

Loo Look Yin v Kok Kum Yue (alias Koh Kum Yue)
[2011] SGHC 84

Case Number : Divorce Petition No 815 of 1989 (Summons No 600122 of 2010)
Decision Date : 07 April 2011
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Noor Mohamed Marican (Marican & Associates) for the petitioner; William Ong Meng Hwa (Alpha Law LLC) for the respondent.
Parties : Loo Look Yin — Kok Kum Yue (alias Koh Kum Yue)

Family law

7 April 2011

Chan Seng Onn J:

Introduction

1 This is a dispute over the balance sum of money that should be paid by Loo Look Yin (m.w.) (the “petitioner”) to Kok Kum Yue @ Koh Kum Yue (the “respondent”) for the purchase of the respondent’s half-share interest in the matrimonial property at No 6 Lucky Crescent Singapore (the “property”) under the terms of an “Irrevocable Deed of Understanding” (the “Deed”) entered into some 25 years ago on 30 May 1986 between the petitioner and the respondent.

Background

2 The petitioner and the respondent were married on 21 August 1979. However, in April 1981, the respondent left Singapore to reside in Hong Kong and the parties started living apart ever since. On 12 April 1989, the divorce petition was filed. The decree nisi was granted on 15 November 1990 on the basis that the marriage had irretrievably broken down in that the parties had lived apart for a continuous period of at least four years immediately preceding the presentation of the petition. On 10 April 1995, the decree nisi was ordered to be made absolute. The ancillary matters were adjourned to be heard in chambers on a subsequent date to be fixed.

3 According to the petitioner, she had consented to the respondent’s solicitors’ application for the decree nisi to be made absolute prior to the resolution of the ancillary matters because she and the respondent had already signed the Deed to transfer the property to her, upon her undertaking to pay the respondent \$200,000 in the following manner:

- (a) \$100,000 immediately upon execution of the legal transfer document by the respondent; and
- (b) \$100,000 when she sold the property, provided that the sale price was not below \$400,000. If it was, then she would have to pay the respondent \$50,000 instead.

4 On 29 May 1986, she transferred \$100,000 to the respondent's bank account. At the request of the respondent, she transferred a further sum of \$20,000 to the respondent on 6 August 1987 by way of a telegraphic transfer to the respondent's bank account in Hong Kong. The net sum received by the respondent was \$19,960 as \$40 was deducted on account of the bank's charges. The respondent acknowledged receipt of the two payments.

5 In view of the duly executed Deed and the respondent's acceptance of her monies, the petitioner did not pursue other ancillary matters such as maintenance, save and except for the final disposal of the property.

6 The petitioner wants to sell the property now and pay the respondent his balance share of \$80,000. Accordingly, the petitioner applied to restore the petition for hearing on the ancillary matters and for an order, *inter alia*, that the property be sold in the open market with the proceeds apportioned as follows:

- (a) To pay all expenses arising from the sale, including the payment of agent's commission, stamp duties and other costs and expenses of the sale;
- (b) To refund the respondent the sum of \$80,000 being his balance share to the property as agreed by both parties; and
- (c) The net proceeds, less (a) and (b) above, be given to the petitioner.

7 I ordered the petitioner to pay the balance sum of \$80,040 to the respondent, and further ordered the sale to be completed within four months of the date of my order. The petitioner would be entitled to all the net proceeds of the sale of the property. It would be up to the petitioner whether or not to pay the \$80,040 to the respondent from the net proceeds of the sale. I made no order as to costs. As the respondent has appealed, I now set out my reasons.

The respondent's position

8 Sometime in May 1986, the respondent requested for the property to be sold so that he could get his half-share of the property. As the petitioner did not want to sell the property, she offered to pay for his half-share of the property in two staggered payments. The Deed was to reflect that arrangement. At the time the Deed was signed, the value of the property was about \$400,000.

9 The respondent's understanding was that the property would be sold soon after the Deed was signed. Basically, he never agreed to have the sale proceeds apportioned in accordance to the value of the property in 1986 as that was not fair. The sale proceeds should now be divided equally between the parties based on the present market value. The amount that he should receive would then be half the actual sale proceeds of the property less the total amount (\$119,960) that he had received from the petitioner.

