Emmanuel Priya Ethel Anne *v* Su Emmanuel and Another
[2015] SGHC 172

Case Number	: Originating Summons No 1124 of 2014
Decision Date	: 01 July 2015
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu SJ
Counsel Name(s)	: Bhargavan Sujatha (Gavan Law Practice LLC) for the plaintiff; Raj Singh Shergill, Chia Aileen (Lee Shergill LLP) for the first defendant; The second defendant in person.
Parties	: Emmanuel Priya Ethel Anne — Su Emmanuel — Emmanuel Satish Philip Ignatius

Land – interest in land – tenancy in common

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 67 of 2015 was allowed in part by the Court of Appeal on 19 May 2016. See [2016] SGCA 30.]

1 July 2015

Lai Siu Chiu SJ:

1 Emmanuel Priya Ethel Anne ("the plaintiff") took out the above Originating Summons ("the OS") and applied for the following reliefs in relation to the property situated at Block 10D Braddell Hill #13-14 ("the property") against Su Emmanuel ("the first defendant") and Emmanuel Satish Philip Ignatius ("the second defendant") (collectively "the defendants"):-

(a) that it be ordered that the title of the property be severed and apportioned according to the respective contributions of the plaintiff and the defendants;

(b) that it be declared that the plaintiff is entitled to a 70% share in the property given that she has contributed approximately 70% of the value of the property;

(c) that it be ordered that the property be sold in the open market and the plaintiff be entitled to receive 70% of the sale proceeds and the defendants be entitled to the balance 30% of the sale proceeds;

(d) that it be further ordered that the second defendant's Central Provident Fund ("CPF") monies that were withdrawn for the purchase of the property be not refunded to her CPF accounts considering that the second defendant is now more than 62 years old;

(e) alternatively, if a refund of the monies into the second defendant's CPF accounts is required, that the refund be effected by the defendants;

(f) such further and other relief as this Honourable Court deems fit;

(g) that the defendants pay the plaintiff the cost of the application.

2 The court granted prayers (a) to (c) and (e) above with an additional prayer as follows: in the

event that the first and/or second defendant wishes to buy over the plaintiff's 70% share in the property, such election shall be made within 10 days of the date of the order, and the sale shall be completed within 60 days of the date of hearing.

3 As the property was held as tenants in common by the plaintiff and the two defendants, there was no need to sever the tenancies under prayer (a) but there was a need to apportion the equitable or beneficial ownership vis a vis the legal ownership.

4 The first defendant, being dissatisfied with the orders that were granted, has appealed (by way of notice of appeal in CA No 67 of 2015) against the whole of this court's decision. A stay on the orders was also granted to the first defendant pending her appeal.

The facts

5 The plaintiff is the younger sister of the second defendant while the first defendant is the second defendant's wife and the plaintiff's sister-in-law. The plaintiff is presently a retiree. The defendants are not on speaking terms although they remain married and continue to reside at the property.

6 According to the plaintiff, the second defendant lost his job in the hotel industry around April or May 2002. The result was that the second defendant encountered difficulties in servicing the mortgage instalments on the loan ("the defendants' loan") that he had taken from the Oversea-Chinese Banking Corporation ("the Bank") to part-fund his purchase of the property. The second defendant also utilised his CPF contributions for the same purpose. By then, the defendants were residing at the property. The second defendant informed the plaintiff that he had fallen behind on his mortgage instalments and that the Bank would soon be recalling the defendants' loan resulting in the defendants losing the property. The second defendant requested the plaintiff's financial assistance.

7 The plaintiff (then aged 47) was a teacher in a government school. As she had sufficient funds in her CPF accounts, the plaintiff agreed to help the defendants. According to the plaintiff, the second defendant informed her that the defendants' lawyers were from Khattar Wong & Partner ("KWP"). According to the plaintiff, the second defendant said that for expediency, KWP should also act for her, and they did so. This was disputed by the first but not the second defendant.

8 Thereafter, various proposals were mooted for the plaintiff to buy into the property, namely that she purchases: (i) 60% share with the balance 40% held by the second defendant; (ii) 50% share from the first defendant and 1% share from the second defendant and (iii) 50% share from the second defendant with the balance 50% being held by the first defendant. Alternative (iii) was not approved by the CPF Board which held a charge on the property.

9 The parties then applied on 24 April 2003 for approval from the CPF Board for the plaintiff to purchase 49% share in the property ("the 49% share") with the first defendant holding 50% share and the second defendant retaining 1% share. This was approved by the CPF Board.

