

Sim Mui Beng Nancy v Tan Peng Huat Steven
[2002] SGHC 79

Case Number : Div 111/2000, RA 720047/2001

Decision Date : 19 April 2002

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Appellant/husband in person; Jasvendar Kaur (Jyah & Jas) for the respondent/wife

Parties : Sim Mui Beng Nancy — Tan Peng Huat Steven

Family Law – Divorce matrimonial assets – Division – Whether to factor husband's obligation to pay maintenance in determining apportionment of matrimonial assets – Need to consider husband's personal circumstances when making orders for division – Quantification of value of matrimonial assets besides matrimonial flat – Whether appropriate for court to estimate value of such assets and require husband to pay wife her share in cash

1. The district judge had explained in her judgment that it was because of the fact that the husband had to support the younger son that she apportioned to him 60% share of the matrimonial assets instead of the 50% share that she would otherwise have allowed. The district judge did not factor into that apportionment the husband's obligation to maintain the wife. This is understandable as maintenance payments are not ordinarily taken into account in determining the distribution of matrimonial assets.
2. However, where the husband is of relatively advanced age and unemployed and where the reality is that the only source of sustenance for him at present and in the years to come would be from his share of the matrimonial assets, there does not seem to be any reason why the court should not factor the obligation to pay maintenance in determining the apportionment of matrimonial assets.
3. Nevertheless, in this present case, the wife will not, in fact, obtain the bulk of her share of the other matrimonial assets, in particular her share of the monies in her husband's CPF account until he is 55 years of age. It thus seems appropriate that until such time as the wife obtains her full share of the matrimonial assets, the husband should be required to maintain her. Therefore, while the apportionment in the ratio of 60 : 40 by the district judge is to be upheld, the \$300 per month maintenance is ordered to be payable only up to June 2005 by which time her 40 % share in the husband's CPF funds would have been released to her and she would have received in full her share of the matrimonial assets.
4. As for the quantification of other matrimonial assets, there was merit in the husband's submissions. It was not appropriate in this case for the court to fix the value of the other matrimonial assets and require one party to pay to the other party in cash the share of the other party. All the court can do (in the absence of consent) is to order the sale of the assets so that the sale proceeds can be apportioned between them. The order of the district judge ordering the husband to pay the wife the sum of \$150,000 was set aside and specific orders (some of them by consent) were made in relation to each of the other matrimonial assets.

Judgment

GROUND OF DECISION

1. The parties to this appeal were married in 1973. A decree nisi dissolving their marriage was granted on an uncontested basis on 17 November 2000. There were two sons to the marriage – the elder is now aged 26 years and the younger is 15 years. Custody of the younger son was, by consent, granted to both parties with care and control to the husband. The only areas of dispute in the court below related to the apportionment of matrimonial assets and maintenance for the wife ("ancillary matters"). The matrimonial assets consisted of an HDB flat ("the matrimonial flat"), the husband's CPF savings, property in Malaysia, shares listed on the Stock Exchanges of Singapore and Malaysia, various bank accounts and club memberships ("the other matrimonial assets").
2. The ancillary matters were heard by the District Judge on 13 and 14 August 2001. At the conclusion of the hearing the District Judge made the following orders:
 - (1) The husband shall have an option to purchase the rights, interests and title of the wife in the matrimonial flat by paying the wife 40% of the value of the flat; the value shall be obtained from an agreed valuer on the basis of open market sale; the husband shall bear the costs of the sale and the option shall be exercised within one month from the date of the order.
 - (2) If the option is not exercised within the stated period, the matrimonial flat shall be sold in the open market and the proceeds of sale, after deducting the costs and expenses of the sale, shall be divided in the proportion of 60% to the husband and 40% to the wife. The husband shall refund his Central Provident Fund ("CPF") account of monies used for the flat with accrued interest from his share.
 - (3) The husband shall also pay the wife a sum of \$150,000 (being about 40% of the value of \$375,680) as her share in the other matrimonial assets.
 - (4) The husband shall pay the wife the amount of \$300 a month as her maintenance with effect from 15 August 2001 and on the 15th day of every month thereafter, into a bank account of the wife.

The husband, through his then solicitors, filed a Notice of Appeal.

3. I heard the appeal on 29 November 2001, 15 and 19 April 2002. The husband appeared in person. His submissions fell into two broad categories:
 - (a) That the apportionment of the matrimonial assets in the ratio 60:40 should be varied in his favour or, alternatively, he should not be required to pay maintenance to the wife.
 - (b) That, in respect of the other matrimonial assets, the District Judge ought not to have quantified the 40% payable to the wife at \$150,000.

I will deal with each of these submissions in turn.

The apportionment of the matrimonial assets

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4. The husband is in his early 50s and has been unemployed for a while. He vehemently denied the submission by Ms Jasvendar Kaur, counsel for the wife, that his unemployment was self-imposed. He has, he said, tried hard to get employment but, in spite of his many years of experience in the

electronic and mechanical engineering trade, his age was against him and he could not secure employment even at in lower positions and at considerably reduced wages. Being unemployed, the only way he could support himself and his younger son (and pay the monthly maintenance to his wife) was to utilise his share of the matrimonial assets to generate sufficient income or, failing that, dip into his capital (ie his share of the matrimonial assets).

