Hamonangan Luis v Suntanto Sanny Suriaty
[2008] SGHC 184

Case Number : RAS 43/2008, D 1949/2006

Decision Date : 23 October 2008

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Lim Soo Peng (Lim Soo Peng & Co LLP) for the appellant; Foo Siew Fong (Harry Elias Partnership) for the respondent

Parties : Hamonangan Luis — Suntanto Sanny Suriaty

Family Law

23 October 2008 *Judgment reserved.*

Judith Prakash J:

Introduction

1 This appeal arises from divorce proceedings initiated by the wife against the husband. The parties were married in February 2002. On 26 April 2006, the wife filed for divorce on the ground of unreasonable behaviour on the part of the husband and interim judgment was granted on 11 January 2007. Thereafter, the ancillary matters came on for hearing before a District Judge (the "trial judge") and various orders were made relating to the division of matrimonial assets and maintenance. The reasons for these orders were explained in *Sanny Suriaty Sutanto v Luis Hamonangan* [2008] SGDC 221 (the "GD").

2 Among the orders made were directions to the following effect:

(a) that the flat be sold and the net sale proceeds, after repayment of the mortgage loan, the refund to the parties' respective CPF accounts, and the payment of the costs and expenses of sale, be divided in the proportions of 65% to the wife and 35% to the husband;

(b) that the couple's joint account with the United Overseas Bank (the "UOB account") be closed and that the wife be paid a half share thereof amounting to $13,000;

(c) that the husband was to pay the wife the sum of $9,600 representing her share of the rental proceeds of the flat from April 2006 till the day of the order; and

(d) that the husband was to pay to the wife a sum of $5,066.05 being the credit balance in a joint account held by the parties with the Post Office Savings Bank (the "POSB account").

3 The husband was not satisfied with the orders made above for various reasons. He appealed. I shall address the husband's arguments on these orders in turn.

Order 1 –Division of the Sale Proceeds of the Matrimonial Flat

4 In April 2004, the couple signed an option to purchase a flat at Block 648B Jurong West Street 64 (the "flat"). The purchase was completed in July 2004 and thereafter the parties rented out the

flat. They themselves occupied a private flat belonging to the husband's father.

5 To finance the purchase of the flat which cost $260,000, the parties took a mortgage loan of $200,000 from the United Overseas Bank ("UOB"). They were able to pay $19,000 of the balance from their respective CPF accounts but had to find the amount of $48,200 to pay the balance of the price, the stamp duty of $4,600 and the agency fee of $2,600. The husband's stand was that the balance was paid from the proceeds of a loan of $100,000 made by his sister (whom I shall refer to as "AH") whilst the wife said that the $100,000 was a gift from the husband's father and that the parties did not need to borrow such an amount to pay for the flat.

6 On appeal, the husband did not dispute the proportions in which the sale proceeds of the flat should be divided. He argued (repeating arguments made before the trial judge) that $68,000 from the net proceeds of the sale should be utilised first to repay AH the balance due in respect of the $100,000 loan. The loan had been made in three tranches. AH issued a cheque for $25,000 on 29 April 2004 which was credited into the UOB account and two cheques for $50,000 and $25,000 on 27 May 2004 and 11 June 2004, respectively, which were credited into the POSB account. After the marriage broke down, the husband had withdrawn $30,000 from the UOB account on 4 March 2006 and a further $2,000 from his personal POSB account on 10 April 2006 to repay AH. The husband considered that the remaining $68,000 should be repaid from the sale proceeds of the flat since the loan had been given for the purchase of the flat. His contention therefore was that $68,000 should be deducted from the proceeds of sale and paid to AH before the remaining proceeds were divided between the parties.

7 The wife, on the other hand, claimed that the $100,000 was actually a gift from the appellant's father to the couple which was transferred first to the appellant's sister before it was passed on to them.

8 The trial judge rejected the husband's arguments and accepted the wife's explanation. He made the following comments (at [5] to [8] of the GD):

> The husband explained that the sum of $30,000 [withdrawn from the UOB Joint Account] was used to repay the $100,000 loan that his sister have (*sic*) given to them to aid their purchase of the matrimonial flat. However, he was unable to adduce any documentary evidence to substantiate his explanation. He had also failed to adduce an affidavit from his sister to support his claim.
>
> On the other hand, the wife claimed that the sum of $100,000 was actually a gift from the husband's father to them through the husband's sister's account. This is evident as the money was transferred to his sister's account before being handed to the couple. The husband's father did so as he knew that the husband was unemployed and wanted to take care of both of them. This also explained why the husband's father had never collected rental from the couple for staying at the Simei home which belongs to him.
>
> The wife also claimed that the $100,000 is unlikely to be a loan as there was no repayment made ever since the sum was given to the couple. The only alleged repayment made was when the husband gave his sister $2,000 after the wife had left the Simei home.
>
> Therefore, *I find that the wife's explanation is more probable in the light of the evidence adduced by both parties*. The husband had failed to discharge the onus placed upon him to show that the withdrawal of $30,000 was made for the purpose of repaying the loan. [emphasis added]

