

# 5 Stone Buildings

---

## Sangha v Sangha [2021] EWHC 1599 (Ch)

**Will East**

---

22 October 2021

[www.5sblaw.com](http://www.5sblaw.com)

## **An overview**

- Claim involving property in England and India worth potentially as much as £40m
- Two actions – will challenge and proprietary estoppel action
- A number of important points buried in 402 paras!
  - Legal and evidential burden in will forgery claims
  - Effect of revocation clause in foreign will on previous English wills
  - Effect of annulled bankruptcy on joint property
  - Whether presumption of due execution can apply where will not executed in accordance with order of events set out in attestation clause

# A tale of two marriages in the Punjab



## **The First Family**

- Deceased, Hartar, married Diljit in arranged Sikh marriage ceremony in October 1962
- Marriage not registered – not a bar to validity under Indian law
- Diljit subsequently referred to as his wife in multiple documents – e.g. 1979 Will, which divided his estate between Diljit, Sundeep and Mandi.
- They have two children, Sundeep and Mandi (born 1969, 1972)
- Live together in Ilford and, from 1990, Chigwell, Essex
- 1983 – plot purchased in Chigwell on which house built
- 1990 – Hartar’s sister, Jagpal, comes to live in Chigwell house

## The Second Family

- 1991 – Diljit and Jagpal fall out, Diljit asks Jagpal to leave. She does, but Hartar leaves as well. They go to Chandigarh
- 1992 – Hartar marries again, this time to Jaswinder. Arranged marriage; marriage certificate states Hartar 'unmarried'
- Son, Harbiksun, born on 1 Mar 2001



## **Further background – SBM Warehouse Ltd**

- By the time he left England in 1991, Hartar had had considerable business success, building up building merchants (SBM) in East London initially which expanded into Brentford, Finchley, Swiss Cottage and Southwark
- 1990 – purchased property at 103-107 Windmill Road - 18 residential units and shop downstairs
- Much of real value in business in the property

## **Further background – SBM Warehouse Ltd**

- Sundeep first worked for Hartar at SBM from age of 10
- Court accepted that Hartar promised he would succeed to the business
- From 1987 onwards working more full time, as sales person. From 1991 onwards, left in de facto control of the company
- SBM in poor state with substantial sums owed, and money being transferred by Hartar to India
- 1994 – business fails

## The curious case of Varcoe Road

- Main warehouse of business in Southwark is transferred by mortgagee to Jagpal for £215,000. 1999 – re-transferred by Jagpal to Hartar and Jaswinder
- Jagpal and Jaswinder then go on and sell warehouse for in excess of £2m.
- Jagpal – says was agreed in 2002 that would receive £250,000 and an interest in a property purchased by Hartar/ Jaswinder in Gillingham – but arrangement never put into effect.
- Start of a feud between Jagpal and Hartar/ Jaswinder which lasted until close to his death in 2016





## **The confession in Chandigarh**

- 1994: Hartar tells Sundeep he has married Jaswinder
- Hartar asks Sundeep to deal with family business in England, Hartar would deal with his developing Indian business. On Hartar's death, Sundeep would get everything in the UK
- From 1994-2011, Sundeep runs his own builder's merchants, Waterforce Ltd, at Windmill Road. Inherited the goodwill and business SBM had developed there, entitled to keep profits. Had to pay rent to Hartar, some of which was paid to Diljit
- Other former outlets of SBM were rented out
- Court found that Sundeep's role in relation to Hartar's remaining business limited – some collection of rent / errands

## **2002 – a key year**

- 2002 – Hartar told Sundeep that he had brought Jaswinder over to the UK – led to a series of events
- Tells Sundeep that subject to payment of £3000 a month, he could keep rents from residential units at Windmill Road.
- Explains that Windmill Road was Sundeep's. 2009, 2011, 2015, 2016 – further promises made to Sundeep that the UK property and business would be transferred to him
- 2002-7 – Sundeep enters into period of semi-estrangement from father; he and Diljit look into possibility of obtaining financial remedies on a divorce
- 2007 – reconciliation.
- 2002 – Jagpal gets married. Leads to escalating feud – Hartar believes that Jagpal should give up interest in Chandigarh property. -> litigation

## **The 2003 Will**

- Will which dealt with Indian estate only (conceded at trial by Jaswinder)
- Gives all of Indian estate to Jaswinder and Harbiksun
- Revokes all previous wills but without specific reference to 1979 Will
- Refers to failure of Jagpal to transfer back share in Chandigarh house
- Will made and registered with the aid of Indian lawyer
- Manuscript note added later '*make sure no property goes to Jagpal*'

## **The 2007 Will**

- Purportedly made in year that Hartar and Sundeep reconciled
- Made on will form with no legal assistance
- Handwritten with employee and close friend / contractor as witnesses
- 10 signatures which differed wildly from each other
- One signature in blue, matched up with crossed out date of 25 August 2000 – replaced with 16 April 2007
- All property in England and India given to Jaswinder– disinherited Diljit, Sundeep and Mandi, but also Harbiksun
- Will purportedly made the day before Harbiksun went to school for the first time
- Jagpal should not get anything and should '*stay away from my family*'

