A

NG PIK LIAN v. TAI MAY CHEAN & ANOR AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
ABU BAKAR JAIS JCA
B GUNALAN MUNIANDY JCA
[CIVIL APPEAL NOS: W-02(NCvC)(A)-1349-07-2019, W-02(NCvC)(A)-1330-07-2019, W-02(NCvC)(A)-1331-07-2019 & W-02(NCvC)(A)-1350-07-2019]
6 OCTOBER 2021

C

MENTAL DISORDERS AND TREATMENTS: *Inquiry – Prima facie – Determination of whether subject mentally disordered – Whether mental disorder made subject incapable of managing herself and her affairs – Inquiry ordered after prima facie case proven – Whether would mean subject only allowed to rebut prima*
D *facie case after inquiry – Whether subject afforded opportunity to rebut prima facie case – Whether circumstances leading to application for inquiry considered – Whether application made in good faith – Mental Health Act 2001, s. 52*

CIVIL PROCEDURE: *Originating summons – Application for – Inquiry – Prima facie – Determination of whether subject mentally disordered – Whether subject*
E *incapable of managing herself and her affairs – Inquiry ordered after prima facie case proven – Carer for subject ordered to produce subject to court – Whether would mean subject only allowed to rebut prima facie case after inquiry – Whether subject afforded opportunity to rebut prima facie case – Whether judge seized with jurisdiction to order carer to produce subject for inquiry – Whether circumstances*
F *leading to application for inquiry considered – Whether application made in good faith – Mental Health Act 2001, s. 52*

CIVIL PROCEDURE: *Judgments and orders – Finality – Finality of inquiry order – Inquiry order after prima facie case proven – Determination of whether subject mentally disordered – Whether mental disorder made subject incapable of managing*
G *herself and her affairs – Whether inquiry order final decision that disposed of rights of parties – Whether appealable – Mental Health Act 2001, s. 52 – Courts of Judicature Act 1964, s. 3*

The parties were related; Ng Pik Lian ('NPL') was the mother of Tai May
H Chean ('TMC') and Tai Hean Leng ('THL'). TMC was estranged from NPL as the two had been embroiled in legal suits regarding family assets since 2013. After many years of litigations, TMC filed an originating summons ('OS') at the High Court, seeking an inquiry pursuant to s. 52 of the Mental Health Act 2001 ('Act'), to determine whether NPL was mentally disordered and whether such mental disorder was making her incapable of managing
I herself and her affairs. Having found evidence that NPL might be mentally disordered, the High Court, in following the Court of Appeal case of *Tan Poh*

Lee & Ors v. Tan Kim Choo & Anor ('*Tan Poh Lee*'), decided that a *prima facie* case had been established. Subsequent to that, the High Court immediately ordered an inquiry to be carried and further ordered THL, who was taking care of NPL, to produce NPL for the said inquiry without proffering any reasons. Hence, the present appeals by (i) NPL against the High Court Judge's ('HCJ') decision, in ordering the inquiry; and (ii) THL against the order that he was required to produce NPL. Resisting the appeals, TMC argued that, *inter alia*, (i) NPL and THL had no right to appeal against the High Court decision as it was not a final decision that had finally disposed of the rights of the parties; (ii) the HCJ did not err, in fact and in law, in finding a *prima facie* case for the inquiry; and (iii) THL must produce NPL as he admitted that NPL was under his care.

Held (allowing appeals):
Per Abu Bakar Jais JCA delivering the judgment of the court:

(1) One must look at the nature of an order to determine its finality. The order made meant that NPL would be subjected to an inquiry to determine whether she was mentally disordered. She would be subjected to a more elaborate medical examination in order to determine her mental health. It was an order made affecting her fundamental rights not to be questioned, probed and examined by anyone suspicious of her own faculty. The order for inquiry was such an intrusive order against her basic right to enjoy her freedom of living freely and independently without interference from others. TMC's contention, that NPL could not appeal against the decision of the High Court, could not be accepted. NPL must be given the right to appeal. There was nothing not final about it. Once the High Court made the order that an inquiry be held under s. 52 of the Act, that order in itself was a final decision that disposed of the right of the parties. As it was a final order, NPL had every right to appeal against the order. (paras 22, 23 & 25)

(2) The word 'order' in s. 3 of the Courts of Judicature Act 1964 ('CJA') was important to be noted in the context of this case. TMC had used this word in her own OS for the inquiry from the HC. She had requested in her own application an order that the inquiry be held against her mother. In s. 3 of the CJA, it was clearly indicated that an order meant a decision and not a ruling. The word 'decision' covered, or was synonymous with, judgment, sentence and, not least, an order. In this regard, an order made by the High Court entailed a right to appeal to this court. (paras 27 & 28)

