

Tan Huat Soon v Lee Mee Leng
[2009] SGHC 199

Case Number : OS 683/2008
Decision Date : 01 September 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Anthony Lim Heng Yong (Anthony & Wee Jin) for the plaintiff; Mirchandani Poonam Lachman (Mirchandani & Partners) for the defendant
Parties : Tan Huat Soon — Lee Mee Leng

Land – Caveats

1 September 2009

Choo Han Teck J:

1 The plaintiff was the sole registered owner of a property known as 47 Hume Avenue #06-02, Parc Palais, Singapore 598748 ("the Property"). He claimed that he purchased it in 1997 when he was already having "marital problems" with his wife, the defendant. He stated that they had separated in 1994. He deposed that he purchased the Property "solely for [his] own purpose to achieve peace and quiet". The marriage was indeed not harmonious and on 7 March 2006 the defendant obtained a decree nisi for judicial separation and she lodged a caveat against the Property on 11 July 2007. The parties were divorced on 10 July 2009.

2 The parties have three children to the marriage aged 16, 19 and above 21 respectively, and they live with the defendant in 24 Fernwood Terrace #16-02, Singapore 458854. There is no dispute that the Property was part of matrimonial assets. The plaintiff applied through this Originating Summons, to set aside the caveat lodged by the defendant on the ground that the defendant had no equitable interest to support the caveat.

3 Counsel for the plaintiff, submitted that the defendant had no interest in the Property sufficient to lodge a caveat since her claim was based solely on the ground that the Property was part of matrimonial assets. Counsel relied on *Lim Kaling v Hangchi Valerie* [2003] 2 SLR 377 ("*Lim Kaling*") which in turn, relied on an unreported decision of the High Court in *Chai Mei Leng v Cheng William* (No 2) [1998] SGHC 381 ("*Chai Mei Leng*") in which the court expressed the view that a spouse was entitled to lodge a caveat against a matrimonial property if he or she had obtained a decree nisi, and thus impliedly holding that a spouse without an order for decree nisi does not have an interest in the property.

4 The court in *Lim Kaling* found support for its wider ruling from the Australian decision in *Hayes v O'Sullivan* (2001) 27 Fam LR 462, 466, where the court held, and S Rajendran J in *Lim Kaling* quoted:

There is clear authority for the proposition that the mere possibility of a court exercising jurisdiction to make an order for the settlement of matrimonial property is not an estate or interest in land necessary to support a caveat.

S Rajendran J also found the further comment by the court in *Hayes* compelling, namely, that the relief open to the party in fear of dissipation of matrimonial assets, is the injunctive relief – not

preservation by means of a caveat. The learned judge went a little ahead of *Chai Mei Leng* and held that even if a decree nisi had been obtained the court might not necessarily grant the petitioning spouse a share of the caveated property. However, the decision in *Lim Kaling* was not followed in *Eu Yee Kai Alexander Junior (alias Eu Sandy) v Hanson Ingrid Christina* [2004] 4 SLR 586. In that case, Lai J was of the view that the power of the court to divide matrimonial property under s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) sufficiently created an interest sufficient to support a caveat.

5 I agree with the views expressed by Lai J. I am of the opinion that so long as a marriage is in subsistence all matrimonial assets belong to both spouses and, thus conceptually, one would not need to lodge a caveat against his own property. However, when a decree nisi has been obtained, there will be two claimants to the same property and, while the party in whose name the property is registered has no need to lodge a caveat (because it is ostensibly his - or hers), legitimate claims may be made of what was once joint property. Each party to the marriage may attempt to deny the other a share in the matrimonial assets. The spouse who is not a registered co-owner will thus, by virtue of her entitlement to claim a share, have an equitable interest in the property. A purely injunctive relief may not sufficiently protect that spouse's interests because she might have no recourse against a bona fide purchaser without notice. I therefore dismissed the plaintiff's application and awarded costs fixed at \$5,000 to the defendant.

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