Re Estate of Chong Siew Kum, deceased
[2005] SGHC 41

Case Number : OS 554/2002

Decision Date : 28 February 2005

Tribunal/Court : High Court

Coram : Andrew Ang JC

Counsel Name(s) : Koh Tien Hua (Harry Elias Partnership) and Liaw Jin Poh (J P Liaw and Co) for the plaintiff; Alan Shankar and Lim Poh Choo (Alan Shankar and Lim) for the defendants

Parties : —

Limitation of Actions – Particular causes of action – Trust property – Whether defendants' counterclaims amounting to action for return of money had and received or action by beneficiaries under trust – Whether counterclaims time-barred – Sections 6(1), 22(1)(b) Limitation Act (Cap 163, 1996 Rev Ed)

Succession and Wills – Construction – Distribution of assets – Whether properties forming subject matter of deceased's estate – Whether respective legal owners holding properties in trust for deceased's estate absolutely

Trusts – Resulting trusts – Presumed resulting trusts – Presumption of advancement – Whether presumption of advancement arising as between mother and adult children – Whether presumption of resulting trust rebutted by presumption of advancement – Section 68 Women's Charter (Cap 353, 1997 Rev Ed)

28 February 2005

Andrew Ang JC:

1 This lamentable tale had its beginning in 1946 when one Tse Hoo Sun died an untimely death at the age of 37 leaving behind an illiterate widow, Chong Siew Kum ("Chong") and six young children, *viz*:

(a) son, Chia Kin Tuck ("the plaintiff"), aged nine years;

(b) son, Chia Weng Tuck ("Weng Tuck"), aged eight years;

(c) daughter, Chai Cheo Moey ("the third defendant"), aged six years;

(d) twin son, Tse Sai Chee ("the second defendant"), aged five years;

(e) twin son, Tse Ng Chee ("Ng Chee"), aged five years; and

(f) daughter, Chia Ee Moey ("the first defendant"), aged three years;

The deceased husband also left behind a business known as Hoo Sun Sail & Flag Maker ("Hoo Sun") which, as its name suggests, specialised in making flags, sails and other canvas goods for ships. Although Chong knew little of the business, by sheer grit and gumption and with help from her late husband's cousin, Chia Sek Cheong, she managed to keep the business going.

2 When the boys were still in school, they helped out at the shop. After the plaintiff left school in 1956, he could not find a job and eventually, in 1959, at the age of 22 years, he decided to work

for Hoo Sun. The other sons worked full-time for Hoo Sun after they left school. Likewise, the sisters helped out in the family business. Initially, none of the children was paid a salary. Whereas the boys got a meagre monthly allowance of some $15 to $30, the girls got practically nothing, apart from the annual "*ang pows*". However, all the children's basic necessities were provided for by the mother, Chong.

3 The business grew and made sufficient profits to enable Chong to buy a property at 19 Ringwood Road, Singapore ("the Ringwood property") in 1963 in the joint names of three sons, *viz*, the plaintiff, Ng Chee and the second defendant. According to the second and third defendants, Weng Tuck's name was not included because Chong was afraid he was "playful" and might jeopardise the property if he got into trouble. According to the third defendant, this was at the instigation of the plaintiff.

4 The three joint tenants occupied the Ringwood property from the time it was purchased. In 1987, Ng Chee left after he was "disowned" by Chong. Chong herself never lived in the Ringwood property. However, she paid for all the outgoings relating to the property such as utilities, property tax and general household maintenance.

5 In or about 1964, Chong made her four sons "partners" in Hoo Sun, but still they did not enjoy any substantial share in the profits of the business. The plaintiff himself said they were but partners in name. In 1975, the second defendant and Ng Chee retired from partnership in Hoo Sun because of some "misunderstanding" with Chong. According to the third defendant, this was because of "things" the plaintiff told Chong about them.

6 In 1965, Chong purchased a shop-house at 393 Balestier Road, Singapore ("the Balestier property") in the name of the third defendant. From the time of purchase, the Balestier property was held for rental. The third defendant collected and saved the rental through the years so that, by 1995, she had accumulated about $370,000.

7 In or about 1992, Chong bought a third property at Block 78, Moh Guan Terrace, #03-05 ("the Moh Guan property") in the joint names of the second son, Weng Tuck, and her late husband's cousin, Chia Sek Cheong. The latter having since died in the year 2000, the property is now solely in Weng Tuck's name.

8 Apart from the immovable properties, Chong bought and gave to each of the children some shares in Sembawang Shipyard Ltd.

9 Sometime in 1987, there was a fist fight between the plaintiff and Ng Chee. This resulted in Chong "disowning" Ng Chee, according to the third defendant, at the instigation of the plaintiff. Pursuant to an agreement dated 30 July 1987, Chong paid Ng Chee $200,000 for his share in the Ringwood property and for some Sembawang Shipyard shares which had earlier been given to him. The first defendant was made a joint tenant of the Ringwood property in substitution for Ng Chee on 17 August 1987.

10 Chong died on 5 April 1996, leaving a will dated 11 June 1987 ("the Will") in which she appointed the plaintiff and the first defendant as her executors and trustees. Under the Will, she gave all her movable and immovable property to her trustees (after payment of her just debts and funeral and testamentary expenses) to sell, call in and convert the same into money and divide the proceeds thereof amongst the plaintiff (as to 50% thereof), Weng Tuck (as to 10% thereof) and the first and third defendants (each as to 20% thereof). No mention was made of either Ng Chee or the second defendant in the Will.

