

ANN v ANO
[2014] SGHC 200

Case Number : Divorce Suit No 5764 of 2009 (Registrar's Appeal Subordinate Court No 94 of 2013)
Decision Date : 09 October 2014
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Zaminder Singh Gill (Hillborne Law LLC) for the plaintiff/appellant; Amarjit Kour d/o Balwant Singh (Belinda Ang Tang & Partners) for the defendant/respondent.
Parties : ANN — ANO

Family Law – Matrimonial Assets – Division

9 October 2014

Woo Bih Li J:

Introduction

1 This is an appeal in a matrimonial dispute between ANN (“the Wife”) and ANO (“the Husband”). The appeal is by the Wife against the decision of a District Judge (“the DJ”) on 2 July 2013 which was on various ancillary matters in the divorce proceedings between the parties. In arguments before me, the Wife confined her appeal to the division of matrimonial assets. After hearing arguments, I dismissed the Wife’s appeal with costs. I set out my reasons below. I will refer to the DJ’s grounds of decision as “the DJ’s GD”.

Background

2 The DJ had determined the value of the matrimonial assets to be \$1,042,498.77 comprising:

- | | | |
|-----|--|----------------|
| (a) | A matrimonial house at Jalan Bahagia held by the Husband and Wife (“the Matrimonial House”): | |
| | Value | - \$761,428.00 |
| | Loan | - \$150,000.00 |
| | | \$611,428.00 |
| (b) | The Wife’s assets in her name and in the joint names of the Wife and her mother | \$303,621.74 |
| (c) | The Husband’s assets in his sole name | \$127,449.03 |
| | | \$1,042,498.77 |

3 The DJ determined the direct financial contributions by the Husband and the Wife towards the acquisition of the Matrimonial House and concluded as follows:

| Husband | Wife |
|---|-------------------------------------|
| \$121,800 from the sale of an Ang Mo Kio flat which was the previous matrimonial flat | |
| \$32,025.02 CPF (as at 19 May 2011) \$270,841.07 cash (between January 1999 till April 2013) | \$80,543.64 CPF (as at 23 May 2011) |

4 It was not clear from the evidence who had paid more for the acquisition of the Ang Mo Kio flat. In any event, the DJ appeared to have focussed on the contributions from the two CPF accounts and the cash contribution from the Husband for the acquisition of the Matrimonial House. The total of these three sums was \$383,409.73. The Husband had contributed \$32,025.02 + \$270,841.07 = \$302,866.09 and the Wife had contributed \$80,543.64. This worked out to a 79% contribution and a 21% contribution by the Husband and the Wife respectively.

5 The DJ then concluded that the Wife had made a greater indirect contribution towards the acquisition of the Matrimonial House as she had given up her job in 1998 and cared for the home and the children since then.

6 Therefore, taking a broad brush approach, the DJ decided that the Husband should be entitled to 60% of the Matrimonial House and the Wife 40%. She applied this proportion to the other assets held by the Husband and the Wife.

7 The DJ concluded that the Husband's assets held in his sole name amounted to \$127,449.03. The Wife's assets in her name and in joint bank accounts with her mother ("the Joint Bank Accounts") totalled \$303,621.74 (see [34] of the DJ's GD). In arriving at these figures, the DJ had included the amounts in the parties' respective CPF Ordinary accounts but not in their respective CPF Special or Medisave accounts. She also excluded two joint accounts which the Wife held with a son and with a daughter because of the small sums of money in those accounts. As mentioned above, the DJ had, however, taken into account the entire sum of money held in the Joint Bank Accounts. Details of the Joint Bank Accounts were as follows:

| | |
|----------------------------|--|
| POSB savings account | \$50,065.10 (as at 9 June 2011) |
| DBS fixed deposit account | \$103,000 (as at 21 May 2011, maturing on 21 May 2013) |
| OCBC fixed deposit account | \$150,000 (as at 22 September 2010, maturing on 22 September 2011) |

8 The money in the Joint Bank Accounts totalled \$303,065.10. The Wife claimed that the money was an inheritance from her father but the DJ found that the Wife had failed to establish this. Accordingly, the DJ included this sum as part of the matrimonial assets.

9 For completeness, I would mention that the money in the Husband's CPF Special and Medisave accounts totalled \$39,069.78. The money in the Wife's CPF Special and Medisave accounts totalled \$4,858 (see [34] of the DJ's GD). The DJ did not elaborate why these accounts were excluded from the pool of matrimonial assets and why she included only the money from the CPF ordinary accounts of the parties. Perhaps it was because the DJ thought that the Special and Medisave accounts were accounts provided by law for specific purposes and hence they should not be included as part of

matrimonial assets. I am of the view that unless there is some law expressly providing that these two types of accounts must be excluded from the pool of matrimonial assets to be taken into account and divided in matrimonial proceedings, there is no reason to distinguish between these two types of accounts on the one hand and the CPF ordinary account on the other hand. However, as the Wife did not seek to have the money in these two types of accounts included in the pool of matrimonial assets, I will say no more about them.

