

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
PROPERTY TRUSTS AND PROBATE (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Wednesday, 18 September 2019

BEFORE:

MASTER SHUMAN

BETWEEN:

REHMAN

Claimant

- and -

HAMID

Defendant

MR MAQSOOD counsel appeared on behalf of the Claimant

MR BISHOP counsel appeared on behalf of the Defendant

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

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MASTER SHUMAN:

1. The issue at the heart of this claim is whether the will of Mrs Ali, the deceased, dated 17 November 2017 and made in Pakistan (the 2017 will), is valid and whether that issue should be determined in Pakistan or England. The 2017 will was a radical departure from an earlier mirror will that the deceased made with her late husband on 23 February 1993 (the 1993 will) where she broadly sought to distribute her estate equally between the family of her husband and herself, presupposing her spouse predeceased her. At the time of the deceased's death there were 14 living beneficiaries under the 1993 will. There was a codicil to the 1993 will which is dated 17 April 2016, albeit it is wrongly dated 17 April 2012 by the deceased.
2. I will refer to the parties by their title in these proceedings even though they are reversed in the proceedings that are currently ongoing in Pakistan. The claimant in the proceedings here is one of three defendants in the proceedings in Pakistan. The defendant here is one of 14 plaintiffs in the proceedings in Pakistan.
3. The defendant alleges that the 2017 will was a forgery or alternatively that the deceased lacked testamentary capacity and that the provisions of the 2017 will are not in accordance with Muslim laws.
4. On 13 January 2015 the deceased's husband died and she returned to live in Pakistan, leaving England on 1 August 2015 on a one-way aeroplane ticket. There is an issue between the parties as to whether that move was permanent or not, the significance of that going to the issue of domicile. When the deceased moved to Pakistan she lived with Raheel Dar, her nephew.
5. The 2017 will appointed the claimant, said to be a business acquaintance of Raheel Dar, as executor. The deceased left her entire estate to Raheel Dar's son, Muhammed Umar Dar, her great-nephew.
6. On 6 December 2017 the deceased died in a hospital in Lahore. Despite the claimant being the executor under the 2017 will, living in this jurisdiction and issuing a probate

claim here, there are no draft estate accounts. It appears that the principal asset in the estate is a leasehold property known as the first floor flat, 29A Green Lane, Palmers Green, London N13 4TM ("the flat"). There is no probate valuation of this property, but in 2015 the deceased had agreed to market the flat for sale at an initial price of £275,000. Additionally there are two bank accounts in Lahore and a bank account at the HSBC Wood Green branch in London. No one has told me that there are any significant sums in these bank accounts, so on the available evidence before me this appears to be a modest estate with a value in the region of £275,000 gross.

7. Given that the claimant, according to counsel in his skeleton argument, was dealing with the grant of probate formalities in England, it is surprising that none of the documents that you would submit to obtain a grant of probate in England have been put in the bundle. The excuse for that was that the claimant has changed solicitors and the file does not contain copies of those documents. What that does not explain is why there has been no attempt by his current solicitors to obtain those documents.
8. That is the backdrop to this application by notice dated 19 February 2019 to stay probate proceedings that were issued on 30 January 2019 in the Family Division by the claimant. The prayer to the Particulars of Claim sets out the relief claimed as follows: (1) defendant's caveat is set aside or revoked; (2) that the grant of probate is granted to the claimant; (3) the proceedings issued by the defendant in Pakistan are dismissed; (4) the order from the conclusion of these proceedings are applicable to the Estate of the deceased in the UK and in Pakistan if any; (5) any other relief the court deems fit; (6) costs. Putting to one side that the claimant could not obtain the extent of the orders sought, the claimant primarily seeks to challenge the validity of the 1993 will and uphold the 2017 will. It remains unclear as to the basis on which the executor to the 2017 will is seeking to challenge the earlier 1993 will.
9. The Claim Form and the Particulars of Claim both have signed statements of truth and have been drafted by the claimant's previous solicitors. There has been a wholesale failure to comply with the provisions of CPR Part 57 even though those provisions are perfectly straightforward to comply with and include vital matters such as ascertaining

the location of all the relevant wills. The claim was issued in the Family Division, it is a contentious probate claim and should have been issued in the Business and Property Courts, Property Trusts and Probate List. The claimant has elected to bring a claim against only one of the 14 beneficiaries under the 1993 will. No explanation has been given as to why the other beneficiaries have not been joined, not least when two of them reside in the jurisdiction.

