

Nalini d/o Ramachandran v Saseedaran Nair s/o Krishnan
[2010] SGHC 98

Case Number : Divorce Suit No 5253 of 2006
Decision Date : 29 March 2010
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Udeh Kumar S/O Sethuraju (S K Kumar & Associates) for the plaintiff; K Mathialahan (Guna & Associates) for the defendant.
Parties : Nalini d/o Ramachandran — Saseedaran Nair s/o Krishnan

Family law – Matrimonial assets

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 84 of 2010 was dismissed by the Court of Appeal on 18 October 2011. See [\[2012\] SGCA 5.](#)]

29 March 2010

Tay Yong Kwang J:

Introduction

1 This was an appeal by the plaintiff/appellant, Nalini D/O Ramachandran Mrs. Saseedaran Nair (“the Wife”) against the decision of the District Judge on 12 November 2009 dismissing the Wife’s application and allowing the application of the defendant/respondent, Saseedaran Nair S/O Krishnan (“the Husband”). Both applications related to a consent order made on 22 January 2008. I dismissed the Wife’s appeal but varied the District Judge’s order.

Background

2 The parties’ matrimonial home was a Housing and Development Board (“HDB”) flat in Bukit Batok East Avenue 3 (“the Property”). The Wife’s appeal related essentially to the Property although she also sought to vary the terms concerning the two children’s maintenance before me.

3 The parties were married on 14 March 1990 and their marriage was dissolved on 27 February 2007. On 22 January 2008, they settled all ancillary matters at mediation before a district judge and a consent order was made accordingly (“the consent order”). A certificate making the interim judgment final was granted on 9 March 2008. Under the consent order, the parties had joint custody of the two children aged 11 and 13, with care and control given to the Wife and reasonable access given to the Husband every weekend. The Husband agreed to pay the Wife a nominal \$1 per month as her maintenance and \$300 per month for each of the two children. The following orders were also made by consent:

5. [The Property] shall be sold in the open market within 4 months from the date hereof, and after reimbursement of the outstanding HDB mortgage loan, and the parties’ respective CPF accounts of such monies utilised by the parties for the purchase of the said flat together with accrued interest, and the incidental expenses and costs of the sale, the net proceeds, if any, shall be divided in the proportion of 60% to the [Wife] and 40% to the [Husband].

6. The [Wife] shall have the option to purchase the [Husband's] rights title and interest in the Property within the aforesaid 4 months period by payment to the [Husband] of such amounts as he would have been entitled to (including reimbursement to his CPF's account of such monies, with accrued interest, utilised by him in the purchase of the Property) had the Property been sold in the open market in accordance with Order 5 above.

7. Liberty to apply.

4 In or around September 2007, the Husband sought medical attention for his visual problems. Subsequently, on 13 February 2008 (*i.e.* after the consent order was made), it was confirmed that he was suffering from Leber Hereditary Optic Neuropathy, a condition which left him with very poor vision in his eyes.

5 He was covered under the Home Protection Insurance Scheme ("HPIS") established by the Central Provident Fund Board ("CPF Board") pursuant to section 29 of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("CPF Act"). The HPIS provided that on his death or incapacity, his liability to repay his housing loan shall be discharged by the CPF. Therefore, on 15 July 2008, he applied to the CPF Board for a payout due to his disability. On 16 December 2008, he was certified to be legally blind. On 26 December 2008, pursuant to the HPIS, the CPF Board paid a sum of money to the HDB to discharge the outstanding housing loan on the Property. Various amounts were stated in the documents but the amount paid to the HDB was later confirmed to be \$165,922.60 ("the HPIS payout").

6 Subsequently, the Wife decided against buying over the Husband's share in the Property. In November 2008, the Wife asked that the Property be sold in the open market. The Husband informed her that he might lose his eyesight and proposed that she transfer her title in the Property to him upon him reimbursing her CPF money used for the purchase of the Property together with accrued interest. Negotiations then took place between the parties. In February 2009, the Husband spoke to the Wife and told her that the CPF Board had paid the outstanding loan on the Property to the HDB under the HPIS. He then proposed that \$20,000 be paid by him to the Wife in addition to what he had offered her earlier. After asking for time to consider the proposal, the Wife did not revert to the Husband.

