Naidu Rajasimha and Another v Naidu Sathyamurthi Narsimhan and Others
[2004] SGHC 124

Case Number : Suit 1438/2002

Decision Date : 10 June 2004

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : P Suppiah and Elengovan Krishnan (P Suppiah and Co) for plaintiffs; R Kalamohan (Kalamohan and Co) for defendants

Parties : Naidu Rajasimha; Naidu Veeraraghava — Naidu Sathyamurthi Narsimhan; Naidu S. Geetha; Arumugam Mangalagowri

Trusts – Resulting trusts – Presumed resulting trusts – Whether presumed resulting trust arose on facts.

10 June 2004

Belinda Ang Saw Ean J:

1 This action is brought by the first and second plaintiffs acting as administrators of the estate of their late mother, Lakshmi Naidu, who died on 24 January 1992. The first plaintiff is Rajasimha Naidu ("RN"). The second plaintiff is Veeraraghava Naidu ("VN"). The administrators seek various declarations and orders in respect of, *inter alia*, a property known as 62 Owen Road, Singapore ("the property"), the title to which was registered in the sole name of their eldest sibling, Sathya Ramaswamy Sathyamurthi Naidu ("SRSN"), who died on 10 November 1997. The dispute principally concerns the beneficial ownership of the property and the circumstances in which the property was acquired in the name of SRSN as long ago as May 1980.

2 The first defendant is SRSN's son, Sathyamurthi Narsimhan Naidu, also known as Narsimha Naidu ("NN"). The second defendant is SRSN's daughter, S Geetha Naidu ("GN"). Both are sued respectively in their capacity as administrator and administratrix of SRSN's estate. The third defendant, Mangalagowri Arumugam ("MA"), is NN's wife. The husband and wife are sued on account of a cash gift of $850,000 that SRSN gave to them in his lifetime. With the cash gift, NN and MA purchased a property known as 6 Jalan Muhibbah, Singapore 368718. SRSN lived there, together with his son and daughter-in-law, until his death.

3 The plaintiffs are represented by Mr P Suppiah assisted by Mr Elengovan Krishnan. The defendants are represented by Mr R Kalamohan.

4 It is common ground that a sum of $1,496,912.61 was paid as compensation on account of the compulsory acquisition of the property in 1996. The initial compensation sum of $850,000 was paid to SRSN. The balance compensation sum of $646,691.61 was paid after SRSN's death to his estate. It was distributed on 7 September 2002 to NN and GN as beneficiaries of the estate of SRSN.

5 It is also common ground that, back in 1918, the property together with a row of three other houses along Owen Road (*ie*, nos 58, 60, 62 and 64) belonged to RN's great-grandfather, H Somapah. The latter's will was complicated and problematic. Under the will, the date of distribution of the estate was 21 years after the death of the children and grandchildren living at the time of Somapah's death in 1919. Lakshmi Naidu was one of the two surviving grandchildren.

6 RN testified that, owing to the difficulties with the administration of Somapah's estate, it was more expedient for the trustees to sell the four houses and distribute the proceeds when the trustees were allowed to do so under the will. There was one title deed for the four houses. An entry in the Index of Lands 1887 for the District of Rochor recorded the conveyance of the four houses on 27 April 1979 to Associated Auto Agencies (Pte) Ltd ("Associated Auto"). The same information is also found in the indenture of conveyance dated 15 May 1980 ("the Indenture") made between Associated Auto on the one part, and the five purchasers of the same four houses, on the other.

7 As is evident from the Indenture, Associated Auto, for the sum of $60,000, sold and conveyed the land and buildings erected thereon and known as 58, 60, 62 and 64 Owen Road, Singapore, to SRSN and four others as tenants in common for their respective shares. SRSN put up a sum of $15,000 for his quarter share. In practical terms and to all intents and purposes, 62 Owen Road was purchased for $15,000 in the sole name of SRSN.

