

AAL v AAK
[2012] SGHC 146

Case Number : Divorce Transfer No 1161 of 2007
Decision Date : 20 July 2012
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Ang Sin Teck (Surian & Partners) for the plaintiff; Andy Chiok and Kelvin Ho (Michael Khoo & Partners) for the defendant.
Parties : AAL — AAK

Family Law – Matrimonial assets – Maintenance

20 July 2012

Lee Seiu Kin J :

1 At the hearing on ancillaries on 9 February 2012, I made the following orders:

(a) The matrimonial assets of the marriage valued at \$5,724,029.88 shall be divided in the final proportions of 40% to the plaintiff and 60% to the defendant, taking into account:

(i) a division of the said matrimonial assets in the proportions of 45% to the plaintiff and 55% to the defendant; and

(ii) the defendant is awarded an additional 5% of the matrimonial assets of the marriage as a lump-sum maintenance for the child's and her maintenance.

(b) The plaintiff shall pay arrears of seven months from July 2011 to January 2012 in the following manner:

(i) \$18,000 to be released by the plaintiff's solicitors; and

(ii) \$13,500 from the plaintiff's share of the matrimonial assets.

(c) Pursuant to paragraphs 1(a) and 1(b) above and taking into consideration the monies received by the parties,

(i) \$451,399.85 shall be released to the plaintiff; and

(ii) \$1,899.451.79 shall be released to the defendant from the monies paid into Court previously.

(d) Any additional monies in the court as a result of interest payments are to be equally divided between the plaintiff and the defendant.

(e) There shall be liberty to apply.

(f) Leave is granted to extract the final judgment.

(g) By consent, the parties shall have joint custody of the child ("the Son") and the defendant shall have care and control of the said Son.

(h) The plaintiff shall have reasonable access to the Son with liberty to take the Son out of the country during school holidays and on any such other occasions as the defendant may agree on the following conditions:

(i) the plaintiff returns the Son to Singapore in time for school; and

(ii) the plaintiff furnishes the defendant with the Son's flight itinerary.

2 The plaintiff has since appealed against the first three orders and I now give the grounds for my decision.

Background

3 The parties were married on 17 March 1992. The plaintiff ("Husband") is aged 63 years and the defendant ("Wife") is 50 years old. They have a 15 year old son. The Husband left the matrimonial home in January 2005. He commenced these proceedings on 15 March 2007.

4 The Husband was employed by [B] since 1990 and became its managing director. His remuneration package included provision of housing. After marriage, [B] permitted him to use his housing allowance to finance the purchase of property. The parties then jointly purchased an apartment at [Property 1]. This was sold in 2007, for a substantial profit. Thereafter the Wife and Son moved to a rented HDB flat and the Husband moved to a rented property at [Property 2]. The Husband also worked in another company, [C], which was incorporated and did business in Thailand. The Husband owned all the shares of [D], but claimed that the company was defunct and its shares were valueless. The Husband owned 39% of the shares of [C] and also claimed that those shares had no value as that company was not doing well. The Husband owned 50% of the shares in a third company, [E] and claimed that the value of those shares amounted to \$9,623.

5 After the marriage broke down in 2005, the Wife took on full-time employment as an office administrator with [F]. She worked there until 2009, when it closed its branch office in Singapore. At that time her gross monthly salary was \$2,362. Since December 2009, the Wife had been engaged by a government body on contract basis, at a monthly salary of around \$2,400.

Division of matrimonial assets

6 The matrimonial assets comprise the following:

(a) net proceeds of sale of [Property 1] amounting to \$5,289,317.78;

(b) additional payment of \$350,000 for [Property 1];

(c) proceeds of sale of yacht amounting to \$60,000;

(d) cash in HSBC Bank account amounting to \$24,712;

(e) shares of [D] (100%);

(f) shares of [C] (39%); and

(g) shares of [E] (50%).