10. Knowles J sitting in the Family Division transferred the probate claim but stayed it pending determination of the proceedings that had been issued in Lahore, Pakistan, in July 2018. When I considered the papers on transfer I was very concerned to see the manner in which this claim had been issued. CPR Part 57 is not simply a technicality. The court retains a supervisory jurisdiction over probate claims, not least when the person who executed the will is no longer here to say what they did or did not do or intended. I rescinded the order staying the claim and listed a directions hearing. I also ordered the parties to comply with Rule 57.5 of the Civil Procedure Rules so that I could ascertain where the wills were. At the directions hearing I listed a further hearing to consider the future management of the claim including, but not limited to: (a) whether the stay should be reinstated; (b) whether any of the beneficiaries of the 1993 will should be given notice of the proceedings; (c) the formal validity of wills in conflicts of law as it applies to the 2017 will, the domicile of the deceased at the time when the 2017 will was made and the relevance of the *lex situs* to issues in this claim.
11. In terms of the evidence that has been put before me, the defendant has filed a witness statement dated 27 June 2019 complying with the requirements of Part 57. I know from that statement that the 1993 will, the original, is with Stapletons Solicitors and that the 2016 codicil has now been lodged at the High Court. The defendant also made a further statement dated 1 July 2019. In addition there is evidence from his solicitor, Alexa Payett, dated 19 February 2019 and two statements from his lawyer in Pakistan based in Islamabad, Mr Asad Ladha, dated 19 February 2019 and 29 June 2019. On behalf of the claimant he has filed a statement dated 27 June 2019 complying with Part 57 of the CPR. That very helpfully set out where the 2017 will might be and that will has now been sent by the probate district registry to the High Court and it is here. In

addition the claimant has filed a statement dated 27 June 2019 and also a letter from his lawyer in Pakistan who is based in Lahore, Mr Salman Rajput. That statement is dated 27 June 2019.

12. The principal issue before me is whether I should accede to the defendant's application and stay the proceedings in England pending determination of the will validity proceedings in Pakistan.

THE FACTUAL BACKGROUND

13. The deceased was born in Lahore in pre-partition India on 1 January 1942. Upon partition, the deceased and her family were living in the newly created country of Pakistan.
14. In Dicey on The Conflicts of Law, 15th edition, paragraph 6R-025, rule 9 says, “A legitimate child born during the lifetime of his father has his domicile of origin in the country in which his father was domiciled at the time of its birth”. Mr Bishop, counsel for the defendant, submits that the name of the domicile was changed through a geopolitical administrative process and it would be artificial to consider Pakistan as anything other than the deceased's domicile of origin. Mr Maqsood, counsel for the claimant, has not put forward any different argument and I accept that the domicile of origin of the deceased was Pakistan.
15. On 12 March 1965 the deceased married Mukhtar Ali (“the husband”) who was living in the United Kingdom. She joined him in the United Kingdom. On 12 September 1986 they were registered as leasehold proprietors of the flat. On 23 February 1993 the husband and the deceased executed mirror wills. They appointed each other as executor or executrix together with Mobin Ahmed and provided a default appointment of two partners at SJ Vickers and Co, now known as Stapletons. I now know that Stapletons hold the 1993 will.
16. The husband and the deceased each passed their Estate to the other and in the event of the spouse predeceasing them, there was a default distribution between a number of

family members. On 17 April 2016, albeit incorrectly dated by the deceased as 17 April 2012, she executed a codicil in Lahore. The deceased appointed Hamid Ali, her brother-in-law, as a default executor in place of the partners at SJ Vickers.

