Yap Hwee May Kathryn v Geh Thien Ee Martin and Another
[2007] SGHC 108

Case Number : OS 983/2006

Decision Date : 03 July 2007

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Engelin Teh SC and Linda Ong (Engelin Teh Practice LLC) for the plaintiff; Josephine Chong (UniLegal LLC) for the first defendant; Luna Yap (Luna Yap & Co) for the second defendant

Parties : Yap Hwee May Kathryn — Geh Thien Ee Martin; Jacqueline Sim Lean Choo

Family Law – Matrimonial assets – Division – Order of division relating to assets at specific date – Whether operative date should be date of decree nisi or decree absolute – Whether "decree of divorce" including decree nisi – Section 112(1) Women's Charter (Cap 353, 1997 Rev Ed)

3 July 2007 Judgment reserved.

Kan Ting Chiu J:

The parties

1 The first defendant, Martin Geh Thien Ee, is in the midst of divorce proceedings from the second defendant, Jacqueline Sim Lean Choo. The divorce proceedings, D No 1393 of 2005, was filed by the second defendant on 2 April 2005 and a decree nisi was granted by the Family Court on 24 May 2005. The plaintiff, Kathryn Yap Hwee May, was the co-respondent in the divorce proceedings.

The background

2 After the marriage of the first defendant and the second defendant broke down, the first defendant co-habited with the plaintiff and her two children. The plaintiff and the first defendant bought a house at 12E Sime Road ("the property") as tenants in common in equal shares and operated a joint account No 027-xxx-6 with the DBS Bank ("the joint account").

The plaintiff's application

3 The plaintiff's application before me was for:

i. A Declaration that as at 4 November 2003, all the 1st Defendant's rights, interest and title in the property known as 12E Sime Road Singapore 288292 ("the Property") had been transferred to the Plaintiff and that the Plaintiff is the sole legal and beneficial owner of the Property;

ii. A declaration that the total sum comprising all the deposits made by the Plaintiff into the DBS Joint Account No. 027-xxx-6 ("the Joint Account"), less the sum of $12,584.85, being the Plaintiff's personal expenses, belongs to the Plaintiff wholly and beneficially and that the 1st Defendant do account to the Plaintiff for the same;

iii. A Declaration that the balance in the Joint Account as at 30 April 2006 (being S$39,882.56)

belongs to the Plaintiff absolutely;

I shall refer to them as prayers 1, 2 and 3 respectively.

The reason for the plaintiff's application

4 The plaintiff took out the application because the property and the joint account had become entangled in the divorce proceedings between the two defendants. The second defendant had obtained two interlocutory injunctions over the property and the joint account:

(a) On 6 January 2006, an interlocutory injunction was granted against the plaintiff (as the co-respondent in the divorce proceedings) from disposing of the property, unless a sum of $208,000 from the sale proceeds is retained.

(b) On 30 September 2005, the first defendant was injuncted from disposing of several assets, including the money in the joint account.

5 The second defendant had sought and obtained those orders on the ground that the first defendant's interest in the property and the joint account were matrimonial assets which should be preserved and made available for division by the Family Court.

6 The plaintiff made her application in the High Court in the belief that the Family Court does not have the power to determine whether the property and the money in the joint account are matrimonial assets. It was submitted:

8. It is the Plaintiff's position that the Family Court is only vested with the powers under section 112 of the Women's Charter (Cap. 353) to make orders over matrimonial assets owned by the 1st and 2nd Defendant. An asset can only conceivably be defined as a matrimonial asset provided the 1st Defendant and/or the 2nd Defendant has a right, interest or title in the same. Section 112 does not empower the Family Court to make orders pertaining to assets owned by 3rd parties absolutely. As such, in determining whether the 1st Defendant has any share or interest in the assets that the Plaintiff owns, the provisions under the Women's Charter (Cap. 353) do not apply. The Court is obliged to apply legal principles under general law to determine the rights and interests of the 1st Defendant and the Plaintiff vis-à-vis the Property and the Joint Account. Only in the event that the Court, in applying general legal principles, finds that the 1st Defendant does indeed have a share or interest in the Property and/or the Joint Account, can the 2nd Defendant thereafter take the position that the 1st Defendant's share in such assets constitutes matrimonial assets and invoke the Family Court's jurisdiction to apportion such share or interest of the 1st Defendant between the 1st and 2nd Defendants.

9. In the case of *Lau Loon Seng v Sia Peck Eng* [1999] 4 SLR 408 ["*Lau Loon Seng*"], the wife sought division of shares which were held in the names of third parties in trust for the husband. The husband contended that the Family Court had no jurisdiction to decide on the issue of those shares held in the names of third parties. On appeal, the Honourable Justice Kan Ting Chiu held that the husband's contention failed because in that case, the wife merely sought a payment by the husband for the value of those shares. She was not seeking an order that required the third parties to transfer any shares to her.

The complaint was that the judge had no jurisdiction to decide on the issue because the wife

should take a separate application for a declaration of trust and because it was wrong to make the decision without notice to the registered owners of the shares.

