IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 18

Civil Appeal No 158 of 2019

Between

Toh Ah Poh

… *Appellant*

And

Tao Li

… *Respondent*

In the matter of Originating Summons No 431 of 2019

Between

Tao Li

And

(1) Toh Ah Poh
(2) Tan Yi Ting
(3) Tan Yu Xuan

GROUNDS OF DECISION

[Land] — [Interest in land] — [Joint tenancy]

TABLE OF CONTENTS

Toh Ah Poh
v
Tao Li

[2020] SGCA 18

Court of Appeal — Civil Appeal No 158 of 2019
Tay Yong Kwang JA, Belinda Ang Saw Ean J and Quentin Loh J
28 February 2020

20 March 2020

Tay Yong Kwang JA (delivering the grounds of decision of the court):

1 The sole issue in this appeal concerned the legal question of whether an interim judgment in divorce proceedings, which was subsequently made final, ordering an apartment held in joint-tenancy by a husband and his wife to be transferred to the husband upon the husband paying the wife a sum in cash, severed the joint tenancy. At the conclusion of the wife's appeal, we decided that the interim judgment severed the joint tenancy and we dismissed the appeal. We gave some brief reasons orally and indicated that we would be explaining our decision more fully in a written judgment in due course.

Facts

2 Tan Chua Joo ("the Deceased") was the husband of the appellant ("Toh"). In 2008, Toh filed for divorce. On 2 June 2009, a District Judge in the then Subordinate Courts granted an interim judgment dissolving the marriage.

The Deceased and Toh agreed on all ancillary matters and the consent orders relating to all these were set out in the interim judgment accordingly. In particular, the Deceased and Toh agreed to have their matrimonial flat transferred to Toh and their investment private property known as 6, Kitchener Link #24-12 Citysquare Residences Singapore 207227 ("the apartment") transferred to the Deceased upon payment by him of a sum in cash to Toh.

3 The relevant terms of the interim judgment are set out below (with paragraph indentations added for easy reading). In the interim judgment, Toh was referred to as the Plaintiff and the Deceased was referred to as the Defendant:

INTERIM JUDGMENT

1. Particulars of Marriage to which this Interim Judgment Relates …

…

2. Interim Judgment Granted in Open Court

…

3. Further Orders Made (By Consent)

3(a)

(i) The Plaintiff is hereinafter referred to as the Spouse, the Defendant is hereinafter referred to as the Member and the Central Provident Fund Board is hereinafter referred to as the Board …

(ii) That the matrimonial property situated at and known as Blk 714 Woodlands Drive 70 #04-166 Singapore 730714, shall be transferred (other than by way of sale) to the Spouse within six (6) months from the date of Certificate of Making Interim Judgment Final with no CPF refunds to be made to the Member's CPF account;

(iii) The Spouse shall bear the costs and expenses of the abovesaid transfer;

(iv) This Order is made subject to the Central Provident Fund Act …

> (v) All obligations to effect the transfer shall be on the Member and not on the Board;
>
> (vi) The Registrar or Deputy Registrar of the Subordinate Courts … is directed/authorised to execute, sign, or indorse all necessary documents relating to matters contained in this Order on behalf of either party should either party fail to do so;
>
> (vii) The parties, including the Board, shall be at liberty to apply for further directions or orders generally;
>
> (viii) In the event that the Defendant refuses neglects and/or fails to execute all necessary documents to give effect to the transfer aforesaid upon notice in writing given to him, the Registrar if [*sic*] the Subordinate Courts be hereby empowered to execute all necessary documents in the name for and on behalf of the Defendant in order to effect the said transfer. …
>
> (b) That the investment property situated at and known as 6, Kitchener Link #24-12 Citysquare Residences Singapore 207227 (a private property), which is in the joint names of the Plaintiff and Defendant, shall be transferred to the Defendant, upon the Defendant refunding to the Plaintiff, a cash sum of S$60,000.00. The Defendant shall be responsible for the costs and expenses of the said transfer;
>
> (c) That the Plaintiff shall have sole custody, care and control of the younger child of the marriage …;
>
> (d) That there shall be no order as to maintenance for the Plaintiff;
>
> (e) That parties shall retain all other assets under their respective sole names;
>
> (f) That parties shall bear their respective legal costs incurred in these proceedings; and
>
> (g) Parties shall be at liberty to apply.

