Tan Cheng Guan *v* Tan Hwee Lee
[2011] SGHC 216

Case Number : Divorce (T) No 1658 of 2008/C

Decision Date : 26 September 2011

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Bernice Loo Ming Nee and Magdalene Sim (Allen & Gledhill LLP) for the plaintiff; Irving Choh and Stephanie Looi Min Yi (RHT Law LLP) for the defendant.

Parties : Tan Cheng Guan — Tan Hwee Lee

Family Law – matrimonial assets – division – Whether inter-spousal gift is a matrimonial asset

Family Law – maintenance – wife – child

Family Law – custody

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 135 and 136 of 2011, and Summons No 266 of 2012 were by the Court of Appeal on 30 August 2012. See [2012] SGCA 50.]

26 September 2011 Judgment reserved

Choo Han Teck J:

1 The plaintiff (husband) is a 55 year old Executive Vice-President at Sembcorp Industries Ltd and the defendant (wife) is 52 years old. She is a housewife. The parties married on 9 October 1982 and have two daughters, aged 23 and 21 years respectively. The children are pursuing their tertiary education in the United States. A decree nisi was granted on 6 May 2010. During the 28 year marriage, the husband was the sole breadwinner while the wife looked after the household and their children.

2 The parties own three properties: 32 Seletar Hills Drive Singapore 807047 ("32 SHD"), 34 Seletar Hills Drive Singapore 807049 ("34 SHD") and 36E La Salle Street Singapore 454936. 32 SHD was the matrimonial home from 1981 to 1999, but from 1999 onwards, the parties resided at 34 SHD. When their relationship deteriorated, the wife claimed the husband gave her 32 SHD to persuade her not to end the marriage. It is this property which raises the issue of whether an inter-spousal gift forms part of the pool of assets liable for division. The parties' claims are widely divergent. The husband wants 80% of 32 SHD, 90% of all the other assets and reimbursement for various items of expenditure. The wife has asked, *inter alia*, for the whole of 32 SHD, 80% of 34 SHD, 35% of the husband's other assets and for her to retain the assets in her name. I shall deal first with 32 SHD. The wife has claimed that 32 SHD was a gift from the husband. Relying on the High Court decision in *Wan Lai Cheng v Quek Seok Kee* [2011] SGHC 9 ("*Wan Lai Cheng*"), her counsel submitted that 32 SHD should not form part of the matrimonial pool. By contrast, the husband asserted that 32 SHD is the matrimonial home and remained a matrimonial asset. He further submitted that his transfer of 90% share of 32 SHD to the wife was not an effective gift. In the alternative, even if it was a gift, it was still part of the matrimonial pool.

3 Section 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC") defines a matrimonial

asset as:

> **Power of court to order division of matrimonial assets**
>
> 112. —(1)…
>
> …
>
> (10) In this section, "matrimonial asset" means —
>
> (a) any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

Generally, the process of dividing matrimonial assets has three stages: first, the pooling of the assets and the ascertainment of the value of the pool; second, deciding the "fair and equitable" division between the parties; and finally, making the actual division. In *Wan Lai Cheng*, the court took the view that inter-spousal gifts are not part of the matrimonial pool to be valued at the first stage. The wife also relied on *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 ("*Wong Ser Wan*") where the court explained why it did not consider the inter-spousal gift as part of the matrimonial pool at [75]:

> … Here, the gifts made to the wife under the financial arrangement were made for the specific purpose of inducing the wife to act in a certain way. She did so. I think that it would be inequitable to allow the husband to retract these gifts now even though his financial circumstances may have changed for the worse…

I am, however, of the view that an inter-spousal gift, acquired by the donor other than as a gift or inheritance from a third party, remains a matrimonial asset. Although this may appear contrary to the intuitive notion that a gift is irrevocable, the concept of gift remains valid, but applies only at the third stage, when the Court decides how to give effect to the percentage division it has ordered, and not earlier. Giving effect to the gift at the third stage reconciles the law on matrimonial assets and the law of property on gifts. The Court should not exclude the inter-spousal gift from the matrimonial pool at the first stage because the qualifying words of s 112(10) only attaches to assets that were never part of the matrimonial pool to begin with. It does not apply to gifts which were purchased with a pre-existing matrimonial asset, such as a spouse's salary. In the latter situation, only the identity of the asset changes. It does not lose its nature as a matrimonial asset. At the same time, considering the gift at the third stage enables the Court to give effect to the irrevocability of the inter-spousal gift. The most common way would be for the Court to order that the gift forms part of the percentage share awarded to the party. Two examples would be helpful to make my point clear:

(a) At the first stage, the Court assesses the matrimonial assets to be worth $10m. Of this, $1m was used by the husband to buy jewellery for the wife. The court decides at the second stage to divide the matrimonial assets 60:40 between husband and wife. At the third stage, the court may order that the $4m the wife will receive will include the jewellery.