(3) *Tan Poh Lee* required a *prima facie* case to be established before the inquiry could be ordered. A *prima facie* is always rebuttable; a court could find a *prima facie* case for one party but the opposite party, as a matter of justice, is always afforded the opportunity to rebut a *prima facie* case. Equally important to consider was the question as to when must one rebut a *prima facie* case; it must be done in the same proceeding. When the HCJ decided TMC had proven a *prima facie* case, what should have been done was to afford NPL an opportunity for her to rebut the *prima facie* case. She had every right to rebut the *prima facie* case at that stage. It was totally unfair for her to undergo the inquiry first before she could bring her evidence to rebut the *prima facie* case. The HCJ erred in ordering the inquiry immediately after it was decided that a *prima facie* case had been established. (paras 33, 35, 36 & 45)

(4) *Tan Poh Lee* indicated that once there is a *prima facie* case, the subject (in this case, NPL), would have to undergo the inquiry. That would mean only after the inquiry, NPL was allowed to rebut the *prima facie* case raised by TMC. According to *Tan Poh Lee*, the rebuttal could not even be given in the inquiry itself; it must be given after the inquiry. What good would it do for the rebuttal to be given only after the inquiry? There would be no real purpose if the rebuttal is to be given at that late stage because, after it is completed, it could well mean that the subject is already found to be mentally disordered and is incapable of managing himself and his affairs due to such mental disorder. After all, this is exactly the purpose of the inquiry, having regard to s. 52 of the Act. (paras 40 & 41)

(5) The OS was filed by TMC only after she had a bitter dispute with NPL. They were engaged in several suits against each other. The OS was not filed with the utmost interest of NPL, in the mind of TMC. The HCJ failed to sufficiently appreciate these circumstances before granting the order for inquiry based on the OS. The High Court should not have shut its eyes and mind to the circumstances that brought about the filing of that OS by TMC. The intention of TMC with regards to the filing of the OS, based on the antecedent background between her and her mother, should have been considered, analysed and proved before ordering the inquiry. Furthermore, there was ample evidence that TMC filed the application against NPL in bad faith. (paras 61, 62 & 67)

(6) The order made against THL was a final order made by the High Court. The High Court had effectively ordered THL to shoulder the responsibility of ensuring the presence of NPL for the inquiry. There was nothing tentative about such an order. THL, too, must be given the right to appeal against the order by the High Court. The fact that NPL

was under THL's care alone could not mean that THL must produce NPL for the inquiry. The HCJ acted without jurisdiction to order THL to produce NPL for the inquiry. (paras 30, 71 & 73)

Case(s) referred to:
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Prem Singh & Ors v. Kirpal Singh [1989] 1 LNS 100 ***(refd)***
Re Cathcart [1982] 1 Ch 549 ***(refd)***
Tan Poh Lee & Ors v. Tan Kim Choo & Anor [2018] 6 MLJ 141 ***(refd)***
Tee Wee Kok v. Teh Liang Teik & Ors [2010] 5 CLJ 605 HC ***(refd)***
Wong Kim v. Loh Kim Foh [2003] 8 CLJ 813 HC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 67(1)
Mental Health Act 2001, s. 52(1)

(Civil Appeal Nos: W-02(NCVC)(A)-1349-07-2019, W-02(NCVC)(A)-1330-07-2019 & W-02(NCVC)(A)-1331-07-2019)
For the appellant - Michael Chow & Wong Zhi Khung; M/s Michael Chow
For the 1st respondent - Chetan Jethwani; M/s Chetan Jethwani & Co
For the 2nd respondent - Kelvin Seet Wan Nam & Lau Zhong Yan; M/s Chooi & Company + Cheang & Ariff

(Civil Appeal No: W-02(NCVC)(A)-1350-07-2019)
For the appellant - Kelvin Seet Wan Nam & Lau Zhong Yan; M/s Chooi & Company + Cheang & Ariff
For the 1st respondent - Chetan Jethwani; M/s Chetan Jethwani & Co
For the 2nd respondent - Michael Chow & Wong Zhi Khung; M/s Michael Chow

[Editor's note: For the High Court judgment, please see Tai May Chean v. Ng Pik Lian & Anor [2019] 1 LNS 1843 (overruled).]

Reported by Najib Tamby

JUDGMENT

Abu Bakar Jais JCA:

Introduction

[1] There were initially four related appeals before us. All originated from one originating summons ("OS") filed at the High Court ("HC") by Tai May Chean ("TMC"). The appeals arose because the OS was allowed by the learned HC Judge. Two appeals were subsequently withdrawn before us in open court. We were therefore left with two appeals. The main appeal is filed by Ng Pik Lian ("NPL"). NPL is the mother of TMC. The second appeal is by NPL's son and TMC's brother, Tai Hean Leng ("THL").

[2] TMC, through the OS, wanted an inquiry to be done to determine whether her own mother, NPL, is mentally disordered. The HC ordered the inquiry. TMC was also granted by the HC an order that THL produce NPL

for the inquiry. Thus, NPL appealed the learned HC Judge's decision ordering the inquiry and THL appealed against the order that he is required to produce NPL for the same.