11 By two deeds both dated 8 October 1996, the first and second defendants severed the joint tenancy in respect of the Ringwood property so that the property was thenceforth held by them and the plaintiff as tenants-in-common in equal shares.

The disputes

12 By an action commenced as an originating summons and subsequently converted to a writ, the plaintiff sought a declaration that the Ringwood and Balestier properties were held by the respective legal owners thereof in trust for the estate of Chong absolutely. He averred that although it caused him "a lot of pain to have to commence this action against my own siblings", it was "necessary in order to fulfil the wishes of my late mother". That statement rang hollow when viewed in the light of his claim against the Balestier property despite his assertion[1] that "it was … my late mother's death wish that the shop house at 393 Balestier Road was to be kept for my two sisters to support them in their old age". Curiously, the plaintiff has not sought a declaration of trust in respect of the Moh Guan property, expressly acknowledging in his affidavit of evidence-in-chief that it had been purchased as a gift to Weng Tuck and Chia Sek Cheong. Accordingly, the beneficial ownership of this property is not in contention in this case.

13 The first defendant, as co-executor and trustee of Chong's estate, averred that neither of the two properties formed part of Chong's estate. By way of counterclaim, the first and second defendants sought, *inter alia*, a declaration that the plaintiff and the first and second defendants are the beneficial owners of the Ringwood property in equal shares and an order for the sale of the property in the open market followed by the distribution of the net proceeds thereof amongst the three co-owners. The first and second defendants also sought an order that the plaintiff withdraw a caveat which he had lodged against the Ringwood property.

14 Likewise, the third defendant counterclaimed against the plaintiff, seeking (a) an order that the plaintiff withdraw a caveat which he had lodged against the Balestier property, (b) a declaration that the third defendant is the sole beneficial owner of the Balestier property, and (c) an order that the plaintiff deliver to the third defendant the title deeds to the Balestier property.

15 Finally, the first and third defendants also counterclaimed against the plaintiff for the return (with interest) to the first and third defendants of the sums of $30,000 and $370,000 respectively which, they alleged, they had entrusted to him.

Resulting trust and presumption of advancement

16 In *Halsbury's Laws of England*, vol 48 (Butterworths, 4th Ed Reissue, 2000) it is stated (at para 612) that:

> **Effect of purchase in or transfer into another's name.** Where a person purchases property in the name of another or in the name of himself and another jointly, or gratuitously transfers property to another or himself and another jointly, then, as a rule, unless there is some further indication of an intention at the time to benefit the other person or some presumption of such an intention, the property is deemed in equity to be held on a resulting trust for the purchaser or transferor.

However, it is further stated at para 614:

> **Advancement or gift to a child.** Where a father or other person in loco parentis purchases property in the name of a child or transfers property into the name of a child, the transaction

> does not create a resulting trust for the purchaser or transferor, but is an advancement or gift to the child, unless there is evidence of a contrary intention at the time of the transaction or the circumstances are such as to raise a presumption against the advancement or gift.

The traditional view is that a presumption of advancement does not arise as between a mother and her son or daughter: *In the matter of De Visme, a Person of Unsound Mind* (1863) 2 De G J & S 17; 46 ER 280; *Bennet v Bennet* (1876) 10 Ch D 474. However, the authorities are not unanimous. The authors of *Parker and Mellows: The Modern Law of Trusts* (Sweet & Maxwell 8th Ed, 2003) at p 282 point to *Sayre v Hughes* (1868) LR 5 Eq 376 as being a case that suggested the opposite conclusion, although they allowed that in that case, Stuart VC was considering the case of a widowed mother. More recently, in *Nelson v Nelson* (1995) 132 ALR 133, the High Court of Australia inclined in favour of a presumption of advancement between mother and child.

17 In *Sekhon v Alissa* [1989] 2 FLR 94, Hoffmann J (as he then was) held that a presumption of resulting trust applied where a mother provided the major portion of the purchase moneys for a property bought in the daughter's name. Arguably, it is possible to infer from the decision that Hoffmann J favoured the traditional view since he made no mention of the presumption of advancement. Equally, however, it might be argued that the decision went in favour of the mother only because she was able to adduce sufficient evidence to rebut any presumption to make a gift.

18 One needs to treat the traditional view with caution, bearing in mind the change in the status of women over the years. Where once they were mere dependants, they now often assume equal importance as providers for the family. Section 68 of the Women's Charter (Cap 353, 1997 Rev Ed) imposes a statutory duty on a parent (whether man or woman) to provide for such maintenance of his or her children as may be reasonable, regard being had to his or her means and station in life. The absence of such an obligation on the part of a mother was apparently the reason why in *Bennet v Bennet* ([16] *supra*), Jessel MR favoured the traditional view. Clearly the *ratio decidendi* of the case would not apply to Singapore today. In a footnote to the second passage in *Halsbury's Laws of England* cited above ([16] *supra*), it is stated:

> Nowadays there is much to be said for the view that the presumption of advancement should apply to a purchase or transfer of property by a mother, even though not widowed or divorced, although, if a resulting trust were presumed, it would be capable of rebuttal by slight evidence …

Parker and Mellows ([16] *supra*) at p 283 is more trenchant, declaring:

> The traditional position is frankly, unsatisfactory. It is particularly difficult to see why a mother, especially if she has money, is not under the same moral obligation to maintain her children as their father is said to be. Having said that, however, it may not matter all that much in practice. If there is indeed no presumption of advancement between mother and child, the presumption of resulting trust in favour of the mother which consequently arises can be rebutted by any evidence of an intention on her part to benefit the child and it is improbable that children will find this particularly difficult to achieve.

