Chan Gek Yong v Chan Gek Lan
[2009] SGHC 20

Case Number : Suit 201/2007

Decision Date : 19 January 2009

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Chan Gek Yong, plaintiff in person; Koh Hai Keong (Koh & Partners) for the defendant

Parties : Chan Gek Yong — Chan Gek Lan

Trusts – Resulting trusts – Presumed resulting trusts

19 January 2009 Judgment reserved.

Woo Bih Li J:

Introduction

1 This action is yet another piece of litigation between two sisters, Chan Gek Yong ("the plaintiff") and Chan Gek Lan ("the defendant").

2 The plaintiff and the defendant are the registered tenants in common in equal shares of a property at 46-A Hillside Drive ("the Hillside property"). In this action, the plaintiff seeks a declaration that she is the legal and beneficial owner of 65% of the Hillside property and for an order for the sale of that property and for 65% of the net proceeds of sale to be paid to her.

3 The defendant did not contest the intended sale but had initially made a counterclaim for a declaration that the plaintiff and her held the Hillside property as trustees for three of their brothers with each of these three brothers having a one-third beneficial interest. This counterclaim was withdrawn at trial leaving the plaintiff's claim to be entitled to 65% of the Hillside property as the main issue. An intermediate terrace house stands on the Hillside property which has a land area of 175.6 sqm.

4 The parents of the litigants are deceased. The father had been running a tomb stone manufacturing business known as "Chan Guan Chua" and the mother had been running a provision shop known as "Chop Guan Huat".

5 There are eight children in the family. The defendant is the eldest and the plaintiff is the second eldest. The defendant attended Chung Hua Girls High School and her highest level of education is Secondary Two. The plaintiff holds a diploma from the Singapore Polytechnic. She worked as a teacher in a secondary school, as a Parts Executive with the Inchcape Group, as a manager with Asia Motors Pte Ltd and then became a partner in Chan Dental Clinic & Surgery which was essentially a practice of one of their younger brothers, Chan Joo Hock. The business of the clinic was carried out at Blk 253, Serangoon Central Drive, #01-233, Singapore 550253 ("the Serangoon property") which was held by the plaintiff and the defendant as joint tenants. In Suit 287 of 2007, the plaintiff was making various claims against the defendant, one of which was for the plaintiff's share of rent paid by the clinic for the use of the Serangoon property. In that action, the defendant in turn made a counterclaim for her share of the rent from the Serangoon property. I dismissed all the various claims

of the plaintiff and the counterclaim of the defendant in that action.

Contentions and my conclusion

6 Coming back to the present action, it was not disputed that in 1978, the father, Chan Tian Thye, intended to buy the Hillside property. However, he eventually decided that the Hillside property would be purchased in the names of the plaintiff and the defendant. This property was transferred to them (by the vendor) as tenants in common in equal shares.

7 The plaintiff's version of events was as follows. She alleged that that she had in the past banked in her salary into her bank account and then withdrew the same in cash which she handed to her father.

8 In or about 1978, the father had told her of his intention to buy the Hillside property for $118,000. He had informed her that he would use $50,000 of her money, which he had saved for her, to make a cash payment of $58,000 with the remainder of $8,000 coming from him. As for the balance of $60,000 (being $118,000 - $50,000), this would be paid from a loan to be taken out by these two sisters on the security of the Hillside property. The plaintiff asserted that she had paid 65% of the principal sum and that therefore, the defendant held part of her half share on a resulting trust for the plaintiff.

9 The defendant's allegations were inconsistent to some extent. For example, at paragraph 3 of her Defence and Counterclaim, the defendant alleged that the Hillside property had been paid for by their father. In paragraph 7 of the same pleading, she alleged that she had paid $46,200 being part of the purchase price. In paragraph 8 of the same pleading, she alleged that the $46,200 (and another sum) were monies belonging to both the parties' late parents. However, the defendant maintained that the plaintiff did not provide any of the funds to purchase the Hillside property.