Background Facts

[3] Since 2013, separate from the present action, there are several legal suits between NPL and TMC. The suits are about family assets. Since then, TMC is estranged from NPL. They are no longer in a cordial and filial relationship. They stayed apart and kept their distance from each other.

[4] There was also criminal prosecution against TMC for criminal breach of trust with regard to family company funds upon complaint by NPL.

[5] In one of the suits, TMC applied to strike out the same on the ground that NPL has no mental capacity to litigate. Wong Chee Lin JC (as she then was) interviewed NPL in open court and refused TMC's striking out application.

[6] In yet another suit, Ong Chee Kuan JC dismissed the same. He found among others, that TMC had bad faith in pursuing the suit. In this suit, TMC among others had applied to remove NPL from being a director in the family company.

[7] It is a fact that only after many years of acrimonious litigations between the two, did TMC apply for the inquiry against NPL before the HC. The inquiry was applied pursuant to s. 52 of the Mental Health Act 2001 ("MHA") to determine whether NPL is mentally disordered and whether such mental disorder is making her incapable of managing herself and her affairs.

HC's Decisions

[8] The HC found some evidence that NPL might be mentally disordered. Therefore, the HC decided that a *prima facie* case has been proven for the inquiry.

[9] The HC had followed the Court of Appeal case of *Tan Poh Lee & Ors v. Tan Kim Choo & Anor* [2018] 6 MLJ 141 regarding *prima facie* case to order the inquiry.

[10] In following *Tan Poh Lee* (*supra*), the HC must have not considered and heard the rebuttal to the *prima facie* case before ordering the inquiry.

[11] The HC also decided that THL must produce NPL for the inquiry but gave no reasons why THL must do so.

NPL's Submission

[12] NPL's grounds of appeal are as follows:

(i) the learned HC Judge failed to properly appreciate the legislative intent of the MHA and TMC's bad faith;

(ii) that TMC, as a hostile party has no *locus standi* in mounting an application under s. 52 of the MHA;

(iii) the learned HC Judge misunderstood s. 52 of the MHA and hence adopted the wrong test;

(iv) the learned HC Judge misconstrued *Tan Poh Lee* (*supra)*; and

(v) the learned HC Judge overlooked that the power under s. 52 of the MHA must be exercised with restraint.

THL's Submission

[13] The HC has no jurisdiction to order that THL produce NPL for the inquiry. Even if there is jurisdiction, the evidence adduced does not support the order against THL.

[14] There is no reason given by the learned HC Judge why the order to produce NPL was made against THL.

[15] The HC failed to appreciate that the application for inquiry is not made in the interest of NPL but had been pursued by TMC to further her personal interest for the litigation in the various suits.

TMC's Submission

[16] There are two points raised by TMC at para. 2.7 of her written submission in resisting NPL's present appeal.

[17] The first point contended by TMC before us is that NPL has no right to appeal against the HC's decision. This is because the HC's decision is not a final decision that had finally disposed the rights of the parties.

[18] It is also contended that the HC did not err in fact and in law in finding a *prima facie* case for the inquiry.

[19] TMC also argued against THL's appeal that THL could not appeal against the HC's decision ordering THL to produce NPL. This is because the learned HC Judge only found a *prima facie* case for the inquiry. As such, this is not a final order that is appealable even for THL.

[20] THL must produce NPL as he admitted NPL is under his care. After all, THL following the HC's order for the OS, had brought NPL for the inquiry.

Our Decision

[21] Since the application for inquiry is premised on s. 52 of the MHA, for clarity, this statutory provision is laid down here as follows:

> (1) The Court may, on an application made before it, make an order directing an inquiry to determine whether a person subject to the jurisdiction of the Court and **alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder.**
>
> (2) The order of the Court under subsection (1) may also contain directions for inquiries to be made concerning:
>
> (a) the nature of the property belonging to the person alleged to be mentally disordered;
>
> (b) the persons who are his relatives;
>
> (c) the period during which he has been mentally disordered; or
>
> (d) such other questions as the Court deems proper.
>
> (3) The application for such an inquiry may be made by a relative of the person alleged to be mentally disordered, or by any public officer nominated by the Minister for the purpose of making the application. (emphasis added)

[22] With regard to the submission of TMC that NPL could not appeal against the decision of the HC, respectfully we could not accept such contention. We are of the opinion that once the HC made the order that an inquiry be held under s. 52 of the MHA, that order in itself is a final decision that disposes of the right of the parties. As it is a final order, NPL has every right to appeal against that order made by the HC.

[23] The order made means NPL will be subjected to an inquiry to determine whether she is mentally disordered. It is not beyond expectation that she will be subjected to a more elaborate medical examination in order to determine her mental health. There is nothing not final about it. It is an order made affecting her fundamental right not to be questioned, probed and examined by anyone suspicious of her own faculty. The order for inquiry is such an intrusive order against her basic right to enjoy her freedom of living freely and independently without interference from others.

[24] After all, she had resisted and strongly contested TMC's application for the said inquiry. She insisted there is no need for the inquiry as she is not mentally disordered. It is beyond comprehension and an injustice if she has no right to appeal against that decision of the HC ordering the inquiry.