8 The plaintiffs' pleaded case is that SRSN held the property on trust for Lakshmi Naidu, who was one of the beneficiaries of the estate of H Somapah and a sitting tenant of the property. The trustees of the estate of H Somapah made arrangements to have the property vested in Lakshmi Naidu and for that purpose transferred the property to a nominee, Associated Auto. On or about 15 May 1980, Associated Auto transferred the property to SRSN to hold the same as trustee for Lakshmi Naidu. At the time of the transfer of the property in the name of SRSN, it was agreed orally between RN, SRSN and their mother that SRSN was to hold the property on trust for Lakshmi Naidu, with RN paying for all the outgoings of the property including the purchase price and legal fees. The purchase price of $15,000 for the property was paid by RN to the vendor, Associated Auto. RN also paid the legal fees and other incidentals connected with the purchase in the sum of $6,950.

9 The defendants have denied the existence of the trust as alleged or at all. At all material times, SRSN was the legal and beneficial owner of the property. It was SRSN who had paid for the acquisition of the property with his own money.

10 Although the plaintiffs have pleaded an alleged oral agreement, it was never their case before me that the estate's entitlement to the declarations and orders is on the basis of that oral agreement notwithstanding ss 6 and 7 of the Civil Law Act (Cap 43, 1999 Rev Ed). Neither are the plaintiffs claiming a constructive trust. The plaintiffs' case was confined to a claim made by the estate under a resulting trust. This was confirmed by counsel for the plaintiffs and the plaintiffs' closing submissions. At the forefront of the plaintiffs' case is the contention that it was RN who provided the funds to purchase the property, but Lakshmi Naidu was beneficially entitled to the property under a resulting trust. Therefore, her estate was entitled to the acquisition compensation of $1,496,912.61.

11 A presumed resulting trust, which is relied upon by the plaintiffs here, arises where property is bought by A in, or gratuitously transferred into, the name of B (or the names of A and B) such that B (or A and B) may be rebuttably presumed to hold the property on trust. The classic statement of the law on this subject is to be found in the judgment of Eyre CB in *Dyer v Dyer* (1788) 2 Cox Eq Cas 92; 30 ER 42 at 43, cited with approval and followed in *Peh Eng Leng v Pek Eng Leong* [1996] 2 SLR 305 at 309, [16]:

> The clear result of all the cases, without a single exception, is, that the trust of a legal estate … results to the man who advances the purchase-money … It is the established doctrine of a Court of equity, that this resulting trust may be rebutted by circumstances in evidence.

12 The purpose of these proceedings is to determine the beneficial ownership of the property. The beneficial interest in the property under a resulting trust is ascertained by the process of identifying the person who provided the purchase money to acquire the property and, if more than one person is identified as having done so, by ascertaining the respective amounts provided. The issue which I have to decide is whether the property was vested beneficially in Lakshmi Naidu or whether, as the defendants contend, the entire beneficial interest was vested in SRSN and did not therefore fall into the estate of Lakshmi Naidu.

13 With the passage of time there are, inevitably, evidential problems in establishing the facts and in discovering exactly how the purchase was financed, and why Lakshmi Naidu agreed as alleged to register the title to the property in SRSN's name. For nine years after the death of Lakshmi Naidu in 1992, everyone proceeded on the basis that the property belonged to SRSN. Views apparently changed, however, in 2001. By then the property that was purchased for a meagre $15,000 had been compulsorily acquired for $1,496,912.61. At any rate, SRSN, in whose name the property was purchased, was allowed to remain in possession of the property for five years after Lakshmi Naidu's death until it was acquired and he moved out with his family. This action was brought in November 2002.

14 RN is a retired civil servant. The last position held by him prior to his retirement in April 1981 was that of Deputy Superintendent of Police. He was, at one time, the Deputy Director of the Corrupt Practices Investigation Bureau. He came across as an austere but conscientious and meticulous person. His attention to detail, the result of years of training and experience in the police force, was evident. He often testified with some measure of exactitude when it came to narrating his version of events by reference to time, date, incident and participants. He is the sort of man who keeps records like copies of his bank passbooks all the way back to 1977. He would make a tick against any cash withdrawal intended for his mother. He considered himself a filial son.

15 VN is also a retired police officer. Unlike his brother, he never rose through the ranks with the same measure of success. Unfortunately for the estate, he was in no position to provide corroborative evidence of the alleged trust or how the purchase of the property was financed. His testimony that his mother told him that SRSN was holding the property on trust for her is hearsay and hence inadmissible.