7 On 18 June 2009, the Wife filed an application for her to have sole conduct of the sale of the Property, for the Husband to vacate it within one month and for the Registrar of the Subordinate Courts to be conferred the power to execute all documents in respect of the sale of the Property on the Husband's behalf should he fail or refuse to do so. On 10 September 2009, the Husband applied for increased access to the two children and variation to the consent order pertaining to the sale of the Property. One of his prayers was for an order enabling him to buy over the Wife's share in the Property upon him refunding the Wife's CPF money used for the Property together with accrued interest and paying her \$20,000. In the alternative, the Husband asked for the following order:

The [Wife] to transfer all her right, interest and title to the flat to the [Husband] upon the [Husband] refunding the [Wife's] CPF moneys with accrued interest to the [Wife's] CPF account. The [Husband] shall pay a sum being 60% of the net value of the flat to the [Wife] which net value shall be calculated by deducting from the price of the flat fixed at \$460,000.00, both parties' CPF monies as at date of transfer of the flat together with accrued interest and after deducting the [HPIS payout] and the sum of \$43,000 being the cash payment made by the [Husband] towards the purchase of the flat. The [Husband] shall bear the costs of the transfer. The transfer of the flat to be completed within six (6) weeks from the date of this Order of Court.

He also prayed for an order declaring him to be solely entitled to the HPIS payout.

8 After hearing both applications together, the District Judge dismissed the Wife's application and varied the consent order to give the Husband more liberal access to the two children. In respect of the Property, she ordered that:

The [Wife] shall transfer her rights, title and interest to the flat to the [Husband] upon the [Husband] refunding the [Wife's] CPF monies with accrued interest to the [Wife's] CPF account and also payment by the [Husband] to the [Wife] of a sum equivalent to 60% of the value of the flat after deducting both parties' CPF monies used for the flat as at the date of transfer together with accrued interest and after deducting [the HPIS payout]. The value of the flat shall be based on the valuation done by the Housing Development Board. The transfer to be done within three (3) months from the date of the HDB valuation.

The District Judge made no order as to costs in respect of both applications.

9 Dissatisfied with the District Judge's decision, the Wife filed the present appeal.

The issues and the arguments

10 There were two main issues on appeal:

(a) whether it was right to order a variation of the consent order; and

(b) if so, whether the varied orders were just and equitable.

11 The Wife contended that the consent order should not have been varied because there was no material change in the circumstances of either party since the time the consent order was made. Further, the Wife contended that the varied order was unjust and inequitable as it accorded the benefit of the HPIS payout entirely to the Husband. The Husband contended that there were material changes in circumstances consequential to his blindness and that the orders were just and equitable because the HPIS payout was intended to compensate him for his blindness and therefore did not fall within the ambit of matrimonial assets.

Whether it was right to order a variation of the consent order

12 Section 112(4) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") provides that:

This court may, at any time it thinks fit, extend, vary, revoke, or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

13 Both parties accepted that s 112(4) leaves the court with the discretion to vary the consent order and the court may vary the terms of a consent order in the event that there was material change in circumstances. In my view, this is correct. It is true that an order of division is usually a one-off order and, subject to appeal, is not of a continuing nature as to permit variation (Leong Wai Kum, *Principles of Family Law in Singapore*, Butterworths Asia 1997 Ed at page 910; cited in *Lee Kok Yong v Lee Guek Hua (alias Li Yuehua)* [2007] SGHC 26 at [16]). However, this does not mean that

the court cannot vary an order where it is appropriate to do so, as is the case here where the Property has not been sold or otherwise dealt with yet. In a District Court decision, *CT v CU* [2004] SGDC 164, the District Judge held that parties would be able to apply to the court for a variation of a court order under s 112(4) of the Charter at least in those situations where the court order was unworkable or did not provide for a particular situation or contingency which had subsequently arisen. I agree.