10 The plaintiff said that it was not possible for their mother to have provided any money to make part or all of the cash payment or the monthly payments to the finance company in respect of the Hillside property because the business of the provision shop was not doing well by 1978 although it had been making profits. The plaintiff also asserted that her salary was more than the declared income of their mother or their father for the calendar year 1976. Furthermore, the parents had subsequently paid for tertiary education for two sons, including education in Canada for one, and all household expenses. They would not have been able to afford to do so if they had used their money to pay entirely for the Hillside property.

11 I am of the view that the fact that the plaintiff's salary for 1976 was more than the declared income of their mother or their father was neither here nor there. Obviously the parents had some financial means and that is why they could afford to pay for all the education of the children including subsequent tertiary education for two sons, including an overseas education, and all household expenses. The fact that they could do that militated against the suggestion that they could not have afforded to pay entirely for the Hillside property. In any event, there was insufficient evidence to show accurately the state of their finances as at the time when the Hillside property was bought.

12 The defendant relied on various statements made by the plaintiff in two of her affidavits which she executed in Originating Summons No. 1677 of 2006 (before this action was converted into the present Writ action). I will refer to the Originating Summons as "OS 1677/06". The defendant's position was that although some of these statements mentioned that the plaintiff had paid part of the purchase price, the plaintiff had acknowledged that she had had only a half share in the Hillside property. The two affidavits which contained these statements were the plaintiff's affidavit of

31 August 2006 ("the plaintiff's first affidavit") and of 16 November 2006 ("the plaintiff's third affidavit"). The statements the defendant relied on were:

(a) Paragraph 5 of the plaintiff's first affidavit which stated that, "[we] are co-owners in ***equal shares*** of two (2) properties, namely, Block 253 Serangoon Central Drive #01-233 Singapore 550253 … and 46-A Hillside Drive Singapore 548991. …"

(b) Paragraph 17 of the plaintiff's first affidavit which stated that, "I wish to sell the Hillside property in the open market and after deducting all incidental expenses and costs, including agents' fees and legal costs and outstanding property tax, ***the nett proceeds be divided equally*** between the Defendant and myself."

(c) Paragraph 8 of the plaintiff's third affidavit which stated that, "… Our late father told me to invest my savings in the Hillside Property. He and I would pay equally and the property to be registered under the names of Chan Gek Lan and myself."

(d) Paragraph 21 of the plaintiff's third affidavit which stated that, "I discussed these matters with our late father and we agreed that I should invest as a ***half share*** interest in the Hillside property …"

(e) Paragraph 22 of the plaintiff's third affidavit which stated that, "Although I have ***half share*** of the Hillside Property, I did not have any objection to my family members using the property …"

(f) Paragraph 32 of the plaintiff's third affidavit which stated that, "… Her ***half share*** of the property was paid for by our late father but ***my half share*** was paid out of my funds."

(g) Paragraph 36 of the plaintiff's third affidavit which stated that, "… I was not willing to exchange my ***half share*** of the Hillside Property for Chan Gek Lan's half share of the Serangoon Property because prior to the Court order being made for equal share in the Serangoon Property, I was under the expectation that I had 73% share in the Serangoon Property."

[emphasis by the defendant]

13 The plaintiff sought to explain why she made those statements. She said that she had only realised that her money had been used to pay for 65% of the purchase price of the Hillside property, instead of 50%, after the Defendant had given discovery of documents in the present Writ action. Until then, she had all along thought that her money had been used to pay only 50% of the purchase price.

14 However, after OS 1677/06 was converted into a Writ action, the plaintiff filed a Statement of Claim on 27 April 2007 to claim a 65% share before discovery had been given to her. She was not able to give a satisfactory explanation as to why she was already able to conclude that she had paid for 65% of the purchase price without the aid of documents from the defendant. In her closing submissions, she asserted, at [183] thereof, that she had in fact learned that she had contributed 65% of the purchase price from the documents disclosed by the defendant in OS 1677/06. I am of the view that this was an attempt by the plaintiff to give evidence during the stage of closing submissions and cannot be allowed.