10 At that time, the property was valued at $530,000 and therefore the price for the 49% share was $259,700. The outstanding sum of the defendants' loan was around $316,000. On 27 May 2003, the plaintiff and the second defendant signed the sale and purchase agreement ("the SPA") at the office of KWP.

11 In order to sell the 49% share to the plaintiff, the defendants had to redeem the defendants' loan. However, they were not in a position to do so as neither defendant was gainfully employed.

They could not take up a fresh loan either. However, the Bank agreed to grant a loan to the plaintiff to enable the defendants to settle the defendants' loan and discharge the Bank's existing mortgage.

12 On 14 August 2003, the Bank issued a letter of offer to both the plaintiff and the second defendant. The Bank offered a loan of $165,000 ("the loan") which was to be used to settle the outstanding sum under the existing mortgage and to pay for the plaintiff's share. The monthly instalment on the loan was $1,481.56.

13 In April 2004, $233,730 was also withdrawn from the plaintiff's CPF accounts to pay for the 49% share. On 16 April 2004, the plaintiff paid the second defendant $25,970 being 10% of the purchase price for the 49% share. In the same month, the plaintiff attended at the office of KWP again to sign the mortgage documentation for the loan. KWP's letter dated 20 April 2004 stated the outstanding sum of the defendants' loan as of that date was $345,726.03, which the plaintiff paid, using her CPF funds and from the loan she had taken up, in the following manner:

CPF withdrawals:	$233,730.00
From the loan	$111,996.03
	$345,726.03

14 There was a balance of $53,003.97 ($165,000 - $111,996.03) left of the loan. After deducting the sum of $10,395.14 which was paid as legal costs to KWP and Harry Elias Partnership who was acting for the CPF Board, a sum of $42,608.83 was left. KWP issued a cheque for $42,608.83 in favour of the second defendant. Together with the initial 10% payment of $25,970, the second defendant received from the plaintiff a total of $68,578.83. The difference between that sum and the purchase price of $259,700 was only $191,121.17. However, as seen from the figures in [13] above, the plaintiff had paid far more than the purchase price for the 49% share.

15 The plaintiff serviced the instalments for the loan by monthly payments ranging from $1,572.60 to $1,671.60 after making an initial payment of $6,199.36 in September 2004. When she turned 55 years old in December 2010, the plaintiff was told she could not continue using her CPF contributions to service the loan's instalment repayments if there were insufficient funds and that she needed to pay cash. All in, the plaintiff paid $155,082.50 on the loan through her CPF funds. Between January 2011 and March 2013, the plaintiff paid about $20,000 in cash towards the loan. As of April 2013, the outstanding sum on the loan was $21,032.94. This sum was subsequently paid by the defendants' eldest son who had started working.

16 According to the plaintiff, she paid a total of $525,579.10 for the property including interest, based on the following breakdown:

(a)	Payment of 10% of purchase price	$25,970.00
(b)	Payment from CPF for 49% of property	$233,730.00
(c)	Instalments on the loan via CPF	$155,082.50
(d)	Interest accrued on her CPF withdrawals	$90,796.60
(e)	Cash top-up on repayments of the loan	$20,000.00

Total		$525,579.10

After excluding the interest that had been accrued on her CPF withdrawals (*ie*, $90,796.60), the plaintiff's payments amounted to $434,782.50.

17 On the other hand (according to the plaintiff), the defendants' payments (only made by the second defendant) for the property amounted to $182,862.33 (excluding interest) and were made in the following manner:

(a)	Second defendant's payments (via CPF of $100,000 and the defendants' loan)	$240,803.36
(b)	Defendants' son's payment	$21,032.94
Less:		
(a)	10% payment by the plaintiff	($25,970.00)
(b)	Less completion account monies in [14]	($42,608.83)
		($10,395.14)
		$182,862.33

18 Again, the figures in [15] and [16] show that the plaintiff had paid more than the purchase price for the 49% share. The plaintiff computed the defendants' contributions of $182,862.33 as being either 34.5% (based on a value of $530,000) or 28.13% (based on a value of $650,000) of the property. She complained that although the first defendant made no monetary contribution at all towards the property, she nonetheless retained 50% in the property and benefited further by residing at the property exclusively all these years with her family. The plaintiff, on the other hand, having contributed about 82.03% towards the price of the property (based on a value of $530,000), or 66.88% (based on a value of $650,000), had not received any benefit at all. In fact, the plaintiff informed that she was on the brink of bankruptcy and had to rent a place to stay.