10 Excluding the Matrimonial House, the value of assets held by the Wife was more than that held by the Husband. The DJ found it expedient to allow the Wife to retain the assets she was holding and to grant the Husband a larger share of the Matrimonial House; otherwise the DJ would have required the Wife to transfer part of her assets to the Husband. To achieve the 60:40 division and to allow the Wife to retain the assets she was holding, the DJ then increased the Husband's share and correspondingly decreased the Wife's share in the Matrimonial House to 80:20 respectively. The DJ then made various orders granting the Husband an option to buy the Wife's share in the Matrimonial House based on a valuation to be done by a valuer to be jointly appointed by the parties.

11 The Wife filed an appeal against the DJ's decision on 11 July 2013. She appealed against all the orders made by the DJ.

12 I would mention that there was another asset, *ie*, a bank account with OCBC held jointly by the couple. Neither side produced any bank statements about this account and in the absence of evidence, the DJ ordered that the account be closed and the money in it be divided equally between the parties except for \$3,000 which was to be repaid to the Husband as he had wrongly deposited this sum into the account on 14 September 2010. The Wife did not contest the Husband's claim for the \$3,000 and her appeal does not cover the DJ's decision concerning the money in this account. Neither did the Husband appeal against the DJ's decision. Therefore I need not say anything more about this account.

Issues

13 As mentioned above, the Wife eventually decided to confine her appeal to the DJ's decision on the division of matrimonial assets. The Wife's appeal raised two issues:

- (a) Whether the DJ was correct in treating the \$303,065 from the Joint Bank Accounts as part of matrimonial assets.
- (b) Whether the DJ should have granted the Wife 50% of the Matrimonial House instead of 40% as her notional share before adjusting it to 20% as mentioned above.

The court's reasons

14 The DJ treated the \$303,065 as being part of matrimonial assets because the Wife failed to establish that the money was part of a \$400,000 inheritance from her father. Relying on *O'Connor Rosamund Monica v Potter Derek John* [2011] 3 SLR 294 at [18], the DJ was of the view that the burden was on the Wife to establish this and she failed to do so. The Wife had also refused to disclose various bank statements which she had been ordered to disclose. For example, the Wife refused to disclose bank statements of the Joint Bank Accounts claiming that the money belonged to her mother and that her mother considered the information confidential. She did so even though the court had already ordered the Wife to disclose the documents.

15 The DJ also noted that the Wife's explanation about the inheritance was not consistent. The

Wife had first said that the inheritance was left for her exclusively and then for both her mother and herself and then for her mother alone.

16 Allegations of loans made by the Wife's mother to the Wife were also not supported by documentary evidence.

17 Eventually the Wife claimed that her mother withdrew all the money in the Joint Bank Accounts because she was too "unsettled". The DJ rightly considered this to be an attempt to dissipate the money.

18 At the appeal before me, the Wife applied to adduce fresh evidence of some bank statements of accounts which her father had held either in his own name or jointly with her mother. Although the Husband opposed the application, I allowed it.

19 However, the fresh evidence only demonstrated that the Wife's father did have money in various bank accounts around the time that he died in 2000. The Wife did not go further to show that the money in the Joint Bank Accounts came from the father's money. While the Wife could produce bank documents from as far back as 2000, she did not produce bank documents to trace the father's money to the present Joint Bank Accounts. She appeared to be selective in her disclosure.

20 On the other hand, it was true that the Wife had stopped working in 1998. Therefore, there appeared to be some basis for her claim that the money in the Joint Bank Accounts was inherited from her father.

21 However, the Husband said that the money could also have come from the couple's own efforts. He said that the Wife had been operating several of their bank accounts and had also helped him to prepare cheques for his company. She had also been trading in shares. Pursuant to an order for discovery made against the Wife, she disclosed some statements of account with one stockbroker, ie, UOB Securities Pte Ltd and some statements of account from the Central Depository Pte Limited ("CDP"). The problem was that she was also selective in disclosing those documents. For example, she disclosed statements from CDP from 2005 but not earlier. Furthermore, the statements from CDP showed that she had an account with a second stockbroker, Philip Securities Pte Limited ("Philip Securities"). Yet the Wife did not disclose statements of account from Philip Securities.

22 The Wife's conduct in respect of another asset again demonstrated her refusal to be candid about her financial position. The Husband had discovered that the Wife was the owner of an Audi Q5 car bearing registration number SKF xxxx. When he asked about the purchase price of the car and for other information, the Wife refused to provide any information. Her counsel said (in 2013) to the DJ that she had sold the car but did not say how much she sold the car for or who received the sale proceeds. The DJ appeared to think that the money to buy the car came from the money in the Joint Bank Accounts and hence did not add the value of the car to the pool of matrimonial assets since the money in those accounts had already been taken into account as part of the said pool.

