

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 124

Originating Summons No 1175 of 2021

Between

Xia Zheng

... Plaintiff

And

(1) Song Jianbo

(2) Li Hua

... Defendants

GROUND OF DECISION

[Land — Interest in land — Joint tenancy — Effect of judgment for division of matrimonial property on joint tenancy]

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Xia Zheng
v
Song Jianbo and another

[2022] SGHC 124

General Division of the High Court — Originating Summons No 1175 of 2021
Andre Maniam J
25 March 2022

26 May 2022

Andre Maniam J

Introduction

1 What is the effect of a judgment for the division of matrimonial property, on a subsequent writ of seizure and sale (for one matrimonial party's interest in the property)?

2 Specifically, where a matrimonial party has been ordered to transfer his entire interest in jointly-owned property to the other matrimonial party, does he still retain any interest in the property that a judgment creditor of his can seize and sell?

3 The plaintiff (Ms Xia) and the second defendant (Mr Li) had been married, but orders were made for their divorce and for the division of their matrimonial property. They contended that the interim divorce judgment determined their respective interests in one of their matrimonial properties, and

thereafter Mr Li’s creditor (the first defendant, Mr Song) could not seize and sell any interest of Mr Li’s in that matrimonial property – for Mr Li no longer had any interest in it.

4 I agreed with that contention and set aside Mr Song’s writ of seizure and sale. Mr Song has appealed against my decision, and these are my grounds of decision.

Background

5 Pursuant to divorce proceedings, Ms Xia and Mr Li are now ex-wife and ex-husband respectively. Mr Song is a judgment creditor of Mr Li’s.

6 Ms Xia and Mr Li were co-owners in joint tenancy of a matrimonial property at Orchard Boulevard (the “Orchard Property”).¹

7 In the divorce proceedings, an interim judgment was entered on 8 July 2019, ordering that Mr Li “shall transfer his title, share and interest in the four (4) matrimonial properties”, including the Orchard Property, to Ms Xia (the “Interim Judgment”).² A final judgment for the divorce was entered on 9 October 2019 (the “Final Judgment”).³

8 Mr Song sued Mr Li and another party on 24 April 2019.⁴ On 26 November 2019, Mr Song obtained a Mareva injunction which restrained

¹ Affidavit of Xia Zheng affirmed on 11 November 2021 (“Ms Xia’s 11 November 2021 Affidavit”) at pages 10 – 17, specifically at page 14.

² Ms Xia’s 11 November 2021 Affidavit at pages 29 – 30.

³ Ms Xia’s 11 November 2021 Affidavit at para 18 and page 31.

⁴ Affidavit of Song Jianbo affirmed on 28 January 2022 (“Mr Song’s 28 January 2022 Affidavit”) at para 4.

Mr Li from disposing of or dealing with, among other things, the Orchard Property.⁵ Both the Interim Judgment and Final Judgment in the divorce proceedings were entered before the Mareva injunction was granted.

9 In his suit, Mr Song obtained a monetary judgment against Mr Li on 12 May 2021.⁶ On 9 March 2022, Mr Li's appeal against that judgment was dismissed.⁷

10 Having obtained judgment against Mr Li at first instance, on 3 June 2021 Mr Song applied for and thereafter obtained leave to issue a writ of seizure and sale in respect of Mr Song's interest in the Orchard Property.⁸ That writ was dated 12 July 2021 and seizure was purportedly effected on 23 July 2021.⁹

11 On 17 November 2021, Ms Xia applied by the present Originating Summons for a declaration that she is the legal and beneficial owner of the whole of the Orchard Property, for the writ of seizure and sale to be set aside, and for related orders.¹⁰

⁵ Mr Song's 28 January 2022 Affidavit at pages 30 – 38.

⁶ Mr Song's 28 January 2022 Affidavit at para 5 and pages 25 – 26.

⁷ See AD/ORC 16/2022 in AD/CA 55/2021.

⁸ Mr Song's 28 January 2022 Affidavit at para 6; Ms Xia's 11 November 2021 Affidavit at pages 26 – 27.

⁹ Ms Xia's 11 November 2021 Affidavit at pages 18 – 23.