19 It was also the plaintiff's case that besides the payments in [16] for the property, she had also contributed towards the upkeep of the defendants over ten years since 2002, averaging $300 per week, for their expenses which included their children's school fees and the outgoings for the property such as property tax, maintenance charges and sinking fund contributions. The plaintiff had also given the second defendant lump sum payments of $2,000 each year when she received her bonus. She estimated such payments amounted to $170,000. However, there was no documentary evidence before the court to support these additional payments.

20 The plaintiff deposed that after much pleading on her part, the first defendant agreed on or about 23 October 2012, to sell the property through the first defendant's appointed housing agent, at the price of $1.6m but there were no buyers. The second defendant had informed her he had no say as he only had a 1% share in the property. In September 2014, the first defendant through her solicitors offered the plaintiff $470,000 to purchase the 49% share; the offer was rejected as unreasonable. The plaintiff then commenced these proceedings.

21 In response to the plaintiff's affidavit supporting her application, the second defendant filed his affidavit in person. He admitted he had difficulties servicing the defendants' loan after he lost his job

in March 2002. He claimed however that he did not approach the plaintiff for assistance to help service the defendants' loan. Rather, he asserted that it was the plaintiff herself who offered, through his older brother, to use her CPF savings for the mortgage repayments. The second defendant then readily accepted this offer. This contention is so absurd that it merits no consideration.

22 The second defendant deposed that he did not specifically appoint KWP to act in the sale and purchase transaction with the plaintiff; rather it was done for expediency as the firm acted for the Bank while Harry Elias Partnership acted for the CPF Board.

23 The second defendant did not challenge the plaintiff's assertion that she had paid $525,579.10 (refer to [16] above) for the property. However, he claimed that she knew from the outset that her CPF monies were insufficient to purchase the 49% share and that a bank loan was necessary to cover the shortfall. He deposed he always intended to repay the plaintiff for her payments as soon as he secured a job (which he never did after March 2002).

24 As for the plaintiff's payment to him of $42,608.83 (referred to at [14] above), the second defendant claimed he gave back $20,000 from that sum to the plaintiff for her expenses. This was denied by the plaintiff. He further asserted that his son, Andrew Emmanuel, paid $21,032.94 while he himself paid $8,977.88 towards the outstanding mortgage as of April 2013, from the sale proceeds of his Singtel shares and from borrowings.

25 The second defendant believed he had paid cash of $118,140.84 and a total amount of $523,547.29 towards the purchase of the property. However, he did not substantiate the figure of $523,547.29 and when questioned by the court, he said he had no supporting documents. On the other hand, he admitted he utilised his CPF contributions of $3,000 per month to service the defendants' loan between July 1995 and September 1998, with the last CPF payment being $1,859.16.

26 The second defendant contended that his contributions (and his son's but excluding interest) totalled $490,803.83 made up as follows:

(a)	Cash contributions	$523,547.29
(b)	Andrew Emmanuel's contribution	$21,032.94
Less:		
(a)	Plaintiff's 10% payment	($25,970.00)
(b)	Completion monies paid by plaintiff after deducting (i) $20,000 that he asserted has been returned to the plaintiff and (ii) 50% of the legal fees which should be borne by the plaintiff	($27,806.40)
		$490,803.83

The sum of $490,803.83 can be equated to 92.61% or 75.51% based on the value of the property at $530,000 and $650,000 respectively. As observed in [25] above, the second defendant's alleged cash payments of $523,547.29 were unsubstantiated.

27 The second defendant deposed that the plaintiff had never expressed to him a wish to exercise her rights to occupy the property although he would have agreed had she asked to stay with his family. He then relied on clause 10 of the SPA ("clause 10") for his family's right of occupation; the

clause states:

> 10. Su Emmanuel and her children will not be removed or evacuated by any means (legally or forcefully) by the [plaintiff] or by the direction of the [plaintiff] as the house is the place of dwelling of Su Emmanuel and her children.

Clause 11 states:

> Other than Clause 10, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement.

The plaintiff however contended she was not aware of the purport of clause 10 nor was it explained to her or drawn specifically to her attention by KWP at the time she signed the SPA.

