

Lee Hwee Khim Rosalind v Lee Sai Khim and others
[2011] SGHC 64

Case Number : Originating Summons No. 935 of 2009/C
Decision Date : 25 March 2011
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Adrian Wong Soon Peng and Teo Shu Qin (Rajah & Tann LLP) for the plaintiff;
Lee Tau Chye (Lee Brothers) for the defendant.
Parties : Lee Hwee Khim Rosalind — Lee Sai Khim and others

Land

25 March 2011

Kan Ting Chiu J:

1 This case arises out of a dispute between two joint tenants of a property known as Block 741 Yishun Avenue 5 #08-506 Singapore 760741 ("the Property").

Ownership history of the Property

2.1 In 1984, the plaintiff, Lee Hwee Khim Rosalind and Cheng Liang Geck ("Mdm Cheng") purchased the Property, a Housing and Development Board ("HDB") flat, as joint tenants.

2.2 In 1991, Mdm Cheng passed away and the plaintiff became the sole proprietor of the Property.

2.3 In 1995, Lee Siew Kim ("LSK") was registered as a joint tenant of the Property with the plaintiff. LSK's interest was recorded as a gift from the plaintiff.

2.4 In 2009, LSK executed a declaration to sever the joint tenancy.

Developments in the proceedings

3.1 In August 2009, the plaintiff filed these originating summons against LSK to seek:

- (1) A declaration that the Plaintiff is the sole beneficial owner of the Property and that the Defendant has no beneficial interest in relation thereto; and
- (2) That the land register be rectified to reflect that the Plaintiff is the sole registered proprietor of the Property.

3.2 LSK passed away on 12 October 2009. An application was made in February 2010 for Lee Sai Khim, Lee Guan Kim and Tan Choon Nghee Melvin, the administrators of the estate of LSK, to be substituted as defendants in place of LSK.

3.3 In October 2009, the plaintiff applied to amend the originating summons. Prayer 1 was retained and new Prayers 2 and 3 were inserted:

- (2) That the registration of the Application of Declaration by a Joint Tenant to Sever a Joint Tenancy affirmed by the Defendant on 23 July 2009 and subsequently registered by the Singapore Land Authority on 4 August 2009 be set aside and/or rendered ineffective and that the land register be rectified accordingly;
- (3) Further and/or in the alternative, that beneficial ownership of the Property be determined by this Court and that the land register be rectified according to such determination by the Court;

3.4 On 19 March 2010, the originating summons with the amended defendants and prayers came before me and was dismissed. The plaintiff now appeals against my decision.

The dispute

4 The plaintiff filed an affidavit on 7 September 2009 in support for her case. In this affidavit, she deposed that she and Mdm Cheng, who was her foster mother, had purchased the Property as joint tenants in 1985 at the price of \$46,400. At that time, she allowed LSK and her husband to move into the Property. As LSK was also a foster daughter of Mdm Cheng, the plaintiff allowed LSK and her husband to move in out of gratitude to Mdm Cheng and "because of my love for the Defendant". When Mdm Cheng died in 1991 she became the sole proprietor of the Property.

5 In 1993, she acceded to LSK's request to provide a home for her (LSK) in the event that she (the plaintiff) passed away. She agreed to the request, but she explained in her affidavit:

11. My intention had always been to let the Defendant live in the Property for as long as she needed a roof over her head. However, the Property was the only substantial asset in my name and my only place of refuge. It was the only place that I could afford on my low monthly income of S\$900.00. As such, I would only allow the Defendant to own the Property after my death and not otherwise. Afterall, I am single. I told the Defendant that she will only own the Property after my death and not otherwise and she agreed.
12. It was on this basis that both the Defendant and I went to the HDB in end-1993 to attend to the necessary procedures to give effect to this understanding. The HDB personnel that spoke to us at the Yishun HDB Area Office explained that for the Defendant to own the Property after I passed away, a joint tenancy of the Property can be created by adding the Defendant's name. In the event that I passed on before her, the Property would belong to her. The Defendant did not pay me for the inclusion of her name in the duplicate certificate of title.

