

Yap Bee Har v Chan Tai Hock Philip
[2005] SGHC 99

Case Number : D 600662/2002, RAS 720083/2004
Decision Date : 24 May 2005
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Suchitra Ragupathy (Rodyk and Davidson) for the petitioner; Satwant Singh (Sim Mong Teck and Partners) for the respondent
Parties : Yap Bee Har — Chan Tai Hock Philip

Family Law – Matrimonial assets – Matrimonial home – Division – Whether husband should be awarded larger share of matrimonial home – Whether husband should be awarded share of moneys in joint account and wife's personal account

24 May 2005

Judgment reserved.

Judith Prakash J:

Introduction

1 This appeal arises out of divorce proceedings initiated by the wife against the husband. The parties were married in August 1985. They subsequently had two children: a son born in 1988 and a daughter born in 1991. The husband left the matrimonial home in 1999 and the decree *nisi* was granted on 29 April 2003 based on the ground of unreasonable behaviour on the part of the husband.

2 The ancillary matters were heard by District Judge Jeffrey Sim. He made the following orders on 23 July 2004:

(a) that custody, care and control of the two children be granted to the wife, with reasonable access to the husband (with detailed access provisions being spelt out) and that there be liberty to apply;

(b) that a just and equitable division of the matrimonial flat would be in the proportion of 55:45 in favour of the wife. The husband shall transfer his share, title and interest in the matrimonial flat to the wife upon the wife paying the husband the sum of \$119,250 (being 45% of the estimated value of the matrimonial flat at \$265,000). The husband shall refund to his own Central Provident Fund ("CPF") account all CPF moneys used for the purchase of the matrimonial flat including accrued interest; and

(c) that the parties retain all other assets which are in their respective names.

3 The husband appealed against the orders relating to the children and the division of matrimonial assets.

4 The appeal first came before me in November 2004. Submissions on both issues were made. The husband wanted the access order varied so that he could have overnight access to the children. He especially wanted further access to the son. I made certain interim orders dealing with the access arrangements for November and December 2004, and adjourned the appeal on this issue for further hearing to Thursday, 6 January 2005. I ordered both children to attend.

5 On 6 January 2005, I interviewed the children. I found that the son was adamant in his refusal to see his father. He blamed the husband for the break-up of the marriage and considered him to have been irresponsible in relation to maintenance and to the care of the family generally. The daughter also expressed certain views that were adverse to the husband. She expressed discomfort about spending time with him. I asked counsel to check on the possibility of counselling for the father and the children to try and improve the relationship. I also asked the parties for further submissions on the division of assets.

6 Subsequently, both counsel reported on the position regarding the children. Counselling was possible though it appeared that the son was not very receptive to the idea. After hearing parties, I made the following orders:

(a) access arrangements in respect of the daughter to continue as per the Order of Court made on 29 August 2001 in Originating Summons No 5045 of 2000, except that the weekly access was changed to Sunday either between 9.00am and 2.00pm, or between 2.00pm and 7.00pm, as decided by the daughter;

(b) in respect of the son, no access on the basis that the son and the husband were to attend counselling sessions at the Family Court either separately or together as may be decided by the counsellors and at such times over the period of four months from 28 January 2005 as the counsellors deem fit;

(c) counsellors to submit to me by end June 2005 a confidential report on the counselling sessions and their recommendations in relation to access; and

(d) appeal on access adjourned to Monday, 11 July 2005.

7 I then heard their further submissions on the division of matrimonial property and reserved judgment. This is my judgment in relation to the division of matrimonial property.

