

Ng Sylvia v Oon Choon Huat Peter and Another
[2002] SGHC 25

Case Number : OS 600528/2001
Decision Date : 18 February 2002
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Lim Chong Boon (Albert Teo & Lim) for the Ng; Rajah Retnam (Rajah Retnam & Co) for the defendants
Parties : Ng Sylvia — Oon Choon Huat Peter; Another

Family Law – Matrimonial assets – Division – Property bought after registration of marriage but before customary tea ceremony and wedding dinner or consummation of marriage – Property bought with money won by defendants in lottery – Whether property a matrimonial asset – Whether property a matrimonial asset in entirety or in part – s 112(10)(b) Women's Charter (Cap 353, 1997 Ed)

Judgment

GROUNDS OF DECISION

1 The Plaintiff and first Defendant were married on 24 March 1990. They have three children. Unfortunately the marriage did not work out and on 3 August 2000, the Plaintiff petitioned for divorce in Divorce Petition No. 2467 of 2000. The order for decree nisi was made on 12 January 2001 and custody of the children granted to the Plaintiff. The hearing of the prayers for division of the matrimonial flat and other matrimonial assets was adjourned to a date to be fixed. The parties were in the midst of filing affidavits with regard to those ancillary matters when the Plaintiff commenced the present proceedings on 12 April 2001. In this summons the Plaintiff sought, *inter alia*, the following declarations:

(a) that the property known as 14 Amber Gardens #14-04 Amber Park ("the Property") is held in trust by the second Defendant for the first Defendant and constitutes a matrimonial asset;

(b) that the motor vehicle registration number EB57S constitutes a matrimonial asset; and

(c) that the Plaintiff is entitled to a fair and equitable share in the aforesaid assets.

2 Counsel agreed at the outset that prayer (c) was not necessary as the Plaintiff's share of the matrimonial assets would and ought to be determined in the course of the divorce proceedings. In respect of the remaining declarations, there was substantial dispute as to the facts and a trial was conducted in which the material witnesses were cross-examined. At the end of the trial, I made the following declarations and orders:

(a) that one-quarter of the property known as 14 Amber Gardens #14-04 Amber Park (Amber Garden Property) is held in trust by the second Defendant for the first Defendant and constitutes a matrimonial asset;

(b) that the first and second Defendants shall not, in any way or to any extent, deal with the Amber Garden Property unless ordered by the Court; and

(c) that the first and second Defendants do pay the Plaintiff the costs of this action to be taxed if not agreed.

The Plaintiff has since appealed against the first order, i.e. the declaration that only one-quarter of the Property constituted a matrimonial asset. I now give my written grounds of decision.

The background facts

3 The Plaintiff works as a childcare teacher. The first Defendant is a marine surveyor. The second Defendant is the elder sister of the first Defendant. She is a retired nurse.

4 The Plaintiff had known the first Defendant since she was 16 years old. On 24 March 1990, they registered their marriage at the Registry of Marriages. According to the first Defendant, they did not live together for about three years until after the customary tea ceremony and wedding dinner on 16 October 1993. He also claimed that they did not consummate the marriage until around July 1993. This was disputed by the Plaintiff who claimed that the marriage was consummated shortly after registration of marriage. This concerns the issue whether the Property or a share in it, acquired by the first Defendant after registration of marriage, constituted a matrimonial asset for the purposes of s 112(10)(b) of the Women's Charter. The first Defendant had submitted that notwithstanding the registration, the marriage had not been consummated at the time of acquisition of the asset and the customary tea ceremony had not been performed. Nor was the marriage celebrated by way of the wedding dinner. He argued that in the eyes of his family, the Plaintiff was not yet his wife and therefore the marriage was not "valid" until these customary practices were carried out, or they had lived together as man and wife, or the marriage was consummated. I held that these matters were not relevant for the purposes of s 112 of the Women's Charter as the term "marriage" there did not refer to the customary marriage but to one that is solemnized and registered in accordance with the Charter. However as this part of my decision is not appealed against, I need not give my detailed grounds on this issue.

5 After the registration the couple did not live together. The first Defendant continued to reside with his mother and siblings at the family home at 85 Jalan Gelenggang. The Plaintiff continued to live with her parents at an HDB flat at Ang Mo Kio. In July 1992 they purchased the Ang Mo Kio flat from the Plaintiff's parents. However they did not move into it immediately and it was tenanted out.

