

Sita Jaswant Kaur v Surindar Singh s/o Jaswant Singh
[2013] SGHC 176

Case Number : Divorce Transferred No 898 of 2007
Decision Date : 16 September 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Suchitra Ragupathy (Rodyk & Davidson LLP) for the plaintiff; George Lim SC and Jinny Tan (Wee Tay & Lim LLP) for the defendant.
Parties : Sita Jaswant Kaur — Surindar Singh s/o Jaswant Singh

Family Law

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 129 of 2013 was allowed by the Court of Appeal on 7 July 2014. See [\[2014\] SGCA 37.](#)]

16 September 2013

Judgment reserved.

Choo Han Teck J:

1 The defendant husband is 69 years old and a part-time remisier. The plaintiff wife is 66 years old and is the licensee of an employment agency. The parties married on 8 March 1972 and have two sons of the marriage aged 40 years old and 35 years old respectively, who both reside overseas. The wife filed a writ for divorce on 28 February 2007 and was granted interim judgment on 2 November 2007 on the basis of four years' separation. The parties have been effectively separated since 2002 after the wife moved out of the matrimonial home.

2 On 11 May 2011, parties attended a mediation session at Maxwell Chambers presided over by an experienced lawyer who is also a mediator with the Singapore Mediation Centre. Both parties were legally represented. After the mediation session, both parties signed a handwritten agreement ("the Settlement Agreement"), which stated as follows:

AGREEMENT

DIVORCE D898/2007/G

The Parties have, by consent, agreed as follows.

1. The Plaintiff wife shall retain the property at #03-17 City Towers. The Defendant husband agrees to share half (1/2) the outstanding overdraft with Hong Leong. The Plaintiff wife shall account for the sum of \$40,000 subject to proof that the said sum or any other lesser sum thereof was used for repairs for the property. The Plaintiff wife agrees to refund any such sum that is not supported by documentary evidence for the repairs. In the event of an en bloc sale, the additional sum above the agreed price of \$1.25m (valuation as at March 2009) shall be shared in the proportion of 60% and 40% in favour of the Plaintiff wife.
2. The Defendant husband shall get the property at 38B Jalan Mat Jambol and the Plaintiff wife shall transfer all her rights, interest and title to the Defendant husband. In the event of an

enbloc sale, the additional sum above the price of \$1.9 m (agreed valuation as at March 2009) shall be shared equally between the parties.

3. The Plaintiff wife shall transfer all her rights, interest and title in the property 3-1-5 Villa Aman Malaysia to the Defendant husband.
4. The Plaintiff wife shall retain her 25% share in the company (Suritas Sdh Bhd) which owes the property at Villa Bukit Tunku in Malaysia. The parties agree to liquidate the company and distribute the sale proceeds accordingly.
5. The Plaintiff wife agrees that the transfer of the property at 38B Jalan Mat Jambol shall be without any refund to her CPF account.
6. The Defendant husband agrees that he is not making any claim to the jewellery.
7. There shall be no maintenance for the Plaintiff wife.
8. Each party shall retain all other assets in his/her own name.
9. In the event of a sale by private treaty of the City Towers or Jalan Mat Jambol properties, each party shall give to the other party, the right of first refusal.
10. This settlement is subject to the approval of the court.
11. Each part shall bear its own costs.
12. In respect of paragraph 4 above, the parties' solicitors agree to work out the outgoings on the property to facilitate the sale of the property. In the event that parties are unable to agree as to how the outgoings are to be determined and settled, parties agree to refer the matter for mediation before Mr Amolat Singh.
13. The proceedings in Malaysia in respect of the Villa Aman property are to be discontinued by the defendant husband with each party to bear its own costs.