[25] One must look at the nature of the order to determine its finality. An order such as this, is so conclusive in nature that a fundamental right of the appellant had been affected. She must be given the right to appeal under the present circumstances of the case.

[26] Section 3 of the Courts of Judicature Act 1964 ("CJA") states as follows:

> "Decision" means judgment, sentence or **order**, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;
> (emphasis added)

[27] The word "order" above is important to be noted in the context of this case. TMC had used this word in her own OS for the inquiry from the HC. She had requested in her own application an order that the inquiry be held against her mother. In the above statutory provision, it is clearly indicated an order means a decision and not a ruling. The word "decision" in the statutory provision above too covers or is synonymous with judgment, sentence and not least, an order.

[28] In this regard, an order made by the HC entails a right to appeal to this court. This is stated in s. 67(1) of the CJA as follows:

> The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or **order of any High Court** in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought. (emphasis added)

[29] The two statutory provisions of the CJA above, contrary to the submission of TMC, indeed show that NPL could and has the right to appeal to this court against the decision of the HC.

[30] In respect of THL's own appeal, the order made against him to produce NPL, is also a final order made by the HC. The HC had effectively ordered THL to shoulder the responsibility of ensuring the presence of NPL for the inquiry. There is nothing tentative about such an order. THL therefore, must be given the right to appeal against that order by the HC.

[31] On the contention of TMC that the HC did not err in fact and in law in finding a *prima facie* case for the inquiry, it is first argued that the correct legal test and relevant evidence had been applied and considered respectively by the HC. Citing the Court of Appeal case of *Tan Poh Lee* (*supra*), TMC submitted that she had established a *prima facie* case in proving there was substance to substantiate the allegation that her mother might be mentally disordered and incapable of managing herself and her affairs due to such mental disorder.

[32] *Tan Poh Lee* held as follows:

> (1) An application made pursuant to s. 52 of the MHA involved a two-tier process. First, the applicant had to establish a ***prima facie*** **case** before an inquiry under s. 52 could be ordered. In determining whether there was a *prima facie* case, the Court had to ascertain whether there was substance to substantiate the allegation that a person was mentally disordered. At that stage, it was not required to be conclusive proven that a person was mentally disordered.
>
> (2) Having found that the appellants had established a *prima facie* case, the HC judge fell into error by proceeding to analyse the appellants' case like it was a full hearing on merits and concluding that the *prima facie* case had been rebutted by the medical reports produced by R2. It had to be noted that the appellants complained that they could not produce latest medical reports on R1 because they were denied access to him. On finding that a *prima facie* case had been established, the judge should have ordered an inquiry to be conducted under the MHA. The inquiry was the next step before any order to administer the affairs of R1 was made or otherwise. By treating the application for leave as if it was a full hearing on its merits and by deciding the case summarily, the judge had short-circuited the procedure contained in s 52 of the MHA and had denied the remedy to the appellants summarily.
>
> (3) On finding that the appellants had established a *prima facie* case, the judge should at that point have considered whether to proceed with the inquiry without considering the rebuttal evidence. **The rebuttal evidence was only to be considered at the next stage, after the inquiry,** when the judge had to consider whether to make the orders to administer the affairs of R1. (emphasis added)

[33] From the above, as can be clearly seen *Tan Poh Lee* requires a *prima facie* case to be established before the inquiry could be ordered. But what does a *prima facie* case at any stage entail? A *prima facie* case means it is always rebuttable. A court could find a *prima facie* case for one party but the opposite party, as a matter of justice, is always afforded the opportunity to rebut a *prima facie* case. In *Balachandran v. PP* [2005] 1 CLJ 85; [2004] 2 MLRA 547, Justice Augustine Paul (later FCJ) in explaining a *prima facie* case said as follows:

> A *prima facie* case is therefore one that is sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal. The phrase "*prima facie* case" is defined in similar terms in *Mozley and Whiteley's Law Dictionary*, 11th edn as:

> A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. **A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side.**
>
> The result is that the force of the evidence adduced must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts exist or did happen. On the other hand, if a *prima facie* case has not been made out it means that there is no material evidence which can be believed in the sense as described earlier in order to make a finding either way the court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established. (emphasis added)

[34] Thus, in the context of the present case before us, even if TMC had raised a *prima facie* case, that does not mean NPL could not rebut the *prima facie* case that she might be mentally disordered.

[35] Equally important to consider is the question when must anyone rebut a *prima facie* case. Rebutting a *prima facie* case certainly must be in the same proceeding. One need not wait until a different proceeding to rebut a *prima facie* case. Waiting that long is simply too late. It goes against the grain of evidentiary rules if one is asked to defer rebutting a *prima facie* case at the earliest possible time.

