Ang Teng Siong v Lee Su Min
[2000] SGHC 76

Case Number : Div P 1455/1998

Decision Date : 29 April 2000

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Michael Hwang SC and Irving Choh (Wong Partnership) for the petitioner; Harry Elias SC and Foo Siew Fong (Harry Elias Partnership) for the respondent

Parties : Ang Teng Siong — Lee Su Min

Family Law – Matrimonial assets – Division of matrimonial home – Using sale proceeds of previous matrimonial home to purchase current matrimonial home – Previous matrimonial home gift from wife's father – Whether court should trace source of funds for previous home to determine respective beneficial interests of parties in current matrimonial home – Whether previous home intended as gift to both parties or to wife alone

Family Law – Divorce – Matrimonial assets – Club membership – Wife to retain membership – Refunding to husband sum paid for transferability of membership

: There are two issues which I have to address in this judgment. The first, and main, issue relates to the division of the matrimonial home and the second to the amount which is payable by the husband to the wife in respect of the Singapore Island Country Club (`SICC`) membership. These matters are the subject of cross-appeals by the husband and wife from the decision of the learned district judge who adjudicated on the ancillary matters arising out of these divorce proceedings.

Matrimonial home

The matrimonial home in question is the house at 9 Mt Rosie Terrace (`Mt Rosie`). This was purchased in 1991 in the joint names of the parties. In the court below, the judge found that the direct identifiable contributions made by the parties to the purchase worked out to approximately 31.4% by the husband and 68.6% by the wife. Her Honour then took into account the fact that the parties had been married for 14 years and there was a young daughter in the care of the wife who had shouldered most of the responsibilities of providing the child`s needs. She concluded that it was just and equitable that the matrimonial home be sold and that the proceeds of sale after deduction of the outstanding mortgage loan and the costs incurred in the sale be divided between the parties with 75% going to the wife and 25% to the husband.

The husband`s appeal against the division is based on a challenge to the judge`s finding that his wife`s direct contribution amounted to 68% of the purchase price. He submitted that if the sources of the funds for the purchase were correctly attributed he would have contributed 69% of the price while the wife contributed the remaining 31%. If this submission is accepted, he is willing that the wife`s indirect contributions be valued at 19% so that each party would get a 50% share in the house. Both parties agreed that the assessment of the proportions in which they contributed to the purchase of Mt Rosie would depend on what interest each of them is held to have had in their first matrimonial home which was a flat in a development known as 16 Leedon Heights. The husband`s main argument was that they were each beneficially entitled to a half share in that flat.

As summarised by the judge, the relevant facts are as follows. The parties were married in January 1985. Between February 1985 and December 1986, they lived in New Zealand while the husband completed his pilot training there for the Singapore Air Force. In July 1986 while they were still in New

Zealand, the Leedon Heights flat was purchased in their joint names by the wife`s father, a lawyer, who paid for the flat in full.

On their return to Singapore, the parties made Leedon Heights their matrimonial home and the husband paid for the property tax, utilities bills and conservancy charges. The flat was sold in 1991 and the net proceeds of sale received by the parties amounted to $615,130.15. The parties used the proceeds of sale to purchase a property at Jalan Haji Alias in their joint names but quickly changed their minds and sold it within months at a minuscule loss. They then went on to buy the Mt Rosie property at the price of $965,000.

The purchase of Mt Rosie was financed as follows:

(1) $541,897.86 from the proceeds of sale of Leedon Heights;

(2) $71,924 (being the total of two sums of $14,500 and $57,424 paid at different times) paid by the wife`s father;

(3) $237,392 paid by the husband towards the mortgage loan as at 14 May 1999.

The wife claimed that the total amounts paid under sub-paras (1) and (2) above had to be attributed to her because the Leedon Heights property was a gift to her alone and the other sums paid by her father had also been meant as gifts to her solely. The husband on the other hand contended that the Leedon Heights property was a gift to both of them and therefore since the profits from its sale had been channelled into Mt Rosie, each party was entitled to credit for half the amount so channelled.