(b) At the first stage, the Court assesses the matrimonial assets to be worth $10m. There is a house worth $6m. Not the matrimonial home, the husband gives it to the wife. The court decides at the second stage to divide the matrimonial assets 60:40 between the husband and wife. At the third stage, the Court may order the house be given to the wife but that she will have to pay $2m to the husband.

4 Giving effect to the gift at the third stage acknowledges that some assets are valued for non-pecuniary reasons. It will be consistent with the reasoning in *Wong Ser Wan* that in some situations it would be inequitable or unconscionable for the gift to be taken back from the recipient. It also accords with the dicta in *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 at [11] ("*Tianzon*"), per L P Thean JA:

> ... Where a gift is made, the donor normally has no intention to claim any interest or share in it and his intention is that the recipient should take the gift absolutely – that clearly must be his intention, at any rate, at the time of the gift. The position should be no different in the case of gifts between spouses.

In *Wan Lai Cheng* at [24], the court held that an inter-spousal gift was not a matrimonial asset on a literal reading of s 112(10) WC:

> If an inter-spousal gift is not regarded as a gift, then it falls outside the exemption under s 112(10), and it is a matrimonial asset. But when it is regarded as a gift, then it comes under the exemption and it is not be to included as a matrimonial asset.

There are three reasons why I disagree with that view. The first is on principle and was articulated in *Tianzon* at [12]:

> … the starting point is whether the subject matter of the gift is property originally acquired during the marriage through the sole effort of the donor or the joint efforts of the donor and his or her spouse... The spouse who made the gift would have no doubt expended moneys in acquiring it. The fact that the gift was contemporaneously or immediately thereafter or later transferred to the other spouse does not affect the original acquisition of the gift. Such a gift was nonetheless acquired by the donor and not the recipient, and if it was acquired during the marriage it would fall within the class of assets covered by s 106. However, where the subject matter of the gift is itself a gift from a third party, for instance from a parent of the donor, then the gift is not property acquired by the donor by any effort on his part and it follows that that property would not fall within s 106.

The point is that a matrimonial asset acquired by the donor, not by way of gift or inheritance from a third party, remains part of the matrimonial pool even when it is given by one spouse to another. A transfer of this nature changes the legal ownership of the asset or the identity of the asset. The nature of the inter-spousal gift however, as a matrimonial asset, is not affected. To hold otherwise runs contrary to the concept of joint property in marriage. In Wan Lai Cheng, the court did not say whether the inter-spousal gift was acquired by the donor husband by his efforts or, as a gift or

inheritance from a third party. If it was the latter, that sufficiently distinguishes Wan Lai Cheng from the present case.

5 Second, the court in *Wan Lai Cheng* [29] rejected the argument that s 112(10) WC makes a distinction between third party and inter-spousal gifts. He noted that two proposed amendments to the predecessor to s 112(10) WC explicitly made provision for inter-spousal gifts. They were not incorporated into the present s 112(10) WC and thus the court regarded this as evidence of Parliament's intention not to distinguish between third party gifts and inter-spousal gifts. However, this is not necessarily the case. It could also indicate that Parliament thought that amendments were unnecessary because the distinction was clear. Indeed, I am of the view that this was the more likely situation. The High Court in *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 held that the qualifying words applied to both paragraphs (a) and (b) of s 112(10). This means that whether an inter-spousal gift is a matrimonial asset depends on how the inter-spousal gift was acquired by the donor. A third party gift or inheritance, received by the donor prior to and during the marriage, and which the donor then gives to his spouse, is not a matrimonial asset. In contrast, inter-spousal gifts that were acquired by the donor using matrimonial assets are not matrimonial assets. Such a distinction eases the competing tension between giving effect to the intention of the donor and the need to prevent a spouse from enjoying an unmerited windfall.