¹⁰ Originating Summons No 1175 of 2021 filed on 17 November 2021.

Analysis

The effect of a judgment for division of matrimonial property

12 In *Toh Ah Poh v Tao Li* [2020] 1 SLR 837 (“*Toh Ah Poh*”), an interim judgment in divorce proceedings provided that a certain investment property “which is in the joint names of the Plaintiff [Ms Toh] and Defendant [Mr Tan], shall be transferred to [Mr Tan], upon [Mr Tan] refunding to [Ms Toh], a cash sum of S\$60,000.00”.

13 After the divorce was made final, Mr Tan remarried. When Mr Tan passed away intestate, he had not paid his ex-wife (Ms Toh) the \$60,000 and the investment property remained registered in their joint names. Ms Toh claimed that the investment property was still held on a joint tenancy, and so she had become its sole owner by survivorship. Mr Tan’s new wife, Ms Tao, disagreed – she contended that the interim judgment had effected severance of the joint tenancy and Mr Tan had thereby become its sole owner. Ms Tao argued that accordingly the investment property passed on Mr Tan’s death, under the law of intestate succession, to Ms Tao (50%) and to Mr Tan’s two children (25% each).

14 The Court of Appeal agreed with Ms Tao, citing its previous decision in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 (“*Sivakolunthu*”): the interim judgment effected severance of the joint tenancy between Mr Tan and Ms Toh (see *Toh Ah Poh* at [1], [24] and [29] and *Sivakolunthu* at [38] and [39]), and made Mr Tan the sole owner of the investment property.

15 Likewise, I found that the Interim Judgment of 8 July 2019 in the present case severed the joint tenancy over the Orchard Property, and made Ms Xia the sole beneficial owner of the Orchard Property.

16 Mr Song contended that until Ms Xia was registered as the sole owner of the Orchard Property, Mr Li and Ms Xia remained joint tenants of it both at law and in equity.¹¹ In *Toh Ah Poh*, the parties were likewise still registered as joint tenants – Mr Tan had yet to transfer Ms Toh the \$60,000, upon which she was to transfer her share in the investment property to him. Nevertheless, the Court of Appeal held that the interim judgment was couched in mandatory terms (“shall be transferred to” Mr Tan) and that it severed the joint tenancy over the investment property, notwithstanding that Mr Tan had not transferred Ms Toh the \$60,000 and the property was still registered in their joint names (*Toh Ah Poh* at [24], [25] and [29]).

17 In the same vein, the Interim Judgment in the present case was phrased mandatorily – it stated: “[Mr Li] *shall* transfer his title, share and interest” in the Orchard Property to Ms Xia (emphasis added). The result is the same as that in *Toh Ah Poh*: the joint tenancy was severed from the time of the Interim Judgment and Mr Li no longer had any beneficial interest in the property. It follows that Mr Li had no interest in the Orchard Property that Mr Song, as his judgment creditor, could thereafter seize and sell.

18 Mr Song was aware of the Interim Judgment at the time he applied for leave to seize and sell Mr Li’s interest in the Orchard Property: the Interim

¹¹ 1st Defendant’s Written Submissions (“1DWS”) at paras 15–16.

Judgment was mentioned in para 20 of Mr Song’s draft affidavit filed under cover of his solicitor’s affidavit in support of his application.¹²

19 Before me, Mr Song’s counsel sought to distinguish *Toh Ah Poh* from the present case by contending that a judgment for division of matrimonial property only affects the matrimonial parties, and no one else.¹³ That is incorrect – *Toh Ah Poh* itself involved parties other than the matrimonial parties. In particular, Ms Tao was not a party to the divorce proceedings – she was Mr Tan’s new wife. In that capacity, Ms Tao successfully contended that because the interim judgment between Mr Tan and his ex-wife (Ms Toh) had severed the joint tenancy between them, Ms Tao obtained a 50% share of the property by devolution upon Mr Tan’s death intestate.