Background on financial matters

8 The husband's educational and employment background, as found by the district judge, are as follows. After completing his "A" levels, the husband entered national service and thereafter, he signed up as a regular officer in the Singapore Armed Forces. At the time of the marriage in 1985, he was in the army and he was earning \$3,200 a month. In 1990, he became a senior executive at Chartered Material Services and he then earned \$2,800 a month. This continued until 1994 when he joined Armstrong Pte Ltd, earning a monthly salary of \$2,500. The next year, he moved to Orient Container Warehousing Services where his monthly salary was \$2,700 a month. He remained there until 1997 and, in his next job, which lasted until 27 March 2001, he earned \$2,374 a month. The husband was unemployed from 28 March 2001 until he was taken on as a project co-ordinator at Kelden Design Consultancy on 28 November 2001. His salary dropped to \$1,800 a month and remained at this level when he joined another firm in January 2002. The husband was unemployed again between August 2002 and 5 January 2003. On 6 January 2003, he found employment at the Informatics Group (Singapore) Pte Ltd from which he earned \$2,394 monthly. All salary figures for the husband are gross figures.

9 The wife worked throughout the marriage. At the time the ancillary matters were heard, she was earning a take-home salary of \$2,233 per month excluding overtime and bonus payments. She did not give a full list of her employers throughout the marriage but did disclose her income tax returns for

1990 to 2003 and also gave her own computation of her net annual income from 1984 to 2002. According to this computation, between 1985 and 1990, her net monthly income moved steadily upwards from \$1,308 to \$1,524. In 1991, she had a net monthly income of \$1,584, in 1992, it was \$1,674, in 1993 it was \$1,778 and in 1994, it was \$2,071. The next year, her income rose to \$2,312 per month and hit a peak of \$3,064 in 1996. In 1997 her monthly net income fell to \$2,638 and in 1998, it fell further to \$2,014. For the first four months of 1999, the wife earned \$2,482 per month. According to the wife, her total net income between 1984 and April 1999 when the husband left her was \$321,194. According to her calculations, the husband's total net income between 1984 and 1999 was \$352,456.

10 In 1984, prior to their marriage, the parties opened a joint bank account. The wife was the one who managed the joint account which was a checking account. She stated that it was used for many purposes including making payments for many of the family expenses. During the period of the marriage, the husband gave the wife a monthly sum in cash each month for his share of the family expenses. This sum started out at \$600 a month and after 1991 it increased until it reached \$1,000 a month in 1997. In addition to the cash sum, the husband paid for the utility, telephone and the Housing Development Board ("HDB") conservancy charges by GIRO. These payments amounted to about \$200 a month.

11 The wife stated that contributions were made to the joint account by both parties. Save for the sale proceeds of their home at Normanton Park ("the Normanton property"), the husband never made any direct deposits into the joint account. Over the years, the practice was that the husband gave her his monthly cash contributions for the family's expenses. She would use these funds together with her own moneys for the family and whenever there was any excess, she would deposit it into the joint account. On an *ad hoc* basis, the husband also gave her additional moneys from his yearly bonuses which, if not used for the family expenses, would be deposited into the joint account. On her part, she regularly put in funds as well, as her personal account was a savings account and not a checking account and many expenses for the family had to be paid by cheque.

12 In 1994, the parties sold the Normanton property and, after all deductions and repayments, the net balance paid to them amounted to \$274,372.96. The parties divided the proceeds equally and the husband's half-share amounting to \$139,686 was deposited into the joint account.

13 Throughout the hearing of the ancillary matters, the husband's position was that he was entitled to a share of the moneys in the joint account. The wife's position was that various payments out of the joint account had been made for the husband's benefit alone, including a sum of \$50,000 she had paid him in 1999 just before he left home. She asserted that once all the payments to him had been computed, he had, in fact, been paid more than his share of the proceeds from the sale of the Normanton property and should repay her some money. The wife had certain other moneys in her own bank accounts but she claimed that these were her own savings and she was entitled to keep them. The husband's appeal was basically for a share in the moneys held by the wife and also for a larger share in the matrimonial home. I will deal with the matrimonial home first and then move on to consider the other matrimonial assets in more detail.