The finding of the judge was that the Leedon Heights property was a gift from the wife`s father to his daughter only and therefore the profits from its sale belonged to her solely. That meant the wife had contributed a total sum of $613,821.86 (inclusive of the amounts paid by her father) towards the matrimonial property. The learned judge went on to find that the husband had contributed only in respect of his payments towards the mortgage loan and these contributions amounted to $281,086 when the interest that would have accrued on his CPF contributions was taken into account. This was the basis for her finding that the husband had contributed only 31.4% of the cost of Mt Rosie as against the wife`s contribution of 68.6%.

(i) Considering Mt Rosie on its own

The husband sought to have the judge`s finding on the beneficial interests in Leedon Heights in two ways. The first approach which the husband asked me to adopt was to consider Mt Rosie on its own, without tracing the source of funds for its purchase to the sale proceeds from the earlier matrimonial home. Counsel for the husband pointed out that Mt Rosie was in the parties` joint names and that the husband had undoubtedly a beneficial interest in Mt Rosie by virtue of his direct contributions towards its purchase price. The wife`s argument had been that the parties` financial contributions were unequal and to support that she had relied not on any direct financial contributions made by her but on the fact that part of the purchase price for Mt Rosie came from the sale proceeds from Leedon Heights and part from her father`s contribution to the purchase price for Mt Rosie. Her stand required the court to look into the source of funds for Leedon Heights and then find that her father had provided those funds as a gift for her whereas the husband`s approach was that the sale proceeds from Leedon Heights should be taken as belonging to the parties jointly since they originated from the sale of a matrimonial home in the parties` joint names.

Counsel`s authority for his submission was the decision of the Court of Appeal in **Hoong Khai Soon v**

Cheng Kwee Eng [1993] 3 SLR 34 . The facts in that case were that the husband was originally a joint tenant of No 7 Bedok Rise with his mother. The mother had paid the entire purchase price of that property so the husband held his interest in it as a gift from her. Subsequently, the Bedok Rise property was sold and part of the sale proceeds were channelled into the acquisition of another property, No 1B Jalan Haji Salam, which was held by the husband and his brother as tenants-in-common. The trial judge had held that No 1B Jalan Haji Salam was not available for division because it was a gift from the husband`s family. The Court of Appeal overturned this holding and commented (at p 39) that:

> *The husband, as joint tenant of No 7 Bedok Rise, must be presumed to own half the beneficial interest in that property. No evidence is being put forward to rebut that presumption. It follows that he owned half the proceeds of sale.*

Justice Lai Kew Chai who delivered the court`s judgment went on to discuss the manner in which No 1B Jalan Haji Salam had been acquired and concluded at p 40 of the report (in a passage on which counsel for the husband here particularly relied):

> *In the absence of documentary evidence or other evidence as to the figure, we are left to make a rough and ready approximation that the husband paid for half of No 1B Jalan Haji Salam as renovated. The money came from the proceeds of sale of No 7 Bedok Rise. Although the latter property was a gift, we do not think we should trace the source of funds for a purchase to its origin. It would be inimical to the concept of a matrimonial partnership if the source of funds for every asset acquired during marriage had to be shown to not originate from the generosity of a third party.*

To a certain extent the above dictum has been overtaken by amendments to the Women`s Charter (Cap 353) (`the Act`) effected after ***Hoong Khai Soon*** `s case was decided. The present s 112 of the Act only applies to the division of those assets that constitute `matrimonial assets` and by sub-s (10) a matrimonial asset does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during that marriage by the other party or by both. Now, therefore, if one party receives a gift during the marriage from a third party that gift cannot be divided as a matrimonial asset upon divorce unless it is the matrimonial home or has been improved by the other party or both. The owner of the gifted asset would have to show that it originated from the generosity of a third party in order to prevent it from being divided upon divorce. For the time being it appears that the matrimonial partnership stops short of extending to gifts received by either party.

In the case of the matrimonial home, the issue of whether the source should be investigated still exists because that is a matrimonial asset, however it was acquired, and also because the views expressed in ***Hoong*** `s case are inconsistent with the attitude taken by the Court of Appeal in a later case, **Tham Khai Meng v Nam Wen Jet Bernadette** [1997] 2 SLR 77 . In ***Tham*** `s case, the property for division was located at Brighthill Crescent. Each of the parties claimed that they had contributed about 80% of its purchase price while the other had only contributed only 20% of the price. In support of their respective claims, both parties referred to and relied on the proceeds of sale of an earlier property at Highland Walk. This had been acquired and sold in the joint names of the husband and wife but had been paid for almost entirely by the wife`s father.

