

Koh Kim Eng v Lim Geok Yian
[2001] SGHC 230

Case Number : Suit 304/2001
Decision Date : 20 August 2001
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Jeffrey Beh Eng Siew (Lee Bon Leong & Co) for the plaintiff; Ismail Hamid (Ismail Hamid & Co) for the defendant
Parties : Koh Kim Eng — Lim Geok Yian

Trusts – Constructive trusts – Immovable property – Requirement of written evidence of express trust – Whether requirement affects creation or operation of constructive and other trusts – ss 7(1) & 7(3) Civil Law Act (Cap 43, 1999 Ed)

Trusts – Constructive trusts – Immovable property – Ownership of property -Whether defendant holding half share on trust for plaintiff – Plaintiff altering position in reliance on arrangements regarding property's ownership – Whether unconscionable for defendant to claim interest in property

JUDGMENT:

1. In this case, the plaintiff, Madam Koh Kim Eng, sought a declaration that a half share of No 63 Jalan Bangsawan is held by her sister-in-law, the defendant, Madam Lim Geok Yian, on trust for her, and an order that Madam Lim transfer the said half share to her.

Background

2. Madam Koh married Mr Chua Chi Moo, whose younger brother, Mr Chua Ki Seng, married Madam Lim.
3. At the material time, the two brothers, Mr Chua Chi Moo and Mr Chua Ki Seng, were partners of a firm, Federal Electronics & Trading Co (hereinafter referred to as "FETC").
4. It is not disputed that FETC paid for two properties. The first, No 63 Jalan Bangsawan (hereinafter referred to as the "Bangsawan property"), was purchased for \$175,000 in April 1980. A loan of \$105,000 was provided by Malayan Banking Berhad for the purchase of the said property. As the Bangsawan property was originally intended to be the matrimonial home for both the brothers, it was registered in the names of the two brothers' wives, both being tenants-in-common with equal shares.
5. Upon completion of the purchase of the said property, only Madam Koh and her family moved into the Bangsawan property.
6. On or about January 1981, FETC's funds were used to purchase a second property, No 19B Sam Leong Mansion (hereinafter referred to as the "Sam Leong property"), an apartment, for \$170,000. A loan of \$90,000 was obtained from Chung Khiaw Bank to finance the purchase of this property. Although the funds required for the purchase of the Sam Leong property were provided by both brothers, it was registered in the sole name of Madam Lim. After the completion of the sale and purchase, she and her family moved into the apartment.
7. Madam Koh alleged that the Sam Leong property was registered in the sole name of Madam Lim on the clear understanding that she would in return give up her half share of the Bangsawan property. She asserted that it was agreed that upon the completion of the sale and purchase of the Sam Leong

property, Madam Lim's registered half share of the Bangsawan property would be held on trust for her. This was denied by Madam Lim.

8. The Bangsawan and Sam Leong properties were subsequently re-mortgaged to Chung Khiaw Bank for the purpose of obtaining funds for the family business, which was subsequently converted to a limited company, known as Federal Electronics Pte Ltd.

9. By the 1990s, Madam Lim and her husband had marital problems and he moved out of the matrimonial home. On 5 December 2000, Madam Lim's solicitors, Choo & Joethy, wrote to Chung Khiaw Bank to serve notice that she wanted the mortgage of the Bangsawan and Sam Leong properties discharged. The letter stated as follows:

We act under the instructions of Ms Lim Geok Yian, the legal owner of:

1. No 19 Sam Leong Road, Sam Leong Mansion, in her sole name; and
2. No 63 Jalan Bangsawan as tenant-in-common in equal shares with her sister-in-law, Ms Koh Kim Eng.

We are instructed by our client that the two pieces of property above captioned were and are mortgaged to your good office sometime in September 1983 in order to secure a loan and overdraft facilities for Messrs Federal Electronics Pte Ltd ("the Company") of which she was/is a director.

Upon her instructions, we are giving you Notice that she would like to have the existing mortgage discharged.

10. In response, Madam Koh's solicitors, Lee Bon Leong & Co, wrote to Choo & Joethy on 9 February 2001 to request Madam Lim to transfer her half share in the Bangsawan property to Madam Koh. The letter was in the following terms:

We are instructed by our client that by letter of 5.12.2000 under the instructions of your client Ms Lim Geok Yian, you wrote to the Manager of Chung Khiaw Bank Limited ("CKBL") claiming that your client is the legal owner as tenant-in-common in equal shares with our client and also giving notice that she would like to have the existing mortgage discharged.

We are instructed that your client is fully aware that although she is registered as a tenant-in-common in equal shares with our client, she is not the legal owner or beneficial owner but merely holding the same in trust for our client.

This property was bought in 1980 as a matrimonial property of our client and her husband, Mr Chua Chi Moo, and they have lived there since together with their children. This property is also mortgaged to CKBL for facilities for Federal Electronics Pte Ltd, our client's husband's business. Our client has no intention of discharging the mortgage.

We are now instructed to and hereby give your client Notice to take steps to transfer the half share registered under her name to our client forthwith.