7 Taking the Husband's valuation of his shares in the three companies at face value, the main matrimonial asset is the proceeds of sale of [Property 1]. It is not disputed that the Husband had contributed \$635,950 in cash towards payment of the housing loan instalments and that the Wife had a sum of \$198,466.14 refunded to her CPF account, comprising \$153,900 in payments of principal sum and monthly instalments and total imputed interest of \$44,566.14. Comparing the parties' contributions of \$635,950 and \$153,900, their relative direct contributions are in the ratio 80:20.

8 I was of the view that the Wife's indirect contributions in this case were substantial. The Son was born in 1996. Shortly after that, in 1997 the Husband was posted overseas up until the marriage broke down in 2005. During that period, the Wife single-handedly managed the home and the Son, albeit with the help of a foreign domestic worker. The Son was diagnosed with attention deficit hyperactivity disorder and had learning difficulties and this added to the burden on the Wife in raising him while the Husband was overseas. The Wife also helped the Husband in his business by doing some translation work for the benefit of his companies. In the context of the 15 year marriage with one child, based on the factors set out above and on the basis of the Wife's direct financial contribution of 20%, I would have given a division of 50:50.

9 However counsel for the Wife urged me to draw adverse inferences against the Husband, principally from his failure to disclose the records of the three companies he owned or part-owned. He was content to merely assert that they were valueless. However there was evidence of transfers of substantial sums of money out of the companies and, in the context of the divorce proceedings going on at the time, this could suggest that the Husband was taking steps to hide his assets. I need not go into the question of whether he had done so. But it should be clear to any party contemplating or undergoing divorce proceedings that the court would demand nothing less than the most open and frank disclosure, failing which the court would not hesitate to draw an adverse inference. In the present case, mere assertions by the Husband that the companies are worthless will not be sufficient to overcome the evidence to the contrary and an adverse inference was justified from the circumstances. Counsel for the Wife urged me to award an additional 10% of the matrimonial assets as a consequence. I was of the view that this, amounting to about \$600,000 was excessive and that a further 5% would be appropriate. I therefore ordered a division in the ratio of 45:55 to the Husband and Wife.

10 Prior to the marriage, the Wife had purchased an HDB flat jointly with her sister. After marriage, the Wife did not live there and the flat was not substantially improved by the Husband or both parties during the marriage. Therefore it does not fall within the definition of matrimonial asset under s 112(10) of the Women's Charter (cap 353, 2009 Rev Ed) and counsel for the Husband quite correctly did not pursue this point.

Maintenance

11 The Husband had been ordered to provide interim maintenance of \$4,500 per month for the Wife and the Son. At the time of the hearing before me, he had not paid up for seven months. I therefore ordered him to make payments of those arrears, partly from his funds with his solicitors and partly from his share of the matrimonial assets.

12 As for future maintenance, the circumstances of this case justify an order for lump sum maintenance. Firstly there is sufficient money after division of matrimonial assets to make such an

order. The Husband has a record of defaulting in his payment of interim maintenance. As he presently works and resides overseas, it would be difficult to enforce any arrears of monthly maintenance. More importantly, an order for lump sum maintenance would remove a source of future discord and increase the possibility that the parties will cooperate in raising their Son. Interim maintenance for the Wife and Son has been ordered at \$4,500 per month and I find this figure to be appropriate. As the Son turns 21 in six years, the total maintenance to that time is \$324,000. Interim maintenance for the Wife, fixed at \$1,000, should continue for a further four years, by which time the Husband would be about 74 years of age. The total sum for this second period is \$48,000, bringing the total to \$372,000. As the Wife would be receiving a lump sum up front, this should be discounted and I found a total discount of 25% to be appropriate. This reduces the sum to \$279,000, which is approximately 5% of the total assets being distributed. Hence I awarded another 5% to the Wife for lump sum maintenance, bringing the distribution to 40:60 to the Husband and Wife respectively. Order 1(c) took into account the sums already paid out to the parties in cash or in terms of refund to CPF account.

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