16 RN testified that on 13 October 1979, his mother and SRSN called on him as the property was offered to her for purchase and she had to make a decision. At that time, he was the base commander of the Police Tactical Force at Mount Vernon. His mother wanted to register the property in the name of RN and SRSN. RN refused to allow his name to be used. He had been told that his brother was a homosexual and he did not want his name associated with his brother's.

17 Continuing, he testified to an oral agreement made between RN, SRSN and their mother at the time of the transfer. It was agreed that the property was to be registered in the sole name of SRSN on trust for their mother and that the outgoings of the property, including the purchase price of the property and legal fees, would be borne by RN. RN claimed that all his siblings knew about this oral agreement. Yet VN was not able to corroborate his testimony or testify to the circumstances in which the property was acquired in the name of SRSN.

18 There was no express declaration of the beneficial interest in the property in any document. RN did not tell his mother to instruct her solicitor to draw up a trust deed as it was a matter between his mother and SRSN. I find his testimony and his claim, that he had no *locus standi* to instruct the solicitor handling the conveyancing that SRSN was holding the property on trust for their mother, to

be thin and equivocal. His testimony is in sharp contrast to his evidence that he was the paying party and is also patently at odds with his own feelings towards his brother. Here he was agreeing to put the property in the name of his brother whom he disliked and was ashamed of. His brother's sexual orientation was an embarrassment to him and the cause of his offer to resign from the police force. He had forbidden his family to associate with SRSN and his family by reason of his sense of morality. His dislike extended to distrust, as was evident from his own testimony that he had advised VN in August 1978 to have his mother's name included in the bank account together with SRSN when VN withdrew his name. Given RN's personality and police background, I find his conduct and omissions to be inconsistent with the existence of an oral agreement as alleged. In addition, there was no explanation as to why his mother had initially wanted the property to be registered in the names of RN and SRSN. There was no explanation why the mother who was a sitting tenant did not want the property registered in her name alone or together with SRSN. Neither was there any explanation why she had agreed to the property being registered in the sole name of SRSN. The material before me does not explain the reason for the trust. I am, in the circumstances, not persuaded that there was such an oral agreement as alleged.

19 RN in his written testimony categorically stated that it was he who paid the vendor the purchase price of $15,000 for the property as well as the legal fees in the sum of $6,950. He did not say how he paid for the purchase. In the course of cross-examination, he explained that the money for the purchase came from the "crisis fund", a fund to which he was the sole contributor. In the context of the pleaded case, RN's oral testimony is clear. RN was the sole contributor to the "crisis fund" and he therefore paid for the acquisition of the property. Mr Suppiah's contention, by way of clarification on 7 June 2004, that the mother in effect paid for the purchase as she was the beneficiary of the "crisis fund", is completely new. He is vacillating and I must disregard his clarification, which at any rate contradicts the pleaded case.

20 RN has set out in his written testimony the history of the "crisis fund". RN joined the police force in January 1952. At that time, he was the only one in his family with a permanent job. His mother derived income from her ayurvedic business. He agreed with his mother to help her financially by making monthly contributions to a bank account to be opened in their joint names. They named the money in the account the "crisis fund". The "crisis fund" was meant for contingencies, rental and household expenses. In his written testimony, RN stated that, from July 1952 to 14 January 1977, he had contributed to the "crisis fund" account opened with United Commercial Bank ("UCO Bank"). In that period, he contributed a total sum of $110,300. From 15 February 1977 to 24 January 1997, his contributions added up to $80,550. He gave discovery of his bank passbooks to show withdrawals of various amounts from time to time beginning from 15 February 1977 and extending to 1997. From 1993 onwards, the statement prepared for him showed one withdrawal each year. Save for 1994, where the amount withdrawn was $1,500, each annual withdrawal in 1993 and 1996 was $500. There was no withdrawal in 1995. In 1997, there was one withdrawal of $200. RN, in cross-examination, acknowledged that his mother was capable of looking after herself. She had her ayurvedic business, but as a filial son he helped her out financially.

21 According to RN, his deceased brother SRSN had little or no money at the time. He was unemployed and depended on his mother to support him. He certainly did not have enough money for the purchase price and legal fees. The plaintiffs also sought to rely on the two letters written by GN to corroborate their story. I will come back to the letters later.

