

Lim Kaling v Hangchi Valerie
[2003] SGHC 99

Case Number : OS 1096/2002, 1136/2002
Decision Date : 28 April 2003
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Randolph Khoo (Drew & Napier LLC) for the Plaintiff/Applicant; Ms Loh Wai Mooi (Bih Li & Lee) for the Defendant
Parties : Lim Kaling — Hangchi Valerie

Land – Caveats – Effect – Wife lodging caveat on property registered in husband's name pending division of matrimonial assets – Whether wife has "caveatable interest" – Land Titles Act (Cap 157, 1994 Rev Ed) ss 4, 115, Women's Charter (Cap 353, 1997 Rev Ed) s 112

1 The plaintiff ("husband") and the defendant ("wife") were married on 27 June 2000. The husband had, prior to his marriage, bought two properties in Singapore, namely, (a) an apartment at #26-01 Four Seasons Park ("#26-01") and (b) a house at 13 Astrid Hill ("No 13"). The parties did not live together in either of these properties save that when they returned from the United States of America in late October 2001 they lived for a period of six weeks at #26-01. In December 2001, the wife moved out of #26-01 and has lived separately from the husband since.

2 In June 2002, the husband entered into a contract for the sale of #26-01. Completion was scheduled for 6 August 2002. On the day of completion, the husband discovered that the wife had, on 5 August 2002, lodged a caveat – CV18121J – under s 115(1) of the Land Titles Act ("the LTA") against #26-01. By that caveat the wife claimed "an equitable interest in the matrimonial property (#26-01) under s 112 of the Women's Charter". The Grounds of Claim, as stated in CV18121J was:

The Caveator's status is the legal wife of Lim Kaling (the Registered Proprietor) and has a share in the property which is the matrimonial asset and home of the Registered Proprietor and the Caveator.

The husband immediately applied – vide OS 1096/2002 – under s 127(1) of the LTA for the removal of that caveat.

3 On 7 August 2002, Lee Seiu Kin JC made interim orders in respect of OS 1096/2002 enabling the sale to be completed with the proceeds of sale being held by stakeholders until the OS was dealt with.

4 On 17 September 2002, the wife commenced an action for judicial separation – vide Div P 603499/2002 – against the husband alleging unreasonable behaviour. She could not, except with leave of court, have commenced dissolution proceedings since the parties had been married for less than 3 years. The husband filed a Memorandum of Appearance contesting the petition for judicial separation.

5 The husband subsequently discovered that the wife had – by caveat CV881290J filed on 5 August 2002 – also made an identical claim against No 13. He immediately took out OS 1136/2002 for the removal of that caveat. OS 1136/2002 and OS 1096/2002 were heard together by me.

6 Section s 115(1) of the LTA under which the caveats were lodged provides as follows:

Any person claiming an interest in land ... may lodge with the Registrar a caveat in the approved form

...

The word "interest" in relation to land is defined in s 4(1) of the LTA to mean "any interest in land recognised as such by law, and includes an estate in land".

7 The caveator is not required under the LTA to verify his interest in the land to the Registrar before lodgement of the caveat. As Selvam J pointed out in *Tan Soo Leng David v Wee, Sektu & Kumar Pte Ltd* [1993] 3 SLR 569 at 575G, s 115(1) pre-supposes that the caveator has a valid interest in the property which needs protection by caveat. In that judgment Selvam J refers to the Torrens legislation in Australia as the spring source of our LTA.

8 Upon an application by the caveatee under s 127(1) of the LTA for the removal of the caveat, the burden is on the caveator to satisfy the court that the caveat should not be removed. This is evident from s 127(1) itself which reads:

At any time after the lodgement of a caveat, the caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed, and the court may make such order, either ex parte or otherwise, as seems just.

The Privy Council in the Malaysian case of *Eng Mee Yong v Letchumanan* [1979] 3 WLR 373 reiterated this rule. Discussing the burden on the caveator and the caveatee the Privy Council opined: "it is for the caveator to satisfy the court that there are sufficient grounds in fact and in law for continuing in force a caveat ..."

9 In the present proceedings, the wife's position was that #26-01 and No 13 were part of the matrimonial assets over which she had, by reason of s 112(1) of the Women's Charter, an "equitable" interest. Section 112(1) of the Women's Charter provides as follows:

The court shall have power, when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

The wife's caveats were lodged – according to the submissions of Ms Loh Wai Mooi, counsel for the wife – in order to preserve the status quo pending determination of the parties' rights as regards the two properties at the conclusion of the matrimonial proceedings.