The matrimonial home

14 The matrimonial home was a flat at Block 624 Yishun Ring Road. It was bought on 1 October 1992 for \$137,000. At the time of the ancillary hearing, the flat had been fully paid for and the parties estimated its resale value at between \$260,000 and \$265,000. The flat is currently occupied by the wife and the two children. As at April 2004, the husband had contributed \$91,238.50 from his CPF account towards the purchase of the flat and the wife had contributed \$21,003.25 from her CPF

account for this purpose.

15 The wife claimed that she had also paid another \$50,500 towards the purchase. Of this, \$38,300 was used as initial cash payment to the HDB, \$15,000 was paid to the seller and \$1,500 was paid to the agent as commission. She also claimed that she had borrowed \$24,000 from her employer to pay for renovations and furnishings. The husband disputed these payments. The judge found that the wife had taken \$50,500 from her personal account and put it into the joint account in July 1992 and that this sum had been applied as stated by her. He based his finding on entries in the wife's bank book showing the transfer of the sum of \$50,500 to the joint account. He did not accept the wife's claim that she had borrowed \$24,000 from her employer as no credible supporting evidence was produced.

16 Based on the judge's findings, the wife's direct contributions towards the flat came to \$71,503.25 and this gave her a 44% share of the total acquisition cost of the flat. The judge also found that the wife had been the primary caregiver of the children and he was therefore of the view that it would be just and equitable to divide the matrimonial flat between the parties in the proportion of 55:45 in favour of the wife. In effect, he credited her with another 11% share in the flat in recognition of her indirect contributions to the family.

17 On appeal, the husband disputed these findings. He asserted that a total of \$139,428.50 had been paid for the flat. The excess of \$2,428.50 over the purchase price was expended in meeting the costs of the purchase including stamp fees. His contention was that the wife had contributed directly a sum of \$20,900 from her CPF account and that the contribution of \$38,300 from the joint account had to be credited to them in equal shares. He did not accept that the wife had paid an extra \$15,000 in cash.

18 The statement issued by the HDB on completion of the purchase on 30 July 1992 showed that the price of \$137,000 had been paid by a total sum of \$48,300 taken from the parties' CPF accounts, a cash payment of \$38,300 and a loan of \$50,400 made by the HDB. The statement also showed that the buyers had to pay a further \$2,185.50 to the HDB to cover the cost of registration fees and stamp fees. The documents produced by the wife showed that she withdrew a sum of \$50,500 from her sole account on 27 July 1992 and that this sum was deposited in the joint account on the same day. Further, her cheque stubs showed that the following payments were made from the joint account: the sum of \$5,000 was paid on 26 June 1992 to Dianah bte Abdullah, one of the sellers of the flat, a further sum of \$10,000 was paid to the same person on 30 July 1992, a sum of \$38,300 was paid to the HDB on 30 July 1992 and a sum of \$1,500 was paid to the agent Patron Property on 30 July 1992. These payments totalled \$54,800. It was also clear from the statement of account that prior to the first payment of \$5,000 to Dianah bte Abdullah, the account had a balance of some \$20,000 only and therefore the parties could not have achieved payments totalling \$54,800 from the joint account had it not been for the wife's deposit of \$50,500. There is no documentary evidence as to where the additional sum of \$2,185.50 came from, but as the wife did not claim that she had paid it either from money that she put into the joint account or from the joint account itself, that money must have come from the husband as he alleged.