[36] In the context of the present case, when the HC decided TMC had proven a *prima facie* case, what should have been done is to afford NPL an opportunity for her to rebut the *prima facie* case. She has every right to rebut the *prima facie* case at that stage. It is totally unfair for her to undergo the inquiry first before she can bring her evidence to rebut the *prima facie* case. Why must she be asked to be the subject of the inquiry or participate in the same before she could rebut the *prima facie* case? The *prima facie* case has already greatly affected her right. She must be allowed to bring evidence to rebut the *prima facie* at that stage. In fact, in rebutting the *prima facie* case, she could even question the evidence by TMC that is said to be sufficient for that *prima facie* case. She could do this and should not be prevented from doing so by having to undergo the inquiry first.

[37] Further, she should not be subjected to a more elaborate medical examination in the inquiry itself before she is allowed to rebut the *prima facie* case. It goes without saying this is not a mundane medical check-up at the local clinic. She will have to undergo much more than the routine temperature check by her family doctor, once she is ordered to undergo the

inquiry. The inquiry is a serious order made encroaching on her personal rights. That is why she should be given the right to rebut the *prima facie* case at the earliest possible time before the inquiry itself. After all, if she could summon medical evidence apart from other evidence before the inquiry itself to prove that she could not possibly be mentally disordered, she should not be prevented from doing so. If she could do so, then that in itself, is a rebuttal to the *prima facie* case.

[38] Another facet to the application for the inquiry at this stage is for the judge to evaluate whether the *prima facie* case has been rebutted before the inquiry itself. If it can be decided by cogent evidence that the *prima facie* case has been rebutted, the subject, in this case, NPL is entitled not to endure the more detailed examination that will ensue in the inquiry.

[39] Yet another aspect to such application for an inquiry is that the applicant ie, TMC in this case must be required to be ready with sufficient proof why she is questioning her mother's mental condition. As it is a serious application affecting her mother's rights, her evidence supporting the application must not be trivial or guesswork in nature. Inevitably TMC's case for the application, should preferably include medical evidence on her mother's mental state. After all, one could not be said even to be potentially mentally disordered without at least medical evidence. It is common knowledge that it is not an easy task to say that anyone might even be mentally disordered without medical evidence. If such evidence is provided by TMC, only then could it be decided that a *prima facie* case has been proven against NPL that she might be mentally disordered. However, immediately after that, NPL should be allowed to rebut the *prima facie* case instead of promptly being subjected to the inquiry. This court is not unaware that TMC had submitted she had no opportunity to bring NPL for any medical examination before she filed the OS. That may be so but as will be shown, there are other considerations that would justify the HC's decision against NPL to be set aside.

[40] Further, Tan Poh Lee (*supra*) indicates that once there is a *prima facie* case, the subject (NPL in this case) will have to undergo the inquiry. That would mean only after the inquiry, NPL is allowed to rebut the *prima facie* case raised by her daughter. This is very significant to be noted. The rebuttal following *Tan Poh Lee*, could not even be given in the inquiry itself. It must be given after the inquiry. That much is clear from the judgment of *Tan Poh Lee* as shown earlier.

[41] First, with respect, what good will it do for the rebuttal to be given only after the inquiry? There is no real purpose if the rebuttal is to be given at that late stage. This is because the inquiry after it is completed, could well mean the subject is already found to be mentally disordered and is incapable

of managing himself and his affairs due to such mental disorder. After all, this is exactly the purpose of the inquiry having regard to s. 52 of MHA as narrated earlier. Hence the very purpose of that inquiry could well have ended at that stage. It would then be too late and pointless for the subject to rebut the *prima facie* case.

[42] Further, if *Tan Poh Lee* is to be followed, the medical experts of NPL are entitled to assist her in rebutting the *prima facie* case only after the inquiry. In the meantime, the poor mother is forced to endure what could potentially turn out to be an unnecessary inquiry. That is why NPL should be allowed to rebut the *prima facie* case before the inquiry starts. After all, it is also consistent with the principle of rebutting the *prima facie* case once it is raised without further ado.

[43] Besides, waiting for the inquiry to be completed before giving the opportunity to NPL to rebut the *prima facie* case, could well mean a different judge might be presiding for the rebuttal than the one finding a *prima facie* case made out by TMC. This is because of the potentially long process of the inquiry. This should be avoided. Preferably the same judge finding a *prima facie* case should also be the arbiter in deciding whether that *prima facie* case has been rebutted or not. This is more likely to happen if the judge that decided a *prima facie* case is also the judge to immediately consider the merits of the rebuttal before the inquiry.

[44] The scheme of MHA essentially means that after a *prima facie* case is proven, the subject ie, NPL in this case, should be allowed to rebut that *prima facie* case. If the rebuttal is accepted, that will be the end of the matter. Hence, no inquiry will be ordered. If it is not accepted, only then the inquiry will be ordered. The inquiry itself then will be in two-tier. First, is to establish that the subject is indeed mentally disordered. If this is not proven, the matter ends there. If this is proven, then the second stage will have to be established. This second stage is to prove that the mental disorder has indeed resulted in the subject being incapable of managing himself and his affairs due to such mental disorder. Mental disorder alone is insufficient. The mental disorder must have caused the subject to be incapable of managing himself and his affairs. This is the thrust of the matter if one looks at s. 52(1) of the MHA.