4 The interim judgment was made absolute in September 2009. The Deceased then married the respondent ("Tao") in May 2010 and they made the apartment their matrimonial home. The Deceased passed away intestate in June 2018 from a heart attack, leaving Tao and two children from his first marriage with Toh ("TYT" and "TYX") as his administrators. At the time of his death,

the Deceased had not paid Toh the $60,000 under clause 3(b) of the interim judgment ("clause 3(b)") and the apartment remained in their joint names.

5 Tao, TYT and TYX filed an application for letters of administration jointly in the Family Court. However, they disagreed about the legal status of the apartment. Tao's position was that clause 3(b) severed the joint tenancy and the Deceased had become the sole owner of the apartment. This meant that the apartment was to be distributed according to the law of intestate succession upon his death (*ie*, 50% to Tao as the Deceased's wife and 25% each to TYT and TYX as the Deceased's children from his first marriage). TYT's and TYX's position, which was also Toh's position on appeal before us, was that clause 3(b) did not sever the joint tenancy and it followed that Toh became the sole owner of the apartment under the right of survivorship.

6 The Family Court took the view that it lacked jurisdiction to determine the ownership of the apartment as the dispute involved a third party (Toh) claiming an interest in the apartment. Tao then took out Originating Summons No 431 of 2019 ("OS 431"), from which this appeal originates, against Toh, TYT and TYX. In OS 431, Tao sought a declaration that clause 3(b) had the effect of severing the joint tenancy in the apartment between Toh and the Deceased and also asked that all three defendants pay damages to be assessed.

7 The only issue in OS 431 was whether clause 3(b) severed the joint tenancy where the condition of paying the sum of $60,000 in cash had not been complied with. The High Court judge ("the Judge") held that it did and found in favour of Tao. Only Toh appealed.

Arguments and decision in the High Court

8 The Judge summarised the parties' arguments and explained his decision as follows:

> 4 The administrators disagree as to the status of the flat. The question is whether the joint tenancy in the flat had been severed. If it had not, then upon [the Deceased] having died intestate, the whole of the interest in the flat devolved to Toh by way of the right of survivorship.
>
> 5 Mr Andy Chiok, counsel for Toh, submitted that the order of court did not sever the joint tenancy because, and only because the condition that Tan pay Toh a sum of $60,000 had not been complied with to this day. Mr Chiok disagrees with Ms Jeanny Ng, counsel for Tao, who relies on the CA decision in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702, in which the court held that when a court order had been made absolute, the order operated to sever a joint tenancy.
>
> 6 When a judgment has been made absolute, and the joint tenancy severed, the property can no longer be held by the parties concerned as joint tenants. The act of severance, whether by consensual agreement or judicial pronouncement, is permanent. If the obligations that accompany or follow the severance remain unfulfilled, the parties must enforce them as the law may permit. Hence, in this case, the estate of Tan may be compelled to pay up the $60,000 as required. Until then, the property remains in the joint names of Tan and Toh as tenants-in-common.
>
> 7 There will therefore be judgment for the plaintiff. I will hear the question of costs at a later date. I do not see what damages Tao might have suffered but I will grant leave to counsel to address me on damages if any.

Parties' cases on appeal

9 Toh accepted that *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") was relevant but sought to distinguish the case. It is therefore convenient to first summarise the facts and the holding in *Sivakolunthu.*

The decision in Sivakolunthu

10 The appellant in *Sivakolunthu* was the ex-wife of the deceased and the respondents were the deceased's personal representatives. The appellant had obtained a divorce decree *nisi* against the deceased. The court made a settlement order for the sale and equal division of the sale proceeds of a property held jointly by the deceased and the appellant. Before this order could be implemented, the deceased died. It transpired that the deceased had bequeathed all his property to a boys' home. The respondents wanted to obtain the portion of the proceeds of sale ordered to be distributed to the estate under the settlement order. However, the appellant claimed that the settlement order had no effect or ceased to have effect upon the deceased's death and that she was entitled to the whole property or the proceeds of sale due to the right of survivorship. The administrators sought, among other things, a declaration that the joint tenancy had been severed by the settlement order. The Court of Appeal upheld the High Court's decision in favour of the respondents.

11 Counsel for the appellant in *Sivakolunthu* had argued that the divorce proceedings abated upon death of the deceased for all purposes and so the settlement order, being an order for division of matrimonial assets consequent upon divorce proceedings, also ceased to have effect. The Court of Appeal disagreed. The true question was whether the court had jurisdiction to enforce the settlement order. The answer was in the affirmative, having regard to two main considerations.