I do not see any basis for the complaint. The husband knew that the wife regarded those shares as matrimonial assets, and he had addressed the issue in his affidavits. The issue was confined to the division of property between them. The wife did not want the registered owners to transfer any of their shares to her. She obtained an order that the husband pay her the value of her division in the shares. The two registered owners are not affected by the order as they are not required to transfer any shares to her. Whether they are liable to transfer the shares to the husband is a separate issue to be resolved between them and him if a dispute arose.[note: 1]

7 The facts in *Lau Loon Seng* differ from the facts of the present case in one significant way. In *Lau Loon Seng*, the shares alleged to be matrimonial assets were held by persons who were not parties to the proceedings. For that reason, a determination on the beneficial ownership of the shares could not be made without their participation in the proceedings. In the present case, the property and the joint account were held by the plaintiff with the first defendant. As the plaintiff was already a party in the divorce proceedings before the Family Court, the Family Court can deal with the beneficial ownership of the property and the money in the joint account because all the necessary parties are before it.

8 The plaintiff had made the application with the intention of obtaining declarations that the property and the majority of the money that had been deposited into the joint account belonged to her and thus should not be tied up with the divorce proceedings. I shall review the merits of and necessity for each prayer.

Prayer 1 – the property

9 The plaintiff and the first defendant contracted to buy the property in October 2002 at the price of $2.08m and the purchase was completed in January 2003.

10 The first defendant paid $208,000 towards the deposit payment while the plaintiff paid $266,190.57. They took a loan of $1,650,000 and bore the monthly repayments equally. The first defendant did not retain his interest for long. In August 2003, he contracted to sell his interest in the property to the plaintiff for $208,000, and the sale was completed in November 2003. The process by which the price of the first defendant's share in the property was fixed at $208,000 was not explained.

11 The injunction granted in relation to the property appears to have some reference to the $208,000 paid to the first defendant. However, since the $208,000 had been paid to the first defendant, it is not apparent why the plaintiff, rather than the first defendant, was injuncted from disposing of that sum.

12 Did the first defendant's beneficial interest in the property pass to the plaintiff on the completion of the sale? The legal title had passed on the completion and registration of the purchase, so that the first defendant ceased to be a co-owner and the plaintiff became the sole legal owner. However, if the first defendant's beneficial interest did not pass onto the plaintiff, that may be a matrimonial asset of the defendants to which the second defendant may have a claim, and this was the position taken by the second defendant. She contended that the plaintiff was not a *bona fide* purchaser for good value because of the close relationship between the plaintiff and the first defendant.[note: 2] Significantly, she did not raise any issue over the price the plaintiff paid for the

first defendant's share.

13 The first defendant explained that he decided to sell his share of the property to the plaintiff because he was in financial straits from having to pay his legal fees, income tax payments and maintenance payments.

14 The sale price was apparently arrived at by reference to a valuation undertaken by the valuers appointed by DBS Bank which financed the plaintiff's purchase for the first defendant's share in the property. The plaintiff and the first defendant were represented by different solicitors in the sale and purchase, and the consideration of $208,000 was paid into a bank account held solely by the first defendant.

15 As there was no issue over the price which was paid and received, I do not find that the transfer of the first defendant's interest can be impugned solely on the ground of the relationship between the parties. When one co-owner wishes to dispose of his or her interest in a property, it is natural that the other co-owner may be interested in good faith to acquire the share, especially when they are in a close relationship and the vendor needed money, and the purchaser is disposed to assist him.

16 Taking this together with the fact that there were other indicia of a genuine transaction, ie, the representation by different law firms, the obtaining of a bank loan to finance the purchase, and the payment of the agreed purchase price, the relationship of the parties alone was not a basis for questioning the validity of the transaction. I therefore grant a declaration in terms of the first prayer.

17 Having concluded that the sale was a valid sale, it follows that the share in the property transferred by the first defendant ceased to be his property upon completion, and could not be a matrimonial asset in the divorce proceedings.

Prayer 2 – the joint account

18 This application was for a declaration that the payments the plaintiff made into the joint account belonged to her beneficially. It was made because of the interlocutory injunction against the first defendant from disposing of his assets in the joint account.

19 The plaintiff had obtained an accountant's report that as on 30 April 2006, the plaintiff had deposited $181,069 into the joint account. (The report did not disclose when the deposits commenced.) The plaintiff accepted that she had used $12,584.85 for her own purposes. Consequently, she was seeking a declaration that the deposits she made into the account (with a deduction of $12,584.85) belonged to her, and are not the matrimonial assets of the defendants and the first defendant is to account for them to her.

20 The plaintiff had explained the payments into and withdrawals from the joint account thus:

> 42. The Plaintiff and the 1st Defendant opened the Joint Account in or around October 2002. The original purpose for the Joint Account was for the Plaintiff and the 1st Defendant to deposit monies into the Joint Account which would then be used to pay for the monthly mortgage payments for the Property as well as their monthly household expenses, groceries, and GIRO payments for their utilities bills and property tax.
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> 43. As it turned out, the 1st Defendant deposited his entire monthly salaries into the Joint Account and in addition to using the Joint Account to pay for the mortgage and other expenses

related to the Property, he also made use of the monies in the Joint Account to meet his maintenance payments to the 2nd Defendant and their two children, payment of his legal bills, and his other personal expenses.