9 Whilst I agree with the ultimate decision that the proceeds of sale should be divided without regard to the alleged loan, with respect, I am unable to agree with the trial judge's finding of fact that this sum of $100,000 was a gift from the husband's father. Ordinarily, an appellate court will not disturb the findings of fact made by the lower court unless they were clearly arrived at against the weight of the evidence: see, most recently, *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 at [32] ("*Mohammed Liton*").

10 The appellate court is constrained in its review of the trial judge's fact finding because the trial judge is presumed to have had the benefit of assessing the credibility and veracity of the witnesses in court: see *Mohammed Liton* at [32], citing favourably the comments of Yong Pung How CJ in *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24]. It follows, however, that where the trial judge's findings did not depend on the observation of witnesses, there is no such constraint. This explains why, for instance, the appellate court is regarded as being equally competent to draw inferences of facts from actual findings: see *Terence Yap* at [24]. In this appeal, I am not constrained in my review of the trial judge's fact finding. This is so because the trial judge's findings were based on affidavit evidence alone. I have equal access to all the evidence and am able to review the same documents and draw different inferences, if necessary.

11 Having considered the documentary evidence, it is my view that neither the wife nor the husband has proven their claim as to the nature and purpose of the $100,000 payment. With due respect to the trial judge, it does not matter that the wife's explanation was the more probable one. The test is not whether the claimant's case is more probable than that of the other party but whether it is more true than not on a balance of probabilities. This principle from the *The Popi M* [1985] 2 All ER 712 at 955-956 has been firmly established: see, for example, *Clarke Beryl Claire (as personal representative of the estate of Eugene Francis Clarke) and Others v SilkAir (Singapore) Pte Ltd* [2002] 3 SLR 1 at [58] and *Wee Yue Chew v Su Sh-Hsyu* [2008] 3 SLR 212 at [9].

12 In this case, neither party has discharged the burden of proving their claims. The parties who can shed light on the nature of the transfer of the $100,000, the appellant's father and sister, have not filed affidavits to testify as to whether it was a gift or a loan. The circumstances surrounding the transfer also present some degree of ambiguity and do not strongly support the veracity of one version over the other. If indeed the money was a gift from the husband's father, it would be most unusual for him to have transferred the money to the sister first before having it passed on to the couple. The father could have transferred the money into the couple's bank account directly. The wife also gave inconsistent explanations as to why the father made the loan. At first, in June 2006, she stated that the money that the husband claimed to have borrowed from his sister was in fact a gift from his father which was mostly used for the husband's business. A year and a half later, she changed her tune and said that these monies were paid by the husband's father through the husband's sister to pay to the wife because the wife was the sole breadwinner of the family as the husband had been unemployed since September 2003 and had no income at all. The latter statement about the husband's employment was inaccurate and misleading. It gave the impression that the husband was a layabout when in fact he was running a business and was doing his best, albeit not very successfully, to contribute towards the family income. There is therefore some doubt about the credibility of the wife's account.

13 On the other hand, if the money was a loan from AH, the way in which it was used did not suggest this. Of the $100,000, $25,000 was not utilised but simply kept in the UOB account to allow the couple to qualify for the bank's Zero Interest Home Loan Plan whereby interest on the mortgage loan was waived for a certain period. It is difficult to understand why AH would have been willing to borrow the money from a third party, as the husband asserted she had, just so that the couple could save a small amount of interest. Much of the remaining money ($35,000) went into the husband's

business (in which the wife was registered as a partner though she said that she did not participate actively in it). The husband did not deny this. In one of his affidavits, he said that the purpose of the loan was to pay for the house and also to fund his business. At most, only $40,000 from the $100,000 went directly into the purchase of the flat and it might not have been this much given that the parties did have some savings of their own as well which could have been used to fund the cash portion of the purchase. Even if the $100,000 had been a loan, there was no reason to tie this loan to the flat and insist that it be repaid from the proceeds of the sale of the flat.

14 Further, considering that the money was not actually hers, it was also unusual that AH did not insist on any security for the loan. In fact, there did not even appear to be any arrangement for repayment of the loan. It was only after the marriage had broken down and the wife had left the home that the husband sought to repay AH.

