APPLICATION OF MUSLIM LAW AND THE SURVIVORSHIP OF JOINT TENANCIES IN SINGAPORE

MUHAMMAD NURSHAZNY BIN RAMLAN

INTRODUCTION

The enactment of the Administration of Muslim Law Act [AMLA]\(^1\) barely a few months after Singapore’s independence followed the need to “make provision for regulating Muslim religious affairs”.\(^2\) AMLA only covers Muslim personal law which “governs a person’s family matters”,\(^3\) such as divorce and succession or inheritance. This article will discuss (1) the f\(\text{araid}\), or the Islamic law of succession, in the context of AMLA; (2) the persuasiveness of fat\(\text{wa}\), or religious rulings issued by the Islamic Religious Council of Singapore (MUIS); and (3) how f\(\text{araid}\) and fat\(\text{wa}\) come together where the right of survivorship arises in the succession of a deceased Muslim’s joint tenancy. As the Syariah Court’s jurisdiction is limited to adjudicating Muslim divorces, the courts referred to hereafter are the State Courts and the Supreme Court of Singapore.

I. Muslim Personal Law on Joint Tenancy

MUIS is the statutory body created under AMLA to advise on and administer Muslim law in Singapore.\(^4\) Under s 32 of AMLA, MUIS is empowered to form a Legal Committee and issue a fat\(\text{wa}\) either upon request (by private parties or the courts)\(^5\) or whenever it wishes to.\(^6\) These fat\(\text{was}

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\(^{1}\) (Cap 3, 2009 Rev Ed Sing).
\(^{3}\) *Black’s Law Dictionary*, 10th ed, *sub verbo* “personal law”.
\(^{4}\) *AMLA*, s 3.
\(^{5}\) *AMLA*, s 32(1).
\(^{6}\) *AMLA*, s 32(6).
are written by MUIS scholars on behalf of the local Muslim community. However, since a fatwa is merely a non-binding opinion,7 a court has the discretion to accept or reject the fatwa as it deems fit.

In Singapore, the faraid is governed by ss 111 and 112 of AMLA. They require the estate of “any Muslim person domiciled in Singapore dying intestate” to be subject to faraid, save for where “Malay custom” apply.8 MUIS publicly issued a fatwa in 2008 about the faraid position on joint tenancies,9 following the Supreme Court decision in Shafeeg bin Salim Talib and Anor v Fatimah bte Abdul bin Talib and Ors [Shafeeg].10 The fatwa opined that in the absence of express alternative arrangements or agreements such as gifts inter vivos or vows, the surviving joint tenant cannot have full ownership of the property and is only entitled to 50 percent or a “half-share” of its value. The remaining 50 percent belongs to the estate of the deceased and would be distributed according to faraid. This fatwa is supported by the faraid principle that a deceased person’s estate constitutes everything that could be considered as her assets at the time of death. These assets would be part of her estate as long as they belonged to her by personal effort, or by way of a gift or will, or by faraid.11 Assets excluded from this rule are those that have been disposed of as gifts inter vivos, by vows, or by will.

This position in faraid runs contrary to that in general law, where the central feature of joint tenancy – the right of survivorship – assumes that there are no ‘shares’ in the property. The right of survivorship prescribes that the interest of a joint tenant is extinguished upon her death, enabling

7 AMLA, s 32(3).
her interest to be ‘survived’ by her other co-owners. The death of a co-owner can be reflected in the Torrens system by an update of the Land Register. This will result in the surviving co-owner becoming the registered sole-proprietor of the property.

II. Shafeeg on the Limits to the Application of Muslim Law to Joint Tenancy in Singapore

The facts in Shafeeg involved a married Muslim couple who registered as joint tenants of a property under the Land Titles Act [LTA] and Land Titles (Strata) Act [LTSA]. When her husband died intestate, the respondent widow gave the Land Registry a Notice of Death and subsequently assumed sole-proprietorship of the property. The appellants were the administrators of the late husband’s estate. Relying on a MUIS fatwa that had previously been issued to the parties, the appellants argued that the “half-share” belonging to the deceased by virtue of the joint tenancy could not be survived by the respondent and must be distributed as part of his estate.

