Chan Gek Yong *v* Chan Gek Lan
[2012] SGHC 102

Case Number : Suit No 283 of 2010
Decision Date : 09 May 2012
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Plaintiff in person; Dr Koh Hai Keong (Koh & Partners) for the defendant.
Parties : Chan Gek Yong — Chan Gek Lan

Restitution

9 May 2012

Woo Bih Li J:

Introduction

1 This action, *ie*, Suit No 283 of 2010 ("the Second Action") arises from an earlier decision of mine in Suit No 287 of 2007 ("the First Action") between the same two sisters, Chan Gek Yong ("the plaintiff") and Chan Gek Lan ("the defendant"). In the First Action, I dismissed various claims made by the plaintiff against the defendant and the defendant's counterclaim against the plaintiff.

2 In the Second Action, the plaintiff sought to set aside my judgment in the First Action dated 2 October 2008 (see *Chan Gek Yong v Chan Gek Lan* [2008] SGHC 167) ("my earlier judgment") and to make the same claims against the defendant as she had already made in the First Action. On the first day of trial in the Second Action, the defendant's counsel submitted as a preliminary issue that the Second Action should be dismissed. After hearing arguments by both parties, I dismissed the Second Action. This time round, the plaintiff has filed an appeal to the Court of Appeal which she did not do in respect of my earlier judgment.

Background

3 The defendant is the eldest child in the family while the plaintiff is the second eldest. They have six other surviving siblings. Their parents are deceased.

4 The plaintiff is a diploma holder. She obtained her diploma from the Singapore Polytechnic in 1971. She was a teacher in St Francis Girls Secondary School in or about 1974. From 1975, she was a Parts Executive of Inchcape Group for about 11 years. From about 1987 to 1992, she was a manager of Asia Motors Pte Ltd.

5 The defendant's highest level of education is secondary two and the last school she attended was Chong Hua Girls High School at Bartley Road.

6 In the First Action, the plaintiff made four claims against the defendant. These were summarised in para 84 of her closing submissions there and I set them out below:

> 84 ...

(a) Claim for $236,520 being the Plaintiffs [*sic*] claim for her 73% share of the rentals collected for the Serangoon property for the period April 1990 to December 1996.

(b) The claim for $21,555 being some of the salaries of the Plaintiff which the Defendant had received or taken pursuant to 3 cheques, issued by the clinic for her salary.

(c) The claim for $39,000 being the total of 3 sums withdrawn from the Plaintiffs [*sic*] said joint POSB savings Account with her mother.

(d) The claim for $10,000 being the amount paid to the Plaintiff by her brother CKH which the Defendant took for her own use.

7 I should mention that the reference in the first claim to a Serangoon property was to Blk 253, Serangoon Central Drive, #01-233, Singapore 550253. The plaintiff and the defendant were co-owners of that property at the time of my earlier judgment.

8 As can be seen, the first claim of the plaintiff in the First Action was for 73% share of the rent paid by a tenant for the Serangoon property for a certain period, *ie*, April 1990 to December 1996. From 1 April 1990 to 30 June 1992, that property was leased to a younger brother of the parties who was practising as a dentist under the name and style of "Chan Dental Clinic & Surgery" ("the Clinic"). On or about 1 July 1992, the plaintiff and her younger sister Chan Gek Keow formed a partnership to operate the Clinic which in turn employed that brother as a dentist. The Clinic was then paying rent from 1 July 1992 to sometime in August 1999 (see [4] of my earlier judgment).

9 I decided in the First Action that the plaintiff was entitled to 50% of the rent and not 73%. However, I dismissed the first claim of the plaintiff in the First Action because she had not established that the defendant had made use of her share of the rent. As mentioned above, I also dismissed the other three claims of the plaintiff.

10 In the Second Action, the plaintiff claimed that the defendant had falsely asserted that the first 27 months' rent (from 1 April 1990 to June 1992) were paid either in cash or by two cheques of $2,000 to each of the parties (making a total rent of $4,000 per month). The plaintiff claimed that as a result of bank statements which the defendant was ordered to produce during the trial of the First Action, she managed to discover later that the rent for the 27 months was paid entirely by cheque and not partly in cash or partly by cheque. Also, the cheques for the rent were not for $2,000 to each of the parties.

11 The plaintiff also asserted that she had discovered that for the period between July 1992 and December 1996 (54 months), 48 months' rent had in fact been paid into a joint account which the defendant held with their mother, *ie*, OCBC Savings Account No [xxx]. The plaintiff said that another six months' rent had been deposited into the defendant's personal savings account no [xxx].

12 The plaintiff said she discovered the information stated in [10] and [11] above after the trial because she did not have time to go through the documents that the defendant had produced during the trial. However, she did not at that time ask for more time to go through the documents. The plaintiff also seemed to accept that some of the information she was relying on came from other documents which were available even before the trial commenced. However, she did not identify clearly which information was already available before the trial commenced.

13 In any event, based on her alleged discovery, the plaintiff claimed that she was entitled to set

aside my earlier judgment in respect of all her four claims including my finding that she would have been entitled to only 50% of the rent and not 73% as she had claimed.

14 As can be seen, even if the plaintiff was correct in her factual assertions as stated in [10] and [11] above, such assertions had nothing to do with her second, third and fourth claims. Furthermore, such assertions had no bearing on my decision that she would have been entitled to only 50% of the rent under her first claim.

15 As regards the rest of her first claim, I had already observed in [28] to [31] of my earlier judgment that the defendant's evidence as to how the rent was paid and into whose bank account it was credited was unreliable. However, this was not because the defendant was duplicitous but because:

(a) she (the defendant) has a simple mind and was not able to grapple with the details of the transactions which happened many years ago; and

(b) she had been executing their mother's instructions.

I would add that their mother passed away in September 1996 and the plaintiff did not commence the First Action until 2007. Her position was that she had trusted the defendant until the defendant had commenced legal action against her first in 2005 to buy the plaintiff's share in the Serangoon property or to have the property sold.

16 The point was whether the defendant had made use of the plaintiff's share of the rent. I had concluded that the plaintiff had failed to establish this (see [32] and [33] of my earlier judgment).

17 Accordingly, even if the plaintiff was allowed to adduce the additional information which she said she had uncovered, it still did not assist her.

18 The plaintiff also sought to rely on fresh evidence about an account which the defendant allegedly had with a stockbroker. However, the existence of such an account did not in itself advance any of the plaintiff's claims any further.

19 As mentioned above, the plaintiff did not appeal against my earlier judgment. Apparently, about ten months after that judgment (dated 2 October 2008), she filed Originating Summons No 882 of 2009 on 6 August 2009 to seek an order for a new trial of the First Action or, alternatively, for leave to file a Notice of Appeal to the Court of Appeal out of time.

20 On 24 February 2010, Steven Chong JC decided that he had no jurisdiction to grant the plaintiff an extension of time to appeal to the Court of Appeal. The plaintiff ought to have filed her application for an extension of time to the Court of Appeal and not to the High Court. Instead of filing a fresh application to the Court of Appeal for an extension of time after Chong JC's decision, the plaintiff filed the Second Action on 24 April 2010 which I dismissed on 20 March 2012.

21 I was aware that the plaintiff was acting in person but that alone did not entitle her to the reliefs she sought in the Second Action.