

Tang Hsiu Lan v Pua Ai Seok and Others
[2000] SGHC 163

Case Number : OS 423/2000
Decision Date : 07 August 2000
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : James Leslie Ponniah [Tan Lu Seng & Co] for the plaintiff; Tan Soo Kiang/Simon Jones [Wee Swee Teow & Co] for the 1st, 2nd and 3rd defendants; Sarjeet Singh [Ann Tan & Associates] for the 4th defendants
Parties : Tang Hsiu Lan — Pua Ai Seok; Lee Siong; Lee Boon; Lee Ee

JUDGMENT:

Grounds of Judgment

1 In these proceedings, which have arisen in the wake of matrimonial proceedings between the plaintiff and the 4th defendant, the plaintiff in asserting proprietary claims sought a declaration that the 1st, 2nd and 3rd defendants as registered owners of the property known as Lot 1112 TS 25 with the house erected thereon known as No. 23 Margoliouth Road, Singapore 258549 (the property) were constructive trustees accountable to the plaintiff for 40% of 1/5 share in the property. Secondly, she also sought a parallel but alternative declaration that the plaintiff was an equitable tenant in common of 8% of the property which is equivalent to 40% of 1/5 share in the property on the basis, as I gathered from the plaintiff's submissions, that she was alternatively the beneficiary under a resulting trust. She further sought consequential orders for the sale of the property and payment of her share to her out of the net proceeds of sale. As against the 4th defendant, she specifically sought an order that the sum equivalent to 10% (with interest) standing to the credit of the 4th defendant in his Central Provident Fund Account as at 16 January 1995 be charged in her favour with immediate effect.. At the conclusion of the hearing, I dismissed the applications of the plaintiff with costs to the 4th defendant and with one set of costs collectively for the 1st to 3rd defendants. On 7 June 2000 the plaintiff filed her Notice of Appeal. I now give my reasons for dismissing her applications.

Background

2 The plaintiff resides overseas and visits Singapore two or three times a year. She is paid by the 4th defendant the monthly maintenance of \$2,000.00. The 1st defendant is the mother of the 2nd, 3rd and 4th defendants. The late Lee Poo Lai was her husband and father of the other defendants. Mr Lee Poo Lai passed away in January 1999. In 1983 the plaintiff married the 4th defendant. They have 2 children. In 1987 the late Mr Lee Poo Lai and the defendants purchased the property as joint tenants. It became the home of the extended family. At that time, the 2nd and 3rd defendants were students. In 1992, the 4th defendant to the knowledge of the plaintiff transferred without any consideration his interest under the joint tenancy to the other defendants.

3 In 1995 the 4th defendant filed Divorce Petition No. 2385 of 1995. In 1996, the Decree Nisi was granted on the plaintiff's cross-petition. On 31 January 1997 the High Court made an order pursuant to section 106 of the Women's Charter. It stated: "The Respondent be given 40% of the one-fifth share of the petitioner in the property known as 23 Margoliouth Road, Singapore, that is, the sum of \$760,000. The 4th defendant appealed against the ancillary orders which included the order for division of matrimonial property.

4 The High Court delivered the following Grounds of Decision on 31 January 1997:

"(a) Matrimonial property:

Order that the respondent is entitled to a share in the one-fifth share of the petitioner in No. 23 Margoliouth Road. This is for the reason that I do not accept the argument of the petitioner that his one-fifth share was a gift to him by his parents.

There is overwhelming evidence that from 1981 when the petitioner started working in the family business, he became, over the years, the main person responsible for running the family business.

Further after his marriage to the respondent in 1983 and after the parties went to live in Margoliouth property, he made it known to the respondent that this was their matrimonial home; notwithstanding that the Margoliouth property was also the home of his parents and his two brothers.

Therefore, I find that the respondent must have share in the one-fifth share of the petitioner.

On the evidence, I rule that the respondent be given 40% of the one-fifth share, i.e. the sum of \$760,000."

5 The Court of Appeal reduced the maintenance payable to the plaintiff but dismissed his appeal against the order made under section 106 of the Women's Charter. However, the Court of Appeal allowed him to pay the sum of \$760,000.00 by 2 instalments. On 26 September 1997 the Court of Appeal ordered: "The Petitioner/Appellant do forthwith pay to the Respondent one half of \$760,000 and the other half before the end of this year." All other orders of the High Court were ordered to remain.

6 The plaintiff was not paid. By an ex-parte application the plaintiff obtained and registered a Writ of Seizure and Sale against the property. Upon being notified the 1st to 3rd defendants filed Originating Summons No. 841 of 1999 and they sought a declaration that the plaintiff had no claim to or interest in the property and that the Order of Court Instrument No. I/51462M (Writ of Seizure and Sale) registered by the plaintiff against the property be removed. Chao Hick Tin J (as he then was) heard the application.