10 According to the respondent, the petitioner had not contributed any monies towards the purchase or upkeep of the property. However, he was prepared to abide by what was agreed in the Deed, *ie*, to have equal division but that the apportionment of the sale proceeds must be based on the present market value.

11 Counsel for the respondent contended that even though the Deed was silent on when the property was to be sold, it was implied in the Deed that the property should be sold within a reasonable time.

The petitioner's position

12 The petitioner stated that there was no deadline for her to sell the matrimonial property. She denied that there was any understanding that the property would be sold soon after the Deed was signed.

13 She said that the respondent was a person of means. She alleged that at the time of divorce, he had seven units in the same condominium in Taiwan which were each worth more than \$1m then, and a piece of land in Gold Coast, Australia. He also purchased a flat in Hong Kong for \$1 million. These were the only assets disclosed to her during the marriage. There could be more.

14 As a result of the Deed that was signed, she had, at the time of the divorce, waived all her rights to maintenance. She had not asked for any maintenance from the respondent for the past 20 years since the divorce. She had also not laid any claim to a share of the respondent's Central Provident Fund balances, monies in his saving accounts, insurance policies and "properties, movable or immovable whether in Singapore, Malaysia or elsewhere" in reliance on the belief that the Deed would be irrevocable and binding on both parties.

15 She was a homemaker and had been residing in the property for the last 29 years, maintaining it and holding on to it until she is now 62 years old. She has no other property to her name in Singapore and has minimal savings.

16 She maintained that she had directly contributed to the purchase of the property in question, having made payments towards its purchase price amounting to \$66,000. Supporting copies of receipts from Messrs Lim Kiap Khee & Co reflecting her payments were exhibited in her affidavit.

The respondent's response

17 The respondent responded that she was already financially provided for. Her brother and the Respondent took all the monies, jewelleries and gold bars which were in the property, worth at least \$1 million then, and brought them to Malaysia. He said that the petitioner owned properties in Ipoh, namely a terrace house at 26 Jalan Tukuko Ipoh Gardens, Ipoh, Malaysia and a bungalow at either 10 or 12 Bintang Park Sunrise Garden, Ipoh, Malaysia.

18 He maintained that the monies that she allegedly paid for the property came from him although the receipts were under her name, as she had no source of income at that time. He denied owning any of the overseas properties mentioned by the petitioner.

My decision

19 I have set out the respective positions of the parties above to show (a) that each party had his or her own reasons for entering into the Deed with the terms as stated below; and (b) how and why the dispute arose subsequently. The terms of the Deed are as follows:

IRREVOCABLE DEED OF UNDERSTANDING

BY THIS DEED:

I, Madam Loo Look Yin holder of Malaysian Blue Identity Card No. 0615983 do hereby confirm as follows:-

(1) In consideration of the sum of Singapore Dollars Two Hundred Thousand only (S\$200,000.00) which shall be paid by me, in 2 stages hereinafter mentioned, to Mr Kok Kum Yue @ Koh Kum Yue, Singapore Pink NRIC No. [XXX], for the latter's half-share interest in the property known as No. 6 Lucky Crescent, Singapore held under Duplicate Certificate of Title Vol. 130 Fol 137 registered at the Land Titles Registry, Singapore (hereinafter called "the said property") and upon legal transfer of Mr Kok Kum Yue @ Koh Kum Yue's said half-share interest in the said property to me (thus making me full owner of the said property), I agree that I thereafter have no further claims of whatsoever nature against the said Mr Koh Kum Yue @ Koh Kum Yue in respect of any properties, movable or immovable whether in Singapore, Malaysia or elsewhere and whether properly belonging to me.