6 On 28 January 1993, a Toto ticket in the possession of the first Defendant won the first prize which amounted to \$1,232,659. The cheque for this sum was made out in the first Defendant's name. He then went to open a new savings account jointly with his brother, Oon Choon Khiang, and deposited the cheque in that joint account. On 17 April 1993, the Property was purchased for \$750,000. Payment was made in cash from the money in the joint account. The property was registered in the name of the first Defendant. It was quickly tenanted out.

7 The customary tea ceremony and wedding dinner were held on 16 October 1993. The couple moved into the Ang Mo Kio flat that day. Their three children were born on 5 May 1994, 25 September 1996 and 10 May 2000. Unfortunately the marriage went downhill after the Plaintiff discovered in December 1999 that the first Defendant was having an affair with a night club hostess. This was aggravated by the first Defendant when he brought her to their matrimonial home in February 2000 - by that time they had swapped the Ang Mo Kio flat for another HDB flat in Tampines. Attempts at reconciliation were made but to no avail. On 3 July 2000, the Plaintiff told the first Defendant that she wanted a divorce. The first Defendant moved out of the Tampines flat on 12 July. On 13 July the first

Defendant entered into a sale and purchase agreement with the second Defendant in which he sold his interest in the Property to her. The transaction was completed two days later. The Defendants had alleged that the first Defendant had borrowed various sums of money from the second Defendant over the years and this had accumulated to around \$270,000. These loans were to repay his substantial gambling debts. They claimed that the sale and purchase agreement was entered into in repayment of this sum. However I was not satisfied with the evidence given by the Defendants in respect of these loans and made the finding that this was a sham transaction and that the second Defendant held the Property on trust for the first Defendant in respect of his share of it. Again, this is not appealed against and I need not give my detailed grounds on this issue.

The sole issue

8 The sole issue in this appeal is whether the Property is a matrimonial asset in its entirety or whether only one quarter of it is matrimonial asset. I now set out the evidence of the parties.

9 The Plaintiff said that the first Defendant had purchased the winning Toto ticket in January 1993 out of money belonging to them jointly as husband and wife. During that period the first Defendant had been collecting and using the rental proceeds from the Ang Mo Kio flat. After the win the first Defendant had used part of the prize money to purchase the Property. This was registered in his sole name. At the time the Plaintiff had asked for it to be registered in their joint names but he had told her that this was not necessary, assuring her that she had an equal share in it. The Plaintiff also claimed that she had made contributions, financial and otherwise, towards the Property. She had paid for the agent's commission to procure a tenant. She had paid for some of the furnishing expenses and made the rental deposit refund upon expiry of the tenancy. She had also attended to the renovation of the Property, and the washing and cleaning of the apartment.

10 This is the evidence of the Defendants. The first Defendant is the youngest in a family of six brothers and two sisters. Prior to the tea ceremony in October 1993 he lived with his mother, sister and some of his brothers at 85 Jalan Gelenggang. The family operated an electrical and plumbing contracting business in which some of the brothers (but not the first Defendant) were partners. The family members regularly purchased tickets for the Singapore Sweep, 4-D draws and Toto. They would pool their money prior to each draw and purchase tickets as a syndicate. One of them would be deputed to purchase the tickets and those interested would notify that person of his or her intention to participate in the syndicate. The purchaser would collect their contributions and go to buy the tickets. Sometimes the contribution would be collected after the tickets were purchased. The understanding was that any prize money would be shared equally among the family members. It was a loose arrangement between close knit family members based on trust. This practice was well established long before the first Defendant married the Plaintiff.

11 According to the Defendants, sometime in January 1993 the first and second Defendants and their brothers Woon Choon Ngee and Oon Choon Khiang agreed to form a syndicate for the next Toto draw. The first Defendant proceeded to purchase \$60 worth of tickets, one of which contained the winning combination for the first prize in the ensuing draw. The jubilant delegation that went to collect the cheque comprised the first Defendant, the Plaintiff, the second Defendant and Oon Choon Khiang. The cheque was made out in the first Defendant's name for convenience. They then went to the Bedok branch of OCBC Bank and opened a savings account in the joint names of the first Plaintiff and Oon Choon Khiang. The cheque was deposited into that account. The Defendants say that they had initially wanted to deposit the cheque in an account in all four of their names. However on the suggestion of the second Defendant, they deposited it in the joint names of Oon Choon Khiang and the first Defendant.