22 The defendants' case is that the purchase price and legal fees were paid by SRSN who had used the money from a fixed deposit no 904/78 placed with UCO Bank. The amount of $53,000 on fixed deposit was used to pay for the purchase and the legal fees. At that time, NN was 23 years of

age and the other joint account holder of the fixed deposit. He was aware that his father had gone to see the bank manager who had prepared for SRSN the text of a letter of instructions to the bank to terminate the fixed deposit before its maturity. NN managed to locate the draft amongst his father's papers. The reason stated in the draft for early termination of the fixed deposit was that the account holders had "contracted to buy [their] own dwelling". A letter from UCO Bank dated 18 February 1981 to SRSN showed the fixed deposit account as closed on 31 March 1980.

23 The defendants also relied on receipts from the solicitors acting in the transaction. The first was a receipt dated 3 April 1980 issued by M/s Lee Boon Leong & Co in favour of SRSN acknowledging receipt of $1,500 being a quarter share of the 10% deposit for the purchase of 58, 60, 62 and 64 Owen Road. Another receipt dated 13 May 1980 was issued in favour of SRSN to acknowledge receipt of $14,030.72 being his quarter share of the balance of the purchase price, payment of the solicitor's bill and his share of property tax. The legal fees and portion of property tax paid by him added up to $530.72.

24 NN said his father worked as a storekeeper for about ten or 11 years. During those years, he was a part-time marriage broker for Indian couples. He also conducted religious services. After he lost his job as a storekeeper in 1968, he became a full-time marriage broker. He continued to conduct religious services. Arranged marriages were common in the 1960s and 1970s, and into the 1980s. NN said that during auspicious months a marriage broker's income could be very high. Besides the fixed deposit of $53,000, there were other fixed deposits of various amounts in his father's name with Indian Bank.

25 RN set out in his written testimony the persons in whose name "the crisis fund" account was from time to time placed. According to RN, the initial account holders of the "crisis fund" account with UCO Bank were RN and his mother. Then it was in the joint names of his mother and VN. It was thereafter placed in the joint names of SRSN and VN. Later on, it was in the joint names of his mother and SRSN until his mother's death and, finally, in the sole name of SRSN. Under cross-examination, it became obvious that he had very little knowledge of the account holders and his written testimony was based on his own assumptions. He had no documents to prove that the account was opened in the names of his mother and himself. He had presumed that the account was subsequently in the joint names of his mother and VN as it was the advice he had given before he went to the US in September 1973 for a few months. As for his written testimony that the account was in the joint names of SRSN and VN, he had relied on a letter from UCO Bank dated 16 August 1974 about fixed deposit no 963/73. The letter was addressed to SRSN but the instructions to UCO Bank to renew the deposit of $38,000 for another year was signed by both SRSN and VN.

26 RN said that in August 1978, VN informed him that he wished to remove his name from the account because he was required to make an asset declaration and the money was not his. RN's advice then was to include their mother in the account together with SRSN. He accepted in cross-examination that he had assumed the account was in the joint names of his mother and SRSN and then in the sole name of SRSN after his mother's death in January 1992.

27 The plaintiffs tried to show that the fixed deposit no 904/78 was a continuation of the fixed deposit no 963/73 for the sum of $38,000 in the names of SRSN and VN. They asserted that the money in fixed deposit no 963/73 was the "crisis fund". Mr Suppiah argued that, with accrued interest at the rate of 6.75% *per annum*, by August 1978 the sum of $38,000 would have increased to $53,000. I am unable to accept Mr Suppiah's submissions. I reject his calculation as arbitrary and unsubstantiated. First, the plaintiffs led no evidence as to the interest rate payable by UCO Bank for that deposit. In closing submissions, the rate of interest was referred to as "roughly 6.75%". It

appeared to have been culled from various rates appearing in documents from UCO Bank and Indian Bank disclosed by the defendants. Counsel attempted to clarify on 7 June 2004 that the rate of 6.75% was derived from a UCO Bank letter dated 21 February 1980, where the interest was $472.50 on a deposit of $7,000. Be that as it may, I would mention that it was not put to NN, who was a joint account holder with his father, that 6.75% per annum was the applicable rate of interest as far as the relevant deposit was concerned. Second, there have been instances where SRSN had withdrawn the interest earned on the fixed deposits instead of allowing the interest component to roll over together with the principal sum from year to year.

