Tien Choon Kuan
v
Tien Chwan Hoa

[2016] SGHC 16

High Court — Suit No 637 of 2015 (Summons No 5218 of 2015)
Choo Han Teck J
18, 25 January 2016

Land — Registration of title — Land Titles Act

Trusts — Resulting trust

Trusts — Constructive trust

Equity — Estoppel — Promissory estoppel

15 February 2016 Judgment reserved.

Choo Han Teck J:

1 Now and then a case grows gradually more and more complicated showing signs that litigating to the end is the poorest option. This is one such case. The plaintiff is 84 years old. He stays in a Housing and Development Board ("HDB") flat ("the flat") at Marine Drive with his wife. He purchased the flat in 1983 for $115,000 in joint names with his eldest son, who is the defendant in this suit, as joint tenants. The defendant contributed $6,400 from his Central Provident Fund ("CPF") towards the purchase, while the rest of the purchase price was paid by the plaintiff through a one-time cash payment as well as subsequent monthly repayments of a HDB loan. The plaintiff has another son

and a daughter who now live in their own homes. In 1983 the defendant was the only one in the family with a CPF account. He was then 24 years old.

2 According to the plaintiff, the defendant subsequently ran into financial difficulties and left Singapore in 1990. On 3 February 2010, the plaintiff, by way of a unilateral declaration pursuant to s 53(5) of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA"), severed the joint tenancy as tenants in common in equal shares.

3 The plaintiff commenced an action by Originating Summons No 984 of 2014 ("the OS"), seeking an order for the land register to be rectified to reflect the plaintiff and the defendant as tenants in common for the flat holding shares proportionate to their contributions to the purchase price, which the plaintiff's counsel, Mr Eugene Ho, said was 95% and 5% respectively (but now ascertained to be 94.4% and 5.6%). The OS came up for hearing before me in April 2015. Mr Ho submitted that the plaintiff had made a "mistake" in instructing his lawyers to sever the joint tenancy as tenants in common in equal shares, and that the plaintiff's actual intention was to severe the joint tenancy based on the parties' relative contributions to the purchase price of the flat. Such a "mistake" provides, according to him, a basis for the land register to be rectified. As the defendant did not enter an appearance, Mr Ho sought judgment in the defendant's absence. Given the potentially contentious nature of the application (even at that time), I dismissed his application and ordered that the OS be converted into a writ action so that the relevant evidence may be adduced in court. This writ is the result.

4 On 18 January 2016, Mr Ho appeared before me with a summons under the writ for judgment in default of appearance and of defence by the defendant.

He submitted that service of the writ had been effected by substituted service in Australia. Apart from seeking an order for rectification of the land register, Mr Ho asked, as an alternative, for a declaration that the defendant holds a 45% (now ascertained to be 44.4%) share of the flat on resulting trust for the plaintiff, by virtue of their unequal contributions towards the purchase price of the flat. In the course of his submission, Mr Ho also said that the defendant's wife ("Mdm Chan") is divorcing the defendant and she had submitted a draft consent order to the family court. The defendant had consented in that draft order, to give half (not the whole) "of his 50% share" of the flat to Mdm Chan in settlement of the division of matrimonial assets. That draft has not been approved because Mr Ho informed the court of the plaintiff's claim before me in the High Court. I thus adjourned the matter before me and directed that Mdm Chan's counsel appear before me as well since Mdm Chan has an interest in the property though that claim or part of it may be disputed. Indeed, it now appears that three parties may have legitimate interests in the flat, namely, the plaintiff, the defendant, and Mdm Chan.

5 On 25 January 2016, Mdm Chan appeared with her counsel Mr Soo Poh Huat but she asked to represent herself as she could not afford legal fees in this matter. Mdm Chan married the defendant on 14 February 1984. She filed for divorce on 11 April 2014. The interim judgment for the divorce was granted on 15 July 2014. The defendant gave his address in Australia to Mdm Chan's counsel and it is to this address that the plaintiff subsequently attempted service on the defendant for the present matter.

6 Having heard the plaintiff and Mdm Chan, I dismiss the plaintiff's application for judgment in default of the defendant's appearance and defence. First, I am not satisfied that the plaintiff's claim was properly served on the

defendant. The defendant gave his address in Australia to Mdm Chan's counsel on 22 April 2014 but the plaintiff first attempted service on the defendant in Australia only in January 2015. According to his affidavit of service, the attempt to serve failed initially because the defendant's daughter "Natalia Tien" told the process server that the defendant was not home, that he had in fact been overseas for a year, and that she did not know when he would return. Mdm Chan has a daughter with the defendant but she is in Singapore and her name is not Natalia. Mdm Chan told me that the defendant is presently in China. Although the plaintiff subsequently tried to serve his claim on the defendant through substituted service by normal post to both the defendant and "Natalia Tien" in Australia in August 2015, we do not know when the defendant moved to China or whether he was in Australia at the time the plaintiff tried to serve process on him.