28 The second defendant did not deny the plaintiff had supported him and his family but disagreed that the sum amounted to $170,000. He further argued that in any case, she was not the only sibling who had done so as he also received financial assistance from his three other sisters and a younger brother. The second defendant claimed he had relinquished his one-seventh share of the inheritance of a Robin Road property from his mother so that the plaintiff could occupy it from 1992 onwards. His inheritance approximated $120,000 in value. No supporting documents were produced for this claim. Since losing his job in 2002, the second defendant has not worked at all but was content for his family and himself to live off the generosity of his various siblings who worked, including the plaintiff.

29 The second defendant requested that the plaintiff sells the 49% share to the defendants based on the current valuation. (As stated at [2] above, the court granted the defendants an option to buy out the 49% share of the plaintiff. However, this option was not exercised simply because the defendants did not or do not have the means to do so. This inability has also caused the plaintiff greater hardship.)

30 The first defendant's affidavit was replete with irrelevant and inconsequential details pertaining, *inter alia*, to (i) how she came to marry the second defendant; (ii) her (short-lived) career (before and after marriage); (iii) her (unhappy) married life (iv) the second defendant's alleged failed business ventures after he lost his job in the hotel industry, (v) the second defendant's alleged investments with the plaintiff.

31 The first defendant alleged that the second defendant threatened her when she refused to accede to his demands to sell the property, by claiming that they would lose the property as he did not have sufficient funds to service the defendants' loan. She further alleged that the plaintiff telephoned her and made similar threats.

32 The first defendant dwelt *in extenso* on how the SPA came to be signed by the three parties after she refused to sign the first three agreements presented to her by the second defendant. She deposed that a close family friend (one Joe Singh) had advised her against signing any of the earlier agreements before the SPA at all costs, as otherwise she and her children would be rendered homeless.

33 The first defendant alleged that the plaintiff and the second defendant made various representations to her when she was reluctant to sign the SPA and that the second defendant refused to work, had no job and knew that they would not be able to repay the defendants' loan. She asserted that the plaintiff and the second defendant assured her that:

(a) based on the SPA, her position and that of her children was secured as none of them would lose the right to live in the property;

(b) she need not worry about repayment of the mortgage loan as the plaintiff would utilise her CPF funds to pay for the property as well as take a small bank loan to cover some portion of the 49% share's price as well as whatever amounts that were outstanding under the original loan. The plaintiff was a joint borrower (with her and the second defendant) of the loan and the plaintiff knew that neither the first nor the second defendants were in a position to make the loan repayments;

(c) the property would be split into ownership according to the parties' shares and the first defendant would retain 50% ownership so that as a majority owner, she could override any attempts to sell the property;

(d) the plaintiff and the second defendant were in any event expecting to receive a large sum of money shortly due to certain investments which meant that the property would be paid up before long.

34 The first defendant claimed that she was persuaded by the representations in [33] to agree to the arrangements by which the plaintiff came to acquire a 49% share. She suspected the real reason for the sale to the plaintiff was not to help the family but to generate cash for the plaintiff and the second defendant for their investments. (The first defendant dwelt at length on this suspicion but produced no evidence in support thereof).

35 The first defendant deposed that KWP were the plaintiff's solicitors and acted for her (this was disputed by the plaintiff). In fact, when she attended at the office of KWP, the lawyer doing the transaction advised the first defendant to seek independent legal advice to safeguard her interest (which she never did).

36 Even though the second defendant did not deny receiving the sums the plaintiff said she had paid him in [13] and [14] above, the first defendant questioned the payments contending that there was no evidence to substantiate the same. She further questioned whether the then value of the property was indeed $530,000 and argued that there was no basis for this valuation apart from what was stated in KWP's letter dated 18 March 2003.

37 Interestingly however, the first defendant deposed (in the section in her affidavit of evidence in chief starting from paragraph 48) that to the best of her knowledge, the plaintiff had consistently been repaying the loan. Thus was to support her contention that based on the SPA, she was not to be liable for repayment of the same.

38 However, the first defendant expressed no sympathy for the plaintiff's present financial predicament. She pointed out that the plaintiff was well aware that neither she nor the second defendant were able to service the loan at the material time. Further, the plaintiff had never demanded that the first and/or second defendants repay the loan. Had she been told that she had to pay the mortgage instalments, the first defendant claimed she would have taken on a job. The court was unable to appreciate how the first defendant's failure or refusal to be gainfully employed (after her marriage) had anything to do with the plaintiff. Apparently, the first defendant used to work as a flight attendant in her younger days.

39 The first defendant prayed for the application to be dismissed. She contended it was unfair of the plaintiff and the second defendant to renege on their word to her and force her and her children

out of their home. Currently, her children are aged 28, 26, 20 and 16 with the oldest two in full-time employment. Only the youngest is still schooling.

