

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2021] SGHC 161

Originating Summons No 410 of 2021 (Summons No 2536 of 2021)

Between

Ambihathevi Alagaretnam Mrs
Jeevarajah Ambihathevi

... Plaintiff

And

Jeevarajah Nithiananthan

... Defendant

GROUND S OF DECISION

[Civil Procedure] — [Injunctions]

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
THE PARTIES AND THE PROPERTY	2
THE PROCEEDINGS	3
<i>The FJC proceedings</i>	3
<i>The High Court proceedings</i>	4
SUM 2536 WAS NOT AN ABUSE OF PROCESS	5
SUM 2536 SHOULD NOT BE DEFERRED UNTIL AFTER SUM 2693	5
SERIOUS QUESTIONS TO BE TRIED	6
MDM AMBIHATHEVI’S RIGHT TO THE PROPERTY	6
MDM AMBIHATHEVI’S CONCERNS ABOUT DR NITHIANANTHAN REMAINING AT THE PROPERTY	11
BALANCE OF CONVENIENCE.....	15
CONCLUSION.....	20

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Ambihathevi Alagaretnam Mrs Jeevarajah Ambihathevi
v
Jeevarajah Nithiananthan

[2021] SGHC 161

General Division of the High Court — Originating Summons No 410 of 2021
(Summons No 2536 of 2021)

Andre Maniam JC
24 June 2021

28 June 2021

Andre Maniam JC:

Introduction

1 I granted an interlocutory injunction against the defendant, excluding him from the property at 23 Carmen Street Singapore 459750 (“the Property”); I also declined to grant a stay of my order. The defendant has filed an appeal against my decision and applied for a stay from the Appellate Division. These are my grounds of decision.

Background

The parties and the Property

2 The plaintiff (“Mdm Ambihathevi”) is the sole beneficiary of the Property under the will of her late husband Mr Jeevarajah (“the Will”). Mdm Ambihathevi is now 83 years old.

3 The defendant (“Dr Nithiananthan”) is one of Mdm Ambihathevi’s two sons. He was named as executor and trustee in the Will.¹ Dr Nithiananthan is a medical doctor, in his 60s.

4 The late Mr Jeevarajah passed away on 5 April 2008, and grant of probate was issued on 27 July 2009.² The Property has, however, not been transferred to Mdm Ambihathevi, to date.³

5 Dr Nithiananthan acknowledged that Mdm Ambihathevi is the sole beneficiary of the Property. His position, however, is that he is not obliged to transfer it to her. Instead, he can retain legal ownership of it, and continue to reside in it as the “family home”.⁴ When the injunction application came before me on 24 June 2021, Dr Nithiananthan was staying in the Property; but Mdm Ambihathevi had moved out on 11 March 2021 and was living temporarily with

¹ 2nd Affidavit of Ambihathevi Alagaretnam Mrs Jeevarajah Ambihathevi dated 1 Jun 2021 (“Plaintiff’s 2nd Affidavit”) at p 48.

² Plaintiff’s 2nd Affidavit at p 46.

³ Plaintiff’s 2nd Affidavit at para 32.

⁴ 1st Affidavit of Jeevarajah Nithiananthan dated 8 Jun 2021 (“Defendant’s 1st Affidavit”) at paras 90 and 112.

a family friend.⁵ However, that friend would be travelling to the United States from 29 June 2021 to 1 August 2021.⁶

The proceedings

The FJC proceedings

6 On 16 April 2021, Mdm Ambihathevi filed an application in the Family Justice Courts (“FJC”) for:⁷

- (a) a personal protection order (“PPO”); and
- (b) a domestic exclusion order (“DEO”) to exclude Dr Nithiananthan from the Property.

7 The same day, an expedited order (“EO”) was granted restraining Dr Nithiananthan from using family violence against Mdm Ambihathevi.⁸

8 The FJC application was then mentioned on 29 April 2021, and the EO was extended to the next mention. The district judge who presided over the first mention stated that the FJC did not have the power to grant an interim DEO.⁹ The FJC application has been fixed for a three-day trial on 28, 29, and 30 July 2021.¹⁰

⁵ Plaintiff’s 2nd Affidavit at para 35.

