

Family Law / Civil Procedure

Divorce proceedings instituted by wife in the English High Court – Husband applied to petition for divorce in the Malaysian High Court – Whether Malaysian High Court ‘clearly inappropriate forum’ – Whether full trial necessary to determine issues of jurisdiction and domicile of parties

Pauline Chai Siew Phin v Khoo Kay Peng

[2014] 8 CLJ 571, Court of Appeal

Facts The appellant (wife) instituted divorce proceedings in the English High Court. The respondent (husband) contested jurisdiction and filed for an *ex-parte* application at the Malaysian High Court under section 53* and 106** of the Law Reform (Marriage and Divorce) Act 1976. The appellant then applied for a stay of proceedings pending hearing and disposal of the divorce petition from the English High Court. The Malaysian High Court found the appropriate forum to be the Malaysian High Court and dismissed the appellant’s application. The respondent proceeded to file a petition for divorce in the Malaysian High Court. The appellant appealed against the Malaysian High Court’s decision.

Issues The issues before the Court of Appeal were (1) whether the Malaysian High Court was a ‘clearly inappropriate forum’ in light of pending divorce proceedings in the English High Court; and (2) whether the judge erred when she determined the issues of jurisdiction and domicile of the parties while considering the appellant’s stay application, and by way of affidavit evidence.

Held The Court of Appeal held that since the proceedings revolved around division of properties and maintenance, that a substantial amount of documentary evidence and witnesses are situated in Malaysia, the respondent being a Malaysian citizen, and that there are no evidence that the proceedings in Malaysia would be oppressive to the appellant, the appropriate forum to hear the case would be the Malaysian High Court. It was also held that the judge had erred while considering the issues of jurisdiction and domicile of the parties as there was no necessity for doing so and since there were substantial disputes of facts and laws, the respondent’s proceedings were ordered to be remitted to the Malaysian High Court before another judge to be tried by way of a full trial.

*Breakdown of marriage to be sole ground for divorce

**Requirement of reference to conciliatory body before petition for divorce