7 By his Order made on 23 July 1999 Chao Hick Tin J declared "that on the basis of the order of the High Court dated 31st January 1997 in Divorce Petition No. 2385 of 1995 and the judgment of the Court of Appeal in Civil Appeal No 30 of 1997 dated 26th September 1997, the defendant (i.e. the plaintiff in these proceedings) has no claim or interest in the property known as Lot 1112 TS 25 together with the house erected thereon known as No. 23 Margoliouth Rod, Singapore ...which is registered in the name of the plaintiffs (i.e. the 1st to 3rd defendants in these proceeds)." [The brackets and the words within them are added]. It was consequentially ordered that the application for registration of the Order of Court Instrument I/51462M registered by the defendant against the property be cancelled or removed from the land register and that the Registrar of Titles be directed to register the Order made herein against the property. The plaintiff did not appeal against those orders.

Plaintiff's Contentions

8 The contentions of the plaintiff's counsel in his submissions may be summarised as follows. It was asserted on her behalf that the first three defendants, though legal owners of the property as respects all shares in it, hold it in equity upon resulting or constructive trusts for the 4th defendant. The two types of trusts, particularly their distinction, was succinctly discussed and applied to the facts in *Cheong Yoke Kuen & Ors v Cheong Kwok Kiong* [1999] 2 SLR 476. Para 17 of the judgment the Court of Appeal referred to the case of *Tan Poh Soon v Phua Sin Yin* [1995] 3 SLR 201 and pointed out the difference between the two trusts in these terms: "The nature of a constructive trust is such that it could not be said to be 'created' by the parties. It is a trust which is *imposed* by equity in respect of an interest in a property in a variety of circumstances and which would render it inequitable for the owner of the property or any interest therein to hold it for his benefit. It arises independently of the intention of the parties. A resulting trust, however, is different. It arises from a certain transaction carried out intentionally by the parties concerned and the court infers an intention to create a trust in favour of a party. The nature of this trust is summarised succinctly in Parker and Mellows *The Modern Law of Trusts* 91998, 7th Ed) at p 36: Implied or resulting trusts arise where a settlor or testator *carries out some intentional act* other than the creation of a relationship of trustee and beneficiary from which

the court infers a relationship of trustee and beneficiary. They consequently arise from the *unexpressed but presumed intention* of the settlor or testator.[Emphasis added]."

My Reasons

9 The ground relied upon as giving rise to either of these types of trust was the fact that the 4th defendant had transferred his interest as joint tenant without any consideration. It was then submitted, without further elaboration, that the 4th defendant therefore held an "equitable" interest in the property to the extent of his 1/5th share.

10 In my view the correct analysis was that a resulting trust arose in favour of the 4th defendant upon his transfer of his interest under the joint tenancy without consideration to the 1st to 3rd defendants who held his equitable interest upon trust for him. Here, equity raised a presumption that the 4th defendant did not intend to make a gift of his interest to the 1st to 3rd defendants. It was asserted and therefore must be accepted by the 1st to 3rd defendants and the 4th defendant that the so-called consideration of \$600,000.00, which was stated in the Transfer signed by the 4th defendant in favour of the 1st to 3rd defendants, was purely for the purpose of ascertaining the stamp duty. I thought equity in this case, as was usually the case, did not presume that the 4th defendant had intended to make a gift to the 1st to the 3rd defendants. At the bottom of it, this was simply an evidential rule. The burden of proving that the transfer amounted to a gift rested with and was upon the 4th defendant. On the evidence before me, the 4th defendant did not adduce any evidence to discharge that burden of proof. All that the plaintiff had to do was to make this analysis and tender this submission before the Court of Appeal in the said appeal or before Chao Hick Tin J (as he then was) and ask for an order that they (the 1st to 3rd defendants) as trustees under the resulting trust sell the property and pay over 40% of the net proceeds, as ordered by the courts in respect of the division of property. These conclusions would have followed in these proceedings but the defendants submitted that the plaintiff was precluded from relying on these submissions as they were considered or canvassed or should have been canvassed before the High Court in the matrimonial proceedings, the Court of Appeal or before Chao Hick Tin J.

11 On the material before me, I did not think that there were circumstances to impose a constructive trust on the 1st to 3rd defendants based on either their refusal to recognise the interest of the 4th defendant, who was not asserting that against them. The plaintiff herself did not have any proprietary claim against the 1st to 3rd defendants in respect of the 4th defendant's 1/5 equitable interest in the property.

