Manik Thanwardas Binwani v Tulsidas Udharam Binwani and Another
[2003] SGHC 100

Case Number : DA 29/2002

Decision Date : 29 April 2003

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Chan Kia Pheng (Khattar Wong & Partners) for the appellant; Sharanjit Kaur (Khattar Wong & Partners) for the appellant; V K Rai (V K Rai & Partners) for the respondents

Parties : Manik Thanwardas Binwani — Tulsidas Udharam Binwani; Morley Udharam Binwani also known as Murlidhar Udharam Binwani

1. The appellant, Manik Thanwardas Binwani ("Manik") appealed against the decision of the District Judge, who dismissed his claim on behalf of the estate of his late father for part of the compensation paid for the compulsory acquisition of No 4 North Bridge Road in 1971. I dismissed his appeal and now give the reasons for my decision.

2. In March 1950, Udharam Dayaram Binwani ("UD") and his brother, Thanwardas Dayaram Binwani ("TD"), set up a partnership called "Binwanis". They acquired a number of properties in Singapore and Penang, including No 4 North Bridge Road, which was purchased in 1956 in their joint names as tenants in common in equal shares. This Singapore property, which cost them $59,000, was paid for with $19,000 from the assets of the partnership and an overdraft from Chung Khiaw Bank.

3. On 30 September 1960, the partnership was terminated by a dissolution agreement that provided, inter alia, as follows:

(i) UD would take over the assets and liabilities of Binwanis in Singapore;

(ii) TD would take over the assets and liabilities of Textile Hall, a business in Penang;

(iii) No 4 North Bridge Road was to be sold at the best market price and until it was sold, it was to remain the collective property of UD and TD.

4. UD passed away in May 1964 and his son, Tulsidas Udharam Binwani ("Tulsidas"), the respondent, was appointed one of the executors of his estate. The other executor, the second respondent, Morley Udharam Binwani, passed away before the trial of the action. TD died in December 1978 and his son, Manik, the appellant, was appointed the administrator of his estate.

5. Several years before TD's death, the Government acquired No 4 North Bridge Road on 12 October 1971 and a sum of $104,930 was offered as compensation for the compulsory acquisition. An appeal was lodged against the award and for this purpose, a sum of $5,000 was required as a deposit. In the meantime, Tulsidas requested the Collector of Land Revenue to pay the initial award of $104,930 less the said deposit of $5,000 to Chung Khiaw Bank, which had provided an overdraft facility to UD and TD for the purchase of the said property.

6. After the hearing of the appeal against the initial award, the compensation for the acquisition of No 4 North Bridge Road was increased by $44,970, with interest payable at the rate of 6% per annum from 1 December 1971 until the date of payment. This additional sum was paid into court because of a dispute between TD and his nephew, Tulsidas, with respect to how the additional

compensation should be apportioned between them.

7. It was not until August 1992 that half of the additional award, totalling $22,485, and interest was paid out to TD's estate pursuant to an order of the High Court in Originating Summons No 449 of 1979. As for the remaining $22,485, which Manik concedes is due to UD's estate, it had still not been paid out in late 2001.

8. In the action presently being considered, Manik claimed in his capacity as the administrator of his father's estate the sum of $49,965 from UD. This sum is half the initial compensation of $104,930 less the sum of $5,000 which was deposited with the Accountant-General for the appeal against the initial award. Manik's case is that the initial award of $104,930 should have been divided equally between TD and UD's estate. He asserted that Tulsidas fraudulently misappropriated his father's share of the initial award by arranging for that sum to be paid to Chung Khiaw Bank.

