IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 91

Suit No 107 of 2022

Between

(1) Appangam Govindhasamy (Legal representative of the estate of T Govindasamy, deceased)
(2) Subbaiyan Govindasamy (Legal representative of the estate of T Govindasamy, deceased)
(3) Selvadurai Manickam (Co-administrator of the estate of T Govindasamy, deceased)
(4) Kalaichelvi C w/o Chidambaram M (Co-administrator of the estate of T Govindasamy, deceased)

… *Plaintiffs*

And

(1) Salaya Kalairani
(2) Salaya Kalairani (Legal representative of the estate of Tey Siew Choon, deceased)

… *Defendants*

Counterclaim of the 1st and 2nd Defendants

Between

(1) Salaya Kalairani

(2) Salaya Kalairani (Legal representative of the estate of Tey Siew Choon, deceased)

… *Plaintiffs in Counterclaim*

And

(1) Appangam Govindhasamy (Legal representative of the estate of T Govindasamy, deceased)
(2) Subbaiyan Govindasamy (Legal representative of the estate of T Govindasamy, deceased)
(3) Selvadurai Manickam (Co-administrator of the estate of T Govindasamy, deceased)
(4) Kalaichelvi C w/o Chidambaram M (Co-administrator of the estate of T Govindasamy, deceased)

… *Defendants in Counterclaim*

GROUNDS OF DECISION

[Trusts — Resulting trusts — Presumed resulting trusts]
[Trusts — Constructive trusts — Common intention constructive trusts]
[Equity — Defences — Acquiescence]
[Equity — Defences — Laches]

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v
Salaya Kalairani and another

[2023] SGHC 91

General Division of the High Court — Suit No 107 of 2022
Chua Lee Ming J
14–17, 22 November, 1–2 December 2022

6 April 2023

Chua Lee Ming J:

Introduction

1 The late Mdm Tey Siew Choon ("Tey") was a remarkable woman. Uneducated and unemployed, she was left a widow at age 25 with four young children. Not only did she raise her children, she also accumulated a number of residential and commercial properties. The property in dispute in this case, a shophouse at 24 Cuff Road, was the first property that she bought after her late husband's death (the "Property").

2 Tey bought the Property with the late Mr T Govindasamy ("TG") as tenants-in-common in equal shares. The main dispute in this case was over whether TG held his half-share in the Property on trust for Tey. The two most important witnesses, TG and Tey, had died – TG died on 10 October 1993 and Tey died on 24 May 2015.

3 The plaintiffs are the legal representatives and co-administrators of TG's estate, pursuant to a Grant of Letters of Administration issued on 1 June 2021. The 1st plaintiff, Mr Appangam Govindhasamy, is TG's eldest son. The 2nd plaintiff, Mr Subbaiyan Govindasamy, is TG's youngest son. The 3rd plaintiff, Mr Selvadurai Manickam, and the 4th plaintiff, Ms Kalaichelvi C w/o Chidambaram M, are the son and daughter respectively of TG's second son, the late Mr Manickam Govindasamy ("Manickam"), who died in 2011.

4 The plaintiffs sought an order for the sale of the Property and the distribution of the proceeds of sale, and for an account and inquiry of all rental proceeds of the Property received by the defendants since TG's death.

5 The 1st defendant, Mdm Salaya Kalairani, is Tey's only daughter and youngest child. She is the main beneficiary under Tey's will dated 28 February 2002 (the "Will"). She is also the 2nd defendant in her capacity as the legal representative of Tey's estate pursuant to the Grant of Probate issued on 26 June 2015.

6 In their counterclaim, the defendants sought a declaration that TG held his half-share on trust for Tey's estate and an order for TG's half-share to be transferred to Tey's estate. Under the Will, the 1st defendant would inherit TG's half-share in the Property if it were found to be held on trust for Tey's estate.

7 On 2 December 2022, I dismissed the defendants' counterclaim and ordered the Property to be sold and the net sale proceeds to be distributed equally between TG's estate and Tey's estate. I also dismissed the plaintiffs' claim for an account and inquiry of rental proceeds.

8 On 29 December 2022, the plaintiffs and defendants filed cross-appeals against my decision.

Facts

9 Tey married the late Mr Salaya s/o Vengdalamandor ("SV") in 1960. SV was an employee with the Public Works Department ("PWD") in Singapore. Their inter-racial marriage was frowned upon and both Tey and SV were estranged from their respective families. Tey reconciled with her own family only in the 1980s.

10 After their marriage, Tey and SV stayed on the lower floor of government-controlled quarters situated off Hindoo Road along present day Jalan Besar. TG was staying on the top floor of the same quarters. TG was then employed as a mason with the PWD and he became good friends with SV and a close friend to SV's family. SV's children addressed TG in Tamil as "grandfather".

11 In the late 1960s, SV was diagnosed with liver disease, and he subsequently fell severely ill and passed away in 1969. As an unemployed young widow with four young children, Tey relied on TG's advice.[1] TG informally adopted Tey as his daughter and Tey's four children as his grandchildren.[2]

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1 1st defendant's affidavit of evidence-in-chief ("AEIC"), at para 37.

2 1st defendant's AEIC, at para 38.

12 On 28 May 1970, Tey and TG bought the Property for $40,000 as tenants-in-common in equal shares.[3] The 1st defendant inherited Tey's half-share in the Property under the Will.

13 On 14 April 1971, Tey and one Mr Muthusamy s/o Govindasamy ("Muthusamy") bought a property at 10 Veerasamy Road ("10 Veerasamy") for $22,000 as tenants-in-common in equal shares.[4] According to the 1st defendant, Muthusamy was a businessman who was introduced to Tey by a family friend.[5] In 1993, after Muthusamy died, Tey bought over Muthusamy's half-share in the property from his estate.[6]

14 1n November 1974, Tey bought a property at 18 Tai Hwan Lane, Singapore ("18 Tai Hwan") for $94,000 in her sole name.[7] Tey sold the property in November 1984 for $500,000.[8]

15 On 12 September 1975, Tey mortgaged the Property to Malayan Banking Berhad ("Maybank") as security for banking facilities not exceeding $120,000 (the "1975 Mortgage").[9] Clearly, the value of the Property had appreciated significantly in the five years since it was purchased. Under the 1975 Mortgage, TG stood as surety and both Tey and TG assumed joint and several liability to Maybank.

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3 Agreed Bundle ("AB"), at pp 25–29.

4 Defendants' 2nd Supplementary Bundle of Documents ("2 DSB"), at pp 6–8.

5 Exhibit D3.

6 AB 105–111.

7 2 DSB 12–15.

8 2 DSB 17–19.

9 AB 30–45.

16 In 1979, Tey bought a property at 19 Puay Hee Avenue.[10] She reconstructed the property into a pair of semi-detached houses between 1994 and 1996, namely 19 and 19A Puay Hee Avenue. One house was bequeathed to her second son (since deceased) and the other to her youngest son.

17 Sometime in the late 1970s to early 1980s, Tey bought 33 Mulberry Avenue for her eldest son (since deceased).[11] The estate of her eldest son sold the property in 2019.

18 On 15 April 1983, Tey mortgaged the Property to Maybank as security for banking facilities not exceeding $400,000 (the "1983 Mortgage").[12] Under the 1983 Mortgage, again, TG stood as surety and both Tey and TG assumed joint and several liability to Maybank.

19 According to the 1st defendant, on 17 August 1983, Tey bought a property at 50 Clive Street, Singapore ("50 Clive") for $75,000 in the name of her sister.[13] On 6 September 2010, Tey's sister sold the property for $1.16m.[14]

20 On 20 November 1983, Tey bought a property at 4 Norris Road ("4 Norris") for $110,000 in her sole name.[15] The 1st defendant inherited this property under the Will.