28 Significantly, RN did not mention in his affidavit of evidence-in-chief the two withdrawals from his bank account, namely $4,000 on 18 April 1981, and the further sum of $11,000 on 21 April 1982. In cross-examination, he explained that the two sums were his reimbursement of $15,000 taken out of the "crisis fund". The two sums were withdrawn shortly after his birthday on 16 April. According to RN, the money was handed over to his mother and SRSN on both occasions. I find it difficult to accept RN's testimony. It was not typical for him to omit any reference in his written testimony to these withdrawals that must have been of importance and significance to him. Both sums were relatively sizeable compared to the usual withdrawals of a few hundred dollars. They were meant to fulfil his side of the oral agreement to reimburse the "crisis fund" when he could.

29 Furthermore, the withdrawals were made after RN had retired. That did not sit comfortably with his story that the only time he was free to go to the bank was during his lunch break, and from the bank he would go straight to 62 Owen Road to hand the money (*ie*, $4,000 and $11,000) to his mother and brother. Mr Kalamohan submits that there can be no truth to any of the two payments: given RN's feelings towards his brother, it was unlikely that he would have handed the money to his mother and brother as claimed. There is also no material before me to corroborate and support a finding that the two payments clearly not made at the time of the acquisition, were referable to the acquisition cost of the property.

30 Besides, even if I were to accept RN's version of the matters and events, the withdrawals and payments in 1981 and 1982 were well after the completion of the purchase and would not assist the plaintiffs. I would not regard them as acts or conduct so proximate in time to the transaction itself that they should be given the significance that they naturally bear as part of the overall picture. Such acts or conduct coming after the transaction carry little or no weight. In *Snell's Equity* (30th Ed, 2000) at para 9-16, it is stated that:

> The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration; subsequent acts and declarations are only admissible as evidence against the party who made them, and not in his favour.

31 RN also said that legal fees, stamp duty, property tax and rent for a period of eight to 12 months had to be paid to the vendor. Thus from January 1980 to May 1980 he had contributed a total sum of $6,950 to cover those expenses. However, the statement of his contributions towards the "crisis fund" for that period showed withdrawals totalling only $3,050. Again, rather confusingly, he contradicted himself when he introduced into evidence a cash payment of $5,030 to SRSN to pay the lawyers. These contradictions and discrepancies did not help the plaintiffs' case.

32 The plaintiffs sought to rely on the two letters written on behalf of GN to support their contention that the property was held in trust by SRSN for Lakshmi Naidu. They are the letters dated

30 March 2001 and 24 April 2001 respectively. GN has only formal education up to the primary 6 level. She attended the Vocational and Industrial Training Board to learn cooking and sewing. She is now a housewife. Before that, she worked as a factory operator. Her counsel, Mr Kalamohan, submits that the plaintiffs had manipulated her to make her send those letters to Mr Suppiah. She was an easy and willing candidate as she was unhappy with her brother who had been given $850,000 by the father. RN denied having amended the draft of the letter dated 30 March 2001.

33 GN is now defending the case, and Mr Suppiah submits that it is because she has received a half share of the balance of the compensation sum. Nonetheless, Mr Suppiah submits that the letters are tantamount to an admission that the property belonged to her grandmother and, as administratrix, GN is bound by her admission. First, I disagree that the letters amounted to an admission. The alleged fact the plaintiffs seek to rely on – that the property belonged to GN's grandmother and was entrusted to her father – is based on hearsay. What she knows is what was told to her by her grandmother. Second, the circumstances in which the letters were written have to be taken into consideration. At the material time, she was motivated by ill will towards her brother, not having received any share of the initial compensation money from her father. The evidential value of the letters does not change even though she is now defending the action. All in all, she is an unreliable witness.

34 I am not prepared to infer from the scanty evidence presented that the money in fixed deposit no 904/78 was the "crisis fund". The plaintiffs have not established that the money used for the acquisition of the property was from the "crisis fund". There is no material before me to give rise to a finding that the beneficial interest in the property did not coincide with the legal estate in SRSN.

