

Lie Djioe Boei alias Lee Yew Wee Executor of the Estate of Lioe Soei Tjin alias Liu Swee Chin (or Lie Soei Tjin also known as Liu Swee Chin), deceased v Huang Han Jiang (alias Huang Han Jiang)
[2000] SGHC 107

Case Number : Suit 1635/1999
Decision Date : 07 June 2000
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : P Balagopal [Palakrishnan & Partners] for the plaintiff; Jack Lee Tsen-Ta with Joanna Tan Ai Ling [Chor Pee & Partners] for the defendant
Parties : Lie Djioe Boei alias Lee Yew Wee Executor of the Estate of Lioe Soei Tjin alias Liu Swee Chin (or Lie Soei Tjin also known as Liu Swee Chin), deceased — Huang Han Jiang (alias Huang Han Jiang)

JUDGMENT:

GROUND OF DECISION

1. In 1951 Liu Swee Chin married Huang Han Jiang under the Civil Law Ordinance, Singapore. Liu's first husband (for whom she bore a son, Lee Yew Wee) died in the Second World War. Lee was about 6 or 7 years old when Liu married Huang. Liu bore two children for Huang; a daughter, Rose Huang, and a son, Huang Yew Bin. In their early days Huang and his family lived together with his mother and aunt in a rented house at 73 Siang Lim Park. The monthly rent was \$23.50. Liu worked as a clerk at Lee Rubber Company Pte Ltd from 1951 to March 1971. Her annual salary in 1951 was \$3,800 inclusive of bonus payments. Her annual pay in 1970 was \$8,200 inclusive of bonus payments. Except for two lean years in 1952 and 1953 her annual income was above \$3,000. Huang was a civil servant from 1961 to 1969. His annual income ranged from \$5,500 to \$8,000. He testified that he also worked part-time as an accountant earning an extra \$150 monthly.

2. In 1961 Huang purchased a semi-detached house at 86 Jalan Seaview. He related under cross-examination that he bought this house because his rented house was full of termites, mosquitoes and other insects which gave his children skin problems. After talking over with his mother, he made the decision to purchase his own property. Liu supported this decision, and through a friend, he found 86 Jalan Seaview. The house was purchased on 12 June 1961 at the price of \$25,000. Huang testified that he paid a total of \$30,000 for it. The extra \$5,000 included expenses such as legal and stamp fees, and an additional \$1,500 which the vendor demanded and Huang conceded. Although Mr. Balagopal, counsel for the plaintiff Lee, suggested to him that the legal costs and stamp fees could not be more than \$1,000, Huang disagreed. Although he could not recollect what the extra costs were comprised of, he recalled clearly that the total cost of the house to him was \$30,000. Huang is now 77 years old. He was frail in body but not of mind. His speech was slurred by his physical infirmity, but once his words were deciphered, they reflected a remarkable clarity of sense and detail. I am content to accept the evidence of facts as he recalled them. He testified that he took a loan of \$12,000 from the Malaya Borneo Building Society while Liu contributed \$6,000; \$4,000 of which was borrowed from her colleague, and \$2,000 came from her savings. His mother gave him \$3,500, and he also utilized the sum of \$4,500 paid to him as "tea money" by the tenant who took over his Siang Lim Park house. Lee produced a note written by him on 9 April 1987 stating that Liu contributed \$8,500 towards the purchase price of the property. Lee testified that the note was signed by Liu. Mr. Lee, counsel for Huang, objected to the admission of this note because the signature has not been proved to be Liu's. I admitted the note in evidence as it was produced by Lee as evidence received by him and on his evidence that he witnessed Liu's signature at the time. However, the weight to be given to

that document is another matter. It is not known under what circumstances the note was made. On the whole, it raised more questions than answers. I am of the view that it was a document procured by Lee and inspired by an exercise book given to him by his mother, Liu. That book carried a notation of \$8,500, in Huang's handwriting, as the amount paid into the bank about April 1961. It was, therefore, Lee's case that the financial contribution made towards the purchase price was \$8,500.

3. Liu died on 15 February 1992 leaving her entire estate to Lee under a will made in 1978. No provision was made in her will for her two children by Huang. Lee as executor of her estate sued Huang for a half share of 86 Jalan Seaview on the ground that by virtue of her financial and non-financial contributions she was entitled to an equal share of the property. Huang conceded that Liu made a contribution, but that was no more than \$6,000. Counsel argued on his behalf that Liu was, therefore entitled to a share in the property, but by reason of the small contribution made compared to that by Huang, her share should not be more than 6.1 per cent (6.1%).