...

13. In or around June 2009, the Defendant was diagnosed with cancer. I felt very sad for her and paid her several visits at the hospital. However, I was totally caught by surprise when she asked me on or around 15 July 2009, during one such visit, whether I was prepared to sell the Property and to give her 30% of the sale proceeds as she owed her sister more than S\$20,000 and needed to repay the debt. The Defendant told me that after discharge, she

would no longer stay at the Property as she planned to stay with her sister. Accordingly, the Property could well be sold.

6 When LSK was discharged from hospital, LSK decided that she would no longer stay in the Property and planned to stay with her sister. She wanted the Property to be sold, but the plaintiff did not agree with the proposal. The plaintiff explained:

15. I told the Defendant that I could not accede to her request as the Property was my only place of refuge. If I sold the Property, I would not be able to afford another comparable HDB flat since HDB flat prices have gone up drastically since the 1980s. Furthermore, the understanding between us had always been that the Property would be left for her only if I passed on before her and not otherwise.

7 In July 2009, she received a letter from Lee Brothers, the solicitors for LSK, enclosing LSK's Declaration to Sever A Joint Tenancy in respect of the Property.

8 She was disappointed with LSK over that. She deposed that:

18. It was clear that [LSK] wanted to forcibly wrest a half-share of the Property from me via the Declaration. I just could not understand why the Defendant wanted to do this to me in spite of my kindness to her all these years and our understanding that she would only own the Property if I passed on before her. Where can I go if I lost the Property now? I had no choice but to seek legal redress.

and she instructed her solicitors, Rajah & Tann LLP to reply to Lee Brothers. The reply dated 31 July 2009 stated:

1. We act for Mdm Lee Hwee Khim and refer to your letter dated 23 July 2009 to our client.
2. We wish to state for the record that **your client does not have any beneficial interest** in the Property. She is also well aware that **she had never contributed to the purchase consideration** for the Property.
3. Please let us know by Monday, 3 August 2009, 4 pm, if your client is prepared to withdraw her false assertion that she will hold the Property as "*a tenant in common with [our client] ... in the share proportionate to the number of joint tenants*", i.e. your client has a half-share in the Property. If we do not hear from you positively by then, our client shall commence proceedings in the Supreme Court against your client.
4. All our client's rights are reserved, including those available under the Oaths and Declarations Act in connection with your client's aforesaid false statement.

[Emphasis in bold added. Other emphasis in original]

9 This is an interesting and revealing letter because:

- (a) the plaintiff was asserting that LSK had no beneficial interest in the Property,
- (b) the plaintiff was asserting that LSK had not contributed to the purchase consideration, and
- (c) there was no reference to the alleged understanding between the plaintiff and LSK that

the Property was to be left to LSK only if the plaintiff died before her.

10 LSK filed an affidavit in reply on 15 September 2009 (a month before her death) to oppose the plaintiff's application. She disputed the plaintiff's claim that she did not contribute towards the purchase of the Property. LSK explained that she was involved in the acquisition of the Property from the start. She had intended to purchase a property, but her husband did not want to make the commitment to purchase. She decided to purchase a property without her husband's knowledge and she approached Mdm Cheng, who was her father's first wife (LSK was the daughter of her father's second wife) and the plaintiff, who was Mdm Cheng's adopted daughter, for their assistance.

11 In response to her request, the plaintiff and Mdm Cheng purchased the Property in their names. When it was purchased LSK paid \$20,000 for the renovation of the Property and she and her husband moved in and occupied the master bedroom. She also contributed about \$100 a month towards the monthly payments and utility bills of the Property, and bought most of the furniture and fixtures.

12 After her husband died in 1989 and Mdm Cheng died in 1991, she requested the plaintiff to transfer Mdm Cheng's share of the Property to her and she became a joint tenant on the Property with the plaintiff. For that to be done, the existing mortgage on the Property had to be discharged and she paid \$13,288.61 out of her Central Provident Fund ("CPF") account towards that. She exhibited in her affidavit a statement from the CPF Board to substantiate that.

