AAG v Estate of AAH, deceased [2009] 2 SLR 1087; [2009] SGHC 33

Suit No:	OS 1136/2008
Decision Date:	11 Feb 2009
Court:	High Court
Coram:	Choo Han Teck J
Counsel:	John Tan Thong Young (Pereira & Tan LLC) for the plaintiff, Lim Choi Ming (KhattarWong) for the defendant

Subject Area / Catchwords

Family Law

Judgment

11 February 2009 Judgment reserved.
Choo Han Teck J:

1 The plaintiff in this action is seeking reasonable maintenance from the estate of the deceased for her two daughters. They were born out of wedlock and are the illegitimate children of the deceased.

2 A preliminary point to be decided was the question of whether illegitimate children are entitled to claim maintenance under the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) ("the Act"). Under s 3 of the Act, the court is empowered to order reasonable maintenance to be provided out of the estate of a deceased to, *inter alia*, "daughter who has not been married". The interpretation provision of the Act, *viz*, s 2, however, is silent on whether the term "daughter", for the purposes of the Act, includes an illegitimate daughter. The provision states:

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.

The Act sought to introduce into Singapore the provisions of the Inheritance (Family Provision) Act 1938 (UK) (*Singapore Parliamentary Debates, Official Report* (21 April 1966), vol 25 at col 77). The provisions in the Inheritance (Family Provision) Act 1938 (UK) relating to the power of the court to order reasonable maintenance to be provided out of the estate of a deceased, *viz*, s 1, is similar to s 3 of the Act. Likewise, the terms "son" and "daughter" is defined in s 5(1) of the Inheritance (Family Provision) Act 1938 (UK) in a similar manner to that which is stated in s 2 of the Act.

3 The established interpretation of the Inheritance (Family Provision) Act 1938 (UK) was that it excluded illegitimate children from making maintenance claims against the estate of a deceased. As stated in *In re Makein, decd; Makein v Makein* [1955] Ch 194 by Harman J (at 209):

Is it, then, more consonant with the object of the statute to give the words 'son' or 'child' an extended meaning? In my judgment it is not. I cannot think that the legislature contemplated applications by illegitimate offspring competing with the claims, whether under a will or intestacy, of the legitimate dependants. The task of the courts in those

circumstances would be not only odious but impossible to carry out, for who could know what other dependants might enter the lists to make further claims to a share? It would indeed be visiting the sins of the fathers upon the children.

On the whole, then, I come to the conclusion that there is no reason for extending the words 'son' or 'daughter' in this Act beyond their ordinary legal meaning. ...

Subsequently, however, the Family Law Reform Act 1969 (UK) amended the Inheritance (Family Provision) Act 1938 (UK) to allow illegitimate children to claim maintenance from the estate of a deceased. In this regard, s 18(1) of the Family Law Reform Act 1969 (UK) stated:

For the purposes of the Inheritance (Family Provision) Act 1938, a person's illegitimate son or daughter shall be treated as his dependent in any case in which a legitimate son or daughter of that person would be so treated, and accordingly in the definition of the expressions 'son' and 'daughter' in section 5(1) of that Act, as amended by the Family Provision Act 1966, after the words 'respectively include' there shall be inserted the words 'an illegitimate son or daughter of the deceased'.

The Inheritance (Family Provision) Act 1938 (UK) was subsequently repealed and replaced by the Inheritance (Provision for Family and Dependents) Act 1975 (UK), which similarly allowed illegitimate children to claim maintenance from the estate of a deceased.

4 The Act, however, has not been amended to expressly allow illegitimate children to claim maintenance from the estate of a deceased. There is also nothing in the records of the debates of the Singapore Parliament regarding the Act to support the possibility of illegitimate children making such claims. *Prima facie*, therefore, the correct interpretation of the Act, *ie*, the interpretation which is in accord with Parliamentary intention, should be the interpretation accorded to the original Inheritance (Family Provision) Act 1938 (UK), *ie*, before it was amended by the Family Law Reform Act 1969 (UK). It is probably for that reason that Prof Leong Wai Kum wrote that it is "possible that an illegitimate child cannot apply for maintenance from his parent's estate under the [Act]" (*Elements of Family Law in Singapore* (LexisNexis, 2007) at p 374). In the absence of any other material which indicates that the Legislature had intended otherwise, the *prima facie* interpretation is the interpretation which I will have to adopt. This is because s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) mandates that the interpretation that would promote the purpose or object of the statute in question is to take precedence over any other interpretation (see also *PP v Low Kok Heng* [2007] 4 SLR 183 at [57]). Here, the clear and unambiguous purpose of the Act was to introduce the provisions of the Inheritance (Family Provision) Act 1938 (UK) *before* it was amended by the Family Law Reform Act 1969 (UK). Therefore, I am constrained to hold that an illegitimate child cannot apply for maintenance under the Act.

5 It is up to the Legislature to revise the law in this regard if it thinks necessary. Legitimacy is an inconsequential factor in many aspects of the law today. This might be the next (see, *eg*, s 68 of the Women's Charter (Cap 353, 1997 Rev Ed) and s 20 of the Civil Law Act (Cap 43, 1999 Rev Ed)). As the learned member for Chelmsford, Norman St John-Stevas (later Baron St John of Fawsley), stated in the British Parliament during the debates at the Second Reading of the Bill to enact the Family Law Reform Act 1969, "very few people today continue in the belief that the sins of the fathers should be visited on the children" (United Kingdom, House of Commons, *Parliamentary Debates* (17 February 1969), vol 778 at col 45). The Attorney-General, Sir Elwyn Jones (later Baron Elwyn-Jones of Llanelli), at the same Parliamentary session, likewise stated that it "would seem almost a piece of cruelty to punish a child for the circumstances in which the child was born" (at col 46).

6 For the above reasons, this application is dismissed. I will hear the parties on costs, if costs cannot be agreed.

Reported by Nathaniel Khng.