12 Thereafter they decided to invest part of the proceeds in property as the property market was very active at the time. They asked their brother Oon Choon Kiat to look for a suitable property. With his help they eventually settled on the Property in April 1993. At first they intended to register the Property in all four of their names. But Oon Choon Kiat said that it would be better to register it under just one name. They agreed. Oon Choon Kiang said that he would like to maintain his eligibility to buy an HDB flat and therefore he did not want to register the Property in his name. As for the second Defendant, she said that she was contemplating marriage and was afraid that her future husband might think that the Property belonged to her solely; she therefore declined to have it registered in her name. The fourth co-owner, Woon Choon Ngee similarly declined on the ground that he had intention to upgrade his HDB flat and wanted to remain eligible for the subsidy. This left the first Defendant as the most convenient person for the task. The understanding between them was that they would each have an equal one-quarter share in the Property. The purchase price was \$750,000 and this was paid in cash from the funds in the joint OCBC account. Stamp fees and legal fees of about \$30,000 was also paid from the joint account.

13 The first Defendant denied that he had told the Plaintiff at the time of the purchase that she had an equal share in the Property as alleged by her. He said that the Plaintiff had never claimed any share in the Property while they were living together as husband and wife. The very first time that she had claimed such share was after she had commenced the divorce proceedings. The first Defendant also denied that the Plaintiff had contributed financially towards the Property. He pointed out that she had stated that she was jobless and had no income from 1996 to 1999, during which period the first Defendant was the sole provider for the family. As for improvements to the Property, the first Defendant said that around July 1993, after completion of the purchase, he and his brothers Oon Choon Kiat and Oon Choon Kiang re-painted it before renting it out. About 2 years later they did further work on it. These were electrical and plumbing works, carried out by Oon Choon Kiat and Oon Choon Kiang. They also installed air conditioners and carried out re-painting. The first Defendant maintained that all payments or expenses made in respect of the Property were shared equally by the four co-owners. Similarly the rental proceeds were shared equally between themselves. However given the close family relationship, they did not keep accounts of such receipts.

Conclusion

14 From the evidence I concluded that the first Defendant was a bit of a rogue. He was the youngest and his father had died before he was born. As such, he was treated like a prince by his brothers and sisters and in the process became extremely spoilt. He left the task of fending for the three children, whom he sired, entirely to the Plaintiff while he squandered away a small fortune in gambling and the proverbial wine, women and song. He was blessed with dotting siblings – especially the second Defendant who continued to indulge him - and good fortune in the form of the Toto win. Unfortunately for all concerned he did not make full use of his endowments, and chose the soft path much to the chagrin of the Plaintiff and the misfortune of his children. I had concluded that insofar as his evidence relating to the sale and purchase of the Property to the second Defendant was concerned, there was no truth in it and the transaction was a sham to avoid giving the Plaintiff a share of it.

15 However it was quite another matter in respect of the question whether he had only a one-quarter share in the Property or owned it wholly. In that aspect of the evidence I could clearly tell that his evidence was truthful. More importantly, his three brothers who gave evidence, Woon Choon Ngee, Oon Choon Kiang and Oon Choon Kiat, impressed me with their demeanour in the witness box. Their evidence substantially corroborated that of the first Defendant. There was overall consistency in their versions and although there were minor discrepancies in some details, I attributed them to the fact

that the events had taken place more than eight years ago. The Defendants' version was also supported by extrinsic facts. First is the fact that the cheque was deposited in a joint account in the names of the first Defendant and Oon Choon Kiang. If the ticket were owned by the first Defendant solely, then it would not be likely that he would put it in a joint account with his brother instead of his wife, the Plaintiff, who was also present at the time. When asked why she did not question this, the Plaintiff merely said as follows:

"... I wanted to hand over my NRIC, but 1st Defendant refused to put my name in account. He told me that it was the same, the money did belong to me."

When asked why Oon Choon Kiang's name was in the account if the money belonged to the first Defendant and her, she simply said that she did not know.

16 Second is the fact that only three other siblings claimed a share of the prize. The syndicate that was formed for each draw varied on each occasion. The evidence was that the eldest brother did not participate but the syndicate sometimes comprised all seven of the remaining siblings. If the first Defendant had wanted to dilute his share, he could have asserted that more people were part of the syndicate.

17 Finally I found the Plaintiff's evidence in this respect to be rather hesitant and her version was certainly not consistent with the extrinsic facts. In the circumstances I believed the Defendants' evidence in this respect and disbelieved hers and found that the first Defendant had only a one-quarter share of the Property.

Sgd:

LEE SEIU KIN
JUDICIAL COMMISSIONER