13 LSK explained that her acquisition of her interest was recorded as a gift because HDB has a policy to treat a transfer of a property that is made between relatives and siblings and is not based on the open market value as a gift.

14 In June 2009, she was diagnosed with pancreatic cancer. She was hospitalised and underwent surgery, but that was unsuccessful. As she needed money for her medical expenses, she decided to sell her share of the Property. When that was brought up to the plaintiff, the plaintiff offered to purchase her half share for \$35,000, which the plaintiff claimed was the amount she had contributed. The offer was subsequently raised to \$50,000, which was still unacceptable to her. Faced with the impasse, she consulted lawyers, and proceeded to sever the joint tenancy.

15 On 24 September 2009, the plaintiff filed a reply to LSK's affidavit. The plaintiff pointed out that LSK had not denied that there was an agreement that LSK would only have a beneficial interest in the Property if the plaintiff pre-deceased her. The plaintiff also alleged that:

6(2)the HDB personnel that attended to us at the HDB Area Office, at the time we applied in 1993 for her name to be added to the title deed for the Property, had explained that the joint tenancy created over the Property was to (and would) give effect to the aforesaid agreement.

The plaintiff did not obtain confirmation from the HDB that the officer who attended to the plaintiff and LSK had been informed of the alleged agreement and had advised them that the creation of a joint tenancy would give effect to the agreement.

16 Then, the plaintiff responded to the evidence of LSK's payment out of her CPF account. The plaintiff explained:

7. I saw the Defendant's latest CPF summary statement exhibited in LSK's affidavit. I now recall that the Defendant did use some monies from her CPF account to redeem the mortgage over the Property in 1993 at the time we made the application for her name to be added as joint

tenant in the Property.

8. When we attended at the HDB Area Office, the HDB personnel that attended to us asked whether I wanted the mortgage over the Property be redeemed. He advised that this would stop the interest to be paid on the HDB loan for the Property from running. I agreed and the HDB personnel then prepared the paperwork for the HDB loan to be repaid. I remember I used up almost all of my CPF monies. I only remembered that the Defendant also used her CPF funds for the repayment of the HDB loan after sighting LSK's affidavit.

17 In her reply, the plaintiff also denied that LSK had discussed with her LSK's intention to acquire a flat. She also denied that LSK had contributed \$100 towards the monthly repayments for the Property. However, she agreed that LSK paid for the renovations to the property, *albeit* that the amount involved was not more than \$5000. She also denied that she had offered LSK \$50,000 for her share of the Property. The plaintiff did not dispute LSK's assertion that LSK's interest as a joint tenant did not come from a gift.

Evaluation of the evidence

18 It is unfortunate that there was no cross-examination of the plaintiff or LSK, as so much depended on the acceptance of their respective accounts. There was nevertheless a sufficient basis for me to make an assessment of their credibility.

The plaintiff's credibility

19 There are clear questions over her veracity. When she received LSK's severance declaration, that must have been a serious matter to her because it affected her home. As can be expected, she objected to the severance. She engaged lawyers and instructed them to write to LSK's lawyers. It would be reasonable to infer that she would have informed her solicitors about the circumstances in which the joint tenancy was created and of the agreement that the Property was to pass to LSK only if the plaintiff died before her. It would also be reasonable to infer that the solicitors would ask the plaintiff to recount in full the circumstances in which LSK became a joint tenant and how the payments for the Property were made.

20 There were two assertions in the letter of 31 July 2009, first, that LSK had no beneficial interest in the property, and second, that LSK had never contributed to the purchase price. I sought clarification from the plaintiff's counsel on the first assertion, but did not have the benefit of any explanation. How can it be said that a registered joint tenant of a HDB property has no beneficial interest? Had the plaintiff deceived the HDB and LSK when she made the transfer? If LSK had no beneficial interest, who had beneficial interest in the Property besides the plaintiff? Even by the plaintiff's own case as stated in her affidavit, LSK had a beneficial interest in the Property. The plaintiff had only claimed that there was an agreement that LSK would only get the whole property when the plaintiff dies. That only meant that LSK had agreed not to sever the joint tenancy, not that she has no beneficial interest. As the alleged agreement was the only ground put forward against the severance, one would expect that to be raised with due emphasis in her solicitors' letter, but there was not a word of it.