Whether Tulsidas is guilty of fraud

9. It is trite law that a fiduciary relationship exists between partners. Indeed, in *Helmore v Smith* (1866) 38 CH D 436, Bacon VC observed that a stronger case of fiduciary relationship cannot be conceived than that which exists between partners. It is also clear that after the dissolution of a partnership, the fiduciary relationship between partners does not end in relation to matters pertaining to the winding up of the affairs of the partnership. In *Thompson's trustee in bankruptcy v Heaton* [1974] 1 All ER 1239, 1249, Pennycuik VC explained:

> Upon the dissolution of a partnership, and in the absence of any agreement to the contrary, … for the purposes of winding up, the partnership is deemed to continue; the good faith and honourable conduct due from every partner to his co-partners during the continuance of the partnership being equally due so long as its affairs remain unsettled; and that which was partnership property before, continuing to be so for the purpose of dissolution, as the rights of the partners require.

10. It follows that UD and, after his death, his executors had a fiduciary relationship with TD with respect to the distribution of partnership property. Relying on *Waimiha Sawmilling v Waione Timber Co Ltd* [1926] AC 101, where the Privy Council made it clear that fraud implies some act of dishonesty, the trial judge said that for Manik to succeed in his claim, he must establish that TD's estate was deprived of its share of the compensation award by an act of dishonesty or deception on the part of Tulsidas.

11. As has been mentioned, part of the compensation money had already been paid to the estate of TD more than 10 years ago. Notwithstanding this, Tulsidas asserted that he did not misappropriate any money due to TD because the latter had agreed to give up his interest in the said property for $29,026.82 sometime between 30 September 1960 and February 1961. He added that it was further agreed that UD and/or Binwanis would deliver cash and goods to TD and Textile Hall, which was TD's business in Penang, in satisfaction of the sum due to him. As such, TD was no longer one of the owners of No 4 North Bridge Road when it was acquired in 1971.

12. For the purpose of determining whether or not TD had divested his interest in No 4 North Bridge Road, the 1960 ledger of the Binwanis was carefully considered by the trial judge. Both Manik and Tulsidas called expert witnesses to interpret the said ledger, in which was recorded an amount of $29,026.82 under the title "Property 4 North Bridge Road". The trial judge found the evidence of Manik's expert witness, Mr Michael Grenville Gray, a certified public accountant, unhelpful and noted that he had not examined the accounts of Textile Hall, TD's business in Penang, before rendering his

opinion. Mr Gray admitted that he did not know whether there was a receipt of $29,026.82 with respect to TD's half share of No 4 North Bridge Road in the Textile Hall's accounts. What troubled the trial judge was that Mr Gray was "unable to offer the Court a clear, steadfast and unwavering interpretation" and that he "appeared to have shifted his ground on material aspects of his opinion".

13. In contrast, the trial judge found the evidence of Tulsidas' expert witness, Mr Zafrullah bin Ahamed Sha, who is also an accountant, more helpful. After evaluating his evidence, the trial judge concluded as follows in para 54 of her judgment:

> [I] prefer Mr Zafrullah's expert evidence and accept that it was more probable than not that TD's interest in No 4 was liquidated and quantified at $29,026.82 and TD's firm, Penang Textile Hall, had received the payment of $29,026.82 from UD or Binwanis in diminution of the amount owed to TD. In this connection, it is significant that TD himself had in his note juxtaposed the entry "1/2 share in property No 4 North Bridge Road - $29,026.82" amongst the items of goods and cash which he had *taken* on 31 December 1960, January and February 1961 to reduce UD's indebtedness to him. As such, it is improbable that this entry was part of a dissolution wish list. Rather, it was part of a list itemising what TD had already received from UD and/or Binwanis pursuant to the dissolution, and was evidence of TD's agreement to accept $29,026.82 in satisfaction of his shares in No 4. To this extent, the dissolution agreement was varied.