12 Could she assert any secondary liability against the 1st to 3rd defendants on the two bases, namely recipient liability or accessory liability, as explained by the Privy Council in *Royal Brunei Airlines Sdn Berhad v Tan* (1995) 3 All ER 97? In *Royal Brunei Airlines*, the airline appointed a travel company to act as its ticketing agents. The agents were under the agreement constituted trustees of the moneys received as airfares. The travel company did not keep a separate trust account. All the airfares were paid into a current account without differentiation and the defendant, Tan, as the managing director authorised their use in the ordinary course of business. The travel company was in breach of the trust. It became insolvent. The Privy Council held that Tan had dishonestly assisted the company in its breach of the trust and had committed the equitable wrong against the airline. Lord Nicholls of Birkenhead succinctly highlighted the two bases of secondary liability at p 386: "Different considerations apply for the two heads of liability. Recipient liability is restitution-based; accessory liability is not." In the former case, there would be a reversal of the unjust enrichment; in the latter case, the dishonest accessory would be made to account or make good any deficiency in the trust property. *The Royal Brunei Airlines* case is an illustration of the latter cause of action and the remedy at work. Another example of the latter personal liability for an equitable wrong is *Agip (Africa) Ltd v Jackson* [1990] Ch 265, [1991] Ch 547.

13 I turn to the facts in this case. Were the 1st to 3rd defendants recipients of trust property or property simpliciter of the 4th defendant where there had been a breach of trust or breach of fiduciary duty. The answer was to my mind in the negative. The fact of the matter was that the transfer had taken place in 1992, well ahead of the divorce petition, and there was nothing to suggest that the transfer was for the purpose of putting the property beyond the reach of the plaintiff. On the scant and slender

evidence led, there seemed no room for the imposition of a constructive trust. On the bare facts as adduced, there arose a resulting trust binding on the 1st to the 3rd defendant in favour of the 4th defendant. Conceptually, it accorded with orthodox analysis. There was no question of any receipt of trust property. A resulting trust arose. But alas, as would be apparent later, this did not avail the plaintiff.

14 Frankly, the matter was not looked into and was not pursued with any degree of conviction or seriousness of purpose. Who could guess what could have turned up in a more rigorous investigation including a cross examination sought before Chao Hick Tin J (as he then was) instead of following the non-contentious mode of proceedings in the form of the originating summons as in this case? Indeed, but for the evidential presumption in equity against a gift, a resulting trust might not and could not have been found.

15 Were the 1st to 3rd defendants liable as dishonest accessories? There was no evidence led of any assistance, let alone any dishonesty in any assistance. They must be taken to have accepted the gratuitous transfer on the basis that a resulting trust would arise. That must be taken as the basis upon which the 4th defendant had proceeded.

16 I now turn to the other submissions made on behalf of the defendants. I did not think that the doctrines of res judicata or issue estoppel applied to the matrimonial proceedings or before the Court of Appeal on the simple ground that the 1st and 3rd defendants were not before those courts. However, I came to the conclusion that the doctrine of issue estoppel, unfortunately, operated against the plaintiff because the same issues had arisen or, unarguably, might have arisen in the proceedings before Chao Hick Tin J.

17 In *Seah Peng Song v Seah Peng Koon* [unreported decision dated 4 September 1990 of Chan Sek Keong J (as he then was)] he said:

"Issue estoppel may arise when a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue."

18 The Order made by Chao Hick Tin J stated that it was made on the basis of the decision of the High Court and the Court of Appeal. If that be the correct interpretation, and that therefore the learned Judge made no pronouncement about the interest of the 4th defendant under the doctrine of resulting trust, it was clear that that particular point was raised and, in any case, it was clear that that particular point might have been raised but was not raised.

19 In *Arnold and Others v National Westminster Bank plc* [1991] 3 All ER 41, Lord Keith said at p 47:

"Issue estoppel, too, has been extended to cover not only the case where a particular point has been raised and specifically determined in the earlier proceedings, but also that where in the subsequent proceedings it is sought to raise a point which might have been but was not raised in the earlier."

20 I turn to the application to charge the CPF account of the 4th defendant. The 4th defendant's responses were these. He said he would have agreed if the plaintiff had written to him. Secondly, he offered to the plaintiff all his CPF monies in his Ordinary Account (less the maximum sum to be retained), which was estimated to be about \$250,000.00, in full and final settlement of the judgment by having the same charged in her favour. The plaintiff was not correct in suggesting that the 4th defendant would give her the "walk around". She ought to obtain a consensual charging order.

21 For these reasons I made the orders I did.

Lai Kew Chai

Judge

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