19 In the present case, Chong was widowed at an early age. She raised the children and provided for them throughout her life. Even when the children worked for Hoo Sun as adults, she continued to hold the purse strings and paid them very little. As the plaintiff said in his affidavit of evidence-in-chief,[2] "[W]e were but partners of Hoo Sun in name. My mother controlled everything." It was clear from the evidence on both sides that she was the matriarch of the family upon whom certain of the children depended, even for their basic necessities of life, up to the time she died when they were well into middle age. In those circumstances, I had no difficulty in arriving at the

conclusion that she stood *in loco parentis* to the children at the time of the purchases even though the defendants were adults then. (To be precise, at the time of purchase of the Ringwood property, the plaintiff was 26 years old and the second defendant was 22. When the first defendant was added as a co-owner in 1987, she was 44 years old. As for the Balestier property, the third defendant was 25 at the time of its purchase in her name.)

20 I therefore held that the presumption of advancement applied so that the burden fell on the plaintiff to prove that when Chong paid for the Ringwood and Balestier properties, she had no intention of benefiting the children into whose names the properties were transferred: *Air Jamaica Ltd v Joy Charlton* [1999] 1 WLR 1399 at 1402.

21 Counsel for the plaintiff submitted in closing that the burden of proof was on the defendants to show why the presumption of resulting trust should not apply to the Ringwood and Balestier properties. In support of this proposition, he quoted from the judgment of Judith Prakash J in *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67 in which the learned judge said at [25]:

> The legal position is that where a person purchases property in the name of another or gratuitously transfers property to another or to himself and another jointly then, unless there is some further indication of an intention at the time to benefit the other person or some presumption of such an intention, the property is deemed in equity to be held on a resulting trust for the purchaser or transferor. See *Halsbury's Laws of England* (4th Ed) vol. 20 para 605. The presumption that arises from the general rule may be rebutted either by evidence that the purchaser intended to benefit the person in whose name the property was placed or by the fact that the person in whom the property was vested stood in such a relationship to the purchaser that the presumption of advancement would apply.

Counsel for the plaintiff went on to submit that it was not enough for the defendants to plead that Chong's purchase of the properties in their names were gifts to them out of the natural love and affection a mother has for her children, and that the presumption of advancement had to be specifically pleaded. In this regard, he also sought to draw support from *Ang Toon Teck v Ang Poon Sin*.

22 It is clear that in the present case, in order to rely upon the presumption of advancement, it was necessary to show that, at the material time, Chong stood *in loco parentis* to the defendants. The fact based upon which such a presumption arose was already pleaded in the Statement of Claim itself and not in dispute, *viz*, that Chong was the mother of the plaintiff and the defendants. It was not necessary for the defendants to plead specifically the presumption of advancement as it is purely a point of law or, more particularly, a rule of evidence. It is, of course, true that the presumption of resulting trust could be rebutted by evidence of an intention to benefit the person in whose name the property was purchased. This would be essential where the purchaser did not stand *in loco parentis* to the person in whose name the property was bought. But it is also true that such a presumption of resulting trust could be countered by a presumption of advancement arising from the relationship of the purchaser to the person in whose name the property was purchased. Where such a relationship exists, a plea that the transaction was a gift cannot be construed as an election not to rely on the presumption of advancement. The plea of gift itself invokes the presumption.

23 The burden of proof therefore was on the plaintiff to rebut the presumption of advancement. Admissible evidence in rebuttal is limited to acts, circumstances and declarations leading to or forming part of the transaction or so immediately following and connected with it as in effect to be contemporaneous with or form part of it. Such admissible evidence can be used either for or against the party who did the act or made the declaration. Subsequent acts or declarations are admissible as

evidence only against the party who did the act or made the declaration and not in his favour: *Chua Cheow Tien v Chua Geok Eng* [1965–1968] SLR 850 ("*Chua Cheow Tien*") at 858, [30] following Viscount Simonds in *Shephard v Cartwright* [1955] AC 431 at 445.

The Ringwood property

24 To this end, counsel for the plaintiff concentrated his efforts on highlighting allegedly damaging statements made by the defendants in their affidavits of evidence-in-chief and under cross-examination. Despite the plaintiff having made reference in his pleadings and in his affidavit of evidence-in-chief to two letters of 11 June 1987 and 28 August 1987, said to have been written by Chong, counsel omitted mention of them in his closing submissions. That was, perhaps, a recognition of their lack of probative value.

25 In the letter of 11 June 1987 by Chong to M/s Lee & Partners, illiterate though she was, she had declared that the Ringwood property was hers and that she was "not intending then nor ever to make a gift" of the same. The plaintiff admitted under cross-examination that the letter had been drafted by a lawyer introduced by the plaintiff's wife (a conveyancing clerk) and typed and interpreted by the plaintiff. In any case, as it was written more than 20 years after the purchase and was for, rather than against, Chong, it was inadmissible as evidence.