(2) And I further confirm that the consideration of S\$200,000.00 hereinbefore mentioned shall be paid by me to the said Mr Kok Kum Yue @ Koh Kum Yue as follows:

- (a) S\$100,000.00 immediately upon execution of the legal transfer document by Mr Koh Kum Yue @ Koh Kum Yue
- (b) S\$100,000.00 *only if and when I decide to sell off the said property* (No. 6 Lucky Crescent) and payment be made within ten (10) days after the purchaser has paid the full purchase price to me, and provided the purchase price does not fall below \$400,000.00. In the event it does, I shall pay \$50,000.00 only as agreed to the said Mr KOK KUM YUE @ KOH KUM YUE.

And I, Mr KOK KUM YUE @ KOH KUM YUE holder of Singapore Pink NRIC No. [XXX] do hereby confirm as follows:-

(1) I consent to the consideration of S\$200,000.00 to be paid to me in two (2) stages as enumerated above.

(2) That I shall immediately sign the absolute transfer [of] all my half-share interest in the said property to the said Madam Loo Look Yin in exchange for the part consideration of S\$100,000.00 and Madam Loo Look Yin's irrevocable undertaking herein to settle the balance of S\$100,000.00 only or S\$50,000.00, whichever is applicable, *if and when she sells off the said property*. In the premises, I hereby waive my right to lodge a caveat against the said property so as not to create any difficulty for the sale of the said property *if and when Madam Loo Look Yin decides to sell off the said property*.

(3) That on receipt of the part consideration of S\$100,000.00, I shall have no further claim of whatsoever nature against the said Madam Loo Look Yin (except for the balance of S\$100,000.00 or S\$50,000.00, whichever is applicable, in accordance with the terms of understanding herein) in respect of any properties, movable or immovable whether in Singapore, Malaysia or elsewhere and whether properly belonging to me.

(4) And I further confirm that on receipt of the part consideration of S\$100,000.00, I shall henceforth no longer hold any right to enter the said premises and that if I do, I shall be treated as a trespasser under the law for Madam Loo Look Yin to take whatever lawful actions against me she deems necessary.

Finally, We, the parties hereto hereby confirm that all the undertakings and promises given herein shall be irrevocable and binding on each other as having immediate force of law.

MADE this 30th day of May, 1986.

SIGNED, SEALED & DELIVERED

by Madam LOO LOOK YIN

at Singapore in the presence of:

)

)(Sgd: Mdm Loo
Look Yin)

)

(Sgd: PREM SINGH, Advocate & Solicitor)

SIGNED, SEALED & DELIVERED

by Mr KOK KUM YUE @ KOH

KUM YUE at Singapore in the

presence of:

)

)(Sgd: Mr Kok
Kum Yue @

) @ Koh Kum
Yue

)

(Sgd: PREM SINGH, Advocate & Solicitor)

[Emphasis added in italics]

contemplation of divorce and the ensuing division of matrimonial assets that would naturally follow as a matter of course once the divorce was granted by the court. As could be seen, the parties were separated and living apart well before the date the Deed was entered into. As at the date of the Deed, the respondent had left the petitioner and migrated to Hong Kong whilst she remained in Singapore, staying in the property which was the only place available for her to stay in. She needed a permanent roof over her head. That was the reason why there was no deadline set in the Deed for the petitioner to sell the property and for the respondent to be paid the second tranche of \$100,000 (which was to be within ten days of the receipt of the sale proceeds by the petitioner, and only in the event of a sale). In fact, the Deed made it explicit at paragraph (2)(b) that she had the absolute discretion to decide if and when the property was to be sold. This was repeated twice at another paragraph (2) in the Deed (as italicised in the Deed for emphasis). Therefore, there could be no understanding as alleged by the respondent "that the property would be sold soon after the deed was signed."

21 It would have been obvious to the respondent at the time the Deed was executed that the respondent was not going to sell the property soon after signing the Deed as she had nowhere else to stay. In my view, the property must have been intended for her long-term use, and the second payment of \$100,000 was to be made (as spelt out in the Deed) only at the time she no longer needed to stay in the property and was prepared to sell it, though it may be years later. I could see no other way of interpreting the terms of the Deed. She had performed her part of the Deed by first paying \$100,000 at the time of execution of the Deed in 1986 and then at his request, a second sum of \$20,000 in 1987, which were very substantial sums of money in those days. The fact that the respondent had never taken any action for the past 25 years to compel the petitioner to sell the property showed that even he himself could not have honestly believed that under the terms of the Deed, the property must be sold soon after (or reasonably soon after) the Deed was signed.