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10 Exhibit D3.

11 Exhibit D3.

12 AB 46–51.

13 Exhibit D3; 2 DSB 25–28.

14 2 DSB 30–32.

15 2 DSB 37–40.

21 On 23 July 1984, Tey bought a property at 22 Veerasamy Road, Singapore ("22 Veerasamy") for $230,000 in her second son's name.[16] This property was repossessed by Maybank in 2019 and sold.

22 On 2 August 1984, Tey mortgaged the Property to Maybank as security for banking facilities not exceeding $480,000 (the "1984 Mortgage").[17] As before, under the 1984 Mortgage, TG stood as surety and both Tey and TG assumed joint and several liability to Maybank.

23 On 10 October 1993, TG died by suicide.[18]

24 In late 1993, Tey went to India, bringing with her a power of attorney which the 1st and 2nd plaintiffs, Manickam and Manickam's wife signed. In the power of attorney dated 28 December 1993 (the "1993 POA"),[19] the 1st and 2nd plaintiffs, Manickam and his wife stated the following, among other things:

(a) they were the beneficiaries of TG's estate;

(b) they were "desirous in having the Grant of Letters of Administration in order to crystalize the assets and to realize same"; and

(c) they appointed Tey as their attorney to, among other things,

(i) apply for and obtain the Grant of Letters of Administration to TG's estate in Singapore; and

16 Exhibit D3; 2 DSB 21–23.

17 AB 52–57.

18 AB 1.

19 AB 9–15.

(ii) to sell any property of TG in Singapore, "especially the property located at and known as No. 24A Cuff Road"; it was not disputed that 24A Cuff Road referred to the second floor of the Property.

The 1993 POA described Tey as "daughter of [TG] and one of the beneficiaries of [TG's] estate".

25 In late 1995, Tey again went to India, bringing with her another power of attorney (the "1995 POA").[20] The 1995 POA was similar to the 1993 POA, except that it no longer described Tey as TG's daughter and one of the beneficiaries of TG's estate. According to the 1st and 2nd plaintiffs, Tey informed them that a new power of attorney needed to be executed because the 1993 POA had not been accepted by the court in Singapore.[21] Manickam refused to sign the 1995 POA because he was suspicious of Tey. In the event, the 1995 POA was not signed.

26 In July 1996, Manickam gave notice to Tey, through his lawyer, that he was revoking the 1993 POA.[22]

27 On 27 November 2000, Tey mortgaged 4 Norris to Maybank.[23]

28 On 28 February 2002, Tey executed her Will, in which she appointed the 1st defendant as sole executrix and trustee of her Will.[24] Tey did not make

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20 AB 16–24.

21 1st plaintiff's AEIC, at para 74; 2nd plaintiff's AEIC, at para 69.

22 Plaintiffs' Bundle of Documents ("PB"), at pp 10–11.

23 AB 139–151.

24 AB 62–66.

provision for her eldest son because she had given him 33 Mulberry (see [17] above). Tey bequeathed 19A Puay Hee to her second son and 19 Puay Hee to her youngest son. As for the 1st defendant, cl 6 of the Will stated as follows:

> 6. I give my aforesaid daughter [the 1st defendant] *my share in the land and premises known as No.24 Cuff Road, Singapore and the lands and premises known as No.10 Veerasamy Road, Singapore and No.4 Norris Road, Singapore* for her absolute use and benefit …
>
> [emphasis added in italics]

The 1st defendant was also the beneficiary of Tey's residuary estate.

29 On 24 May 2015, Tey died.

30 On 23 June 2015, the 1st defendant obtained a Grant of Probate of Tey's Will.[25]

31 On 8 September 2015, 10 Veerasamy was transferred to the 1st defendant (as beneficiary under the Will).[26]

32 On 21 October 2015:

(a) the three mortgages over the Property were discharged;[27] and

(b) Tey's half-share in the Property was transferred to the 1st defendant (as beneficiary under the Will).[28]

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25 AB 61.

26 AB 112–113.

27 AB 69–70.

28 AB 58–60.

33 On 1 December 2015, the 1st defendant's three brothers lodged a caveat against her half-share in the Property.[29] The 1st defendant's brothers claimed that Tey had executed a later will (the "2nd Will") that superseded the Will and that under the 2nd Will, Tey had bequeathed her half-share in the Property to them. The 1st defendant's brothers subsequently disavowed the 2nd Will pursuant to a settlement with the 1st defendant.

34 On 5 December 2016:

(a) the mortgage over 4 Norris was discharged;[30] and

(b) 4 Norris was transferred to the 1st defendant (as beneficiary under the Will).[31]

35 On 23 October 2020, the plaintiffs obtained a Grant of Letters of Administration of TG's estate.[32]

The parties' cases

36 The plaintiffs' case was that:

(a) TG owned the beneficial interest in his half-share in the Property and his half-share therefore belonged to his estate;

(b) in any event, the defendants' claim that TG held his half-share in the Property on trust for Tey was barred by laches and/or acquiescence;

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29 AB 71–74.

30 AB 152–153.

31 AB 154–157.

32 AB 7.

(c) the Property should therefore be sold, alternatively, the 1st defendant could purchase TG's half-share in the Property; and

(d) the defendants were liable to account for the rental proceeds collected by them from the Property since TG's death, and the claim for an account was not barred by laches.

37 The defendants' case was that:

(a) TG held his half-share in the Property on a resulting trust, alternatively, a common intention constructive trust, for Tey;[33]

(b) if TG's half-share in the Property belonged to his estate absolutely, the Property should be partitioned instead of sold;

(c) in any event, the plaintiffs' claim that TG was the beneficial owner of his half-share in the Property was barred by acquiescence;

(d) the defendants did not have to account for the rental proceeds in respect of the Property; and

(e) in any event, the plaintiffs' claim for an account was barred by laches.

38 During closing submissions, the defendants confirmed that they no longer maintained (a) the defences of limitation and laches with respect to the plaintiffs' claim that TG was the beneficial owner of his half-share in the

[33] Defence & Counterclaim (Amendment No 1) ("D&CC"), paras 9–10.

Property, and (b) the defence of limitation with respect to the plaintiffs' claim for an account.[34]

The issues

39 The issues before me were:

(a) Whether TG held his half-share in the Property on a resulting trust, alternatively, a common intention constructive trust, for Tey?

(b) If so, whether the defendants' counterclaim was barred by laches and/or acquiescence?

(c) If not, whether the plaintiffs' claim that TG was the beneficial owner of his half-share in the Property was barred by acquiescence?

(d) If TG's half-share belonged to his estate and the plaintiffs' claim was not barred by acquiescence, whether the defendants were liable to account for the rental proceeds in respect of the Property, and if so, whether the claim for an account was barred by laches?

(e) If TG's half-share belonged to his estate and the plaintiffs' claim was not barred by acquiescence, whether the Property should be sold or partitioned?

Burden of proof

40 The defendants submitted that the plaintiffs bore the burden of proving that the Property remained a part of TG's estate. I agreed with the defendants'

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[34] Notes of Evidence ("NE"), 1 December 2022, at 6:6–26.

submission. This meant proving that TG owned his half-share in the Property absolutely. However, the plaintiffs were entitled to rely on the presumption of indefeasibility of title. The plaintiffs did not have to prove that TG paid for his half-share; they only needed to show that TG was the registered owner of a half-share in the Property: *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14]. The plaintiffs had discharged their legal burden of proof; it could not be disputed that TG was the registered owner of a half-share in the Property.

