Murakami Takako v Wiryadi Louise Maria and Others
[2008] SGHC 47

Case Number : Suit 219/2008, SIC 4366/2007

Decision Date : 01 April 2008

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Devinder K Rai and Subramanian Pillai (Acies Law Corporation) for the plaintiff; Yeap Poh Leong Andre SC, Wong Soon Peng Adrian and Chan Wai Kit Darren Dominic (Rajah & Tann LLP) for the defendant

Parties : Murakami Takako — Wiryadi Louise Maria; Ryuji Murakami; Bahari Sjamsjur; Ryuzo Murakami

Civil Procedure – Amendments – Estoppel – Proceedings commenced in foreign court – Whether issue estoppel or cause of action estoppel barring amendments to statement of claim

Conflict of Laws – Jurisdiction – Application to introduce foreign immovables into statement of claim – Distinction between immovables and movables – Whether exception to rule that forum does not have jurisdiction over disputes relating to title of foreign land satisfied – Scope of exception

Conflict of Laws – Natural forum – Whether Singapore natural forum for determination of disputes over foreign immovables that arose from ancillary divorce proceedings in Indonesia

1 April 2008 Judgment reserved.

Andrew Ang J:

Introduction

1 By way of Summons No 4366 of 2007, the plaintiff sought to introduce amendments to her Statement of Claim. The proposed amendments enlarge the scope of the assets covered by the plaintiff's claims. These claims are based on the assets of one Takashi Murakami Suroso situated in various parts of the world and I had earlier summarised these claims in *Murakami Takako v Wiryadi Louise Maria* [2007] 1 SLR 1119 at [5] (the appeal from which is reported in *Murakami Takako v Wiryadi Louise Maria* [2007] 4 SLR 565).

2 The proposed amendments introduce eight Australian properties, five Indonesian properties (or sale proceeds thereof where they have been sold) and moneys in two accounts with Westpac Bank in Australia. The Statement of Claim thus far only includes properties situated in Singapore as well as other movables.

3 Since the proposed amendments, if allowed, would involve foreign immovable property, I had asked parties to make further submissions on the applicability of the rule in *The British South Africa Company v Companhia de Moçambique* [1893] AC 602 ("the *Moçambique* rule"), *viz*, that the forum has no jurisdiction to determine the title to, or the right to the possession of, any immovable situate outside of the forum.

4 After careful consideration, I will allow the amendment to include the moneys in the two Westpac Bank accounts but not the Australian and Indonesian properties.

Issue and cause of action estoppel

5 The defendants' key arguments focus on issue and cause of action estoppel. In relation to issue estoppel, they argue that in so far as the Australian properties are concerned, the plaintiff had commenced proceedings in *Murakami v Wiryadi* [2006] NSWSC 1354, where the Supreme Court of New South Wales granted the defendants a stay on grounds of *forum non conveniens*, *viz*, that Australia was a clearly inappropriate forum compared to Indonesia.

6 It is unnecessary for me to traverse the law on issue estoppel. Suffice it to say that I do not accept the defendants' argument because I am not satisfied that the issue considered before the Supreme Court of New South Wales is identical to the issue before me.

7 The issue before the Supreme Court of New South Wales, following *Oceanic Sun Line Special Shipping Company Inc v Fay* (1987-1988) 165 CLR 197, was whether Australia, looking at itself as a focal point, was clearly an inappropriate forum such that a stay of proceedings should be granted. There was no doubt that the Australian court had jurisdiction at least over the Australian properties; the question was simply one of the *exercise* of such jurisdiction. The issue before me, however, is the *a priori* question of whether Singapore has jurisdiction over the foreign immovable properties and, if so, whether such jurisdiction ought not be exercised on the ground that "some other forum was the more appropriate forum": *Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia* [1992] 2 SLR 776.

8 Similarly, I do not accept the defendants' argument on cause of action estoppel. Specifically, they relied on *Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson v Henderson*") which held that, barring special circumstances, cause of action estoppel extends also to points which might have been but were not raised and decided in the earlier proceedings for the purpose of establishing or negativing the existence of a cause of action. The rationale for the rule in *Henderson v Henderson* is to place the onus on a party to put forth every point which properly belonged to the case. In the present case, the defendants argue that the plaintiff *ought to* have raised before the Supreme Court of New South Wales the point that in the event that Australia was not the most appropriate forum, Singapore was and that, accordingly, the plaintiff ought to be estopped from making the present argument that Singapore was the more appropriate forum.