Both parties made detailed arguments on the acquisition of Highland Walk and how their respective

shares in it had to be calculated. The Court of Appeal held that since evidence had been adduced on this issue and considerable argument devoted to it, it was necessary to dwell on the circumstances in which that property was acquired and to consider whether both or either of them had made any contribution towards its acquisition. Having considered the evidence, the court held that there was no doubt that Highland Walk was essentially a gift from the wife`s father and then went on to consider whether it was gift to both the husband and the wife or to the wife alone. The court came to the conclusion that the wife`s father had intended to benefit his daughter solely. In assessing the parties` contribution to the purchase of Brighthill Crescent therefore, the court credited the wife as having contributed all that portion of the purchase price which had emanated from the sale proceeds of Highland Walk.

It is clear from the judgment of the Court of Appeal in ***Tham*** `s case that it had no doubt that the proper way to assess how the parties had contributed to the purchase of Brighthill Crescent was to investigate the source of each payment that had been made towards that price. Once it was ascertained that $65,000 of the price came from the proceeds of sale of Highland Walk, the court thought it correct to consider who in fact owned that money beneficially and that it was not sufficient to simply divide it between the parties on the basis that they had been joint owners of Highland Walk. Unfortunately, ***Hoong*** `s case was not cited to the Court of Appeal when it was considering the division of Highland Walk.

It appears to me that the approach taken by the Court of Appeal in ***Tham*** `s case is that the court should, in a situation in which purchase moneys for a matrimonial home have been derived from the sale of a previous matrimonial home, trace the source of funds for that previous home in order to determine the respective beneficial interests of the parties in that home and should not simply divide the funds equally between the parties on the basis that the legal ownership was a joint one. Such an approach is consistent with the approach that the court takes in every other case of the division of a matrimonial home where the parties have contributed directly to its purchase. In such cases, the court does not divide the property equally between them simply because they had chosen at the beginning to hold as joint tenants. Under the Act, when the court divides matrimonial assets upon divorce, it must have regard to, among other things, the extent of each party`s financial contribution to the acquisition and if the court does not trace back the source of funds it will not be able to have proper regard for all of the factors which the law requires it to consider. Of course, if the marriage had been a long one and the parties had bought and sold several homes during it, this process might become tedious or very difficult because of lack of information through loss of documents and the fading of memories over the years. In that situation, the court will have to trace back only so far as is reasonably practicable. That is not the situation in the present case, however. The documents and information necessary for the tracing exercise were easily available to, and remembered by, the parties.

It is my view therefore that it would be wrong for me to consider Mt Rosie on its own without considering to whom the proceeds of sale of Leedon Heights actually belonged and in what shares.

(ii) Looking at the source of funds - did the husband have any interest in Leedon Heights?

The husband`s submission on this issue was that he had a beneficial half share in Leedon Heights and this interest was converted to a half share of the sale proceeds in Leedon Heights which were used to acquire Mt Rosie. He contended that he gained this interest because Leedon Heights had to be considered as having been conveyed to the parties as a gift to both the husband and the wife on the basis that either:

(a) the donor`s (ie the wife`s father`s) manifested intention had been for the husband to have a

beneficial interest in Leedon Heights; or

(b) in the absence of evidence, a parent`s contribution towards the purchase price of his child`s matrimonial home is presumed to be for the benefit of both the husband and wife.

The wife`s reply to this submission was that her father`s intention had been to make a gift to herself alone notwithstanding that the property had been put into the joint names of the parties. Her counsel pointed out that on the authority of ***Tham Khai Meng*** `s case, the court was able to go behind the fact that Leedon Heights was held in joint names and consider the evidence to determine whether in fact the gift had been made to one party only. Both counsel agreed that whether a gift belongs to one spouse alone or to both of them is a question of the donor`s intention: see ***Family Law*** (8th Ed, 1992) by Bromley and Lowe at p 575.