20 *Central Provident Fund Board v Lau Eng Mui* [1995] 2 SLR(R) 826 (“*Lau Eng Mui*”) is another example demonstrating that a judgment for division of matrimonial property may affect parties other than the matrimonial parties. In that case, in prior divorce proceedings, the husband was ordered to pay the wife a lump sum which was to be charged against the husband’s CPF monies. The Central Provident Fund Board (the “CPF Board”) was not a party to the divorce proceedings, but thereafter it applied to challenge the order for division of matrimonial property, contending that the order contravened a provision of the Central Provident Fund Act (Cap 36, 1991 Rev Ed) (the “CPF Act”). The Court of Appeal held that there was no contravention of the CPF Act, further

¹² Affidavit of Song Jian Bo (formally affirmed on 26 January 2022) at para 20 and pages 122 – 123, exhibited in the Affidavit of Ng Hua Meng Marcus affirmed on 3 June 2021 in HC/S 427/2019 (HC/SUM 2575/2021).

¹³ Minute Sheet, 25 March 2022, HC/OS 1175/2021, page 4, lines 11 – 12; 1DWS at para 14.

holding that an order for division of a matrimonial asset “operates *in rem* on the asset” (*Lau Eng Mui* at [7]).

21 *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2007] 4 SLR(R) 565 (“*Murakami Takako*”) was also cited to me, but it is distinguishable. *Murakami Takako* did not concern a Singapore judgment or order for *division* of matrimonial property, but rather a *declaratory* Indonesian judgment.

22 In that case, one of the issues was whether certain proposed counterclaims were time barred, which turned on whether an earlier judgment obtained in Indonesia was *in personam* or *in rem* (for if the Indonesian judgment was *in rem*, the claim would not be time barred) (*Murakami Takako* at [26]). The Court of Appeal observed that in determining whether a judgment is *in personam* or *in rem*, it is necessary to consider, among other things, the intention of the court making the order as to the effect of the order on the parties (*Murakami Takako* at [30]). Notably, the Court of Appeal concluded that the Indonesian judgment, which was made pursuant to divorce proceedings, merely *declared* the respective rights of the parties to the matrimonial assets, and did not amount to a *disposal* of the assets so as to constitute it a judgment *in rem* (*Murakami Takako* at [31]). *Murakami Takako* is therefore distinguishable from the present case – the facts before me involved a Singapore judgment for the *division* of matrimonial property which ordered Mr Li to transfer his title, share and interest in the Orchard Property to Ms Xia. The Interim Judgment in the present case was thus one which *disposed* of the matrimonial assets, and which was described in *Lau Eng Mui* (at [7]) as a judgment or order operating *in rem* on the assets.

23 Mr Song also contended that I should not give effect to the Interim Judgment or grant the declaration and orders sought by Ms Xia because Ms Xia had not come to court with clean hands: he alleged that the divorce and division of matrimonial assets was a sham, designed to render Mr Li judgment-proof.¹⁴ Despite these allegations, however, Mr Song had not applied to set aside the Interim Judgment. (In contrast, the CPF Board in *Lau Eng Mui* had applied to challenge the court order in that case which had arisen from prior divorce proceedings.)

24 At the hearing before me, Mr Song’s counsel confirmed that Mr Song had not applied to set aside the Interim Judgment, and moreover, was not asking me to set aside the Interim Judgment.¹⁵ Mr Song simply asked that I do not give effect to the Interim Judgment. I could not agree with this.

25 So long as the Interim Judgment subsists, it has the effect of severing the joint tenancy over the Orchard Property, and making Ms Xia its sole beneficial owner. It follows that Mr Li had no interest in the Orchard Property that Mr Song could seize and sell.

26 Mr Song contended that it was not necessary for him to apply to set aside the Interim Judgment, for the court to choose not to give effect to it. He relied on the High Court decision in *Yap Chwee Khim v American Home Assurance Co and Others* [2000] SGHC 185 (“*Yap Chwee Khim* (HC)”). There, Yap (the plaintiff executrix and sole beneficiary of the deceased’s estate) claimed payment on certain insurance policies. The viability of Yap’s claim depended on (among other things) whether the deceased’s death was accidental. The court

¹⁴ 1DWS at paras 23 – 63.