35 Separately, on a legal point, the claim that SRSN held the property on resulting trust for the estate of Lakshmi Naidu must fail. A resulting trust arises from the provision of the purchase price and the presumption operates in favour of the provider of the money to purchase the property in the name of another, and not in favour of a third party who comes into the picture on some other basis. The beneficial interest in the property must arise under a resulting trust from the actual provision of the purchase price. Bagnall J's illustration and view in *Cowcher v Cowcher* [1972] 1 WLR 425 at 431 are apposite. In his view, if the whole purchase price is provided by A, a trust giving an interest to B could be an express trust, but certainly not a resulting trust as there is nothing in that situation to bring the doctrine of resulting trust into operation.

36 For instance, if the conduct of the paying party is explicable on the basis of the oral agreement as alleged (other than an expectation of a return by way of the beneficial interest in the property) it will not suffice to give rise to a resulting trust. The plaintiffs do not have another string to their bow. Besides, I have already concluded that the plaintiffs have not established, on a balance of probabilities, the oral agreement as alleged.

37 For completeness, I should mention that the assertion of a sale to Associated Auto as nominee was not made good. Clearly, the four properties were sold. The other buyers were not members of Somapah's family or descendants. From the Indenture, 58, 60 and 64 Owen Road were conveyed to Chinese purchasers, and Associated Auto was described as the vendor and as the entity seised of the properties for an estate in fee simple in possession. House no 58 was a shop selling spare parts. House no 60 was a residence and a shop selling sports goods, and house no 64 was a tailor shop. In fact, one of the purchasers, Ho Choo Moi, sold her quarter share to another party in 1986.

38 At the outset of the trial, Mr Suppiah informed the court that the plaintiffs had abandoned

their claim for personal effects itemised as nos 3 to 29 in the annexure to the statement of claim. The other remaining claim concerns a fixed deposit of $106,000 with UCO Bank in SRSN's name. After paying estate duty and legal fees, the balance sum of $82,824 was distributed by NN and GN to, *inter alia*, RN, VN, Rama Bai Naidu and Jamuna Bai Naidu. RN did not receive his share. This was because VN had informed NN and GN that RN did not want the money. His share thus went to the children of a deceased sister. Mr Suppiah confirmed to the court that, as NN had distributed RN's share on the instructions of VN, RN was not making a claim for his share. It is the plaintiffs' case that the $106,000 was part of the "crisis fund" and that was why the net balance sum of $82,824 was distributed in that manner. On the other hand, NN and GN said that VN had advised them to share their father's money with his siblings as it was the proper thing to do and they went along with the advice of a uncle whom they trusted.

39 The sole question is whether NN and GN should have utilised $23,176 out of $106,000 to pay estate duty and legal fees. To answer the question, I have to decide whether the total sum of $106,000 was money SRSN held on trust for the estate of Lakshmi Naidu.

40 I have earlier commented on the plaintiffs' difficulty in tracing the "crisis fund" to SRSN's joint account with NN at the UCO Bank. I would also add that a feature of the case that is telling against the plaintiffs is their silence. The fact that no complaint was made for a long time calls for an explanation. If no sufficiently credible explanation is forthcoming when one might have been expected, as was the case here where no explanation was proffered, then in my judgment, this serves to undermine the plaintiffs' claim. After their mother's death in January 1992, for the next nine years the plaintiffs acted as if the estate had no money left from the "crisis fund". For five years after Lakshmi Naidu's death, RN and VN did not ask SRSN to account to the estate in order to distribute the "crisis fund" amongst the children. There is no evidence that their mother had not needed the money in her lifetime and had saved most of it so that, on her death, a tidy sum remained. In fact, the evidence suggested a different picture. NN in his written testimony said that his grandmother's ayurvedic shop was "gone" in 1975. Overall, the plaintiffs have not proved on a balance of probabilities that the $106,000 was part of the "crisis fund". Accordingly, their claim for $23,176 must fail. The earlier distributions were, in my view, gratuitous.

41 For all these reasons, the plaintiffs' action is dismissed with costs.