

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA #2656 of 1997

IN THE MATTER OF THE ESTATE
OF BHADASE SAGAN MARAJ (deceased)

BETWEEN

RAMOLA RAMESAR

Plaintiff

AND

SATNARAYAN MAHARAJ
AND JAGDISE SAGAN MARAJ
(the legal personal representative of
Bhadase Sagan Maraj, deceased)

Defendants

In Chambers

Before: The Hon. Justice Nolan Breaux

Appearances: Mr A Manwah for Plaintiff
Ms L Lucky Samaroo for Defendants

JUDGMENT

The applicant by summons dated and filed 17th October, 1997 seeks certain orders which would direct the defendants to convey to her certain entitlements she claims under the last will and testament of Bhadase Sagan Maharaj who died on 21st October, 1971.

The action is one of three actions brought by the plaintiff and Sandra Sagan Maharaj, as beneficiaries under the will. The other actions, it is agreed, will abide the outcome of this decision.

The plaintiff in her main affidavit contends that letters of administration with the last will of the deceased annexed was granted to the defendants and one Hilda Sagan Maharaj who has since died.

She contends that, to date, she has not been paid that which is due to her under the will. She has tendered into evidence what she contends is an inventory of the estate which was extracted from previous proceedings between the parties. That inventory however, was not up to date at the time of hearing of this action.

The first defendant denies that he and the second defendant have refused to give the plaintiff that which is due to her. He contends that the administration of the estate is very complex. Some of the lands which comprise the estate are in the process of acquisition by the Government of Trinidad and Tobago. There remains to be paid a sum in excess of \$5,000,000.00 due and owing to the Board of Inland Revenue. I have had no precise or up to date figure of the extent of that indebtedness but the sum of \$4,792,265.74 was due and owing to the Board of Inland Revenue as at 30th September, 1994. That indebtedness is stated in an affidavit sworn by the first defendant in a previous proceeding, which affidavit has been filed by the plaintiff in support of her application.

The first defendant contends that he has made every effort to assist the plaintiff through the payment of sums on account of her share in the estate but he is required to keep intact so much of the estate as is necessary to liquidate the indebtedness of the Board of Inland Revenue.

The plaintiff, he stated, has received well in excess of \$300,000.00 as at 1998 and that he has also conveyed to her a property situate at 56 Sagan Drive, Champ Fleurs. The first defendant also alleges that there is an outstanding debt in respect of Land and Building Taxes in the amount of \$90,259.16.

The action is brought pursuant to Order 82 rule 2(1), 2(3)(c) and (e) and 82(1) rule 4 and pursuant to section 12(2) of the Administration of Estates Ordinance Chap. 8 No. 1

Submissions of Counsel

Ms Lucky-Samaroo, on behalf of the defendants submits that the defendants cannot complete the distribution of the estate because on a proper construction of Section 82 of the Income Tax Act, Chap. 75:01, were they to do so without the payment of outstanding taxes, including interest and penalties, they will be personally liable to the Board of Inland Revenue. They must retain so much of the estate as in their opinion shall represent the value of the outstanding taxes.

She makes the additional submission that the plaintiff had agreed not to institute fresh proceedings in this court as a consequence of the settlement of a previous High Court Action brought against the defendants. This was denied by the plaintiff. Having regard to the evidence I am not in a position to make any proper finding as to such an agreement, and I decline to do so.

Mr Manwah, on behalf of the plaintiff submits that the defendants began distributing the estate before having obtained the certificate required by Section 82(2) and (3) of the Income Tax Act, Chap. 75:01. He submits that when given its ordinary and natural meaning, it means that the certificate must be obtained before distribution begins, and the defendants are now personally liable.

He submitted in the alternative that the assessment of the taxes owed by the deceased's estate must be made within three years of the year of income, pursuant to section 89(2) & (3) and argued that the notice is date stamped 8th November, 1994 and is for the years of income 1972 to 1978 which is clearly outside the time limits set.

It is convenient that I deal with this latter submission now. Attractive though the submission appears, it takes this court down a slippery slope and into error. I do

not have before me any sufficient evidence of the actual date upon which the assessment was made. The relevant exhibit upon which the plaintiff relies, speaks of outstanding arrears for the period 1977 to 1994. There is no evidence as to when the assessment of that amount was actually made and to what year of income it refers.

