should consider, and if the Plaintiff suffers prejudice as a result of such delay then that must be a problem for him. 27. The Defendant would, he repeated, be responsible for any improper behaviour and it is about time these proceedings were removed. 28. The Court agrees that there has been an inordinate and deplorable delay. 29. On the papers before it however, it does not appear that the fault for all the delay lies at the door of the Plaintiff. It took Mukta for instance until 1994 to file proceedings in Kenya. 30. It appears to the Court that the 1986 proceedings are merely ancillary to the 1994 (Kenya) and 1997 proceedings and is merely a holding operation in those proceedings. 31. The Defendant is sued as the Attorney of Mukta and as having sought Letters of Administration in that capacity, rather than in its position in the 1997 proceedings. 32. Despite the delay it is difficult to see what prejudice it suffers with a continuance of the injunction. Once the Kenyan proceedings are complete either a Grant of Probate, or letters of Administration will be granted there, in which case, in either event, these proceedings will fall away and the person entitled to wind up the Estate will deal with the Defendant as a Trustee. 33. It seems to the Court that the continued imposition of the injunction imposes no greater pressure on the Defendant than would be the case if it were lifted; and that given the allegations in Kenya, and the position of the

Defendant as Special Attorney the prejudice to the Plaintiff could be substantial. 34. As the Court sees it, to repeat these proceedings are merely ancillary to those in Kenya and the proper course is for the injunctions to remain on. The Order of the Master is therefore set aside, and the application of the Plaintiff granted. Authorities Royal Court Rules 1992 (as amended)

- Rule 6/20. Broad Street Investments (Jersey) Limited and others -v- National Westminster Bank Plc and Others [1985-86 JLR 6]. Drake -v- Gouveia [2000 JLR 411]. Kinsella -v- Lido Bay Hotel (Jersey) Limited [2001 JLR 247]. McGorrrin -v- Pascoe [2002 JLR Note 24]. Birkett -v James [1977] 2 All ER 801. Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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