DALAM MAHKAMAH TINGGI DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN
[GUAMAN SIVIL NO: BA-22NCVC-69-02/2020]

ANTARA

PUNNUSAMY ARUNASALAM
(NO. K/P: 620919-10-6079) ... PLAINTIF

DAN

1. MANIMARAN ARUNASALAM
(NO. K/P: 680229-10-6105)

2. RAMU ARUNASALAM
(NO. K/P: 740624-10-5315) ... DEFENDAN-DEFENDAN

JUDGMENT

Introduction

[1] The plaintiff sought a court order to revoke or set aside a Grant of Probate dated 4.9.2019 which was granted by this Court under Originating Summons No. BA-32NCVC-599-07/2019 (hereafter 'the probate action') in relation to a will dated 5.9.2018 (hereafter 'the impugned will'). The probate action was filed by the defendants (who were the executors / beneficiaries of the impugned will) in year 2019.

[2] In essence, the plaintiff's action questioned the legitimacy of the impugned will. The plaintiff averred the testatrix, who was the plaintiff's mother, did not have the testamentary capacity at the time of the making of the impugned will. The parties have gone through a

full trial. On 17.2.2022, this Court dismissed the plaintiff's action. The reasons for the decision are set out below.

The Background Facts

[3] The plaintiff and the defendants are siblings. The testatrix, Thangammah a/p Muthu (hereafter 'the Deceased'), passed away on 22.6.2019, and the cause of her death was "stroke" as stated in the Death Certificate.

[4] Before her passing, the Deceased made the impugned will on 5.9.2018. The impugned Will was prepared by a firm of solicitors Messrs Gerard Lazarus & Associates.

[5] In the impugned will, the Deceased bequeathed all her real and personal estate to only two of her six children, namely Manimaran a/l Arunasalam and Ramu a/l Arunasalam, who were the defendants in this suit, in equal shares. The defendants, other than being named as the beneficiaries, were also named as the executors and trustees in the impugned will.

[6] The Deceased executed the impugned will by placing her thumb-print on the same. The impugned will was then witnessed by two witnesses, namely the late Mr. Gerard Lazarus and Ms. Darshne a/p Jeevananthan (DW1). Both were advocates and solicitors of the High Court Malaya.

[7] After the passing of the Deceased, the defendants filed the probate action in July 2019. On 4.9.2019, the defendant obtained the Grant of Probate. The defendants were duly appointed as the executors of their mother's impugned will.

[8] On 29.1.2020, the plaintiff filed a Citation against the defendants pursuant to Order 72 rule 7 of the Rules of Court 2012 to

challenge the Grant of Probate, and required the defendants to bring the Grant of Probate to be produced and left at the Court Registry.

[9] On 20.2.2020, the plaintiff filed this action. The nub of the plaintiff's complaint is encapsulated in the following paragraphs of the Statement of Claim:

> "6 SI MATI mengalami *cerebrovascular accident* pada tahun 2015, dan sejak dari itu beliau terlantar di atas katil dan hanya diberi makan *Ryle's tube*. Keadaan SI MATI tidak pernah pulih sehingga beliau meninggal dunia pada 22 Jun 2019 akibat *acute coronary syndrome*.
>
> 7. Dalam kata lain, SI MATI tidak mempunyai kapasiti untuk membuat wasiat yang sah pada 6 September 2018, selaras dengan peruntukan di bawah seksyen 3 Akta Wasiat 1959. Ini bermakna, SI MATI telah meninggal dunia tanpa wasiat yang sah.
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> 8. Bagi maksud Aturan 72 kaedah 13(3)(b) Kaedah-Kaedah Mahkamah 2012, adalah diplidkan bahawa SI MATI, pada masa penyempurnaan wasiat itu, berada dalam keadaan tak sempurna akal, ingatan dan kefahaman.
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> 9. Oleh itu, terdapat alasan yang munasabah untuk Mahkamah Yang Mulia ini membatalkan GERAN PROBET, selaras dengan peruntukan di bawah seksyen 34 Akta Probet dan Pentadbiran 1959."

[10] In essence, the plaintiff averred that the Deceased was not of sound mind, memory and understanding at the time of making the impugned will (see Order 72 rule 13(3)(b) Rules of Court 2012). In other words, the plaintiff was challenging the testamentary capacity of the Deceased at the time of the making of the impugned will.

