

Lee Min Jai v Chua Cheow Koon
[2004] SGHC 275

Case Number : D 501/2004, RAS 58/2004
Decision Date : 22 December 2004
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : James Chia (James Chia and Co) for the petitioner; Colin Kang (East Asia Law Corporation) for the respondent
Parties : Lee Min Jai — Chua Cheow Koon

Family Law – Matrimonial assets – Matrimonial home – Petitioner wife appealing against district judge's dismissal of application to rescind part of consent order in decree nisi relating to transfer of her share in matrimonial home to respondent husband for certain sum of money – Whether application on grounds of trial solicitor's failure to render appropriate advice should be allowed

22 December 2004

Choo Han Teck J:

1 This was an appeal by the petitioner (wife) against an order by the district court judge dismissing her application to rescind part of a consent order in the decree *nisi* granted on 27 July 2004, and to substitute a fresh order in its place.

2 The petitioner, a Korean national, married the respondent, a Singapore national, on 16 October 2000 when they were about 32 and 33 years old respectively. The couple had lived together for about three years although the marriage lasted four years before the decree *nisi* was granted. They have no children.

3 The part of the decree *nisi* that the petitioner sought to rescind was cl 3(b) which reads as follows:

That upon full payment of \$50,000.00 by the Respondent to the Petitioner, the Petitioner shall transfer her share to all title, rights and interest of the matrimonial flat known as and situate at 27, Paya Lebar Road, #12-06, Singapore 409042 entirely to the Respondent. That the Respondent do bear all costs and expense in the said transfer.

The petitioner's grounds for this application were that she consented to the orders without realising that she was a joint owner of the matrimonial flat. Mr Chia, her counsel, on appeal before me, submitted that had she known, she would not have consented to the sum of \$50,000. She should have been, and ought to be given, at least half the value of the flat, valued at \$520,000 as at 13 August 2004. He conceded that the petitioner was represented by a solicitor and that she had told her (then) solicitor that she had a share in the matrimonial flat. But she did not know the nature of her interest and so did not mention this aspect. Mr Chia argued that the solicitor ought, in those circumstances, to have made a search of the register because, had he done so, he would have known that she was a joint-owner and would have advised her accordingly. Mr Chia submitted that the solicitor was thus in breach of his duty to the petitioner. He argued that any reasonable solicitor would have caused a search of the register to be made in those circumstances.

4 Mr Chia referred to the authority of *Wee Ah Lian v Teo Siak Weng* [1992] 1 SLR 688 at 698, [39] and [40], in which Karthigesu JA held that:

The matter does not end there. We must still decide whether in the exercise of our discretion under s 106 of the Women's Charter (Cap 353) we ought to uphold the settlement. Section 106 does not specifically provide for the validation of agreements honestly negotiated by the parties but it does give jurisdiction to the court to order a division of matrimonial assets when granting a decree of divorce. The section provides for two distinct situations. Sub-sections (1) and (2) deal with the position where the matrimonial assets were acquired by the joint effort of the parties in which case, subject to the factors to be taken into account in exercising discretion, the court is directed to incline towards equality of division. Sub-sections (3) and (4) deal with the position where the matrimonial assets were acquired by the sole effort of one party in which case, subject to the factors to be taken into account in exercising discretion, the court is directed that the division shall assure that the party by whose effort the assets were acquired shall receive a greater proportion.

In our view, it is incumbent on the court to see that these provisions of the section are not violated when ordering a division of matrimonial assets following the granting of a decree of divorce, and the same would apply where the court's intervention is sought notwithstanding that the parties may have reached an agreement before seeking the court's intervention.

Counsel then cited the English case of *Kelley v Corston* [1997] 4 All ER 466 and the unreported Family Court case of *Lim Chee Kit v Chen Boon Siong* [2001] SGDC 160 as examples of instances in which the courts would set aside consent orders on the ground that the terms were not fair to the applicant. These cases are not binding on me, but more importantly, they each turn on their own set of facts.

5 Under s 112(4) of the Women's Charter (Cap 353, 1997 Rev Ed), the court "may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made". But this section, and the authorities referred to by Mr Chia, should not be construed as an invitation to revise the terms of a settlement merely so that they appear more equitable or will be, in fact, more equitable in the objective opinion of the court. Privately settled terms in respect of the ancillary matters in a divorce may not always appear to be fair. But divorce is a very personal matter, and each party would have his own private reasons for demanding, or acquiescing, to any given term or condition in the ultimate settlement. What the court should be alert to, is that one party had not taken an unfair advantage over the other in the course of negotiating and settling the terms. Hence, in *Dean v Dean* [1978] 3 All ER 758, the court held (as set out in the headnote) that:

[W]here an agreement between the parties had been reached at arm's length and the parties had been separately advised, the agreement itself would be prima facie evidence of the reasonableness of its terms, and formal discovery would probably be unnecessary.

6 In the present case, the matrimonial flat was a gift by the respondent's grandmother to him as well as the petitioner. The petitioner was aware that she had a share in that flat and told her previous solicitor so. The terms of settlement were clearly reached at arm's length, and there was no question of the respondent concealing any material fact from the petitioner. If Mr Chia is right in saying that the petitioner's previous solicitor failed in his duty in failing to search the registry for the petitioner's interest in the flat, that fault should have no implication on the innocent respondent. A court would interfere with an order of court obtained by consent, only on just and equitable grounds. And in determining whether such grounds have been established, the court should also take into account the effect of a setting aside of the order on the other party. Here, the respondent had, in

good faith, negotiated a settlement at arm's length, and was proceeding to make a fresh start in life. If there was an error, it sprang from the petitioner herself. It might not even be proven that the fault lay with her previous solicitor. Hence, there is all the more reason why this court ought not to disturb the consent order on that account. If it is true that the fault lay with the solicitor, and that it had caused the petitioner to gain less than she otherwise might, the petitioner's remedy is against that solicitor and not the respondent.

Appeal dismissed.

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