

Saseedaran Nair s/o Krishnan (now known as K Saseedaran Nair) v Nalini d/o K N
Ramachandran (Mrs Saseedaran Nair)
[2012] SGCA 5

Case Number : Civil Appeal No 84 of 2010
Decision Date : 16 January 2012
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Tan Lee Meng J
Counsel Name(s) : Mr K Mathialahan (Guna & Associates) for the appellant; Mr Krishna Morthy SV (SK Kumar & Associates) for the respondent.
Parties : Saseedaran Nair s/o Krishnan (now known as K Saseedaran Nair) — Nalini d/o K N Ramachandran (Mrs Saseedaran Nair)

Family Law

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2010\] SGHC 98.](#)]

16 January 2012

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the judge (“the Judge”) in *Nalini d/o Ramachandran v Saseedaran Nair s/o Krishnan* [2010] SGHC 98 that:

- (a) the appellant, Saseedaran Nair s/o Krishnan (now known as K Saseedaran Nair) (“the Husband”), was *not* solely entitled to the payout of \$172,740.30 (“the HPIS Payout”) under the Home Protection Insurance Scheme (“HPIS”); and
- (b) that the HPIS Payout, which pertained to the matrimonial home (“the Property”), was to be divided between the parties in accordance with the ancillary order made, and not deducted in calculating the net worth of the matrimonial home.

2 The object of the HPIS and the manner of its operation are described in [\[4\]](#) and [\[9\]](#) below. At the conclusion of the hearing, we dismissed the Husband’s appeal. We now give our reasons.

Facts

3 The Husband was married to the respondent, Nalini d/o K N Ramachandran (“the Wife”) for 17 years, and the parties have two children aged 15 and 13 respectively. On 22 November 2006, the Wife filed a writ for divorce on the ground of four years’ separation. On 27 February 2007, an interim judgment dissolving the marriage was made. On 22 January 2008, the parties settled all ancillary matters at mediation before a district judge and a consent order (“Consent Order”) was made accordingly. Paragraph 5(5) of the Consent Order relating to the division of the Property, a Housing and Development Board (“HDB”) flat, provided, *inter alia*, that the Property should be sold in the open

market, and that the net sale proceeds should be divided in the proportion of 60% to the Wife and 40% to the Husband. As at the date of the Consent Order, there was an outstanding mortgage loan on the Property of approximately \$170,000.

4 Between September 2007 and February 2008, the Husband sought medical attention for his visual problems. On 13 February 2008 (after the Consent Order was made), his doctor at the National University Hospital confirmed in writing that he was suffering from Leber Hereditary Optic Neuropathy, a condition which left him with very poor vision in both eyes. At the time the Property was purchased, the Husband had taken up the HPIS established pursuant to s 29 of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("CPF Act"). The HPIS provided that in the event of the Husband's death or disability, his outstanding liability to repay the housing loan shall be discharged by the Central Provident Fund ("CPF"). As such, on 15 July 2008, the Husband applied to the CPF Board for a payout due to his disability. On 16 December 2008, he was certified to be legally blind. On 26 December 2008, pursuant to the HPIS, the CPF Board paid a sum of \$172,740.30 directly to the HDB to fully discharge the outstanding mortgage loan on the Property.

The decisions below

5 On 18 June 2009, the Wife filed an application to enforce para 5(5) of the Consent Order (see above at para 3), viz, that she have sole conduct of the sale of the Property and that the Husband should, *inter alia*, vacate the Property within one month of the date of Consent Order. On 10 September 2009, the Husband applied for a variation of the Consent Order, so that he would be solely entitled to the HPIS Payout. He further applied for a variation to the Consent Order requiring the Wife to transfer her interest in the flat to him, after which he would pay the Wife a sum being 60% of the net value of the flat after deducting, *inter alia*, the HPIS Payout. In other words, the Husband sought to claim that he was solely entitled to the benefit of the HPIS Payout. After hearing both applications together, the district judge ("DJ") dismissed the Wife's application and varied the Consent Order. The DJ ordered that the Wife transfer her title to the flat to the Husband, and that the Husband pay the Wife 60% of the net value of the flat without taking into account the fact that, pursuant to the HPIS Payout, the outstanding mortgage on the Property had been redeemed (*ie*, the 60% share of the matrimonial home due to the Wife would be on the basis as if the outstanding loan on the Property had not been repaid by the HPIS Payout).

6 The Wife appealed against the DJ's decision. On appeal, the Judge varied the DJ's order and held that: (i) the Husband was *not* solely entitled to the HPIS Payout; and (ii) that the HPIS Payout was not to be deducted for the purposes of calculating the net value of the Property for division between the parties. The Husband appealed against this variation made by the Judge.

Whether the HPIS Payout should be attributed solely to the insured party, such that it should be deducted from the sale proceeds before computing the parties' respective shares in the matrimonial home

7 We found that the Judge was correct in holding that the HPIS Payout was *not* for the sole benefit of the insured party (here the Husband), such that it should not be deducted from the sale proceeds before determining the net worth of the Property and in turn, the parties' respective shares in it.

