

Yam Lai Lin Angeline v Campbell Harvey Llewellyn
[2010] SGHC 102

Case Number : Divorce Petition No 600777 of 2003 (Registrar's Appeal No 720017 of 2009)
Decision Date : 05 April 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Petitioner (Wife) in person; Seenivasan Lalita (Virginia Quek Lalita & Partners) for the Respondent (Husband).
Parties : Yam Lai Lin Angeline — Campbell Harvey Llewellyn

Family Law

5 April 2010

Woo Bih Li J:

Introduction

1 This was an ancillary matrimonial proceeding between Yam Lai Lin Angeline ("the Wife") and Campbell Harvey Llewellyn ("the Husband"). The three issues before me on appeal were:

- (a) whether the matrimonial flat at Block 173, Bishan Street 13, #14-107, Singapore 570173 ("the Bishan flat") should be surrendered to the Housing and Development Board ("the HDB") or sold in the open market;
- (b) the apportionment of the surrender or sale proceeds between the parties; and
- (c) whether the apportionment between the parties should be effected prior to or after reimbursement of money withdrawn from their Central Provident Fund ("CPF") accounts and interest.

2 The District Judge ("DJ") ordered the Bishan flat to be surrendered to the HDB and that the surrender proceeds should be applied first towards reimbursing the parties' CPF accounts for whatever money that had been used therefrom to pay for the Bishan flat and interest, with the remainder to be divided between the Wife and the Husband 80:20.

3 The Husband appealed to me against the DJ's decision (a) to surrender the Bishan flat, (b) to use the surrender proceeds to pay the CPF accounts and interest first, (c) the apportionment of 80:20 of the balance in favour of the Wife.

4 After hearing the parties, I ordered the Bishan flat to be sold in the open market and that the net sale proceeds be divided 80:20 as between the Wife and the Husband respectively with each party to use his or her share of the sale proceeds to reimburse his or her CPF account and interest.

5 The Husband has appealed against the whole of my decision which is surprising since the order I made to have the Bishan flat sold in the open market was made pursuant to his request, with the Wife agreeing thereto. I also agreed with his contention that the apportionment between the parties

should be effected first and, thereafter, the parties were to use their respective shares of the net sale proceeds to reimburse their CPF accounts and interest. I presume his true complaint is with my apportionment of the sale proceeds.

6 The Husband has also appealed for an order that the Wife "change the name of the payee on the cheque from AIA to the name of [the Husband]". I do not know what this issue is about and will say no more about it.

Whether the Bishan flat should be surrendered to the HDB or sold in the open market

7 In the hearing before the DJ, the Wife had indicated that she did not mind whether the Bishan flat was surrendered or sold but appeared to prefer the former as the HDB would take charge of the process and she need not be concerned whether the Husband, whom she said was a property agent, would get a genuine purchase price for the Bishan flat.

8 The DJ noted that the surrender price would probably be less than the sale price. However, as both parties were no longer represented by solicitors and in view of the history of multiple proceedings between the parties, he concluded that it would be very difficult to sell the Bishan flat in the open market amicably. It would be more expeditious to surrender the Bishan flat and the parties would not need to pay the commission of a property agent.

9 It seemed a pity to me that both parties would lose out on the higher price they would get, even after taking into account the commission of a property agent, from a sale. Even if the Husband was a property agent, which he did not accept, and even if he somehow managed to deflate the sale price, the Wife could still be in a better position if I were to order a sale at a price not less than a minimum sum, which would in any event be higher than the surrender value.

10 Indeed, before me, the Wife agreed to a sale and to a minimum selling price of \$480,000 which was rather much more than the anticipated surrender value of \$319,500. By then, the Husband was represented by Ms Lalita who was acting on instructions from Legal Aid Bureau. On 26 November 2009, I made an order for sale at no less than this minimum price accordingly with consequential orders leaving the apportionment to be decided later after the Husband filed an affidavit on his contributions to the acquisition of the Bishan flat and to the marriage.

The apportionment and whether the respective CPF accounts and interest should be reimbursed first

11 I agreed with the case authority cited for the Husband, *ie, Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385 that the apportionment between the parties should be made first and that the parties should then use their respective shares to reimburse their own CPF accounts and interest.

12 The main issue before me was the 80:20 apportionment between the Wife and Husband respectively. I will set out some of the DJ's factual observations.

13 The DJ noted that the parties were married on 22 May 1983. On 11 June 1987, their daughter was born. On 10 February 1990, their son was born.

14 On 8 October 1997, the Wife obtained a personal protection order ("PPO") against the Husband by consent but on 6 February 1998, that order was rescinded, also by consent.

15 On 21 May 1998, the Wife and children left the Bishan flat.

16 On 12 June 1998, the Wife obtained another PPO against the Husband for herself and on behalf of her son who was then eight years old.

17 On 10 March 2003, the Wife petitioned for a divorce on the ground that the parties had lived apart for a continuous period of four years.

18 On 3 February 2004, a decree nisi was granted on an uncontested basis. The ancillary matters were adjourned to be heard in chambers.

19 After some applications were heard and more than five years later on 29 July 2009, the ancillary matters were finally fixed before the DJ. The parties appeared in person. However, the Husband applied for an adjournment to file his affidavit of assets and means, his Forms 22 and 35A (the fact and position sheet) although he had been repeatedly directed to do so in several pre-trial conferences. He said that he wanted to file more affidavits on the issue of custody of the son and on ancillary matters and he had not brought some of his affidavits. The DJ refused to adjourn the hearing. Eventually, the DJ granted sole custody, care and control of the son to the Wife and made his decision on the Bishan flat in the terms I have mentioned above.