26 The letter of 28 August 1987 was, likewise, drafted by the same lawyer on the plaintiff's instructions and had also been typed and interpreted by the plaintiff. It read as follows:

> I refer to the above matter and would be grateful if you could release all the prior title deeds relating to the above property to Chia Kin Tuck who is authorised to collect the same on my behalf.
>
> I confirm that the Acknowledgement for Production is not required as it is my intention that the property is to be held by the trustees, Chia Kin Tuck, Tse Sai Chee and Chia Ee Moey in trust for me. Kindly to [*sic*] proceed to prepare the Trust Deed for their execution.

As against the second defendant, it was clearly inadmissible. Whether or not it was admissible against the first defendant depended on whether it could be construed as "so immediately following and connected with [the transfer into the first defendant's name on 17 August 1987] as in effect to be contemporaneous with or form part of it": see *Chua Cheow Tien* ([23] *supra*). On balance, I would have been inclined to say that it could be so construed. However, for the reasons following, such a construction would not avail the plaintiff.

27 Firstly, despite Chong's instructions of 28 August 1987 to Lee & Partners to prepare a trust deed for execution by the plaintiff and the first and second defendants in Chong's favour, this was never done. Similarly, despite Chong's letter of 11 June 1987 evincing an intention to have the title to the Ringwood property transferred to her name, it was never carried out. When asked by the court, the plaintiff was hard put to explain why Chong's alleged intention to have the property transferred to herself had not been carried out. He said she "feared that we would create trouble and so to make sure that this property will not be taken away [she] therefore instructed that we are holding on trust for her". Such an answer, of course, did not make sense and he was finally reduced to saying, "My mother wanted it that way. I cannot explain."

28 In regard to the letter of 28 August 1987, he alleged that the failure to cause the plaintiff and the first and second defendants to execute a trust deed in favour of Chong was due to the lawyer's negligence. It was suggested to him that in view of such a serious allegation, it was only fair

that he should call the lawyer in question to give evidence. However, he declined, adding that "after ten years no action can be taken against [the lawyer]". One would have thought that that circumstance would have made the lawyer more prepared to admit to negligence (if indeed there was any). When he was asked why he did not pursue the matter when it was "discovered" that the trust deed had not been done, he said he had overlooked it. Counsel for the defendants then put it to him that he had not "overlooked" and that, in truth, Chong never had any intention to place the property upon trust. The evidence of the first defendant[3] was as follows:

> As regards the letter dated 28 August 1987 to the solicitors, Lee & Partners, I humbly wish to inform this Honourable Court that my mother never told me of her intention to get the lawyers to prepare a Trust Deed. I humbly wish to inform this Honourable Court that my mother would not have known anything about this "Trust Deed" if she had not been "advised" by Kin Tuck. My mother did not read or write English and would not have known what she was signing unless she was "told".
>
> I strongly believe that it was my brother, Kin Tuck who "tricked" or "advised" my mother to sign the letter dated 28 August 1987, to Lee & Partners for his own selfish reasons.

29 It would appear that on the same day that the letter of 11 June 1987 was signed by Chong, she also executed the Will in which, as stated earlier, she gave half her estate (movable and immovable) to the plaintiff. Curiously, the Will was prepared by a different firm, M/s Chung & Co, from that which prepared the drafts of the letters of 11 June 1987 and 28 August 1987, *viz*, Lee & Partners. The link between the two documents was of critical importance. If truly the Ringwood property was held upon trust for Chong as alleged in the 11 June 1987 letter, then, by the Will of the same date, the plaintiff would stand to inherit 50% of its value.

30 Given its importance, one would have expected the letter to have been treated with as much care as the Will. Yet, although the Will was interpreted to Chong by a Chinese lawyer from Hong Kong,[4] the letter was not, except by the plaintiff. If the plaintiff wanted to be sure that there would be no dispute as to Chong's instructions, surely he could easily have caused it to be interpreted by Chinese lawyers in Lee & Partners (of which there were five), if not by the same Chinese lawyer from Hong Kong. Little wonder then, that counsel for the defendants should put to the plaintiff that in truth, Chong never intended to claim the property as her own.

31 The fact that Chong had to pay $200,000 to Ng Chee for the transfer of his interest in the Ringwood property was a significant factor. Earlier drafts of the agreement between them for that purpose (describing Chong as beneficial owner of the property) were rejected by Ng Chee even though the same consideration of $200,000 was provided for. Ng Chee had refused to be characterised as a mere trustee.

32 However, cl 1(b) of the agreement as executed by Chong and Ng Chee on 30 July 1987 stated that Ng Chee was to "transfer all his rights, interest and title in the property … to … Chia Ee Moey [the first defendant] … for Chia Ee Moey to hold such interest and title together with [the plaintiff] and [the second defendant] on trust for the benefit of Chong …". As against the second defendant, such evidence was inadmissible, coming as it did more than 20 years after the purchase. As against the first defendant, however, it appeared at first blush to be an effective rebuttal of the presumption of advancement as it preceded the first defendant's taking of title. Upon further examination, however, it was again seen that the plaintiff was the interpreter of the agreement.

33 The critical importance of cl 1(b) to the plaintiff was probably not known to Chong's solicitors, Lee & Partners, as they did not prepare the Will. Otherwise, one would have expected that

they would have called for another interpreter sans the interest which the plaintiff had. The plaintiff, of course, knew the significance of cl 1(b). Yet he was content to do without an independent interpreter despite the risk of challenge in the future. In the light of the other circumstances set out above, I drew an adverse inference against him.