## **2011 onwards**

- Following credit crunch, Sundeep's business Waterforce fails in November 2011
- One of Waterforce employees, Mr Gill, takes over commercial premises at Windmill Road, pays £6,500 a month in rent for the privilege
- Arrangement – rent would be paid to Diljit, with residential rents remaining with Sundeep subject to payment to Hartar/ Jaswinder
- Sundeep receiving payments worth £50-60,000 a year by own admission before costs such as electricity on building
- Mr Gill however falls behind on repayments
- From 2011 onwards Sundeep was not employed and did only limited work on UK business – some collection of rent/ management of Windmill Road
- In later years of his life, Hartar transferred very substantial UK property interests into joint names of him and Jaswinder, on the basis of beneficial joint tenancies
- Value of properties worth over £10m, included Chigwell property at which Diljit living

## **2011 onwards**

- Sundeep spends much of his time looking after Diljit, suffering from a severe condition which resulted in her becoming disabled – request from Hartar
- Sundeep finds out that properties had been transferred into joint names in 2016, raises issue with Hartar
- Hartar says he has tax issues to sort out, promises to deal with things properly on return from trip to India
- Instead, died in India on 3 September 2016
- Diljit dies in March 2018

## **The 2016 Will**

- Jagpal alleged that Hartar made one final Will on 21 March 2016
- Will only raised in proceedings late in the day – shortly before trial due in May 2019
- Original not available at trial – lodged in Indian court which refused to produce it
- Will divided Indian estate between Sundeep, Diljit, Harbiksun and Jagpal in equal shares
- *'Although we did split due to some reasons, but I do not want to ignore my sister's support to me on many aspects'*
- Will also contained a revocation clause: *'that this is my last and final WILL and all such previous documents stand cancelled.'*
- Typed, with Indian advocate and a mechanic as witnesses

## **Litigation galore**

- Following Hartar's death, five civil claims commenced between parties
- Three in India regarding probate, one commenced by Jagpal, one by Jaswinder, one by Sundeep
- Claim in England regarding Windmill Road - Jaswinder sought account of rental proceeds received by Sundeep after death, injunction preventing him from having anything more to do with property. Sundeep counterclaimed for declaration that Windmill Road and 6 other properties put into joint names of Jaswinder/ Hartar held on trust for him due to proprietary estoppel
- Probate claim in England commenced by Jaswinder
- In addition – prosecution commenced in India against Jaswinder and employee Mr Gurdeep Tiwana, in relation to attempted murder of Jagpal and Jagpal's husband



## **The estate**

- Various valuations given of Indian estate
- English estate – Jaswinder gave value of £1.1m
- Properties passed to her by way of survivorship to value of £10.079m  
– no surprise that Sundeep wanted to pursue estoppel claim
- The twist: during trial evidence of Hartar having become bankrupt in 2012 came out, although bankruptcy was annulled.
- Sundeep/ Mandi's argument – bankruptcy resulted in severance of joint tenancies such that around £4.5m more property fell into estate.

## **English probate claim – the issues**

- Was the 2016 Will valid or was it a forgery?
- If valid, did the 2016 Will revoke all previous Wills including those which applied to English estate?
- If 2016 Will not valid/ did not revoke English Wills, was 2007 Will valid?
- If 2007 Will invalid, did 2003 Will apply to English property (conceded)/ did it revoke the previous 1979 Will?
- If 2003 Will did not apply to English estate/ did not revoke the 1979 Will, **was the 1979 Will revoked by marriage between Jaswinder/ Hartar?**
- **If intestacy in English estate, who is the surviving spouse?**
- **Where was Hartar domiciled?**

## **Probate claim – legal aspects**

- Court acknowledged importance of seeing original testamentary document at trial (see *Re Payne [2018] EWCA Civ 985*) but held that could proceed with trial without original of 2016 Will – all parties had been able to inspect Will via their handwriting experts
- Court considered whether execution of Wills was in accordance with s. 9 of Wills Act – although Wills executed in India, no suggestion that Indian law was any different
- Court agreed that where evidence at trial shows that Will not executed in accordance with statement in attestation clause, presumption of due execution cannot apply: see *Wrangle v Brunt [2020] EWHC (Ch) 1784*, para 144. However – approach on due execution '*tends in favour of upholding the disposition*'

## **Probate claim – legal aspects**

- Court held that in forgery case, burden of proof rests on person propounding the will to show that it is valid, agreeing with *Face v Cunningham* [2020] EWHC 3119 (Ch). However – given the very serious nature of allegation, greater likelihood was that wills were genuine. See *Re H* [1996] AC 563, *Re Dellow's Will Trusts* [1964] 1 WLR 451.
- In construing revocation clauses, court can take into account extrinsic evidence of testator's intention, but a party seeking to prevent express revocation clause from taking effect according to plain meaning has a heavy burden to overcome.
- Court held that annulment of bankruptcy does not result in undoing of severance given the terms of section 282 (4) Insolvency Act. Court upheld Land Registry guidance on the topic – only property which vests in trustee reverts to former bankrupt.