The Findings of this Court

[11] It was not in dispute that the Deceased suffered *cerebrovascular accident* (hereafter "CVA") in 2015, and thereafter, she depended on the *Ryle's tube* for food/nutrition until her passing on 22.6.2019. It was also not in dispute that the cause of death of the Deceased was acute coronary syndrome.

[12] The main contention between the parties is whether the Deceased was of sound mind in making the impugned will at that material time.

[13] Section 3 of the **Wills Act 1959** states:

> "Except as hereinafter provided, every person of **sound mind** may devise, bequeath or dispose of by his will, executed in manner hereinafter required, all property which he owns or to which he is entitled either at law or in equity at the time of his death notwithstanding that he may have become entitled to the same subsequently to the execution of the will."

[14] The Wills Act 1959 does not define what "sound mind" is. However, s. 2 of the **Probate and Administration Act 1959 (Revised 1972)**, which is a corresponding law to the Wills Act 1959, defines "person of unsound mind" as follows:

> "(a) person found under section 10 of the Mental Disorders Ordinance 1952 [*Ord. 31 of 1952*], to be of unsound mind and incapable of managing himself and his affairs;
>
> (b) a person certified insane by a medical practitioner and by an Asylum Medical Officer under section 4 of the Lunatics Ordinance of Sabah [*Cap. 74*]; and
>
> (c) a person found under section 5 of the Mental Health Ordinance 1961 of Sarawak [*Ord. 16 of 1961*] to be of unsound mind and incapable of managing himself or his affairs,

and includes any other person of unsound mind **incapable of managing himself or his affairs**;"

[15] The above definition is of little assistance. The Mental Disorders Ordinance 1952 [*Ord. 31 of 1952*] has been repealed by s. 93 of the **Mental Health Act 2001 (Act 615)** (came into force on 15.6.2001).

[16] At best, the definition suggests a person is considered of unsound mind when he is "incapable of managing himself or his affairs". In other words, if a person is capable of managing himself or his affairs he will be considered as of sound mind. Further, the definition of "person of unsound mind" in the **Probate and Administration Act 1959 (Revised 1972)** is in reference to the grant of representation under s. 21 of he said Act. It is not in reference to a testator's mental capacity.

[17] In the **Black's Law Dictionary** (Revised 4th Ed.), p. 1708, defines "unsound mind" as follows:

> "A person of unsound mind is one who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots, and imbeciles. And see *Cheney v. Price*, 90 Hun 238, 37 N.Y.S. 117; *In re Black's Estate*, 1 Myr. Prob. (Cal.) 24. *Stewart v. Lispenard*, 26 Wend. (N.Y.) 300; *Ray v. State*, 32 Ga. App. 513, 124 S.E. 57. It exists where there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life. *Oklahoma Natural Gas Corporation v. Lay*, 175 Okl. 75, 51 P.2d 580, 582"

[18] Whereas, at p. 1567, "sound mind" is defined as follows:

> "The normal condition of the human mind, - that state in which its faculties of perception and judgment are ordinarily well developed, and not impaired by mania, insanity, or dementia.

> See *Daly*, 183 III,. 269, 55 N.E. 671; *Delafield v. Parish*, 25 N.Y. 102; *Harrison v. Rowan*, 11 Fed. Cas. 661; Yoe v. McCord, 74 III. 37; *Rodney v. Burton*, 4 Boyce (del.) 171, 86 A. 826, 829. In the law of wills means that testator must have been able to understand and carry in mind, in a general way, nature and situation of his property, his relations to those having claim to his remembrance, and nature of his act. *Needham Trust Co. v. Cookson*, 251 Mass. 160, 146 N.E. 268; *In re Lawrence's Estate*, 286 Pa. 58, 132 A. 786, 789; *In re Bossom's Will*, 195 App. Div. 339, 186 N.Y.S. 782, 786; *Rose v. Rose*, Mo. Sup., 249 S.W. 605, 607."

[19] The meaning of "sound mind" when used in relation to a will seems to have a wide meaning. In *Gan Yook Chin & Anor v. Lee Ing Chin* [2004] 4 CLJ 309, FC, 321, wherein the Federal Court held as follows:

> "It is trite law that for a will to be valid, a testator must have testamentary capacity. Whether a testator has testamentary capacity depends on the facts of each case…."