⁶ 3rd Affidavit of Ambihathevi Alagaretnam Mrs Jeevarajah Ambihathevi dated 18 Jun 2021 (“Plaintiff’s 3rd Affidavit”) at para 46.

⁷ Plaintiff’s 2nd Affidavit at para 10.

⁸ Plaintiff’s 2nd Affidavit at para 11 and pp 17–18.

⁹ Plaintiff’s 2nd Affidavit at para 14.

¹⁰ 2nd Affidavit of Jeevarajah Nithiananthan dated 15 Jun 2021 (“Defendant’s 2nd Affidavit”) at para 11(a).

The High Court proceedings

9 On 26 April 2021, Mdm Ambihathevi filed Originating Summons No 410 of 2021 (“the OS”). In the OS, she applied for:

- (a) Dr Nithiananthan to furnish and verify accounts in respect of the late Mr Jeevarajah’s estate; and
- (b) Dr Nithiananthan to transfer the Property to her.

10 Dr Nithiananthan is resisting the OS.

11 On 1 June 2021, Mdm Ambihathevi filed the present summons (“SUM 2536”) for an interlocutory injunction to exclude Dr Nithiananthan from the Property, until the Property is transferred to her, or until further order.

12 Dr Nithiananthan disputes Mdm Ambihathevi’s mental capacity. On 8 June 2021, Dr Nithiananthan filed Summons No 2693 of 2021 (“SUM 2693”) for Mdm Ambihathevi to be medically examined as to whether she had the requisite mental capacity to have instituted the OS and to file SUM 2536, and for related orders. SUM 2693 has been fixed for hearing on 19 August 2021.

13 There were thus various pending proceedings when the application for an interlocutory injunction (*viz*, SUM 2536) came before me:

- (a) the FJC proceedings;
- (b) SUM 2693; and
- (c) the OS itself.

SUM 2536 was not an abuse of process

14 Dr Nithiananthan submitted that SUM 2536 was an abuse of process.¹¹ He submitted that since the FJC can only grant a DEO but not an interim DEO, the High Court cannot grant an interlocutory injunction that amounts to an interim DEO. I disagreed. That is tantamount to saying that no court can grant interlocutory relief in the nature of excluding a person from a property, even where that is necessary for the protection or personal safety of an applicant. I rejected that completely.

15 By giving the FJC the power to grant DEOs, Parliament did not curtail the High Court’s power to grant injunctions. In particular, the fact that the FJC has been given the power to make DEOs, but no power to make interim DEOs, cannot mean that the High Court is powerless to grant an interlocutory injunction for the protection and personal safety of an applicant. That is absurd. To the contrary, the FJC’s lack of power to make an interim DEO all the more justifies an applicant seeking relief from the High Court.

SUM 2536 should not be deferred until after SUM 2693

16 In the alternative, Dr Nithiananthan contended that SUM 2536 should only be heard after SUM 2693 – his subsequent application for Mdm Ambihathevi to be medically examined as to her mental capacity.

17 He contended that because he had put in issue Mdm Ambihathevi’s mental capacity, the court should not proceed with the injunction application

¹¹ Defendant’s Written Submissions (“DWS”) at paras 52–61.

until after his application for Mdm Ambihathevi to be medically examined had been dealt with.¹²

18 I did not agree. Instead, the fact that SUM 2693 is pending, and Dr Nithiananthan's allegations as to Mdm Ambihathevi's lack of mental capacity, are matters which can and should be considered in deciding whether to grant the interlocutory injunction sought in SUM 2536.

Serious questions to be tried

19 Mdm Ambihathevi has raised serious questions to be tried, in relation to her entitlement to have the Property transferred to her, and in relation to her protection and personal safety.