The wife relied on the following matters as evidence of the father`s intention to benefit her alone when he made the gift. First, there was the father`s evidence in two affidavits which he filed in these proceedings. There he stated that immediately after the marriage, the parties had left for New Zealand and that from the first day he met the husband until he bought the property, he could not have spoken to the husband for more than 15 minutes. He did not know the husband at all and never had any intention of giving any property to him. The father had bought Leedon Heights as he wanted to provide for his only daughter and give her a comfortable home. The husband`s name appeared in the title deeds because at the time of the purchase the wife`s mother persuaded him to put the husband`s name in the sale and purchase agreement. She stressed to him that if he did not do so the husband would feel inferior as his own father was not able to give him anything and the husband would resent the wife and give her endless trouble. The wife`s father was initially opposed to the idea but he was finally persuaded to include the husband`s name in the sale and purchase agreement.

Apart from the father`s evidence, the other matters relied on by the wife to indicate his intention were that the husband did not know of the purchase before it took place and only saw the brochure about the property when he was in New Zealand. Further, the property had been chosen by the wife`s mother and her father had paid not only the purchase price but also the stamp fees and disbursements and his law firm had handled the conveyance. The husband never saw the property before it was bought nor did he have any role to play in anything to do with its acquisition. He did not even know that it had been paid for solely by the father: he thought that both her parents had paid for it. There was no reason why the wife`s father would want to give the property to the husband who was a stranger to him and the husband had admitted in his affidavits that the wife`s father had purchased the property out of concern for the wife alone as he wanted her to live comfortably. In my view, the husband`s ignorance about the purchase and non-involvement in the details of the transaction were neutral factors and could not affect the court`s assessment of the father`s intentions at the relevant time.

The wife also pointed to the conduct of the parties at the time that Mt Rosie was purchased. Out of the net sale proceeds from Leedon Heights of $615,450.15 a sum of $459,897.86 was paid on completion for the purchase of Mt Rosie and the balance of $127,424 was paid out by the wife`s parents first with the prior agreement that she was to repay this amount to them later. The balance amount of $155,832.29 from the sale of Leedon Heights was placed in a fixed deposit account in the wife`s name solely. As regards this last point, the husband`s reply was that this money was placed in the fixed deposit account for only a short time. Initially, all of the proceeds of sale went first to the purchase of Jalan Haji Alias which was bought in joint names and later they put into the purchase of Mt Rosie which was once again bought in joint names. He submitted it was significant that both these properties were purchased in joint names when the wife, a lawyer by training herself, could have reminded him that the proceeds of sale of Leedon Heights belonged solely to her and that the two

subsequent properties would have to be purchased by the parties as tenants-in-common for their respective pro-rata shares. I agree that the wife`s conduct in agreeing that the two subsequent purchases be acquired in joint names was not consistent with any assertion on her part that she was the sole beneficiary of the Leedon Heights sale proceeds.

The main issue here is that of the father`s intention at the time of purchase. In this connection, it is useful to bear in mind the observations of Justice GP Selvam in **Lee Leh Hua v Yip Kok Leong** [1999] 3 SLR 506 . In that case, the question was whether the husband had made a gift to his wife of his share of the sale proceeds of the matrimonial home. GP Selvam J explained (at [para] 15) that `intention`:

> *means manifested intention.* ***Intentio caeca mala*** *for concealed intention is bad. The law concerns itself with overt acts and not covert thoughts ... [the] rule has been laid down that when a man by words or conduct makes apparent his intention to bestow right and title in a thing to another and puts the latter in effective possession and control of the thing, the latter acquires immediate ownership of the thing. It matters not that the transfer is gratuitous because what the law looks for is intention and not consideration ... So, in this case the revealed intention of the respondent will decide the appeal.*

The submission for the husband was that even if one relied on the father`s own evidence the conclusion appeared to be that the husband was meant to have a beneficial interest in Leedon Heights. His evidence that he conveyed the property into the name of the husband to compensate for any feelings of inferiority that the husband might otherwise have, implied that this conveyance was meant to be a meaningful way of making the husband feel that he had a `stake` in Leedon Heights. This could only realistically mean that the husband was to have a beneficial interest in Leedon Heights. Otherwise, the whole arrangement would be meaningless and a sham. Thus, on the one hand, the overt actions of the father were meant to give the husband the impression that he had a stake in the home so that he would not feel inferior. At the same time if the father`s later evidence was to be taken at face value, at all material times his concealed intention was that the wife alone should have a beneficial interest in the property.