41 The burden therefore shifted to the defendants to prove the alleged resulting trust or common intention constructive trust. Proof of either would displace the presumption of indefeasibility of title.

42 Both TG and Tey had died and there was no direct evidence of either trust. Much of the case turned not only on inferences to be drawn, but also on inferences upon inferences.

Whether TG held his half-share in the Property on a resulting trust

43 The defendants alleged that Tey paid the full purchase price of the Property and relied on the presumption of resulting trust (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108). The burden was on the defendants to prove that Tey did pay the full purchase price of the Property.

44 There was no evidence as to how the Property was paid for, including whether a loan was taken to pay for the Property. The defendants' case that Tey paid the full purchase price was one of inference based on their allegations that Tey had the ability to pay the full purchase price whilst TG did not have the ability to pay for his half-share of the purchase price. There was no direct evidence of Tey's ability to pay or TG's inability to pay.

45 It was not enough for the defendants to merely prove that Tey had the ability to pay the full purchase price. Having the ability to pay did not necessarily mean that Tey therefore *did* pay the full purchase price. To support the inference that Tey did pay the full purchase price, the defendants had to also prove that TG could not have paid for his half-share in the Property.

Whether Tey had the ability to pay the full purchase price

46 Tey was married in 1960. In 1969, her husband died. The 1st defendant's evidence was that during the 1960s, Tey cooked and delivered meals in tiffin carriers to foreign workers living in the Serangoon Road vicinity. Tey also washed laundry but the 1st defendant admitted that this "wasn't a big thing".[35]

47 It was not the defendants' case that Tey's husband left her any substantial assets. In any event, there was no such evidence. In fact, the 1st defendant testified that Tey's food business was to "supplement the family income".[36] The defendants' case was that Tey's food business in the 1960s enabled her to pay the full purchase price of the Property.

48 There was no evidence as to Tey's earnings from her food business in the 1960s (which was the relevant period in this case) or thereafter for that matter. There was no evidence even as to when the food business started.[37] The 1st defendant was born in 1965; she had no personal knowledge of how well Tey's food business did or how much she earned from the business in the 1960s.

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35 NE, 17 November 2022, at 74:8–11.

36 1st defendant's AEIC, at para 25.

37 NE, 17 November 2022, at 70:10–12.

49 Tey carried out her food business from home and she handled the cooking and delivery all by herself.[38] This meant that she had to get orders, cook the food, pack the food into tiffin carriers and deliver these tiffin carriers all by herself. In addition, in the 1960s, she bore four children between 1960 and 1965 and had to raise four very young children. The 1st defendant testified that when Tey was busy, she would ask the neighbours to take care of the children.[39] Even so, as the 1st defendant conceded, the children were still Tey's primary responsibility and needed constant care and attention.[40] As remarkable a woman as Tey was, the circumstances that she was in would have constrained her earning capacity in the 1960s.

50 The defendants also relied on the fact that Tey purchased a half-share of 10 Veerasamy in 1971 and that she purchased 18 Tai Hwan in 1974 (see [13] and [14] above). The defendants argued that this showed that she had financial means. In my view, these facts did not lead to the inference that Tey therefore had the ability to pay the full purchase price of the Property *in May 1970*. I noted as well that Tey's half-share of the purchase price of 10 Veerasamy was $11,000 and there was no evidence as to how she paid for it. 18 Tai Hwan was purchased in 1974 for $94,000; again, there was no evidence as to how she paid for it. There was evidence that she mortgaged the Property for a bank loan of $120,000 in 1975 although there was no evidence as to what she used the moneys for.

51 In my judgment, there was insufficient evidence for me to draw the inference that Tey had the means to pay the full purchase price of the Property in May 1970. All that could be inferred from the evidence was that Tey was able

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38 NE, 17 November 2022, at 70:6–9.

39 NE, 17 November 2022, at 71:25–72:11.

40 NE, 17 November 2022, at 72:12–13, 20–23.

to save enough money to pay for at least half of the purchase price of the Property, either with or without taking a loan.

Whether TG had the ability to pay for his half-share

52 It was the defendants' own case that TG came to Singapore in 1950 and the documentary evidence supported this.[41] It was not disputed that TG was working in Singapore although there was no evidence as to what work he was doing before 1966. The evidence showed that by 1966, TG was working with the PWD as a mason.[42] The 1st and 2nd plaintiffs' evidence was that TG became a supervisor with the PWD.[43] The 1st and 2nd plaintiffs testified that TG also carried out private contracting for landscaping and gardening maintenance.[44] I found no reason not to accept their testimony.

53 The 1st defendant alleged that TG's sons and wife had "little or no formal education" and lived in "poor and squalid conditions" in India.[45] The 1st defendant also alleged that TG had to send most of his "meagre salary" to his family in India, that he had no savings in Singapore, and that he was financially dependent on Tey especially after his retirement in or around 1980.[46] The 1st defendant's allegations were based on her own assertions as to what TG and Tey allegedly told her and her claim to have observed Tey giving money to TG. There was no supporting objective evidence.

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41 Defendants' Bundle of Documents ("DB"), at pp 102–103; Defendants' Closing Submissions, at para 25.

42 DB 28.

43 NE, 14 November 2022, at 20:17–19; 16 November 2022, at 32:16–21.

44 NE, 14 November 2022, at 20:8–9; 16 November 2022, at 35:12–13.

45 1st defendant's AEIC, at para 32.

46 1st defendant's AEIC, at paras 33 and 39–40.

54 The evidence adduced in court contradicted the 1st defendant's allegations. First, far from having little or no education, the 2nd plaintiff had a Bachelor of Arts (Tamil medium); he also had businesses, including running a cinema theatre that he owned.[47]

55 Second, photographs of the 1st and 2nd plaintiffs' houses in India showed that they were far from poor and their living conditions were far from squalid.[48]

56 Third, TG was not as poor or as financially dependent on Tey as the defendants tried to make him out to be. The 1st defendant's description of TG's salary as "meagre" was an unjustified attempt to bolster the defendants' case.

(a) The 1st defendant herself testified that TG had told her that he had bought pieces of land and property in India which his sons enjoyed.[49]

(b) The 1st plaintiff had purchased land in India in 1965;[50] he testified that TG remitted Rs15,000 for the purchase.[51]

(c) TG gave a General Power of Attorney (the "General POA") to the 1st plaintiff in 1973 to manage his immovable properties and a pawn broker business in India.[52] The plaintiffs produced the original copy of the document. The defendants disputed the authenticity of the General POA, pointing out that a "seal" (which was just a rubber stamp) affixed

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47 NE, 16 November 2022, at 25:30–27:20.

48 Plaintiffs' 2nd Supplementary Bundle of Documents, at pp 12–14 and 17.

49 1st defendant's AEIC, at para 54.

50 Exhibit P9.

51 NE, 16 November 2022, at 7:14–22, 8:22–25.

52 Exhibit P1; PB 17–28.

to the document was dated 30 April 1973 but the document was executed on 8 November 1973. There was no evidence as to why the date on the rubber stamp was 30 April 1973. However, the document showed that it was presented and registered in the office of the "Sub Registrar of Paddukkotai" on 8 November 1973, consistent with the date of execution. I accepted the document as genuine. The plaintiffs also produced what appeared to be a formal handwritten copy of the General POA, made in 1985.[53] There was no reason to doubt the authenticity of the copy. The defendants pointed out that the reasons for the existence of the copy were unclear. That may have been so. However, in my view, the fact that a copy of the General POA was made supported the authenticity of the General POA.

(d) TG had a Non-Resident External Account with Indian Bank.[54] The transactions between 1983 and 1986 in the account passbook showed that he had financial resources.

