

Lee Kok Yong v Lee Guek Hua (alias Li Yuehua)
[2007] SGHC 26

Case Number : D 1404/2004, RAS 95/2006, 96/2006
Decision Date : 27 February 2007
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Lim Say Fang (Tan Lee & Partners) for the appellant/petitioner; Tan Siew Kim (Lee & Lee) for the respondent
Parties : Lee Kok Yong — Lee Guek Hua (alias Li Yuehua)

27 February 2007

Tan Lee Meng J:

1 The appellant, Mr Lee Kok Yong, appealed against the decision of District Judge Jocelyn Ong ("the District Judge"), who dismissed his application to vary an order of court ("the order of court") dated 30 July 2004 regarding the division of matrimonial assets and the payment of a lump sum maintenance of \$20,000 to the respondent, his former wife, Mdm Lee Guek Hua. I dismissed the appeal and now give the reasons for my decision.

2 The parties were married on 17 September 1997. Shortly thereafter, they purchased No 31 Bangkit Road #08-03 Chestervale Singapore 679973 (the "matrimonial property"). The said property was purchased in both their names for \$629,100.

3 The appellant alleged that the respondent left him in January 2000 and went to live with her parents.

4 In April 2004, the appellant filed a petition for divorce. The Decree Nisi, which was granted on 30 July 2004, was made absolute on 1 November 2004. During the divorce proceedings, the appellant was represented by counsel whereas the respondent was not. Even so, the parties managed to reach agreement on the division of matrimonial assets and the payment of lump sum maintenance for the purpose of a clean break between them. Their agreement was embodied in an order of court on 30 July 2004 ("the order of court"). The terms of the order of court included the following:

(a) The respondent was to transfer her share and title in the matrimonial property to the appellant after the latter refunded to her CPF account all monies utilised for the purchase of the said property, together with accrued interest.

(b) The appellant was to pay the respondent \$20,000 as lump sum maintenance. This sum was to be paid in five instalments of \$4,000 per month.

5 The appellant remarried in November 2004 and he and his new wife occupied the matrimonial property. However, he did not comply with the terms of the order of court regarding the matrimonial property and the lump sum maintenance.

6 In 2005, the appellant and his present wife moved out of the matrimonial home and in July 2006, their daughter was born.

7 As the appellant did not honour his commitment to refund money into her CPF account and to pay her the lump sum maintenance, the respondent instituted SUM 7921 of 2006 to enforce her rights under the order of court. In the meantime, the appellant sought to vary the said order of court by instituting SUM 7888 of 2006 to seek a reduction of the amount to be refunded to the respondent's CPF account and the lump sum maintenance.

8 In the meantime, a buyer for the matrimonial property was found. On 7 September 2006, the District Judge varied the order of court by allowing the matrimonial property to be sold. She ordered that the costs and expenses of the sale of the matrimonial property were to be borne by the appellant. She also dismissed the appellant's application to vary the order of court by reducing the amount to be refunded to the respondent's CPF account and the quantum of the lump sum maintenance. She ordered the appellant to pay the long overdue lump sum maintenance within one month.

9 To date, the appellant has not paid the respondent the lump sum maintenance. Instead, he filed two appeals against the decisions of the District Judge.

RAS No 95 of 2006

10 RAS No 95 of 2006, which concerns the appellant's application to vary the order of court to reduce the amount he has to pay into the respondent's CPF account and the lump sum maintenance, will first be considered.

Variation of Order of Court

11 The appellant's only ground for seeking a variation of the order of court was that he is not in as strong a financial position as he was in 2004 when the order of court was made. He claims that his income from his clothing business has dwindled and that the District Judge failed to take into account his material change of circumstances from mid-November 2004 onwards. As has been mentioned, he remarried in November 2004.

12 The respondent asserted that the appellant's financial position is not as bad as that painted by him. She pointed out that he is a joint owner of a bungalow at 410 Pasir Panjang Road, which has an area of 579.4 square metres and he had stated that he spent \$1,380 per month on his present wife. She also pointed out that the appellant claims that he gives his mother an allowance of \$800 per month. As such, he should be able to honour his commitments under the order of court.