17. Under the 1993 will Mohammed Umar Dar, who is the sole beneficiary under the 2017 will, is not a beneficiary. His father, Raheel Dar, however is a beneficiary and would receive 11% of the estate. The defendant is a beneficiary under the 1993 will and he would receive 5% of the estate. On 13 January 2015 the husband died. On 1 August 2015 the deceased returned to Pakistan and lived with Raheel Dar. She remained living with him until she was admitted to hospital. The deceased died in hospital on 6 December 2017, aged 75 years. On 15 December 2017 Raheel Dar applied for a death certificate recording the deceased's nationality as Pakistani, and her address at his residential address in Lahore.
18. On 16 March 2018 a caveat was entered in England following an application by the defendant. Notwithstanding that caveat, on 3 July 2018 the claimant applied for a grant of probate in England, even though he had not properly warned off the caveat that was in place.
19. In July 2018 a civil suit was issued before the senior civil judge in Lahore. It bears the signature and stamp of the judge dated 28 July 2018. Those proceedings list 14 plaintiffs, one of which is the defendant here. All of them are beneficiaries under the 1993 will and the proceedings in Pakistan seek to challenge the validity of the 2017 will. The suit is brought against the sole beneficiary under the 2017 will, Muhammad Umar Dar, his father Raheel Dar, and the claimant. Within those proceedings Khalid Massood, who is the eighth plaintiff, is acting as special attorney for the other plaintiffs. He is resident in Lahore, as is all but three of the plaintiffs. Of the three plaintiffs who reside in England, one of which is the defendant, all have confirmed that they wish the proceedings in Pakistan to proceed and the proceedings here to be stayed. On 22 October 2018 a High Court judge in Pakistan suspended the operation or the effect of the 2017 will pending determination of the suit.

THE LAW

20. The applicable factors are encapsulated in the case of *Spiliada Maritime Corporation v Cansulex Limited* [1987] AC 460 (HL). In that case the House of Lords considered the factors applicable to both granting a stay of English proceedings on the ground that some other forum was the appropriate forum and granting leave to serve proceedings out of the jurisdiction, the House of Lords considering that the factors were the same in relation to both sorts of application. A summary of the law is set out by Lord Goff at pages 476 to 478 and the principles are set out in sub-paragraphs (a) to (f). Given that they are the relevant principles for my consideration of this application, I will set those out at some length.
21. Lord Goff said at page 476C,

"(a) The basic principle is that a stay will only be granted on the ground of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, ie in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

(b) As Lord Kinnear's formulation of the principle indicates, in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay ... It is however of importance to remember that each party will seek to establish the existence of certain matters which will assist him in persuading the court to exercise its discretion in his favour, and that in respect of any such matter the evidential burden will rest on the party who asserts its existence. Furthermore, if the court is satisfied that there is another available forum which is *prima facie* the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country. (see (f) below)

22. I also bear in mind and am cautious that the application before me is made on the basis of submissions taken from written evidence and so that evidence has not been tested in cross-examination.

"(c) The question being whether there is some other forum which is the appropriate forum for the trial of the action, it is pertinent to ask whether the fact that the plaintiff has, ex hypothesi, founded jurisdiction as of right in accordance with the law of this country, of itself gives the plaintiff an advantage in the sense that the English court will not lightly disturb jurisdiction so established..."

23. There is then the reference to the position in the United States, although this is a federal system and so one can see why the claimant's choice of forum would be a particularly important factor for the court. Lord Goff at page 477E,

"In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum." [my emphasis] In this way, proper regard is paid to the fact that jurisdiction has been founded.

(d) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum."

24. Lord Goff referred with approval to the expression used by Lord Keith in the case of *The Abidin Daver* [1984] AC 398 at 415, when he referred to the "natural forum" as being "that with which the action had the most real and substantial connection." At page 478A,

"So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction ... and the places where the parties respectively reside or carry on business.

(e) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay...

(f) If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent evidence, that the plaintiff will not obtain justice in the foreign jurisdiction."

25. The burden is on the defendant to show that England is not the natural or appropriate forum for the trial and to establish that Pakistan is clearly or distinctly more appropriate than the English forum. If I conclude that there is some other available forum which prima facie is clearly more appropriate for the trial of the claim, a stay will usually be granted unless there are circumstances which justice requires that a stay should nevertheless not be granted. That will be a matter for the claimant to establish.

THE APPLICATION

26. Whilst there is much disagreement between the parties, counsel are in agreement as to the law. Mr Bishop has set out six discrete factors in this case that I should consider.

They encapsulate both the arguments put forward by the claimant and the defendant so they are a helpful framework for my decision.

(i) What is the natural forum for a dispute?

27. Rule 152, paragraph 27R-030, of Dicey states,

"A will made by a testator dying on or after January 1 1964 will be treated as properly executed if its execution conformed to the internal law in force in the country where it was executed or in the country where at the time of its execution or of the testator's death he was domiciled or had his habitual residence or in a state at which at either of those times he was a national."