34 I also noted that the Indenture of Conveyance of 17 August 1987 by which Ng Chee (as vendor) conveyed his interest in the property to the first defendant made no mention of any trust. If a trust had been intended, it could easily have been reflected in the Indenture itself, or, more usually, in a contemporaneous trust deed. Neither step was taken. The dispute arose only after Chong's death. Only then did the plaintiff lodge caveats against the Ringwood and Balestier properties.

35 In closing, plaintiff's counsel submitted that it was significant that Chong retained the title deeds. He claimed that the third defendant (actually the first defendant) confirmed it. Plaintiff's counsel had asked the first defendant:[5]

> Q: Title deed kept by your mother?
>
> A: Yes.

It should be noted that the plaintiff himself did not aver that Chong had retained the title deeds. Nothing to this effect appeared in the Statement of Claim or in his affidavit of evidence-in-chief or in his oral evidence. That being a material fact, it was highly unlikely that the plaintiff would not have pleaded it or mentioned it at any point. I therefore regarded Chong's possession of the title deeds as being in doubt. In any case, for the reasons given in the paragraph following, it would not have made a difference.

36 The fact that the utilities, property tax and costs of general household maintenance were paid by Chong might have been favourable to the plaintiff's case, suggesting that Chong was the true owner of the property. However, given the evidence of the plaintiff himself in the following terms:[6]

> Even though … and I became partners from 1 July 1964 onwards, we were but partners of Hoo Sun in name. My mother controlled everything. My sisters were helping out at the family business of Hoo Sun and only received a small monthly allowance. We could hardly be described as financially independent.

and the third defendant's evidence[7] deposing that "my mother did not believe in giving anyone of us much money because she was already providing us with everything", Chong's payment of the property tax and utilities was perfectly understandable and did not, in my view, rebut the presumption of advancement. For the same reason, even if she did hold the title deeds to the property, it would have been explicable by the fact that she was the matriarch.

37 As stated earlier, plaintiff's counsel sought to draw support for the plaintiff's case from statements made by the defendants which were allegedly adverse to themselves. In particular, he pointed out that when the first defendant was asked during cross-examination whether Chong told her why Ng Chee was transferring his interest in the property to her, the first defendant's reply was, "I don't know." This, according to plaintiff's counsel, precluded the first defendant from maintaining the position in her affidavit of evidence-in-chief[8] where she had deposed, "My mother did not tell me that I was to hold the Ringwood Property in trust for her. She told me that she was giving me a share in the Ringwood Property together with my brothers, Kin Tuck and Sai Chee."

38 To my mind, the plaintiff's contention was misconceived. The burden was on the plaintiff to

rebut the presumption, not for the first defendant to justify her legal ownership of a share in the Ringwood property. Besides, the first defendant's two statements were not irreconcilable. It was not clear, when the first defendant said "I don't know", whether she meant:

(a) that she did not know (meaning she could not remember) whether her mother told her why Ng Chee was transferring his interest in the Ringwood property to her; or

(b) that she did not know Ng Chee's reason for transferring his interest in the Ringwood property to her.

In either case, her answer did not preclude the possibility that Chong had told her that Chong was giving her a share in the Ringwood property. My impression of the witness was that she was a simple woman with little education, who answered questions in a forthright manner even if her memory was not on all points to be relied on (not surprisingly, after all this time).

39 With respect to the second defendant, the principal point of plaintiff's counsel was that the second defendant had said in para 5.42 of his affidavit of evidence-in-chief as follows:

I verily believe that deep down our mother loved all her children equally and would provide for us all as she had done throughout the years and that is why she bought the Ringwood Property for us.

and that Chong "was very fair".[9] Plaintiff's counsel also referred to the second defendant's evidence (presumably in para 5.1 of his affidavit of evidence-in-chief) where the second defendant said Chong bought the Ringwood property for "her sons" and sought to suggest that the second defendant thereby meant that it was for all the sons, *ie*, including Weng Tuck as well.

40 From the second defendant's statements, plaintiff's counsel took a flying leap and said that the second defendant had "by his own admission rebutted the assumption that Mdm Chong intended to make a gift of the one-third share of the Ringwood property to the second defendant". Clearly, that was not the purport of the second defendant's statements. Firstly, para 5.42 had to be read together with paras 5.1 and 5.13 where the second defendant had said that the Ringwood property was a gift to the three sons (*viz*, the second defendant, Ng Chee and the plaintiff). Secondly, plaintiff's counsel overlooked the second defendant's evidence given under cross-examination and recorded as follows:

Q: Are you saying your mother wanted to exclude Weng Tuck from a share of Ringwood property?

A: Yes.

Q: Still on para 5.1. Put: Your mother did not intend to exclude Weng Tuck?

A: Disagree.

Thirdly, as between (a) upholding the gifts of the Ringwood and Balestier properties so that each of Chong's children was provided for, and (b) finding a resulting trust in favour of Chong's estate with the result that the second defendant himself would have nothing while the plaintiff would be disproportionately enriched, it seemed clear that the second defendant could not have been suggesting the former.

41 In the result, I held that the plaintiff failed to discharge his burden of proving that when Chong purchased the Ringwood property in 1963, she did not intend to benefit her sons, *viz*, the plaintiff, Ng Chee and the second defendant. Likewise, the plaintiff failed to prove that when Chong bought Ng Chee's title and interest in the Ringwood property, she did not intend to benefit the first defendant.