4. Counsel for both sides fought on the basis that Liu's entitlement was based on a constructive trust. They thus took pains to ascertain the direct and indirect contributions made by the husband and wife. The position in law is neatly summarized in a passage from Halsbury's Laws of England, Vol 48, at page 325. That passage reads as follows:

"Where the house is taken in only one of the two names, usually in practice the man's, the position is more complicated. Subject to any declaration of trust, where property is purchased in the man's name but both parties contribute to the purchase price, the woman acquires an interest under a resulting trust proportionate to her contribution to the purchase price. Alternatively, she may wish to make a claim under a constructive trust. On such a claim the first and fundamental question which must always be resolved is, whether independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to the acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property was to be shared beneficially. This common intention which has been said to mean a shared intention communicated between them and which must relate to the beneficial ownership of the property can only be based on the evidence of expressed discussions between the parties, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made, it will only be necessary for the party asserting a claim to a beneficial interest against the party entitled to the legal estate to show that he or she had acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel."

5. On the evidence before me I am unable to find any agreement between the defendant and Liu, whether before or after the purchase, as to how the property was to be shared. Liu has died, and the evidence of the defendant was simply that he decided to purchase the property after discussing with his mother. He testified that Liu supported his decision and managed to obtain a loan of \$4,000 from her colleague to add to \$2,000 of her own savings which she then gave to the defendant. He deposed in his affidavit of evidence-in-chief that he made a will on 2 April 1987 giving the house to his two children by Liu and the latter did not protest. That will was subsequently revoked. Nothing more was said and this point was not pursued very far. It could be that Liu intended her contribution to be a gift to her husband, but the evidence was also insufficient for me to come to this conclusion with confidence. In the circumstances, the most equitable finding that I can make is to hold that Liu

be entitled to a resulting trust proportionate to the amount of her contribution. I have little difficulty accepting the defendant's evidence that the total contribution by Liu was \$6,000. The plaintiff's contention that it was \$8,500 was based on two documents. The first was the cash book with the sum \$8,500 written in it (with no reference as to what it was for), and the second was the letter signed by Liu but written by the plaintiff. It was signed at a time when Liu was suffering from physical and psychological problems. These were indicated in the medical reports produced by the parties in this trial. But the real disadvantage was that Liu, having died, could not be cross-examined on that document. The defendant on the other hand gave a good account of his version under cross-examination, and I have no difficulty accepting his evidence.

6. Counsel for both sides agree that *Mercier v Mercier* [1903] 2 Ch 98 has often been cited as the authority for the proposition that a presumption of gift applies only when a husband buys property in the name of his wife but not when the wife buys property in the name of the husband. That case was affirmed on appeal on a much narrower point of law which is irrelevant to the present case before me. I think that two points ought to be made. The first is that authority represented by *Mercier v Mercier* is, I think, rapidly becoming archaic. It represents the social thinking in the early twentieth century when men were still generally regarded as the bread-winners in the family. A man would not uncommonly purchase properties in the name of his wife so that they may not be vulnerable to creditors. But he can only do so honestly if he genuinely gave the properties as a gift to her. Thus, the presumption operates in some way towards the maintenance of that virtue. In present times, the bread-winning duty is commonly shared between husbands and wives. The incentive a man might have in the past to place his properties in his wife's name is an equally attractive incentive to the wife today to place hers in his name - especially where the wife is a business woman and the husband a salaried employee. It may soon be necessary to extend the presumption to cover properties purchased by a wife in the husband's name; alternatively, it may no longer be justified in maintaining the doctrine of presumption of advancement (from husband to wife). I do note, of course, that the facts in the present case occurred in 1961 where the *Mercier* way of thinking still held sway.

7. The second point is that although the presumption of gift does not apply, the defendant could still prove that the contribution by his wife was a gift by her to him. However, on the evidence before me, I am not able to come to such a finding. The defendant himself had not averred that Liu's contribution was a gift.

8. As both parties were desirous of selling the property, I ordered the property to be sold and the estate of Liu Swee Chin be given 20 per cent (20%) of the net proceeds of sale after deducting the expenses of sale. I have left the mechanics of sale to be agreed by the parties with liberty to apply. The defendant was ordered to remove the caveat within a week.

9. Mr. Lee for the defendant submitted that costs should be borne by the plaintiff because he failed in his prayer for a 50 per cent (50%) share of the house, and also that he had rejected a "without prejudice" (Calderbank) offer made to him by the defendant on 15 May 2000 in which the defendant offered him a 20 per cent (20%) share in the proceeds of sale. I am of the view that since the plaintiff had succeeded substantially, he is entitled to some costs. The Calderbank Offer was made virtually at the end of the trial. In the circumstances, I am of the view that the plaintiff be awarded one-third costs up to 15 May 2000, with no order as to costs on the counter-claim which was essentially for an order that the caveat be removed.

CHOO HAN TECK

JUDICIAL COMMISSIONER

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