40 Returning to the plaintiff's evidence, she revealed in her reply affidavit that she (and her siblings) hardly had any contact or dealings with the first defendant at least for the past 16 years. Indeed, she had not seen the first defendant even once, in the last ten years. The plaintiff denied making the alleged representations in [33] to the first defendant.

41 The plaintiff recalled that in September or October 2012, she had requested the second defendant to speak to the first defendant to arrange an overdraft facility on the property so that the plaintiff could continue to support them while supporting herself and her eldest brother and his daughter. Her request was rejected by the first defendant who however was willing to sell the property, to which intent and purpose, the first defendant appointed her own agent, rejecting the appointee of the second defendant, on the basis the first defendant's agent could get a price of $1.6m as against $1.4m from the second defendant's agent. The plaintiff deposed she acceded to the first defendant's demand and signed a sale and purchase agreement in or about October 2012 at the first defendant's behest. The plaintiff claimed the agreement then was that the sale proceeds would be distributed in accordance with the parties' shares in the property after refund of their individual CPF withdrawals utilised in the purchase.

42 However, nothing came out of the above transaction. When the plaintiff inquired of the second defendant in January 2013 about the status of the proposed sale, he told her there were no buyers because of the poor state of the property. The plaintiff sent two legal letters to the defendants to which the first defendant replied on 11 March 2013, agreeing to sell the property provided the plaintiff only took back her CPF monies utilised in the purchase, because the first defendant "has four children". Not surprisingly, the plaintiff rejected the first defendant's offer.

43 A privatisation exercise of the property took place in August 2014. Like the previous supposed *en-bloc* potential of the property (for which possibility Joe Singh advised the plaintiff she must not jeopardise at any cost by defaulting on the mortgage), there was no change in the status quo between the parties. The court took note that a valuation report that the plaintiff had obtained gave the open market value of the property as $1.25m as of 17 February 2015.

44 The plaintiff labelled the first defendant as ungrateful for all that she had done for the first defendant between 2002 and February 2013 for which (judging by the first defendant's affidavit), the latter not only expressed no gratitude but instead levelled numerous unmeritorious accusations against her.

The findings

45 It serves little purpose to review the rest of the plaintiff's reply to the affidavits of either the first or second defendant since the exercise does not advance either side's case further. The additional affidavits filed by both sides can equally be ignored for the same reason. Looking at the affidavits, it was difficult to sift through the many allegations and cross-allegation to ascertain the veracity of each side's version of events apart from what was reflected in the documents before the court. Having said that, it should be noted that if the first defendant's allegation that the plaintiff made the representations to her in [33] is given any credence, it would appear that the plaintiff did abide by representations (a) to (c). I would however dismiss representation (d) as being unlikely to have been made, in the light of the second defendant's continued joblessness over the years (which he did not seem to make any efforts to redress), his dire financial straits and in the light of the plaintiff's ordinary occupation as a teacher at the material time.

46 This court was mindful of the fact that the plaintiff is the subject of Bankruptcy OS No. B 1134 of 2014 on a petition presented by the Hong Kong and Shanghai Banking Corporation ("HSBC") for a debt of $28,684.29. In addition to the claim of HSBC, the plaintiff revealed she was indebted to seven other banks and her debts to all eight banks totalled $188,681.96. She had obtained a temporary reprieve from her creditors because of these proceedings.

47 Counsel for the first defendant contended that notwithstanding the undisputed fact that the plaintiff had paid considerably far more than the purchase price for the 49% share (as shown in [16] above), she was not entitled to any relief for having made a bad bargain, however unfortunate her present circumstances may be – she had to live with it. He argued that she was estopped from pursuing her claim.

48 Counsel further asserted that his client (and her children) had an unassailable right to reside at the property *ad infinitum* because of clause 10 (*supra* [27]) read with s 2 of the Contracts (Rights of Third Parties) Act (Cap 53B) ("the CRTP Act"). The salient portions of s 2 of the CRTP state:

> **Right of third party to enforce contractual term**
>
> 2. —(1) Subject to the provisions of this Act, a person who is not a party to a contract (referred to in this Act as a third party) may, in his own right, enforce a term of the contract if —
>
> (a) the contract expressly provides that he may; or
>
> (b) subject to subsection (2), the term purports to confer a benefit on him.
>
> (2) Subsection (1)(*b*) shall not apply if, on a proper construction of the contract, it appears that the parties did not intend the term to be enforceable by the third party.
>
> (3) The third party shall be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
>
> (4) This section shall not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.
>
> …