If Justice GP Selvam`s observations in ***Lee Leh Hua*** were applied to this case, then it would only be the overt action or manifested intention of the father and not his concealed intention that would be relevant to the question of determining the father`s intention when he conveyed the property into the joint names of the wife and the husband. It is noteworthy that when the parties returned from New Zealand they both went into effective possession of the flat by occupying it as their matrimonial home. It is clear also that the husband considered himself as joint owner of the property: he paid the property taxes and conservancy and maintenance charges for the property. This belief on his part was further indicated by his decision not to implement his original intention of buying a five-room HDB flat, an investment which would have become a valuable asset.

It is also significant that at the time of the purchase the father did not tell anyone that his intention was to give the property to the wife alone. There was no evidence either written or oral of any contemporaneous expression of the father`s intention or of any reservation that he might have had about putting the property into joint names. The father was a well known and senior lawyer at the time of the purchase and would then have been very well aware of the implications of conveying property to parties in joint names. He would have known that if the wife had died during the course of the marriage the husband would have immediately become the sole owner of Leedon Heights by virtue of his position as joint tenant. Knowing this and knowing the various ways in which parties can co-

own property, the fact that the father did not convey the property solely to the wife or even make the parties tenants-in-common with differing shares, so that the husband would have some real though small interest in the property to preserve his face, it appears to me to be an irresistible conclusion that the father did intend to give the property to both of them jointly.

The wife has relied on ***Tham Khai Meng*** `s case where it was found that although the property was in joint names the father there had not intended to make any gift to his son-in-law but only to benefit his daughter. The facts of ***Tham Khai Meng*** were, however, very different. First, the father there as a property developer would not have been as well versed in the intricacies of the law as the father here. Secondly, the property was not purchased as a matrimonial home since the parties were living with the wife`s parents at all material times. Thirdly, the father thought of the husband as a vain and irresponsible man who placed his own needs above those of his wife and children and was content for them to be supported by the wife`s father. The father there was primarily concerned about the future of his daughter and grandchildren and considered that they should have a property for their security.

In this case, the father may, as he alleged, have hardly spoken to the husband at the time the property was bought, but he had no complaints about the way in which the husband was conducting his financial affairs nor was there any allegation of his sponging on the father. No doubt the father did send the wife money while she was in New Zealand but that appears to have been because he wanted her to have a better standard of living than she could have enjoyed on the husband`s salary alone. It was certainly not because the husband was spendthrift and intent on using his salary for his own pleasures so that the wife had no recourse except to turn to her parents for help, as in ***Tham Khai Meng*** `s case. Thus, the father here knew nothing adverse about the husband and had no reason not to want to make a gift to him. The fact that the husband was his son-in-law and his daughter`s chosen spouse was reason enough for the father to want to be generous towards him and make him one of the recipients of the gift of a home that was intended to be occupied by both parties. When the father wanted to make a gift to his daughter alone, he was fully capable of doing so as shown by his purchase of a flat at the Maplewood Condominium which was conveyed to the wife`s name only.

There is also a line of English cases which holds that in the absence of clear and credible evidence to the contrary, a parent`s contribution towards the purchase of his or her child`s matrimonial home is presumed to be for the benefit of both the husband and the wife. See **McHardy & Sons (a Firm) v Warren & Anor** [1994] 2 FLR 338 and **Midland Bank plc v Cooke** [1995] 4 All ER 562. In the first of these cases, the issue was whether the wife had a beneficial interest in the matrimonial home which was in the sole name of the husband. The issue arose in proceedings brought by the husband`s creditors seeking to enforce the security over the home. The evidence was that the husband`s parent had paid towards the deposit of the parties` first matrimonial home. Dillon LJ who delivered judgment on behalf of the Court of Appeal stated (at p 340):

> *To my mind it is the irresistible conclusion that where a parent pays the deposit, either directly to the solicitors or to the bride and groom, it matters not which, on the purchase of their first matrimonial home, it is the intention of all three of them that the bride and groom should have equal interests in the matrimonial home, not interests measured by reference to the percentage half the deposit there is to the full price, and certainly not an intention that the wife should have no interest at all because the property was put into the sole name of the husband.*

In my judgment, the evidence in this case supports the inference that the father`s actual intention was to make a gift to both the parties and not only to his daughter. Even if the weight of the evidence does not go so far as I think it does to establish such an intention, the evidence is clearly not weighty enough to be considered as clearly and credibly evincing an intention on the part of the father to benefit his daughter alone. Thus, I would as an alternative, invoke the presumption described in the cases cited in [para] 27 and on that basis decide that in this case the intention of the father was to give the husband and wife equal interests in Leedon Heights.

