

Ho Shin Hwee v Kwik Mak Seng Mark
[2013] SGHC 215

Case Number : Divorce Suit No 6225 of 2010
Decision Date : 22 October 2013
Tribunal/Court : High Court
Coram : Lionel Yee JC
Counsel Name(s) : Lim Bee Li and Choh Thian Chee Irving (Optimus Chambers LLC) for the plaintiff;
K R Manickavasagam (Manicka & Co) for the defendant.
Parties : Ho Shin Hwee — Kwik Mak Seng Mark

Family Law – Matrimonial assets – Division

Family Law – Maintenance

22 October 2013

Lionel Yee JC:

1 The plaintiff wife and defendant husband were married on 21 September 2002. As at the date of filing of the respective affidavits of assets and means in early 2012, the wife was 34 years old and the husband was 36 years old. Both were working at the time of marriage but about six months after they got married, the wife ceased her employment and the parties relocated to Australia as the husband was sent there on a work assignment. Unfortunately, in July 2003, the parties were involved in a car accident in Australia after the husband fell asleep behind the wheel, leaving the wife permanently disabled. The parties then returned to Singapore but in July 2004, a year after the accident, the defendant left the wife and the matrimonial flat. The parties lived separately until the wife filed for divorce on 9 December 2010. Interim judgment was granted on 22 November 2011 based on four years of separation (*ie* s 95(3)(e) of the Women’s Charter (Cap 353, 2009 Rev Ed)). At the ancillary matters hearings, the only outstanding issues were the division of the matrimonial flat and maintenance of the wife.

2 After hearing the parties, I gave oral judgment on 3 September 2013, ordering: (1) the matrimonial flat to be sold and the net sale proceeds divided in the ratio of 53% to the husband and 47% to the wife, with each party being responsible for refunding their respective Central Provident Fund (“CPF”) contributions; (2) the wife to be given the option of buying over the husband’s share of the matrimonial flat valued at S\$259,700; (3) S\$54,000 in lump sum maintenance for the wife to be paid out of the husband’s share of the net sale proceeds of the matrimonial flat. As the wife has appealed against these orders, I now give my full grounds of decision.

Division of the matrimonial flat

3 The parties owned the matrimonial flat as joint tenants. The parties agreed to value the matrimonial flat at \$490,000. The housing loan on the property has been fully discharged. Both parties contributed to the monthly mortgage payments using their CPF funds: the wife’s CPF contributions added up to S\$23,545.60 whereas the husband’s CPF contributions totalled S\$45,978.60 (without accrued interest). The balance of the housing loan was paid up using a sum of S\$136,297.97 received pursuant to the Home Protection Insurance Scheme (also known as the Home Protection Scheme or

“HPS”).

4 The HPS is a mortgage-reducing insurance scheme established under s 29 of the CPF Act (Cap 36, 2013 Rev Ed) and administered by the CPF Board. Under the HPS, in the event that a CPF member becomes permanently incapacitated and cannot continue any employment, the CPF Board will discharge the member's outstanding mortgage by making a payment directly to the mortgagee. In this case, the parties had taken out HPS mortgage insurance at the time that they purchased the matrimonial flat and the premiums were paid by both parties. After the accident in 2003, the wife made a claim under the HPS in respect of her incapacity and the CPF Board duly made a payment to the Housing & Development Board to settle the outstanding housing loan (the “HPS Pay-out”).

5 The parties' positions on the division of the matrimonial flat were as follows. The wife submitted that the matrimonial flat should be transferred to her sole name, without any refund to the husband's CPF account. As for the husband's position, while he had claimed 80% of the net proceeds in his affidavit of assets and means, his counsel submitted that the matrimonial flat should be sold and that he should receive 50% of the net sale proceeds after refunding his CPF contributions with interest; alternatively, his share of the matrimonial flat should be transferred to the wife for proportionate consideration. Counsel for the husband submitted that this was fair given that the husband was not claiming any share of the S\$4.56 million (A\$3.8 million at an exchange rate of A\$1=S\$1.20) that the wife had received in August 2011 as an insurance pay-out for the 2003 accident in Australia.