20 The appeal to me was only in respect of matters pertaining to the Bishan flat as I set out above.

21 Before the DJ, the Wife wanted the apportionment of 80:20 for the Wife and Husband respectively while the Husband suggested an equal apportionment.

22 The DJ's reasons for his apportionment are found in paras 25 to 30 of his grounds of decision:

Parties' direct financial contributions

25. The wife's direct financial contribution to the Bishan flat was \$48,187.50 (as at 25 Oct 2008).

26. The husband's direct financial contribution was not disclosed by him. The husband, as stated above, did not file his affidavit of means and assets, and his fact and position sheet. In his other affidavits filed since 2006, the husband did not disclose what was his direct financial contribution to the Bishan flat. Neither did he exhibit his CPF statement on this. However, he did submit that, when they bought the Bishan flat in about 1987, he had only \$7,000.00 in his CPF account. He revealed that he had to persuade the wife to use her CPF money to buy the flat jointly. He said that, in return, he would pay the monthly mortgage instalments to HDB. I infer that the husband did not make any direct financial contribution when they first purchased the Bishan flat. His contributions, if any, were made subsequently. These were payments for the monthly mortgage instalments to HDB, as he said.

27. However, the wife's affidavits disclosed that, since 2004, the husband had stopped paying for the monthly mortgage instalments to HDB. This was not replied to by the husband. As of to-date, the outstanding arrears were, in total, \$13,511.00. The wife also disclosed that the husband had not paid the property tax for 2 years. Finally, the wife disclosed that, for 12 years, since 1998, when she and the 2 children left the Bishan flat, the husband had been staying in it, whilst she had to rent various flats.

28. In my judgment, the husband had not frankly and fully disclosed his contributions, if any. I, therefore, drew an adverse inference against the husband. Consequently, I took this into

consideration in deciding what further percentage should be awarded to the wife in the division of the Bishan flat.

Parties' indirect contributions

29. The wife exhibited in her affidavit District Judge Jeffrey Sim's grounds of decision in SS No. 1799 of 2004. This was pursuant to an application by the husband to rescind the personal protection order. The order had been granted to protect the wife and the son against him. The finding of facts in the grounds of decision was revealing. It disclosed that, from 1998 to 2004, the husband had committed repeated acts of family violence against the wife. It would be an understatement to conclude that the 2 children of their marriage was brought up and looked after solely by the wife. The wife and 2 children left the Bishan flat in May 1998. The daughter was then 11 years old. The son was then 8 years old. They had not returned to the Bishan flat ever since. The facts found in the above personal protection hearing disclosed that the wife was fleeing from the husband because of his repeated acts of family violence. They had to stay at several addresses. An affidavit filed by the daughter, now 22 years old, corroborated the wife's evidence and submission. The daughter affirmed that the wife had brought up the 2 children single-handedly and further, that the wife had protected the 2 young children from the husband.

My decision

30. I had no hesitation in concluding that the wife, in addition to being awarded a larger percentage of the surrender-proceeds to be paid by HDB for her direct financial contributions to the Bishan flat, should also be awarded a significant percentage for her indirect contributions to the welfare and interest of the family, particularly of the 2 children. In summary, this was a case of a husband who had completely neglected to maintain and contributed [*sic*] to the welfare of the family. I am heartened that, despite this, the 2 children have, through the wife's sole efforts, excelled in their education. The son has also excelled in his national service. He was the best recruit in his national service cohort. Both of them are determined to pursue their tertiary education, according to the wife. The wife also said that they needed these outstanding ancillary matters to be concluded as soon as possible, so that the 2 children can move on with their further education.

23 As mentioned above, I allowed the Husband to file an affidavit on his contributions to the acquisition of the Bishan flat and the marriage.

24 It transpired that while the Wife had paid \$48,000 from her CPF account (including interest) towards the acquisition of the Bishan flat, the Husband had paid \$7,458 (with interest, it was about \$12,000) from his CPF account. In addition, he had paid cash of \$50,650 for instalment payments towards paying off a loan.

25 The Husband had also recently obtained a loan from a cousin to pay \$8,244 towards some arrears of payment which had arisen because he had failed to keep up his monthly payments. Leaving aside the \$8,244 which would be paid back from the proceeds of sale, the Wife's and Husband's direct financial contribution was 43:57 respectively.

26 The Husband also said belatedly that he had paid for household expenses and additions and alterations to the Bishan flat but the Wife did not accept that the money came entirely from him. The Husband's counsel attempted to produce the Husband's statement from a Post Office Savings Bank account to support his position but I was not minded to allow it to be admitted or, if admitted, to give it much weight bearing in mind the number of opportunities he had had to present his case.

27 Although the Husband's direct financial contributions for the acquisition of the Bishan flat turned out to be slightly more than the Wife's, I also took into account the following:

- (a) the Wife had single-handedly brought up the children in an environment of violence from the Husband;
- (b) for 12 years after she left the Bishan flat, she had to rent various flats while the Husband had the benefit of staying at the Bishan flat;
- (c) the Husband was supposed to keep up the monthly instalment payments but he defaulted even on that. That gave rise to some late payment charges of \$490.35 which the parties were hoping would be waived. Apparently, he had also failed to pay property tax for some time but that was apparently no longer in issue.

28 Bearing in mind the parties' indirect contributions and the poor and irresponsible conduct of the Husband in discharging all his responsibilities as a husband and father, I was of the view that the apportionment of the sale proceeds should remain as 80:20 for the Wife and Husband respectively.

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