[45] Therefore, based on all that has been explained above, with respect, the learned HC Judge erred in ordering the inquiry immediately after it was decided that a *prima facie* case had been established. She must have decided so as she had followed *Tan Poh Lee*. The HC should have given NPL the right to rebut the *prima facie* case before ordering the inquiry. Depriving NPL to rebut the *prima facie* case at that stage, resulted in the HC to prematurely order the inquiry without hearing the rebuttal evidence from NPL. With

respect, this is a serious error on the part of the HC because it is a fundamental principle that a *prima facie* case is always rebuttable. This serious error alone should mean the main appeal by NPL must be allowed.

[46] In submitting a *prima facie* case has been proven, TMC referred to the testimony of NPL in a criminal case at the Sessions Court where TMC was the accused and NPL was the complainant. TMC referred to the answers given in the trial of that criminal case, where NPL gave incoherent answers upon being questioned. She said she has 11 children, when the fact is she has six children. She said she is 60 when she is actually 85. She said one of the children name is "Tan Hen Heng", when she had none by that name.

[47] Replying to TMC on the above incidents, first NPL asserted through her affidavit that she was nervous when she testified in that case and not feeling very well on that day. This should have been accepted by the HC as NPL felt uncomfortable and she was understandably under great stress to testify in court against her own daughter, TMC.

[48] Further, considering that NPL is 85 years old or thereabouts, she should not be expected to remember all the finer details of her life. Those details she gave incorrectly, should not be a basis to say NPL might be mentally disordered. In view of NPL's position as the mother of TMC, it would be quite daunting and not easy for her to testify in court where the accused was her own daughter and she herself was the complainant.

[49] TMC also referred to the incident when her father passed away. A few days after, TMC came for the final prayer ceremony and she met her mother, NPL. Her mother did not recognise her and asked who she was. TMC had to repeat her name several times before her mother could recognise her and she cried.

[50] With regard to this incident after the death of her father, the HC should have appreciated the animosity that existed between NPL and her daughter over the family assets. NPL naturally was upset with her daughter on the dispute over family properties. It brought great shame to the family. There is every likelihood she had pretended not to recognise her because of TMC's attitude and approach in being hostile towards her regarding these properties. She was strongly displeased with TMC and pretending not to recognise her, could be a form of registering her profound unhappiness towards her daughter.

[51] In respect of the suits between TMC and NPL, the former also referred to an incident where NPL's own counsel was not prepared for NPL to be cross-examined because of her own mental condition. This TMC submitted is another incident to suspect and question NPL's mental health. NPL's counsel also sought adjournment for the trial of the suits. In seeking

this adjournment, another doctor's letter indicating that NPL had poor short-term memory was shown. This too according to TMC supported her application for the inquiry.

[52] The incidents above, though may be substance for the application for inquiry, must not be taken with a blinkered view. An 85-years old lady may not on certain days be ready to testify in court because of her old age and should be permitted to have her off-days, so to speak. However, that does not mean she might be mentally disordered. While in respect of the doctor's letter, the most that is said was that NPL had poor short-term memory. Having poor short-term memory alone must not be taken to mean a possibility of mental disorder. It would not be far-fetched to note quite a number are facing such condition but to definitively say they may be mentally disordered is incorrect, let alone offensive. It should also not be forgotten, to amount to a possible mental disorder, that poor short-term memory must also have caused NPL to be incapacitated of managing herself and her affairs.

[53] TMC also applied for one of the suits to be struck out on the ground of NPL's questionable mental condition but Wong Chee Lin JC (as she then was) refused that application. One of the reasons given by the learned Judicial Commissioner was that she could not find that NPL was mentally disordered because there was no inquiry pursuant to the MHA. In fact, it was found by the learned Judicial Commissioner that NPL was quite alert.

[54] During the course of hearing in respect of these suits, not in the hearing of the OS, NPL showed a report by Dr Sng Kim Hock ("Dr Sng") who had personally examined her. Dr Sng in the report found NPL to be fully mentally fit and with normal upper brain cognitive functions. NPL also did not have dementia and was fully capable of making her own decisions, choices and opinions.

[55] TMC in turn showed a report by Dr Gurdeep Singh Grewal ("Dr Gurdeep"), again not for hearing for the OS, who basically challenged the findings of Dr Sng. However, it must be noted that Dr Gurdeep did not examine NPL. He gave his report and criticised Dr Sng's report without having NPL before him to be examined. Hence, no or little weight should be given to Dr Gurdeep's report. TMC also engaged Dr Chee Kok Yoon ("Dr Chee") to comment on the report written by Dr Sng. Dr Chee's report is also not for the OS itself. Again, similarly as Dr Gurdeep, Dr Chee did not examine NPL. He also criticised Dr Sng's report but since he did not examine NPL, his report should not carry much weight.