¹⁵ Minute Sheet, 25 March 2022, HC/OS 1175/2021, page 5, lines 2 and 8.

concluded that the deceased's death was not accidental, finding that Yap and Lim had conspired to cause the death of the deceased intentionally, in order to benefit from the insurance monies (*Yap Chwee Khim* (HC) at [254]). In coming to this conclusion, the court considered Yap's divorce from Lim to be a sham and a charade (*Yap Chwee Khim* (HC) at [230], [232], [236], [237] and [239]), which they orchestrated so that Yap could keep the matrimonial flat, and Lim could buy another (*Yap Chwee Khim* (HC) at [237]). Hence, the court observed that the testimonies of Yap and Lim in relation to whether the deceased's death was accidental must be examined with circumspection, as they were willing to present false particulars to the court in the prior divorce proceedings to obtain a sham divorce for financial gain (*Yap Chwee Khim* (HC) at [239]).

27 The insurance companies' defence in *Yap Chwee Khim* (HC) concerned whether the deceased's death was accidental, and indeed they had not put in issue whether Yap's divorce from Lim was a sham – that was a point pursued by the judge of his own initiative.

28 Whether the order for division of matrimonial property between Yap and Lim was effective (or not) did not affect the insurance companies' defence, nor was that the court's focus. Rather, the court scrutinised Yap's and Lim's intentions in relation to their divorce, in deciding whether the deceased's death was accidental (or whether Lim – with Yap as a conspirator – had a hand in it).

29 In contrast, Mr Song's contention in the present case – that Mr Li had an interest in the Orchard Property which he could seize and sell – could only succeed if the court did not give effect to the Interim Judgment which severed the joint tenancy. Otherwise, Ms Xia would be the sole beneficial owner of the Orchard Property, and Mr Li would have no interest in it that Mr Song could

seize and sell. In those circumstances, Mr Song ought properly to have applied to set aside the Interim Judgment.

30 It is noteworthy that on appeal, the Court of Appeal in *Yap Chwee Khim v American Home Assurance Co and others* [2001] 1 SLR(R) 638 (“*Yap Chwee Khim* (CA)”) held that the trial judge ought not to have, on his own, conducted an investigation into Yap’s divorce from Lim, which resulted in him finding that it was a sham – that question was not raised in the pleadings, the insurance companies’ affidavit evidence, or the cross-examination by counsel for the insurance companies (at [27] and [28]). Yap’s appeal was dismissed on the limited ground that she had not proved that the deceased’s death was accidental (*Yap Chwee Khim* (CA) at [40]). Unlike the trial judge, the Court of Appeal did not find that there was sufficient evidence to implicate Yap in a conspiracy to cause the death of the deceased (*Yap Chwee Khim* (CA) at [31] and [32]), nor did the Court of Appeal find that the deceased’s death was caused by Lim (*Yap Chwee Khim* (CA) at [41]).

31 In the present case, where Mr Song had not applied to set aside the Interim Judgment, and his counsel said I was not being asked to set aside the Interim Judgment (see [24] above), I could not, and indeed should not, decline to give effect to the Interim Judgment. I was reinforced in this conclusion by the High Court’s decision in earlier proceedings, which gave effect to the same Interim Judgment in contempt proceedings between Mr Song and Mr Li, as I elaborate upon below.

The prior attempt to avoid the effect of the Interim Judgment

32 This was not Mr Song’s first attempt to avoid the effect of the Interim Judgment, without getting it set aside.

33 On 1 October 2020, by HC/SUM 4329/2020, Mr Song applied to hold Mr Li in contempt of court in relation to alleged breaches of the Mareva injunction obtained on 26 November 2019, which included:

- (a) non-disclosure of Mr Li’s interest in a Duchess Crest Property;¹⁶
- (b) not explaining or accounting for the proceeds of sale of the Duchess Crest Property and a Duchess Road Property;¹⁷ and
- (c) the sale of the Duchess Road Property and the Duchess Crest Property, and the dissipation of their proceeds of sale.¹⁸

34 The Duchess Road Property and the Duchess Crest Property were (like the Orchard Property) matrimonial properties in respect of which the Interim Judgment provided that Mr Li “shall transfer his title, share and interest in” to Ms Xia.¹⁹

35 In the contempt proceedings, the court held on 18 February 2021 that as long as the divorce judgment stood, the transactions involving the Duchess Road Property and the Duchess Crest Property were valid and proper –

¹⁶ Statement (Amendment No 1) of Song Jianbo pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) in his application for leave to apply for an order of committal against Li Hua in HC/S 427/2019 (HC/SUM 3846/2020) (“Mr Song’s Statement”) at para 44.