23 It was clear to me, just as it was to the DJ, that the Wife had failed to discharge her obligation to make full discovery of documents. There was an order for the Wife to disclose the statements of the Joint Bank Accounts. If her mother was objecting, it was for her mother to take the necessary steps to challenge the order. The mother did not do so.

24 Secondly, the Wife had been selective in disclosing bank statements of accounts as elaborated above. Even after she had a second chance to disclose documents to establish that the money in the Joint Bank Accounts came from her father, she only exhibited bank statements of her father's

accounts from several years ago without exhibiting the bank statements in subsequent years to show that the money in the Joint Bank Accounts came from her father.

25 The Wife's refusal to disclose all the statements for her share trading accounts with CDP and with Philip Securities suggested that the money in the Joint Bank Accounts might not have been from her father. It may also well be that there are some other bank accounts which the Wife has not disclosed yet.

26 Additionally, the DJ might have erred in the Wife's favour in not including the sale proceeds of the Wife's Audi car as part of the matrimonial assets. The statements of the Joint Bank Accounts that were exhibited showed outstanding balances as at 2010 and 2011. The Audi's vehicle registration card showed that the Audi was registered in 2009. The money used to purchase the Audi might already have been withdrawn from the Joint Bank Accounts (or some other bank account). There was no documentary evidence that the Wife had taken a loan to buy the car. Therefore, it was likely that the money used to purchase the Audi was not included in the sums disclosed as the outstanding balances of the Joint Bank Accounts in 2010 and in 2011. Likewise, the sale of the car in 2013 would have resulted in an additional sum of money which was not taken into account. The Wife's refusal to elaborate about the source of funds to purchase the car and where the sale proceeds of the car went to suggested that there might have been another bank account which she had not disclosed.

27 I did consider whether I should apportion part of the money in the Joint Bank Accounts as having come from the Wife's father but the question was where to draw the line.

28 Eventually, I concluded that the Wife had only herself to blame. Contrary to her submissions, the DJ was correct that the burden was on her to establish that the money in the Joint Bank Accounts was an inheritance from her father. She failed to discharge the burden. Her failure to do so was not caused merely by the lapse of time. It was clear that she was not forthcoming with information for the reasons stated above.

29 Furthermore, the Wife had already enjoyed the benefit of the fact that the DJ did not include the value or the sale proceeds of the Audi car as the DJ ought, in my view, to have done.

30 In the circumstances, I concluded that the DJ was correct in concluding that the Wife had failed to discharge her burden and that all the money in the Joint Bank Accounts were part of matrimonial assets.

31 As for the second issue, the Wife said that she wanted 50% of the Matrimonial House only. She was no longer claiming a share of the Husband's assets held by him which amounted to \$127,449.03 (see [7] above).

32 This was a strange approach. The DJ had granted the Wife a 40% notional share of the Matrimonial House before adjusting it to 20% because of the money in the Joint Bank Accounts. Since the Wife was now asking for 50% of the Matrimonial House, the additional 10% (of its value of \$611,428) would be \$61,143. On the other hand, she was prepared to forego her notional share of 40% of the Husband's assets of \$127,449.03. This 40% worked out to be about \$50,980. It did not make much sense for her to claim an additional \$61,143 and forego the \$50,980. It seemed to me that the main reason why she adopted this approach was because she did not want to share the assets held by her, including the Joint Bank Accounts, in case the court still concluded that the money in the Joint Bank Accounts was part of matrimonial assets.

33 In any event, the Husband relied on *NK v NL* [2007] 3 SLR(R) 743 to show that for a 22-year

marriage, the wife was given 40% of the matrimonial home. In that case, the Court of Appeal was of the view that the wife should be entitled also to the profits from the sales of previous matrimonial homes. In the present case, the parties were content not to elaborate how the \$121,800 from the sale of the previous matrimonial flat should be apportioned and so I did not take that into account.

34 The Wife in turn relied on the case of *Anthony Patrick Nathan v Chen Siew Chin* [2011] 4 SLR 1211. However, in that case, the wife was given 40% (and not 50%) of the pool of matrimonial assets, which included the matrimonial home, although this was because the court drew an adverse inference against her for her failure to make full and frank disclosure of some matters. The Wife did not cite any authority to support her claim for 50% of the Matrimonial House.

35 In the circumstances, she also failed on this issue.

36 Therefore, I dismissed her appeal with costs. I also varied some of the DJ's orders to address the mechanics regarding the valuation to be done of the Matrimonial House in order for the Husband to decide whether he would buy the Wife's 20% share thereof.

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