6 Third, regarding an inter-spousal gift as a matrimonial asset provides better justification as to why the courts take it into consideration at the second stage. Even though the court in *Wan Lai Cheng* did not regard inter-spousal gifts as a matrimonial asset, it noted that at [30]:

> … the shares are not subject to division as matrimonial assets. This does not, however, mean that the plaintiff will have the advantage of keeping the shares for herself, without this being taken into account in the division of the matrimonial assets.

The judge's reasoning was that under s 112(2)(h) WC, the Court has to consider "the matters referred to in s 114(1) WC so far as they are relevant" and that one of the factors, as stated in s 114(1)(a) WC is:

> The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future.

That approach is not possible in a case where the parties are litigating only on the division of matrimonial assets, without maintenance being an issue. The conceptually simpler reason why the Court should consider inter-spousal gifts at the second stage is that they are matrimonial assets. I hasten to add that though my reasoning differs from that in *Wan Lai Cheng*, the practical outcome in most cases will likely be the same.

7 I find that 34 SHD, not 32 SHD, is the matrimonial home because the parties had lived in it from 1999. In addition, I find that the husband had made an effective gift of 32 SHD to the wife. Nonetheless, for the reasons I have articulated above, it is still part of the matrimonial pool. Following the parties' submissions, I value their assets to be worth S$6,794,973.09. This comprises the following:

(a) 32 SHD, which has a net value of S$2,488,622.47 (Estimated market value of S$2.6m minus an outstanding loan of S$111,377.53)

(b) 34 SHD, which has a net value of S$2,121,980.71 (Estimated market value of S$3.15m minus an outstanding loan of S$1,028,019.29)

(c) 36E La Salle Street Singapore 454936, which has a net value of S$800,000 (Estimated market value of S$2.4m minus an outstanding loan of S$1.6m)

(d) The husband's bank accounts which have S$285,249.97

(e) The husband's CPF accounts which have S$126,173.69

(f) The husband's insurance policies worth S$58, 850

(g) The husband's shares worth S$607,812.50

(h) The husband's car which has a net value of S$666 (Estimated market value of S$80,000 minus outstanding amount on the hire purchase agreement of S$79,334)

(i) The husband's club memberships worth S$26,400

(j) The wife's bank accounts which have S$185,791.40

(k) The wife's CPF accounts which have S$24,790.40

(l) The wife's insurance policy worth S$22,393.95

(m) The wife's shares worth S$46,242

8 The parties' contributions to the family were different. The husband was the breadwinner. The wife attended to the household and the children. A 50:50 division of the matrimonial pool in such circumstances would be just and equitable. Since the husband had given 32 SHD to the wife, it would be inequitable for it to be taken back from her. Therefore, I award the property to her. In addition, I order that she be given the following:

(a) the assets in her name, valued at S$279,217.75;

(b) the husband's Seletar Club membership, valued at S$21,400, and which is frequently used by the wife and children; and

(c) cash of S$608,246.325.

9 The husband proposed to pay S$4,000 monthly to the wife for her and the younger daughter's maintenance. He also agreed to pay for the latter's school fees and related education expenses. The wife submitted she was entitled to lump sum maintenance of S$1.24m (S$8,645.56 X 12 months X 12 years – assuming husband retires at 65). In the alternative, she wanted maintenance of S$8,645.56 a month (PS29). The wife also claimed S$6,000 a month for her younger daughter in addition to her school fees and expenses, until the latter has graduated from university. The wife applied on 31 July 2009 for maintenance in Summons No 12682 of 2009/R, claiming for S$13,500 monthly for herself and their children, and the latter's school fees and related educational expenses. After hearing the application, DJ Sowaran Singh ordered that the husband pay the wife S$6,000 a month for herself and the two children. He also ordered the husband to continue paying for the children's school fees and education related expenses. I have not been persuaded as to why the quantum awarded by DJ Singh should be varied other than to take into account the fact that the older daughter is now above 21 years of age. Consequently, I order that the wife should be given S$2,000 a month. This shall be given as a lump sum of S$288,000 (S$2,000 X 12 months X 12 years). I also order that the husband pay the younger daughter S$2,000 a month directly, as well as her education expenses and fees, until she graduates from university. She is old enough to manage her own expenses and thus her monthly maintenance can go directly to her.

10 The older daughter is already above 21 years of age so the issue of custody does not arise. The younger daughter will turn 21 years in October 2011. Both parties agree that they should have joint custody of her, with care and control to the wife, and reasonable access to the husband until the younger daughter attains 21 years of age. I make an order in such terms.