Subsequently, on 31 May 2011, the wife's lawyers sent a draft copy of a consent order incorporating the terms of the Settlement Agreement to the husband's lawyers. The husband's lawyers wrote to the wife's lawyers on 13 June 2011 proposing a clarification on the date at which the outstanding overdraft would be accounted for and suggesting that the date of liability be fixed at 11 May 2011. After an exchange of correspondence, the wife's lawyers wrote to the husband's lawyers on 28 October 2011 informing them that the wife was not agreeable to fixing the date of liability for the overdraft at 11 March 2011 and seeking to introduce two new terms relating to: (1) the sale of the Singapore properties if no en bloc sale took place; and (2) the \$40,000 that the wife had to account for under the overdraft. The wife subsequently discharged her lawyers and appointed new lawyers, who informed the husband's lawyers that the wife did not wish to be bound by the Settlement Agreement. The husband then filed a summons on 26 January 2012 before the Family Court for the terms of the Settlement Agreement to be recorded as an Order of Court. The District Judge made no order as he took the view that it was for the judge hearing the ancillary matters to decide whether the Settlement Agreement was binding on the parties.

3 Parties attended before me to address two issues: the preliminary issue of whether I should give effect to the Settlement Agreement on its terms, and if I found against the husband on this

point, how the matrimonial assets ought to be divided. Counsel for the husband, Mr George Lim S.C. ("Mr Lim"), submitted that the court should generally respect and endorse agreements entered into by parties at arm's length, and that the court ought to give effect to the policy of encouraging mediation in family disputes by enforcing settlement agreements that parties had freely entered into after mediation in the absence of fraud. Counsel for the wife, Ms Suchitra Ragupathy ("Ms Suchitra"), contended that the terms of the Settlement Agreement were disadvantageous to the wife and that the wife had entered into the Settlement Agreement after a long day and had been fatigued and oppressed and did not fully understand the terms of the agreement.

4 Generally, agreements made in contemplation of divorce pertaining to the division of matrimonial assets should comply with the doctrines applicable to the law of contracts: see *Lian Hwee Choo, Phebe v Tan Seng Ong* [2013] SGCA 37 at [18]. Clause 10 of the Settlement Agreement provided that the "settlement [was] subject to the approval of the court". This never eventuated because the wife subsequently refused to have the Settlement Agreement converted into a consent order, but I do not think that the failure to fulfill the requirements of cl 10 meant that the Settlement Agreement was not legally binding. The Settlement Agreement was legally binding at the point at which it was signed; the terms were certain and the parties were *ad idem*. I also do not think that the wife had any basis for claiming that she was not bound by the agreement because she did not fully understand the terms and that the terms were not complete. The wife was legally represented and the negotiation was conducted at arm's length, and I do not see any contractual basis for impugning the Settlement Agreement on those grounds. Neither were the terms so uncertain as to render the division of the assets unworkable.

5 However, an agreement made in contemplation of divorce is only one of the factors that the court should take into account under s 112(2) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") in determining what division is just and equitable, and I do not think that the proposed division in the present case was just and equitable such that I should accord the Settlement Agreement conclusive weight. The husband contended that under the Settlement Agreement, the assets would be divided in the proportions of approximately 57% to 43% in favour of the husband. The husband apparently reached this calculation by assigning a substantial value of \$800,000 to the gold and jewellery that was purportedly in the wife's possession. There is no evidence of how the husband reached this valuation, and absent the jewellery, the husband would have received 68% of the assets and the wife would have received 32% of the assets. This proportion does not include the other assets disclosed by the husband and wife which were not provided for in the Settlement Agreement, and for the reasons that I will subsequently discuss, the agreed division under the Settlement Agreement was disadvantageous to the wife.

6 I would also add that I am not persuaded by Mr Lim's argument that the policy of encouraging mediation would be furthered if I "enforced" the Settlement Agreement. Mediation is merely part of the context for an agreement made in contemplation of divorce. The binding nature of an agreement made after mediation will depend, as I have already observed, on usual contractual principles and crucially on whether there was an intention to enter into a legally binding settlement. In a division of matrimonial assets proceedings, the court is not merely enforcing an agreement or the resolution of a mediation; it is exercising its discretion under s 112(2), taking into account any agreement which may have been made and any other circumstances present, to determine what is a fair and equitable division. No special status is accorded to an agreement following mediation. Vague considerations of any public policy to promote alternative dispute resolution mechanisms cannot override the court's duty to ensure that the settlement was fair and equitable.

