

Vellasamy Lakshimi v Muthusamy Suppiah David
[2003] SGHC 75

Case Number : Suit 946/2002

Decision Date : 01 April 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : V. Ramakrishnan (V. Ramakrishnan & Co) for the plaintiffs; R. Narayanan and Zaminder Gill (Hilborne & Co) for the defendant

Parties : Vellasamy Lakshimi — Muthusamy Suppiah David

Equity – Fraud – Undue influence – Whether the plaintiff had discharged her burden of proof in alleging fraud – Whether the plaintiff had adduced sufficient evidence to prove that the defendant had exerted undue influence on her.

Evidence – Onus of proof – Whether the burden of proof to prove undue influence lies on the defendant.

1 The plaintiff, aged 73, is the widow of Veerappan Muthusamy who had purchased an Housing and Development Board ('HDB') flat at Block 545 Ang Mo Kio Avenue 10 together with one of his sons, Muthusamy Krishnan. Krishnan died in October 1991. The flat devolved to Muthusamy (the father) as sole owner. Muthusamy died, intestate, shortly after, in December 1991 and under the intestacy law the plaintiff as widow was entitled to a half share of the flat, and her children to the other half equally. She had two sons and two daughters who were so entitled to the half share. They were M Subramaniam (the eldest son), M David Suppiah (the defendant), M. Thanapakiam the elder of two daughters, and M. Krishnavani, the youngest child and daughter.

2 This suit was brought by the plaintiff against the defendant alleging that he had deceived her, in her capacity as administratrix, into selling the entire flat to him for \$240,000. And secondly, for misappropriating, by deceit, monies in various bank accounts in which the plaintiff was a joint account holder together with either Thanapakiam, Krishnavani, or her deceased husband. The monies in these accounts came to a sum of \$249,178.69.

3 The plaintiff's claim in respect of the flat was presented as follows. Letters of Administration over her husband's estate were granted to her in 1992. The only assets were the flat (then valued at \$140,000) and \$65.62 in a bank account held by the deceased husband. The plaintiff alleged in her affidavit of evidence-in-chief that she was illiterate, and on that account, the defendant deceived her into transferring the flat to him for a consideration of \$240,000. She alleged that the trickery was carried out by the defendant falsely telling her that the transfer document was actually a transfer by the estate to herself. She, therefore, consented to impress her thumb print on the transfer document. She maintained that she did not know what the true nature of the transaction was and neither did she consult any of the other beneficiaries. It was also her case that she did not know that she had a joint account with the defendant.

4 On 12 January 1994 the HDB handed a cheque for \$240,000 to the plaintiff which the plaintiff said was deposited into a joint account in the names of the plaintiff and the defendant. From that account the defendant drew out cheques in favour of all his siblings in the sum of \$30,000 each. These payments represented the respective entitlement of the family to the assets of Veerappan Muthusamy, deceased. However, the plaintiff then alleged in her affidavit that the defendant did not pay to her any part of the sum \$120,000 being her half share.

5 The plaintiff's claim in respect of the monies in the joint accounts was particularised as

follows. First, a \$85,000 fixed deposit account in the joint names of the plaintiff and Krishnavani with the Standard Chartered Bank; secondly, \$5,000 in the fixed deposit account in the joint names of the plaintiff and Thanapakiam; thirdly, \$60,000 in a savings account in the joint names of the plaintiff and Krishnavani; fourthly, \$15,614.04 and interest of \$356.19 in a fixed deposit account in the joint names of the plaintiff and her deceased husband; fifthly, \$40,000 in either a fixed deposit account or savings account in the joint names of the plaintiff and her deceased husband, sixthly, \$23,189.89 being the money in the deceased husband's account with the Central Provident Fund Board which was withdrawn and deposited into a Standard Chartered Bank savings account; and finally, arrears of \$2,888 from her deceased husband's pension fund as well as monthly payments of \$359.64. She alleged that the defendant took all these monies and paid her \$300 every two months from the monthly pension fund. According to the plaintiff, the method of deceit was identical to that used when the defendant tricked her into pressing her thumb print on the transfer document in respect of the flat.

6 These then, were the allegations; and being allegations of fraud, deceit, and trickery, they require strong proof. What evidence did the plaintiff adduced? The question was pertinent, but the answer was discouraging. I think that it is appropriate at this point to mention some unchallenged facts for an expansion of the context, and include some perspectives from the defendant's case. The defendant was at the material times the only unmarried child of the plaintiff. The others were married and lived with their respective families elsewhere. The plaintiff lived in the same flat as the defendant until 1999. The other siblings, including Krishnavani with whom the plaintiff now lives, do not dispute that they were paid \$30,000 being their share of the proceeds of the flat. Only Krishnavani denies any family arrangement to sell the flat to the defendant and share out the proceeds among themselves and the plaintiff after the sale. The eldest brother, Subramaniam testified that the plaintiff did not agree to have the flat sold in the open market because she wanted to continue living there. Since the defendant was single and had at that time no intention of getting married, the family then agreed to sell the flat to him for \$240,000 so that the asset of the estate could be shared out and the plaintiff can still continue to live there and be cared for by the defendant. This arrangement found unanimous favour. Thus the flat was transferred and the proceeds shared out accordingly in 1994. Thereafter, plaintiff continued to live in the flat with the defendant until he got married on 17 July 1999. The plaintiff then went to live with Krishnavani. Notice of the claims as set out in this suit was only given to the defendant through a solicitor's letter dated 17 August 1999.