28. Rule 153, paragraph 27R-042, of Dicey states,

"A will so far as it disposes of immovable property will be treated as properly executed if its execution conformed to the internal law in force in the country where the property was situated."

29. Rule 154, paragraph 27R-044, of Dicey states,

"The material or essential validity of a will of movables or of any particular gift of movables contained therein is governed by the law of the testator's domicile at the time of his death."

30. The principal asset in the estate is the flat. The 1993 will was made in England. The natural forum of this claim is England. It is easier for the court in England to apply the law of England.

(ii) The ability of the litigants to understand the procedure

31. Mr Bishop submits that this is a factor that I can consider when I balance whether to grant a stay or not. I accept it is a consideration; no more than that. The history rather demonstrates that the claimant, and specifically his previous solicitors, struggled, in fact failed, to comply with the English procedure. In contrast there is nothing in the papers before me to suggest that the claimant has any such difficulty with the procedure in Pakistan. Indeed, the evidence of Mr Rajput, the claimant's lawyer in Pakistan, clearly demonstrates that he has a legal team in place in Pakistan who hold themselves out as experts in the field of probate law. The defendant has also instructed a lawyer in Pakistan. He has filed two statements and he is the lawyer acting for the 14 plaintiffs in the Pakistan proceedings.

(iii) The domicile of the deceased

32. This has exercised quite a significant amount of time between the parties, both in terms of their submissions and the evidence before me. The parties accept that the deceased's domicile of origin was Pakistan.

33. The parties agree that a person may acquire a domicile of choice and this is encapsulated in Rule 10, paragraph 6R-033, in Dicey,

"Every independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence but not otherwise."

There are two parts to the test: residence and an intention of permanent or indefinite residence.

34. I bear in mind the guidance from *Spiliada* and it is the claimant's case that the deceased acquired a domicile of choice in England and so the burden is on him to establish that. I was referred to the authority of *Kelly v Pyres* [2018] EWCA Civ 1368. This was a factually complicated case about domicile of choice, the wife was seeking to argue that the English court had jurisdiction for divorce proceedings. Her domicile of origin was Ireland but she had lived for short periods in England although she had not lived there for 17 years. She married in Italy and lived in various

countries in Europe. King LJ, as she then was, set out the general propositions of law at paragraph 33,

“i) The domicile of origin remains of great importance and is said to be "more tenacious" than other forms of domicile. As Dicey put it at [6-031] "it is more difficult to prove that a person has abandoned his domicile of origin than to prove that he has abandoned a domicile of choice".

ii) There is a presumption that a person continues to be domiciled in the country in which he is domiciled. The burden of proof is on the wife to demonstrate that she has lost her domicile of origin, the standard of proof being the ordinary civil standard. Cogent and clear evidence is needed to show that the balance of probabilities has been tipped regardless of whether the issue is the acquisition, or loss, of a domicile of choice.

iii) The statements of people claiming or disputing a change of domicile must be treated with caution unless corroborated by action consistent with the declaration. The court will view evidence of an interested party with suspicion.

iv) A person can acquire a domicile of choice by a combination of residence and the intention of the person of permanent or indefinite residence but not otherwise.

v) Residence for a short period of time, even a few days, may be sufficient to establish a domicile of choice. The length of residence is not important in itself. (It is accepted by Mr Scott that, all other things being equal, either of the wife's two short periods of residence in England could be capable of establishing a domicile of choice.)

vi) Whilst the residence does not have to be long it has to be with the intention of permanent or indefinite residence.

vii) Residence without intention or intention without residence will not do to establish a domicile of choice.”