Please let us hear from you within seven (7) days from the date hereof as to whether your client is prepared to do so, failing which our client shall commence action against your client without any further reference.

11. Choo & Joethy replied on 26 February 2001 and denied that Madam Lim held her half share of the Bangsawan property on trust for Madam Koh. In view of the stand adopted by Madam Lim, Madam Koh instituted the present action.

Section 7 of the Civil Law Act

12. It ought to be noted that there was no written evidence of the existence of the alleged trust. Section 7(1) of the Civil Law Act provides as follows:

A declaration of trust respecting any immovable property or any interest in such property must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.

13. However, section 7(3) of the said Act provides that the requirement of written evidence does not affect the creation or operation of resulting, implied or constructive trusts. As such, if Madam Koh can establish that Madam Lim is a constructive trustee of her half share of the Bangsawan property, this case is unaffected by section 7(1) of the Civil Law Act.

Evidence of Madam Koh and the two brothers

14. Madam Koh's case is that it is improbable, and even incredible, that she and the two brothers would combine their financial resources to benefit Madam Lim in such a disproportionate manner when they purchased the two properties. After all, the family business which provided the funds for the purchase of the said properties was started by the two brothers. Furthermore, the price paid for both properties was approximately the same, one being \$175,000 while the other was \$170,000 and the family business had utilised both properties to obtain credit facilities.

15. Madam Koh contended that Madam Lim's refusal to honour the agreed arrangements on the ownership of the Bangsawan and Sam Leong properties is inequitable and vindictive. She pointed out that Madam Lim should not be allowed to benefit unjustly from the trust placed on her by the family.

16. Madam Koh's husband, Mr Chua Chi Moo, testified that his wife's version of the arrangements relating to the division of the Bangsawan and Sam Leong properties is correct.

17. Madam Lim's husband, Mr Chua Ki Seng, also supported his sister-in-law's claim. In para 4 of his affidavit of evidence-in-chief, he said as follows:

I confirm that my only matrimonial property is 19B Sam Leong Mansion Singapore. No 63 Jalan Bangsawan Singapore is the matrimonial home of my brother and the Plaintiff, and the Defendant and myself have no interest in the property.

18. When cross-examined, Mr Chua Ki Seng reiterated that it had been agreed that the Bangsawan property would belong to Madam Koh after the purchase of the Sam Leong property. He said as follows:

After the property at 63 Jalan Bangsawan was bought, my elder brother and I had several discussions and we mentioned that should we purchase another property, the second property would go to my family while my brother would keep the first property at Jalan Bangsawan. We viewed quite a number of properties.

19. Mr Chua Ki Seng, who was clearly disappointed that his wife had not stood by the agreed arrangements on the ownership of the two properties, also explained why the Sam Leong property was not put in the names of the two wives as the first property at Jalan Bangsawan had been in the following terms:

There is a Chinese saying that had we known that this would have happened, we would not have done what we did. The first property was in the names of both our wives because it was our intention to have both families move into that property. However, as the second property was intended to be my home, it was put in my wife's name.

20. When asked why the question of ownership was not settled at the lawyer's office when they were there to sign the documents for the purchase of the Sam Leong property, Mr Chua Ki Seng said as follows:

Jalan Bangsawan was mortgaged to the bank and all of us were aware of that. We knew that one property was for my brother and one for us. Prices for the properties were the same. I am a traditional Chinese man and as far as my brother and I are concerned, we act on what we say. Once we have given our word, it's good enough. We never renege on our promise. Money was made by my brother and I.

21. A relevant question which arises is why it took Madam Koh more than 20 years to assert her claim against Madam Lim. When cross-examined, Madam Koh explained as follows:

Q. Why did you take 20 years to claim the trust property?

A. We were living in harmony and it was only when we received a letter from her lawyer informing us that she wanted to collect the title deed to the Bangsawan property that I approached my lawyer.

Q. The defendant merely wanted to redeem the mortgage?

A. When I said that she wanted to collect the title deed, I meant that she wanted to claim her half share.

22. I believe Madam Koh. Although she should have had the property transferred to her much earlier, the two brothers had utilised the Bangsawan property as security for loans to their business. As the family was then living in harmony and the question of ownership of the Bangsawan property appeared to have been amicably settled, she did not think it necessary to take steps to have the property registered solely in her name. I believe that had Madam Lim not fallen out with her husband and not written to the bank to stake her claim after 20 years to a half share in the Bangsawan property, these proceedings would not have been initiated by Madam Koh.

Madam Lim's evidence

23. Madam Lim denied the existence of the trust. According to her, she and her family did not move into the said property because she wanted to accommodate Madam Koh, who had a large family and was then living in dilapidated rented premises at Kelantan Lane. She added that she allowed Madam Koh to have exclusive use of the property out of sympathy and compassion. She asserted that the first time she was informed by Madam Koh that the Bangsawan property was being held in trust for

her was when Madam Koh's solicitors wrote to her on 9 February 2001. She also pointed out that when the Sam Leong property was bought, no one requested her to transfer the Bangsawan property to Madam Koh and her husband did not ask her to see a solicitor to sign a Deed of Trust declaring that she held 50% of the said property on trust for Madam Koh.