9 I do not think this was a point which properly belonged to the case before the Supreme Court of New South Wales. Even if it was, there is an exception to cause of action estoppel, which is the showing of special circumstance: *Seah Peng Song v Seah Peng Koon* [1992] SGHC 87. Such special circumstance is made out in the present case. The Supreme Court of New South Wales was fully cognisant that proceedings were ongoing in Singapore: *Murakami v Wiryadi* [2006] NSWSC 1354 at [35]. Even if the Supreme Court of New South Wales had pronounced that Singapore was the more appropriate forum, surely this is not a point that binds the parties or the Singapore courts. Moreover, the plaintiff was seeking to persuade the Supreme Court of New South Wales that Australia was not a clearly inappropriate forum; I would not have expected her to weaken her case by indicating that Singapore was a possible alternative forum.

10 In light of my finding that the estoppel arguments are not made out, there is nothing to prevent me from allowing the inclusion of the two Westpac accounts. However, in so far as the foreign *immovables* are concerned, the court will have to deal with the *Moçambique* rule.

The *Moçambique* rule and the special position of land

11 The second part of the plaintiff's application is essentially an invitation to the Singapore court to exercise jurisdiction over foreign land. The traditional common law response has been, for reasons

elucidated below, generally one of caution as witnessed in *Moçambique*.

12 In the present case, the plaintiff is invoking the exception to the *Moçambique* rule – that a forum has jurisdiction over a matter, even though the proceedings are concerned with foreign immovable property, if it is based on a contract or equity between the parties ("the exception"). This is embodied in Rule 122(3) exception (a) of Dicey, Morris & Collins, *The Conflict of Laws*, vol 2 (Sweet & Maxwell, 14th Ed, 2006) ("*Dicey & Morris*"), which cites, *inter alia*, *Penn v Lord Baltimore* (1750) 1 Ves Sen 444; *Deschamps v Miller* [1908] 1 Ch 856 ("*Deschamps v Miller*"); *Griggs (R) Group Ltd v Evans (No. 2)* [2004] EWHC 1088 ("*Griggs v Evans*").

13 The exception has been explained in various forms. In *Deschamps v Miller* ([12] *supra*) at 863, Parker J described the obligation which the court will enforce as depending:

> [O]n the existence between the parties to the suit of some personal obligation arising out of contract or implied contract, fiduciary relationship or fraud, or other conduct which, in the view of a Court of Equity in this country, would be unconscionable, and do not depend for their existence on the law of the locus of the immovable property.

14 Paul Baker QC in *Webb v Webb* [1991] 1 WLR 1410 at 1418 ("*Webb v Webb*") explained the exception thus:

> Where there is a defendant within the court's jurisdiction, and there exists some relationship between him and the plaintiff arising out of contract, trust or fraud or other fiduciary bond, the court may make an order directed to the defendant to perform his contract, carry out his fiduciary duties or undo the effects of his fraud. Through the relationship, the defendant's conscience is affected and bound. The sanctions for failure to carry out the order are commitment for contempt and sequestration of any assets of his to be found within the jurisdiction. It is no objection that the order relates to land abroad, save only this, that the order will not be made if the carrying of it out is illegal or impossible according to the lex situs.

15 In attempting to apply the exception, one ought first to distil the rationale behind the *Moçambique* rule. Is the distinction drawn between movable and immovable property an artificial one? That the common law makes a distinction between movable and immovable property in conflict of laws is not without reason. TM Yeo in *Choice of Law for Equitable Doctrines* (Oxford, 2004) ("*Yeo*") explained the rationale for respecting the *lex situs* at para 5.02:

> Property choice of law rules seek to give effect to policies relevant to the protection of property rights, including the protection of the integrity and effectiveness of title recording systems, the protection of the expectations of the parties, security of vested rights, security of transactions, certainty and uniformity of results, and the ultimate control of the *situs* in the enforcement of court orders. … Additional considerations applying to immovable property are that the court of the *situs* has the ultimate control over interests in immovables, and respect for the interests of social and economic policies of the *situs* in the transmission of rights in immovables.