19 Considering the evidence, therefore, it would appear that the initial cost of the house was \$155,685.50 (\$137,000 + \$1,500 + \$15,000 + \$2,185.50). When the sum of \$13,438.50 being the interest paid to the HDB on the loan is added, the total amount paid is \$169,124. Of this, the wife paid \$50,500 from her own savings and \$20,900 from her CPF account, the husband paid \$27,400 from his CPF account as the initial deposit, a further \$63,838.50 by instalments from his CPF account in settlement of the loan and interest thereon, and an additional \$2,185.50. The amount that the wife put into the joint account was \$50,500 but she withdrew \$54,800 from that account for the house

payments. The difference of \$4,300 should be credited equally to each party (*ie* \$2,150 each) since it came from the credit balance in the joint account. Therefore, the wife's total contributions were \$73,550 and the husband's total contributions were \$95,574. This meant that the husband contributed 56.5% and the wife contributed 43.5%. This figure that I have come to is not very different from that found by the district judge. Awarding the wife a further 11.5% on top of the 43.5% to reflect her non-financial contribution to the family cannot be considered excessive or out of proportion to that contribution.

20 The husband has not satisfied me that the district judge was wrong in dividing the matrimonial flat in the way that he did. The evidence supported the finding made by the district judge that the wife had in fact contributed \$50,500 from her savings towards the purchase. I dismiss the appeal on this part of the division.

Other matrimonial assets

21 The husband made a claim before the district judge for a half share of the moneys in the joint account and also for a share in moneys which he said the wife had stashed away in her personal account. The district judge accepted the wife's evidence that there were no moneys left in the joint account and, also, no moneys left from the sale of the Normanton property, for division between the parties. The wife had, in his view, given the best estimates that she could of the contributions and expenses of the parties and the family over the period of the marriage until the husband left the matrimonial home. These estimates showed that there were no moneys left for division. Accordingly, the district judge did not make any order dividing the moneys in the joint account or in the wife's personal account between the parties.

22 On appeal, the husband submitted that when he left the matrimonial home in May 1999, he had \$49,324.67 in his savings account, whilst the wife had \$220,910.64. The husband produced a copy of his savings account statement to substantiate his assertion. As regards his assertions of the assets in the wife's name, he substantiated these by reference to a table that he had drawn up of all the deposits and withdrawals made by the wife into and from her personal savings account between 1988 and 1999. His conclusion was that, as of December 1999, the wife had saved \$220,910.64 although this amount was not shown as being available in the account at that time. The husband also exhibited documents that showed that in February 1999, the wife had a fixed deposit of \$100,213.38 with DBS Bank, in April 1999 she had taken \$50,220.22 from an account with Overseas Union Bank Ltd ("OUB") and in December 1999 she had withdrawn a further \$101,620.03 from OUB. Other documents he relied on indicated that in July 2001, the wife had made deposits totalling \$150,000 with OUB.

23 The husband relied on the parties' agreement that both of them would contribute to the joint account. The wife had never denied that the husband had paid her at least \$600 a month for crediting into the joint account and had not denied either that she had been supposed to make a similar contribution to the joint account. The documents she had disclosed, however, showed that she had deposited her salary into her sole account. That would mean that she had used moneys from the joint account which had come solely from the husband to run the household. It was also apparent from the accounts that the wife had taken out moneys from the joint account and put them into her own account. The wife had not observed her part of the arrangement, *ie*, to put her money into the joint account and thereby contribute to the household expenses.

24 The wife had taken money for the purchase of stocks and shares and to place on fixed deposit. She had not given an accounting of this and some of this money must have come from the joint account. Prior to the receipt of the sale proceeds from the Normanton property, the joint account, having been in existence for some ten years, had a credit balance of only \$30,771.46, and

\$30,000 of this was withdrawn on 31 May 1994. The sale was completed on 2 June 1994 and on the same day \$274,372.96 was paid into the joint account. It was accepted that \$139,686 belonged to the husband. On 6 June 1994, \$30,000 was withdrawn and on 16 June, another \$150,000 was withdrawn. Thus, within a few weeks of completion, the wife had taken out her share of the Normanton property sale proceeds and a further \$40,000 or so as well.