15 More importantly, I come now to the plaintiff's explanation as to how she allegedly derived the figure of 65%. The purchase price was $118,000. 65% thereof would be $76,700.

16 The plaintiff said she paid $2,000 cash to one Seet Sian Tiang ("Seet") who was the original purchaser of the Hillside property as Seet had changed his mind and intended to buy another property at 46C Hillside Drive instead. The plaintiff said that after she had reimbursed Seet, the developer, Kau Nia Enterprise Pte Ltd issued a receipt in favour of the plaintiff and the defendant for the $2,000. However, the plaintiff was not able to explain why the developer issued a receipt to both of them when her payment was not made to the developer but to Seet. More importantly, the receipt did not disclose who had provided the cash of $2,000.

17 Secondly, the plaintiff said her money was also used to pay the balance of 10% of the purchase price, *ie*, $9,800. She relied on a copy of a cashier's order for $9,800 in favour of Seet which was to reimburse him for his payment of the same sum. However, again the cashier's order did not disclose who had provided the $9,800.

18 Thirdly, the plaintiff said that another $46,200 was paid by cheque from OCBC current account number 511-XXXXXX-XXX ("the OCBC joint account"). This was a joint account held by the plaintiff and the defendant. The plaintiff alleged that out of this $46,200, $38,200 was her money although there was no documentary evidence to establish this. I would add that the $38,200 plus the earlier two sums of $2,000 and $9,800 add up to $50,000.

19 The plaintiff said that although their father had provided the cash to make the three payments of $2,000, $9,800 and $46,200, he must have used her savings to pay the total of $50,000 for the reason stated below. She did not know where he had obtained the cash from but he would hand the cash either to the plaintiff or the defendant. Where a cashier's order or cheque was required, the recipient of the cash would deposit the cash into the OCBC joint account. Thereafter, someone would obtain a cashier's order or issue a cheque for the same amount.

20 The plaintiff asserted that her money had been used to pay $50,000 because she had agreed with their father to use $50,000 from her savings.

21 The plaintiff also came up with some workings in Exhibit P1 to explain how she concluded that her money had been used to pay not just $50,000, but $76,700, being 65% of the purchase price.

22 She explained that her money had been used to make seven instalment payments to the finance company as follows (with references to pages in the defendant's bundle of documents):

Instalment	**Interest**	**Principal amount**	**For month**	**Page ref**
$ 797	$ 194.75	$ 602.25	October 1978	216
$ 797	$ 194.75	$ 602.25	November 1978	212
$ 797	$ 194.75	$ 602.25	December 1978	209
$ 797	$ 194.75	$ 602.25	January 1979	207

$ 797	$ 194.75	$ 602.25	February 1979	183
$ 797	$ 194.75	$ 602.25	March 1979	181
$ 814	$ 289.81	$ 524.19	April 1979	180
$5,596	$1,458.31	$4,137.69		

23 The plaintiff said that when the instalment amount increased from $797 to $814, she had spoken to their father as he had told her to do so if there was a change in interest rate. When he learned from her about the increase in the instalment sum, he told her not to worry and that henceforth, he would take care of the monthly instalments. Prior to that, her money had been used. Based on the principal sums paid from the above seven instalments, she would have paid another $4,137.69 towards the purchase price. She said that monthly instalments were also paid from their father's money for the period from May 1979 to say, November or December 1979, before the loan was redeemed in February 1980.

24 The redemption amount was $49,498.03 (comprising $49,450.40 + $47.63). The plaintiff deducted $4,137.69 from the redemption amount on the reasoning that $4,137 had been paid by her. This left a sum of $45,360.34. She then divided this sum by two, as she was supposed to pay half, which resulted in a sum of $22,680 and she rounded this down to $22,600. She then rounded down the figure of $4,137 (which she had previously deducted) to $4,100 and added this $4,100 to the $22,600 to derive a figure of $26,700.

25 Then, she added the $26,700 to the sum of $50,000 previously discussed and derived the figure of $76,700, *ie*, 65% of the purchase price of $118,000.