35. The question of the domicile of choice is still subject to the evidential burden on the balance of probabilities. It is highly fact sensitive but I would expect to see clear and cogent evidence from the claimant to support his contention that the deceased acquired a different domicile. Certainly the deceased lived in England between 1965 and 2015 but length of residency alone is not sufficient, a point that Mr Maqsood, counsel for the claimant, acknowledges. He summarises the claimant's evidence at paragraph 7 of his skeleton argument and supplemented this in his oral submissions. He says the deceased came to England from Pakistan and acquired a domicile of choice here by acquiring indefinite leave to remain and then being granted British citizenship. He submitted that the deceased made England her home, she lived here for 50 years and owned property here for more than 30 years. When she lived in Pakistan in 2017 “she expressed her intention to take charge of handling her issues on her own in order to prevent Mr Hamid Ali from dealing with her affairs in England”.
36. When one analyses that evidence it boils down to the fact that the deceased moved here to live with her husband. She acquired British citizenship but she retained her Pakistani citizenship. Her principal asset was the matrimonial home that she jointly owned with her husband and she lived here for 50 years. The claimant seeks to rely on the 2017 will and various other documents including a document recording that she revoked any power of attorney in favour of Mr Hamid Ali. However the authenticity of those documents are in dispute and this is an issue for trial. Those disputed documents cannot assist the claimant in discharging the evidential burden. The claimant also submits that I can rely on the fact that the deceased wanted to be buried with her husband in England. However again, this is a disputed fact and her body was never repatriated to England.
37. So when I analyse the evidence that is before me there is a long period of residency, the purchase of a matrimonial home and the acquisition of British citizenship. The claimant also makes a bare assertion that the deceased intended to acquire a domicile of choice in England. I do consider it relevant, given the factual matrix, that the deceased moved to England to live with her husband and that upon his death she returned to live in Pakistan, having placed the flat on the market for sale. I am not

satisfied that the claimant has established that the deceased acquired a domicile of choice in England. More specifically, the evidence that has been adduced and which I must treat with caution, given much of it is in dispute between the parties, has not addressed the issue of intention adequately.

38. If I am wrong on that and the deceased acquired a domicile of choice, I then have to go on to consider whether that domicile of choice was abandoned. Although this has been mentioned by the claimant, there has been no real engagement by the claimant on the issue of abandonment. I accept the submissions made on behalf of the defendant that the circumstances in 2015 to 2017 are decisive. If the claimant had established that there was a domicile of choice in England, then I consider it was abandoned so that the deceased was domiciled in Pakistan from 2015 when she returned to live there and specifically at the date when she made her will in 2017 and at the date of her death. I place weight on the following facts or matters raised in evidence. As I have indicated, the deceased moved to live in England because she married her husband who was living and whose home was in England. He died in January 2015. The claimant describes the deceased as not coping well following the death of her husband and describes her as being lonely. The deceased told her doctor, other health professionals, friends and family that she was leaving the United Kingdom, she was returning to Pakistan and she would not be coming back to the United Kingdom. On 22 May 2015 she entered into an agency agreement with Bairstow Eves to market the flat for sale at a price of £275,000. If it was her intention simply to go to Pakistan for a short visit, the fact that she placed the flat on the market for sale is wholly inconsistent with her simply going to Pakistan for effectively a holiday or a short break. That is evidence that she intended to sever her links with this country. It is also relevant that her principal, if not only, asset was the flat.

39. There is a letter before me from Sun Life dated 20 July 2015 which is evidence that the deceased was checking the effect or impact of her move to Pakistan on her life insurance, again consistent with her severing her life in England. On 1 August 2015 she flew to Lahore on a one-way ticket. Again, she could have purchased an open return but she chose to purchase a one-way ticket.

40. There is also reference in the bundles to correspondence with the International Pension Service Office which operated from the British High Commission in Islamabad. She was sent forms in Pakistan and these were clearly sent at her request and on 17 July 2017, following the receipt of those forms, the deceased swore a declaration to the Pension Service that she had "gone to live in Pakistan".
41. Even when the deceased became unwell, she chose to remain in Pakistan and she died in Pakistan. I also note that Raheel Dhar, whom she was living with, referred to the deceased's nationality as Pakistani and that her residential address was said to be Sector B Bahria Town, House No 3, Block Usman, City Lahore.
42. Whilst I am cautious about the significance of semantics in this case, my conclusions are also supported by the claimant's own case and his evidence. In the Particulars of Claim it is pleaded that the deceased's husband passed away on 13 January 2015, "shortly following which, she wished to relocate to Pakistan to live with" the father of the sole beneficiary of the 2017 will. That is a pleading presumably prepared by the solicitors instructed in the matter at the time and it is supported by a statement of truth. The term conveys a degree of permanence in the living arrangements of the deceased, not a temporary visit to Pakistan. In the evidence before me the claimant elects to describe the deceased's relocation as a temporary move, I do not accept that evidence. It is inconsistent with his pleaded case and the pleaded case has not been amended.
43. In relation to Mr Rajput's evidence, he describes Pakistan as the place the deceased visited to meet her nephew and his family and lived with them temporarily due to her loneliness in London, England, after the death of her husband. Putting to one side how he can give factual evidence in that regard given that he is the lawyer involved, he does not describe himself as a close family member or close family acquaintance, his contemporaneous correspondence does not accord with that evidence. I have been taken to various documents, principally relating to the pension issues and I shall refer to some extracts of those.