(a) First, the nature of the proceedings was substantially a claim to enforce the settlement order, which at the death of the deceased had not been carried out. There was still a *res* before the court and "[t]he performance of the settlement order is not dependent upon [the

deceased] being alive, unlike an order for maintenance or custody" (at [33]).

(b) Second, s 137(1) of the Women's Charter (Cap 353, 1985 Rev Ed) provided that:

> All decrees and orders made by the court in proceedings under this Part shall be enforced, and may be appealed from, as if they were decrees or orders made by the court in the exercise of its original civil jurisdiction.

This meant that a decree *nisi* or decree absolute was enforceable like any other court order and continued to be enforceable after the death of a party to the divorce except where the order by its nature ceased to be so enforceable (*eg*, an order for maintenance or custody): *Sivakolunthu* at [35].

12 On the issue of whether the settlement order, when made, severed the joint tenancy, the Court of Appeal concluded in the affirmative. In its discussion below (at [38]–[41] of *Sivakolunthu*), it relied on *Public Trustee v Grivas* [1974] 2 NSWLR 317 ("*Grivas*"):

> 38 … there is still the question whether the settlement order, when made, had the effect of severing the joint tenancy in the said property. We are of the opinion that it did. The court by making the settlement order in the form it did (*ie* by ordering a sale of the said property and the distribution of the proceeds of sale equally between the parties) intended to divide the said property between the parties without any limitation as to the length of life of either of them.
>
> 39 The severance was not effected by an act of the parties but by an order of court. In principle, there is no reason why a court order may not have such an effect. All orders of court made in exercise of its powers to make partition orders have such effect even where the order has not been carried into effect before the death of a party to the proceedings …
>
> 40 We find support for this principle in *Public Trustee v Grivas* [1974] 2 NSWLR 317. In that case, the parties, by

consent, obtained an order under s 86(1) of the Matrimonial Causes Act 1959–1966 that the former matrimonial home, which they had owned as joint tenants, be sold and the net proceeds of sale be equally divided between them. The decree *nisi* so ordered. After the decree had become absolute, the husband remarried, but before the property had been sold, he died intestate. The Public Trustee, as administrator of his estate, sought an order that he, the Public Trustee, and the former wife held the property as tenants in common. Bowen CJ held that the joint tenancy was severed on one of two grounds, *ie* firstly, the order of court had the effect of severing the joint tenancy and, secondly, the form of the order which was by consent and the pleadings evidenced an agreement between the parties that there should be a final division of the matrimonial home which had the effect of bringing about a severance. In respect of the first ground, Bowen CJ said at 321–322:

> Further, it appears to me that under s 86(1) of the Matrimonial Causes Act the court has jurisdiction to make a settlement, which is a once for all order, so that even if there remain matters to be attended to, which flow from obligations placed by the order upon one or other of the parties and which are incomplete at the time the party subject to the obligation dies, the order will not be aborted, but will have to be carried out by the legal personal representatives of the party, unless there is rescission or a variation of the order procured from the court in a proper manner. The order, in my view, being an indivisible provision for a settlement between the parties, it would be inconsistent with the order for the joint tenancy to survive and be effective so as to render the order abortive. In other words, it appears to me that inherent in the order is involved a severance of the joint tenancy between the parties. I do not accept the argument that the powers of the Family Law Division under Pt VIII are in all respects limited, as a matter of jurisdiction, to the making of orders which have no operation beyond the joint lives of the parties. In my view the power of the court under s 86(1) is not so limited as a matter of jurisdiction. In addition, it appears to me that in the exercise of that jurisdiction in the present case the Family Law Division has evidenced an intention to divide the property in question between the parties without any limitation as to the length of the life of either of them. It would, of course, be in the highest degree inconvenient if an order such as that made in the present case would fall to the ground upon the death of either party where, as here, it is the division of a capital asset and an order which no doubt furnished some basis for the other orders which were limited to the life

> of the parties. It appears to me the parties were entitled to order their affairs on the basis it was a final settlement. It would be a matter of chance which of them die first and suffer the results of the order being rendered ineffectual, if the rule of survivorship should be held to continue to apply. Although it would, of course, have been clearer, if there had been an express order that the parties should thenceforth hold the property as tenants in common, I do not think that the absence of these express words should lead me to the opposite conclusion, that they were not to do so. Rather, I think that the whole thrust and effect of the order is that it was final division of the property between them equally.
>
> 41 In adopting the reasoning of Bowen CJ, we have given consideration to the fact that in *Public Trustee v Grivas* [1974] 2 NSWLR 317, the decree had been made absolute but we are of the view that his Lordship regarded the court's intention when making an order for the division of matrimonial assets as paramount and the finality of such division should not be dependent on the chance of one party dying first and rendering the result of the order ineffectual.