[20] The apex court regarded "testamentary capacity" as having the same connotation with the term "sound mind" in s. 3 of the Wills Act 1959. English common law has long recognised that one of the essential elements in the formation of a valid will is that the testator must possess the testamentary capacity in making the will.

[21] In *Banks v. Goodfellow* [1870] L.R. 5 Q.B, 549, 565, the Court of Queen's Bench explains what are the considerations to be taken into account in order to find a testator has the testamentary capacity in making a will. In the judgment of Cockburn, CJ, his Lordship has this to say:

> "It is essential to the exercise of such power that a testator shall understand the nature of the act and its effects; shall understand

> the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

[22] Based on the above references, it is safe to say that a testator must be of sound mind when he makes his will. Only a person of sound mind is capable of understanding what a will is and capable of forming a rational decision of the effect in the will upon his demise. A testator must know and approve of the devise, bequeath or disposal of his property(ies) in the will.

[23] In the present case, in order to establish that the Deceased understood the nature of making the impugned will and its effects, and that she understood the extent of the properties of which she was disposing, and she was able to comprehend and appreciate the claims to which she ought to give effect; and, with a view to the latter object, that no disorder of the mind had poisoned her affections, perverted her sense of right, or prevented the exercise of her natural faculties, that no insane delusion should influence her will in disposing of her property and bringing about a disposal of it which, if her mind had been sound, would not have been made, this Court would have to examine the surrounding circumstances when the will was made.

[24] The late Mr. Gerard Lazarus was the solicitor who prepared the impugned will. He had passed away at the time of the trial. There was no account before this Court on what actually transpired between the late Mr. Gerard Lazarus and the Deceased on 5.9.2018, i.e., the day the impugned will was executed. The only evidence offered before this Court on that material day and time was the evidence of DW1 and the 1st defendant (DW2).

[25] According to the testimony of Ms. Darshne a/p Jeevananthan (DW1), the second attesting witness of the impugned will, the Deceased came to see Mr. Gerard Lazarus on 5.9.2018. The Deceased was on a wheelchair and could not climb the stairs to her office. As such, the meeting between the late Mr. Gerard Lazarus and the Deceased was held at a restaurant below her office. DW1 explained that the contents of the impugned will were prepared according to the instruction given by the Deceased to Mr. Gerard Lazarus.

[26] The late Mr. Gerard Lazarus explained and translated the contents of the impugned will to the Deceased in Tamil language, said DW1. DW1 told the Court that the Deceased understood the contents as translated to her, and thereafter, the Deceased placed her thumb print on the impugned will.

[27] DW1 also told the Court that she did not take part in the explanation and translation of the impugned will. All the explanation and translation were done by the late Mr. Gerard Lazarus. Her role was to witness the Deceased's execution of the impugned will at that material time. DW1 also told the Court that she did not see the Deceased on a *Ryle's tube* at that material time.

[28] DW2 told the Court that the Deceased wanted to make a will and asked him to look for a lawyer. He and his brother then brought the Deceased to meet the late Mr. Gerard Lazarus. He told the Court that the Deceased met and spoke to the late Mr. Gerard Lazarus at the restaurant. After that the late Mr. Gerard Lazarus went back to his office. The late Mr. Gerard Lazarus then came back to the restaurant and spoke to the Deceased and he saw DW1 was with them. DW2 did not participate in the meeting and the conversations between the Deceased and the late Mr. Gerard Lazarus. DW2 was asked by the Deceased to be excused from the meeting between the Deceased and the late Mr. Gerard Lazarus. DW2 told the Court that he could not confirm what transpired between the Deceased and the late Mr. Gerard Lazarus.

[29] Insofar as the narrative and evidence of the defendants' case are concerned, the Deceased was able to move around using a wheelchair. The Deceased met with the late Mr. Gerard Lazarus. The late Mr. Gerard Lazarus prepared the impugned will according to the instruction given by the Deceased. The late Mr. Gerard Lazarus translated the impugned will to the Deceased. The Deceased placed her thumb print on the impugned will.

[30] The whole account of what transpired on that day was explained by DW1 who has no interest in the impugned will, other than being an attesting witness to the Deceased's thumb print. This Court finds her evidence is credible and there is no reason to doubt her truthfulness in her testimony.