15 For these reasons, I find that neither party has discharged their burden of proof. The nature of the transfer of the $100,000, whether it was a loan or a gift, was, simply, not proved. As such, the trial judge's order must be upheld and the appellant's submission that the sale proceeds should be used to repay his sister is rejected. It is important to note, however, that because the nature of the $100,000 has not been finally established, the issue is not *res judicata*. If indeed the money was a loan, AH is still free to attempt to recover the monies from the parties.

Order 2 – Division of the monies in the UOB account

16 The monies in the UOB account came from two sources. The first source was AH's cheque dated 29 April 2004. The second source was the rental from the flat from the time it was first rented out up to March/April 2006. On 1 March 2006, there was a balance of $34,268 in this account. Subsequently, the husband withdrew $30,000 which he claimed was used to repay his sister. Upon discovering his withdrawal, the wife withdrew the remaining $4,000. The trial judge rejected the husband's explanation that the $30,000 was withdrawn to repay the alleged loan from his sister and held that the wife was entitled to a half share of the credit balance in the account before the withdrawals were made. This amounted to $17,000. Since the wife had already withdrawn $4000, the trial judge ordered the husband to pay her the remaining $13,000.

17 The only argument which the husband raised against this order on appeal was that the $30,000 was rightfully used to repay the loan of $100,000. Having already rejected this argument, there is no reason for me to disturb the trial judge's order. It is thus upheld.

Order 3 – Division of the proceeds from the rental of the flat from April 2006 onwards

18 The trial judge awarded the wife a half share in the proceeds from the rental of the flat from April 2006 up to the time of the trial in April 2008. The trial judge accepted the wife's assertion that the monthly rental was $800. The basis of the wife's argument was the husband's affidavit in which he had stated that he had been collecting $800 a month for the 2 rooms in the flat. Accordingly, the wife was awarded $9,600 as a half share of the total rental proceeds which amounted to $19,200 for the 2 years that the flat was rented out.

19 The appellant argued that the trial judge had erred in the computation of the total rental proceeds because he did not actually collect $800 a month throughout the two years. Having considered all the evidence, I accept the husband's contention. The problem arose because in one of his affidavits, the husband asserted that he had been collecting a monthly rental of $800 in total for the two rooms in his flat. This was the assertion that the wife relied on. The relevant paragraph reads as follows:

I have been collecting monthly rental of $800.00 in total a month for 2 rooms in our flat. I have collected an estimated $7,100.00 since April 2006 to February 2007. I have used $2,000.00 to repay my sister Anna Hamonangan and paid maintenance for the flat of $4,698.00. The balance remaining from the rentals collected is $401.08.

20 Although the husband stated that he had been collecting $800 a month, he also went on to say in the same paragraph that he had collected $7,100 from April 2006 to February 2007. A simple calculation (see table below) will show that this sum is consistent with his contention that he had collected $850 for two months from April 2006 to May 2006 but only $500 from June 2006 to November 2006; it was only from December 2006 to April 2008 that he had been collecting $800 a month.

April 2006 – May 2006 at $850/month:	$1,700
June 2006 – November 2006 at $500/month:	$3,000
December 2006 – February 2007 at $800/month:	$2,400
Total:	$7,100

21 The wife was thus wrong to refer to only part of the husband's affidavit. The whole of the evidence given by the husband had to be considered. On this point, therefore, I accept the husband's evidence and submissions and find that the total rental proceeds amounted to $18,300 and not $19,200. The following table sets this out:

April 2006 – May 2006 at $850/month:	$1,700
June 2006 – November 2006 at $500/month:	$3,000
December 2006 – April 2008 at $800/month:	$13,600
Total:	$18,300

22 The husband also argued that the trial judge had failed to take into account the fact that he had paid the utility bills, the conservancy charges and the cost of repairing and servicing the air-conditioner. He claimed that after deducting these costs, a net balance of $12,000 remained. Accordingly, the half share to which the wife was entitled would be $6,000 and not $9,600.

23 In the court below, the wife contended that she had also contributed to utility bills, conservancy charges, property tax and television licence fees and was therefore entitled to a half share of the gross rental proceeds. When the appeal came on before me however, counsel for the wife had to concede that the wife had not contributed to the cost of utilities and the conservancy charges from April 2006 onwards. The wife had, however, continued to pay the property tax and television licence fees, a total of $19.47 a month. The total amount paid by the wife for these items over the period from April 2006 to April 2008 would therefore be $467.28. The total expenditure incurred by the husband over the same period in order to maintain and upkeep the flat in tenantable condition was $6,300. Accordingly, between the both of them, they spent $6,767.28 on maintaining

the flat. When this amount is deducted from the total rental of $18,300, the net rental becomes $11,532.72. The wife is entitled to $5,766.36 which is half of this.

