

IN THE SOLOMON ISLANDS

COURT OF APPEAL

Appeal No. 2 of 1994

Connolly P.
Kapi J.A.
McPherson J.A.

IN THE ESTATE of SUNNY WUN SAN TONG
Deceased (Intestate)

BETWEEN:

MADALENE MAE FUN TONG

Appellant (Applicant)

- and -

ROBERT VICTOR EMERY and JOHN SULLIVAN

(Respondents)

JUDGMENT OF THE COURT

Delivered the 29th day of June 1994



Pursuant to the order of Ward C.J. of 22 February 1991, Letters of Administration of the estate of the abovenamed deceased were granted to the respondents. The complexity of the deceased's business affairs and property interests were considered to warrant the appointment of a practising barrister as well as an accountant and the four reports which the administrators have filed to date and the time which the administration of the estate has consumed, justified that decision.

The applicant, the widow of the deceased, had not sought a grant of administration. She and her children reside in Australia where the latter are being educated. The estate's assets have

been progressively realised but the cash resources have, after the cost of administration, been largely needed to pay debts. Nonetheless the administrators have made monthly payments of maintenance to Mrs Tong in amounts approved by the High Court. Major assets of the estate are subject to claims which the administrators are resisting and must resist if substantial benefit is to accrue to the applicant and her children. Nonetheless she is understandably frustrated by what seems to her an inordinately long time to realise the assets and wind up the estate. She has incurred substantial legal costs in litigation against the administrators the payment of which from the estate has been permitted by the High Court as an advance against her ultimate beneficial interest. Their payment, however, depends upon cash resources being available for this purpose. In this state of affairs the appellant brought an application on 2 December 1993 for a declaration that certain land, the East Kola'a Ridge property, which the administrators propose to sell, is not an asset of the administration and her sole property, she and the deceased having been joint tenants at the time of his death. If this were the only relevant fact, her contention would, of course, be correct, s. 179 of the Land and Titles Act reflecting the common law on the subject.

However, the administrators became aware of the likelihood that the joint tenancy had been severed prior to the death of the deceased and, being faced in 1992 with a claim against the land by the Tong Poy family, brought proceedings to clarify the position. On 19 November 1992 those proceedings were settled with the sanction of the High Court on the basis that the East Kola'a land be held by Mrs Tong and the administrators as tenants in common. The register still shows Mrs Tong and the deceased as joint owners but the legal position in the light of these facts is undoubtedly that the East Kola'a land is held by Mrs Tong for herself and the administrators as tenants in common in equity on the statutory trust for sale. See Bull v. Bull [1955] 1 Q.B. 234.

When the application of 2 December 1993 came before the High Court, Palmer J., by order of 26 January 1994, affirmed the equitable interest of the administrators as tenants in common and ordered sale of the land by them upon consultation with Mrs Tong. On 2 June 1994 she appealed against that order. The appeal was out of time but time was extended on 6 June. However, it is apparent that there is no substance in the appeal on this point. There is ample power in the High Court to order the sale of land held by tenants in common and the division of the proceeds of that sale.

The application of 2 December 1993 did not in terms seek the removal of the administrators by revoking the letters of administration but the notice of appeal, as well as seeking the reversal of the order for sale of the East Kola'a land, does so. As the question of revocation was not before Palmer J. it is not properly the subject of appeal, but, in the hope, possibly vain, of discouraging the expenditure of costs unnecessarily on this type of litigation, we shall shortly express our views on the point. The administrators have now filed four reports. The estate is potentially of considerable value but much of this depends upon the successful conduct by the administrators of an action brought by one Hashimoto against them claiming an interest in what is called the Cape Esperance land. Mrs Tong's complaint against the administrators, at least on this occasion, has been confined to one point. It is that the action brought by Mr Hashimoto should be settled as soon as possible and presumably on any basis so that the administration may be brought to an end and the value of the remaining assets not dissipated in cost of administration and the costs of that action. The administrators, on the other hand, have had the advice of counsel, including one senior counsel in Australia, that they have good prospects of success. Mr Hashimoto is at present required to give proper particulars of his claim against the administrators and those are due to be delivered on 1 July next. Once the precise nature of Mr Hashimoto's claim is revealed, we have no doubt that the High Court will find means of bringing that action to a speedy conclusion. In those

circumstances, this Court would, even if the matter were properly before it, not make the order sought. The appeal must be dismissed with costs.

By the Court,

(P.D. Connolly P.)