Distribution of Mt Rosie

When purchasing Mt Rosie the parties used $541,897.85 from the proceeds of sale of Leedon Heights in part payment of the purchase price. On the basis that they had equal interests in Leedon Heights, each of them should be attributed with half of this payment (ie the sum of $270,948.92). In addition to the sum of $270,948.92 the wife must be credited as having paid the sums of $14,500 and $57,424 which were paid on by her father. The husband did not contend that these sums were gifts to him. The wife`s total contribution was therefore $342,872.92. The husband, on the other hand, contributed the sum of $270,948.92 plus $281,086 (his mortgage payments plus interest) making a total of $552,034.92.

On the basis of the parties` direct contributions, the husband`s proportionate share of Mt Rosie would be 61.7% whereas the wife`s share would be 38.3%. The husband suggested that the property be divided between them equally to reflect the wife`s indirect contributions to the family. The learned district judge gave the wife an extra seven percent interest in the home to reflect those contributions. As she pointed out, the parties were married for 14 years, there was a young child in the wife`s care and the wife had mainly been responsible for taking care the needs of the child. I consider that seven percent does not adequately reflect the wife`s contributions in that respect. In coming to that percentage, the judge was probably influenced by the fact that she had already found the wife to own 68% of the property. In my view, it would be just to give the wife an additional 15% interest (or thereabouts) in the home in order to reflect her non financial contributions. I accordingly allow the husband`s appeal in relation to the division of Mt Rosie and order that the net proceeds of sale after deducting the outstanding mortgage loan and the costs of the sale be divided as follows: 46% to the husband and 54% to the wife. The husband shall refund his CPF account from his share of the proceeds.

SICC membership

The judge found that the wife was given an SICC junior membership by her parents and paid $1,000 in 1982 to convert her junior membership to an adult membership. When the club memberships were made transferable, the husband paid monthly instalments for five years amounting to $50,000 for that privilege. In the court below, the husband asked for return of $50,000 paid by him and the learned judge was of the view that it was just and equitable that it be returned since the wife was to retain the club membership.

The wife has appealed against that decision on the basis that what the husband had in fact paid for the transferability of the club membership was not $50,000 but only $24,580. The wife referred the court to a letter from the SICC dated 29 July 1999 which shows that the $50,000 was not paid wholly by monthly instalments but as follows:

	Date	Source of Payment	Amount
1	7 February 1992	Cheque drawn on POSB account 765-01620-2	$14,000
2	October 1992 to April 1996	$500 monthly paid by GIRO from POSB account 028-18820-0	$21,500
3	From April 1996	Paid by two cheques from the wife and by GIRO from POSB account 9812-081-107-30400-2	$14,500

The accounts mentioned in items 1 and 2 above were joint accounts in the names of the parties whilst the account in item 3 was an account held solely by the wife. Accordingly, the wife on her own paid $14,500 of the transfer fee whilst $35,500 came from the joint account. The husband did not dispute that payments towards the transfer fee were made from the joint account.

The wife submitted that the husband had contributed 70% of the moneys in the joint account while she had paid 30% of those moneys. She drew up a table showing the parties respective contribution to the joint account between 1991 and 1996 which substantiated the calculation of the proportions she contended for. Since the husband contributed 70% of the moneys in the joint account, he would be entitled to 70% of the $35,500 paid from the joint account which worked out to a sum of $24,850. He was not entitled to recover the whole $50,000.

With due respect to the learned judge, it appears that she overlooked the significance of the letter from the SICC detailing the way in which payment of the transfer had been made. I accept the wife`s submissions on this point and accordingly allow her appeal and substitute the order made below with an order that the wife shall pay the husband $24,850. Counsel has informed me that this amount has in fact already been paid by the wife.

Costs

I reserve the issue of costs to be decided when I hear the parties on the issue of custody.

Outcome:

Appeals allowed.