6 It should first be noted that the HPS Pay-out could *not* be regarded as the wife's contribution towards the acquisition of the matrimonial flat. Counsel for both parties were also agreed on this point. In the case of *Saseedaran Nair s/o Krishnan (now known as K Saseedaran Nair) v Nalini d/o K N Ramachandran* [2012] 2 SLR 365 (“*Saseedaran*”), the Court of Appeal at [7] made it clear that a pay-out under the HPS is not for the sole benefit of the insured party (and therefore cannot be regarded as the sole property of the insured party) such that it should be deducted from the sale proceeds before determining the parties' respective shares in the matrimonial property. This is because the purpose of the HPS is to reduce the outstanding mortgage on the property and not to compensate the insured for his incapacity (*Saseedaran* at [9]). Further, under the CPF Act, HPS is compulsory for members who use their CPF savings to pay their monthly housing instalments. To treat the HPS Pay-out as part of the wife's financial contributions to the matrimonial flat in the present case would be no different from treating it as belonging solely to the wife. In my opinion, it was the premiums which both parties paid for the HPS coverage, rather than the HPS Pay-out itself, which would be regarded as their contributions towards the acquisition of the matrimonial flat, although *Saseedaran* also makes clear that a HPS pay-out is still a matrimonial asset even if only one party pays the HPS premiums. In the absence of any evidence showing how much each party paid in premiums, I can only assume that the amounts were broadly similar.

7 In dividing the matrimonial flat, I took into account the following financial and non-financial contributions of the parties. First, both parties had made CPF contributions towards the acquisition of the matrimonial flat. Without taking into account the HPS Pay-out, the proportion of their respective contributions was approximately 33.87% by the wife and 66.13% by the husband. Second, pursuant to interim consent orders entered into in January 2008, the wife was allowed to rent out the matrimonial flat and retain the rental proceeds for herself. The wife disclosed tenancy agreements from October 2011 showing that the matrimonial flat was rented out for S\$2,100 a month. The husband did not claim any share of these rental proceeds. Third, I took into account the wife's indirect contributions towards the marriage, in particular the fact that she left her job in Singapore to relocate to Australia with the husband as well as the fact that for the period of time in Australia before the accident, she took care of the house while he worked. Finally, the parties lived together for only a short period of time and they had no children. While the marriage lasted nine years, the

parties only lived together for about ten months from September 2002 to July 2003 when the accident took place. The situation was therefore one where the husband had made significantly greater financial contributions than the wife, especially to the acquisition of the matrimonial flat, while the wife's non-financial contributions were not very substantial.

8 This would ordinarily mean that the husband would be entitled to a significantly larger share of the matrimonial flat. In this case, however, the position taken by the husband was that the sale proceeds of the matrimonial flat should be split equally between the parties after refunding each party's CPF contributions and accrued interest. I considered this position to be more than reasonable in the circumstances and a just and equitable division of the matrimonial flat should, in my view, proceed on this basis. However, the approach advocated by the husband of deducting the CPF contributions first before splitting the net proceeds of sale gave rise to uncertainty since the exact amount of accrued interest to be refunded to the CPF Board would change over time. Moreover, I was granting the wife's request for an option of buying over the husband's share of the matrimonial flat and thus it was desirable to determine with certainty the amount which she would have to pay to him should she choose to do so. I therefore sought to achieve a result arithmetically similar to the husband's position by ordering that the net sale proceeds of the matrimonial flat be divided in the ratio of 53% to the husband and 47% to the wife, with both parties being responsible for refunding their respective CPF contributions and accrued interest out of their respective shares of the sale proceeds.

9 The 53% share of the husband was computed as follows:

Description	Value (S\$)
Valuation of matrimonial flat	490,000.00
Wife's CPF contributions and accrued interest	(23,545.60) (5,141.30)
Husband's CPF contributions and accrued interest	(45,978.60) (11,924.98)
Proceeds net of CPF contributions	403,409.52
50% share of proceeds net of CPF contributions	$403,409.52 \div 2 =$ 201,704.76
Husband's 50% share of net proceeds + husband's CPF contributions and accrued interest	$201,704.76 + 45,978.60 +$ $11,924.98 = 259,608.34$

The value of the husband's share of the net proceeds together with his CPF contributions and accrued interest was S\$259,608.34, which was 52.98% of the S\$490,000 value of the flat which I rounded up to 53%.