7 The only evidence tendered on behalf of the plaintiff was her own oral evidence that she had no knowledge what the transactions were about, and in respect of the flat, her oral evidence that the defendant lied to her that the transfer was from the estate to herself. Mr. V Ramakrishnan, counsel for the plaintiff, had from the start of the case cast the plaintiff as an unlettered, old woman cheated and bullied by a scheming and greedy son. That was the theme. If fraud and deceit are proved, the wrong must be corrected; the stolen, retrieved; and the injured, compensated. That would be so whether the plaintiff was a fit, robust, and educated woman, or an old and unschooled one. It is proof that sculpts the verdict of a court - not feelings of sympathy and benevolence that age and ignorance so readily draws to its side, for the court must act upon reason. And reason demands proof.

8 So far as the flat is concerned, aside from the assertions of the plaintiff, the evidence and circumstances are in favour of the defendant. The letters of administration were granted in 1994 to the plaintiff, a woman of no education, whose grown children knew that she was the legal owner of the flat. All of them, including the estranged sister Krishnavani, acknowledged that they had received their share of the proceeds of sale. It was plainly not the plaintiff's case that she was tricked into selling the flat in a conspiracy of her children. That being so, I must infer that none of them told her that they had received their share. I must also infer that the children believed that the

plaintiff and the defendant came to the agreement to sell the flat without consulting them; or that the defendant had cheated the plaintiff into selling it and they had no idea that that was what happened. That was not the evidence and I cannot draw any such inference. The picture that forms readily from the evidence before me was that as declared by the defendant in his affidavit and supported by his elder brother and sister in their affidavits, namely that the decision to sell the flat to the defendant was made by the family as a whole, including the plaintiff.

9 The solitary line repeatedly recited by Mr. Ramakrishnan was that the plaintiff affixed her thumb print on the transfer document without being told the true nature of the document nor the transaction it embodied. But Mdm Allwiyah Binte Suib a senior estates officer with the HDB testified that the procedure and requirements of the resale of the flat would normally have been explained to the parties by the attending officer. There were at least two officers who attended to the parties in this case. One was a Mr. Poh and the other was Mdm. Allwiyah Binte Suib herself. The plaintiff's thumb print, together with the defendant's signature, were endorsed in various documents relating to the transaction. Nonetheless, the plaintiff insisted that the transaction was not explained to her. I accept Mdm. Allwiyah's evidence and believed that she had explained or at the very least informed the plaintiff sufficiently for her to realise that the transaction was a sale of the flat. Even if Mr. Poh (who was not called to testify) did not have the transaction explained to the plaintiff, it would be a serious breach of procedure for a second officer (and perhaps even a third) from the HDB to have completed the transaction from application to payment without ascertaining that the seller knows what she was doing. The burden of proof is on the plaintiff and I do not think that she had discharged that burden. Her failure to discredit Mdm Allwiyah or the HDB must be considered together with the positive evidence of the defendant and his siblings, Subramaniam and Thanapakiam. I find all three to be reliable witnesses. Thanapakiam impressed me as a very honest witness. Mr. Ramakrishnan pointed to her evidence in court in saying that she remembers only one family meeting, thereby contradicting her affidavit of evidence-in-chief where she repeated her brother's affidavit in saying that there were two meetings, one in 1993 and the other in 1994. On the contrary, it was her constancy and manner in which she maintained that she could only remember one meeting that underlines the sincerity of her oral testimony. She could have changed her testimony when the discrepancy was pointed out to her, but she seemed bewildered by the written reference to two meetings, and stood firm in respect of her recollection.

10 If I am to accept the plaintiff's assertion - and she has only one - that she did not know what she was doing when she affixed her thumb print on the transfer document, then I must also accept that she did not know what a cheque looks like or what it is. The HDB officer affirmed that the cheque of \$240,000 would have to be handed to the seller after checking her identity card and obtaining her signature (in this case, her thumb print). I do not think that this plaintiff would not have recognise a cheque, especially one with such large figures, without asking either the officer or the defendant or any of her other children what it was about. So far as the sale of the flat is concerned, I am of the view that the plaintiff had failed utterly to prove her case.

11 I now turn to the alleged withdrawals of money from the various joint accounts. The only withdrawal of money admitted by the defendant was that from the joint account in the Standard Chartered Bank in the names of the plaintiff and the defendant. This was the account in which the \$240,000 proceeds from the sale of the flat was first paid into. When the plaintiff gave instructions to pay out the respective shares to her children, the defendant withdrew \$100,000 and paid that into his personal account and from there issued cheques in payment to his siblings for their shares. Into this account was also deposited a sum of \$60,000 which the plaintiff had withdrawn from the joint account she had with Krishnavani. Mr. Ramakrishnan's main argument in support of his submission that the defendant had withdrawn the money by deceit was that the defendant, being a technical officer earning less than \$3,000 a month, could hardly have the means to purchase a \$114,000 car

which the defendant here did. The flaw in that argument is connecting withdrawal in itself with the notion of withdrawal by deceit.

