

Ang Hai San Henry v Ang Bee Lin Elizabeth and another
[2010] SGHC 353

Case Number : Suit No 848 of 2009
Decision Date : 06 December 2010
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Chelva Retnam Rajah SC, Imran H Khwaja, Guy Ghazali, Zareen Islam (Tan Rajah and Cheah) for the plaintiff; Martin Francis Decruz (Shenton Law Practice LLP) for the defendants.
Parties : Ang Hai San Henry — Ang Bee Lin Elizabeth and another

Equity

6 December 2010

Judgment reserved.

Philip Pillai J:

Introduction

1 The plaintiff, Henry Ang Hai San, brings this suit against the defendants, Ang Bee Lin Elizabeth (“Elizabeth Ang”) and Andrew Ang Soon Chye (“Andrew Ang”) for a declaration that:

(a) The plaintiff is the sole beneficial owner of No 68 Jalan Naung Singapore 537730 (“the Property”); and

(b) that Elizabeth Ang and Andrew Ang are trustees of the Property.

The plaintiff also seeks an order that the defendants are to convey the Property to him absolutely forthwith, and an injunction to restrain them from disposing of the Property except as ordered by the court. In these proceedings, only Elizabeth Ang entered an appearance. Andrew Ang did not enter an appearance.

Background facts

2 The plaintiff is the elder brother of Elizabeth Ang and Andrew Ang. Their parents were married in 1943. Around 1951, their father moved away from the family and lived with various mistresses thereafter. In or about 1967, their father lived in a rented property with a mistress (the “Mistress”) and the three children she bore him. At about the same time, the plaintiff began shouldering the burden of the sole breadwinner, providing for his younger siblings and their mother, Chia Lye Neo. In 1975, their father retired at the age of 55 and became entitled to withdraw his Central Provident Fund (“CPF”) savings. It is not disputed that in 1975, their father made a \$27,000 contribution from his CPF savings towards the purchase price of the Property, which was eventually registered in the name of their mother. The Property was purchased on 7 April 1976 at the price of \$69,000. It is undisputed that their father and the Mistress lived at the Property while their mother lived at a separate rented

property with several of her children.

3 Their father died on 3 April 1999, and their mother died intestate on 17 October 2002. Their mother left ten surviving children. Elizabeth Ang and Andrew Ang are the administrators of their mother's estate under letters of administration dated 27 September 2004 and extracted on 10 December 2008.

The disputed facts

4 The only factual dispute between the plaintiff and Elizabeth Ang in this action turns on who had paid the purchase price of the Property. The plaintiff claims that their father had entered into an arrangement with him as follows:

- (a) the plaintiff would pay for the purchase price of the property;
- (b) to assist the plaintiff, their father would contribute \$30,000 towards the purchase from his CPF savings;
- (c) the plaintiff would pay the rental of the rented property at which their mother and his siblings lived, which continued to be their father's responsibility;
- (d) their father and the Mistress would live in the Property rent-free for as long as their father wished; and
- (e) the plaintiff would pay the outgoings such as property tax and insurance relating to the Property.

5 The plaintiff's evidence is that before the Property was purchased, their mother learnt about this planned arrangement and was very upset. In order to placate their mother, he registered the Property in her name. The plaintiff produced evidence to show that he had provided for the payments to purchase the Property as follows:

- (a) a cheque bearing number P081479 dated 3 January 1976 for \$2,000 paid to and acknowledged by the vendor;
- (b) a cheque bearing number CBb30737 dated 3 February 1976 for \$10,000 to the plaintiff's solicitor for the purchase;
- (c) \$27,000 from the father's CPF savings, paid to the plaintiff's solicitors for the purchase; and

(d) a \$30,000 loan from Credit POSB Pte Ltd.

The plaintiff gave evidence that the cheques in (a) and (b) above were issued by him, and the moneys were paid out from his bank account. It was his evidence that the loan stated above in (d) was secured by a mortgage over the Property, with their mother named as the sole mortgagor. The plaintiff was the guarantor and the person who had borne the burden of all the instalment loan repayments. The plaintiff paid the instalment loan repayments by way of cheques directly to Credit POSB Pte Ltd and cheque and cash deposits into his mother's POSB Account No 23-XXXXX-X ("mother's POSB Account"), which was held jointly with another one of her sons, Philip Ang Chin Chye. Their mother's POSB Account was used for making the instalment loan repayments. In support of this, the plaintiff annexed to his affidavit extracts from his mother's POSB Account passbook and copies of cheques which stated the mother as payee from 1976 until 1986. His mother's POSB Account passbook reveals that a total amount of \$4,000 in cash was deposited into her POSB Account in 1976. Between 1977 and 1986, a total of \$3,588.35 was deposited by the plaintiff into her POSB Account. The plaintiff avers that he had deposited the \$4,000 into her POSB Account in 1976. The copies of cheques were self-explanatory in that they show that the plaintiff had written various cheques to her between 1976 and 1986, paying her a total of \$43,415.62. The plaintiff avers that these payments were made for the purpose of repaying the loan and interest taken out for the purchase of the Property.

6 Elizabeth Ang's pleaded case is a straightforward one. She denies that their father had made the purported arrangement with the plaintiff as described above, at [4]. She avers that on 3 October 1975, their father had called and told her over the telephone that he had withdrawn his CPF savings of more than \$30,000.00 upon reaching the age of 55. He had told her that he wanted to distribute to each of his children a portion of his withdrawn CPF savings. She had then advised him against doing that and that he should purchase a property with his CPF savings instead. She avers that their father agreed with her and that when she asked him in whose name it was to be registered, he had replied "put your mother's name lah! Put whose name? [*sic*]". She also avers that the plaintiff had never mentioned to her the existence of any purported arrangement between himself and their father prior to these proceedings.