24 I therefore allow the appeal in respect of this order and vary the same so that the amount the husband shall pay the wife in respect of her half share of the rental proceeds shall be $5,766.36.

Order 4 – Division of the money in the POSB Joint Account

25 The wife claimed that as at 29 December 2005, there was a balance of $5,066.05 in the POSB account which was used up by the husband. The wife argued that she was entitled to the entire sum because she was the one who had contributed to the account from October 2004 onwards and that the husband contributed less than what he had withdrawn. This argument was accepted by the trial judge who awarded her the entire sum.

26 It is well-established that in the division of matrimonial assets, the court exercises its discretion in broad strokes rather than by way of an unrealistic mathematical formulae: see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR 520 at [33] ("*Lock Yeng Fun*"); *NI v NJ* [2007] 1 SLR 75 at [18] and *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR 605 at [66]. As a result, an appellate court should not interfere with a trial judge's exercise of discretion except only in very exceptional circumstances: *Lock Yeng Fun* at [36].

27 Bearing this principle in mind, I am nevertheless of the view that, with respect, the trial judge had erred in allowing the wife to claim the entire sum in the couple's POSB account. Matrimonial assets are not to be viewed as belonging to one party exclusively such as to allow for full entitlement upon divorce. Instead, these assets are to be treated as community property. For this reason, the argument that one party should be fully entitled to assets which he or she had accumulated has been decisively rejected by the Court of Appeal in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR 520. The comments of the court (at [40]) are apposite:

> Although [the arguments by counsel for the wife] were intuitively attractive, we were unable to accept them based on legal principle. A broad-brush approach is not a licence for the court to ignore the spirit and intent of the legislative framework. In particular, if accepted, such an argument would undermine the very basis upon which s 112 of the Act was premised: that matrimonial assets are not to be viewed as belonging to the husband or the wife exclusively, to be dealt with accordingly upon a divorce. On the contrary, the legislative mandate to the courts is to treat all matrimonial assets as community property (or, as one writer put it, "deferred community of property" inasmuch as the concept of community property does not take place until the marriage is terminated legally) to be divided in accordance with s 112 of the Act (and see generally Leong Wai Kum, *Halsbury's Laws of Singapore: Family Law*, vol 11 (LexisNexis, 2006 Reissue, 2006) ("*Halsbury's Laws of Singapore*") at para 130.751).

28 It follows that although the contributions to the POSB account may have come primarily from the wife, the money did not belong exclusively to her. It was still community property which was subject to division. The other cash assets of the parties were divided by the trial judge on a fifty-fifty basis. The wife did not appeal against this apportionment. There is no reason for a different apportionment to be applied to the money in the POSB account. It should therefore be shared equally.

29 There is however, another issue to be considered in this connection. This is the husband's argument that it was incorrect for the trial judge to find that the balance remaining in the POSB account when the marriage ended was $5,066.05. The husband pointed out that the last entry in the copy of the pass book of the POSB account produced by the wife showed a balance of $4,496.92 as

of 14 December 2005. He also noted that the wife had not produced all the pages of the pass book containing that entry for 14 December 2005 although that book was in her possession. There were two pages missing from the copy of the pass book exhibited in the wife's affidavit. The husband had however in his possession the first three pages of the new pass book for the same account which was issued at the end of December 2005. The first page of the new book showed that the credit balance of the POSB account as at 31 December 2005 was only $1,743.52. Obviously withdrawals had been made but there was no evidence they were made by the husband only. Subsequently, further deposits and withdrawals were made and on 5 January 2006 after the parties had paid a sum $718.20 as maintenance charges, the balance in the POSB account was $2,705.32. The wife left the husband a few days later. It was clear too that the wife had access to the new pass book as well because her handwriting appeared in it. Going by the evidence produced, I agree with the husband's submission that $5,066.05 was the wrong sum to be divided.

30 The husband submitted that if the wife was entitled to a share in the POSB account monies, she should only be entitled to half of the $1,743.52 in the account at the end of December 2005. There is however, no particular reason to use that date since the wife was transacting in relation to the POSB account up to 3 January 2006 as shown by her notation in the new pass book on that date in regard to the maintenance payment. Thereafter, there is no indication of the wife having operated the POSB account and, when she left, the book remained with the husband. I think therefore that the correct date at which the balance in the account should be determined is 3 January 2006. The parties shall share the balance of $2,705.32 equally and therefore the order made below in respect of this account shall be varied so that the husband shall pay the wife the sum of $1,352.66 instead of the amount of $5,066.05 as ordered below.

Conclusion

31 The appeal is thus allowed in part. I will hear the parties on costs.