IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 173

Originating Summons No 148 of 2016

Between

Krishnamal d/o Rajoo

… Plaintiff

And

Sucila d/o Rajoo

… Defendant

GROUNDS OF DECISION

[Land] — [Sale of land] — [Sale under court order]

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v
Sucila d/o Rajoo

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High Court — Originating Summons No 148 of 2016
Kannan Ramesh J
21, 29 June 2016, 18 April 2017; 2, 24 May 2017

20 July 2017

Kannan Ramesh J:

Introduction

1 This dispute concerned two sisters and a property which they had purchased. The property is at Block 704 West Coast Road, #09-415, Singapore 120704 ("the Property"). It is registered in the joint names of the plaintiff and the defendant. The plaintiff asserted that she jointly owned the Property with the defendant. The defendant, while accepting that the Property was purchased jointly with the plaintiff, asserted that the plaintiff had agreed to divest her interest in the Property to the defendant for consideration, which the plaintiff had received from the defendant. Accordingly, the defendant asserted that the plaintiff no longer had any interest in the Property.

2 The plaintiff sought the sale of the Property and an equal share of the net sale proceeds under s 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") read with para 2 of the First Schedule to the SCJA. On 24 May 2017, I granted her application and delivered oral grounds. The defendant now appeals against my decision. These are the full grounds of my decision.

Background

3 In early 1999, the defendant and her first husband sold a flat in Dover Road ("the Dover Road flat") in which they were living. This prompted the search for a new home. The Property was identified thereafter, and the defendant and her first husband agreed to purchase the Property. An application to purchase was filed with the Housing and Development Board ("the HDB") on 15 April 1999, and a deposit was paid. Sadly, the defendant's first husband passed away on 24 May 1999 before the purchase of the Property. The sale of the Dover Road flat was completed sometime in May 1999 but the defendant appears to have been allowed to remain at the Dover Road flat until June 1999 to deal with the last rites for her late husband.

4 The defendant moved out of the Dover Road flat to live with the plaintiff and the plaintiff's daughter and son-in-law, one Morgan s/o V Suppiah ("Morgan"). She then received the proceeds of the sale of the Dover Road flat, which amounted to $185,000. According to the defendant, the proceeds of sale were initially deposited into her POSB Bank account and subsequently deposited into a joint account with the Overseas-Chinese Banking Corporation Bank ("the OCBC Account"), which she had allegedly opened with Morgan. The OCBC Account was of significance in this matter.

5 At the material time, the defendant was a Singapore permanent resident

("PR"). Therefore, under the prevailing eligibility requirements of the HDB, she was unable to purchase a HDB flat in her sole name. The passing of her first husband therefore left her in a quandary because she could not purchase the Property by herself. As the plaintiff was a Singapore citizen and her sister, the defendant approached her and suggested that they purchase the Property jointly. The parties thereafter agreed that they would purchase the Property. It was also agreed that both parties would use their Central Provident Fund ("CPF") funds to pay for the Property. The defendant testified that the plaintiff had suggested that both parties use their respective CPF funds for this purpose.

6 On 1 September 1999, the parties went to the HDB, signed the relevant papers and purchased the Property. The following facts in relation to the purchase of the Property were undisputed:

(a) the purchase price was $138,000;

(b) the plaintiff contributed $49,710 from her CPF account ("the plaintiff's contribution") to the purchase price (as at 20 August 2015, the principal and the accrued interest amounted to $73,653.64);

(c) the parties took a loan of $29,000 from the HDB to fund the purchase, and the defendant paid the monthly instalment of $131; and

(d) the defendant paid the balance of the purchase price of some $59,290 (using monies from her CPF account).

7 At the time that the Property was purchased, the plaintiff was 51 years old and had retired. She was living with her daughter and Morgan, and was taking care of her grandchildren.

8 After the purchase of the Property, the defendant stayed in the flat and paid most of the monthly conservancy charges. The defendant subsequently married Dayalan s/o Kumarasamy ("Dayalan"), who was registered as an authorised occupier of the Property. This appears to have been done without the plaintiff's knowledge or consent. The Property is presently occupied by the defendant and Dayalan. The plaintiff has never stayed in the Property.

9 The estimated present value of the Property was $380,000.

Procedural history

10 The defendant asserted that this was a matter that ought not to have been commenced by originating summons. The plaintiff, on the other hand, submitted that there were clearly identifiable issues of facts which made it appropriate for this matter to stand as an originating summons with cross-examination directed on those issues. After hearing parties, it was quite apparent that there were in substance two key areas of factual disagreement. First, what the parties had agreed regarding the plaintiff's interest in the Property. Secondly, whether the defendant had repaid the plaintiff's contribution. I therefore directed that the action be fixed for a one-day hearing with cross-examination of the plaintiff, the defendant, and Morgan. I also directed parties to frame the factual issues for the purpose of cross-examination.