14 A consent order for division of matrimonial assets should not be as easily revised as an order made without incorporating the spouses' prior agreement (see Leong Wai Kum, *Elements of Family Law in Singapore*, LexisNexis 2007 Ed at p 585; see also *Lee Min Jai v Chua Cheow Koon* [2005] 1 SLR(R) 548 (which dealt with the setting aside of a consent order relating to matrimonial assets ("*Lee Min Jai*") at [5])). From the wording of s 112(4), the court retains the power to interfere on just and equitable grounds (*Lee Min Jai* at [6])). I also observe that, as a matter of comparison, while s 119 of the Charter provides that the court may vary agreements for maintenance where there has been a material change in the circumstances, the court is not so limited under s 112(4). Likewise, s 118 of the Charter provides specific situations in which the court has the power to vary orders for maintenance at any time, one of which is where there has been material change in the circumstances. The circumstances giving rise to the court's decision to vary an order under section 112(4), being a more broadly framed provision, could therefore include a situation as envisaged by s 118 or s 119, i.e. where there has been material change in the circumstances after the order was made.

15 The Wife contended that there was no material change in the circumstances. This was because even though the Husband was certified to be legally blind subsequently, he had already been suffering acute vision loss prior to the making of the consent order. Furthermore, given the Husband's condition, it was only a matter of time before an application was made to the CPF Board for a payout to discharge the outstanding mortgage loan under the HPIS. Based on the terms of the Husband's HPIS policy, the mortgage would be fully discharged as a result. Therefore, his visual impairment and its consequential impact had already been taken into consideration when entering the consent order and was not a development occurring after the consent order.

16 The Husband contended that the material change in circumstances arose from three events, namely (a) his blindness; (b) the consequent HPIS payout; and (c) the total discharge of the outstanding mortgage loan. He explained that he depended on the rental proceeds from the Property to pay for his expenses as he was unable to work due to his blindness. He submitted that at the time the consent order was entered, he was not yet considered to be 'legally blind' and neither he nor the Wife envisaged that he would be entitled to a claim under the HPIS and that the CPF Board would approve full payout of the assured sum under the HPIS.

My decision

17 I agreed with the District Judge's decision to vary the consent order and was satisfied that there was material change in the circumstances after the consent order was made. Although the Husband had experienced visual loss prior to the consent order, it was uncertain at that time that there would be a payout by the CPF Board under the HPIS. A variation of the consent order to allow the Husband to purchase the Wife's share in the Property would not prejudice the interest of the Wife, given that she still retains the benefit of 60% of the value of the Property. This was unlike a case where a variation may affect the proportionate division of assets.

Whether the varied orders were just and equitable

18 The contention here was whether the District Judge erred in ordering the Wife to transfer her rights, interest and title to the Property to the Husband upon the Husband refunding the Wife's CPF monies with accrued interest to the Wife's CPF account and also payment by the Husband to the Wife of a sum equivalent to 60% of the value of the Property after deducting both parties' CPF monies used for the Property as at the date of transfer together with accrued interest and *after deducting the HPIS payout*. In other words, the HPIS payout would be deducted from the value of the Property which would then be apportioned between both parties. Effectively therefore, the Husband would receive the benefit of the HPIS payout to the exclusion of the Wife.

19 The Husband contended that the HPIS payout was not a matrimonial asset and that it had to be attributed to him and not to both parties. This was because he received the HPIS payout on the ground of his total and permanent physical disability after the divorce was granted and the flat ordered to be sold. He further contended that such a payout, being one to compensate him for his misfortune of losing his sight, could not be considered a matrimonial asset even if the marriage between him and his Wife subsisted at the date of the payout.

20 The Wife contended that the District Judge failed to consider that the purpose of a HPIS policy is quite unlike that of a personal insurance policy. The HPIS is intended to insure CPF members and their families against loss of their home should the members become physically and/or mentally incapacitated or pass away before their housing loans are fully paid up and not, as alleged by the Husband, intended to compensate for disabilities. She contended that s 29 of the CPF Act made it clear that the HPIS payout was specifically directed towards the discharge of the mortgage over the Property because it provided that "on the death or incapacity of a member of the [HPIS] at any time during the period in which the member is insured under the [HPIS], *his liability to repay his housing loan ... shall be discharged by the Board in accordance with the [HPIS]* [emphasis added]". She submitted that by assigning the benefit of the HPIS payout to the Husband solely, the District Judge's order was inconsistent with the intent of the scheme and therefore not just and equitable.