(e) Entries in TG's Post Office Savings Bank ("POSB") passbook between April 1990 and October 1993 contradicted the 1st defendant's allegation that TG was financially dependent on Tey after he retired.[55]

(f) In 1986 (after TG had retired), TG lent $14,000 to one Vellachami Perumal Servai ("Vellachami") who signed an acknowledgment of debt.[56] Vellachami (who lived in India) did not give evidence. The plaintiffs produced the original copy of the document.

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53 Exhibit P2.

54 PB 30–48.

55 DB 81–95.

56 Exhibit P3.

The 1st plaintiff explained that he searched for and met up with Vellachami but he was not willing to come to Singapore to give evidence.[57] I accepted the 1st plaintiff's explanation and admitted the acknowledgment of debt as evidence pursuant to s 32(1)(*j*)(iii) of the Evidence Act 1893 (2020 Rev Ed).

(g) PW4 (an Indian national who got to know TG in 1993 when he came to work in Singapore) testified that TG lent him $3,000 in September 1993 and that he repaid it with some interest in October 1993.[58] It was put to PW4 that there was no supporting documentary evidence (to which PW4 agreed) but otherwise, PW4's evidence was not challenged.[59] The defendants submitted that PW4's evidence ought to be viewed with suspicion because he had good reason to keep the goodwill of the 1st plaintiff who was his village elder. I rejected the defendants' submission. The suggestion that PW4 was not truthful simply because the 1st plaintiff was his village elder was unsubstantiated.

(h) PW5 (an Indian national who got to know TG in 1987 when he came to work in Singapore) testified that he borrowed about $3,000 from TG in or around 1989 and repaid TG with some interest.[60] The defendants again submitted that PW5's evidence ought to be viewed with suspicion because the 1st plaintiff was his village elder. I rejected the defendants' unsubstantiated submission.

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57 NE, 14 November 2022, at 41:28–42:20.

58 Chinna Samy Subramaniam's AEIC, at paras 15–16; NE, 17 November 2022, at 29:3–9.

59 NE, 17 November 2022, at 28:28–29:11.

60 Mary Karnanithy's AEIC, at paras 3 and 10–11; NE, 17 November 2022, at 35:11–18.

57 The 1st defendants' response to the above evidence was to allege that the loan to Vellachami, the moneys that TG remitted to India, as well as the moneys deposited into his accounts all came from Tey.[61] The 1st defendant even claimed that "most if not all of the properties" bought by TG's sons in India were bought using funds remitted by TG through financial assistance provided by Tey.[62] When confronted with the fact that TG's Indian Bank passbook showed that TG still received funds after his retirement, the 1st defendant claimed that the monies came from Tey.[63]

58 There was no objective evidence in support of the 1st defendant's allegations. Her self-serving bare allegations were just her assumptions based on her unsubstantiated claim that she had seen Tey hand money to TG and the fact that TG had retired.[64] The 1st defendant accepted that she had no knowledge of the specific transactions.[65] In fact, she was not even in Singapore when the loan to Vellachami was given. The entries in TG's POSB passbook also included transactions that took place when she was not in Singapore. The 1st defendant was away from Singapore for further studies from 1985 to 1989, although she would return to Singapore twice a year during the summer and winter holidays.[66]

59 The 1st defendant did not produce any statements of Tey's bank accounts to substantiate her allegation that TG's moneys came from Tey. In

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61 1st defendant's AEIC, at paras 41, 48 and 114; NE, 17 November 2011, at 82:30–83:21, 86:7–10 and 86:20–31.

62 1st defendant's AEIC, at para 48.

63 NE, 17 November 2022, at 82:12–24.

64 NE, 17 November 2022, at 83:25–84:17, 86:11–17, 86:32–87:30.

65 NE, 17 November 2022, at 87:15–18.

66 NE, 17 November 2022, at 51:20–32.

particular, deposits in TG's POSB included cheque deposits and deposits in TG's Indian Bank accounts included Singapore Mail Transfers. If the cheque deposits and Singapore Mail Transfers had come from Tey's accounts, these should be reflected in Tey's accounts statements.

60 In any event, even if TG's financial position *after 1970*, and in particular, after his retirement, was less than healthy, that did not mean that he had no means to pay for his half-share in the Property *in 1970*.

61 On the contrary, there was no credible reason as to why TG's name was included as a tenant-in-common if he did not in fact pay for his half-share. The defendants contended that TG's name was included as a tenant-in-common to enable him to stand as Tey's surety when she sought future financing from banks.[67] There was no evidence of this apart from the 1st defendant's contention that this was what Tey had told her. In my view, this contention was both unlikely and illogical.

(a) The first bank loan taken by Tey was in 1975; the loan was secured by a mortgage over the Property. It was unlikely that in 1970, Tey was already making plans to not only take loans in future but to also use TG as surety. Tey's husband had just died in 1969 and she had to raise four young children who were aged between five and ten.

(b) More importantly, the contention that Tey made TG a co-owner of the Property so that he would be an acceptable surety to the bank was illogical. The Property itself was going to be used to secure the loan. It did not make sense that making TG a co-owner of the Property would make him more acceptable as a surety for the loan.

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67 D&CC, at para 8.4.

62 I found that the 1st defendant was not a credible witness. As can be seen from the discussions above, she had no hesitation in claiming as fact what was nothing more than her own speculation. She also had no hesitation in making baseless sweeping allegations. The 1st defendant's wild allegations did her credibility no favours.

63 In my judgment, there was not enough evidence for me to infer that TG could not have paid for his half-share in the Property in May 1970. I noted also that, as in Tey's case, he could also have done so with a loan.

The objective evidence showed that Tey did not pay the full purchase price

64 The objective evidence showed that Tey did not treat TG's half-share as hers. The inference to be drawn was that Tey did not pay the full purchase price of the Property.

The 1993 and 1995 POAs

65 Tey obtained the 1993 POA from the 1st and 2nd plaintiffs, Manickam and his wife (see [24] above).[68] The 1993 POA was drafted by Tey's lawyer. The recital in the 1993 POA stated that TG's beneficiaries were "desirous in having the Grant of Letters of Administration in order *to crystalize the assets and to realise the same*" (emphasis added). The stated purpose of the 1993 POA was to authorise Tey to apply for the Letters of Administration for TG's estate and to "effect any other application … to sell, transfer, mortgage, lease or to otherwise deal [with] any property whatsoever of [TG] … especially the property located at and known as No 24A Cuff Road". It was clear that the 1993

68 AB 9–15.

POA was targeted at TG's half-share in the Property. TG had no other significant asset in Singapore that that had to be realised or sold.

66 The 1995 POA was similar to the 1993 POA except that a description of Tey as TG's daughter and one of the beneficiaries of TG's estate in the 1993 POA was removed from the 1995 POA.[69] The 1995 POA was not signed but the fact remained that the 1995 POA again contemplated the sale of TG's half-share in the Property for the benefit of the beneficiaries of his estate, this time excluding Tey.

67 The 1993 and 1995 POAs showed that Tey did not treat TG's half-share as hers.

(a) First, the POAs clearly contemplated the sale of TG's half-share for the benefit of the beneficiaries of his estate.

(b) Second, if Tey had regarded TG's half-share as hers, her concern would have been to have TG's half-share transferred to her. The defendants' case was that the reason for the 1993 POA was for Tey to obtain the letters of administration for TG's estate and effect the transfer of TG's half-share to Tey.[70] I noted that the 1st defendant did not give any evidence to this effect. In any event, the defendants' case was contradicted by the 1993 and 1995 POAs, which stated expressly that TG's beneficiaries wanted the letters of administration to realise the Property. Both POAs were drafted by Tey's lawyer. It seemed to me that if Tey had informed her lawyer that TG's half-share was held on trust for her, or that the purpose of the POAs was for Tey to transfer TG's

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69 AB 16–24.