7 I now consider the division of the matrimonial assets. The wife submitted that she should be entitled to around 57% to 64% of the matrimonial assets, and the wife also argued that a property

located at #10-317 City Towers ("the City Towers Property") should not be a matrimonial asset available for division. The husband submitted that he should be entitled to 60% of the Singapore assets, with the rest of the Malaysian assets to be retained by him save for the wife's 25% share in a Malaysian company Suritas Sdn Bhd ("Suritas"), which owns a property at Villa Bukit Tunku ("the Bukit Tunku Property") in Malaysia.

8 The two most valuable assets of the parties are the matrimonial home located at 38B Jalan Mat Jambol #01-02 ("the Jalan Mat Jambol Property"), which is in the joint name of the parties, and the City Towers Property, which is in the wife's sole name. Ms Suchitra submitted that the City Towers Property was not a matrimonial asset as it had been jointly purchased by the wife with her father as joint tenants three months after the marriage for \$86,000, and that the wife had paid for the property with funds that she had acquired solely prior to marriage. The wife and her father paid \$33,000 each, and the remaining sum was funded by an overdraft of \$20,000, secured against her father's business, that was repaid over time from the rental proceeds of the City Towers Property and her savings or earnings. The wife later claimed to have taken out a \$60,000 loan to purchase her father's half share in 1977. I do not think that this argument has any merit. The City Towers Property was purchased after marriage, and is clearly an "asset of any nature acquired during the marriage by one party" and falls within the definition of "matrimonial asset" under s 112(10)(b) of the Women's Charter. There was also much dispute over the existence and valuation of the jewellery and gold allegedly in the wife's possession and stocks and shares that the husband had transferred to the sons prior to the divorce. The husband contended that the jewellery was worth \$800,000, and displayed numerous pictures in his affidavits of the wife wearing the jewellery. I do not think that this was of any assistance to me, and I do not accept, without more, that it is reasonable for the jewellery to have that estimated value. The wife submitted that the court should take into account the proceeds of sale of the husband's shares amounting to \$244,000 and shares valued at \$136,000 that the husband had transferred to his sons in August 2007 in order to prevent the wife from receiving these assets on division. The wife also claimed that the husband had manipulated her into transferring some of her shares in Suritas to the sons in 1997 and had allotted further shares to the sons so as to gain majority control over the company and the property held in the company's name. The husband denied any ulterior motive, and both sons filed affidavits in support of the husband, averring that they had informed their mother of this arrangement and she had agreed to this. I do not think the circumstances warrant an adverse inference being drawn that there was anything necessarily untoward in the transfer; a father is entitled to provide for his sons if he wishes to. If this constituted dissipation, justice would be achieved by setting off the disputed sum of the jewellery with the sums transferred to the sons.

9 I therefore proceed on the basis that the pool of matrimonial assets available for division is as follows:

(a) **Assets in joint names:**

38B Jalan Mat Jambol #01-02 valued at \$3,500,000

#3-1-5 Villa Aman Condominium in Kuala Lumpur valued at \$800,000 ("the Villa Aman Property")