44. In a letter dated 30 January 2017 from ABS & Co lawyers, Mr Rajput is the litigation partner at the firm, to Mr Hamid Ali it is stated that the deceased "has moved to Lahore, Pakistan, and it will be appropriate that she receives the pension directly." There is no suggestion that she is there temporarily. In a letter dated 11 March 2017 ABS & Co, Mr Rajput is given as the contact, it is stated that "her pension as well as that of her late husband should be transferred to her account in Pakistan where she is living."
45. On or around 12 October 2018 in a written statement that has been filed in the Pakistan proceedings it is recorded that, "Mst Iffat Ali used to visit Pakistan from time to time where she resided with her nephew Defendant No. 3's family. The late Mst Iffat Ali came to Pakistan in 2015 to live with the Defendant No. 3 and his family." There does seem to me to be a clear delineation in that statement between visiting Pakistan pre-2015 and moving to Pakistan to live there after 2015. The claimant's own evidence is that the deceased permanently returned to Lahore in 2015.
46. To summarise, the domicile of origin of the deceased was Pakistan. I am not satisfied that the claimant has discharged the evidential burden of establishing that there was a domicile of choice in England, but if I am wrong on that and there was a domicile of choice in England, then I am satisfied on the evidence before me that there was an abandonment of that domicile of choice so that the relevant domicile of the deceased was Pakistan. This was her domicile at the date the instructions to make the will were given, when the 2017 will was executed and at the date of death of the deceased.

(iv) An issue of Mohammedan Law

47. This is not pivotal. It is something that simply weighs in the balance. An English court could resolve this issue with the assistance of expert evidence and although, as Mr Bishop submits, a court in Pakistan may be better placed to deal with it, I do not accept that this is a pivotal factor. It is simply something that I weigh in the balance.

(iv) Connecting factors: the location of the relevant protagonists in this case

48. Under the 1993 will and the 2017 will there are 15 living beneficiaries: 12 of them live in Pakistan; the 3 that live in England have made it clear that they wish the dispute to be resolved in Pakistan. The material witnesses in this case, so those are the attesting witnesses to the 2017 will, are in Pakistan. They will need to give oral evidence and their evidence tested under cross-examination. The notary on which the claimant relies in relation to the 2017 will lives in Pakistan. The medical professionals that treated the deceased for just over two years before her death are in Pakistan. Indeed, all of those who had contact and relevant contact with the deceased in the two years preceding the execution of the disputed will, the 2017 will, are in Pakistan. As Mr Bishop submits, those with the motive and opportunity to allegedly procure the 2017 will through undue influence are in Pakistan. He says that this is a relevant factor in the Pakistan proceedings, and that those with the motive and opportunity to allegedly forge the 2017 will are also in Pakistan. So the connecting factors for the witnesses in this case are wholly connected with and live in Pakistan.
49. The claimant's evidence is far from persuasive in relation to this factor. The claimant accepts that the attesting witnesses to the disputed will are in Pakistan. He also suggests that Mr Rajput and an associate of Mr Rajput are relevant witnesses. On the limited evidence before me I am struggling to see what their relevance is but in any event they are based in Pakistan. In terms of relevant connection with England, the claimant seeks to rely on the fact that the executor who may or may not renounce under the 1993 will and Stapletons which hold the 1993 will are relevant, but the claimant has no obvious standing to challenge the validity of the 1993 will and the key issue is the validity of the 2017 will. That is precisely what is in issue in the Pakistan proceedings.
50. Simply because the executor, the claimant, would find it more convenient to have a trial in England cannot outweigh the fact that the material witnesses in this case, the vast majority of the parties in this case, all of whom have instructed lawyers who are conducting the proceedings on their behalf are all based in Pakistan. There was some suggestion by the claimant through counsel in his skeleton argument that medical professionals here will need to give evidence because they will be relevant to

determine a question of testamentary capacity in 2017. The deceased left England on 1 August 2015 over two years before the disputed will was signed. I fail to see why or how medical professionals here would be relevant to an issue that concerns matters in 2017 in Pakistan. I could see potentially an argument to say that perhaps medical notes should be admitted into evidence but that can be dealt with.