7 Secondly, in terms of merits, Mr Ho's submission on rectification of the land register on the basis that the plaintiff had made a "mistake" in severing the joint tenancy as tenants in common in equal shares does not go very far. The plaintiff had severed the joint tenancy by way of a unilateral declaration. This is a new method of severance introduced by Parliament when it enacted the LTA in 1993. Section 53(5) – (6) of the LTA, as they were originally enacted in 1993, read as follows:

> (5) Without prejudice to any rule or principle of law relating to severance of a joint tenancy, any joint tenant may sever a joint tenancy of an estate or interest in registered land by an instrument of declaration in the approved form and by serving a copy of the instrument of declaration personally or by registered post on the other joint tenants.
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> [6] Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant and the remaining joint tenants as tenants in common *in their respective shares.*

> [emphasis added]

8 In moving the second reading of the Land Titles Bill in Parliament in 1993, Professor S. Jayakumar, then Minister for Law, explained that the abovementioned provisions were intended to provide a joint tenant who wishes to avoid the rule of survivorship with a simple way to unilaterally severe the joint tenancy, without having to obtain the consent of the other joint tenant(s) (*Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 374 – 376).

9 Section 53(6) of the LTA has since undergone two amendments. Following the first amendment in 2001, the provision read:

> Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant as tenant in common with the remaining joint tenants and shares in the registered land shall be *equally apportioned* by the Registrar among the declarant and the remaining joint tenants.
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> [emphasis added]

Whereas following the second amendment in 2014, the provision read:

> Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant as tenant-in-common with the remaining joint tenants, and the declarant shall be deemed to hold a *share that is equal in proportion to each of the remaining joint tenants as if each and every one of them had held the registered land as tenants-in-common in equal shares prior to the severance.*
>
> [emphasis added]

10 The 2001 amendment was made in response to "owners claiming to unilaterally sever joint tenancies into unequal shares", to make clear that

"unilateral severance of a joint tenancy can only be in equal shares" (*Singapore Parliamentary Debates, Official Report* (25 July 2001) vol 73 at col 1919 (Associate Professor Ho Peng Kee, Minister of State for Law)). Otherwise, a co-owner will be able to adversely vary the proprietary interest of another co-owner unilaterally, without the other co-owner necessarily having the chance to dispute the matter. The position remains the same with the 2014 amendment, which simply removes the role of the Registrar in the equal apportionment of shares by providing that the co-owners are automatically "deemed" to be tenants in common in equal shares.

11 Thus, in the present case, it cannot be said that the plaintiff had made a "mistake" when he severed the joint tenancy as tenants in common in equal shares in 2010. It was by then clear that the law only permitted him to sever the joint tenancy unilaterally into tenants in common in equal shares. That was what he had done. To allow the plaintiff to now rectify the land register showing him and the defendant as tenants in common in unequal shares will unfairly vary the proprietary interest of the defendant unilaterally, contrary to the express intention of Parliament in enacting s 53 of the LTA. In any case, the Court of Appeal in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 has established at [47] that a court's power under s 160(1)(b) of the LTA to order rectification of the land register in the case of a "mistake" must be read together with s 46(2)(b) to s 46(2)(e) of the LTA. Mr Ho has not addressed how the facts of the present case may fall within s 46(2)(b) to s 46(2)(e) of the LTA.

12 As for Mr Ho's submission that the plaintiff is entitled to a declaration that the defendant holds a 44.4% share in the flat in trust for the plaintiff, he submitted various cases including *Sitiawah Bee bte Kadar v Rosiyah bte*

Abdullah [1999] 3 SLR(R) 606 and *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 in which the court had granted declarations of trust on the ground that the plaintiff paid more than his share of the purchase price, even after the joint tenancy had been severed in law through unilateral declarations. It may be that the plaintiff's claim based on a resulting trust, or perhaps also on constructive trust, may still succeed even though the joint tenancy had been severed. Indeed, s 53(7) of the LTA expressly provides that:

> Where a joint tenant holds an estate or interest in registered land on trust, the severance of the joint tenancy shall not affect the rights of the beneficiary of the trust or the operation of the law relating to breaches of trust.