10 The first question for consideration in these two applications is whether the power of division that a court has under s 112(1) of the Women's Charter, is a power that constitutes – in respect to the spouse who is not the owner of the property – "an interest in land recognised as such by law". I will refer to such an interest as a "caveatable interest".

11 If the interest that the wife in this case claimed in respect of each of the two properties was a caveatable interest, the court will go on to consider (secondly) whether the evidence in support of that interest discloses a serious question to be tried and (thirdly) whether the balance of convenience lies in favour of the caveat remaining on the Land Register pending the determination of that interest (see *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782; *Tan Soo Leng David v Wee, Saktu & Kumar Pte Ltd* [1993] 3 SLR 569). If the first question is answered in the negative, then the caveat will be set aside and the court need not consider the second and third questions.

12 Can the power that the court has to order the division of matrimonial assets when granting a decree of divorce, judicial separation or nullity be said to constitute a caveatable interest? It is relevant to note that – until exercised – that power remains only a power. Whilst a spouse may hope that the court will order the division of certain properties, until the order for division is in fact made, that hope will remain merely a hope: an inchoate expectation. Even after a decree nisi is pronounced, the court may not order division under s 112(1) and, even if it does, that order may not extend to the particular property/properties in question.

13 The position would be otherwise if (for instance) the property, although registered in the name of one spouse, had in fact been paid for by both spouses or by the party who is not the registered owner. In such a situation, the spouse who is the registered owner may well be holding the property in trust for the other spouse to the extent of the other's contribution to the purchase price. Such an equitable interest – existing at the time of lodging the caveat – would be an interest recognised by law and would be a caveatable interest even before any formal order recognising that trust is made by a court.

14 The "interest" that the wife claimed in #26-01 and No 13 at the time she filed the caveats was, as discussed above, merely the hope that "if" divorce or judicial separation proceedings are instituted and "if" an order of dissolution or judicial separation was granted, the court "may" order the division of #26-01 and/or No 13 between herself and the husband. Such an amorphous hope that a future event will occur, cannot, in my view, fall within the scope of the words "an interest in land recognised as such by law".

15 The position will be otherwise if, at the time the caveat was filed, the court had already ordered the division of the property under s 112(1) of the Women's Charter. In that situation the hope would have crystallised and by virtue of the order of division there would be "an interest in the land recognised as such by law" that would be a caveatable interest. This is recognised in s 115(3) (b) of the LTA to which I will shortly revert.

16 The only local authority that was cited to me on whether the possibility of a division of property under s 112(1) of the Women's Charter constitutes a caveatable interest, was the unreported decision of Lee Seiu Kin JC in *Chai Mei Leng v William Cheng* (OS 208/1998). In that case, the Family Court had, on 13 January 1998, granted a decree nisi dissolving the marriage. On 9 February 1998, before any decision relating to the division of the matrimonial assets had been made by the Family Court, the husband filed two caveats under the LTA against two properties that were registered in the name of the wife. The grounds stated in the caveats were:

(a) That the wife held them on a constructive trust for his benefit because he had advanced the moneys for their purchase; and/or

(b) These being matrimonial assets subject to division by the Family Court in pending proceedings, he (the husband) has an interest that can ground a right to lodge a caveat.

In an application by the wife to have the two caveats set aside, Lee JC found, on the facts, that there was no constructive trust and dismissed ground (a) as invalid. In respect of ground (b), Lee JC found that "by virtue of the decree nisi and pending hearing on division, the husband had an interest in both properties and was entitled to lodge caveats on them".

17 The wife had, in the meanwhile, appealed against the grant by the Family Court of the decree nisi and at the hearing of the appeal that decree was quashed. The application for the removal of the caveats was again brought up before Lee JC. At this further hearing Lee JC set aside the

caveats. In his judgment, he said:

10. On 17 August, when I made the orders set out in paragraph 6 above, it was on the basis that the *decree nisi* was subsisting and therefore the Defendant had an interest in the property. However, when the decree was quashed on 24 August it would follow that from that date, the Defendant did not have any interest in the property. ... Therefore after 24 August, the Defendant was not entitled to lodge the caveat.

It would appear from the above that Lee JC had taken the view that a caveatable interest will arise only when the decree nisi was pronounced.

18 In the present case too, the caveats in respect of #26-01 and No 13 had been filed before any decree had been obtained. Therefore, on the authority of *Chai Mei Leng v William Cheng*, the caveator (ie the wife) in the present case, at the time she filed the caveats, would not have had a caveatable interest in the properties.