Mdm Ambihathevi's right to the Property

20 The following portions of the Will were of note:¹³

1. I appoint my son [Dr Nithiananthan] to be the sole Executor and Trustee ('my Trustee') of this my Last Will. I also wish to declare that I have given much careful thought and consideration to the contents of this Will and I wish all my beneficiaries to know that this my Last Will represents my true intentions as at the date of this Will and I wish all of them to strictly abide by it.
- ...
3. I give, devise and bequeath all my real and personal property whatsoever (including capital and income), movable and immovable property and effects of whatsoever nature and wheresoever situate to my wife [Mdm Ambihathevi] absolutely.
4. In such event that my wife, [Mdm Ambihathevi] should predecease me, then I give, devise and bequeath all my

¹² DWS at paras 62–77.

¹³ Plaintiff's 2nd Affidavit at pp 48–50.

real and personal property whatsoever (including capital and income), movable and immovable property and effects of whatsoever nature and wheresoever situate to my following three (3) children in equal shares

- a. [Dr Nithiananthan]
- b. [Dr Nithiananthan's younger brother, Mr Premananthan]
- c. [Dr Nithiananthan's sister, since deceased]

...

- 6 (a) I direct that my Trustee shall hold my son's, [Mr Premananthan's], share of my estate in trust for and on his behalf during his lifetime.

(b) I direct that my Trustee shall, in his lifetime, be given full authority to supervise, oversee and make all important decisions relating to my son, [Mr Premananthan's] upkeep and care. I further direct that it is my wish that my wife and children shall, in their lifetime, provide full support, financially and otherwise, to my Trustee, as directed by him (my Trustee), to assist him in taking care of and managing the affairs of [Mr Premananthan] in his lifetime. It is my earnest wish that the best possible love, care and upkeep be given to my son [Mr Premananthan] by my remaining beneficiaries.

- 7 (a) I direct that my Trustee shall be given full discretion relating to the management of my property known as 23 Carmen Street Singapore ('the Property') and to maintain the Property as the family home. I further direct that if, in his absolute discretion, my Trustee sees it fit to sell the Property, then I direct that the Property be sold at a value which is equivalent to, or exceeding, the fair market value of the Property as at the time of the sale.

(b) I further direct that if such a sale of the Property is effected, the proceeds of the sale, less all other incidental expenses, shall be divided in equal proportions among my beneficiaries.

21 It was common ground that the Property was included in the gift of all of Mr Jeevarajah's real and personal property whatsoever to his wife Mdm Ambihathevi absolutely, under cl 3 of the Will.

22 In 2016, Dr Nithiananthan corresponded with the Property Tax Division of the Inland Revenue Authority of Singapore (“IRAS”), and successfully persuaded IRAS to apply owner-occupier tax rates to the Property on the basis that Mdm Ambihathevi “is the sole beneficiary [the Property], [the Property] is owner occupied and she does not hold nor own any other property”.¹⁴ In the same email of 1 December 2016, Dr Nithiananthan also described himself as “merely the administrator having been appointed the sole executor and trustee ... and granted probate by the court”.¹⁵

23 IRAS replied on 5 December 2016 asking to know “the reason(s) that [the Property] has not been transferred to the sole beneficiary”.¹⁶

24 Dr Nithiananthan replied on 5 December 2016 to say, “my mother being the sole beneficiary and an elderly person, she has requested that I handle all the legal paperwork for her as the sole executor”.¹⁷ He did not then say that she was not entitled to have the Property transferred to her, which is his position in these proceedings. Nor did he say he was holding the Property “on trust for her and for the family”, as he asserted in para 108 of his affidavit dated 8 June 2021.¹⁸ Dr Nithiananthan concluded his 5 December 2016 reply to IRAS by reiterating:¹⁹

She is the owner-occupier (property bequeathed to her as stated in the will) and she has no other property to her name. I am

¹⁴ Defendant’s 1st Affidavit at p 212.

¹⁵ Defendant’s 1st Affidavit at p 212.

¹⁶ Defendant’s 1st Affidavit at p 212.

