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Prakash Devi w/o Durga Singh

v

Devendra Pratap Singh

[2018] SGHC 53

High Court — Originating Summons No 584 of 2017
Choo Han Teck J
23, 26 February 2018; 22 March 2018

Land — Interest in land — Tenancy in common

26 March 2018

Judgment reserved.

Choo Han Teck J:

1 This case concerns a dispute between a grandmother and her grandson over a five-room Housing Development Board (“HDB”) flat (“the property”). The plaintiff contends that she and her grandson, the defendant, hold the beneficial interest in the property in equal proportions. The defendant contends that his beneficial interest amounts to 94.36% of the property.

2 The opportunity to purchase the property arose in 2006, when the HDB flat occupied by the plaintiff and her late husband was compulsorily acquired under the HDB’s Selective En Bloc Redevelopment Scheme (“SERS”). The plaintiff and her late husband were given an option to purchase a bigger flat. The plaintiff and her late husband chose to exercise that option but they worried that they would not be able to obtain a mortgage loan for the bigger flat because

the plaintiff was self-employed and her late husband was retired. To obtain the mortgage, the defendant, who was earning a regular income, was included in the flat application as a joint tenant.

3 It was only now that the plaintiff alleges that there was a common intention for the plaintiff and her husband to hold 50% of the beneficial interest in the property. The defendant disputes the existence of such a common intention, and contends that the beneficial interest in the property should be computed according to the parties' contributions to the purchase price of the property.

4 The property was bought at a price of \$321,240.35 and was registered in the names of the plaintiff, the plaintiff's late husband, and the defendant, as joint tenants. The parties were jointly liable for the mortgage of \$288,200. The initial payment for the property came up to \$33,040.35, of which \$15,867.65 came from the defendant's Central Provident Fund ("CPF") account, \$410 came from the plaintiff's CPF account, and the remaining \$16,762.70 came from the compensation received by the plaintiff and her late husband under the SERS. The plaintiff alleges that she and her late husband lent the defendant \$16,000 to top up his CPF account, thus enabling him to make the payment of \$15,867.65. The defendant disputes the existence of such a loan. The plaintiff further alleges that she and her late husband lent the defendant \$20,000 for renovation of the property. The defendant disputes the loan.

5 It is undisputed that the defendant has been making the mortgage repayments. However, the plaintiff alleges that there was an agreement that the plaintiff and her late husband were to occupy the master bedroom of the property, and that the remaining rooms were to be rented out by the defendant.

According to the plaintiff, the rental income from the property was intended to be taken as the plaintiff and her late husband's contributions to the mortgage repayments. The defendant claims that the agreement was for him to be solely responsible for the mortgage repayments, and in return, for the rental income to be for the defendant's use.

6 I will first deal with the alleged loans given by the plaintiff and her late husband (see [4]). I do not think that those loans were given. The only evidence which the plaintiff has adduced is an account allegedly drawn up by the plaintiff's late husband in the Hindi and/or Punjabi language. There are multiple difficulties with this piece of evidence. First, when translated, the account states "Rakesh and Nandan took a loan from me". The plaintiff has not shown that 'Rakesh' or 'Nandan' refers to the defendant. Second, the account is dated 17 December 2009. The payment of \$15,867.65 from the defendant's CPF account was made in November 2009. How could the plaintiff and her late husband have enabled the defendant to make the payment of \$15,867.65 if they only topped up his CPF account after the payment was already made? I do not think they did. Further, the defendant's CPF statements do not reflect any such top up. Clearly, the plaintiff's allegations have not been proven.

7 Counsel for the plaintiff ultimately conceded that the loans, assuming they existed, would not have altered the plaintiff's beneficial interest in the property. I am of the opinion that the allegations made by the plaintiff as to the loans were not the only false allegations made by the plaintiff.

8 I also do not accept the plaintiff's contention that there was an agreement that the rental income from the property would be taken as the plaintiff and her late husband's contributions to the mortgage repayments (see [5]). I am more

inclined to accept the defendant's version of the agreement. I note that the mortgage was to be for a period of 30 years. At the time that the agreement was being discussed, the plaintiff would have been in her late 60s, whereas the plaintiff's late husband would have been in his late 70s. It is implausible that the parties would have agreed for the mortgage liability to be borne equally between the plaintiff and her late husband on one hand, and the defendant on the other.

9 Further, it is undisputed that the parties wished for the flat to devolve to the defendant upon the death of both the plaintiff and her late husband. I find it difficult to believe that the plaintiff and her late husband would have agreed to leave their main asset (the property) to the defendant solely, with little much left for their other ten grandchildren and four surviving children, if not for the fact that the defendant was to solely bear the mortgage repayments (and thus the bulk of the purchase price of the property). I therefore find that the parties agreed that the defendant would be solely responsible for the mortgage repayments.

10 Counsel for the plaintiff sought to argue, as an alternative argument, that the mortgage repayments made by the defendant were gifts to the plaintiff and her late husband, since the defendant expected to inherit the property. I am not satisfied that the mere fact that the defendant expected to inherit the property would result in the mortgage repayments being a gift to the plaintiff and her late husband. If anything, as I have stated earlier (see [9]), one would think that if the defendant was to inherit the main asset of the plaintiff and her late husband, the defendant would have to contribute more towards the property; and not make such contributions as a gift which, by definition, would require him to not expect anything in return.

11 I also do not accept the plaintiff's contention that there was a common intention for the plaintiff and her husband to hold 50% of the beneficial interest in the property (see [3]). First, I note that the plaintiff only alluded to such a common intention after having sight of the defendant's affidavit, in which he made references to the existence of an agreement. The alleged common intention thus appears to be an afterthought. Second, as argued by counsel for the plaintiff, the existence of the common intention was premised upon the existence of the agreement that the rental income was to be taken as the plaintiff and her late husband's contributions towards the mortgage repayment — counsel for the plaintiff argued that since the mortgage repayments were to be shared equally, the beneficial interest was likewise to be shared equally. But, as I have stated above, I do not accept the plaintiff's version of the agreement as to the mortgage repayments.

12 In conclusion, given that there was no common intention, the beneficial interest in the property has to be determined from the respective contributions of the parties towards the purchase price of the property. I note that counsel for the defendant has sought to include payments for items such as utilities and damage to the property caused by the plaintiff's family members. I fail to see how these items would alter the defendant's beneficial interest in the property. The plaintiff and her late husband's contribution comes up to \$17,172.70 (\$410 plus \$16,762.70). The defendant's contribution comes up to \$324,817.65 (\$288,200 plus \$15,867.65 plus \$20,750 for renovation of the property). This gives the defendant a beneficial interest of 94.98% in the property, and the plaintiff 5.02%, and I so find.

13 The parties have agreed to have the plaintiff's share sold to the defendant at market price, according to the proportion that the court determines.

14 I will hear the parties on costs, if they are unable to come to an agreement on costs.

- Sgd -
Choo Han Teck
Judge

Ramesh s/o Varathappan (Straits Law Practice LLP) for the plaintiff;
Alagappan s/o Arunsalam and Chen Shy Yng (A Alagappan Law
Corporation) for the defendant.