More fundamentally since the Board of Inland Revenue is not a party to this action, my decision will not bind it. This is an argument to be taken before the Tax Appeal Board by the defendants themselves but the defendants appear to acknowledge and accept that the debt is owed by the estate and from the evidence of the first defendant, they have been negotiating with the State in an attempt to settle it.

I turn to Mr Manwah's submission that the defendants ought first to have obtained a certificate from the Board of Inland Revenue before proceeding to any distribution and that by failing to do so he is now personally liable.

Section 82 (2) of the Income Tax Act provides as follows:

Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, before distributing any property under his control, shall obtain a certificate from the Board certifying that there are not outstanding any taxes, interest or penalties that have been assessed under this Act and are chargeable against or payable out of the property.

Subsection (3) provides that:

Distribution of property without a certificate required by subsection (2) shall render the person required to obtain the

certificate personally liable for the unpaid taxes, interest and penalties.

The effect of section 82 (2) & (3) is to place the onus on the administrator/executor to settle all outstanding tax liability with the Board of Inland Revenue before proceedings to distribute the estate. It creates a first charge on the property comprising the estate and the first obligation of the executors is to dispose of any outstanding tax liability. It is after that charge has been satisfied that the certificate is issued. Failure to pay debt renders the administrator/executor personally liable for the tax liability if the estate is finally distributed before the tax is paid and it is prudent and in his best interest to obtain the tax certificate before distribution of any property.

But in my judgment, when the section refers to the distribution of "*property under the administrator's control*", it contemplates the distribution of the entire estate to the beneficiaries, that is to say, distribution to its finality before payment of taxes due and owing. As such, a partial distribution of the estate in this case does not prejudice the rights of the Board of Inland Revenue if there is a sufficient residue to cover the sum due on the entire estate. As such the failure of the defendants to pay the outstanding liability before distribution does not render them personally liable if the value of the residue is sufficient to cover the outstanding tax debt.

As to Mr Manwah's submission that the properties can be conveyed to the beneficiaries subject to those taxes which create a charge on the properties, I agree with Ms Lucky-Samaroo that the defendants run the risk of personal liability if the properties are transferred and the debts remain unpaid and it will therefore be imprudent of them to do so without the prior concurrence of the Board of Inland Revenue. I shall say no more on this until I have had a full account of the efforts of the defendants to distribute the estate.

I am not satisfied that the defendants have made any serious effort to complete the administration of the estate and while I agree with Ms Lucky-Samaroo, the relief

sought in the summons cannot now be granted. I do not agree with her that I am obliged to dismiss it. The deceased in this case died in 1971. We have entered the 30th year after his death. It is inconceivable that his estate has not yet been finally completed. No proper or sufficient reason has been put forward by the defendant as to why it has not been. The first defendant states that he is “*in discussion with representatives of Government to speed up*” a proposed acquisition of property belonging to the estate. He has provided no detail as to the status of those discussions, of the value of the property which is the subject of such acquisition and the proposed purchase price. He adds that the property is also occupied by squatters who have been facilitated by the Water and Sewerage Authority and Trinidad & Tobago Electricity Commission without the consent of the executors. If that is so, it is a poor reflection on the defendants’ efforts to administer the estate.

The plaintiff in her summons has asked this court for such other relief as I may see fit. In my judgment, Order 82 of the Rules of the Supreme Court empowers me to make the following order:

The defendants shall furnish a full account of their administration of the estate of the deceased to date. It shall include:

- (i) an account of all outstanding indebtedness due to the Board of Inland Revenue as at 31st December, 2000, inclusive of interest. Such interest to be separately itemized; the indebtedness shall also include any outstanding land & building taxes and any interest accruing thereon which is to be separately itemized.
- (ii) an account of all payment of cash and conveyances of land or other property made to the beneficiaries entitled under the will.
- (iii) an account of all entitlements still due to the plaintiff Ramola Ramesar and to Sandra Sagan Maharaj

This account is to be submitted to the Registrar no later than ninety days from the date of this judgment, to be filed in court and served on the plaintiff Ramola Ramesar and on Sandra Sagan Maharaj, plaintiff in HCA 2655 of 1997.

The matter stands adjourned to 10th April, 2001 at 9.00 am for further consideration.

There shall be liberty to apply.

Dated this 19th day of December, 2000

NOLAN P G BERAUX
Judge