70 NE, 15 November 2022, at 41:11–15.

half-share to herself, her lawyer would have drafted the POAs differently. The language in both POAs was more consistent with the 1st and 2nd plaintiffs' evidence that Tey told them that she would sell the Property and repatriate half of the proceeds to them.[71]

The Will

68 Clause 6 of the Will stated as follows:[72]

> I GIVE [the 1st defendant] my *share* in the land and premises known as No. 24 Cuff Road, Singapore *and the lands and premises* known as No. 10 Veerasamy Road, Singapore and No. 4 Norris Road, Singapore for her absolute use and benefit and she will be responsible for settling the loans (if any) under all or any of the lands and premises mentioned under this clause.
>
> [emphasis added]

69 By 2002, when the Will was executed, 10 Veerasamy Road was wholly owned by Tey; 4 Norris Road was wholly owned by Tey from the time of its purchase. The description of Tey's interest in the Property as her "share" showed that Tey did not treat TG's half-share as hers. This was especially clear when contrasted with the description of her interests in 10 Veerasamy and 4 Norris Road.

70 The defendants argued that the half-share held by TG would pass to the 1st defendant pursuant to cl 7 of the Will under which Tey bequeathed the residuary assets to the 1st defendant.[73] In my view, this argument did not help the defendants. It did not explain why Tey referred to only her "share" in the Property in the Will. The Will was prepared by a lawyer. If Tey had regarded

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71 1st plaintiff's AEIC, at para 61; 2nd plaintiff's AEIC, at para 56.

72 AB 64–65.

73 AB 65.

TG's half-share as hers, there was no reason why she would not have informed her lawyer. If Tey had informed her lawyer that TG held his half-share on trust for her, there was no reason why the Will would not have dealt with this expressly, especially since there was express reference to 24 Cuff Road. In my judgment, the Will was strong objective evidence that Tey did not regard herself as the owner of TG's half-share in the Property and thus did not inform her lawyer that TG held his half-share on trust for her.

Conclusion on resulting trust

71 The burden was on the defendants to prove that Tey paid the full purchase price for the Property. The defendants sought to prove this by way of inference based on their allegations that Tey had the means to pay the full purchase price whilst TG did not have the means to pay for his half-share. The defendants did not prove both allegations. Even if it could be said that Tey had the means to pay the full purchase price, this in and of itself did not prove that she did so. The objective evidence showed that she did not pay the full purchase price.

72 The defendants therefore failed to prove that Tey paid the full purchase price. Accordingly, I dismissed the defendants' claim based on resulting trust.

Whether TG held his half-share in the Property on a common intention constructive trust

73 In *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048, the Court of Appeal explained a common intention constructive trust as follows (at [97]):

> … X acquires a beneficial interest in a property by way of a common intention constructive trust when he relies to his detriment on a common intention that the beneficial interest in the property is to be shared. Such a common intention may: (a) arise from an express discussion; or (b) take the form of an

> inferred common intention, as evidenced by direct financial contributions by X to the purchase price of the property; or (c) in exceptional situations, arise from other conduct by X which gives rise to an implied common intention. …

74 The court is ultimately concerned with identifying whether the parties shared a common intention as to the beneficial interest in the property; direct financial contributions to the purchase price are an important consideration but they are not the only basis upon which the court may infer such a common intention: *Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 at [34].

75 The defendants' pleaded case relied on the following to support the inference of a common intention that the beneficial interest in TG's half-share was to belong to Tey:[74]

(a) On 28 May 1970, Tey completed the purchase of the Property.

(b) Tey paid the full purchase price for the Property.

(c) Tey did not intend or evince any intention to give the half-share registered in TG's name to TG.

(d) Tey included TG's name as the registered owner of a half-share to enable TG to stand as her surety when she sought future financing from banks for the purposes of future investments by her.

(e) Tey operated a restaurant at the Property. TG was not involved in the restaurant business.

(f) TG did not reside at the Property at any time.

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74 D&CC, at para 8.

(g) Tey took up credit facilities with banks as "borrower" while TG stood as a surety pursuant to the 1975 Mortgage, the 1983 Mortgage and the 1984 Mortgage. Tey used the credit facilities in part to fund the purchase of further properties and Tey alone serviced the loan repayments.

(h) Tey leased out the Property in her own name, collected the rent, paid for the maintenance of the Property and paid the property tax.

(i) TG did not contribute towards the purchase price or maintenance of the Property.

(j) Tey retained possession of the original title deeds to the Property.

Tey completed the purchase of the Property on 28 May 1970

76 There was no evidence as to what happened during the completion of the purchase of the Property. The mere fact that the purchase was completed did not evidence any common intention that TG was to hold his half-share on trust for Tey.

Whether Tey paid the full purchase price

77 As discussed earlier, I found that the defendants had not proved that Tey did pay the full purchase price of the Property.

Whether Tey evinced an intention to give the half-share registered in TG's name to TG

78 The defendants' contention that Tey did not evince an intention to give the half-share registered in TG's name to TG assumed that Tey paid for TG's

half-share. As the defendants had failed to prove that Tey paid the full purchase price, this question was moot.

Whether TG was registered as owner of a half-share to enable him to stand at surety

79 The defendants contended that TG's name had to be included as a tenant-in-common to enable him to stand as Tey's surety when she sought future financing from banks.[75] This contention had more to do with the defendants' assertion that Tey paid the full purchase price. It was the defendants' attempt to explain why TG was registered as the owner of a half-share if he did not pay for his half-share. In any event, I rejected this contention; it was both unlikely and illogical (see [61] above).

Tey's operation of a restaurant at the Property

80 The defendants' pleaded case was that Tey operated a restaurant at the Property and that TG was not involved in the restaurant business.[76] These two facts were not disputed. However, in my view, these facts were neutral at best. Tey held a 50% share in the Property. The restaurant was on the ground floor. The plaintiffs' case was that TG occupied the second floor. The fact that Tey operated a restaurant on the ground floor did not evidence any common intention that TG was to hold his half-share on trust for Tey.

81 In any event, TG had stepped in to help Tey after her husband died. He adopted (albeit informally) Tey as his daughter and her children as his grandchildren. The fact that he had no issues with Tey operating the restaurant

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75 D&CC, at para 8.4.

76 D&CC, at para 8.5.

on the ground floor was hardly surprising. It was not enough to support an inference that he held his half-share on trust for Tey.

Whether TG lived at the Property

82 The defendants alleged that TG stayed with Tey and her family at 22 Veerasamy Road and did not reside at the Property *at any time*.[77] The plaintiffs contended that TG lived at both the Property and 22 Veerasamy Road.

83 TG did live at 22 Veerasamy at the time of his death. However, it was not disputed that in the final days of his life, TG was not well. The defendants' own case was that after TG's knee surgery sometime between 1987 and 1989, it was unlikely that he would have lived at the second floor of the Property because that would have required him to climb a flight of stairs.[78] In the circumstances, the fact that TG would have stayed with his adopted family at 22 Veerasamy in his later years was not surprising. This fact was not sufficient evidence that TG never stayed at the Property.

84 TG's wake was also held at 22 Veerasamy. It was not disputed that under Hindu tradition, a deceased person's wake would be held at his last place of residence.[79] However, the fact that TG's wake was held at 22 Veerasamy merely showed that 22 Veerasamy was TG's last place of residence at the time of his death. As discussed above, there was a reason why TG was staying at 22 Veerasamy at the time of his death. The holding of TG's wake at 22 Veerasamy did not mean that TG never stayed at the Property.