The parties' cases

11 The plaintiff's case was that the defendant had requested her to participate in the purchase of the Property because the latter could not meet the HDB eligibility requirements to buy the Property in her sole name (see [5] above). The plaintiff agreed to purchase the Property with her sister, and to make the plaintiff's contribution, on the basis that they would be joint owners

of the Property. The parties also agreed that, while the defendant would occupy the Property, the plaintiff, who was living with her daughter, Morgan and her grandchildren (see [7] above), would be entitled to rent out one room in the Property and keep the rental proceeds to defray her expenses. The plaintiff would also be entitled to a half share in the sale proceeds of the Property when it was sold.

12 The defendant's case was that the plaintiff had no share in the Property. The principal plank of her case was that after the Property had been purchased, the parties agreed that the defendant would repay $50,000 to the plaintiff, upon which payment the latter would no longer have an interest in the Property ("the Agreement"). Accordingly, the defendant repaid the plaintiff. Such repayment, as agreed, was in the form of a cash payment of $36,000 to Morgan, and a set-off against a loan of $16,000 that the defendant had extended to the plaintiff. The defendant also averred that the parties had never intended that the plaintiff would become a joint owner.

13 The plaintiff denied that the parties had entered into the Agreement. She also denied that the defendant had repaid the plaintiff's contribution to her.

Issues to be determined

14 The parties were joined over three issues:

(a) First, what was the original basis on which the parties purchased the Property – did they agree that the plaintiff would receive a half share in the Property (when sold), or that her interest would be limited to the plaintiff's contribution?

(b) Secondly, did the parties enter into the Agreement?

(c) Thirdly, did the defendant repay the plaintiff's contribution to the plaintiff (pursuant to the Agreement)?

I shall refer to these issues as "the Original Basis Issue", "the Agreement Issue", and the "Repayment Issue" respectively.

The Original Basis Issue

The Parties' Submissions

15 The plaintiff submitted that the parties had purchased the Property on the basis that she would have a half share of the Property (when it was sold). The plaintiff relied on her consistent evidence in this regard, and the fact that both parties had contributed to the purchase price using their CPF funds.

16 The defendant submitted that the parties did not agree that the plaintiff would have a half share in the Property (when it was sold) because, after the Property was purchased, the plaintiff did not behave like a joint owner:

(a) First, apart from two alleged payments for renovation expenses and three alleged payments for conservancy charges, she did not make any payments for the Property after it was purchased.

(b) Secondly, the plaintiff had little or no control over the Property.

(c) Thirdly, the plaintiff had never resided at the flat even though she had become homeless after May 2015.

(d) Fourthly, the plaintiff had made only a single attempt to rent out a room in the Property in the 17 years since the Property was purchased.

My Decision

17 I found that the parties had purchased the Property on the agreed basis that the plaintiff would be a joint owner and obtain a half share in the Property when it was sold.

18 First, the plaintiff's contribution is objective evidence that the parties agreed that the plaintiff would jointly own the Property (and obtain a half share of the proceeds when it was sold). As noted earlier, the defendant testified that the plaintiff had insisted that both parties contribute to the purchase of the Property using their CPF funds (see [5] above). The plaintiff explained that she had wanted to contribute because she desired a share in the Property. Having retired, she did not have a roof of her own over her head. The Property would address that. If, as the defendant testified, the plaintiff had insisted on contributing, it seems eminently logical to conclude that the parties had intended that the latter would have a share. Furthermore, the evidence did not indicate that the parties agreed that their respective shares in the Property (when sold) should reflect the quantum of their individual contributions. It is therefore equally logical to conclude that the division upon sale would be in equal shares.

19 Importantly, by 1 September 1999, when the purchase of the Property took place, the defendant had received the sale proceeds of the Dover Road flat amounting to $185,000 (see [4] above). This was well in excess of the purchase price of $138,000 for the Property. If it was the understanding that the plaintiff was not to have a share in the Property, it is difficult to comprehend why the defendant allowed the plaintiff to make any financial contribution towards the purchase price. The defendant could have used the Dover Road flat sale proceeds to purchase the Property outright without the plaintiff's contribution. Moreover, if the understanding was as alleged by the defendant, one would have

expected her to insist on documenting it given the plaintiff's contribution. However, the defendant did not tender any such documentation. In this light, the fact that the parties contributed towards the purchase price from their respective CPF accounts, with the result that CPF charges reflecting their contributions would be attached to the Property, indicated that they had agreed that they would jointly own the Property (and that they would each obtain a half share of the proceeds if it were subsequently sold). The plaintiff's explanation in this regard of desiring a roof over her own head was eminently credible. In contrast, the defendant prevaricated on this point.