[31] The impugned will was prepared according to the instruction of the Deceased. The contents of the impugned will were translated to the Deceased in the language that she understood. The Deceased then placed her thumb print on the impugned will. All the evidence is sufficient for this Court to make a finding of fact that the Deceased understood the nature of making the impugned will and its effects. The Deceased clearly identified her assets which she intended to dispose. The Deceased's action of placing her thumb print (without assistance) on to the impugned will after the contents were translated to her shows that the Deceased was able to comprehend and appreciate the claims to which she ought to give effect. The fact that the Deceased did not name the plaintiff as one of the beneficiaries in her impugned will could not raise suspicious circumstance, because the Deceased also did not name her other children in the impugned will, other than the defendants.

[32] The plaintiff's counsel submitted that DW1 assumed the Deceased had the testamentary capacity to make the impugned will. Her assumption was worthless, said the plaintiff's counsel. The plaintiff's counsel submitted that DW1 is not a psychiatrist or a psychologist, therefore, she could not testify the Deceased's

testamentary capacity. This Court could not agree with the plaintiff's counsel submission.

[33] DW1 witnessed the contents of the impugned will being translated to the Deceased in the language that she was familiar. DW1 also witnessed the Deceased placing her thumb print on the impugned will after she received explanation of the contents of the impugned will. Given these facts, anyone, more so DW1 as a legally trained professional, would reasonably come to a conclusion that the Deceased had the testamentary capacity in making the impugned will. There is no need for a psychiatrist or a psychologist to state the obvious.

[34] The plaintiff's counsel also submitted that it was doubtful whether the contents of the impugned will were actually translated to the Deceased in Tamil language as there was no evidence to support that fact. The Court should give little, or no weight, to the testimony of DW1, the plaintiff's counsel submitted. The plaintiff's counsel relied on a passage of the Australian High Court decision in **Willian Henry Bailey** (infra) which states: "the opinion of witnesses as to the testamentary capacity of an alleged testator is usually for various reasons of little weight on the direct issue…." This Court finds the plaintiff's counsel has misquoted the passage. DW1 was not merely a witness; she was the attesting witness of the impugned will. Her observation of the facts does carry some weight. The Australian High Court stated that "the opinions of the attesting witnesses that the testator was competent are not without some weight, the Court must judge from the facts they state and not from their opinion."

[35] The mere fact that there is no other evidence to support the fact that the contents of the impugned will was translated to the Deceased in Tamil language, other than the testimony of DW1, could not preclude this Court from accepting the testimony of DW1. This Court did not find anything wrong to accept the testimony of DW1. DW1 has nothing to gain for not telling the truth. DW1's testimony was not

discredited in any manner in the cross-examination. This Court finds DW1 was a truthful and credible witness during the trial.

[36] In the plaintiff's case, the plaintiff (PW2) told the Court that since the Deceased was bedridden and depended on the *Ryle's* tube until her demise, she could not have the capacity to make a will. PW1 also told the Court that the Deceased suffered dementia (hilang ingatan) and could not recognise him or his siblings after suffering from CVA in 2015, i.e. stroke.

[37] The plaintiff called one Dr Amshar bin Mohamad (PW1) as his witness to testify on the condition of the Deceased. PW1 is a Medical Officer attached to Hospital Tanjung Karang. On 22.6.2019, PW1 attended to the Deceased when she was brought into the Hospital. PW1 stated in his report that there was no sign of life and no spontaneous breathing when the Deceased was brought to the Hospital (see PW1's report at p.3-4, Exhibit B, Ikatan Dokumen Bersama). He performed cardiopulmonary resuscitation (CPR) on the Deceased for 20 minutes, but the Deceased was "not revived". He then pronounced the Deceased died at 14:40 hour.

[38] PW1 admitted that the Deceased was not his patient. He did not perform any evaluation of the degree of mental capacity of the Deceased because the Deceased had no sign of life when he attended to the Deceased. PW1 also told the Court that one Dr. Nor Sharimah had been attending to the patient based on the medical record.

[39] During cross-examination, PW1 told the Court that a patient who is suffering from CVA could still think and talk, that depends on the seriousness of stroke. At the end, PW1 agreed that he attended to the Deceased only on 22.6.2019. He did not attend to the Deceased in the past 5 years before her demise. He was not the doctor who attended the Deceased in the past 5 years.

[40] This Court, after having sieved through the plaintiff's case, could not find any supporting evidence to suggest that the Deceased did not have the testamentary capacity to make the impugned will on 5.9.2018. This Court found no evidence to suggest that the Deceased being a CVA patient necessarily meant her mental capacity had been impaired.