¹⁷ Mr Song’s Statement at para 46.

¹⁸ Mr Song’s Statement at para 52.

¹⁹ Ms Xia’s 11 November 2021 Affidavit at pages 29 – 30.

accordingly, the court could not find Mr Li in contempt in relation to those transactions.²⁰ The court said in its brief oral reasons:²¹

2. A general point pertaining to a number of the breaches in question is that on the evidence before me I could not go behind the divorce between the 2nd Defendant (the Defendant) and his ex-wife. There were indeed a number of areas of concern about the divorce judgment and its effect on the assets of the Defendant. But unless the divorce judgment was set aside, I could not, despite the greatest of suspicions, treat the various transactions involving the ex-wife, such as those involving the Duchess Road and Crest properties, as tainted, and colourable as being in breach. As long as the divorce judgment stood, these transactions were valid and proper.

3. With that significant bar against findings of breach, I could only find that [there] was breach in respect of [matters that did not concern the Duchess Road Property and Duchess Crest Property].

4. As noted above, I could not touch the alleged breaches in respect of the Duchess Road and Duchess Crest assets and proceeds. I also find that the allegation in respect of the additional hidden assets was not made out. ...

36 Mr Song did not seek to appeal against that decision of 18 February 2021. It would have been clear to Mr Song from the dismissal of his complaints in relation to the Duchess Road Property and the Duchess Crest Property (and what the court said), that so long as the Interim Judgment stood, the court would regard transactions pursuant thereto as valid and proper. The hearing before me on 25 March 2022 was more than a year later, yet Mr Song had not applied to set aside the Interim Judgment. What is more, his counsel told me that Mr Song was not asking me to set aside the Interim Judgment. However, Mr Song could

²⁰ Certified Transcript, HC/S 427/2019 (HC/SUM 4329/2020), 18 February 2021 at para 2.

²¹ Certified Transcript, HC/S 427/2019 (HC/SUM 4329/2020), 18 February 2021 at paras 2 – 4.

not defend the writ of seizure and sale, unless the Interim Judgment were set aside.

Can the interest of one joint tenant be the subject of a writ of seizure and sale?

37 Submissions were also made on whether the interest of one joint tenant could be the subject of a writ of seizure and sale.²² There is a divergence of judicial opinion on this.

38 I did not decide this issue, given that the Interim Judgment, which resulted in Mr Li not having any interest in the Orchard Property, was a sufficient basis for me to dispose of the present application.

Conclusion

39 The Interim Judgment for the division of matrimonial property had the effect of making Ms Xia the sole beneficial owner of the Orchard Property, from the time the Interim Judgment was made on 8 July 2019. Mr Song confirmed that he had not applied to set aside the Interim Judgment, and that he was not asking me to set aside the Interim Judgment. So long as the Interim Judgment stood, Mr Li would have no beneficial interest in the Orchard Property, that Mr Song as his judgment creditor could seize and sell. Moreover, the Interim Judgment was made final on 9 October 2019, prior to Mr Song's judgment in May 2021 and his application in June 2021 for the writ of seizure and sale (see [7]–[10] above).

²² 1DWS at para 11; 2nd Defendant's Written Submissions at paras 25 – 42.

40 On the basis of the Interim Judgment, I thus granted a declaration that Ms Xia was the beneficial owner of the whole of the Orchard Property, ordered that the writ of seizure and sale be set aside, and ordered costs against Mr Song.

Andre Maniam
Judge of the High Court

Oei Ai Hoea Anna and Heng Chye Ming Friedrich (Tan Oei & Oei
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