20 Secondly, the defendant implicitly conceded in her affidavit that the Property had been bought on the basis that the plaintiff would have a half share in it. She deposed that the Agreement was that, after she had repaid the plaintiff for the plaintiff's contribution, the latter would "transfer her half share to me". This undermines the defendant's position. Surely such an agreement would not have been necessary if the plaintiff had not intended to have a half share in the Property in the first place.

21 Thirdly, in my judgment, the plaintiff's conduct after the purchase was not inconsistent with her case on the basis on which the Property was bought.

(a) In relation to the payments for the Property that were made by the defendant, and the fact that the plaintiff never occupied the Property, one must bear in mind that the parties bought the Property with the intention that the defendant would occupy it. It was purchased in substitution of the Dover Road flat. Thus, it stands to reason that the plaintiff would not occupy it especially because she was looking after her grandchildren who were living with their parents. It would then follow that the defendant, as the occupant of the Property, would bear

the conservancy charges and other payments in relation to the Property (as the plaintiff testified).

(b) While the plaintiff had become homeless after May 2015, she deposed that she had gone to the Property thereafter but had been sent away by a then unknown male (Dayalan). The defendant did not challenge this claim during cross-examination.

(c) That the plaintiff had arranged for one room in the Property to be rented out supports her case on what the parties had agreed. The fact that the room had only been leased to one tenant, for between one and one and a half months, is explicable in view of the plaintiff's evidence, which I accepted, that the defendant had terminated the tenancy agreement and refused to allow the room to be leased out thereafter.

22 Fourthly, the plaintiff gave clear and consistent evidence that the parties had agreed that she would be a joint owner of the Property. Morgan corroborated the plaintiff's evidence that one room in the Property was to be set aside for the plaintiff.

23 For all these reasons, I found that the parties had purchased the Property on the agreed basis that the plaintiff would be a joint owner and obtain a half share in the Property when it was sold. Therefore, subject to my consideration of the Agreement and Repayment Issues, given that the Property was registered in the parties' joint names, the plaintiff was entitled to the orders sought. In that light, I turn to consider the Agreement and Repayment Issues.

The Agreement Issue

24 I found that the parties did not enter into the Agreement.

25 First, there was no documentary evidence of the Agreement. I accept that it might be setting the bar too high to expect the parties to have entered into a formal and complete written contract given that they were sisters and close at the time of the acquisition of the Property. However, in my judgment, if the parties had indeed made the Agreement, it would have been condensed into writing or at least reflected in a simple written acknowledgement, for the following reasons:

(a) The Agreement would have been important to the defendant. It pertained to the ownership of the defendant's home. She acquired the Property after being widowed. It was plainly a piece of real estate that was very important to her. It seems logical that if the parties had agreed that the defendant would become the sole owner of the Property, the latter would have recorded this in writing.

(b) The Agreement was that $36,000 would be paid, not to the plaintiff, but to Morgan. It would thus have been common sense for the defendant to record the Agreement in writing or at the very least have Morgan (on behalf of the plaintiff) or the plaintiff acknowledge receipt of the monies. In fact, in her affidavit and during cross-examination, the defendant gave evidence that she had asked for a written receipt for the payment to Morgan. However, her evidence on the plaintiff's response to her request was inconsistent. In her affidavit, she deposed that the plaintiff had said that there was no need for a written acknowledgement because they were sisters. On the other hand, the defendant testified that the plaintiff had told her that she would give her something "in writing". Notably, Morgan and the plaintiff denied that payment was made to the former.

26 Secondly, the defendant's evidence was that Morgan had witnessed the parties in discussions leading up to or in making the Agreement. However, Morgan testified that he was not aware of any such agreement and that he had not witnessed the parties conversing about any agreement after they had gone to the HDB to complete the paperwork for the purchase of the Property. Importantly, the defendant did not challenge Morgan's evidence in this regard during cross-examination.

27 Thirdly, the plaintiff's evidence was that she had not entered into the Agreement. Although she did ask the defendant for money soon after the purchase of the Property, the defendant refused to sell the Property and so the plaintiff had to turn to other sources for money.