The Balestier property

42 In his affidavit of evidence-in-chief, the plaintiff offered no direct evidence that Chong's intention when she bought the Balestier property in the third defendant's name was not to benefit the latter. However, he deposed that the title deeds of the property had been kept by Chong since the date of purchase. He also claimed in cross-examination that Chong had told him that the third defendant was to hold the property in trust for Chong. However, he admitted that for close to 30 years, Chong did not ask the third defendant for the rental. He also admitted that in 1987 when Chong (according to him) instructed Lee & Partners to document her claim to beneficial ownership of the Ringwood property, the Balestier property was not mentioned.

43 Plaintiff's counsel sought to prove that the Balestier property was held upon trust for Chong arguing that:

(a) the third defendant did not specifically say in her affidavit of evidence-in-chief that Chong had told her that the Balestier property was a gift to her;

(b) the fact that the third defendant did not spend any of the rental proceeds suggested that the third defendant knew the money was not hers;

(c) the third defendant "willingly handed over the entire sum over to the plaintiff because she knew that the money belonged to [Chong]";

(d) Chong, being very traditional, would only want the sons to inherit and not the daughters; and

(e) given that the first defendant was the "princess" of the family, it made little sense that Chong would have given the third defendant the Balestier Road property without giving the first defendant a share of it.

44 Contrary to the plaintiff's assertion that the title deeds to the Balestier property had been kept by Chong since the date of purchase, there was evidence that until 1991, the title deeds were in the third defendant's possession. This evidence was in the form of a letter dated 17 December 1996 from solicitors acting on behalf of the third defendant demanding the return of the title deeds from the plaintiff, to whom and at whose suggestion the third defendant had handed the title deeds for safe keeping in 1992. Plaintiff's counsel asked the third defendant to confirm that the contents of the letter were her instructions and she did so. Plaintiff's counsel did not challenge the letter's account of the movement of the title deeds. It would appear, therefore, that the plaintiff was wrong in his assertion that they had been with Chong since the date of purchase. His contradictory pleading in para 11 of the Reply and Defence to Counterclaim that "Chong had requested him to [safe keep] the title deeds to the Balestier Road Property since in or about 1970" would appear also to be false.

45 As to argument (a) in [43] above, the third defendant did affirm, in para 9.2 of her affidavit of evidence-in-chief, as follows:

> I believe that when the Balestier property was purchased in 1966 by my mother it was meant for me and that was why my mother had put it in my name. *She told me that in my old age I could collect rental* and therefore did not have to go out to work. At that time, I was about 26 years of age and *my mother knew that I would not get married and therefore wanted to provide for me*. [emphasis added]

Despite the unhappy choice of the word "believe", the meaning of the paragraph as a whole was clear. She obviously meant that the property was a gift to her. When the third defendant was asked by plaintiff's counsel when it was that her mother had told her the property was bought for her, she said it was in 1967. Her contention that it was a gift was corroborated by Ng Chee[10] and by the second defendant,[11] both of whom said that Chong had told them (separately) that the Balestier property was a gift to the third defendant.

46 As regards argument (b) in [43] above, surely the fact that the third defendant did not spend the money could also be explained by the fact that Chong paid for everything. The fact that she did not spend the money did not necessarily lead to the inference that the money was Chong's. Apart from the fact that Chong paid for all her expenses, it could also be that the third defendant was frugal. Looking at the way she dressed when she appeared at the hearing, I would not be in the least surprised if indeed she was.

47 As to argument (c) in [43] above, the third defendant's account of the handing over of the money to the plaintiff was quite different from the plaintiff's. The latter had affirmed (in para 22 of his affidavit of evidence-in-chief) that in 1995, the third defendant had paid the accumulated rental to Chong from her Hongkong & Shanghai Bank account. That, he later admitted, was wrong as the money had been transferred to him. (The transfer of such a large sum having been made to him relatively recently, it was unlikely he could have forgotten.)

48 Plaintiff's counsel, nevertheless, sought to argue that the handover of the money was on Chong's instructions and was proof that the money was Chong's. The third defendant's account was simply that she had asked the plaintiff to place the money on fixed deposit in his and the first defendant's name. Ordinarily, it might be somewhat difficult to believe that a person would voluntarily entrust her money to another without some cogent reason. In the instant case, given that the third defendant, a self-confessed "slow learner", had very little education and that the plaintiff was the eldest brother in a close family unit, it was, to my mind, plausible. (Given the plaintiff's highly unsatisfactory evidence in this regard, which is dealt with in detail in [53] below, the evidence of the third defendant was to be preferred.) Even if I believed the plaintiff's version that the third defendant had handed over the money at Chong's request, that would not be conclusive of the matter. Chong was the matriarch of the family and controlled everything. Handing over the money in those circumstances could well be explained by reasons other than that the third defendant acknowledged Chong as the owner thereof. In *Grey (Lord) v Grey (Lady)* (1677) 2 Swans 594 at 600; 36 ER 742 at 744, it was held that a son who had permitted his father to continue to receive the profits of the property in question did so as an "act of reverence and good manners" and that that fact was insufficient to rebut the presumption of advancement. As Viscount Simonds said in *Shephard v Cartwright* ([23] *supra*) at 449, any such evidence of subsequent acts was regarded jealously.