10 With respect to the wife's request for an option of buying over the husband's share of the matrimonial flat, given that parties agreed to regard the value of the matrimonial flat as S\$490,000, the husband's 53% share would be valued at S\$259,700. The husband did not ask to be given a similar option to buy over the wife's share.

Maintenance of the wife

11 The wife sought a monthly maintenance payment of S\$2,300 from the husband in the event that she was not allowed to keep the matrimonial flat. She argued that a lump sum should be awarded

given that it was a short marriage and that she desired a clean break. She asked that a multiplier of ten be applied, given her medical condition, such that a lump sum of (ten years x 12 months x S\$2,300 per month) = S\$276,000 would be awarded to her. On the other hand, the husband contended that he should not be ordered to pay maintenance to her and that, even if maintenance were awarded, it should not take the form of a lump sum since it would be a significant cut from his share of the proceeds of sale of the matrimonial flat and would leave him with insufficient funds to purchase another flat.

12 In determining the appropriate maintenance to be granted to the wife, I took into consideration the income and expenses of the husband as well as the expenses claimed by the wife, which were not disputed. The husband earned a fairly modest gross salary of about S\$2,500 a month and his expenses amounted to about S\$2,200 per month, of which S\$950 went to rental. The wife's expenses amounted to about S\$8,779 per month, the bulk of which were medical expenses. I also took into account the fact that if the wife buys over the husband's share of the matrimonial flat, she will continue to receive rental income from it; if she does not, she can use her share of the sale proceeds of the flat for other investments. As for the husband, he will also receive a significant sum of money from the sale of the matrimonial flat which, if applied towards purchasing another flat, will significantly reduce his current rental expenses of S\$950 per month. I have, in addition, noted that just before the parties ceased to live together, it was the husband who was maintaining the wife, albeit for a very short period of time.

13 As for the S\$4.56 million insurance pay-out received by the wife, I was of the view that in determining the maintenance to be awarded to the wife, this had to be taken into account as one of her financial resources under s 114(1)(a) of the Women's Charter even though the husband did not lay claim to any share of this sum. Counsel for the wife explained that this sum came about as a result of litigation in Australia against the vehicle insurers. It was reasonable to assume that the legal regimes in Australia and Singapore did not differ significantly and thus that the S\$4.56 million pay-out was likely to have taken into account factors such as past and future medical expenses and the loss of future earnings or earning capacity. In my opinion, S\$4.56 million was a significant sum of money and could be invested to yield a considerable income stream.

14 In the circumstances, neither party's position was reasonable. It should be noted that the wife's position would effectively mean that the husband would pay to her a lump sum in excess of his entire share of the sales proceeds of the matrimonial flat. The husband, on the other hand, should be expected to and did have some capacity to maintain the wife. I therefore ordered maintenance to be paid by the husband to the wife to be set at S\$450 per month. As requested by the wife, I also ordered that it be paid in a lump sum. Counsel for the husband did not make any submission on the multiplier to be used. Applying the multiplier of ten years submitted by the wife to S\$450 per month would yield a lump sum of S\$54,000. I was of the view that deduction of this amount from the husband's share of the sale proceeds from the matrimonial flat would still give him a sum which, taking into account the likely quantum of mortgage repayments on a loan in lieu of the rental that he was paying, would be sufficient to enable him to purchase a reasonably-sized flat should he wish to do so. I therefore ordered a lump sum payment of maintenance of S\$54,000 to be paid by the husband to the wife out of his share of the net sale proceeds of the matrimonial flat.

15 Accordingly, should the wife choose to buy over the husband's share of the flat, she would have to pay him S\$205,700, being S\$259,700 less the lump sum maintenance of S\$54,000, with the husband being responsible for refunding his CPF contributions plus accrued interest.