[41] There is also no evidence in the plaintiff's case to suggest that the mental capacity of the Deceased was impaired after suffering from CVA. The only evidence was from the plaintiff saying the Deceased suffered from dementia and could not recognise her own children. This evidence contradicted the defendants' narrative, especially the testimony of DW1. This Court is more inclined to accept the defendants' narrative. This is because DW1 is an independent eye-witness who saw and met the Deceased on the day of the making of the impugned will. If the plaintiff's narrative has any truth, DW1 would have been lying as a legally trained professional. Why would she want to be in cahoots with the defendants to make up a story? She gains nothing for such an unethical professional practice. There is no reason for her to risk her legal career to lie.

[42] The Deceased was bedridden, but she was still mobile on a wheelchair. Being on a wheelchair did not suggest she could not move her limb entirely. Being dependant on a *Ryle's* tube could not suggest the Deceased was incapable of managing her own affairs. The Deceased could be physically impaired, but not mentally retarded. The Deceased died of acute coronary syndrome. That could not prove or suggest the Deceased was mentally impaired before her death.

[43] The plaintiff's case failed to offer any evidence that could suggest the Deceased did not have the testamentary capacity to make the impugned will at that material time on 5.9.2018. The plaintiff's complaint was based entirely on his own belief and judgment on the physical condition of the Deceased after the CVA in 2015.

[44] The plaintiff's counsel in his submission tried to cast doubts in the defendants' narrative, especially the event on 5.9.2018. The plaintiff's counsel's submission was purely based on conjecture without support of any cogent or even relevant evidence.

[45] Dr. Nor Sharimah who attended to the Deceased in the past 5 years before her demise was not called to testify on the mental capacity of the Deceased. There was no evidence in the plaintiff's case that could convince this Court on a balance of probabilities that the Deceased did not have the testamentary capacity to make the impugned will. This Court is of the view that based on the evidence before the court, it was more probable that the Deceased had testamentary capacity to make the impugned will.

[46] The plaintiff's counsel submitted that the Federal Court case *Gan Yook Chin* (*supra*) stated that "where the validity of a will was challenged, the burden of proving testamentary capacity and due execution lay on the propounder of the will as well as dispelling any suspicious circumstances surrounding the making of the will". The plaintiff's counsel also relied on the proposition of law of the High Court of Australia in *William Henry Bailey & Ors v. Charles Lindsay Bailey & Ors* [1924] 34 CLR 558 which was cited by our apex Court in **Gan Yook Chin** with approval, particularly the proposition in the Judgment of Isaacs J, at pp. 570-572, which states as follows:

> "(1) The onus of proving that an instrument is the will of the alleged testator lies on the party propounding it; if this is not discharged, the court is bound to pronounce against the instrument.
>
> (2) This onus means the burden of establishing the issue. It continues during the whole case and must be determined upon the balance of the whole evidence.

(3) The proponent's duty is, in the first place, discharged by establishing a prima facie case.

(4) A prima facie case is one which, having regard to the circumstances so far established by the proponent's testimony, satisfies the Court judicially that the will propounded is the last will of a free and capable testator.

(5) A man may freely make his testament, how old soever he may be; for it is not the integrity of the body, but of the mind, that is requisite in testaments.

(6) The quantum of evidence sufficient to establish a testamentary paper must always depend upon the circumstances of each case, because the degree of vigilance to be exercised by the Court varies with the circumstances

(7) As instances of such material circumstances may be mentioned (a) the nature of the will itself regarded from the point of simplicity or complexity, or of its rational or irrational provisions, its exclusion or non-exclusion of beneficiaries; (b) the exclusion of persons naturally having a claim upon the testator; (c) extreme age, sickness, the fact of the drawer of the will or any person having motive and opportunity and exercising undue influence taking a substantial benefit.

(8) Once the proponent establishes a prima facie case of sound mind, memory and understanding with reference to the particular will, for capacity may be either absolute or relative, then the onus probandi lies upon the party impeaching the will to show that it ought not to be admitted to proof.

(9) To displace a prima facie case of capacity and due execution, mere proof of serious illness is not sufficient: there must be clear evidence that undue influence was in fact exercised, or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing his property.

(10) The opinion of witnesses as to the testamentary capacity of an alleged testator is usually for various reasons of little weight on the direct issue.