5. The husband argued that just as he had to support himself (and his younger son) from his 60% share of the matrimonial assets, so too could the wife support herself from her 40% share of the matrimonial assets. He argued that the District Judge, in ordering him to pay maintenance to his wife, had not sufficiently taken into account the fact that whilst his share of the matrimonial assets had to be utilised for himself and his younger son, the wife's share of the matrimonial assets was only for herself. He therefore urged the court to either grant him a greater share of the matrimonial assets or reduce/cancel the maintenance payable to the wife.

6. Miss Kaur pointed out that the Notice of Appeal did not specifically cover maintenance and submitted that, unless the court granted leave to the husband to appeal out of time, the court should not vary the apportionment of the matrimonial assets to reflect the obligation on the husband to maintain the wife or entertain any submissions on maintenance. It could well be argued, as the husband did in this case, that the apportionment of matrimonial assets and the provision of maintenance were inter-connected and that an appeal on the apportionment would necessarily involve an appeal on the maintenance. But even if that was not so, I was prepared to grant the husband leave to raise the question of maintenance.

7. In her Grounds of Judgment, the District Judge explained that it was because of the fact that the husband would have to support his younger son that she apportioned to him 60% share of the matrimonial assets instead of the 50% share that she would otherwise have allowed. The District Judge did not factor into that apportionment the husband's obligation to maintain the wife. This is understandable as maintenance payments are not ordinarily taken into account in determining how matrimonial assets are to be distributed. However, in a case like this – where the husband is of relatively advanced age and unemployed and where the reality is that the only source of sustenance for him at present and in the years to come would be from his share of the matrimonial assets – there does not seem to be any reason why the court should not factor the obligation to pay maintenance into the equation in determining the apportionment of the matrimonial assets.

8. In the present case, however, the wife will, in fact, not obtain the bulk of her share of the other matrimonial assets – in particular her share of what is in the husband's CPF account – until the husband attains the age of 55 years, which is still some 3 years away. It seems to me appropriate that until such time as the wife obtains her full share of the matrimonial assets, the husband should be required to maintain her. Thereafter she and the husband can meet their financial needs from their respective shares in the matrimonial assets.

9. I therefore upheld the decision of the District Judge that the matrimonial assets be apportioned in the ratio 60:40 but ordered that the \$300 per month maintenance ordered by the District Judge be payable to the wife only up to June 2005 by which time her 40% share in the husband's CPF funds would have been released to her and she would have received in full her share of the matrimonial assets.

Quantifying the "other matrimonial assets"

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10. The District Judge had not quantified the value of the matrimonial flat: its value was to be dependent on the price it fetched when sold. This was as it should be. In respect of the "other matrimonial assets" however, the District Judge quantified the value of each asset as follows:

1.	Mewah View Condominium in Malaysia	\$90,000
2.	DBS autosave account	\$ 46,394
3.	POSB savings account	\$ 2,219
4.	RHB bank account A	\$ 773
5.	RHB bank account B	\$ 323
6.	Citibank account	\$ 990
7.	SCB savings account	\$ 208
8.	CPF ordinary account	\$ 61,450
9.	Shares – CPF Investment account	\$140,004
10.	CDP shares account	\$ 16,753
11.	Malaysian shares	\$ 28,656
12.	Thailand shares	\$ 4,410
13.	Chinese Swimming Club	\$ 3,000
14.	Pinetree Club	\$ 12,000
15.	Penang Club	<u>\$ 2,700</u>
	TOTAL:	<u>\$409,880</u>
	Less: Liability to creditors	<u>\$ 34,200</u>
	NET VALUE:	<u>\$375,680</u>

Having arrived at the nett value of \$375,680 the District Judge rounded off the wife's 40% share of the nett assets at \$150,000 and ordered the husband to pay that sum to the wife.

11. The husband, at the hearing of this appeal, pointed out that he just did not have cash anywhere near \$150,000 with which to comply with the order made against him. He pointed out that the amount of \$61,450 stated to be in his CPF ordinary account and \$140,004 stated to be in his CPF investment account could not be withdrawn by him until he reached the age of 55 years. He further pointed out that figure of \$409,880 adopted by the District Judge as the gross value of the other matrimonial assets was a mere estimate and until the assets were actually realised the value would be just conjecture. In that context, he pointed out that the property market and the share market had in recent times suffered rapid decline and the values adopted by the District Judge were just not realistic. A fairer order for the District Judge to have made, he submitted, would have been – as she did in respect of the matrimonial flat – to order that the other matrimonial assets be sold within a time-span prescribed by the court and the proceeds apportioned between him and the wife in the ratio of 60:40.

12. There was merit in the husband's submission. It was not appropriate, in this case, for the court to fix the value of the other matrimonial assets and require one party to pay to the other party in cash the share of the other party. All that the court can do (in the absence of consent) is order the sale of the assets so that the sale proceeds can be apportioned between them.

13. For the above reason I set aside the order of the District Judge ordering the husband to pay the wife the sum of \$150,000 and made specific orders (some of them by consent) in relation to each asset. In respect of the CPF investment account, I authorised the husband to sell the shares held in that account and I further authorised the wife to place a charge on the funds in the CPF ordinary account and the CPF investment account in order to secure her 40% interest. As for the Mewah View Condominium, I ordered the husband to sell the property within 6 months and pay 40% of the nett sale proceeds to the wife in Malaysian Ringgit. As for the memberships in the Chinese Swimming Club

and the Penang Club (of which he was an absent member), the husband was prepared to pay to the wife 40% of the value determined by the District Judge. In respect of the Pinetree Club, I accepted the submission of the husband that as a result of recent events the membership was no longer marketable and so could not be given any value.

Sgd:

S. RAJENDRAN
Judge

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