49 As regards argument (d) in [43] above, the Will itself is proof that Chong did not want only the sons to inherit.

50 Finally, as regards argument (e) in [43] above, it would be a matter of pure conjecture what might have been in Chong's mind at the time. For all we know, it might have been because Chong feared that the first defendant might get married, unlike the third defendant who, Chong knew, would

not get married. It is certainly far from irrefutable logic that if the first defendant, who was the "princess" of the family, was not given a share of the Balestier property, then it could not have been intended as a gift to the third defendant. As a matter of fact, the first defendant was eventually given a share in the Ringwood property.

51 The burden of proof was on the plaintiff to rebut the presumption of advancement. He could not hope to discharge it merely by raising vacuous doubts as to Chong's real intentions. A strong case was required to overthrow the presumption of an advancement to reduce the third defendant from a legal owner to a bare trustee.

52 I therefore found that the plaintiff had failed to discharge his burden of proving that Chong had intended the third defendant to hold the Balestier property merely as her trustee.

The first and third defendants' counterclaim for the return of moneys

53 If the third defendant's recollection of the transfer of her moneys to the plaintiff seemed odd, the plaintiff's was worse, riddled as it was with contradictions. In para 8(iii) of the Statement of Claim he averred:

> [T]he rental proceeds from the said property were eventually *given to Chong* although wrongfully held by the 3rd Defendant initially. [emphasis added]

Paragraph 12 of his Reply and Defence to Counterclaim stated:

> The Plaintiff avers that he had, by chance, discovered that the 3rd Defendant had, from the start, *wrongfully and secretly retained* the rental proceeds for the Balestier Road Property. In 1996, at the request of Chong, the Plaintiff demanded that the 3rd Defendant hand over the rental proceeds to Chong. The 3rd Defendant willingly *handed over the rental proceeds to the Plaintiff* because she knew that the money belonged to Chong and she dared not used [*sic*] a single cent herself. Chong then intimated to the Plaintiff that the rental proceeds was a *gift to the plaintiff as her eldest son*. The rental proceeds was initially deposited in an account under the names of the Plaintiff and the 1st Defendant; the latter's name was included for security purpose as the Plaintiff was afraid that he might die if he met with an accident aboard the boats. [emphasis added]

Under cross-examination,[12] the plaintiff admitted that both Chong and he knew that the property had been rented out since its purchase and that the third defendant had been collecting the rental. The third defendant's retention of the rental was therefore neither wrongful nor secret. He also admitted that contrary to para 8(iii) of the Statement of Claim and para 22 of his affidavit of evidence-in-chief (which stated that the money was given to Chong) the money was transferred to him.

54 Despite earlier having asserted categorically that Chong made a gift of the money to him, in re-examination he said:[13]

> My mother asked her [*ie*, the third defendant] to hand it to me because I am responsible for the family welfare.

It is interesting to note that in a letter dated 5 March 1997[14] by the plaintiff's solicitors to the third defendant's solicitors who had demanded the return of the money, the plaintiff's solicitors wrote:

> The late mother demanded that your client returned [*sic*] it and it was *entrusted* to our client. [emphasis added]

55 The plaintiff said in cross-examination that he wanted to find out the total rental the third defendant had collected because the money did not belong to her. When pressed why there was a need for him to check how much the third defendant had collected when the property was in the third defendant's name and Chong had not asked for the rental, he prevaricated.

56 The plaintiff also made two telling slips further on in the cross-examination. In the first, he referred to the money as "my money" when the court sought clarification. In the second, after he had said that the third defendant handed over the money to him, he was asked, "What do you mean, 'hand over'?" He replied, "To trust, to hand money to me."

57 Finally, although he averred that "[the first defendant] returned on her own accord" the $30,000 from her savings account, he changed his testimony when the court sought clarification, and said Chong had asked for the money.

58 In the circumstances, it was difficult to accept the evidence of the plaintiff. Perhaps, in recognition of the weakness of the plaintiff's evidence, plaintiff's counsel concentrated his closing submissions in this regard almost exclusively on the defence of time-bar. To this end, he sought to characterise the first and third defendants' counterclaims as actions for money had and received which had become time-barred under s 6(1) of the Limitation Act (Cap 163, 1996 Rev Ed). He argued that nothing in the first and third defendants' pleadings alluded to their claims as being those of beneficiaries under a trust. This was critical to the plaintiff's defence as s 22(1)(b) of the Limitation Act, upon which the first and third defendants relied, excluded the application of any period of limitation to an action by a beneficiary under a trust "to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use".

59 Next, he contended that the defendants had not proved that any trust had been created. Finally, plaintiff's counsel submitted that if trusts were created, they failed for breach of the rule against perpetuities.

6 0 *Halsbury's Laws of England*, (Butterworths, 4th Ed Reissue, 2000) vol 40(2), at para 1305 describes an action for moneys had and received thus:

> An action for money had and received is an action used by claimants who are, for example, seeking to recover from the defendant money which has been paid to the defendant (1) by mistake; (2) upon a consideration which has totally failed; (3) as a result of imposition, extortion or oppression; or (4) as the result of an undue advantage which has been taken of the claimant's situation, contrary to the laws made for the protection of persons under those circumstances.

I found no basis for the plaintiff's contention that the first and third defendants' counterclaims were for moneys had and received.

61 Whilst I would agree that the defendants' pleadings could have been more precise, the elements necessary to constitute a trust had been pleaded. With regard to the third defendant, para 15 of the Defence and Counterclaim did plead the following material facts:

> (a) The moneys were rental deposits from the Balestier property which the third defendant had accumulated.