12 Once again, the plaintiff's story was that she was asked to put her thumb print on the withdrawal forms without knowing or being told what that was for. At one point under cross-examination, the plaintiff, who had hitherto alleged fraud, trickery and deceit, had not particularised how that was carried out, said, that on three occasions the defendant made her put her thumb print on the withdrawal forms at home. The plaintiff's case was that there was withdrawal of money by the defendant deceitfully, and all money was withdrawn at the bank. There was no evidence from any of the banks that they condone such practice, especially in respect of accounts of the illiterate old. I am sceptical, but in any event, the burden of proof is on the plaintiff. In the absence of any evidence to support this implausible assertion, and the other evidence of the case taken in totality, I find that the plaintiff had failed to prove her case.

13 I should add that the defendant does not dispute that he had used money from that account. But he says that it was used with the knowledge and consent of the plaintiff. It must not be forgotten that this was a joint account. It was not an account in the name of the plaintiff alone; and even in that kind of situation, it does not follow that when a withdrawal was effected by the plaintiff (affixing her thumb print to the withdrawal form) and given to (or taken by) the defendant, fraud must be suspected without more. It has been the defendant's case consistently that all the money that was given to him by his mother were money given freely and willingly. He and his older siblings testified that all that had taken place when the defendant, then a bachelor was singularly looking after his mother. The defendant, his elder brother, Subramaniam and sister Thanapakiam all impressed me as reliable and honest witnesses. I have reservations about Krishnavani. Even the plaintiff's motives are suspect and unreliable. In an unguarded moment, she declared under cross-examination, that 'My previous intention was to divide my property equally but now I am of the view that whoever looks after me and takes care of me I would give my property to them'. When asked, 'And that would be Krishnavani?', she replied, 'Yes. All the other children are cheating me. Only Krishnavani cares for me. So I will give it to her.' There was no basis or proof as to how the other children had cheated her. This outburst from the plaintiff belies the truth, namely that she had switched the fondness she once had for the defendant, to Krishnavani and wants to reward her accordingly. Furthermore, after ensuring that the impression to be left with the court is that she had no inkling as to how money was taken from her accounts, the plaintiff declared that she had once loaned \$10,000 to Thanapakiam. I think that the plaintiff is more savvy than her counsel wants me to believe.

14 Mr Ramakrishnan referred to the case of *Daing Soharah bte Daing Tadaleh v Chabak bte Lasaliho* (1927) PCC 265 for the proposition that the burden of proof is on the donee to show that there was no undue influence. Hence, he submitted that this burden fell on the defendant and that he did not succeed in discharging it. This is a fine example of how not to cite a case in counsel's closing submission. Mr. Ramakrishnan cited it, and relied on it for what appears, in the brief form cited. But it appears to be a doubtful authority. If counsel does not refer to the full and crucial facts (as Mr. Ramakrishnan did not in this case) then he is obliged to produce the case in full. Instead, all that was produced was a single paragraph excerpt of the proposition from a local textbook. The citation of that case was eventually traced to a report from a Malaysian casebook in which the case was reported but we are not told if it was a full and complete report. More importantly, the case number was not given and the only information there was that it was an appeal from a decision of the Supreme Court Of the Straits Settlements. I am not bound to examine, let alone follow a case whose origin cannot be established; but in any event, it is at once clear that that case dealt with a donee of a power of attorney who benefited himself at the expense of the donors. Factually so different that no reliance can be placed on it.

15 In this case, if any presumption is to be applied, it is the presumption of a gift by the parent to her child. If the plaintiff wishes to say that on the facts, the reverse is true, namely that the child was the one who had the power to exercise undue influence on his mother, then the burden is on the parent. I have been shown no evidence that supports any contention that the defendant had exerted undue influence on the plaintiff. Looking after her alone is no evidence for that would have applied equally to Krishnavani presently, whom the defendant says was instigating his mother to sue him. There is an abundance of authority that establishes that whenever fraud or deceit is alleged, a high degree of proof is required on he who asserts. *Intersiff Schiffahrtsagentur GMBH v Southern Star Shipping & Trading Pte Ltd* [1982-83] SLR 322 is one. There are equally, a wealth of authority for the proposition that undue influence must be particularised and proved. These cases include *Rajabali Jumabhoy v Ameerli R Jumabhoy* [1997] 3 SLR 802, 855, and *Lim Geok Hian v Lim Guan Chin* [1994] 1 SLR 203, 216. The plaintiff's pleadings and her evidence fall short on every count. On the other hand, the evidence of the defendant and the two neutral siblings have convinced me that the plaintiff's case is unreliable.

For the reasons above, the plaintiff's case is dismissed. No costs may be awarded against her, however because the plaintiff is legally aided.

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