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77 D&CC, at para 8.6.

78 Defendants' Closing Submissions, at para 40.4.

79 NE, 15 November 2022, at 28:6–16.

85 The defendants also relied on the fact that TG's POSB passbook showed TG's address as 22 Veerasamy.[80] However, this fact had to be looked at in context. The passbook was issued on 18 April 1990, when it was likely that TG was staying at 22 Veerasamy. As stated earlier, the defendants' own case was that after TG's knee surgery sometime between 1987 and 1989, it was unlikely that he would have lived at the second floor of the Property (see [83] above). Further, I noted that in his Indian Bank passbook (which covered an earlier period between 1983 and 1986), TG's address was stated as 24A Cuff Road, *ie*, the second floor of the Property.[81] In my view, TG's address in his POSB passbook did not mean that TG never stayed at the Property. In fact, TG's address in his Indian Bank passbook supported the plaintiffs' claim that he did stay at the Property.

86 The plaintiffs' witnesses testified that TG did stay at the Property. PW3 (the 1st plaintiff's daughter) testified that she visited TG in 1987 and stayed with him at 24A Cuff Road and also with Tey at 22 Veerasamy.[82] In her oral testimony, she explained that she was at the Property only in the daytime as TG did not allow her to stay at night.[83] PW4 testified that TG stayed at the second floor of the Property and that TG had brought him there on a few occasions.[84] PW4 was able to describe the Property including the fact that there was a restaurant on the ground floor and that they had to walk up the stairs to the second floor.[85] PW5 also testified that TG stayed at the second floor of the

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80 DB 82.

81 PB 31.

82 Karunanithi Santhi's AEIC, at paras 6–7.

83 NE, 17 November 2022, at 7:29–30.

84 Chinna Samy Subramaniam's AEIC, at paras 9–10.

85 Chinna Samy Subramaniam's AEIC, at para 11; NE, 17 November 2022, at 28:8–9.

Property, and that he had gone there on a few occasions to borrow money from TG.[86]

87 I agreed with the plaintiffs that there would have been no reason for TG to bring PW4 and PW5 to the Property if he did not stay there at all. PW5 was in Singapore from 1987 to 1990 whilst PW4 came to Singapore in 1993. Even if TG was staying at 22 Veerasamy by then, that did not mean he had abandoned his residence at the Property or that he did not bring PW4 to the Property. There was no reason why he could not have continued to go to the second floor of Property as and when he wanted to. Even if it was more convenient for TG to stay at 22 Veerasamy after his knee surgery, that did not mean that he could not on occasion climb the stairs to go to the second floor of the Property.

88 It was not disputed that TG used 24A Cuff Road as his official registered address. There was no reason for him to have done so if he never stayed there at all.

89 In my view, the defendants failed to prove that TG did not stay at the Property at any time. I found that on balance, it was more likely than not that TG stayed at the Property and in his later years, at 22 Veerasamy.

90 In any event, even if TG did not stay at the Property, that did not prove that he therefore held his half-share on trust for Tey. After all, he was a close family friend and he had informally adopted Tey and her family after Tey's husband died in 1969. That would have been reason enough for him to have stayed at 22 Veerasamy.

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[86] Mary Karnanithy's AEIC, at paras 5–6.

TG was surety for Tey's bank loans

91 Tey took loans from Maybank, secured by mortgages over the Property and TG stood as surety (see [15], [18] and [22] above). In my view, the fact that TG stood as surety for Tey's loans was a neutral factor. It did not show that TG therefore held his half-share on trust for Tey. Given the close relationship between TG and Tey and her family, the fact that he was prepared to stand as surety for her did not mean that he therefore held his half-share on trust for Tey.

Whether Tey leased out the Property and collected rent, and paid for maintenance and paid the property tax

92 There was a period when Tey leased out the ground floor at the Property to a restaurant known as The Banana Leaf Apolo.[87] However, this was not inconsistent with TG's ownership of his half-share in the Property. This was no different from Tey's use of the ground floor for her own restaurant.

93 The defendants also contended that Tey rented out the second floor to workers at the restaurant, but there was no objective evidence. The defendants produced a lease agreement that Tey had entered into in 1990.[88] However, that agreement appeared to be in respect of the ground floor and cl 2(b) expressly provided that the premises were to be used solely for "restaurant purposes". The agreement did not mention the second floor and there was no evidence that it covered the second floor.

94 The defendants sought to rely on an AEIC filed by the 1st defendant's second brother, Kalaichelvan s/o Salaya ("Kalaichelvan"), in MC/MC 10881/2016. In that action, Kalaichelvan had sued the 1st defendant for rentals

87 1st defendant's AEIC, at para 99.

88 DB 15–26.

collected in respect of 22 Veerasamy. As stated at [21] above, 22 Veerasamy was registered Kalaichelvan's name. Paragraph 6 of Kalaichelvan's AEIC stated as follows:[89]

> The upper floor of No 22 was rented out. So were No 10 Veerasamy Road, No 4 Norris Road and No 24 Cuff Road. The rentals collected from these properties were used to provide for the expenses of [Tey] as well as my elder brother S Kalaimani and myself and our respective families. …

95 I placed little weight on the above statement in the AEIC. The AEIC was affirmed in 2016. It was not clear which period of time the above statement referred to or whether it included 24A Cuff Road. The focus in MC/MC 10881/2016 was on rentals collected in respect of 22 Veerasamy.

96 DW2 testified that during the period from 1975 to 1987, Kalaichelvan and he helped Tey to collect rentals from the properties that she owned, including the Property, and that they collected rentals from the second floor of the Property.[90] DW2 had known Kalaichelvan from school days. In 1993, he married Tey's niece (the 1st defendant's cousin).

97 The plaintiffs contended that TG lived on the second floor and rented out part of the second floor. PW3 testified that she had witnessed tenants paying rent to TG.[91] PW4 and PW5 testified that TG had tenants at the second floor of the Property and that the tenants paid rent to TG.[92] I saw no reason to disbelieve them. Their evidence was unshaken under cross-examination. I preferred their evidence over that of DW2, in view of DW2's relationship to the 1st defendant.

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89 DB 542.

90 V Rajandhran's AEIC, at para 18; NE, 22 November 2022, at 22:19–24:3.

91 Karunanithi Santhi's AEIC, at para 10; NE, 17 November 2022, at 10:4 and 17–19.

92 Chinna Samy Subramaniam's AEIC, at para 12; Mary Karnanithy's AEIC, at para 7.

98 In my judgment, the defendants failed to prove that Tey rented out the second floor and collected rental for herself during the period before TG died.

99 There was no evidence that TG contributed towards maintenance of the Property or property tax. However, there was also no evidence that Tey paid for the maintenance of the Property or property tax during the period before TG died.

Tey retained possession of the original title deeds

100 The defendants alleged that Tey retained possession of the original title deeds to the Property.[93] There was no evidence as to who kept the original title deeds from the time the Property was purchased in 1970 until the 1975 Mortgage in 1975. Thereafter, the title deeds were with the banks.

101 In her AEIC, the 1st defendant claimed that in 2001/2002, Tey informed her that in 2000 she "replaced the pledge for the Maybank loans" with the title deeds to 4 Norris and "in return, retrieved the title deeds for the Property".[94] There was no objective evidence to support this assertion. In my view, the assertion seemed questionable. 4 Norris was mortgaged to Maybank on 27 November 2000.[95] However, the three mortgages over the Property were discharged only on 21 October 2015,[96] *ie*, after Tey's death. It seemed unlikely that Tey could have had the title deeds to the Property in her possession since 2000.