(b) **Assets in the husband's name**

5% of shares in Suritas valued at \$35,000

Bank accounts with \$132,465

AIA insurance policy with a surrender value of \$37,425.00

CPF funds in the husband's name worth \$137,648

Shares in husband's name worth \$15,144.67

(c) **Assets in the wife's name:**

#10-317 City Towers valued at \$2,500,000

25% of shares in Suritas valued at \$175,000

Bank accounts with \$7,722.88

AIA insurance policy with a surrender value of \$14,556.07

CPF funds in the wife's name worth \$45,652.32

I should add that I valued both the Jalan Mat Jambol Property and the City Towers Property on the basis of the most current valuations presented by Ms Suchitra during the first hearing before me on 15 February. The properties were valued both in the husband's Second Affidavit of Assets and Means and in the Settlement Agreement as at March 2009. In *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157, the Court of Appeal stated (at [39]) that once assets are identified as matrimonial assets, they should be assessed at the date of the hearing (*cf.* the observation of the High Court in *Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121, where a more flexible date of valuation was preferred). Given that it was almost four years before the matter came before me, it would not be realistic for me to assume that the properties have not increased substantially in value, particularly in the present property market. Mr Lim also did not attempt to contest Ms Suchitra's valuation, and the husband's Second Affidavit of Assets and Means filed in November 2009 estimated that the City Towers Property was worth \$3,180,000, thus acknowledging that general property prices had increased since the last date of valuation. I did not have evidence on the current value of the other matrimonial assets.

10 Turning to the parties' direct financial contributions to the marriage, the wife claimed that she came from a wealthy family and entered the marriage with money. She was initially working as a tax assistant but later became a licensee for an employment agency sometime in the early 1980s. The wife claimed to have made considerable financial contributions to the acquisition of both the City Towers Property and the Jalan Mat Jambol Property. The wife's account of the acquisition of the City Towers Property is set out above (at [8]), and it was also not disputed that an overdraft facility with the Bank of East Asia ("BEA"), which was subsequently replaced by the present overdraft facility with Hong Leong Bank ("the Overdraft Account") in the late 1990s, was secured by the City Towers Property. The Jalan Mat Jambol Property was purchased for \$520,000 in 1987 and was originally held in the wife's sole name. The husband and wife only held the property as joint tenants subsequently when a transfer was made in August 1992. There was clear documentary evidence and it was not disputed that \$162,000 of the wife's CPF monies had been used to purchase the property and pay off part of the loans taken to fund the purchase of the property. The wife averred that a \$300,000 loan from BEA, which was also used to purchase the property, was paid off using the rental income from the City Towers Property and the Jalan Mat Jambol Property. The balance of the purchase price was paid using the proceeds of sale of shares that had been purchased using the Overdraft Account and rental income from the City Towers Property. The wife also claimed that the Villa Aman Property and Bukit Tunku Property again came from the rental income from the Singapore properties and the sale

proceeds of shares purchased using the Overdraft Account. She submitted that her financial contributions were accordingly much larger.

11 The husband was a security supervisor at the time of marriage but later started a moneylending business and a stockbroking business. The husband claimed that he had contributed a larger proportion of the purchase price of both properties. In particular, the husband contended that his father had given him \$30,000 in cash at his wedding and that he had given this to the wife to purchase the City Towers Property. The husband also stated that the monthly payments for the \$60,000 loan in the wife's name were serviced by him using the profits that he earned after he started trading in the stock market as a remisier. In support of his account, he pointed to a letter written by the wife on 26 July 1987 to him, stating that:

This is to confirm that the property known as #10-317, City Towers, Bukit Timah Rd, Singapore 1025 which was purchased solely in my name is owned beneficially bt [sic] you, Surindar Singh s/o Jaswant Singh and myself, Sita Jaswant Kaur jointly, in equal shares.

The wife alleged that the husband had forged the letter. Parties filed additional affidavits on this point but I do not think it is necessary for me to make any finding on this. The City Towers Property is available for division whether or not the husband was also an acknowledged owner of the property, and neither do I think that this letter, signed almost 15 years after the initial purchase of the City Towers Property, is credible evidence to support an inference that the husband must have made significant contributions to the initial purchase of this property or the payment of the loan taken out to fund the purchase. The husband also claimed that he had made a direct contribution to the purchase of the Jalan Mat Jambol Property as he had made a direct initial contribution of \$120,500 and had further discharged the original \$300,000 loan from BEA by making monthly installments that totalled \$400,000 inclusive of interest. According to the husband, the Villa Aman Property, which was purchased for RM\$1.514m, and the Bukit Tunku Property, which was purchased for RM\$1.1m, were wholly financed by him from his profits from trading in shares.