¹⁷ Defendant’s 1st Affidavit at p 211.

¹⁸ Defendant’s 1st Affidavit at para 108.

¹⁹ Defendant’s 1st Affidavit at p 212.

only the appointed administrator and trustee as dictated by my father's will and merly [*sic*] granted probate by the court to act on her behalf.

25 IRAS wrote further on 8 March 2017 to ask for confirmation that Mdm Ambihathevi has no objection to being included as the owner of the Property in IRAS' records for property tax purposes.²⁰ Dr Nithiananthan provided that confirmation on 8 March 2017,²¹ and on 10 March 2017 IRAS re-applied the owner-occupier tax rates from 1 January 2016.²²

26 Dr Nithiananthan's position in the present proceedings stands in some contrast with what he had represented to IRAS. As mentioned at [24] above, he filed an affidavit on 8 June 2021 claiming to hold the property on trust for Mdm Ambihathevi "and for the family" (which would include himself). From cl 3 of the Will, however, and as Dr Nithiananthan represented to IRAS, Mdm Ambihathevi is the sole beneficiary of the Property. The Will does not purport to give Dr Nithiananthan any beneficial interest in the Property. Under cl 4 of the Will, the Property would only have gone to Dr Nithiananthan and his siblings in the event of Mdm Ambihathevi pre-deceasing Mr Jeevarajah, but that did not happen.

27 Dr Nithiananthan's case rests substantially on cl 7 of the Will, which directs that he as trustee shall be given full discretion relating to the management of the Property and to maintain it as the family home; and that if in his absolute discretion he sees it fit to sell the Property (a) it must be sold at or above fair

²⁰ Defendant's 1st Affidavit at p 210.

²¹ Defendant's 1st Affidavit at p 209.

²² Defendant's 1st Affidavit at p 209.

market value; and (b) the net proceeds of the sale shall be divided in equal proportions among Mr Jeevarajah's beneficiaries.

28 Dr Nithiananthan accepted that if he should decide to sell the Property, the net proceeds would go to Mdm Ambihathevi (in view of it having been given to her under cl 3 of the Will). But he contended that he is entitled to keep the Property as "the family home" and so continue staying in it;²³ consequently Mdm Ambihathevi is not entitled to have it transferred to her. This does not sit well with his representations to IRAS that Mdm Ambihathevi was the sole beneficiary of the Property (which he did not seek to qualify in any way), and that IRAS could regard her as the owner of the Property.

29 Before me, Dr Nithiananthan's counsel submitted that Mdm Ambihathevi had the right to stay in the Property, and the right to the net proceeds of sale if Dr Nithiananthan should decide to sell it. But she could not sell the Property, and she could not insist that it be transferred to her. Counsel, however, acknowledged that Mdm Ambihathevi could leave the Property in her will, *ie*, it would form part of her estate.²⁴ Dr Nithiananthan's position means that in Mdm Ambihathevi's lifetime, she cannot be the owner of the Property (in the full sense of ownership), although cl 3 of the Will purported to give it to her.

30 Put another way, Dr Nithiananthan claimed that he could keep the Property as "the family home" and so continue to stay there, notwithstanding

²³ DWS at para 89.

²⁴ Notes of Argument, 24 Jun 2021, p 3 lines 8–10.

Mdm Ambihathevi's wishes: to have it transferred to her, and for Dr Nithiananthan to leave and stay elsewhere.

31 Dr Nithiananthan said Mdm Ambihathevi may return to the Property and stay there, while he stays there too; if she will not return, it is up to her to find her own accommodation.

32 Mdm Ambihathevi's position is that she will not return home if Dr Nithiananthan continues to stay there. I will now discuss why that is so.

