

Jersey is not part of the UK!

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In the matter of Shandra Prakash Bhasin [2015] Royal Court, unreported judgment 10 September 2015

In the matter of the Estate of Meena Krishnan (deceased)[2015] unreported judgment, 1 September 2015.

We have two cases in this briefing which make the same simple point. Jersey is not part of the UK! We shall start with the Bhasin case.

The Bhasin case

This case dealt with two points, both of which have come before the Royal Court before: both points however, are of general interest and are therefore worth restating. The first is a simple re-statement of a fact (of relevance to will draftsmen outside Jersey who may be under a misapprehension), namely that Jersey is not part of the United Kingdom. Jersey is a crown dependency and as such part of the territory of Great Britain and Northern Ireland. The second point is a succinct re-confirmation by the Royal Court of how it approaches the interpretation of a foreign will.

Facts

The deceased died domiciled in Kenya on 19 May 1996. He had one child from his marriage to Jean Bhasin (the respondent in the application); he subsequently divorced his wife; the daughter survived the deceased but died without issue on 7 October 2012. The deceased travelled to England with his medical practitioner during 1995. He signed English and Jersey wills on the 16 June 1995. The Jersey will was explicit; it only applied to movable estate of the deceased in Jersey. The English will was similarly worded but in relation to assets in the UK. The deceased then returned to Kenya, and on the 23 February 1995 executed his Kenyan will. Whilst the Kenyan will disposed of only the deceased's estate in Kenya, unfortunately it contained the following words:

“I hereby revoke all my Wills made by me at any time hereinbefore.”

The deceased then made a codicil on 17 May 1996 which dealt entirely with Kenyan assets. It was in handwriting and contained the following statement:

“My UK assets have been dealt with separately”.

Accordingly, when the Jersey will was presented to the probate registrar in Jersey, the question was raised by the registrar as to whether the Kenyan will had had the effect of revoking the Jersey will. The Judge, namely Commissioner Clyde-Smith helpfully stated the principles to be applied by the Royal Court, a similar issue having arisen in the case of Re Hawksford Executors Limited [2013] 2 JLR 357:

(i) In relation to private international law, the Jersey courts have consistently had regard to English common law, and in particular to the rules in Dicey, Morris & Collins Conflict of Laws.

(ii) The material or essential validity of a will of movables is governed by the law of the testator’s domicile at the time of his death (Rule 154 of Dicey, 12th edition).

(iii) The question of whether a will has been revoked depends on the law of the testator’s domicile at the date of the alleged act of revocation, so that if the alleged act of revocation is the execution of a later will, the question whether the later instrument revokes the first depends on whether the second instrument is valid in accordance with the rules laid down in Chapter 27 of Dicey, and in particular, Rule 151 (capacity) and Rule 152 and 153 (formal validity).

(iv) The aid of private international law is unnecessary where the intention of the testator is expressed in a manner which leaves no room for doubt (Cheshire and North’s Private International Law, 11th edition at 844).

On the evidence presented, the court found that the deceased was domiciled in Kenya, both at date of death and at the time of the purported revocation of the Jersey will. Therefore Kenyan law applied to the question of whether the Jersey will had been revoked. Kenyan law required an intention to revoke. An express revocation clause in a subsequent will would be strong evidence. However this could be rebutted if evidence to the contrary could be shown. In that regard, Kenyan law permits the admission of extrinsic evidence.

The Kenyan lawyer who took instructions from the deceased in respect of his Kenyan will stated in his affidavit that the deceased had let him know that the deceased had made English and Jersey wills and had instructed the Advocate in respect of his Kenyan estate only. The Advocate also advised the court that there was a common belief in Kenya that Jersey formed part of the UK. In addition the doctor who had travelled to England with the deceased, and two others close to the deceased, said that the deceased had no intention of revoking his Jersey will and was also under the misapprehension that Jersey was part of the UK.

Decision

The court examined all the extrinsic evidence available. Ultimately it concluded that having gone to the trouble in his last illness of going to England and executing Jersey and English wills, it was unlikely that the deceased would return to Kenya and five weeks later revoke both the Jersey and English wills. The court noted that the only person who could benefit from arguing to the contrary was the deceased's daughter and her mother as her representative, was not objecting to the application by the representor. Accordingly, the court concluded that it was not the intention of the deceased to revoke his Jersey will, and that to the contrary, it was his intention that his Jersey assets be disposed of by his Jersey will. The court directed that the Jersey will be admitted to probate.

The Krishnan case

Facts

The issue was whether the will in this case covered the deceased's Jersey assets. If it did not, the question was whether an intestacy would result or whether a previous will would catch the Jersey estate. As a preliminary point in this case, the former Bailiff, Commissioner Birt, stated that consideration needed to be given as to who might have an interest in arguing in favour of either an intestacy or the previous will applying, so that the court could convene them.

This case involved a deceased who had been born in India but who had lived in Hong Kong for most of her life. She died domiciled in Hong Kong. The deceased made a will purporting to cover her real and personal property in Hong Kong and the UK. However, when the deceased died, aside from her Hong Kong estate, she only had three bank accounts in Jersey, a bond in the Isle of Man but no assets in the UK. The question for the court was whether the use of the term "UK" was intended to include Jersey and the Isle of Man, when legally the term "United Kingdom" consists only of Great Britain and Northern Ireland.

Decision

The court applied Hong Kong law, having been assisted by affidavits of law from two Hong Kong lawyers, one of whom drew up the will for the deceased. Hong Kong law stated that where there was ambiguity in the will, extrinsic evidence was admissible. The court concluded, based on the affidavit of law as to how Hong Kong law would have dealt with this question, that there was ambiguity and extrinsic evidence could be admitted. That evidence pointed strongly to the conclusion that the deceased did intend to include her Jersey and Isle of Man assets when referring to her UK estate.

The court noted there had been at least two previous cases in which a similar issue had arisen. In Re: Reid [2008] JRC 213, the court concluded that a will dealing with "*my United Kingdom Estate*" was intended by the testator to cover his bank account in Jersey; and in Re: Estate El-Kaisi [2000/241A] the court again held that the disposition in a will of "*such other assets within the United Kingdom which may belong to me...*" covered monies in a Jersey bank account. In each case the court was satisfied

from the extrinsic evidence produced that, despite the fact that as a matter of law Jersey does not form part of the United Kingdom, when using the expression “*the United Kingdom*” the testator in each case intended the expression to cover assets situated in Jersey.

Accordingly, the court ordered that the will in question should be admitted to probate.

Comment

As a Jersey practitioner, it is to be noted (perhaps surprisingly) how common it is that clients and indeed other professionals, have the belief that Jersey is part of the UK. It is helpful therefore for the correct position to be simply re-stated by our court. Also, whilst the rules to be applied in Jersey on the interpretation of foreign wills are similar or the same as those in many common law jurisdictions, it is beneficial for practitioners to have those rules so succinctly and precisely laid out as they are in this case.

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