Appellant's case

13 Toh submitted that *Sivakolunthu* could be distinguished on four grounds.

14 First, unlike in *Sivakolunthu* where there was "finality in the division of the property" and nothing further to be done by the deceased, clause 3(b) required the Deceased to elect to take ownership of the apartment by paying Toh $60,000 in cash. In other words, it conferred on him a right but not an obligation to sever the joint tenancy. He did not exercise this right while he was living and this could no longer be done upon his demise.

15 Second, the interim judgment did not sever the joint tenancy. Applying the second limb in *Williams v Hensman* (1861) 70 ER 862, there was no mutual agreement between the former spouses to sever the joint tenancy. Further, where a mutual agreement was subsequently embodied in an order of court by way of

a consent judgment, the act of severance "stems from the underlying mutual agreement, and the court order is a mechanism to allow the enforceability of the terms, rather than the basis of the severance … the true nature of the terms is not altered by the mere fact that the terms are embodied into an order of court".

16 Third, unlike in *Sivakolunthu*, the interim judgment made no finding on the parties' respective shares in the property.

17 Fourth, the four unities (of time, title, interest and possession) which are the hallmarks of a joint tenancy still remained. The interim judgment in this case recorded the parties' agreement and the parties' intention was that the division would be contingent on the Deceased electing to take over the apartment.

18 Toh did not ask the Deceased for the payment of $60,000 because her understanding was that "it was up to him to buy [her] out of the [apartment] and if he did not do so, then [she] simply remained as a co-owner with him". This was acceptable to her because if the apartment was sold, she would be entitled to a half-share of the sale proceeds.

Respondent's case

19 Tao submitted that clause 3(b) had the effect of severing the joint tenancy so that the Deceased became the sole owner of the apartment following the divorce, with Toh's entitlement being confined to $60,000. She rebutted Toh's attempts to distinguish *Sivakolunthu* in the following manner.

20 First, the characterisation of clause 3(b) as merely conferring the option to elect to have the apartment transferred into his sole name and the characterisation of the payment of the $60,000 as a condition for exercising that option violated the text and the context of that clause. Clause 3(b) was part of

an order for division of matrimonial assets, where parties were seeking finality. Tao pointed to clause 3(a) of the interim judgment which provides that another property (the Deceased and Toh's matrimonial flat):

> … shall be transferred (other than by way of sale) to [Toh] within six (6) months from the date of Certificate of Making Interim Judgment Final with no CPF refund to be made to [the Deceased's] CPF account …

Against that backdrop, the clear intention of clause 3(b) was for Toh to relinquish her interest in the apartment subject to her right to receive $60,000 from the Deceased. In this way, each spouse retained one property. Although the Deceased has died, the obligation to pay $60,000 could be carried out by his personal representatives.

21 In respect of Toh's second and third arguments, the parties' intention was irrelevant because clause 3(b) involves severance by judicial pronouncement. Just because clause 3(b) was the result of an agreement between the parties did not mean that the agreement held sway over the order of court. Tao referred to *Lee Hong Choon v Ng Cheo Hwee* [1995] 1 SLR(R) 92 ("*Lee Hong Choon*") at [32] and [35] for the propositions that:

> 32 In family law, the legal effect and force of consent orders are not derived from the agreement made between the parties, but from the court order which finally and conclusively determines the rights of the parties …
>
> …
>
> 35 The contractual basis of a consent order relating to financial arrangements agreed between the parties is eliminated. The effect of such a consent order is derived from the court order itself and must be treated as an order of the court and dealt with as far as possible in the same way as a non-consensual order.

22 Lastly, the argument about the four unities of a joint tenancy was misconceived because the severance here was by way of judicial pronouncement.

23 Tao also raised an additional reason why the appeal should be dismissed – Toh knew all these years that the Deceased and Tao were living in the apartment after the Deceased remarried. One would have expected Toh to make a fuss if she truly believed that she remained a joint owner until the $60,000 was paid, such as by demanding payment of rent. However, she did not. This evinced her awareness of the deal that she had agreed to.

Our decision

24 In our judgment, clause 3(b) severed the joint tenancy over the apartment and made the Deceased its sole owner. This clause also gave Toh the entitlement to the payment of $60,000. Toh's attempts to distinguish *Sivakolunthu* and *Grivas* had no merit.