(11) While, for instance, the opinions of the attesting witnesses that the testator was competent are not without some weight, the Court must judge from the facts they state and not from their opinions.

(12) Where instructions for a will are given on a day antecedent to its execution, the former is by doing established law the crucial date."

(**Note**: the authorities cited at the end of each paragraph of the Judgment of the High Court of Australia has been intentionally omitted)

[47] This Court is fully aware that the legal burden of proof always lies upon the person propounding the will. Propounding a will simply means to take legal action to have the will authenticated by the court of law. The propounder has to prove that the formal requirements of a will have been met, and that the testator has reviewed, understood and approved the contents of the will by the act of executing the will. The legal burden rests on the propounder who wants the court to authenticate or to give judicial effect to the will. This is basic rule of evidence – whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts,

must prove that those facts exist (see s. 101 of the **Evidence Act 1950**).

[48] In this present case, the impugned will has already been propounded before the court through the Probate action. The sealing of the Grant of Probate dated 4.9.2019 simply means the impugned will has already been authenticated or proved in the Probate action before this Court.

[49] It is stated in the Grant of Probate that "*BE IT KNOWN that the date hereunder-written Last Will and Testament of late of Thangammah A/P Mutuhu ... who died on the 22nd day June 2019 at Selangor leaving property situate within the jurisdiction of this Court,* ***was proved before this Court***...." The Grant of Probate dated 4.9.2019 is the judicial certificate of a valid will.

[50] In both the decisions of **Gan Yook Chin** and **William Henry Bailey**, the respective apex courts referred to the legal burden on a *propounder* [emphasis added] of the will. This means the will in question has yet to be propounded. When a challenge is levelled against the testamentary capacity or legality of a testator or the legality of a will which has yet to be proved before the court in that the will has yet to be propounded i.e. before the issuance of a Grant of Probate, surely the legal burden is on the propounder of the will. This legal proposition follows and adheres to the basic rule of evidence.

[51] In this instant case, the impugned will had already been proved before this Court. Therefore, a challenge to the impugned will was a challenge to a court decree for the Grant of Probate dated 4.9.2019. *A fortiori* the plaintiff who desired this Court to give judgment to him must bear the burden to prove that those facts exist, i.e, the Deceased did not have the testamentary capacity to make the impugned will.

[52] Insofar as the defendants' burden of proof is concerned, they have proven and satisfied this Court judicially that the impugned will

propounded was the last will and testament of a free and capable testatrix in the Probate action. In the Probate action, the application was supported by the affidavits of the two attesting witnesses and the propounders, namely, Enclosures 4 and 5 of the Probate action, i.e. the affidavits of the late Mr. Gerard Lazarus and DW1 both affirmed on 25.7.2019, and Enclosure 2 of the Probate action, i.e. the supporting affidavit of the propounders (the defendants in this present case) affirmed on 25.7.2019 as well.

[53] Based on the above, the defendants had discharged their burden of proof in the Probate action as well as in this action to prove that the Deceased had the testamentary capacity to make the impugned will. In this action, the plaintiff failed to prove on a balance of probabilities that the Deceased did not have the testamentary capacity or that the Deceased was of unsound mind when making the impugned will. Hence, the plaintiff has failed to satisfy this Court for an order to be given to revoke the Grant of Probate.

Conclusion

[54] For the reasons stated above, this Court dismissed the plaintiff's action. This Court ordered the plaintiff to pay costs of RM20,000.00 (subject to allocator fees) to the defendants.

Dated: 4 APRIL 2022

(CHOO KAH SING)
Judge
High Court Shah Alam

COUNSEL:

For the plaintiff - Shamsher Singh Thind & Gunamalar Joorindanjn; M/s Gunamalar Law Chambers

For the defendants - Komathi Arunasalam; M/s Komathi Arunasalam

Case(s) referred to:

Gan Yook Chin & Anor v. Lee Ing Chin [2004] 4 CLJ 309

Banks v. Goodfellow [1870] L.R. 5 Q.B, 549

William Henry Bailey & Ors v. Charles Lindsay Bailey & Ors [1924] 34 CLR 558

Legislation referred to:

Wills Act 1959, s. 3

Probate and Administration Act 1959, ss. 2, 21

Mental Health Act 2001, s. 93

Evidence Act 1950, s. 101

Rules of Court 2012, O. 72 rr. 7, 13(3)(b)