Chan Sek Keong CJ (as he then was) presided over the case in the Court of Appeal. He recognised that while property law in Singapore is governed by common law and legislation such as the LTA and LTSA, land-owning Muslims are simultaneously subject to Muslim personal law in relation to their legal capacity as Muslims. His Honour went further to clarify how Muslim personal law ought to be applied in Singapore by citing case law from Singapore, Malaysia, and India: (i) that Muslim personal law only applies if expressly stated by statute; and (ii) that fatwas are not binding on the courts.

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16 Supra note 10 at [22].
i. Muslim personal law only applies if expressly stated by statute

With the existence of AMLA, statutes will contain express provisions exempting Muslims. Chan CJ held that in absence of such provisions in the LTA and LTSA, these statutes would apply to Muslims.\textsuperscript{17} Therefore, all rules governing property ownership in general law, including the rights of survivorship in a joint tenancy, would prevail over faraid rules in Singapore.

ii. Fatwas are not binding on the courts

This is further supplemented by the assertion in Shafeeg that any fatwa issued by MUIS has no binding effect on courts. On this issue, Chan CJ followed the decision in an earlier High Court case, Saniah bte Ali v Abdullah bin Ali [Saniah],\textsuperscript{18} where LP Thean J (as he then was) opined that “the fatwa is merely an opinion of the Majlis and is not binding on this court which has full jurisdiction to decide on the matter in issue. What is before me is not really a point of Muslim law on which the Majlis is empowered under s 32 to issue the fatwa.”\textsuperscript{19} On this reasoning, Thean J rejected a prior MUIS fatwa\textsuperscript{20} and held that a statutory trust created by the CPF Act prevailed over the application of Muslim law to the fund in question.

Chan CJ in Shafeeg also explained that the MUIS fatwa cannot be binding especially in Saniah and Shafeeg because they were not obtained by the court, but by request of the private parties themselves. As such, they “will not ordinarily have the same standing.”\textsuperscript{21} It was acknowledged that there was a likelihood of these parties “framing a question based on assumed or hypothetical facts” in a way that misled MUIS, with the result that fatwas were irrelevant or inconsistent with existing

\textsuperscript{17} Supra note 10 at [44].
\textsuperscript{18} [1990] SGHC 40, [1990] 1 SLR(R) 555.
\textsuperscript{19} Ibid at [17].
\textsuperscript{20} This fatwa was issued by MUIS in 1990 to clarify that under faraid, CPF moneys belong to the estate of the deceased CPF member.
\textsuperscript{21} Supra note 10 at [65].
All these re-emphasise the status of MUIS fatwas as nothing more than expert opinion which can be rejected if deemed irrelevant by the court.

CONCLUSION

It is now clear that Muslim law in Singapore applies only insofar as statutes allow it and MUIS’ fatwas are merely non-binding opinions. With regard to joint tenancy, the LTA, LTSA and other statutes concerning land law will continue to apply to Muslims and non-Muslims alike.

However, it is also important to recognise that the conflict between faraid and general law will arise only when succession is contested in the courts. Only then will the supremacy of general law be asserted, as in the decision in Shafeeg. When the beneficiaries and inheritors of an estate accept their standing and entitlements under faraid or the ‘alternative arrangements or agreements’ as specified by the MUIS fatwa, such a conflict will not arise at all. In Shafeeg, it was the estate of a Muslim joint tenant who brought the case to court.

In common inheritance disputes involving assets like CPF money and property, where statutes governing them do not make express exceptions for Muslims, the courts can now take Shafeeg as locus classicus. In fact, the holding in Shafeeg is a clear and helpful guide from the Court of Appeal for legal practitioners in advising their Muslim clients on Muslim personal law. It is also hoped that this would result in greater care and thought being put into estate planning as well as the purchase of matrimonial property as joint tenants.

\[22\] Supra note 10 at [64]–[65].