Foo Tee Sey v Loy Hui Eng
[2001] SGHC 276

Case Number : Div P 143/2000

Decision Date : 21 September 2001

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Yap Teong Liang and Wong Lai Keen (Hin Rai & Tan) for the appellant/petitioner; Lim May Li (Lim & Pillay) for the respondent

Parties : Foo Tee Sey — Loy Hui Eng

Family Law – Matrimonial assets – Division – Direct and indirect contribution towards purchase of matrimonial home – Marriage lasting 18 years with two children – Division of 60-40 in wife's favour – Whether fair and reasonable

Family Law – Matrimonial assets – Division – Duty to maintain matrimonial home – Wife paying money paid towards maintenance and upkeep of matrimonial home – Whether taken as direct or indirect contribution – Whether fact that wife has sole occupation of matrimonial home during period separation affects duty to maintain

Family Law – Matrimonial assets – Division – Division – Agreement to maintain income in separate bank accounts – Reason for parties doing so – Whether separation of accounts alters nature of income earned during marriage as matrimonial asset – Agreement in contemplation of divorce – Women's Charter (Cap 353, 1997 Ed)

Judgment:

GROUNDS OF DECISION

1. The petitioner married the respondent on 18 September 1982. They separated in June 1996 and were divorced in March 2000. The respondent was granted custody of their two sons presently aged 14 and 18. This appeal arose from the decision of the Family Court judge dividing the matrimonial assets on the basis of 60% to the respondent and 40% to the petitioner. The judge found that the respondent was entitled to more because of her non-pecuniary contributions although the direct contributions were about equal. The petitioner's case on appeal was made on the grounds that the financial contributions were not equal but that he had contributed about 54% and the respondent about 46%, and that the judge gave undue weight to the respondent's non-pecuniary contribution. His counsel Mr. Yap also submitted that the judge failed to take into account the agreement made by the parties during their marriage to keep their respective finances separate and apart. The petitioner's case, therefore, was that the division ought to have been apportioned equally at least if not more in favour of the petitioner.

2. Counsel for the parties did not consider that it was relevant to adduce evidence of the parties job details at the hearing below nor do they think it relevant now, so it was only by their mutual agreement before me that they accepted that the petitioner worked as an engineer earning about $6,112 net a month. Counsel for the respondent, Miss Lim, also conceded that the petitioner was at all material times earning slightly more than the respondent. No precise figures were brought to my attention as counsel did not appear to know what they were. The matrimonial home was purchased in 1985 for $540,000. It has been fully paid for through the CPF accounts of the parties towards the loan granted by Bank Indosuez in which the parties maintained a joint account mainly for that purpose. The judge found that the petitioner contributed $287,672 from his CPF account and the

respondent $248,813 from hers. She also made a finding that the petitioner contributed $65,500 in cash and the respondent $11,500. In so doing the judge decided that the sum of $23,000 that was withdrawn from the joint account in Bank Indosuez came from both parties equally. The petitioner had claimed, however, that this sum came as a loan of about $25,000 from his employers. The loan was granted on 18 September 1985. It was not disputed that a sum of $27,687 was credited into the account on 30 September 1985. The judge accepted that the loan by the petitioners employers was proved but not that it was part of the $27,687. The judge also did not accept the affidavit evidence of the respondent that the payment of $23,000 from the Bank Indosuez account came from the respondent and that the account was operated by her solely. Thus, because of the uncertain evidence the judge attributed the sum of $23,000 to the parties equally. In my view, on the evidence as it stood, the burden of proof shifted to the respondent to show that the $23,000 came from her personal funds once the above loan was made and a deposit close to that figure was proved by documentary evidence to have been paid into the account on 30 September 1985. That burden was not discharged and I am of the view, therefore, that on the balance of probabilities the $23,000 came from the petitioner as he claimed, bearing in mind that it was accepted that the Bank Indosuez account was the principal joint account that the parties used for the purpose of repaying the housing loan obtained from that bank.

3. The judge accepted the respondent's claim that a sum of $5,406 was paid by her towards the maintenance and upkeep of the house from 1997 to 2000. At paragraph 7 of her Grounds of Decision she held that she "agreed with the [respondent] that the amount should be considered as her indirect financial contribution." However, at paragraph 11 she counted this sum as part of the respondent's direct financial contribution. Mr. Yap submitted that this sum should not be taken into account at all because the respondent was in sole occupation of the house during that time and was thus duty-bound to pay for its up-keep and maintenance. In this regard, I am of the view that the $5,406 should be taken as a direct financial contribution. Both parties were under a shared duty to maintain the matrimonial home until its division has been adjudicated upon and therefore, in the interim, all contributions by a party towards its up-keep and maintenance must be taken into account.

4. For the reasons above, I am of the view that the findings in respect of the direct financial contributions of the parties ought to be varied by crediting the $23,000 solely to the petitioner. The sum of $5,406 is to stand as a direct financial contribution and not as an indirect one. However, notwithstanding the variation above, I am of the view that the apportionment of 60% of the matrimonial home to the respondent an 40% to the petitioner appears to be fair in view of the fairly long marriage and the indirect contributions of the respondent in looking after the household and children. The petitioner disputes this but there is little in the affidavit evidence to persuade me, even after giving credit to the petitioner for the sum of $23,000 that the weighted proportion to the respondent was unfair.