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93 D&CC, at para 8.10.

94 1st defendant's AEIC, at para 81.

95 AB 139–151.

96 AB 69–70.

102 Nevertheless, even assuming that Tey did retain possession of the title deeds from 2000, that fact was a neutral factor. The Property was held in both Tey's and TG's names. The fact that Tey kept the title deeds was not as significant compared to if the Property had been registered in TG's sole name. More importantly, TG died in 1993 and thus could not have asked for possession of the title deeds in 2000 or later.

The defendants' further allegations

103 In her AEIC, the 1st defendant alleged that about four to five months before his death, TG had insisted "on numerous occasions, both in [her] presence and in the presence of others" that Tey took back the half-share registered in his name and transferred it to herself because he did not trust his sons to act honestly and do the right thing after his death.[97]

104 I rejected the 1st defendant's allegation. First, the allegation was being relied on to support an inference of a trust but it was not part of the defendants' pleaded case. Second, it was a self-serving bare allegation. The 1st defendant did not call any of the "others" who had allegedly been present. The 1st defendant did not even identify who these "others" were. Third, Tey was not a naïve woman. If TG had told her that he did not trust his sons to act honestly and do the right thing after his death, Tey would no doubt have taken immediate steps to transfer TG's half-share to herself, but she did no such thing. There is no evidence that she had even tried to do so. Fourth, the 1st defendant's allegation was contradicted by the 1993 and 1995 POAs and Will, which have been dealt with earlier (see [65]–[70] above).

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97 1st defendant's AEIC, at para 58.

105 In her AEIC, the 1st defendant also alleged that in 2018, she made a trip to India during which she visited the 1st and 2nd plaintiffs. According to the 1st defendant, they discussed the transfer of TG's half-share to Tey's estate, and the 1st and 2nd defendants agreed to do all things necessary to effect such transfer.[98]

106 I rejected the 1st defendant's allegation for the following reasons:

(a) One would have expected that, having allegedly obtained the 1st and 2nd plaintiffs' agreement to do the necessary, the 1st defendant would take steps to instruct her lawyers to prepare the necessary documentation. However, the 1st defendant admitted she did not do so.[99] The 1st defendant explained that she did not do so because she had no cause to doubt the 1st and 2nd plaintiffs and she therefore decided to keep the documentation in abeyance until after her dispute with her brothers had been concluded. I rejected the 1st defendant's explanations. Her claim that she had no reason to doubt the 1st and 2nd plaintiffs was utterly unbelievable. After all, according to the 1st defendant, TG had said in her presence that he did not trust his sons to "do the right thing after his death".[100] Further, TG's half-share had not been transferred despite the 1st and 2nd plaintiffs' alleged acknowledgment in 1993. I also noted that the 1st defendant's dispute with her brothers was concluded in September 2020; yet she took no steps to instruct her lawyers to prepare the necessary documentation.

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98 1st defendant's AEIC, at para 132.

99 1st defendant's AEIC, at para 134.

100 1st defendant's AEIC, at para 58.

(b) The 1st defendant had taken no steps to obtain a power of attorney from the beneficiaries of TG's estate to enable her to apply for letters of administration. She could not explain how she expected to transfer TG's share to herself without first obtaining the letters of administration, which she clearly knew would be needed.[101]

In my view, the 1st defendant's allegation, that the 1st and 2nd plaintiffs agreed in 2018 to transfer TG's half-share to Tey's estate, was a fabrication.

The objective evidence showed that there was no trust

107 In my view, the objective evidence clearly showed that there was no common intention that TG was to hold his half-share on trust for Tey.

The 1993 and 1995 POAs and the Will

108 The two POAs and the Will have been dealt with earlier (see [65]–[70] above).

109 The 1993 and 1995 POAs also contradicted the 1st defendant's claim that during TG's funeral in October 1993, the 1st and 2nd plaintiffs acknowledged that TG's half-share belonged to Tey.[102] If such an acknowledgment had been made, there would have been no reason for the two POAs to have been drafted in the way that they were. In fact, one would have expected the alleged acknowledgment to have been included in the recitals, but they were not.

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101 NE, 17 November 2022, at 122:12–123:12.

102 1st defendant's AEIC, at para 76.

Dispute between 1st defendant and her brothers

110 As stated in [33] above, the 1st defendant's brothers had claimed that Tey had executed a later will. In that dispute, the 1st defendant's brothers' position was that Tey only had a half-share in the Property.[103]

The defendants did not call the 1st defendant's brother as a witness

111 Of her three brothers, the 1st defendant's third brother was the sole living brother by the time of the trial. The defendants had initially indicated that he would be called as a witness and he was interviewed by the defendants' lawyers.[104] Ultimately, he was not called to give evidence for the defendants. He was clearly a relevant witness who could have testified to various matters, including whether TG lived on the second floor of the Property and why he took the position that Tey was only entitled to a half-share in the Property during his (and his brothers') dispute with the 1st defendant. I agreed with the plaintiffs that an adverse inference should be drawn against the defendants.

Re Estate of Tan Kow Quee

112 The defendants referred me to *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 ("*Tan Kow Quee*"). In that case, the dispute was over a property that had belonged to the deceased. The plaintiffs were two of the beneficiaries of the estate. The defendants were co-administrators of the estate. The 1st defendant (whose husband was another beneficiary of the estate) and her family had occupied the property without challenge for some 46 years. The plaintiffs sought a declaration that the property formed a part of the deceased's estate and an order that the property be sold, and the proceeds

103 AB 349–354.

104 NE, 17 November 2022, at 117:26–118:4.

distributed. The issue was whether the property still formed part of the estate. The High Court dismissed the claim.

113 The defendants submitted that it was readily apparent that *Tan Kow Quee* applied to the present case. The defendants relied on a statement by the High Court (at [10]) that the "utter lack of any steps having been taken by any of the beneficiaries to assert their claims for such a long period of time renders it highly improbable that these rights had not been settled".

114 In my view, the defendants' reliance on *Tan Kow Quee* was misplaced. The defendants did not quote the Court in context. The Court first referred to certain facts (at [9]) which included the fact that some distributions had taken place, but no steps appeared to have been asserted in respect of the property. The Court then said the following (at [10]):

> 10 In my judgment, the proper inference that is to be drawn from these facts is that the property had been taken into account in a consensual arrangement between all the children of the deceased. The utter lack of any steps having been taken by any of the beneficiaries to assert their claims for such a long period of time renders it highly improbable that these rights had not been settled. …

115 Having inferred that the property had been taken into account in a consensual arrangement between the beneficiaries, the Court then found that the lack of any steps having been taken rendered it highly improbable that the rights over the property had not been settled in that arrangement.

116 The factual matrix in the present case was very different. There was no reason or basis to infer that there was any sort of consensual arrangement between the TG's estate and Tey (who died in 2015) or Tey's estate regarding TG's half-share in the Property. On the contrary, the evidence did not support any such inference. The 1993 and 1995 POAs, the revocation of the 1993 POA

in 1996 and the Will showed that there could not have been any such consensual arrangement which might have resolved the question of the beneficial ownership of TG's half-share. Indeed, there was no objective evidence of any claim of a trust over TG's half-share that might have led to some sort of a consensual arrangement regarding the same, before 27 July 2021.[105]

Conclusion on common intention constructive trust

117 In my judgment, the defendants failed to prove that TG and Tey shared a common intention that TG was to hold his half-share in the Property on trust for Tey.

Whether the defendants' counterclaim was barred by laches and/or acquiescence

118 As I had found that the defendants failed to prove that TG held his half-share in the Property on a resulting trust or a common intention constructive trust for Tey, it was unnecessary for me to consider whether the defendants' counterclaim was barred by laches and/or acquiescence.