16 In relation to a contract between the parties for the sale and purchase of foreign land, the English court in *Griggs v Evans* had no difficulty in holding that the exception ought to apply. Judge Peter Prescott QC in *Griggs v Evans* explained the unique position with regards to foreign land cogently at [78] and [118]:

> Even so, it is apparent that to litigate a title in rem to land situate abroad is regarded as a special case. Why is it a special case? It is partly because the court cannot enforce its judgment

and partly because it is felt the local sovereign might object. But why might he object? Why can one bring a claim that says "According to the laws of the sovereign the chattel is mine", but not "According to the laws of the sovereign the land is mine"? The answer must be that it is understood that in the case of land the sovereign is or may be asserting a double prerogative. It is not only a prerogative to make laws for his own country, but a prerogative to have those laws adjudicated in his own courts exclusively.

…

According to deeply held notions of mankind, land, the surface of the earth, has a very special, I am almost tempted to say, sacral character … Even as I write, there are men and women who are prepared to kill or maim innocent people, all because of what an outsider might call a tract of arid desert or mountain; yet who would, perhaps, scorn to do so over money of equivalent value. In former times ownership of land might confer obligations of a military character. In unruly times the very puissance of the sovereign might depend on his ability tightly to control land ownership. Later on, ownership of land might confer a right to vote or to seek election to the legislature. For a foreign court to determine titles to land might amount to undermining the constitution of the country. Those considerations are obsolete now in civilised states, but may have shaped the law. In *Dicey & Morris*, 13th ed, vol 2, para 23-003, p 939, it is stated:

> In a broad sense [rule 113] is based on a general principle found in most legal systems that, where the action concerns immovable property, the courts of the country where the land is situated have exclusive jurisdiction … There are various reasons for the principle … land still has a rather special position in most legal systems …

17 In the present case, the plaintiff is asserting an equity, *viz*, a resulting or constructive trust against the defendants. The equity allegedly arose when the first defendant used the deceased's money in acquiring the foreign properties in question during and after their marriage.

18 In inviting this court to exercise jurisdiction, the plaintiff relied on, *inter alia*, *Webb v Webb* ([14] *supra*). In that case, a father had purchased a property in France in his son's name. The father brought proceedings in England against the son for a declaration that the son held the property as trustee and for an order to execute the documents necessary for vesting the legal title in the father. Thus, that was a case, like the present, where there was an alleged resulting trust. The court exercised jurisdiction over the matter after a review of cases from *Penn v Lord Baltimore* ([12] *supra*) to *Chellaram v Chellaram* [1985] 1 Ch 409. I shall return to this further down.

19 In this connection, one finds the Singapore Court of Appeal case of *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97 ("*Eng Liat Kiang*") highly instructive.

Eng Liat Kiang

20 In *Eng Liat Kiang*, a father sought a declaration that Malaysian land was held on express or resulting trust by his son. In the High Court, Judith Prakash JC rejected arguments that the exception was anamolous having no place in modern jurisprudence based on judicial comity and confirmed the exception as part of Singapore law: *Eng Liat Kiang v Eng Bak Hern* [1995] 1 SLR 577 ("the High Court judgment"). However, she ultimately declined to exercise jurisdiction on the ground of *forum non conveniens*. The Court of Appeal upheld her decision on the same ground, citing *Webb v Webb* ([14] *supra*) and *Cook Industries Incorporated v Galliher* [1979] 1 Ch 439 ("*Cook Industries Inc v Galliher*").

21 Applying *Eng Liat Kiang*, even if this court has jurisdiction to hear this matter under the

exception, it does not necessarily follow that the court must *exercise* such jurisdiction: see also *Griggs v Evans* at [85]. The High Court judgment is apposite (at 582):

> [A]ny fears that may arise from the continued recognition of this jurisdiction should be allayed by the development of the forum non conveniens doctrine to its present stage. That doctrine can be called upon to ensure that this jurisdiction of the court is only exercised in a proper case.

22 I am of the view that in the present case, the exception does not apply. Even if this is incorrect, I am of the view that as in *Eng Liat Kiang*, this case is not a proper instance for the court to exercise its jurisdiction over the foreign immovables because Singapore is not the natural forum.

Applicability of exception

23 The exception does not apply in this case because I am not satisfied that the relationship between the parties ought to be governed by the equitable standards of this court. Put in another way, the exception only applies when the court of equity is of the view that the relationship between the parties has a connection with the forum that will warrant equity lending her assistance to the dispute.

