

Tien Choon Kuan v Tien Chwan Hoa
[2015] SGHC 155

Case Number : Originating Summons No 984 of 2014
Decision Date : 11 June 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Eugene Ho Tze Herng (Eugene Ho & Partners) for the applicant.
Parties : Tien Choon Kuan — Tien Chwan Hoa

Land – rectification of land register

11 June 2015

Judgment reserved.

Choo Han Teck J:

1 The applicant is the father of the respondent. In 1983, they purchased a Housing Development Board (“HDB”) flat at Marine Drive, Singapore, as joint tenants for \$115,000. The applicant claims the respondent has only contributed \$6,400 of the purchase price, and the remainder was funded solely by the applicant. The applicant severed the joint tenancy on 3 February 2010 as tenants in common in equal shares.

2 The applicant now claims that the registration of the manner of holding was wrong and his intention was to sever the joint tenancy based on the parties’ relative contributions to the flat — approximately 95% to the applicant and 5% to the respondent. By this Originating Summons (“OS”), the applicant applies for an order allowing him to rectify the land register by amending the manner of the shares between the applicant and respondent accordingly.

3 A memorandum of service was filed on 20 March 2015 by the applicant, showing that the writ of summons has been deemed to be served on the respondent as of 18 March 2015. The respondent did not enter an appearance within the 21 days required. The applicant further alleges that the respondent has absconded from Singapore in 1990 because of reasons of debt and has not left any form of contact to his family. The service of the OS on the respondent seemed to have been made in Australia by way of normal post.

4 The applicant makes this application pursuant to s 160(1)(b) of the Land Titles Act (Cap 157, 2004 Rev Ed) (“the Act”) which states:

160.—(1) Subject to subsection (2), the court may order rectification of the land-register by directing that any registration be cancelled or amended in any of the following cases: ...

(b) where the court is satisfied that any registration of notification of an instrument has been obtained through fraud, omission or *mistake* ...

(emphasis added)

The applicant further relies on *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [1999] 3 SLR(R) 606 (“*Sitiawah*”) and *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 (“*Tan Chui Lian*”) to argue that

the land register should be rectified to reflect the manner of holding as tenancy in common in unequal shares. But these cases merely demonstrate that the court has the power under s 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) "in any cause or matter relating to land...to order the land or any part of it to be sold, and to give all necessary and consequential directions". The cases do not demonstrate in what circumstances the land register can be rectified for reasons of mistake. A balance has to be struck between the indefeasibility of registered title in a system of land registration, and the power to rectify the land register in circumstances involving fraud, omission of mistake. The Court of Appeal in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 ("*Bebe*") at [47] established that s 160(1)(b) of the Act applies only to the mistake of the party who presents the instruments to the registry for registration, and that the reference to mistake must be read together with ss 46(2)(b) to 46(2)(e) of the Act. On the facts of *Bebe*, it was held that it was the mistake of the registry staff which caused the registration of the mortgage and not the mistake of the bank's solicitors. Thus s 160(1)(b) was held not to apply. The applicant has not persuaded me as to how the facts of the present case fall within ss 46(2)(b) to 46(2)(e) of the Act nor how the registration of the notice of severance has adversely affected the interest of another party.

5 Furthermore, both cases cited by the applicant show that the current application is unclear in its cause of action. The cases show that the severance of the joint tenancy in both cases created a tenancy in common in equal shares, but that the subsequent distribution of sale proceeds was carried out according to the position in equity—in which "equity recognises a presumed intention that the parties intended to hold the property in proportion to their relative contributions, and raises a resulting trust which adjusts the equities accordingly" (at [11] of *Sitiawah* and affirmed at [19] of *Tan Chui Lian*). Thus the notice of severance was merely in law and not in equity. The position in equity, taking the facts as presented by the applicant, is that there exists a presumed intention that the parties intended to hold the property in proportion to their relative contributions and the respondent holds 45% of his share on resulting trust for the applicant. But given the circumstances in which the applicant had served a notice of severance of joint tenancy which created a tenancy in common in equal shares, he has to further rebut the presumption of advancement and any evidence that the respondent's additional share of the property was not intended as a gift, to succeed in his application.

6 However, the applicant in this case has chosen to commence proceedings by way of OS and not by way of writ. An action is commenced by OS where required by statute or if the dispute is concerned with matters of law where there is unlikely to be any substantial dispute of fact. In this case, the applicant has to prove to the satisfaction of the court that he made a mistake in the manner of holding as found in the notice of severance filed on 3 February 2010 to the Singapore Land Authority. The applicant further has to prove that he did not intend to give his share of the property to the respondent by way of gift. These are all matters in which the respondent should be given sufficient opportunity to respond to, and may result in substantial disputes on fact. The fact that a defendant may not appear is not a reason to commence the action by OS. The plaintiff might still obtain judgment in default of appearance, but he must do so by the proper process.

7 For the reasons above the application in Originating Summons No 984 of 2014 is to be converted to a writ action. Applicant is to file a statement of claim and plead his cause of action within 14 days from the date of this order.

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