12 There was unfortunately little documentary evidence before me, other than mere assertions, to support the husband's account that he had paid for a substantial portion of the initial purchase price of the City Towers Property. In my view, the husband's story that his father had carried a large sum of \$30,000 in cash from India in 1972 and had given it to him to purchase the property was merely an assertion. I accept the wife's account of the initial purchase of the City Towers Property. This was a more likely inference in the light of the fact that the property was initially held in the joint names of the wife and her father and subsequently held in the wife's sole name. However, I am more inclined to accept that the husband played at least some part in servicing the \$60,000 loan to purchase the City Towers Property as well as discharging the \$300,000 loan from BEA for the Jalan Mat Jambol Property as there is nothing to indicate that the source of the funds that went towards the discharge of the loans, taken from the joint accounts of the parties, came solely from the rental proceeds of the City Towers Property and/or the Jalan Mat Jambol Property. I do not think that there was such a clear division in the way that the parties managed their finances such that it can be said that since the large sums of initial capital came from the wife's contribution to the City Towers Property and the Jalan Mat Jambol Property and the rental proceeds derived therefrom, the financial contributions to the properties can only be largely attributed to her. I also note that the wife did not deny that the husband was fairly successful in trading in the stock market or that he had made profits despite drawing on the Overdraft Account to finance his purchase of the shares. On balance, taking into account that both parties had adduced no material documentary evidence on how the various loans were paid off, I find that the wife's direct financial contributions are marginally larger by virtue of her proven contributions to the initial outlay for both the City Towers Property and the Jalan Mat Jambol Property.

13 With respect to each party's indirect contributions to the marriage, the wife claimed that she had played the role of primary care giver for the sons and had done most of the household tasks while the husband concentrated on his career and had multiple affairs with several maids from the wife's employment agency. She also claimed that she and her father had given the husband money for him to set up his stock-brokering firm. The husband criticised the wife as having been derelict in her duties as a mother and claimed that she was a virtually absent wife and mother, going on extended overseas holidays and leaving the husband to care for the two sons alone. The husband also claimed that he was the one who paid for both sons' overseas education and who had attended to the work of the wife's employment agency. He also made improvements and renovations to the City Towers Property and the Jalan Mat Jambol Property. The affidavits filed by the sons generally supported the husband's account. I am not inclined to believe either account in its entirety as each appears to be exaggerated to paint the other party in an unduly negative light. I also sense that the sons were taking sides but am willing to accept that the husband had been a responsible father and was heavily involved in the upbringing of the sons, perhaps to a greater extent than the wife. I would, however, hesitate to draw any conclusion that the wife's contributions to the household over the years were entirely nugatory.

14 Taking into account the entirety of each party's direct and indirect contributions, I am of the view that a fair and equitable distribution of the matrimonial assets would be to award an equal share of the assets to each party. This is not based on any presumption of equality of division – which the Court of Appeal has cautioned against in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [55] – but a recognition that this was a long marriage of almost 30 years (prior to the point that the wife left the matrimonial home) and that the documentary and circumstantial evidence before me demonstrated that the wife had made significant financial contributions to the acquisition of both Singapore properties, and the involvement of both parties was not restricted to either the financial or domestic spheres. I therefore order that the matrimonial assets be distributed in the following manner:

- (a) The Jalan Mat Jambol Property will be sold on the open market and distributed in the proportions of 60% and 40% to the husband and wife respectively;
- (b) The wife will keep the City Towers Property;
- (c) The wife will account for the sums outstanding in the Overdraft Account;
- (d) The wife will transfer her 5% shareholding in Suritas and her share of the Villa Aman Property to the husband; and
- (e) Parties will keep all other assets in their own names.

The approximate division will therefore be 50% of the matrimonial assets to each party. I make no order for maintenance as the parties have been separated since 2002 and the wife has been supporting herself for over ten years.

15 Parties are to bear their own costs.

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