My decision

7 I turn to consider the pivotal issue of whether a resulting trust arises with respect to the Property given the facts before me. If there is on the evidence before me a resulting trust in favour of the plaintiff, then the Property would not form part of their mother's estate. In *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"), the Singapore Court of Appeal recognised that:

34 Resulting trusts are presumed to arise in two sets of circumstances. These circumstances were appositely summarised by Lord Browne-Wilkinson in [*Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669] at 708 as follows:

Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which presumption is easily rebutted either by the counter-presumption of advancement or by

direct evidence of A's intention to make an outright transfer ... (B) Where A transfers property to B *on express trusts*, but the trusts declared do not exhaust the whole beneficial interest ... Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention.

[emphasis in original]

8 We are here concerned with the implication of resulting trust of type (A) above. The presumption of a resulting trust is an "*inference* or even an *estimate* as to what a party's intention is likely to be, based on certain assumptions arising from a set of given facts": *Lau Siew Kim* at [37]. The usual inference in a situation where one person pays for the purchase of a property registered in the name of another, is that the first person did *not* intend to make an absolute gift to the second person, unless they fall into certain established categories of relationships out of which a presumption of advancement arises to displace the presumption of resulting trust. I also refer to *Lau Siew Kim* at [57] where V K Rajah JA, who delivered the judgment of the Court of Appeal, stated that:

... We are of the view that a two-stage test remains helpful and, indeed, necessary. The court must first determine if the presumption of resulting trust arises on the facts; and it is *only* if a resulting trust is presumed that the presumption of advancement would apply to displace that initial presumption. In addition, it should also be noted that the actual *effect* of the presumptions of resulting trust and advancement relates to the *burden of proof* in the particular case. ...

[emphasis in original]

Where it has been proven that a child has paid for the purchase of property in the name of his mother or father, the only presumption which arises is that of a resulting trust. This is because equity does not readily presume that children generally intend to make gifts to their parents.

9 Thus, relying on the above authorities, I need only consider whether the presumption of resulting trust arises in the plaintiff's favour on the facts of this case, and if so, whether Elizabeth Ang has rebutted the presumption on a balance of probabilities. I am satisfied that in the light of objective evidence such as the extracts from the mother's POSB Account passbook and the cheques which the plaintiff had written in favour of their mother (see [\[5\]](#) above), the plaintiff has proven, on a balance of probabilities, that he had paid for the purchase of the property which was in her name. Thus, the presumption of resulting trust operates in favour of the plaintiff. If the presumption of resulting trust is unrebutted, the Property would not form part of the mother's estate. I am of the view that Elizabeth Ang has not rebutted the presumption of resulting trust. I appreciate that the burden which rests on her is not easily discharged given that their father has since died and her main contention is that their father had paid for the purchase price of the Property. The evidence clearly indicates that their father had given the plaintiff S\$30,000 towards the purchase price of the Property. It was the plaintiff who was the guarantor to the bank loan and who made all the loan and interest repayments as well as paid the other payables in respect of the Property. Elizabeth Ang has not been able to adduce any corroborating evidence of her telephone conversation with their father, quite apart from whether it was and remained his intention at the time of the purchase of the Property. Elizabeth Ang further relies on her recollection of the plaintiff having sought the mother's permission to sell the Property as evidence that the plaintiff could not have been the sole beneficial owner of the Property. Even if I were to accept this, it does not follow that this evinces what she asserts. As the Property was registered in the mother's name, her agreement to such sale and signature on the relevant sale documents would be necessary and this could account for the reason

he sought her approval. Elizabeth Ang's account of their mother's suspicions of the plaintiff's proposal to sell the Property has no direct bearing on the question of their father's true intentions *at the time of the purchase of the property*. Therefore, I find that Elizabeth Ang has failed to rebut the presumption of a resulting trust in favour of the plaintiff.

10 I turn now to consider whether the contribution of S\$30,000 towards the purchase price of the Property by the plaintiff's father had any bearing on the resulting trust which I find ought to be declared in favour of the plaintiff. I am of the view that although \$27,000 out of the purchase price of \$69,000 originated from the father's CPF savings, the plaintiff has discharged his burden of proving on a balance of probabilities, that (a) his father had promised to give him \$30,000 in exchange for allowing the father and his mistress to stay rent-free at the Property; (b) the plaintiff would pay for the Property's outgoings; and (c) the plaintiff would pay for the rental of his mother's accommodation. It was in the light of this agreement between the plaintiff and his father that the plaintiff's father had given the entire amount of \$30,000 to the plaintiff. Therefore, I find that the \$30,000 belonged to the plaintiff and was applied towards the purchase of the Property.

Conclusion

11 Given my findings, I grant the following:

- (a) a declaration that the plaintiff is the sole beneficial owner of the Property;
- (b) a declaration that the Property does not form part of their mother's estate; and
- (c) an order that Elizabeth Ang and Andrew Ang are to convey the legal title of the Property to the plaintiff absolutely within six weeks.

12 Costs to be agreed or taxed are to be paid from the mother's estate to the plaintiff. In the event that there are no sufficient or remaining funds in the mother's estate to meet these costs, such costs to be paid by Elizabeth Ang to the plaintiff.