Whether the plaintiffs' claim was barred by acquiescence

119 Acquiescence is premised not on delay, but on the fact that the plaintiff has, by standing by and doing nothing, made certain representations to the defendant in circumstances to found an estoppel, waiver, or abandonment of rights: *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 at [114].

120 Acquiescence can be established where (a) a person abstains from interfering while a violation of his legal rights is in progress, or (b) he refrains

105 AB 166–167.

from seeking redress when a violation of his rights, which he did not know about at the time, is brought to his notice: *Kok Wee Meng v Trans Eurokars Pte Ltd* [2014] 3 SLR 663 at [120].

121 The defendants' pleaded case on acquiescence was based on (a) the plaintiffs' delay in bringing the present action, (b) the allegation that the plaintiffs caused or permitted the defendants to believe that the plaintiffs did not intend to make any claim in these proceedings, and (c) the alleged acknowledgment by the 1st and 2nd plaintiffs and Manickam during TG's funeral that TG's half-share was beneficially owned by Tey.[106]

122 Although the defendants' pleaded case referred to the 1st and 2nd plaintiffs and Manickam having acknowledged the trust over TG's half-share, the 1st defendant's evidence alleged that only the 1st and 2nd plaintiffs made the acknowledgment.[107] In any event, the 1st defendant's claim that the 1st and 2nd plaintiffs acknowledged the trust over TG's half-share during TG's funeral was clearly contradicted by the 1993 and 1995 POAs (see [109] above).

123 I rejected the defence of acquiescence. It was not at all clear what the defendants' case on acquiescence was, what were the legal rights that had been violated that the alleged acquiescence related to, or how the alleged acquiescence displaced the presumption of indefeasibility of title.

124 I also noted that the defendants were throwing stones in a glass house. They too had delayed taking action on their claim until after the plaintiffs had filed their claim. Given that the half-share in the Property was registered in TG's

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106 D&CC, at para 31.

107 1st defendant's AEIC, at para 76.

name and it was the defendants who were trying to defeat that registered title, the defendants' delay was more significant and blameworthy.

Whether the plaintiffs' claim for an account was barred by laches

125 The plaintiffs sought an account by the defendants of all rentals received by reason of the defendants' lease(s) of the Property after TG's death in 1993. The defendants relied on the defence of laches.

126 The two factors to consider with respect to laches are: (a) delay, and (b) the existence of circumstances that make it inequitable to enforce the claim; the basis for the defence is ultimately found in unconscionability: *Tan Kow Quee* at [33].

127 In my view, the plaintiffs were barred by laches from pursuing their claim for an account of the rentals received by the defendants. The plaintiffs refused to sign the 1995 POA and the 1993 POA was revoked in 1996. It would have been clear by then that Tey could not proceed to obtain the letters of administration in respect of TG's estate and that consequently the Property would not be sold. Yet, the plaintiffs did nothing with regards to the rental of 24A Cuff Road, until after 2018. It was inequitable to require the defendants to now account for rentals received since 1993.

Relief

128 As the defendants failed to prove the alleged trusts, I dismissed the defendants' counterclaim. Consequently, TG's half-share in the Property remained a part of his estate.

129 The plaintiffs sought an order to sell the Property. The defendants asked for partition instead of sale. The defendants submitted that the Property could be partitioned horizontally between the two floors. It was not disputed that the burden was on the defendants to show that partition was feasible and more appropriate.

130 I agreed with the plaintiffs that partition without subdivision was not feasible. The relationship between the plaintiffs and the defendants had deteriorated. It would be difficult for the parties to work together on matters relating to the Property. More importantly, the plaintiffs live in India and preferred to realise the value of TG's half-share whereas the defendants made it clear that they wanted to keep the Property. It would be difficult for the plaintiffs to sell TG's half-share without subdivision.

131 The plaintiffs submitted that the subdivision would be difficult and perhaps even unlikely. Under the URA Conservation Guidelines issued under s 11 of the Planning Act 1998 (2020 Rev Ed), URA would not permit strata subdivision of shophouses in the Historic Districts of Singapore.[108] URA Circular No URA/PB/2004/37-CUDD dated 6 December 2004 states that strata subdivision is currently not allowed for traditional conservation shophouses within Little India.[109] The Property is a shophouse in the Little India Historic District. The defendants failed to show that subdivision was possible.

132 I therefore ordered that the Property be sold in the open market and the net proceeds be distributed equally between TG's estate and Tey's estate. For the purposes of the sale:

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108 AB 389.

109 Plaintiffs' 2nd Bundle of Authorities, at p 101.

(a) The plaintiffs were to obtain a valuation of the Property by a licensed valuer within 8 weeks. The cost of the valuation report was to be borne equally between the plaintiffs and the defendants.

(b) The plaintiffs were to send a copy of the valuation report to the defendants' solicitors within 3 days after receipt of the same.

(c) The defendants would have first option ("Option") to purchase TG's half-share in the Property based on the value of the Property in the valuation report. This Option was to expire 14 days after a copy of the valuation report was received by the defendants' solicitors.

(d) If the Option expired, the Property was to be sold in the open market at a price no lower than the valuation, by a licensed agent appointed by the plaintiffs. The sale was to take place within 6 months from the expiry of the Option. The plaintiffs would have control of the sale process.

(e) The parties were to cooperate and do all things reasonably necessary to facilitate the sale of the Property. If any party failed or refused to sign the necessary documents to effect the sale within 14 days after receipt of the same, the Registrar of the Supreme Court was empowered to sign on behalf of such party.

(f) The above timelines could be extended by the parties' mutual consent or by the court.

(g) The parties had liberty to apply.

133 I dismissed the plaintiffs' claim for an account and inquiry of rental proceeds received by the defendants after TG's death.

Costs

134 On 6 June 2022, the plaintiffs made a settlement offer to the defendants. The offer was not an offer to settle ("OTS") under O 22A of the Rules of Court (2014 Rev Ed). The plaintiffs' offer was on terms that (a) the Property be sold and the plaintiffs would receive 50% of the proceeds less $50,000, (b) the costs of valuation would be borne by the parties equally, (c) the plaintiffs would forgo their claim for an account of rentals. The defendants did not respond to the offer. Although this offer was not an OTS, it was nevertheless still a relevant factor on the question of costs.

135 On 28 October 2022, the plaintiffs made an offer to settle pursuant to O 22A in similar terms to the previous offer but with a $100,000 haircut instead of $50,000. The defendants did not accept the OTS.

136 Both the 6 June 2022 offer and the 28 October 2022 OTS offered terms that were more advantageous to the defendants than my decision in this case. Accordingly, I ordered the defendants to pay costs on standard basis up to 6 June 2022 and on indemnity basis thereafter. I fixed the total costs at $130,000 plus disbursements to be fixed by me if not agreed.

Conclusion

137 For the above reasons, I dismissed the defendants' counterclaim and ordered the Property to be sold and the net proceeds distributed equally between TG's estate and Tey's estate. I gave directions for the conduct of the sale, including an option to the defendants to purchase TG's half-share in the Property.

138 I dismissed the plaintiffs' claim for an account of rentals received by the defendants since TG's death.

139 As for costs, I ordered the defendants to pay costs to the plaintiffs fixed at $130,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Joshua Chow Shao Wei and Mohamed Baiross (I.R.B. Law LLP) for the plaintiffs and defendants in counterclaim;
Subramaniam Pillai, Joel Wee Tze Sing, Tan Guo Chin, Darren and Tan Jin Yi (CNPLaw LLP) for the defendants and plaintiffs in counterclaim.