14. The trial judge also considered the effect of clause 3(a) of the dissolution agreement between UD and TD. Under its terms, UD was to manage No 4 North Bridge Road until it was sold and there was to be a separate account for the income derived from the property and the expenditure incurred. The understanding must have been that the income generated from and the expenditure incurred on this property were to be shared equally. However, from 1960 until 1971, when the said property was acquired, neither UD nor Tulsidas had looked to TD or his estate for any contribution towards the expenditure on the said property. The trial judge said that the fact that no claim had been made for contribution towards the expenses of No 4 North Bridge Road supported Tulsidas' contention that TD had divested his interest in the said property in favour of UD.

15. As the trial judge held that TD was no longer one of the owners of No 4 North Bridge Road when it was compulsorily acquired in 1971, it followed that Tulsidas was not guilty of fraudulent misappropriation of any part of the compensation paid for the said acquisition. I agreed with her decision, which was supported by cogent reasons.

Laches

16. Another ground relied on by the trial judge for rejecting Manik's claim was laches.

17. Manik testified that by March 1977, he knew that Tulsidas had fraudulently misappropriated his father's share of the compensation paid for the compulsory acquisition of the said property. On 12 October 1977, his solicitors, Kirpal Singh & Co, wrote to Tulsidas to demand the payment of TD's alleged half share of the initial award. In his reply on 15 October 1977, Tulsidas stated that TD had "forfeited his rights when he deviated from the terms of the dissolution agreement and took half the share in [No 4 North Bridge Road] at [a] value fixed by both the partners at that time". On 18 October 1977, Kirpal Singh & Co sought additional information from Tulsidas on the alleged deviation from the terms of the dissolution agreement and on the value that was allegedly agreed upon between UD and TD for the latter's share in the said property. On 9 November 1977, Tulsidas replied that the dispute could not be settled even if he provided the additional information sought and added that he was prepared to accept service of a writ. Kirpal Singh & Co's involvement in the dispute apparently ended with Tulsidas' reply. The trial judge said that Manik was unable to give a

satisfactory explanation for his inaction thereafter.

18. The trial judge found that Tulsidas had been prejudiced by the exceedingly long delay on Manik's part to prosecute his claim. In his letter of 9 November 1977 to Kirpal Singh & Co, Tulsidas alluded to a 'claim' which he had against TD for contribution towards the expenses of maintaining No 4 North Bridge Road up to the time it was compulsorily acquired if TD really had a half share in the compensation money. It transpired during the trial that Tulsidas has since lost the requisite documentary evidence to prove the expenses incurred. More importantly, the long delay had caused Tulsidas' claim for these expenses to be time-barred.

19. The trial judge, who relied on *Mechanical Handling Engineering (S) Pte Ltd v Material Handling Engineering Pte Ltd* [1993] 2 SLR 205 and the decision of the Court of Appeal in *Tay Joo Sing v Ku Yu Sang* [1994] 3 SLR 719, summed up the position in para 40 of her judgment in the following terms:

> [Manik] waited for 15 1/2 years till August 1992 to make a claim for the half share and even then, it was not for the full claim of $49,965 but only for $22,485 plus the interest thereon that was then lying in court. It was only upon the commencement of this action in 1993 that Manik finally sought to be paid the full sum of $49,965 by Tulsidas. …. Even when … Manik … had the benefit of a solicitor's assistance and advice on the claim in 1977-78, [he had no explanation whatsoever for his] failure to commence proceedings then…. In the premises, I am of the view that by reason of the prolonged, inordinate and inexcusable delay on Manik's part, Manik had acquiesced or waived any fraudulent conduct on Tulsidas' part and has accordingly been guilty of laches.

20. No credible reason was given as to why the trial judge was wrong in her conclusion.

Conclusion

21. The arguments that had been raised during the trial were repeated during the appeal. In my view, the trial judge furnished valid reasons for holding that TD had given up his half share of No 4 North Bridge Road before 1971. She also had ample reasons for finding that there was prolonged, inordinate and inexcusable delay in the prosecution of Manik's claim to part of the compensation for the compulsory acquisition of No 4 North Bridge Road. As I was not persuaded that she had erred, I dismissed the appeal against her decision with costs.