## **Probate claim – the 2016 Will**

- Sundeep and Mandi neutral (previous report showing forgery)
- Battle between Jagpal and Jaswinder
- Some of Jaswinder's points:
  - Inherently unlikely that Hartar would have made Will in favour of someone with whom was in litigation for many years
  - 2016 Will made no provision for her
  - Was drawn up by Indian lawyer who had never previously met Hartar
  - Both witnesses expanded their story very significantly as compared with their affidavits – evidence was being made up 'on the hoof'

## **Probate claim – the 2016 Will**

- Court held that witnesses were entirely credible
- Reason why witnesses' accounts expanded was because Jagpal was unrepresented and they hadn't been asked to give full detail before
- Court found Jagpal's expert much more compelling – Jaswinder's expert gave answers which became 'incomprehensible white noise'. Not willing to consider alternative explanations or expand her view beyond very limited aspects.
- Court believed Jagpal when she said that letter to her from deceased from 2016 indicating he wanted to reconcile was true
- Ultimately, was clear from evidence that Hartar and Jagpal had been very close at one point and it was not unlikely that he would have wanted to make up as he became older
- This was despite fact that Hartar did not attend a family wedding in 2016 as Jagpal would be there
- Hartar would have had regard to the fact that he had passed substantial property over to Jaswinder via the transfers into joint names, other transfers into her sole name

## **Probate claim – the 2016 Will**

- Although 2016 Will applied only to Indian estate, revocation clause had the effect of revoking all previous Wills, including all English Wills
- Words of Will could not be clearer – 'all other wills are cancelled'.
- Will was prepared substantially as a result of Hartar dictating it – he could have limited scope of revocation clause if he wanted to
- Fact that revocation clause gave rise to intestacy is not something which should result in limited construction (as in *Benjamin v Bennett* [2007] All ER (D) 243) – Hartar had already taken many steps during his lifetime regarding his English assets

## **Probate claim – the 2007 Will**

- Although arguments over 2007 Will rendered moot, shows how difficult it is to maintain forgery claim.
- Some of Sundeep/ Mandi's arguments:
  - Will only produced when their solicitors stated that earlier 2003 Will only applied to Indian property
  - For some time in Indian litigation, Jaswinder was asserting that the Will was the 'first and last will of the deceased'.
  - Witnesses to Will had all worked for Jaswinder. Two of them had helped her in India to try and transfer properties into her name on the basis of the 2003 Will, and after the Indian court had imposed an injunction to prevent further transfers
  - Witnesses had wildly differing accounts of how will execution occurred, two of them suggested that the blue signature on the Will made by Hartar in 2007, when expert evidence suggested otherwise
  - Even Jaswinder's expert acknowledged that Hartar's signature vulnerable to simulation, the signatures differed wildly



## **Probate claim – the 2007 Will**

- Additional argument about due execution:
  - Emerged from evidence that one of witnesses did not see Hartar sign the Will or the first witness sign
  - Second witness was brought into room after this happened
  - What was required in these circumstances was for Hartar to acknowledge signature and then (1) first witness to acknowledge his signature to Hartar in some way and (2) second witness to sign
  - However, (1) did not happen.

Argument rejected by court despite lack of evidence – witness 2 would have been likely to have done something to acknowledge.

## The estoppel claim

- Court acknowledged that promises had been made to Sundeep that he would inherit Hartar's UK property in return for working on UK business. However, the claim failed for a number of reasons:
  - Rather than relying on his father's promises to his detriment, Sundeep had done what he did because of his father's domineering personality and his love for him
  - Sundeep had done very little work on father's business from 1994 -2011
  - Care for mother from 2011 had not been in reliance on promises
  - Insofar as suffered detriment during period in charge of SBM, dealt with by allowing him to establish Waterforce at Windmill Road with benefit of existing goodwill
  - Sundeep benefited from substantial income from Windmill Road (residential flats)
  - Further, Sundeep will have  $\frac{1}{4}$  of valuable Indian estate plus substantial entitlement to English estate, will satisfy any equity
  - Procedural issue - wrong to make orders in relation to property falling into estate without estate being joined

## **Sangha v Sangha: insights**

- Trial conducted partly remotely with interpreter - not easy!
- Difficulty of advancing forgery claims shown in two dismissals of arguments which seemed to have a real chance of success
- Technical section 9 arguments may not get you anywhere if the court is disposed towards upholding the testator's intention
- Further demonstration of heavy burden of overturning plain meaning of revocation clause in international wills, even where results in intestacy
- No previous reported authority on effect of annulment on severance of joint property
- Importance of choosing an expert who can present well in court arena

## **The sequel?**

- Court will now have to consider two further questions
  - Who benefits under an intestacy? Is Jaswinder the surviving spouse or was Diljit?
  - Did Hartar die domiciled in England and Wales?

# 5 Stone Buildings

---

## Thank you

---

t 020 7242 6201

w [www.5sblaw.co.uk](http://www.5sblaw.co.uk)

🐦 [@5sblaw](https://twitter.com/5sblaw)