49 The first defendant's counsel also relied on s 46 of the Land Titles Act (Cap 157) ("the LTA") which states:-

> **Estate of proprietor paramount**
>
> 46. – (1) Notwithstanding —
>
> (*a*) the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority;
>
> (*b*) any failure to observe the procedural requirements of this Act; and
>
> (*c*) any lack of good faith on the part of the person through whom he claims,

any person who becomes the proprietor of registered land, whether or not he dealt with a proprietor, shall hold that land free from all encumbrances, liens, estates and interests except such as may be registered or notified in the land-register, but subject to —

(i) any subsisting exceptions, reservations, covenants and conditions, contained or implied in the State title thereof;

…

(2) Nothing in this section shall be held to prejudice the rights and remedies of any person —

(*a*) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or his agent was a party or in which he or his agent colluded;

(*b*) to enforce against a proprietor any contract to which that proprietor was a party;

…

50 The relevant provision would be s 46(2)(*b*) as that would have enabled the first defendant to enforce clause 10 of the SPA against the plaintiff based on s 2 of the CRTP Act.

51 However, there is also s 3 of the CRTP Act which states:

Variation and rescission of contract

3. – (1) Subject to this section, where a third party has a right under section 2 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or vary it in such a way as to extinguish or alter the third party's entitlement under that right, without his consent if —

(a) the third party has communicated his assent to the term to the promisor;

(b) the promisor is aware that the third party has relied on the term (whether or not the third party has knowledge of its precise terms); or

(c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it (whether or not the third party has knowledge of its precise terms).

…

52 There was nothing before the court to suggest that the first defendant (as the third party) had communicated her assent to clause 10 to the plaintiff. As stated earlier at [27], it was unlikely the plaintiff knew the full implications of clause 10 when she signed the SPA or even later, before these proceedings were commenced. Apart from clause 10, there was no other reference to the first defendant as she was not a party to the agreement. Clause 10 identified the first defendant but not her children although even the youngest was already born by the date of the SPA (*ie*, 27 May 2003).

53 The court noted that when it suited her purpose, the first defendant was quite happy to give up her rights under clause 10. This was on two occasions:- (i) when she was prepared to sell the property at $1.6m on her own terms (at [42]); and (ii) when there was a possibility of an *en-bloc* sale

of the entire Braddell Hills block. Such conduct spoke volumes of the lack of *bona fides* in the first defendant's professed claim to want to continue to reside at the property indefinitely.

The decision

54 It was the unenviable task of this court to determine the rights to the property between the plaintiff, who from the (undisputed) facts had been unfairly treated by an older (and lazy) brother. Even more so, the plaintiff had a sister-in-law (the first defendant) who not only was short on gratitude for all the financial assistance the plaintiff had provided over ten years that enabled the two defendants and their children to live at the property without shouldering any financial burden relating to its purchase but worse, who levelled unmeritorious accusations against her and denied her of any benefit in the property, despite the plaintiff having 49% share in the property.

55 It would be highly unjust for the plaintiff to have no remedy at law because of clause 10 of the SPA. To allow the first defendant to rely on s 46 of the LTA to assert that her 50% share was indefeasible would cause and in fact has caused grave injustice to the plaintiff. The maxim "Equity will not suffer a wrong to be without a remedy" would be most apt in this case. The law should step in to assist the plaintiff because:-

(a) she could not, despite holding 49% share (without the defendants' consent which they would not give), sell the property to recoup her purchase price and other monies she had expended towards the loan and the defendants' (prior) loan, let alone make a profit therefrom;

(b) even if she could sell the property, the plaintiff was faced with clause 10 of the CTPR which precluded her from removing the first defendant and her children from occupation thereat;

(c) the plaintiff did not and even if she had asked almost certainly would not have been allowed by either the first defendant or second defendant to occupy the property despite the second defendant's claim to the contrary; and

(d) the plaintiff would be otherwise adjudged a bankrupt.

56 This was not a question of the plaintiff having obtained a bad bargain for which she had no recourse at law. Over and above her legal interest of 49% in the property, the plaintiff had an equitable interest equivalent to the further sums she had paid towards the property, to her detriment and for which the defendants had been unjustly enriched.

57 In the light of the very unusual facts of this case, the court therefore granted the orders set out in [2] above.