26 There was, however, no documentary evidence to establish that the money for the payment of the seven instalments she referred to came from her. Likewise, there was no documentary evidence that half the money for the redemption came from her. Her explanation as to why half of the redemption sum would have come from her money, even though their father had said that, henceforth, he would take care of the monthly instalments, was that she believed that she was paying half of the purchase price.

27 I do not find the plaintiff's explanations convincing.

28 First, I noted hesitancy on her part before she explained that she was still paying half of the redemption sum even though their father had allegedly said he would henceforth take care of the monthly instalments.

29 Secondly, it seems to me that she was trying to work out the figures to come up with an explanation to reach a sum of $26,700 (before adding that sum to the $50,000). If she had paid the $4,137.69 from the seven instalments, there was no logical reason for her to deduct this sum from the redemption sum to calculate what she had paid. The correct approach would be simply to add (without first making a deduction) the $4,137.69 to $22,600 being half of the redemption sum. It seems to me that she had deducted the $4,137.69 first and then added back a round figure of $4,100

because she was trying to derive a figure of $26,700 to support her claim.

30 Thirdly and more significantly, if the plaintiff was right that her money had been used to pay for more than 50% of the purchase price, this would mean that their father had either misled her or had been careless in appropriating more than he should have from her savings to pay the purchase price. Yet, there was no suggestion that he had either misled her or had been careless.

31 The truth of the matter is that the children did as their parents dictated. If the plaintiff had passed her salary to their father, she was prepared to do so and let the father do with it as he wished.

32 The dearth of evidence means that I cannot make a finding of fact as to whether the money to fund the purchase of the Hillside property came only from their father or both the parents (as the defendant contended) or from their father and the plaintiff (as the plaintiff contended). If the latter, I am also not able to conclude that 65% of the purchase price was paid from the plaintiff's savings.

33 The burden of proof is on the plaintiff and she has failed to discharge that burden.

34 Even if she had provided the funds to pay 65% of the purchase price, that would only raise a presumption of a resulting trust. On the evidence before me, I would have concluded that the presumption would have been rebutted in that she had agreed to the defendant having a legal and beneficial half-share in the Hillside property irrespective of how much money she had provided, so long as that was the wish of the father, as I find to be the case.

35 In the circumstances, I make the following orders:

(1) The plaintiff's claim for 65% of the Hillside property is dismissed.

(2) The Hillside property is to be sold in the open market within twelve (12) months from the date hereof by way of public auction or private treaty and upon "The Law Society of Singapore Conditions of Sale 1999".

(3) The sale price is to be agreed upon by the parties hereto within one month from the date of this order. In the absence of such an agreement within the time stipulated, the sale price is to be a price not below the prevailing market value as determined by a valuer to be appointed by the parties within two months from the date of this order. If the parties do not agree on the appointment of a valuer within the time stipulated, then the valuer is to be appointed by the court after either party writes in for an appointment before the court to appoint the valuer.

(4) The plaintiff and the defendant may have conduct of the sale.

(5) The defendant is to vacate the Hillside property when the option to purchase is exercised by the purchaser or if there is no option, when the sale and purchase agreement is executed by the vendors and the purchaser.

(6) The defendant is to deliver the title deeds to her solicitors or the solicitor having conduct of the sale for safe-keeping and to complete any sale within one month from the date of this order.

(7) If any of the parties hereto cannot be found, is un-cooperative or unwilling or fails, refuses or neglects to sign, seal and/or deliver any instrument, document, deed, surrender of lease,

transfer or conveyance required for the sale and transfer of the Hillside property within three days from a written request to do so by the other party or her solicitors, the Registrar of the Supreme Court may do so for and on behalf of the party in default.

(8) The net proceeds of sale after deducting all incidental expenses and costs, including housing agent's fees, legal costs for conveyancing and all outstanding property tax, is to be shared equally between the plaintiff and the defendant.

(9) Parties shall have liberty to apply in respect of the intended sale of the Hillside property.

36 I will hear parties on costs of the claim and counterclaim.