24. Madam Lim's evidence does not support her claim to half of the Bangsawan property. To begin with, she knew the source of the funds for the purchase of the Bangsawan property. When cross-examined, she said as follows:

Q. Did the funds to purchase the Bangsawan property come from Federal Electronics & Trading Co?

A. Yes.

25. Madam Lim also knew where the money for the purchase of her apartment at Sam Leong Mansion came from. When cross-examined, she said as follows:

Q. When the property at Sam Leong Mansion was bought, did you know where the funds came from?

A. Yes, the company.

Q. The company belongs to your husband and his brother?

A. Yes.

26. Madam Lim could not explain why her brother-in-law would agree to let her have sole ownership of the Sam Leong property without requiring her to give up her interest in the Bangsawan property to his wife. When cross-examined, her explanation was confusing and unconvincing. She said as follows:

Q. The Sam Leong property was registered in your name although your brother-in-law contributed to the funds to purchase it?

A. Yes.

Q. Are you saying this was something your brother-in-law gave to you?

A. My husband gave it to me. Since the decision was made by the brothers, it was in my name. I don't know whether my brother-in-law gave it to me. I am not claiming it as mine. It could have been deducted from my husband's account.

27. When pressed, Madam Lim admitted that she did not know whether the sum paid for Sam Leong Mansion had been deducted from her husband's account. When cross-examined, she said:

Q. You don't know that as a fact?

A. No.

Q. By the same token, your brother-in-law could have paid for the Sam Leong Mansion apartment entirely.

A. I don't know.

28. Madam Lim subsequently conceded that her brother-in-law could not, by putting his money into the Sam Leong property, have intended it as a gift to her. When cross-examined, she said:

Q. I put it to you that if the Sam Leong property was bought with company funds and put in your name, it could not have been a gift from the plaintiff's husband to you.

A. *Definitely not a gift from my brother-in-law.*

(emphasis added)

29. It is also important to note that Madam Lim conceded that she had no say in the purchase of the two properties and that all decisions regarding the purchase of property were made by her husband and his brother. When cross-examined, she said as follows:

Q. Was it after you decided not to move into the Jalan Bangsawan property that you looked for another property?

A. That was not a decision for me to make. Whatever decisions were made where property is concerned, they were made by the two brothers.

30. Subsequently, in reply to a question about company matters, she reiterated that she had no say in the purchase of the properties when she said as follows:

This is the typical Chinese family business. Even for the buying of properties, the ladies have no say. Only the men make the decisions.

(emphasis added)

31. In view of Madam Lim's evidence that decisions regarding the purchase of properties were made by the two brothers, the fact that both brothers had given clear evidence that all the parties concerned had agreed that the Bangsawan property belonged to Madam Koh and the Sam Leong Mansion belonged to Madam Lim cannot be ignored. As such, a question arises as to whether Madam Lim is a constructive trustee of her half share of the Bangsawan property.

Whether there was a constructive trust

32. The nature of a constructive trust has been elucidated in innumerable cases. Relevant to the present case is the following passage from *Halsbury's Laws of England*, 4th ed, Vol 48, para 586:

[I]f a person attempts to assert full beneficial ownership of property by relying unconscionably on the absence of the statutory formalities requisite for another person's interest, he will be treated as holding the property on constructive trust for that other person.

33. In a recent case, *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400, 409, Millett LJ said:

A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property

and deny the beneficial interest of another. In the first class of case, ... the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust.

34. I believe that Madam Koh, her husband and Madam Lim's husband are telling the truth regarding the arrangements with respect to the purchase of the Bangsawan and Sam Leong properties. I do not believe that Madam Lim was unaware of the arrangements regarding her relinquishing of her half share of the Bangsawan property in return for the Sam Leong apartment being purchased in her name.

35. There being a clear understanding between all the parties in the present case that Madam Lim would give up her half share in the Bangsawan property in return for having the Sam Leong property registered solely in her name, it would be unconscionable for her to claim an interest in the Bangsawan property. To borrow Millett's LJ's words in *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400, 409, which apply, *mutatis mutandis*, to the present case, Madam Lim's possession of the Sam Leong property is coloured from the first by the trust and confidence by means of which she obtained it.

36. Madam Koh has certainly altered her position as a result of the common understanding regarding the ownership of the Bangsawan property. Had Madam Lim not agreed that she would give up her share in the Bangsawan property after the purchase of the Sam Leong property, Madam Koh and her husband could have made other arrangements to ensure a more equitable distribution of the two properties. For more than 20 years, Madam Koh relied on the agreed arrangements. Madam Lim cannot be allowed to upset these arrangements.

37. Madam Koh thus succeeds in her application to have Madam Lim's half share in the Bangsawan property transferred to her. Madam Koh is entitled to costs.

Sgd:

TAN LEE MENG
JUDGE