

Case review

Law, Common Law



They were the executors and trustees of the will executed by the deceased which dated on 20 October 1995. On 16 June 1997, the plaintiffs applied to the High Court of Kuala Lumpur by way of petition for a grant of probate of the said will.

The defendant who was the wife of the deceased however then entered a caveat with the Registry on 10 July 1997 in order to prevent the grant of probate to the plaintiffs without the defendant being given notice. On 21 October 1997, the plaintiffs commenced this probate action against the defendant praying to the court to decree probate of the said will in solemn form of law. The defendant then counterclaim seeking a declaration that the said will is null and void and prayed that she be granted letters of administration to the estate of the said deceased.

ISSUES: 1. Whether deceased had requisite testamentary capacity to execute will 2. Whether suspicion satisfactory discharged by the party propounding the will 3. Whether the will valid 4. Whether probate should be granted HELD: Plaintiffs claim dismissed with cost and defendant's counterclaim allowed with cost REASON FOR JUDGMENT: 1. The burden of proving the deceased had the requisite testamentary capacity laid with the parties propounding the will, which were the plaintiffs in this instance. 2.

The deceased suffered from nose cancer and was heavily dependent on a steroid drug called "dexamethasone" to obtain relief from its resultant pains and discomfort. "Dexamethasone" used long term can give rise to several physical and psychiatric side effects. There is also doubt that the deceased who experienced weakness of his limbs and muscles with reduced motor function could have typed the will in question. 3. The plaintiffs did not

impress as having done what they did for the welfare and interest of the deceased.

On the other hand, the defendant impressed as being a truthful witness. Her evidence was accepted as being the true version of the events that transpired. It was evident that the plaintiffs had not satisfactorily discharged the suspicion raised. *RATIO DECIDENDI* 1. *Dr Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153 * it was emphasised that where there are suspicious circumstances lurking behind the execution of the will, the onus is on the party propounding the will, to remove, by way of explanations such suspicious circumstances. . *Foo Fio Na v. Hospital Assunta & Anor* [1999] 8 CLJ 184 * ... I am of the view that a doctor could not give any opinion what more an expert opinion as to the injury of any person without seeing and examining that person and also in the present case without seeing the x-rays of that person. 3. *Tyrrell v. Painton* [1894] P 151 * The rule in *Barry v. Butlin* 2 Moo PC 480, *Fulton v. Andrew* LR 7 HL 448 and *Brown v.*

Fisher 63 LT 456, is not, in my opinion, confined to the single case in which a will is prepared by or on the instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite the suspicion of the Court; and wherever such circumstances exist and whatever their nature may be, it is for those who propound the will to remove such suspicions, and to prove affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on these who oppose the will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the will. 4. *Udham Singh v. Indar Kaur* [1971] 2 MLJ 263 * It is trite

law that the burden of proving that the deceased had the requisite testamentary capacity whilst executing the will lies with the party propounding the will. COMMENT: In this case, the burden to prove at the time of executing the will the deceased was in sound mind, memory and understanding position lies with the plaintiffs since they are the one who propounding the will. However the plaintiffs failed to prove that the deceased was in that capability to execute the will. This is because there was evidence that the deceased was suffering from the side effects of the drugs taken by him in order to cure the pain that he suffered. The deceased was found euphoric, had muscle weakness and suffered from psychiatric effect of the drug, thus it is impossible for the deceased to type the will. In addition, the deceased also suffered " hemiparesis" which according to the expert, the strength of the deceased body was less which mean he can only write slowly and not type. A perusal of the will shows that it was type and the plaintiffs failed to prove who actually prepared the will.

The suspicion raised in this case was not satisfactorily discharged by the plaintiffs when they failed to give all the needed prove such as whether the will was read to the deceased. The deceased was right handed and suffered " hemiparesis" which unable him to type the will. The love of the deceased to the defendant also cannot be denied by the conversation of the deceased with her daughter however the psychiatric problem that he suffered as the side effect of the drug taken had made him to show the contravention. The statements given by the witnesses of the plaintiffs also doubtful, thus it is concluded that the will was invalid and the probate should not be granted.