25 Clause 3(b) of the order did not confer on the Deceased an "option to elect" to take over ownership of the apartment. It was part of an order of court and was couched in mandatory terms ("shall be transferred to" the Deceased), even though it embodied the former spouses' consent instead of coming into existence by way of contention through the adversarial system. Toh's argument might have been more persuasive if clause 3(b) had been worded in permissive terms (such as "if the defendant so chooses") or had been limited in time (such as being expressed to cease automatically to have effect if the necessary action to sever the joint tenancy was not taken by a specified date). Clearly, those were not the situation here.

26 Toh's submissions that clause 3(b) was only "an option to elect" ignored the context of the entire clause 3 in the interim judgment, in particular clause 3(a). As Tao correctly pointed out, the interim judgment contemplated that each party would have one property after the divorce, with Toh becoming the sole owner of the matrimonial flat and the Deceased becoming sole owner of the apartment. The condition of payment of $60,000 served a similar function as an order for CPF refund or payment of a party's financial and/or non-financial contributions made towards the property in question in order to arrive at a just and equitable division of matrimonial assets.

27 Further, Toh's argument that the interim judgment did not sever the joint tenancy because the parties' mutual agreement "superseded" the court order and the parties had no mutual intention to sever, was inconsistent with the authorities. *Lee Hong Choon* unequivocally affirms that the contractual basis of a consent order of court relating to financial arrangements agreed between the parties is eliminated. *Grivas* itself also concerned a consent order but, as the paragraphs of *Grivas* cited by *Sivakolunthu* show, this was not a relevant factor in the court's analysis. There is no requirement that a court must pronounce on merits by contention rather than by consent before the order has the effect of severing a joint tenancy.

28 As for Toh's argument that the interim judgment did not specify what shares or proportions the parties would get, similarly, there is no requirement that the court hearing ancillary matters in a divorce must make a finding on the former spouses' respective shares in the matrimonial assets, whether in percentage terms or in fractions. In any case, by agreeing that the matrimonial flat referred to in clause 3(a) be transferred to Toh without the need for her to make any refund to the Deceased's CPF account, that the apartment be transferred to the Deceased upon payment of $60,000 to Toh and that all other

assets would remain in their respective sole names, the parties had agreed on their respective shares in the matrimonial assets, not by percentage but by *specie*. There is nothing in law against taking such a course of action. Their agreement was incorporated into the interim judgment which was made final since September 2009. For that reason, there was no "gap" in terms of what proportions the parties should hold as tenants in common. The mechanics of transferring the properties to their respective sole owners were only practical matters for the parties and their lawyers to carry out.

29 Finally, the four unities of a joint tenancy did not remain because the interim judgment stands and its effect of severing the joint tenancy stands, even if the said effect was not expressly stated in the interim judgment. Even if different considerations should apply to an interim judgment (in the sense that whatever is stated therein is still tentative and could be subject to change) as contrasted to a final judgment, this appeal concerns a final judgment anyway. In any event, the Court of Appeal in *Sivakolunthu* at [41] (as cited above) has made it clear that whether the case concerns an interim judgment (formerly known as a decree *nisi*) or a final judgment (then called a decree absolute) makes no difference to the legal consequences intended and mandated by the court's orders.

30 For these reasons, Toh's stand concerning the effect of the interim judgment had no legal basis. The Judge was therefore correct in holding that the joint tenancy in the apartment was severed by the interim judgment.

Conclusion

31 We therefore dismissed Toh's appeal. The administrators of the Deceased's estate should now comply with the terms of the interim judgment

which was made final years ago. Having considered the parties' costs schedules, we ordered Toh to pay Tao $25,000 in costs inclusive of disbursements.

32 In response to our query whether the question of damages was still a live issue, Tao's counsel informed us that Tao would still want to claim damages for the period that the apartment could not be sold as this option was kept open to her pursuant to paragraph 7 of the Judge's judgment which granted leave to Tao to address the court on any damages suffered. We urged all the parties to let the matter rest and not prolong the dispute by further litigation because more costs would be incurred and reminded them that all the parties in this litigation are related to the Deceased. Their counsel agreed with the court's sentiments and we are grateful that they said they would assist their clients to try to resolve this matter amicably.

Tay Yong Kwang Judge of Appeal	Belinda Ang Saw Ean Judge	Quentin Loh Judge

Andy Chiok and Teo Jun Li Tania (JHT Law Corporation) for the appellant;
Jeanny Ng (Jeanny Ng) for the respondent.