Mdm Ambihathevi's concerns about Dr Nithiananthan remaining at the Property

33 Mdm Ambihathevi has in her affidavits detailed her concerns about Dr Nithiananthan which led to her leaving the Property with only a few clothes and essentials, and staying with a family friend.²⁵ She said that Dr Nithiananthan has been verbally, emotionally, mentally, and psychologically abusive towards her; and that she is in fear of being physically hurt, given that he had repeatedly said that she should "fall on [her] back and die".²⁶ Dr Nithiananthan disputed Mdm Ambihathevi's allegations, and said she is paranoid, delusional, and lacking mental capacity.²⁷

34 I will not delve further into Mdm Ambihathevi's allegations, which are the subject of the FJC application – headed to trial next month. I am satisfied that there are serious questions to be tried in relation to those allegations. I also noted that, in granting the EO on 16 April 2021 (see [7] above), the FJC was

²⁵ Plaintiff's 2nd Affidavit at para 34.

²⁶ Plaintiff's 2nd Affidavit at paras 34 and 41.

²⁷ Defendant's 2nd Affidavit at paras 46 and 52.

satisfied that there is imminent danger of family violence being committed against Mdm Ambihathevi.²⁸

35 I found that there is a serious question to be tried, notwithstanding the issues which Dr Nithiananthan has raised about Mdm Ambihathevi's mental state.

36 In the first place, the burden of establishing that Mdm Ambihathevi lacks mental capacity, rests on Dr Nithiananthan. He is some way away from proving that. As a first step, he has applied for Mdm Ambihathevi to be medically examined as to whether she has the requisite mental capacity – that application (*viz*, SUM 2693) has been fixed for hearing on 19 August 2021 (see [12] above).

37 Mdm Ambihathevi has adduced three medical reports by:

(a) Dr Calvin Fones ("Dr Fones") of Fones Clinic at Gleneagles Medical Centre, dated 8 April 2021;²⁹

(b) Dr Chong Mei Sian ("Dr Chong") of The Geriatric Practice at Mount Elizabeth Hospital Specialist Centre, dated 19 April 2021;³⁰ and

(c) Dr Goh Kiat Sern ("Dr Goh"), her regular doctor, who specialises in geriatric medicine at Changi General Hospital, dated 12 May 2021.³¹

²⁸ Plaintiff's 2nd Affidavit at p 17.

²⁹ Plaintiff's 2nd Affidavit at para 22(a) and p 73.

³⁰ Plaintiff's 2nd Affidavit at para 22(b) and p 69.

³¹ Plaintiff's 2nd Affidavit at para 22(c) and p 79.

38 Dr Fones stated that Mdm Ambihathevi “does not lack mental capacity with the meaning of s 4 of the [Mental Capacity Act (Cap 177A, 2010 Rev Ed)]” [emphasis in original] and that she has the capacity to litigate.³²

39 Dr Chong stated that Mdm Ambihathevi “has decision-making capacity in managing her own affairs” and “is able to understand, appreciate, express and reason her choices”.³³

40 Dr Goh has seen Mdm Ambihathevi on no less than 13 occasions, starting on 21 February 2018, and most recently 14 April 2021.³⁴ In his report, Dr Goh stated:³⁵

On 11 Nov 2020, a comprehensive geriatric assessment was performed. Her [Mdm Ambihathevi’s] Abbreviated Mental Test score was 9/10. A cognitive history was obtained from her son, Mr Nithi [Dr Nithiananthan]. He reported no concerns with her cognitive domains of learning and memory, language, perceptual-motor ability, executive functioning, complex attention and social cognition. A review of her instrumental activities of daily living revealed that she was able to manage accounts and use the telephone.

...

On 19 Feb 2021, her son Mr Nithi [Dr Nithiananthan] reported that Mrs Jeeva [Mdm Ambihathevi] had behavioural issues at home, accusing her helper of stealing money and was paranoid about her son and her helper. The multi-disciplinary team consisting of doctors, nurses and therapists did not notice any behavioural or psychological issues during all her sessions in the Geriatric-Day Hospital. Hence the doctor in the Geriatric-Day Hospital reassured Mr Nithi [Dr Nithiananthan] that the geriatric team and myself would continue to monitor her for any behavioural or psychological issues. A referral was made to the

³² Plaintiff’s 2nd Affidavit at p 76.