2 4 *Yeo* ([15] *supra*) at para 1.18 had cited RW White in "*Equitable Obligations in Private International Law: The Choice of Law*" (1986) 11 Sydney L Rev 92 ("White"). White had reviewed *Deschamps v Miller* ([12] *supra*) and *Norris v Chambres* (1861) 45 ER 1004 where the court declined to exercise jurisdiction under the exception. White explained his rationalisation of the two cases (at p 106):

> A defendant could not reasonably be expected to conform to the principles of English equity if his connection with England were as tenuous as mere presence at the time of service. It seems that instead of applying choice of law rules to a dispute the Court insisted that there be a sufficient connection between the parties or the cause of action and England.

25 Having said that, I recognise that this court must not shy away from applying the exception to the *Moçambique* rule merely because the precise equitable right being enforced is not recognised in other jurisdictions: *Re Courtney* (1840) 4 Deac 27. Nevertheless, this exception certainly cannot be a *carte blanche* for any claimant without connection to the forum to seek equity's aid.

26 The English decision of *Lightning v Lightning Electrical Contractors Ltd* [1998] EWHC Admin 431 ("*Lightning v Lightning*") cited by the defendants is insightful. In that case, the first defendant company, Lightning Contractors, bought immovable property in Scotland, which was registered in its name. The first plaintiff, who was the managing director of Lightning Contractors, claimed that Lightning Contractors held the property on resulting or constructive trust for him as he had provided the whole of the purchase price (the funds having been provided in England). Lightning Contractors, however, contended that the law governing the issue of ownership of the immovable property was the *lex situs*, *ie*, Scottish law. If English law applied to the issue of ownership, there would be a presumption of resulting trust in favour of the first plaintiff but this was not the position under Scottish law.

27 The issue before the court was which law applied in regard to title to the property in Scotland. For present purposes, what is relevant is the explanation by Peter Gibson LJ (with whom Henry LJ agreed) about the scope of the exception at paras 23–25. After reviewing the authorities on the exception ([12] *supra*), he said:

> Mr Lord said that these authorities go only to the question of jurisdiction and do not go to the question of the applicable law. But, for my part, whilst that may be correct, *it seems to me implicit that the English court not unnaturally regarded English law as applicable to the relationship between the parties before it in the absence of any event governed by the lex situs destructive of the equitable interest being asserted*.
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> As is pointed by Millett LJ when sitting at first instance at Macmillan Inc v Bishopsgate Trust (No 3) [1995] 1 WLR 978 at page 989 (commenting on Norris v Chambres (1891) 29 Beavan, 246, affirmed 3 De Gex Fisher and Jones 583), where a plaintiff invokes the in personam jurisdiction of the English court against a defendant amenable to the jurisdiction and there is an equity between the parties which the court can enforce, the English court will accept jurisdiction and apply English law as the applicable law, even though the suit relates to foreign land. In contrast if the equity which is asserted does not exist between the parties to the English litigation, for example where there has been a transfer of the property to a third party with notice of an equity but by the *lex situs* governing the transfer, the transfer extinguished the plaintiff's equity, the English court could not then give relief against the third party even though he is within the jurisdiction.
>
> It *would have been a complete answer to the plaintiff in Webb v Webb, if Mr Lord's submission was correct, to say that English law relating to a resulting trust had no application to the relationship between the parties in respect of the property in France with its civil law system*. The point was not taken, in my view rightly, because it is to my mind obvious that in that case *the applicable law governing the relationship between the father and the son arising out of what had occurred was English law and not French law*. So, in my judgment, here too. Apart from the fact that the property to be purchased was situated in Scotland, there is nothing to connect Scottish law with the relationship between the persons concerned, Mr Lightning and LEC who are both resident in England. No event governed by Scottish law occurred whereby any equity arising under English law was destroyed. [emphasis added]

28 To my mind, *Lightning v Lightning* suggests a two-step reasoning process. First, the court of equity must be satisfied of the connection of the dispute with the forum, such that it will be reasonable to expect the defendant to conform to the standards of equity of the forum. Second, if there is indeed such a connection, the court will exercise its jurisdiction only if the *lex situs* has not extinguished the plaintiff's equity: see also Dicey & Morris ([12] *supra*) at para 23-047.

29 Returning to *Webb v Webb* ([14] *supra*), the court exercised jurisdiction in that case because it was satisfied that the relationship between the father and the son was connected to the English forum which thereby warranted the court of equity's assistance. The father and the son were English residents and the father had provided the purchase money in England.