28 Fourthly, I found it inherently implausible that the plaintiff would have entered into the Agreement for the following reasons:

> (a) As I elaborate below, the defendant's evidence was that the plaintiff had requested for repayment because she needed money immediately after the purchase of the Property on 1 September 1999. In view of the close proximity in time between the purchase of the Property and the alleged request, I found it difficult to comprehend why the plaintiff would have purchased the Property with her sister using her CPF funds if she needed money. She would not have wanted to contribute any monies towards the purchase of the Property, and would have made that plain when the defendant had first approached her for assistance or at the very least in the period leading up to the purchase of the Property on 1 September 1999. Alternatively, if the plaintiff had wanted to "monetise" her CPF Funds, she would have requested repayment when she suggested use of CPF funds to purchase the

Property. She would not have waited until after the completion of the Property. In this regard, when cross-examined on when the plaintiff had made the request, the defendant offered two differing versions. She first said that it was in Morgan's car on the way back from the appointment with the HDB on 1 September 1999. She then said that it took place at Morgan's home. Morgan denied being aware of any such request. Apart from being different, both versions contradicted para 8 of her affidavit filed on 10 May 2016 where she said that the request was made following the sale of the Dover Road flat. It seemed strange that defendant's recollection on something as significant as the Agreement was so inconsistent. When the inconsistency was pointed out, the defendant initially said that what she had meant in para 8 was that the plaintiff had asked for a loan. Later, she testified that the assertion in the paragraph was correct. These responses only underscored the doubts that shrouded her testimony.

(b) The defendant's account that the plaintiff entered into the Agreement because she needed money was inconsistent with the nature of the Agreement. The plaintiff would not have received a cent under the Agreement: Morgan was to obtain $36,000, and the remainder would be set off against the alleged loan of $16,000. To elaborate:

(i) If the plaintiff had needed money, I did not see why the plaintiff would have agreed to Morgan receiving such a large proportion of the plaintiff's contribution. This was especially because, according to the defendant, the plaintiff did not benefit from the sum which was given to Morgan. The defendant testified that Morgan had spent the money on a month-long

holiday in New Zealand with his family. As noted earlier, Morgan denied receiving any monies from the defendant.

(ii) The defendant did not contend that she had demanded that the plaintiff repay the alleged loan at the material time. It was therefore difficult to comprehend why the plaintiff would have agreed to repayment in the form of a set-off of the loan, if she had needed money at the time of the Agreement. It must be pointed out that the Agreement was for the payment of $50,000. It is difficult to fathom why the plaintiff would have agreed to receive part of that sum by way of a set-off of a loan, which the defendant did not demand repayment of in the first place. Furthermore, even if the defendant had demanded that the plaintiff repay the alleged loan, I struggled to see why the plaintiff, who was allegedly in need of cash, would have agreed to a set-off. In any event, the evidence that the defendant had extended a loan to the plaintiff was weak to begin with. There was no documentary evidence of such a loan. The defendant did not particularise the nature of the loan. Notably, the plaintiff denied that there had been any alleged loan.

(c) The defendant's evidence on when the plaintiff's request for repayment was made was shrouded in uncertainty. I have referred to the two differing versions given by the defendant in cross-examination, which also differed from that stated in para 8 of her affidavit (see [(a)] above). It was difficult to accept the defendant's evidence on any of these versions, for the following reasons:

(i) The conversation alleged in para 8 could not have happened. The Dover Road flat was sold in May 1999. The

plaintiff's contribution was made on 1 September 1999 when the Property was purchased. It is inexplicable that the plaintiff would have asked for a refund of her contribution when it had not even been made.

(ii) On the versions that the defendant offered in oral testimony, I found it difficult to understand why the plaintiff, having purchased the Property with her sister on the basis that she would be a joint owner (see my finding at [17] above), would suddenly do an about turn so quickly after signing the relevant papers, and ask for repayment. The timing of the alleged conversation raises serious doubts as to the credibility of the defendant's testimony. Surely, as noted in [(a)] above, if the plaintiff had the intention to divest her share, the easiest thing to do would have been to raise this before 1 September 1999 when plaintiff's contribution was made.

(d) The amount allegedly repaid – a total of $52,000 (*ie*, $36,000 plus $16,000) – did not match the plaintiff's contribution, which amounted to $49,710, nor the sum of $50,000 that was allegedly agreed under the Agreement. The defendant tried to explain this away by saying that the additional amount of $2,000 represented goodwill and interest on her part. It is unclear exactly how the figure was arrived at. It seemed to me that this assertion was nothing more than an afterthought.

