

Cheok Soon Huat v Tan Yee Hiang
[2004] SGHC 177

Case Number : Div P 601836/2003, RAS 720017/2004
Decision Date : 13 August 2004
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : S Gunaseelan (S Gunaseelan and Partners) for appellant; Chia Cheok Sien (Chia and Tang) for respondent
Parties : Cheok Soon Huat — Tan Yee Hiang

Family Law – Matrimonial assets – Central provident fund – Whether court could reverse priority between Central Provident Fund and bank.

Family Law – Matrimonial assets – Matrimonial home – Division – Whether court should not have made order reversing priority between Central Provident Fund and bank because consent of both parties required.

20 August 2004

Choo Han Teck J:

1 This is an appeal against the District Court's order in respect of the division of matrimonial assets. The dispute concerns only orders 4 and 5 of the court's order. For convenience, the said orders are set out in full as follows:

4 Subject to the approval of the Central Provident Fund ["CPF"] Board, Citibank NA shall have the 1st charge in respect of Housing Loans No 76111000076785, 76111445076785 and 76111444076785 and secured on the matrimonial property at No 55 Dedap Road, Singapore 809459 and the Central Provident Fund Board shall have the 2nd charge.

5. The matrimonial property at No 55 Dedap Road, Singapore 809459, be sold in the open market within 6 months from the date of extraction of the Decree Nisi Absolute herein and, after repayment of Housing Loans No 76111000076785, 76111445076785 and 76111444076785, the balance be utilised to reimburse to the Petitioner's and Respondent's respective Central Provident Fund Accounts the monies withdrawn therefrom for the purchase of the said matrimonial property in proportion to their respective withdrawals. The costs and expenses of sale of the said matrimonial property shall be borne by the Petitioner and Respondent equally.

The main item was the matrimonial house at Dedap Road. The house was jointly purchased by the parties in 1993 for \$1.36m. As at 1 July 2003 (when the appellant ["the husband"] filed for divorce) the respondent ("the wife") had withdrawn \$376,869.50 from her CPF account for the purchase of the property. The appellant contributed \$598,654.00 from his CPF account. The interest accrued on his account was \$170,057.45. The property was mortgaged to Citibank for \$363,996.84, which was the sum of the housing loan taken out by the parties as well as for credit facilities taken out by the husband in the form of an overdraft facility of up to \$415,000.00.

2 The contentions of the husband were made on his behalf by Mr S Gunaseelan. Counsel first argued that the court had no authority to reverse the priority as between the bank and the CPF Board. The problem in this case arose because there would be insufficient money to pay Citibank if the sale proceeds were used to repay the parties' CPF accounts first. Hence, the wife had applied and had been granted an order that the priority be reversed such that the sale proceeds be used to

pay Citibank first.

3 It was patently clear, as the district judge noted, that if the priority was not reversed, Citibank would almost certainly apply for bankruptcy orders against both parties. There were concerns for the continued welfare of the two children, the younger of whom is 15 years old. The reason for the husband's objection to the reversal of priority was also equally clear. If the money was paid into his CPF account, he expected that it would still revert to him but not if it went to the bank. Mr Gunaseelan submitted that the husband would be quite happy to face the prospect of being made a bankrupt by the bank so long as his share of the money was deposited back into his CPF account. However, by the same token, it seems that he thinks nothing of the fact that the wife might similarly be made a bankrupt. The wife had contended all along that she ought not to be responsible for the debt incurred by the husband under his overdraft account with the bank.

4 Mr Gunaseelan argued that since the court had stipulated that the priority be reversed only if the CPF Board did not object, then the order should not have been made because the CPF Board would only approve the reversal of priority if both husband and wife consented to it. The husband preferred to let the CPF Board have the first charge because it would be of greater advantage to himself at the expense of the wife (and the bank). He expected that by defaulting on his payment to the bank, the bank would not only apply to make him and the wife bankrupts, but it would also foreclose on the house. All these appeared to have been anticipated by the district judge when she decided that the bank should therefore have priority over the CPF Board. The husband produced an affidavit filed the day before this hearing exhibiting a letter dated 6 August 2004 from the CPF Board responding to the husband's solicitors' letter of 2 August 2004. In the latter, the CPF Board was asked if it would consent to the reversal of priority between itself and the bank. In its reply, the Board stated that it would require both members to agree before it would give its consent. It appears to me that the Board itself has no objection and is concerned only not to be embroiled in litigation should it give its consent in the face of an objection from one party or the other. That being the case, the only obstacle, really, is the husband's own refusal to consent. Thus the husband is putting the matter through a circuitous loop. It was he who claimed that the order below could not be made because the Board's priority cannot be compromised. Now that the Board had stated that it will consent if the parties agree, the husband has decided that he will not consent for the reasons alluded to above. It is clear, therefore, that there is nothing inherently wrong with orders 4 and 5 of the district court. On this ground alone, the appeal should be dismissed. In the contingent situation that the husband remains steadfast in his refusal to give his consent to the change of priority, the wife may have recourse to the court to compel him to carry out such actions as may be required to give effect to the orders below or to enjoin him from objecting to the reversal of priority. But, in the meantime, there is clearly no merit in the appeal.

Appeal dismissed.