8 First, the character of the HPIS, as revealed by both the legislative intent and the mechanics of its operation, clearly indicates that a payout under the HPIS pertains to the insured CPF member's property rather than to the insured CPF member. The HPIS is a mortgage-reducing policy that is specifically targeted at protecting the family home. This was expressly articulated in the course of

parliamentary debates by the then Minister for Communications and Minister for Labour, Mr Ong Teng Cheong, when the HPIS was introduced (*Singapore Parliamentary Debates, Official Report* (6 March 1981) vol 40 at cols 324-325):

The Ministry has found that a large majority of CPF members who are using their CPF moneys to repay the mortgages on their flats are not covered by any mortgage reducing insurance policy... Therefore, the establishment of the [HPIS] by the CPF Board would meet a need which insurance companies have failed to meet.

9 It is clear that the purpose of the HPIS is to reduce the mortgage outstanding on the property, *not* to compensate the insured for his incapacity (here, the blindness of the Husband). A payout under the HPIS is not personal in nature, thereby distinguishing it from a payment under an ordinary life insurance policy. This distinction is borne out by following hypothetical. Suppose that a home owner had fully repaid his housing loan while he was in good health. In the event of incapacity on the part of this particular insured property owner, the insured would not be entitled to receive from the CPF Board a payout under the HPIS. In this regard, it is also pertinent to note that the payout under the HPIS is not made to the insured, but directly by the CPF Board to the HDB. The insured has no control over the use of the monies. It is therefore clear that a payout under the HPIS is not intended as a personal benefit to the insured CPF member to dispose of as he wishes. Additionally, the fact that the HPIS is compulsory for CPF members who have used their CPF monies to pay for their monthly housing loan instalments for the purchase of their HDB flats under the Public Housing Scheme further points to the conclusion that the benefit of the payout is to secure the home for the family in the event that the insured breadwinner should lose his capacity to earn.

10 Indeed, the manner in which a payout under the HPIS is effected again reinforces the point that the object of the HPIS is to prevent the insured and his family from losing their home if the insured were to meet with some misfortune that would either claim his life or render him incapable of supporting his dependents. As articulated in the following extract taken from the same parliamentary debates (above at [7]) (*Singapore Parliamentary Debates, Official Report* (6 March 1981) vol 40 at cols 325-326):

Members will only be given coverage up to the age of 55 years. This is because at this age members are entitled to withdraw their CPF savings which could be used to pay off the outstanding loans. *Besides, the need for a cover beyond this age is less crucial as such members are unlikely to have young dependent children.* [emphasis added]

11 Accordingly, it is clear from the parliamentary debates (see above at [7] and [10]) that the HPIS was designed to protect not just the insured, but his dependents as well. As such, we found that the Judge was correct in holding at [23] of his grounds of decision that “[t]he HPIS [P]ayout therefore pertained to the Property and was not intended to be a personal benefit for the Husband although the premium was paid by the Husband.” As the HPIS Payout pertained to the Property, it followed that the HPIS Payout should be factored in to determine the net value of the Property for division in accordance with the Consent Order.

12 Second, as regards the Husband’s argument that as of the date on which he became entitled to the HPIS Payout, he was already divorced from the Wife, and as such, she should not be entitled to any benefit of the HPIS Payout, we found that it was an argument without any regard to the object of the HPIS. Moreover, we would also underscore the fact that the Wife was still a joint owner of the Property both at the time of the hearing before the Judge and of the appeal before us, and we could not see any reason why the Wife, being a joint owner, should not be entitled to share in the benefits accruing to the Property, such as the HPIS Payout.

13 The Husband further submitted to this court that the only reason he was willing to pay for a 100% HPIS coverage for the loan was that he assumed that his marriage would be intact and his family would benefit. However, this argument is also untenable as the HPIS is both compulsory and statutory in nature. Any person who has an outstanding loan on his HDB flat and has utilized his CPF money to pay for his monthly instalments due on the flat is required to subscribe to the HPIS. Although he could apply for an exemption under s 29(4) of the CPF Act, the ultimate decision rested with the CPF Board. There was nothing before us which would indicate that had he applied for an exemption his application would likely have been granted. In any case, he did not make any such application. Subscription to the HPIS was not a step taken by him of his own free will. The status of the marriage of the insured would not be a relevant consideration. It is the order of court dividing the matrimonial assets, read with the HPIS, that would be determinative.

14 As we have stated above at [6] – [8], the HPIS Payout pertains to the Property (to protect it in the interest of the family) not just the individual insured. The Consent Order for division of matrimonial assets was for the Property to be sold in the open market with the net proceeds, after settling outstanding liabilities, to be divided between the parties in the ratio of 60:40 in favour of the Wife. Up to the date on which we heard the appeal, the Property had yet to be sold. There was nothing in the Consent Order which stated what else should be included or excluded to determine the net proceeds, other than the outstanding liabilities. As of the date of the hearing before the Judge, there was no more outstanding loan on the Property, the outstanding loan having been repaid by the HPIS Payout. In the circumstances there was nothing more to be deducted from the proceeds of sale to determine the net proceeds of the sale of the Property. The net proceeds would naturally be enhanced and both the Wife and Husband would in turn get more under the division.