29 I now address the Repayment Issue.

The Repayment Issue

30 I found that the defendant did not repay the plaintiff's contribution to the Plaintiff.

31 First, there was no documentary evidence to support any repayment. In respect of the payment to Morgan, the defendant testified that she had withdrawn the sum in cash from the OCBC Account, which she claimed to have held jointly with Morgan, and had then handed the cash to Morgan on the plaintiff's instructions. However, I struggled to accept this evidence for two reasons:

(a) There was no documentary evidence that the defendant had held a bank account jointly with Morgan. Furthermore, the defendant did not depose to this in her affidavit. Morgan also denied that he had held a bank account jointly with the defendant. The defendant did not challenge Morgan's evidence in this regard.

(b) The defendant did not tender any document evidencing that she had withdrawn the cash from her bank account. According to her, all her bank documents had been taken from her by, amongst others, Morgan. She did not retrieve her bank statements because the bank had informed her that it would cost her a lot to do so. I found this difficult to understand. The cost of obtaining her bank records would clearly have been outweighed by the benefits of producing them. As noted at [9] above, the estimated present value of the Property was $380,000 making the cost-benefit analysis very much in favour of obtaining the bank statements. The importance of the bank statements was apparent. The defendant, who was represented by counsel, would have been advised of this.

32 Secondly, Morgan's evidence was that the defendant did not pay the $36,000 sum to him; nor had the defendant paid him any sum of money relating to the transaction. Critically, the defendant did not challenge his evidence.

33 Thirdly, the parties' conduct after the alleged Agreement casts serious doubts on whether the defendant had performed her obligations thereunder even if the parties had made the Agreement.

(a) It was unchallenged evidence that one room in the Property had been leased out to one tenant, for between one to one and a half months (see [21(c)] above). If the parties had made the Agreement shortly after the purchase of the Property on 1 September 1999, and the defendant had repaid the plaintiff's contribution to her sister, why did the defendant allow the room to be rented out for about one month?

(b) As the plaintiff's contribution consisted of funds from her CPF account, a CPF charge would have attached to the Property to secure those funds. Furthermore, notwithstanding the alleged repayment, the title documents to the Property would have continued to show that the plaintiff was a joint owner. In those circumstances, if the defendant had performed her obligations under the Agreement, it would have been natural for her to see to the transfer of ownership and to deal with the plaintiff's CPF charge. The defendant's evidence on this point was inconsistent. During cross-examination, she said that the plaintiff had refused to agree to the transfer of ownership; she had then made some enquiries at the HDB but did not pursue them because the plaintiff was her sister and was close to her. However, in her affidavit, she deposed that "somehow, [the parties] never got around to effect the transfer of

> the ownership of the [Property]"; a statement which suggests that the issue of transferring the ownership was never raised between the parties.

34 Fourthly, I found the defendant's evidence on the repayment inherently implausible. The defendant's evidence was that she had eventually deposited the sale proceeds of the Dover Road flat into the OCBC Account (see [4] above). She explained that she had opened the joint account with Morgan for convenience, as she had found it difficult to withdraw money. However, the defendant's evidence was that she had withdrawn the sum which she had paid to Morgan in cash before handing it to him (see [31] above). This was difficult to accept, given her own evidence that she had opened a joint account with Morgan because she found it difficult to withdraw money. Moreover, as Morgan was a joint account holder, he could simply have withdrawn the agreed sum by himself. Again, the bank statements would have gone some distance in supporting the defendant's allegation.

Conclusion

35 In conclusion, I note that, while the defendant's case was that the plaintiff had no interest in the Property, she surprisingly made the alternative submission in closing submissions that the court should order the sale based on the parties' actual contributions to the Property. This was not a case that the defendant ran in evidence and it completely went against the grain of her case that the plaintiff did not have any interest in the Property.

36 Finally, for completeness, I note that the plaintiff did not argue that the Agreement would have been unenforceable under s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed) because it was not evidenced in writing. However, if I had accepted the Defendant's case, I would have found that a constructive trust had arisen in favour of the defendant on the basis that she had paid for the

plaintiff's share in the Property.

37 For all the above reasons, I did not accept the defendant's evidence on the Original Basis, Agreement, and Payment Issues, and preferred the plaintiff's evidence on the same. I therefore granted an order-in-terms of the first three prayers of the application. Upon hearing the parties on costs, I granted costs to the plaintiff fixed at $9,000 inclusive of disbursements.

Kannan Ramesh
Judge

D Ganaselvarani (D Rani & Company) for the plaintiff;
Ng Chip Teck Nelson (Messrs Nelson Ng) for the defendant.