³³ Plaintiff’s 2nd Affidavit at p 71.

³⁴ Plaintiff’s 3rd Affidavit at para 26.

³⁵ Plaintiff’s 2nd Affidavit at pp 79–80.

geriatric psychiatrist upon request of Mr Nithi [Dr Nithiananthan], so as to seek a second opinion on her psychological status. To date, she has not attended this appointment with the geriatric psychiatrist.

[emphasis added]

41 Dr Nithiananthan disputed Dr Goh’s report.³⁶ In particular, he disputed Dr Goh’s description of the consultation on 11 November 2020 – he said he had not positively informed Dr Goh that he had no such concerns, and that “[w]hilst [he] may not have specifically stated that [Mdm Ambihathevi] had any problems relating to cognition, that [did] not mean that these problems did not exist”.³⁷

42 Dr Nithiananthan has since filed an affidavit from Dr Jacob Rajesh (“Dr Rajesh”) dated 15 June 2021, with Dr Rajesh’s report commenting on the reports of Dr Fones, Dr Chong, and Dr Goh. Dr Rajesh had, however, not examined Mdm Ambihathevi, whereas Dr Fones, Dr Chong, and Dr Goh had. Dr Rajesh’s opinion is, among other things, that “it would be beneficial for [Mdm Ambihathevi] to be admitted to a psychiatric unit for psychiatric observation and assessment to either confirm or rule out the presence of a psychotic disorder such as a delusional disorder”.³⁸

43 Dr Fones, Dr Chong, and Dr Goh’s reports (notwithstanding what is said by Dr Nithiananthan and Dr Rajesh, and the other affidavits that Dr Nithiananthan has filed) reinforced my view that Mdm Ambihathevi’s allegations raise serious issues to be tried.

³⁶ Defendant’s 2nd Affidavit at paras 26–27.

³⁷ Defendant’s 2nd Affidavit at paras 26(a) and (c).

³⁸ Affidavit of Jacob Rajesh dated 15 Jun 2021 at p 58.

Balance of convenience

44 The question then is whether the balance of convenience lies in favour of granting the injunction.

45 Dr Nithiananthan submitted that since what is sought is a mandatory injunction (requiring him to leave the Property where he is now residing), the injunction should only be granted where there is a “high degree of assurance” of it being rightly granted.³⁹

46 The Court of Appeal in *Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd* [1992] 2 SLR(R) 1 (“*Chuan Hong*”) commented on this (at [89]):

The ‘high assurance’ test mentioned by counsel is no more than a generalisation, albeit a useful one, of what courts normally do. It is not a principle in the sense of being capable of application in all cases or capable of explaining what courts do in all cases. It is a factor, no doubt often a strong factor, which the court will take into consideration when granting a mandatory injunction. The stronger the case appears at this stage, the lesser the risk of being proved wrong at the trial. However, the court, of necessity, has to consider other relevant factors, such as the conduct of the parties and whether damages instead of an injunction are an adequate remedy. The strength of a party’s case (reaching a ‘high assurance’ or ‘clear case’ standard) is neither a necessary, nor is it a sufficient, condition for the grant of a mandatory injunction.

[emphasis added]

47 While the “high assurance” test is a useful generalisation, the Court of Appeal had earlier emphasised that it is important to distinguish between fundamental principles and guidelines, *ie*, useful generalisations. The Court said (*Chuan Hong* at [88]):

³⁹ DWS at paras 78–79.

... a fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong at trial in the sense of granting relief to a party who fails to establish his rights at the trial, or of failing to grant relief to a party who succeeds at the trial. We agree with Hoffmann J that *the guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.*

[emphasis added]

48 That fundamental principle was reiterated in *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 (at [28]), with the Court of Appeal adding (at [31]):

The need for caution arises from the recognition that an interim mandatory injunction is a more invasive remedy and, as such, may lead to irreversible prejudice to a defendant. A court must therefore be sure, in accordance with the fundamental principle described above, that the grant of the interim mandatory injunction is indeed the course of action which carries the lower risk of injustice – in other words, that the prejudice to the applicant from not granting the interim mandatory injunction outweighs that to the defendant from granting it.