(vi) The court first seized

51. The proceedings were commenced in Pakistan in July 2018. It was six months later when the claimant commenced his unorthodox probate proceedings in the Family Division. The Pakistan court was first seized of this matter.

52. It is suggested on behalf of the claimant that the proceedings in Pakistan are an abuse, that they are not genuine proceedings. That is a serious allegation to make against the 14 plaintiffs and potentially their lawyer in Pakistan. I questioned Mr Maqsood on this submission because I found it a surprising submission for counsel to make on the basis of the evidence before me, but I allowed him some latitude as he said he would make good that submission. But all that Mr Maqsood put forward were purported inferences to be drawn from the timing of events. He set out in detail the correspondence between solicitors in this country and invited me to infer that the proceedings in Pakistan were abusive because there was a day or perhaps a few days between correspondence in this country and proceedings being issued in Pakistan. I simply do not accept that submission. There is an extremely detailed claim that has been pleaded in the Pakistan proceedings that is before me and that has been stamped by the court on 28 July 2018. Mr Maqsood went on to put forward that the issue fee in the claim is wrong. He told me that the suit value equates to the estate value. There is no evidence before me that that is correct and counsel, as he well knows, cannot give evidence so I can place no weight in relation to that if it is in fact accurate. He also pointed to the power of attorney as being unusually wide. I have no evidence about what is usual for a power of attorney given in, and to assist in proceedings, in Pakistan and simply because counsel tells me that it is true is not evidence. Counsel cannot give evidence. Therefore, the assertions by counsel which is, I accept, putting

forward the claimant's case that the Pakistan proceedings are an abuse of process are baseless and I am surprised that such a submission and argument was maintained before me.

(vii) The cost of proceedings

53. The parties agree that it would be less expensive in financial terms for the parties to litigate their dispute in Pakistan rather than in London. There is some limited evidence that it may be a slightly longer process in Pakistan. I can put it no higher than that but it certainly does not tip the balance.

54. For those reasons that I have set out at some length, I am satisfied that the defendant has established that Pakistan is clearly or distinctly more appropriate as the forum of this dispute.

Substantial Justice

55. The claimant has sought through the evidence principally from Mr Rajput to denigrate the Pakistani legal system and to advance a case that justice would effectively be denied to the claimant if this case were tried in Pakistan rather than England. Mr Rajput is the claimant's lawyer so he is not an independent witness. He purports to put forward expert evidence. He is not an expert within the meaning of Part 35 of the Civil Procedural Rules. The burden is on the claimant to establish that substantial justice will be unavailable to him in Pakistan. I bear in mind that the claimant has not sought to obtain permission to instruct an expert to give opinion evidence so all that I have is a witness statement from Mr Rajput. The defendant criticises Mr Rajput's evidence both as a factual witness and the purported evidence on which he relies to castigate the Pakistani judiciary and I consider the criticisms made by the defendant to be well made.

56. I find the manner in which Mr Rajput has made his assertions as a lawyer astonishing. A lawyer knows that if a case is being put forward you need evidence not assertion. Some of his evidence is simply not reconcilable with the factual matrix. Mr Rajput

says that the claimant filed his statement in the Pakistan proceedings on 8 January 2019, Mr Rajput is his lawyer. The statement says “That since the execution/implementation of the Will in question is already pending in London, United Kingdom, the suit in question is not maintainable”. The claimant did not issue his probate claim until 30 January 2019.

57. On 18 April 2019 Mr Rajput stated, "The validity of the will and its implementation are already being adjudicated by the courts at England. Presently the matter in dispute is sub judice in the High Court of Justice in London where all aspects of the validity and implementation of the will are to be considered by the Court." Charitably it might be a question of interpretation but that is not what my order of 20 March 2019 dealt with. What was in issue was whether the stay should be re-imposed or not and what directions should be given. Mr Rajput also stated, “That the execution of the will dated 17.11.17 has already been filed in England. The record of the property so available there. The Courts in England have got jurisdiction to adjudicate upon the matter and to examine the validity of the will. The High Court of Justice in London is looking into all aspects of the case....”. What is evidence does not say is that the court is considering whether to re-impose the stay that was originally imposed by Knowles J.