5. I now come to the issue of the other assets which consists of monies in the CPF accounts and various fixed deposit accounts, as well as stocks and shares, including CLOB shares. The judge below divided the other assets in the same proportion namely, 60% to the respondent and 40% to the petitioner. One of the main disputed items was the money in a fixed deposit account in the joint names of the petitioner and his mother and another in the joint names of the petitioner and his sister. The money amounted to $239,283. The judge accepted the respondents suggestion that the

petitioner's mother, who was 83 years old and long depended on the petitioner, could not have the means to contribute any sum into that account and therefore the money in that account must have belonged to the petitioner. The same argument applied in respect of the account with the petitioner's sister even though that account had only $5,000. This evidence was hardly challenged by the petitioner and I am of the view that the judge was not wrong in coming to the conclusion that the money must have belonged to the petitioner. However, Mr. Yap submitted that the parties had from the early years of their marriage fought over money matters because they had vastly different priorities. The respondent, he says, held the firm view that money was best invested in stocks and shares. The petitioner, on the other hand, preferred to keep them in the bank. Thus, the parties kept their own earnings and invested them in his or her own way. The respondent thus had over $120,000 in shares while the petitioner had only $20,000 worth. The respondent also had CLOB shares were valued at about $12,000 as at April 2001; the petitioner had no CLOB shares. The petitioner had a total of $382,780 in his bank accounts while the respondent had $36,800 in hers. Mr. Yap drew my attention to the respondent's own affidavit of 26 May 2000 in which she deposed as follows:

> "19. All this while, there was a very clear cut distinction as to his money and my money. Though we have several accounts in joint names, including a DBS account and a Banque Indosuez current account (no. 154190133), only the money deposited in the DBS current account after April/ May 1983 belongs to the Petitioner. The monies in the account with Banque Indosuez and other joint names account were mine. Should any of the Petitioners monies be put in my account with Banque Indosuez, I would issue a cheque for that exact amount to return to him. Similarly should any of the monies be deposited into the petitioners DBS account, he would issue a cheque out of that account to return me. We never had so called joint-funds for our family expenses. This is why I could say so categorically what I paid for and also identify items I paid for from my Banque Indosuez account or other accounts."

6. On the basis of the above statement Mr. Yap advanced the argument that the parties had agreed to keep their assets separately, and the court should therefore order the division of these assets on the basis that each party keeps what he or she earned and saved respectively. However, I think that more attention must be paid to what the respondent said just a few paragraphs after that. There she stated as follows:

> "25. In the circumstances, I feel that I have fulfilled my duty in acting responsibly to take care of our children and household. Despite the [petitioners] cold shoulder treatment, I still ask for his opinions on matters relating to our children and household even though he would ignore me. I have taken over more than my fair share as a parent and wife because the petitioner chose not to do his part fully whether financially or emotionally.
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> 26. As a result of me footing the bulk of the household expenses and that of our children and maid, the petitioner was able to accumulate substantial savings. I estimate the petitioners saving to be about S$400,000. The petitioner

has also bought a flat in China."

7. If one takes these two paragraphs into account as they ought so to be, then it becomes clear that the arrangement adopted by the parties in respect of their income was merely to keep them in separate accounts. Generally, all income earned by a married couple fall into their common coffers as part of their matrimonial assets no matter where they may be kept. The mere separation of the accounts does not alter the nature of the income as matrimonial assets. There must be clear evidence to show that the separation of their respective income was made with the view that their assets will be divided along that line in the event of divorce proceedings. Section 112 of the Women's Charter Ch 353 provides that when a court exercises its power to divide matrimonial assets it is duty bound to consider the circumstances of the case, including "any agreement between the parties with respect to the ownership and division of matrimonial assets made in contemplation of divorce". These words are plainly wide enough to cover agreements made before divorce proceedings have begun although one may question them as going against the spirit and ideals of marriage especially where the parties take a vow of commitment to each other until death, but that is not a matter of law; secular law allows for the contemplation of contingency planning and insurance. Michael Hwang JC took a similar approach when he considered this sort of agreement in *Wong Kam Fong Anne v Ang Ann Liang* [1993] 2 SLR 192, 201 where he was of the opinion that although what was said in *Hyman v Hyman* [1929] AC 601 had taken a limited form in s 110 (now s 116) of the Women's Charter, it has no application in respect of an agreement regarding the division of matrimonial assets unless the agreement was made in contemplation of divorce. But there is nothing in the affidavit evidence before me to suggest that the parties had divorce in mind when they commenced their practice of keeping their income in separate accounts. It appears to me that they only wanted to be able to invest and deal with their income in their own independent way. It is obvious that the petitioner and the respondent had their own ideas as to what their preferred investment plans were to be. The respondent paid for household and other matrimonial expenses from her account but the benefit goes to home and family, especially the children. By so doing, she freed the petitioner's funds so that he could invest them as he pleased; but they remain, like her funds, as part of the matrimonial assets and are liable to division. In this regard, I have no grounds to disturb the finding of the judge who accepted that the money in the petitioner's joint account to be his money. The judge had not said so, but it appears to me that the petitioner was not entirely forthright when he first declared his assets, and thereby initially concealing his interest in the fixed deposit accounts with his mother and his sister. To say that he did not disclose those accounts because they were not money in his sole name may not be entirely false, but it was also not entirely true. The obligation of a witness or deponent giving evidence before a court is to tell the whole truth; and not just to avoid telling a whole lie. Even if the money had come from the petitioner's mother he ought to have disclosed it and then establish if he can (and he could not in this case) that the money though in joint names was not his at all. A joint account is what it is described to be - that every account holder named is entitled to operate the account, and on the face of it, entitled to the money. The onus is on the account holder to prove otherwise.

8. For the reasons above, and in view of the long marriage and the extent of non-financial contribution of the respondent in bringing up the two children and the maintenance of the house and home, a division of 60-40% in her favour was not unreasonable. The appeal was therefore dismissed.

Sgd:

CHOO HAN TECK

Judicial Commissioner