49 In the present case, the injunction is mandatory in effect. But that is only because Dr Nithiananthan is presently residing at the Property. If he were residing elsewhere, then an injunction excluding him from the Property would merely be a prohibitory one. Either way, the prejudice Dr Nithiananthan suffers from not being able to stay at the Property is the same; the difference lies in him having to leave the Property in the present circumstances.

50 On the other hand, not granting the injunction will have the effect of keeping Mdm Ambihathevi out of the Property. Dr Nithiananthan said the Property is his home, but it is also Mdm Ambihathevi's home. Just as Dr Nithiananthan would suffer prejudice from having to leave the Property, Mdm Ambihathevi would suffer prejudice in not being able to return home.

51 Dr Nithiananthan said Mdm Ambihathevi is free to return, and the EO that she had already obtained should provide her with some assurance (although no assurance is really needed).⁴⁰ It is, however, not viable to now expect Mdm Ambihathevi and Dr Nithiananthan to both reside at the Property, with the current state of their relationship and the allegations that they have made against each other. If Mdm Ambihathevi were to move back, then any allegation by her of further incidents (even if true) would again be met by Dr Nithiananthan asserting that she is paranoid, delusional, and lacking mental capacity. In any event, Mdm Ambihathevi has said that she will not move back, if Dr Nithiananthan continues to stay there.⁴¹ Dr Nithiananthan, however, is unwilling to leave the Property.⁴²

52 I was thus faced with the choice as to who should reside in the Property for the time being. My conclusion was that the course of action which carries the lower risk of injustice, is to allow Mdm Ambihathevi to stay at the Property, and to require Dr Nithiananthan to leave the Property and stay elsewhere.

53 Mdm Ambihathevi is the sole beneficiary of the Property under the Will, and has been recognised as such by Dr Nithiananthan. He has also acknowledged (at least to IRAS) that he is “merely” or “only” the executor and trustee appointed under the Will (see [22]–[24] above). He did not tell IRAS that he had any interest in, or right to stay in, the Property.

54 In the present proceedings, Dr Nithiananthan has sought to use his position as executor and trustee, and the powers he claimed cl 7 of the Will gives

⁴⁰ Defendant’s 2nd Affidavit at paras 76–77; DWS at paras 94–97 and 102.

⁴¹ Plaintiff’s 2nd Affidavit at para 41

⁴² Defendant’s 2nd Affidavit at para 78.

him, to refuse to transfer the Property to Mdm Ambihathevi and instead indefinitely stay there himself (on the basis that he can retain the Property as a family home, for the family – in effect, himself). I preferred to allow the sole beneficiary to reside at the Property, rather than the executor and trustee.

55 Moreover, besides Mdm Ambihathevi’s pending claim for a transfer of the Property, there were also her allegations against Dr Nithiananthan which are going to trial in the FJC.

56 If a high degree of assurance were required to grant the injunction, I had that degree of assurance in the present case. The merits of the FJC application, and the OS, remained to be determined. Nevertheless, I considered Mdm Ambihathevi to have the better of the argument that, as the sole beneficiary under the Will, she is entitled to have the Property transferred to her. Dr Nithiananthan’s assertion that he is holding the Property on trust for Mdm Ambihathevi and for the family (including himself) (see [26] above) seems to go against the terms of the Will. As for his reliance on cl 7 of the Will, his claim that that allows him to retain the Property (and stay there indefinitely) does not sit well with cl 3 which gives all of the late Mr Jeevarajah’s property to Mdm Ambihathevi absolutely.

57 Dr Nithiananthan has filed an affidavit from the solicitor who prepared the Will.⁴³ That includes an account of what the solicitor said he remembers being told by Mr Jeevarajah in 2007.⁴⁴ However, some of that appears inconsistent with the Will itself. For instance, it is stated that Mr Jeevarajah

⁴³ Affidavit of Siva Kumar Rajagopal dated 15 Jun 2021 (“Mr Siva’s Affidavit”).