13 The appellant retorted that the bungalow at Pasir Panjang Road should not be taken into account and even claimed that when he proposed that this property be sold, his sisters beat him up and scolded him and his present wife.

14 The present state of the appellant's finances is not relevant to the present appeal. As the appellant did not appeal against the order of court in 2004, he should have made the requisite repayment to the respondent's CPF account in 2004. He also ought to have paid the five monthly instalments of \$4,000 for the lump sum maintenance in that year. Having defied the order of court since 2004, he is not entitled to assert that his own failure to perform his long overdue obligations should pave the way for a variation of the division of matrimonial property or the lump sum maintenance.

15 Admittedly, under certain circumstances, an order for the division of matrimonial property may be varied under s 112(4) of the Women's Charter (Cap 353, Rev Ed 1997), which provides as follows:

The 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.

16 However, as Prof Leong Wai Kum ("Prof Leong") rightly pointed out in *Principles of Family Law in Singapore* (Butterworths Asia, 1997) ("*Family Law*") at p 910, it "is still true that an order of division is, usually, a one-off order and, subject to appeal, is not of continuing nature to permit variation". She added that it is only in relation to orders of a continuing nature that a question of variation arises. Such continuing orders, as listed in s 112(5) of the Women's Charter, are an order for a matrimonial asset to be held on trust, an order postponing the sale or vesting of any share in any matrimonial asset until such future date as may be specified and an order granting to either party the right personally to occupy the matrimonial home to the exclusion of the other party. As the order of court for the division of the matrimonial property in the present case is not a continuing order, the question of a variation does not arise.

17 The appellant relied on the decision of the Court of Appeal in *Chia Chew Gek v Tan Boon Hiang* [1997] 2 SLR209 to show that an order of court in relation to the division of matrimonial property may be varied but that case is clearly distinguishable from the present case. In that case, matrimonial property had been divided between the parties on the basis of their mistaken belief that they could qualify for two Housing and Development Board ("HDB") flats because their only son could form a nucleus family with both his father as well as his mother. The order of court in question expressly stated that it was "subject to the approval by the [HDB]". As such, Karthigesu JA, who delivered the judgment of the court, said at [16] that as the HDB did not allow the son to form a nucleus family with both his father and his mother, the consent order in question had completely failed and there was no jurisdictional bar to a consideration of the husband's application to vary the said order. In the present case, the order of court could have and should have been complied with by the appellant in 2004. As such, the provision in the order of court requiring the appellant to make the requisite refund to the respondent's CPF account should be enforced.

Lump sum maintenance

18 As for the lump sum maintenance, reference ought to be made to s 118 of the Women's Charter, which provides as follows:

The court may at any time vary or rescind any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made... where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

19 Section 118 makes it clear that only a subsisting order for payment of maintenance may be varied or rescinded. Prof Leong opined in *Family Law* at p 1008 that where lump sum maintenance is to be paid by several instalments, some of which have not been paid, it may be argued that the court has the power to vary or rescind because such an order remains, on a literal reading, "subsisting". However, where, as in this case, the instalments of lump sum maintenance should have been paid long ago, the party who has blatantly refused to make the payment is in no position to assert that the lump sum maintenance should be varied. As such, the appellant's application to reduce the lump sum maintenance payable to the respondent was dismissed.

RAS No 96 of 2006

20 RAS No 96 of 2006, which concerns the District Judge's ruling on the costs and expenses of the

sale of the matrimonial property, will next be considered.

21 As has been mentioned, the District Judge, who ordered that the matrimonial property be sold and also that the appellant is to bear the costs and expenses of the sale of the matrimonial property, cannot be faulted. It cannot be overlooked that when the ancillary matters were considered by the court in 2004, the appellant, who was represented by counsel whereas the respondent was not, had wanted to keep the matrimonial property for himself. That was why he was prepared to refund to the respondent's CPF account the amount paid from that account for the matrimonial property. Regrettably, he did not keep his word. As the sale of the matrimonial property was necessitated by the appellant's failure to honour his commitment, he should bear the costs and expenses of the sale of the said property.

Conclusion

22 For reasons already stated, I dismissed both the appellant's appeals with costs.

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