30 In the present case, the deceased was, and the first defendant is, resident in Indonesia. They were married in Indonesia. The purchase money for the properties was acquired in Indonesia. The present dispute arose out of ancillary proceedings in a divorce commenced in Indonesia. I am not satisfied that the parties were connected to this forum in a manner which would warrant the court of equity's assistance. In this light, it is unreasonable to expect the defendants to conform to the standards of equity imposed by this court; the *lex causae*, as I will elaborate later, is Indonesian law. Accordingly, the plaintiff fails *in limine* at the first hurdle.

31 Whilst it is therefore unnecessary for me to apply the second step, it appears that there is an arguable case that the *lex situs* may well extinguish the plaintiff's equity. It is common ground that the communal property doctrine in Indonesia has an exception which allows one spouse to have full entitlement to properties acquired as gifts or by inheritance. The first defendant could have received

the foreign properties as gifts and, accordingly, would be fully entitled under Indonesian law to those properties. This is, of course, not a foregone conclusion and it is unnecessary for my holding that the exception ought not to apply in this case. The import of this point is to emphasise how the circumstances of the present case would make the court of equity hesitate in reaching out.

32 Even if I am incorrect in the preceding analysis, this court is not the natural forum with regard to the properties in both Australia and Indonesia.

Natural forum

33 In *Eng Liat Kiang*, the Court of Appeal considered the following factors in deciding whether Singapore was the natural forum of the dispute: the *situs* of the properties, the *lex causae* and the enforceability of the remedy sought. The last factor may not be as important in the present case since the plaintiff is seeking an account of moneys (mis)used, *viz*, an *in personam* remedy, and this should not involve any change in ownership of the land under Australian and Indonesian laws.

34 In seeking to persuade this court that Singapore is the natural forum, the plaintiff is prepared to give an undertaking that she will be bound by this court's determination on all the assets involved and will not undertake duplicate proceedings elsewhere. I also note that expert evidence on Indonesian law would already be introduced before this court since the court will be hearing the claims involving movables.

35 These practical considerations aside, the natural forum test as expounded by the Court of Appeal in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR 377 behoves this court to balance countervailing factors, such as the subject matter in dispute and more importantly, the *lex causae*.

36 Little more need be said about the subject matter in dispute; I had explained the special status of immovable properties ([15]–[16] *supra*). I need only add that the Court of Appeal had emphasised in *Eng Liat Kiang* at 107 that:

> *Great weight* should also be attached to the location of the subject matters in dispute and the undesirability of a Singapore court in deciding issues involving ownership of land in Malaysia. [emphasis added]

37 Turning to the *lex causae* in the present case, the English cases that applied the exception – *Webb v Webb* and *Cook Industries Inc v Galliher* – both applied the *lex fori*.

38 Interestingly, in *Eng Liat Kiang*, the Court of Appeal found the *lex causae* to be Malaysian; it stated (at 105) that the creation, existence and validity of a trust over immovable property are governed by the *lex situs*. It did not simply assume that Singapore law, as *lex fori*, would govern the dispute; the court preferred the *lex situs* as the *lex causae* notwithstanding that the claim was couched in equity. In other words, if the Court of Appeal had decided to exercise jurisdiction in that case, it might have had no qualms in applying a law other than the *lex fori*.

39 Given that the *lex fori* (Singapore law) and the *lex causae* (Malaysian law) are largely similar, that approach might not have been regarded as inappropriate. In any event, there is no such similarity here. In accordance with my explanation of the relationship between jurisdiction and choice of law earlier ([23]–[24] *supra*), the court's jurisdiction over foreign immovables in the first place is founded on an equity between the parties; this equity is judged in accordance with the standards and conscience of the forum: *Deschamps v Miller* ([12] *supra*) at 863; Cheshire & North's *Private*

International Law (Butterworths, 13th Ed, 1999) at 379, *Dicey & Morris* ([12] *supra*) at para 23-042. In other words, if the forum exercises jurisdiction over the dispute because in the view of its court of equity there has been conduct which is unconscionable, it ought to follow that the court will then apply its *own* equitable standards and laws, and not some other foreign law, to resolve the matter.

40 Put simply, if I was minded to assume jurisdiction over the immovables by using the exception, it appears that I would have to apply the *lex fori*; or, following *Eng Liat Kiang*, at least a system of law largely similar to the *lex fori*. This is precisely why the plaintiff invited me to apply Singapore law with respect to the Indonesian properties and to apply Australian law with respect to the Australian properties.