44. The Plaintiff, on the other hand, did not deposit her monthly salaries into the Joint Account. For the period when she and the 1st Defendant were joint owners of the Property, the Plaintiff would arrange for a monthly sum of $2,907, being her half share of the mortgage payments, to be transferred into this Joint Account via GIRO. In addition, the Plaintiff would also deposit various sums of monies into the Joint Account mainly to assist the 1st Defendant with his tight financial situation from time to time.[note: 3]

21 The second defendant, however, took issue with the date the joint account was opened. She contended:

53. The allegation by the Plaintiff that the Joint Account was opened jointly by herself and the 1st Defendant in October 2002 is untrue and baseless. The said account was opened in the 1st Defendant's sole name on 15th April 2002 with $10,000.00 of matrimonial funds and the account no. was 027-xxx-6 …

54. From the 1st Defendant's evidence … it shows that up till August 2002, the Joint Account was still in his sole name and the inclusion of the Plaintiff as a joint signatory is only evidenced in December 2002.[note: 4]

22 The affidavits filed and the submissions made show that there are serious disputes between the parties over important aspects of this issue, eg, whether the defendants had contemplated that they should account to each other for their use of the money in the joint account, and the amount the plaintiff had withdrawn from the account for her own use.

23 The joint account was an active account. Both the plaintiff and the first defendant made payments into and withdrawals from the account. If the purpose of seeking the declaration was to resolve the difficulties presented by the interlocutory injunction over the joint account, it will not have that effect, because the second defendant's claim on the money in the joint account must relate to the matrimonial assets existing at the time the division is made. Unfortunately, the parties had made their arguments on the joint account without any reference to any cut-off date and such that it is not possible for a declaration to be made in relation to any specific date even if the court is minded to do that.

24 Even if a declaration is in terms of prayer 2, it would not assist in the division of the matrimonial assets. The division, when ordered, would relate to the assets at a specific date. The operative date can be the day of the decree nisi (or interim judgment) when the order is made that the matrimonial asset was to be divided, even though the actual division may not take place on that day. The operative date may also be the date of the decree absolute (or final judgment) when a marriage is finally dissolved.

25 There are no local reported decisions directly on this issue that I am aware of. There are persuasive reasons for preferring the earlier date. Firstly, if all the relevant facts are before the court, there is no reason why the actual division of matrimonial assets should not be done when the decree nisi is granted. Secondly, Rule 59(3)(a) of the Women's Charter (Matrimonial Proceedings) Rules (Cap 353, R4, 2006 Rev Ed) requires that the hearing of all ancillary matters, such as division of matrimonial assets and custody, be concluded before the decree absolute is made. It is impossible to

employ the date of the decree absolute as the operative date for division as the date cannot be ascertained when the division is made.

26 The Court of Appeal in *Sivokolunthu Kumarasamy v Shanmugam Nagaiah & Anor* [1987] SLR 182 offered guidance on this issue when it stated at [25] that "There is therefore good reason to construe s 106(1) [of the Women's Charter] so as to empower the court to make such orders [for the division of matrimonial assets] after the decree nisi has been pronounced" and at [28] that "the expression 'decree of divorce' in s 106(1) of the Charter must be construed to include a decree nisi." Section 106 has since been replaced by s 112, but there are strong similarities in the two provisions. They both set out the power of court to order division of matrimonial assets. They differ insofar as s 106 stated that the court shall have the power "when granting a decree of divorce" while s 112(1) states that the court shall have the power "when granting or subsequent to the grant of a decree of divorce". Nevertheless, the Court's ruling that "decree of divorce" includes a decree nisi should apply to s 112(1) as well.

27 For the foregoing reasons, the operative date in this case should be 24 May 2005. Since the declaration sought does not relate to that date, it is of little relevance to the division process even if it is obtained, and I shall not make a determination on this prayer. This prayer also sought an order for the first defendant to account to the plaintiff on the deposits. However, it is apparent that the request for the first defendant to account to the plaintiff for those deposits is complicated by the second defendant's contention that she has a share of the money in the account that is a matrimonial asset. It is uncertain that the plaintiff still wants to proceed with this application in the circumstances.

28 If it is felt necessary that there be a declaration on the beneficial interests in the joint account before hearing on the division of matrimonial assets commences, any of the parties can make an application in the proper form. However, as all the interested and affected parties are already parties in the divorce proceedings, they should consider whether a further application is necessary, and whether this question could and should be dealt with by the Family Court in the course of the ancillary hearings on the division of matrimonial assets.

Prayer 3 – the balance in the joint account

29 This prayer was stood down pending the determination of prayer 2. In the light of my observations on prayer 2, the parties should consider whether it is necessary to continue with prayer 3, or to have both prayers dealt with by the Family Court at the same time.

[note: 1]Plaintiff's Submissions dated 9 March 2007

[note: 2]2nd Defendant's Written Submissions para 42

[note: 3]Plaintiff's Submissions dated 9 March 2007

[note: 4]2nd Defendant's Written Submissions dated 9 March 2007