[56] Further, both Dato' Dr Tai Hean Sing ("THS") and Tai Hean Kiat ("THK"), the brothers of TMC and THL filed affidavits to oppose TMC's OS for the inquiry. THS affirmed that NPL is a fiercely independent lady and is alert and leads an independent and purposeful life. THS affirmed

A further that she is not lacking in any way with regards to her mental abilities. THK said the same things about NPL and added basically she could go about her daily life normally.

[57] Thus, we have THS, THK and THL, three children of NPL denying that NPL might be mentally disordered. While TMC is without support B from any of her own siblings that NPL's mental condition is a matter of concern.

[58] Loke Kam Yong ("LKY") is a hairdresser of NPL who also affirmed an affidavit opposing TMC's OS. LKY essentially affirmed that NPL frequents her salon to do her hair and engages in conversation and pays her C own bills and leaves just like everyone else. LKY's affidavit standing alone might not be sufficient. However, her affidavit taken with other affidavits supporting NPL, should be more than enough to doubt the assertion of TMC that NPL might be mentally disordered. LKY's affidavit should be taken as corroborating NPL's position that there is not even a possibility that she is D mentally disordered.

[59] In any event, regarding all these incidents, it is undisputed that NPL was not under any form of expert medical observation and examination on her brain functions at the material time. Without this observation and E examination medically, it should be obvious that NPL must not even be considered as possibly mentally disordered.

[60] The fact remains no matter that there might be some evidence supporting TMC for a *prima facie* case in view of these incidents, NPL was never allowed to rebut TMC on her *prima facie* case. Therefore, the HC acted F unfairly towards NPL. Her rebuttal on the incidents narrated above may not be favourable and accepted by the HC but nonetheless, the HC has a duty to first hear her rebuttal no matter how weak that rebuttal might be.

[61] There is also a need to take note how and why TMC had filed the OS to question her mother's mental condition. The OS was filed by TMC only G after she had a bitter dispute with NPL. It is very acrimonious in nature because as stated, NPL, although the biological mother of TMC, had even lodged a police report that resulted in a criminal prosecution against the latter. On top of that, they were engaged in several suits against each other. All these would suggest that the OS filed by TMC was not filed with the H utmost interest of NPL in the mind of TMC. TMC's OS was earnestly pursued more likely by the desire to fight her mother to the very bitter end. After all, as stated, not one but three siblings of TMC denied that NPL might be mentally disordered.

I

[62] The HC with respect failed to sufficiently appreciate the circumstances highlighted above before granting the order for inquiry based on TMC's OS. The HC should not have shut its eyes and mind to the circumstances that brought about the filing of that OS by TMC. The HC also should not have acted mechanically by merely looking at s. 52 of the MHA to order the inquiry. The intention of TMC with regards to the filing of the OS based on the antecedent background between her and her mother, should have been considered, analysed and probed before ordering the inquiry. After all, the one most affected by the inquiry would be NPL and nobody else, including TMC. The HC thus has a duty in this regard to be vigilant in studying all possible reasons why the OS was filed by TMC. After all, the court must act in the interest of justice above anything else.

[63] In this regard, it is worth to note the approach taken in *Tee Wee Kok v. Teh Liang Teik & Ors* [2010] 5 CLJ 605; [2010] 3 MLJ 84, where an application was made under the then Mental Disorders Ordinance 1952 as a consequence of a bitter family feud. The court held that:

> [8] ... Going through para 18 of encl 2, it is abundantly clear that the sole aim of this application is related to the suits that are afoot. In encl. 11, paras. 7-12 again the averments of the plaintiff relate to the pending suit. The position is the same with regards to paras 14-19 of encl 22. *The court is of the view that the plaintiff's application is not made in the best interest of TLT but merely to protect and preserve the position of the plaintiff in respect of the suits pending. The court cannot and will not allow an application under the MDO which does not take the interest of TLT into account but made purely to protect the plaintiff's commercial interest.* (emphasis added)

[64] Similarly the Singapore High Court in *Prem Singh & Ors v. Kirpal Singh* [1989] 1 LNS 100; [1989] 2 MLJ 89, held as follows:

> The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered person. I do not think this court ought to sanction a course of procedure which is likely to lead to further distress to the patient on account of the **bitter dispute between the respondent and some of his children.** (emphasis added)

[65] Likewise, in *Wong Kim v. Loh Kim Foh* [2003] 8 CLJ 813; [2003] 4 MLJ 535, the application for an inquiry was also dismissed because the court noted there were family disputes and it is said as follows:

> ... I find this application to be not only disturbing, but also misplaced. I also find it to be incongruous to the overall scheme and purpose of the MDO, which in the main is to provide for the care, protection and treatment of a mentally disordered person. **The defendant is now locked in a family dispute.** It is hoped that this falling-out amongst them will be quickly resolved so that his wish to go home can be met and in the process be reunited with the plaintiff. In the twilight of his life, he deserves some peace and quiet. (emphasis added)