As a matter of law therefore, severance of a joint tenancy at law through unilateral declaration pursuant to s 53 of the LTA does not preclude a court from declaring that the co-owners hold the property in shares proportionate to their initial contributions to the purchase price in equity. Issues arising from the law of resulting trust can be complicated. First, the law and evidence between a resulting trust and a constructive trust must be differentiated and ventilated at trial. Discovering what a purchaser's intention might be at the time of the purchase of the flat is a difficult exercise in itself. There are also issues of law to be addressed, one of which concerns the relevance of a resulting trust in the case of a HDB property, where social and legislative policies may contradict the use of a resulting or any trust. A purchaser of an HDB flat receives substantial subsidies from public funds for his purchase, and the HDB have strict rules and regulations regarding who may own the flat and how it may be shared. There is therefore the burden of proving that the plaintiff was unaware of the rules as to what he could or could not do with his HDB flat. These issues cannot be swept aside under an application for default judgment.

13 Moreover, when parties bearing close ties purchase properties in the other's name, the law presumes that the purchaser bought it as a gift to the other. The burden is on the giver to rebut this presumption. Furthermore, in an appropriate case, a conscious decision to unilaterally sever a joint tenancy as tenants in common in equal shares may give rise to an inference of fact that the purchaser had always intended to give to the other party a 50% share of the property, even though that party may have contributed less to the purchase price. In the present case, the plaintiff stated in his affidavit that he attended a talk in a Community Club in 2009 and thus realised that if he were to die while holding the flat as joint tenants with the defendant, his wife and other children would not get any share in the flat. He did not give the details but he stated that that was why he had the joint tenancy severed so that he can bequeath his share to his wife. It is however unclear from the affidavit what exactly were the percentages of shares that the plaintiff thought he and the defendant were entitled to respectively at the time of severance of the joint tenancy. If, as Mr Ho now contends, the plaintiff's intention was to sever the joint tenancy such that the defendant would only have a 5.6% share in the flat, it is questionable why solicitors engaged by the plaintiff then had not advised him that unilateral severance of a joint tenancy pursuant to s 53(5) of the LTA can only be in equal shares. In any event, it is the intention of the plaintiff at the time of purchase of the flat that matters. The plaintiff has not explained why he did not name, in addition to the defendant, his own wife (the defendant's mother) as a joint tenant when he bought the flat intending it as their matrimonial home (as Mr Ho submitted). It is common knowledge that the HDB permits more than two persons to be named as joint tenants.

14 The situation is further complicated by Mdm Chan's assertion (before me) that she and the defendant were looking to buy a flat for themselves early

in their marriage, but her father-in-law, the plaintiff, told them that there was no need to get their own home because one day this flat would be theirs. This is not evidence but it raises the possibility of promissory estoppel. That is a defence that requires a clear and convincing proof of the words that were said and how the law may be applied. More importantly, it means that Mdm Chan must be joined as a party to this suit, a move that she strongly resists on account of the high costs of litigation.

15 There is no evidence as to how much the flat is valued today but given publicly available information, we can assume that its present value may be roughly gauged at about $500,000 to $600,000. Three parties have indicated an interest in the portion held by the defendant as a tenant-in-common with the plaintiff. The 84-year-old plaintiff is claiming that the defendant holds a 44.4% share of the flat as a trustee in a resulting trust for him. Mdm Chan maintains that the plaintiff has a 50% share in the flat and is claiming half of the same portion on the strength of a consent settlement of her claim for her share of the matrimonial assets in her divorce proceedings with the defendant. The defendant gives away half of his 50% share, and thus implicitly retains the remaining 25%. He has been silent and we do not know his intentions.

16 What is clear is that the evidence at this stage is sparse and untested. Litigation will be financially draining on all three parties. It is not to the benefit of all the parties concerned for this matter to continue to trial, yet I am unable to give judgment to the plaintiff on his pleadings given what has transpired. This matter cannot be resolved unless all three parties are bound in the result of a single set of proceedings. The plaintiff's application for judgment in default of appearance is therefore dismissed and the action must proceed to trial. If the defendant still fails to appear, the plaintiff must adduce better proof that the

defendant has been duly served with process. For practical purposes, however, this case should be mediated for a more expedient and less costly resolution, but that also requires all three interested parties to participate and be willing to give and take. Otherwise they will find only grief and despair at the end of the long road. They do not seem to see that far right now. The lawyers must help them.

17 Costs reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge

Eugene Ho Tze Herng and Chua Wei Yun (Eugene Ho & Partners) for the plaintiff;
Chan Hui Soo Elizabeth (wife of defendant) in-person;
Soo Poh Huat (Soo Poh Huat & Co.) for Chan Hui Soo Elizabeth in Divorce Suit No 1675 of 2014.