19 Mr Randolph Khoo, who appeared for the husband in the present applications, submitted, on the basis of the decision in *Chai Mei Leng*, that the caveats in the present case also ought to be set aside. Mr Khoo also went on to submit that even the fact that a decree nisi had been granted would not, by itself, confer an interest in any property that could be said to be a caveatable interest. He submitted that even at that stage the wife would not have any vested interest in the property. What was needed before a caveatable interest can arise, he submitted, was an order for the actual division of the property in question. With that submission, for reasons that I have alluded to in paragraphs 13 to 20 above, I agree.

20 I have, earlier in this judgment, adverted to the comment that the Torrens legislation in Australia was the spring source of our LTA. Australian family law and the Australian land registration systems are broadly similar to ours. It would therefore be relevant to consider the Australian authorities vis-à-vis the rights of a spouse to lodge a caveat against a matrimonial property.

21 That issue came up for discussion before the full bench of the Supreme Court of Western Australia in *Ioppolo v Ioppolo* (1978) 5 Fam LR No 27. In that case the parties were divorced in 1977 and the wife then proceeded to apply to the Family Court for orders of division of property and lodged a caveat under s 137 of the Transfer of Land Act (WA) against certain property of which her husband was the sole registered proprietor on the grounds that her application to the Family Court for division of the property was an interest in land within the meaning of s 137 of the Transfer of Land Act (WA). Section 137 of the Australian Act, like s 115(1) of our LTA, enabled a person claiming any interest in land to lodge a caveat with the Land Titles Registry. The Supreme Court unanimously held that the wife's claim for division was not an interest in the land within the meaning of s 137 of the Transfer of Land Act (WA) and therefore not a caveatable interest.

22 The same view was taken in the more recent case of *Hayes v O'Sullivan* (2001) 27 Fam LR 462 where Roberts-Smith J stated, on the strength of *Ioppolo* and other Australian authorities that:

There is clear authority for the proposition that the mere possibility of a court exercising jurisdiction to make an order for the settlement of matrimonial property is not an estate or interest in land necessary to support a caveat.

I will not here rehearse the copious Australian authorities and commentaries referred to by Roberts-Smith J in his judgment. Suffice to say that the clear Australian position is that the possibility that a court may, in matrimonial proceedings, order the division of property does not constitute a caveatable

interest.

23 Roberts-Smith J in *Hayes's* case made a comment which is of some significance. He stated:

If the defendant were apprehensive that the plaintiff would dispose of the land, his remedy was not a caveat under the Real Property Act based on an existing estate or interest, but an injunction by the Family Court restraining the plaintiff from dealing with the land and so preserving the property which might in the end be the subject matter of an order of the Family Court.

Similar recourse to injunctive relief is provided for in s 132 of our Women's Charter.

24 If the reason for filing the caveats in respect of #26-01 and No 13 was fear on the part of the wife that the husband was going to deprive her of her rights to any property by disposing of that property, then the appropriate course of action for the wife would be to institute proceedings under s 132 of the Women's Charter for the grant of injunctive relief. To obtain such relief the wife will have to satisfy the court that by reason of the conduct of the husband her rights are in fact in jeopardy. If the wife obtains an injunction under s 132, that injunction would constitute a caveatable interest by reason of s 115(3)(b) of the LTA which provides that a person claiming an interest in land shall include a person who has obtained an injunction in respect of an estate or interest in land.

25 Ms Loh, in her submissions, also argued – although this was not a ground stated in the caveats – that if this court was satisfied that the wife had sufficient grounds to obtain injunctive relief under s 132 of the Women's Charter, the wife would, in the light of s 115(3)(b) of the LTA, have a caveatable interest in respect of #26-01 and No 13 and the caveats should therefore not be lifted.

26 The existence of an injunction is a pre-requisite for s 115(3)(b) to operate. If the wife in this case had obtained injunctions under s 132 relating to #26-01 and No 13, then on the basis of those injunctions the wife would, by virtue of s 115(3)(b), have a caveatable interest. But that did not happen. The wife had no caveatable interest arising out of s132 of the Women's Charter at the time she filed these caveats. I do not think it would be appropriate for me to accept Ms Loh's submission that I treat these applications to set aside the caveats as applications for injunctive relief under s 132 of the Women's Charter.

27 I am satisfied that the wife, in this case, did not have a caveatable interest in respect of #26-01 and No 13 and, accordingly, grant with costs the prayers in the two Originating Summonses before me that the caveats be removed. I further order that an inquiry be held (before the Registrar) as to damages incurred by the husband as a result of the caveats having been lodged and order that the wife pay to the husband such damages (if any) that the Registrar may award.

Plaintiff's applications allowed.