25 The husband also pointed out that on 16 June 1995, \$104,000 was put into the joint account and within the next week, \$149,700 was moved out. On 16 June 1997, \$49,900 was withdrawn from the joint account. In March 1997, \$20,678.09 was moved into the account and in April 1998, \$50,000 was moved out of the account. In February 1999, \$100,213.38 was paid into the joint account (I note that this probably came from the DBS fixed deposit account) bringing the balance up to \$110,556.19 but on 3 March 1999, \$50,000 was withdrawn (I note that this was probably the payment of \$50,000 that the wife made to the husband from the joint account). A further \$55,000 was taken out on 28 April 1999. When the husband moved out in May 1999, the account had a \$5,000 net balance. The husband submitted that the wife had controlled all the movements in the joint account and that she had very much more money than he. He also pointed out that, based on a statement of account issued by OUB on 15 June 2002, as of January 2002, the wife still had \$150,000 in fixed deposits with OUB. It should also be noted that at the end of 1998, the husband had approximately \$121,000 in his ordinary account with the CPF Board. At that time the wife had about \$150,000 in her ordinary account.

26 The wife agreed that the net sale proceeds of the Normanton property had to be divided equally between the parties. She asserted that, in fact, the husband had spent all his share of those proceeds and that there was no further money in the joint account which was due to him. Her computation went as follows:

Contributions by the husband

(a)	husband's half share of the proceeds of the Normanton property	\$139,686
(b)	husband's approximate contributions to the family expenses from 1984 to April 1999	\$167,471
Less:		
(c)	husband's half share of family expenses	(\$162,535)
(d)	moneys withdrawn by the husband from the joint account for his personal purposes:	
	(i) purchase of first car on 6 June 1994	(\$30,000)
	(ii) purchase of second car on 8 May 1998	(\$64,000)

(iii)	road tax for 1995 and 1997	(\$1,628)
(iv)	husband's personal income tax from 1985 to 1988	(\$10,776)
(v)	payment to the husband	(\$50,000)
	Balance owing by the husband	(\$11,782)

27 The wife submitted that the total family expenses of about \$325,000 over a period of 15 years worked out to an average of \$1,800 a month. The husband's contributions over this period amounted to only about \$167,000 and the payment for the rest of the family expenses must have come from her. She had taken much effort to compute these expenses over the period and it was not fair to say that she had not been contributing to the family's expenses. The monthly salary of the husband was deposited into his personal account save for the amounts given to her to be placed in the joint account. The amounts given to the wife were insufficient to meet all the expenses and the husband had shown no basis on which to allege that he had paid all the expenses over the years.

28 As regards his computations based on the entries in the joint account, the wife asserted that the husband had only chosen selected entries from the joint account and had no basis to substantiate his claim that the wife was holding on to \$305,000 outside the joint account. The husband had not taken account of the withdrawals made to purchase the first car and to pay him \$50,000. If all proper withdrawals were taken into account, the wife would hold only \$150,000 as at 1999 and not \$305,000 as alleged. The wife submitted that, as at 23 December 1999, she had some \$237,643.84. This amounted to her share of the Normanton property and some savings of hers from the many years of her working life. Since then substantial sums had been used for the family expenses. In 2002, her fixed deposits amounted to \$150,000 only and not \$299,997 as alleged by the husband.

29 As regards the cars, the wife's position was that the cars were bought by the husband and used almost exclusively by him. Her case was that, for some time before he left home, her husband had hardly spent any time with the family. Shortly after the second car was bought, he left the home. If the second car had been used for the family, the husband should have accounted for the sale proceeds in 2000 and returned half the same to the wife. Instead, he had kept the sale proceeds for himself.

30 The wife's submission was that the district judge was therefore correct in finding that all the money in the joint account had been spent and that there was nothing left to be divided between the parties.