58. The defendant also criticised some of the quality of the factual evidence that Mr Rajput puts forward. For example, he says the deceased was mentally and physically stable at the time and execution of the 2017 will. He is going beyond his expertise as a lawyer to make those assertions. When the defendant suggests that his evidence indicates a loyalty to his client, which is understandable, I accept that criticism. In so far as the claimant puts Mr Rajput’s evidence forward as expert opinion evidence, without the permission of the court, I reject it. Mr Rajput is not an expert for the purposes of the CPR Part 35.

59. Mr Rajput goes on to complain about delay in the case and puts that in the context of delay generally within the Pakistan judicial system. However from the evidence before me it appears to be the claimant who is prevaricating and delaying the

proceedings in Pakistan. I have been referred to various steps in the proceedings in Pakistan: 5 September 2018 adjourned for the appearance of the claimant; 24 September 2018 listed for the appearance of the claimant; 4 October 2018, listed for the appearance of the claimant; and on 15 November 2018 the claimant sought an adjournment. On 14 March 2019 the claimant and the other two defendants in the proceedings withdrew their application, causing further delay. In so far as the claimant seeks to rely on the fact there has been delay in the Pakistan proceedings, that is delay caused principally by the claimant and it ill behoves him to rely on delay as a factor.

60. Then I look at the evidence that has been advanced by Mr Rajput to support his blistering attack on the Pakistani judiciary. He asserts that Pakistani judges lack expertise and make irrational orders and do not apply the relevant law. He relies on three sources or purported sources to support his contention. He refers to a decision of *Omar v The District Judge*, a first instance decision of the Chief Justice of the Lahore High Court which was handed down eleven years ago in which he is critical of some delay by a district judge. Secondly, a case of *Shamsi v Lahore High Court*. This appears to be a judgment from a supervisory body of the judiciary. It concerns a hearing that took place three and a half years before and a district judge who was removed because of significant delays. So rather than support Mr Rajput's contentions it supports that the Pakistani legal system exercises proper supervision over judges and that they will act and remove judges where necessary where there has been misconduct, in that case delay.

61. Mr Rajput also relies on a paper delivered over 6 years ago by a judge who had retired several days beforehand, which he appears to have found on the internet. The judge, I am told and I have no reason to disbelieve this, was the Chief Justice, but he is a retired judge. I asked the basis of the paper whether it was a report specifically commissioned by someone, and this is no criticism of Mr Maqsood but he was unable to answer me.

62. The sources that are advanced by Mr Rajput's evidence are not proper sources upon which he can genuinely contend before this court that the Pakistani judiciary lack expertise, that they make irrational orders and that they do not apply the relevant law. The allegations made are scurrilous and I simply disregard his evidence in relation to this.

63. Mr Bishop has also quite properly referred me to, *Vedanta Resources Plc & Anor v Lungowe & Ors* [2019] UKSC 20, specifically paragraphs 11 and 96 to 97. The litigation arose from a company allegedly discharging copper toxins into watercourses in rural areas in Zambia. The company was incorporated in Zambia but its parent company was domiciled and incorporated in the United Kingdom. It was argued that the claimants were using the parent company as an anchor defendant to found jurisdiction in England. The court concluded that substantial justice was unavailable in Zambia. This was a niche area on environmental law affecting indigenous people, there was a practical impossibility of funding the proceedings in Zambia and there was the absence of a substantial and suitably experienced legal team in Zambia. At paragraph 11 Lord Briggs said,

"A particular reason for the requirement to exercise proportionality in jurisdiction disputes of this kind is that, in most cases, they involve a contest between two competing jurisdictions in either of which the parties could obtain substantial justice. The exception, an issue whether substantial justice is obtainable in one of the competing jurisdictions, may require a deeper level of scrutiny, not least because a conclusion that a foreign jurisdiction would not provide substantial justice risks offending international comity. Such a finding requires cogent evidence, which may properly be subjected to anxious scrutiny."

64. The evidence in this case comes nowhere near a level of evidence that I need to scrutinise. It is simply not sufficient.

65. I am satisfied that the defendant has demonstrated that Pakistan is clearly or distinctly the more appropriate forum and that the claimant has not satisfied me on the evidence

adduced that justice would not be available to him in Pakistan. I therefore grant a stay of the English proceedings in so far as they relate to the validity of the 2017 will until determination of that issue in the proceedings in Pakistan.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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