(b) The third defendant requested the plaintiff to place her moneys upon fixed deposit on her behalf but in the names of the plaintiff and the first defendant. In particular, the third defendant requested the plaintiff to place $350,000 of her moneys on fixed deposit on or about 18 April 1995.

(c) The plaintiff and the first defendant placed the sum of $350,000 with Oversea-Chinese Banking Corporation Ltd on 15 November 1995 (actually 19 April 1995 as shown in the Agreed Bundle[15] and as put to the plaintiff).

(d) On or about 8 March 1996, the third defendant entrusted the plaintiff with another $20,000 for placement upon fixed deposit.

62 Similarly, with regard to the first defendant, para 15(v) of the Defence and Counterclaim pleaded that on or about 8 March 1996, the first defendant entrusted the plaintiff with a sum of $30,000 from her bank account for the plaintiff to place the same on fixed deposit. Paragraph 16 of the Defence and Counterclaim alleged that despite demands from the first and third defendants, the plaintiff refused, failed or neglected to return the respective sums to the first and third defendants.

63 With regard to the sum of $20,000 allegedly entrusted by the third defendant to the plaintiff on or about 8 March 1996, I found that the sum had been loaned to the plaintiff, as evidenced by a letter of demand dated 17 December 1996 written by the third defendant's solicitors. Accordingly, the third defendant's counterclaim for the return of the $20,000 was time-barred.

64 Except for the said $20,000, all the above material facts in the first and third defendants' counterclaim were proved to my satisfaction with the aid of documentary evidence, none of which was refuted by the plaintiff. I therefore found that the sums of $350,000 and $30,000 were held by the plaintiff in trust for the third and first defendants respectively.

65 Moving to the next contention of plaintiff's counsel, it is baffling as to what basis he had for saying that the trusts failed for breach of the rule against perpetuities. There were no words of limitation giving rise to the risk of remoteness of vesting, nothing to suggest that the trusts were to be of perpetual duration nor any restrictions on the alienation of income of the trust property extending beyond the perpetuity period. I concluded that this defence was devoid of merit.

66 In the course of cross-examination, it was put to the plaintiff (which he denied) that he had converted to his use $300,000 out of the $350,000 entrusted to him by the third defendant. In the absence of sufficient evidence, I could not make a finding either way. Nevertheless, I would have been prepared to order that the plaintiff account for the movement of the funds and, if it emerged that he had converted any of it to his use, pay interest on such converted amount from the date of conversion. However, as a magnanimous gesture, the first and third defendants, through their counsel, made a request that the court not unduly burden the plaintiff in the court's exercise of its discretion with regard to interest. The first and third defendants were conciliatory to the extent that they were prepared to allow the plaintiff time to return the money.

67 Accordingly, I dismissed the plaintiff's claims with costs and declared and ordered as follows:

(a) in respect of the counterclaim of the first and second defendants:

(i) that the plaintiff, the first defendant and the second defendant are the beneficial owners of the Ringwood property, as tenants-in-common in equal shares;

(ii) that the plaintiff withdraw his caveat against the Ringwood property and that it be sold; and

(iii) that costs be awarded to the first and second defendants to be taxed unless agreed.

(b) in respect of the counterclaim of the third defendant:

(i) that the third defendant is the sole beneficial owner of the Balestier property;

(ii) that the plaintiff withdraw his caveat against the Balestier property;

(iii) that the plaintiff do deliver possession of title deeds relating to the Balestier property, within six months from the date of this order; and

(iv) that costs be awarded to the third defendant to be taxed unless agreed.

(c) in respect of the counterclaim of the first and third defendants:

(i) that the sum of $350,000 together with interest earned thereon while it was on fixed deposit (whether in the joint names of the plaintiff and the first defendant or otherwise) be returned by the plaintiff to the third defendant;

(ii) that the third defendant's claim for payment of the remaining $20,000 out of the sum of $370,000 is time-barred;

(iii) that the sum of $30,000 together with interest earned thereon while it was on fixed deposit (whether in the joint names of the plaintiff and the first defendant or otherwise) be returned by the plaintiff to the first defendant;

(iv) that interest be paid to the third defendant and the first defendant respectively on the said sums of $350,000 and $30,000 at the rate of 2% per annum from the date of filing of the Defence and Counterclaim but that such interest shall not be payable for any period(s) during which the aforesaid sums of $350,000 and/or $30,000 were earning interest on fixed deposit or otherwise; and

(v) that costs be awarded to the first and third defendants to be taxed unless agreed.

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[1]In para 23 of his affidavit of evidence-in-chief

[2]Para 10

[3]At paras 3.6 and 3.7 of her affidavit of evidence-in-chief

[4]See para 8 of Reply and Defence to Counterclaim

[5]In line 15 of p 58 of the Notes of Evidence

[6]In para 10 of his affidavit of evidence-in-chief

[7]In para 5.5 of her affidavit of evidence-in-chief

[7]In para 5.5 of her affidavit of evidence-in-chief

[8]Para 3.4

[9]Para 5.23 of the second defendant's affidavit of evidence-in-chief

[10]In lines 13 to 15 of p 55 of the Notes of Evidence

[11]In lines 20 to 25 of p 46 of the Notes of Evidence

[12]At p 28 of the Notes of Evidence

[13]At p 39 of the Notes of Evidence

[14]AB.274

[15]AB.321