21 Another aspect of the letter was equally troubling. The plaintiff had flatly asserted that LSK had not contributed to the purchase of the Property but when LSK produced proof that she had paid \$13,288.61 towards the purchase of the property, the plaintiff altered her position and conceded that LSK made that payment. \$13,288.61 is a significant sum in the context of a property that was purchased for \$46,400. LSK had stated in her affidavit that she and the plaintiff were required to

discharge and redeem the existing mortgage on the Property before she can become a joint tenant, and that was not disputed by the plaintiff. How could the plaintiff forget these events and claim that LSK had not made any contributions? It suffices to say that the plaintiff's account of LSK's acquisition of her interest in the Property left much to be desired, and it showed that the plaintiff cannot be believed.

LSK's credibility

22 The main issue raised by the plaintiff was that LSK did not deny the agreement that the plaintiff alluded to in her affidavit. While there was no express denial, a fair and reasonable reading of her affidavit would show that she did not accept that there was such an agreement. Moreover, the absence of a specific mention by LSK that this agreement never existed is less significant than the absence of a specific mention of the agreement in the plaintiff's solicitors' letter of 31 July 2009. I find LSK's evidence to be credible.

23 The evidence presented satisfied me that LSK had a beneficial interest in the Property as a joint tenant which she acquired through the payment of \$13,288.61, and the other payments she alluded to. Prayers 1 and 2 must be dismissed.

24 With regard to Prayer 3, the plaintiff did not pursue this matter as fully as she needed to. Besides stating that she has withdrawn \$47,258.46 from her CPF account to pay for the Property and acknowledging that LSK had also paid \$13,288.61, she went no further.

25 Counsel for the defendants had submitted that when LSK's monthly contributions of \$100 over 23 years six months, totalling \$28,200 and the \$20,000 payment for the renovations is added to the \$13,288.61, that would add up to a total contribution of \$61,488.61. However, counsel did not advocate that the apportionment of the ownership shares upon severance be based on the parties' contributions to the purchase, but asked for a half share on "the presumption of equal shares", as he put it. Counsel was referring to the rule stated by the English Court of Appeal in *Goodman v Gallant* [1986] 1 All ER 311 where Slade LJ delivering the judgment of the Court stated at 320 that:

... it is of the very nature of a joint tenancy that, on a severance, each takes an equal aliquot share according to the number of joint tenants.

Baroness Hale of Richmond in her judgment in the decision of the House of Lords in *Stack v Dowden* [2007] 2 All ER 929 referred to *Goodman v Gallant* and reiterated that a severance of a beneficial joint tenancy results in a beneficial tenancy in equal shares. The same rule is explained in the authoritative work on land law, Harpum, Bridge and Dixon, *Megarry & Wade: The Law of Real Property* (Sweet & Maxwell, 7th Ed. 2008) p 504, [13-036] that:

Where land is conveyed to two or more persons as joint tenants beneficially, each will share equally on severance even though they may have contributed unequally to the purchase price. It may however be possible for a trust to declare expressly that the beneficial interests of two or more parties should be equivalent to those of joint tenants unless and until severed, but that in the event of severance their interests should be in some specified shares other than equal shares.

26 The plaintiff had not put forward any figures on the apportionment of their interests and in the closing submissions. Her counsel made no reference to the issue of apportionment, did not point to any trust which provided for a different apportionment, and did not respond to the defendants' submissions.

27 The situation is that the defendants were contended to rely on the rule on equal division, and the plaintiff did not state the basis for and the portion of the interest she wanted to be determined. In these circumstances there was no necessity or basis for a determination under Prayer 3.

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