[66] Even in the UK, in *Re Cathcart* [1982] 1 Ch 549, Kay LJ said as follows:

> *Such a proceeding should only be adopted where there is danger or homicide or suicide, or immediate risk to the health of the person against whom it is made.* In the conduct of the Petitioner there are no traces of the kind and considerate conduct which a husband ought to adopt towards his wife. He has not succeeded in shewing that he acted without personal motives and solely with a view to the best interests of his wife. *His real motive was to enrich himself and to obtain the position of master of Wootton. Lastly, he was not justified in commencing these proceedings unless he had reasonable grounds for believing that his wife was of unsound mind and incapable of managing herself and her affairs.* (emphasis added)

[67] There is ample evidence that TMC filed the application for an inquiry against her mother, NPL, in bad faith. She also filed the same only to serve her own personal interest having regard to the following:

(i) since 2013, TMC has been estranged from the family and is deeply involved in more than one suits with NPL, over family assets;

(ii) TMC even engaged a private investigator against NPL for the litigations;

(iii) in Kuala Lumpur Suit No.: WA-24NCC-334-08-2016, TMC even argued that NPL was healthy and fit because it suited her position;

(iv) TMC remains cold towards her own mother, NPL, since 2013 and had refused to visit her at her home; and

(v) only in 2018, after years of litigations against her own mother in court and just when the suits have been set down for trial, TMC filed applications to strike out the suits on the ground that NPL has no mental capacity to litigate.

[68] In another suit, Ong Chee Kwan JC found against TMC as follows:

> [41] ...
>
> c. It seems disingenuous for the Plaintiff to have commenced the MHA Suit and sought to stay all legal proceedings by the 2nd Defendant against her on the ground that the 2nd Defendant does not have the mental capacity to manage herself and her affairs and to instruct solicitors and in the next instant commenced this action against the 2nd Defendant asserting that she is the wrongdoer in control of UER which has caused the company to be incapacitated from bringing an action against TYYR;
>
> [42] Given the backdrop of the multitude of legal proceedings currently pending between the Plaintiff and the 2nd Defendant relating to the family businesses, the Court cannot but be alive to the possibility that the Plaintiff's present action is part of her strategy in furthering her own personal interests in the legal proceedings against the parties therein rather than the interest of the 1st Defendant.

> [43] ... Based on the facts of this case, in particular, the timing of this action in the context of the backdrop of the legal proceedings, the institution of the MHA Suit followed thereafter with the Plaintiff commencing this action against the 2nd Defendant, a step that is inconsistent with her grounds stated in her applications to stay the 2nd Defendant's suits against her, I am not persuaded that this is the case here.
>
> [44] In the circumstances, it is my view that the requirement of 'good faith' on the part of the Plaintiff has not been established in this case.

[69] Thus, based on the aforesaid, in applying for the inquiry, TMC's lack of good faith and conduct should also be relevant considerations. One should not be allowed to use the application as a disguise to show concern for the well-being of the subject ie, NPL. The overall scheme of MHA would be frustrated if that is permitted to happen.

[70] Based on all the reasons highlighted, the appeal by NPL is allowed.

[71] In respect of THL's appeal, the fact that NPL is under his care alone could not mean that THL must produce NPL for the inquiry, contrary to the suggestion of TMC. There is nothing that should be further imposed on THL for taking care of his mother. Being filial, it is expected for THL to take care of NPL. That does not mean he must also be instructed to produce his mother for the inquiry.

[72] The submission of TMC that THL also had obeyed the order by producing NPL for the ongoing inquiry could not mean he should be held responsible to bring the latter in the first place. He had obeyed the order simply because if he did not comply with the same, he will be liable for contempt of a court order.

[73] More importantly, the learned HC Judge acted without jurisdiction to order THL to produce NPL for the inquiry. No provisions were shown by the learned HC Judge that would allow for the order against THL to be made. Equally important to note is the undisputed fact that the learned HC Judge did not give or address at all the reasons supporting the HC's decision requiring THL to produce NPL for the inquiry.

[74] Hence, it is inevitable that THL's appeal must also be allowed.

Conclusion

[75] The orders made by the HC against both NPL and THL are final in nature, allowing both to rightly appeal against the HC's decisions. Hence, the submission by TMC that the HC's orders have not finally disposed of the rights of NPL and THL could not be accepted.

A **[76]** The HC had erred in depriving NPL the right to raise her rebuttal against the *prima facie* case proven by TMC. Before ordering the inquiry, there is a need to hear the rebuttal of NPL immediately after the *prima facie* case raised by TMC. In following *Tan Poh Lee* (*supra*), this must not have been done by the HC.

B **[77]** TMC had not filed the OS in good faith for the inquiry to be granted. There are reasons as highlighted to question the real motive why TMC had pursued the OS.

[78] Based on all the reasons explained, we are unanimous in allowing the appeals of both NPL and THL with costs against TMC. The HC's decisions against NPL and THL must accordingly be set aside.

C

D

E

F

G

H

I