Pushpavalli d/o Govindaraju v Shanmuga Nathan s/o Lakshmanan
[2000] SGHC 231

Case Number : Div P 445/2000

Decision Date : 14 November 2000

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Madan Assomull and Tan Cheow Hung (Assomull & Partners) for the appellant; Abraham TK (Abraham Logan & Partners) for the respondent

Parties : Pushpavalli d/o Govindaraju — Shanmuga Nathan s/o Lakshmanan

Family Law – Divorce – Matrimonial assets – Division of matrimonial home

Family Law – Divorce – Maintenance – Whether lump sum maintenance award appropriate

: The appellant (wife) married the respondent (husband) on 10 April 1993. She was then a divorcee with a daughter from her previous marriage. She earned $1,866.20 a month (with a take-home sum of $953.80) as a naval material specialist in the Singapore Navy. The respondent was a foreman at Sembawang Shipyard earning $2,608 (with a take-home pay of $1,225.95).

The couple purchased a flat for $230,780 on 1 August 1995. The respondent paid $47,780 towards the initial capital payment and the appellant paid $1,500. Thereafter, the couple paid the monthly instalments through their respective accounts with the Central Provident Fund. ("CPF") equally.

The respondent deposed that he transferred his share of the flat to the appellant on 1 December 1996 to avoid being divorced by the latter. Notwithstanding that, the appellant filed for divorce, in July 1998 and a ***decree nisi*** was eventually granted, not on her petition but by consent, on the respondent`s cross-petition, on 1 February 1999.

The ancillary matters were argued before the District Judge Regina Ow on 3 September 1999, and various orders were made. The appellant appealed against those orders relating to the flat and maintenance only. The appellant was ordered to pay the respondent 50% of the Housing and Development Board`s valuation price (after deducting the outstanding loan, the appellant`s CPF contributions and accused interest, and a $1,200 option fee to the appellant). It was further ordered that if the appellant was unable to raise the funds the flat was to be sold in the open market and the proceeds divided equally after the relevant deductions have been made. The other order under appeal was the lump sum payment of $1,200 for the appellant`s maintenance. This figure was based on the sum of $50 over two years.

The appellant contended that the judge was wrong in dividing the matrimonial flat equally. She felt that the judge wrongly attributed 50% of the initial cost of renovating the flat to the respondent. The flat was renovated for about $25,000 or $26,000. Evidence was adduced later to show a payment of $25,694 by the appellant to the contractor. She asserted that at that time the respondent was facing threats of bankruptcy and could not have contributed the sum of $15,000 which he said he did towards the renovation.

Counsel for the respondent argued that the statement by the appellant that she had to borrow money from her family and pawn her belongings to make the instalment payments only goes to show that without the respondent`s contribution she could not have managed because all the pawn tickets indicate that the borrowings were made after the respondent had transferred his share of the flat to her.

The appellant laid claim to paying off the respondent`s debts including credit card debts incurred prior to their marriage. The evidence suggests that in all probability, the debts were largely incurred during the marriage. The credit card debts amounting to $11,327.82 were paid off about November 1995, a year before the respondent transferred his share of the flat to the appellant.

It is difficult to tell from the affidavits alone, whether the respondent transferred his share of the flat to the appellant in an attempt to save their marriage or in acknowledgement of his indebtedness to her for paying his debts. In this regard, the appellant was wrong, in my view, in relying on contract. A domestic arrangement is not normally seen as a cold, arms-length commercial transaction in the absence of very clear proof. The evidence on record was not sufficient.

In a dispute of this nature, the matrimonial relationship must be viewed from a distance to see what picture emerges as a whole, and from time to time, advancing for a look at close range of specific items. Employing this approach, I form the view that the appellant and the respondent were an ordinary married couple with their share of problems both financial and otherwise. There were obviously moments of acute anxiety, but all these have been resolved one way or the other.

While I may not share the same degree of confidence as the district judge in concluding that the respondent transferred his share of the flat to the appellant in order to save the marriage, I hesitate to conclude that her finding was wrong. In any event, that finding is not crucial because I am of the view that the reason advanced by the appellant was also not sufficiently valid or proved.

I would make just an observation or two in respect of the submissions made on the appellant`s behalf concerning her financial capability. Even if the district judge was wrong in believing that the appellant did not have the funds for the renovation and instalment payments, that did not affect the result which was that the contributions by both parties were about equal. Secondly, if the appellant had any substantial sum from the proceeds of sale of her Yishun flat, they were certainly not used towards the initial purchase of the matrimonial flat.

I now come to the appeal against the lump sum maintenance award. Lump sum payments are certainly more efficacious and convenient than monthly or other periodic payments, but they may occasion hardship and injustice in some cases and when that happens, it is not something that can be readily rectified. Therefore, a lump sum award is to be avoided when there are no compelling reasons to institute a clean break. The circumstances and evidence in this case do not warrant a lump sum award. I agree with the submission on behalf of the appellant that the court ought not decide the lump sum amount and then consider whether the respondent had the means to pay it. However, a reading of the judge`s grounds of decision generally, and [para ] 5 and 6 in particular, the impression I get is that the judge had taken the respondent`s ability to pay as one of the factors for consideration, but the ground was not expressed in sufficiently clear terms. It may also be that the judge had taken the global view of things in deciding to award a lump sum in this case, but if so, she had not made it sufficiently clear.

Taking length of the marriage, the monthly incomes of the appellant and the respondent as well as their expenses into account, I am of the view that $50 a month in maintenance is a little low. The maintenance award here should be about $200 a month.

For the above reason, I will allow the appeal in part and only vary the order relating to maintenance. The lump sum award is set aside and a monthly sum of $200 shall be paid with effect from 1 October 1999.

The parties are at liberty to apply to the Subordinate Courts in the event of any change of circumstances.

Outcome:

Appeal allowed in part.