⁴⁴ Mr Siva’s Affidavit at para 10.

wanted Dr Nithiananthan to hold Mdm Ambihathevi's interest in his estate, and should she predecease him, Mr Premananthan's share in his estate on trust for each of them.⁴⁵ In relation to Mr Premananthan's share, this is provided for in cl 6(a) of the Will (see [20] above). But there is no equivalent in relation to Mdm Ambihathevi's interest – to the contrary, cl 3 simply says that all of Mr Jeevarajah's property is given to Mdm Ambihathevi absolutely.

58 Finally, Mdm Ambihathevi is 83 years old, and she has no other property. Dr Nithiananthan is in his 60s, a medical doctor, and he owns another property at Marine Terrace. Dr Nithiananthan's position is that his mother, Mdm Ambihathevi, should fend for herself if she did not want to return home to the Property (with him continuing to live there). I considered that Dr Nithiananthan is better able to fend for himself, than Mdm Ambihathevi for herself.

59 At the conclusion of the hearing, I indicated my view that the course which carries the lesser risk of injustice, was to require Dr Nithiananthan to move out. I asked if he would do so voluntarily, as an alternative to me granting the interlocutory injunction. He declined to do so. Instead, his counsel indicated that an expedited appeal would be filed, and sought a stay until after the hearing of that appeal.⁴⁶ I did not agree to such a stay.

60 Mdm Ambihathevi is staying with a family friend who will be leaving the country on 29 June 2021. If I did not require Dr Nithiananthan to vacate the Property by 28 June 2021, Mdm Ambihathevi would not return home with Dr Nithiananthan still there. A stay would mean that come 29 June 2021, Mdm

⁴⁵ Mr Siva's Affidavit at para 10(g).

⁴⁶ Notes of Argument, 24 Jun 2021, p 5 lines 1–17.

Ambihathevi will have to fend for herself in terms of accommodation. I did not think that was right.

61 In the course of argument, Mdm Ambihathevi's counsel acknowledged that the usual undertaking as to damages had been omitted, and indicated that a further affidavit would be filed to rectify that⁴⁷ – that further affidavit has since been filed on 25 June 2021.⁴⁸

Conclusion

62 For the above reasons, I made the following orders:

(a) With effect from 12pm on 28 June 2021, Dr Nithiananthan be prohibited from entering and/or continuing to remain in occupation of the Property and be prohibited from interfering in Mdm Ambihathevi's occupation and enjoyment of the Property, until the transfer of the Property by Dr Nithiananthan as executor of the estate of the late Mr Jeevarajah to Mdm Ambihathevi, or until further order.

(b) Dr Nithiananthan be permitted reasonable access to enter the Property up to three times a week, for up to two hours each time, between 10am and 5pm, provided at least 48 hours' prior notice is given to Mdm Ambihathevi's solicitors. Dr Nithiananthan may lock up the room he is currently occupying.

(c) Costs of SUM 2536 are reserved to the judge hearing the OS.

⁴⁷ Notes of Argument, 24 Jun 2021, p 4 lines 18–20.

⁴⁸ 4th Affidavit of Ambihathevi Alagaretnam Mrs Jeevarajah Ambihathevi dated 25 Jun 2021 at para 7.

63 I did not grant a stay of the orders.

64 Mdm Ambihathevi is the sole beneficiary of the Property. She wishes to return home. She will not have peace of mind doing so, with Dr Nithiananthan continuing to stay there. To that end, I required Dr Nithiananthan to leave the Property.

Andre Maniam
Judicial Commissioner

Narayanan Sreenivasan SC, Palaniappan Sundararaj,
Liyana Sinwan, Eva Teh Jing Hui
(K&L Gates Straits Law LLP) for the plaintiff;
Samuel Chacko, Anne-Marie John, Joanna Karolina Korycinska
(Legis Point LLC) for the defendant.