41 However, I am of the view that the application of the *lex fori* to the present case would be unsuitable. As the Court of Appeal made clear in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* ([35] *supra*), one ought not simply apply the *lex fori* in *every* situation where a claim in equity is made. Ultimately, the court has to look beyond the formulation of the claim and identify the true issues thrown up by the claim: *Macmillan Inc v Bishopsgate Investment Trust plc (No 3)* [1996] 1 WLR 387 at 407 *per* Auld LJ. This is all the more imperative in situations where the parties seek to make use of domestic concepts which may be absent in foreign law, as the plaintiff has in the present case.

42 *Yeo* at Chapter 5 of his book ([15] *supra*), makes the point that domestic legal distinctions, *ie*, legal or equitable, should not control the choice of law process. In dealing with claims in equity, one must closely analyse the substance of the claim to pick out whether an obligation or a proprietary right was sought to be enforced. If the true issue in a case is whether the transferor had intended to make a gift or had intended to retain title, that may well be a question of property: see *Yeo* at paras 6.05–6.08.

43 However, "the effect of matrimony on property is the subject of a separate category of choice of law": *Yeo* at para 6.52. The heart of this dispute is really who has better claim to properties acquired during a marriage celebrated in Indonesia. This dispute arose pursuant to the divorce in Indonesia. The defendants therefore argued that the *lex causae* in this case is the law of the matrimonial domicile, *viz*, Indonesian law. I also note that the Court of Appeal in *Murakami Takako v Wiryadi Louise Maria* ([1] *supra*) at [45] characterised the present dispute as a *matrimonial* one, a position which I had implicitly held as well.

44 As the defendants submitted, Rule 156 of *Dicey & Morris* ([12] *supra*) at p 1287 makes a forceful argument that the law of the matrimonial domicile is the appropriate choice of law for *immovables*, as well as movables. The use of the *lex situs* was rejected because it will result in the matrimonial estate being juridically fragmented, there being a separate matrimonial property regime for each piece of land in a different country. *Yeo* ([15] *supra*) at paras 6.52–6.53, also supports the use of the law of the matrimonial domicile instead of the *lex situs*, stating that husbands and wives would expect their respective acquisitions to be subject to their existing matrimonial property regime. Having regard to the true substance of the case before me, I am satisfied that the choice of law rule to apply in this case is that of the matrimonial domicile.

45 Accordingly, given my view that the *lex causae* is really Indonesian law (which is also echoed by the Australian court as explained below), I should not exercise jurisdiction in this case because a corollary of exercising jurisdiction under the exception is that the forum has to apply the *lex fori*.

46 Another factor standing strongly against the defendants is that even in relation to the Australian properties, the Australian courts themselves declined to exercise jurisdiction – what more a

Singaporean court. The Supreme Court of New South Wales opined thus (at paras 48 to 51):

> 48 Mrs Murakami's trust claims are based upon a finding that the New South Wales properties are common marital property and non-disclosure to the Indonesian courts. They also involve questions whether property purchased in the name of another person is capable of being common marital property and whether property purchased in the name of someone else with money that was common marital property remains common marital property.
>
> 49 In this case not only is the law of the issues the law of Indonesia …
>
> 50 … Furthermore, it would be an invidious task for a New South Wales court to make findings as to the sufficiency of the Indonesian Supreme Court common marital property proceedings …
>
> 51 To my mind these considerations far outweigh the need for New South Wales proceedings to enforce a judgment of the Indonesian courts or any limitations in Indonesian court procedure and the fact that proceedings in Indonesia have not been commenced. The lack of the concept of a trust under Indonesian law is also outweighed by these considerations. The Indonesian courts clearly have power to determine whether the New South Wales properties and the Australian bank accounts are common marital property and, if so, to order Mrs Wiryadi, Ryuji Murakami and Ryuzo Murakami to deliver up to Mrs Murakami such portion of those assets as the courts think fit.

47 In conclusion, the preceding analysis has sought to elucidate the common law's approach in dealing with immovables by respecting the sovereign of a country and leaving foreign courts to exercise dominion and jurisdiction over their land. The position is not changed even if the plaintiff is seeking the sale proceeds of the properties instead: *Dicey & Morris* ([12] *supra*) at para 23-063. Considering the overall matrix of the case, in my judgment, justice between parties will not be jeopardised if I find that the natural forum for the dispute over the foreign immovables is not Singapore.

48 I therefore allow the application with regard to the movables, *viz*, the two Westpac Bank accounts, but not for the foreign immovables in Australia and Indonesia.