15 We are also unable to accept the Husband's further argument that the parties had already decided to sell the flat in view of the divorce, he should therefore be solely entitled to the benefit of the HPIS Payout. If that intention was carried out and the sale was in fact completed before any payout was made under the HPIS, then such a payout would not have taken place (as the parties would no longer be owning the Property) and the issue which the Husband raised before us would not have arisen. In that eventuality, both the Wife and the Husband would have been the poorer as a result. But that was not what happened here. We would reiterate that we could not see why the HPIS Payout, which was meant to benefit the family, should as a result of the divorce benefit only the Husband. Indeed, to so hold would give rise to gross injustice to the Wife and the two children whom she has custody of. In view of the legislative policy behind s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) ("Women's Charter") which governs the division of matrimonial assets as well as the object of the HPIS, it would not have mattered that the Wife had made no financial contributions towards the payment of the premiums for the HPIS. The Husband's argument that the Wife made no contribution towards paying the HPIS premium is also without merit.

16 As the Husband wished, subsequent to the making of the Consent Order, to retain the flat for himself, he stated that if the HPIS Payout was not deducted as per the order of the Judge, he would have had to pay the Wife the amount of \$316,000 (being her 60% share) due to the subsequent appreciation of the net value of the Property. In contrast, if the HPIS Payout was to be deducted, he would only have to pay the Wife \$216,460. This follows from our holding as a matter of course. He benefits from the enhanced net value of the Property because the outstanding loan had been repaid by the HPIS Payout, and so should the Wife.

Whether the HPIS Payout was a matrimonial asset

17 The Husband also argued before us that the HPIS Payout was not a matrimonial asset as it was paid out after the dissolution of the marriage and that, therefore, it should accrue solely to him.

Again, we were unable to accept this argument. He was required to subscribe to the HPIS during the subsistence of the marriage. As such, it clearly fell within the definition of a matrimonial asset under s 112(10)(b) of the Women's Charter, being "any other asset of any nature acquired during the marriage by one party or both parties to the marriage." It is clear that an insurance policy purchased by either party during the marriage can be regarded as a matrimonial asset: see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 606. In our view, it was immaterial that the payout was made after the marriage had been dissolved, as the operative time was when the Husband subscribed to HPIS. Furthermore, the HPIS Payout could not be said to be a distinct asset from the matrimonial home as it was inextricably intertwined with the Property, having been given directly by the CPF to the HDB for the sole purpose of discharging the outstanding loan on the Property and in turn the mortgage. In the premises, the Husband's contention that the HPIS Payout was distinct from the matrimonial home and was not a matrimonial asset was without basis.

Observations

18 Before we conclude, we would state that we recognise that this ruling could pose challenging issues in different circumstances. Take, for instance, the case where the husband was permitted to retain the matrimonial flat and was ordered to pay the wife a certain percentage of the net proceeds. Assuming that payment to the wife of her share was duly made and that the flat became the sole property of the husband (regardless of whether the flat was originally in the husband's sole name or in joint names with the wife). A year later, the husband met with an accident which rendered him permanently incapacitated. A payout under the HPIS was made to discharge his outstanding loan on the flat. Query: would the ex-wife be entitled to a share of that payout? Would the answer be different if instead of the incapacity being caused by an accident, it was brought about by a pre-existing medical condition? These are delicate questions which fortunately do not arise here and thus we are not required to answer them. It would appear, however, that a strong case could be made for the conclusion that there is no basis for an ex-wife to make such a claim for a share of that HPIS payout, for the following reasons:

- (a) First, the HPIS payout should no longer be considered a matrimonial asset as it came about only after the parties had executed the ancillary order for the division of matrimonial assets, ie, the parties' rights and interests with regard to matrimonial assets have already been determined and enforced. Parties should not be allowed to continue to make claims indefinitely for benefits received by the other party after the division of matrimonial assets has been completed. There is a need for finality, unless fraud is shown.
- (b) Second, once the husband obtained sole title to the flat after paying the wife her share, the flat would become his exclusive property. Conceptually, it can no longer be regarded as the matrimonial home once the division of matrimonial assets has been completed. At the time the HPIS payout was actually made, the wife would no longer have any interest in the flat. As such, if subsequent to this, a mishap should occur which triggers a HPIS payout, that payout which pertains to the property should accrue to the benefit of the owner at that time, viz, the husband.
- (c) Third, at the time of the mishap, the wife would no longer fall under the category of persons the legislature intended to protect under the HPIS, viz, the insured's dependents who face the prospect of losing the roof over their heads.

Conclusion

19 For the reasons above, we dismissed the appeal. However, in the light of the Husband's wish to retain the matrimonial flat, we gave him an option to do so within 3 months from the date of our order dismissing his appeal. In the event that the Husband should decide to retain the flat then immediate steps must be taken by him (including the obtaining of objective evidence as to the value of the flat) to pay to the Wife her due share. As the Wife had agreed to waive costs, we made no order in that regard except that the Husband should pay the Wife reasonable disbursements in relation to this appeal.

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