22 To show that the respondent did not deserve any sympathy, the petitioner's counsel submitted that the respondent could have used the money paid to him in 1986/1987 (amounting to \$119,960) to buy another property in 1987 in Singapore if he so wished. In those days, property prices were much lower. If the respondent failed to invest the money he received as part-payment by the petitioner to purchase his half-share in the property, it would be inequitable for him now to ask essentially for a hefty upwards revision of the consideration for his half-share, when at the time the respondent disposed of his interest in the property (in 1986), the valuation of the property was about \$400,000 (as acknowledged by the respondent himself), and his half-share was therefore not incorrectly priced at \$200,000.

23 In my view, the terms of the Deed could not have been clearer and I could understand why the terms were structured in that way having regard to the state of affairs between the parties at that time. I had to give effect to the Deed, which undoubtedly reflected the way in which they had agreed to divide their matrimonial assets (taking into consideration the need to provide for maintenance) in order to avoid difficulties with the ancillary matters later on.

24 However, the respondent is now trying to vary the terms of the Deed unilaterally by substituting the purchase consideration of \$200,000 in 1986 for his half-share in the property (based on a 1986 valuation of \$400,000 for the property) with a new price based on 50% of the present market value of the property. In principle, I do not think I should allow him to do so.

25 Not only were the terms of the Deed unambiguous, the respondent had also made clear his own understanding of the Deed in his acknowledgment of receipt (set out below) that the first payment of \$100,000 to him was part consideration towards the purchase price of \$200,000 in respect of his sale to her of his half-share interest in the property:

ACKNOWLEDGMENT

I, KOK KUM YUE @ KOH KUM YUE holder of Singapore Pink NRIC No. [XXX] do hereby acknowledge receipt of Singapore Dollars One Hundred Thousand (S\$100,000.00) from Madam LOO LOOK YIN holder of Malaysian Blue I/C No. [XXX] vide CASH *being part consideration towards the purchase price of Singapore Dollars Two Hundred Thousand (S\$200,000.00) in respect of the sale to her of my half-share interest in the property* known as No. 6 Lucky Crescent, Singapore 1646 held under Duplicate Certificate of Title registered in Vol. 130 Folio 137 Land Titles Registry.

(Sgd)(Date 29/5/86)

(Sgd) (Signature of KOK KUM YUE @ KOH KUM YUE)

Witness: (Sgd: PREM SINGH, Advocate & Solicitor)

[Emphasis added]

26 Sometime on 31 July 1987, the respondent requested the petitioner in writing to remit \$20,000 to his bank account in Hong Kong on or before 4 August 1987. In this request, the respondent reaffirmed his understanding of the Deed by stating unambiguously that the amount of \$20,000 was "*part payment of the balance of S\$100,000 due on the property*" and that this amount was to be deducted at the time of "*sale of the said property*". Again his understanding was consistent with the terms of the Deed. There was no mistake as to the meaning of paragraph (2)(b) of the Deed. Out of goodwill, the petitioner promptly complied with the respondent's request and made a telegraphic transfer of the money on 6 August 1987 (although strictly under the terms of the Deed she need not do so as she had not sold the property and the balance of \$100,000 was not due and payable).

27 As I see it, with property prices in Singapore having risen drastically since the date of the Deed, the respondent obviously felt short-changed after having the benefit of hindsight. He wanted the court to rescue him from a bad bargain of having earlier disposed of his half-share in the property to his then-wife at a fixed sum of \$200,000 in 1986 for which he had already received part payment of \$119,960 in 1986/1987 amounting to some 60% of the agreed sum, with the balance of 40% to be paid only if and when she decided to sell the said property, which in my view could only have meant that the petitioner was given an absolute discretion under the Deed to decide when the property was to be sold. To allow any apportionment of the sale proceeds that would give a different result from that stipulated in the Deed would be to destroy the bargain that the parties had freely entered into. I was not prepared to do so.

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