31 I take a different view from the district judge. Whilst I think that the husband's calculations are not logical and do not support his conclusion as to the amount that the wife has, it is clear from the facts that at the end of the day, she had much more cash than he and, bearing in mind the fact that she earned less than he did throughout the marriage, it appears to me that she would not have been able to accumulate that much cash without the husband bearing more than an equal share of the family expenses. The wife controlled the joint account and she moved moneys in and out as she pleased. She was the one who managed all the family expenses and decided how much had to be spent on each item and how much could be saved from month to month. She kept the accounts and was able to come up with figures as to the family's expenditure over the years. She was not able to

show, however, that she contributed as much as the husband did to those expenses. She did not give the exact figures of how much she paid each month. I accept that she did contribute but the proportion of her contribution could not have been close to equal during the earlier years of the marriage when the husband was earning two to two and a half times what the wife earned. In the later years of the marriage, the wife may have contributed half of the expenses but that does not mean that over all the 15 years her contribution came to half the total expenses.

32 Before I decide what share the husband should have of the wife's savings, I first have to determine the amount of those savings. First, there is the money from the sale of the Normanton property. This was divided equally and, therefore, both parties would have had \$139,686 from it. The wife deducted the cost of the two cars from the husband's \$139,686. I do not think that she should have done so as, while the family lived together, the cars were used as family cars even if the husband was the person who drove the cars. Also, there was no assertion by the wife that at the time the cars were bought (the first was bought just after the Normanton property was sold) it had been agreed that they were intended as the husband's sole property. Therefore, the total cost of the cars and the road tax should be shared between the parties. As the husband took the second car away with him and sold it subsequently, he must, however, account for the proceeds.

33 On the foregoing basis, I have calculated that the husband has received from the wife \$11,096 less than his entitlement in relation to the proceeds of the Normanton property. The exact calculations are as follows:

(a)	Amount of proceeds	\$139,686
	Less:	
(b)	half the cost of the two cars and the road tax	(\$47,814)
(c)	the husband's income tax	(\$10,776)
(d)	the amount received by the husband on the sale of the second car	(\$20,000)
(e)	the amount received by the husband from the joint account in March 1999	(\$50,000)
	Total	\$128,590
	Balance	\$11,096

34 Turning to the wife's share of the proceeds of the Normanton property, as at May 1999, she would have had a balance of \$91,872 remaining if half the cost of the two cars and half the cost of the road tax were to be deducted from that sum. This means that out of her savings of \$237,643.84, at the end of that year, approximately \$145,771.84 represented moneys other than the proceeds of the Normanton property. This is the sum that should be divided between the parties because the wife would not have been able to accumulate it had it not been for the husband's contribution to the

family's expenses. A large chunk of the wife's savings prior to 1992 would have been used for the purchase of the matrimonial flat in Yishun. She has already received credit for that sum of \$50,500. Thus, much of the savings she had as at 1999 must have been accumulated after 1992. This conclusion lends further support to the inference that the quantity of the wife's savings arose from the husband's greater contribution to the family expenses. Despite the fact that her salary was steadily rising during the period between 1992 and 1999, the wife could not have saved so much money in such a short period if she had had to bear half the family expenses.

35 The issue now is how much of the \$145,771.84 should be awarded to the husband. He would like a 50-50 distribution. I have to take into account, however, the fact that this was money accumulated by the wife from her own efforts and his contribution to it was indirect through the fact that, in bearing the greater proportion of the family's expenses, he enabled her to accumulate such savings by the exercise of frugality and prudence. Secondly, the wife also had indirect contributions to the family as recognised by the district judge. Thirdly, the husband left the household and as a result, the wife had to shoulder additional responsibilities. Fourthly, there is no documentary support for the husband's assertion that the proceeds of the sale of the car amounted to only \$20,000. In all these circumstances and using the broad-brush approach, I think a fair apportionment would be 75% to the wife and 25% to the husband.

36 I therefore order the wife to pay the husband \$11,096 remaining from his share of the Normanton proceeds and \$36,443 as his share of the savings of \$145,771.84.

Conclusion

37 The appeal is therefore allowed in part. Since each party has succeeded on one issue and failed on one issue, each party shall bear his or her own costs of the appeal in relation to the matrimonial property.

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