21 The HPIS was introduced by legislation. To understand its intended purpose, I refer to the Second Reading of the Central Provident Fund (Amendment) Bill (Singapore Parliamentary Debates, Official Report (6 March 1981) vols 40 at cols 323-324), where the then Minister for Communications and Minister for Labour, Mr Ong Teng Cheong, stated the following:

... the Bill seeks to amend the Central Provident Fund Act to empower the Central Provident Fund Board to operate a Home Protection Insurance Scheme so that the outstanding loans on flats purchased by members under the various approved housing schemes of HDB, JTC, HUDC and Mindef will be paid in the event that the members die or are permanently incapacitated from ever working again...

A study by the CPF Board in 1979 of HDB housing loan borrowers indicated that 56,200 borrowers did not have sufficient CPF savings to pay off their outstanding loans if required to do so. Should such members die or become permanently incapacitated from working again, *they or their families may lose their homes* if the repayment of the loan cannot be met. The risk is especially real if members die or are incapacitated early in their working life when their CPF savings are small.

[emphasis added]

22 It is evident that the HPIS is meant to benefit *both* the incapacitated CPF member and his family. In establishing the HPIS, the Legislature was clearly concerned with the problem of families losing their homes when the breadwinner of the family (the insured) became unable to repay the housing loan. The mischief that the HPIS was intended to address was therefore not the insured's

general financial concerns resulting from some future disability but the prospect of the insured and his dependants losing their home should the insured meet with some misfortune. A distinction must therefore be drawn between the HPIS and an ordinary insurance policy where the payout is made to the insured who has control over the use of the money. The HPIS is a mortgage-reducing policy and the payout therefore diminishes with time as the housing loan is progressively repaid by the insured. The HPIS is specifically targeted at protecting the family home and any payout thereunder goes towards discharging the outstanding housing loan only.

23 The HPIS payout therefore pertained to the Property and was not intended to be a personal benefit for the Husband although the premium was paid by the Husband. The same would have applied if it had been the Wife (who was similarly insured under the HPIS) who met with some misfortune rendering her unable to repay the housing loan. Since the Wife has a claim to 60% of the value of the Property, the HPIS payout should not be deducted in calculating the net value of the Property for distribution between the parties. I therefore varied the District Judge's order only to this extent.

Variation of maintenance order for children

24 Both parties share joint custody of their two children, with the Wife having care and control. In accordance with the consent order, the Husband is currently paying maintenance of \$300.00 per month for each of the two children. In the appeal before me, the Wife applied for a variation of the maintenance order to one for a lump sum of \$30,000 to be paid by the Husband from the sale proceeds of the Property. The Wife contended that given the Husband's condition, it was questionable if he would be able to continue paying monthly maintenance. She accepted that she did not make such an application to the District Judge but argued that the court has inherent jurisdiction under s 112 of the Charter to make such an order at any time. This, she said, would allow the parties to have a "final break" and leave her with sufficient funds to purchase a flat for the children and herself and to provide for the children's needs. The Husband objected to this surprise "unfair" application sprung by the Wife at the appeal.

25 I saw no reason to vary the maintenance order in this manner. There was no indication that the Husband was unable or unwilling to carry out his obligations to maintain his children as agreed under the consent order. Further, the Wife's application was predicated upon the Property being sold and that both parties would be receiving their share of the proceeds of sale. However, if the Husband is able to comply with the District Judge's order (at [\[8\]](#) above), there will not even be a sale of the Property. To impose upon him, in the unfortunate circumstances that he is already in, an additional amount of \$30,000 as lump sum maintenance for the children might be too much of a burden for him to bear.

Conclusion

26 For the reasons above, I dismissed the Wife's appeal against the variation of the consent order with the District Judge's order varied to the extent that the HPIS payout is not to be deducted in calculating the net value of the Property for distribution between the parties. I made no order as to costs for the appeal as the Wife succeeded on the HPIS payout issue although she failed in the rest of her appeal.