Chan Yat Chun *v* Sng Jin Chye and another
[2016] SGHCR 4

Case Number : Suit No 589 of 2015 (Summons No 6228 of 2015)
Decision Date : 16 March 2016
Tribunal/Court : High Court
Coram : Zhuang WenXiong AR
Counsel Name(s) : Joel Lim Junwei and Daniel Seow Wei Jin (Allen & Gledhill LLP) for the plaintiff.
Parties : Chan Yat Chun — Sng Jin Chye — Zhang Yuzhen

Civil Procedure – Judgments and orders – Enforcement – Writs of seizure and sale

Courts and Jurisdiction – Court judgments – Binding force

16 March 2016 Judgment reserved.

Zhuang WenXiong AR:

1 Is the interest of a tenant-in-common in realty exigible to a writ of seizure and sale? There is a surprising lack of authority on this point.

2 The plaintiff (hereinafter "the judgment creditor") and the first defendant (hereinafter "the judgment debtor") entered into a consent judgment on 18 November 2015 for the sum of $300,000, but this remains unpaid to date. The judgment creditor applied, on an *ex parte* basis, for a writ of seizure and sale to be issued vis-à-vis the judgment debtor's interest in a condominium located at 79 Jurong West Central 3 ("the property"). The judgment debtor and the second defendant hold the property as tenants-in-common in equal shares.

3 I requested further research into this point. Counsel for the judgment creditor submitted that *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 ("*Malayan Banking*") is distinguishable; while *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 ("*Chan Shwe Ching*") implicitly held that the interest of a tenant-in-common is exigible to a writ of seizure and sale.

4 In *Malayan Banking*, two writs of seizure and sale were registered against property held in a joint tenancy. The High Court held that a writ of seizure and sale against immovable property could not be used to enforce a judgment against a debtor who is one of two or more joint tenants of that immovable property. In *Chan Shwe Ching*, the plaintiff-judgment creditor applied for a writ of seizure of sale in respect of property held by the defendant-judgment debtor in a joint tenancy. The High Court declined to follow *Malayan Banking*, and held that property held under a joint tenancy can be seized.

5 I agree that the *ratio decidendi* of *Malayan Banking* does not extend to tenancies in common. The decision rests on the following propositions:

(a) The "interest of the judgment debtor" attachable under a writ of seizure and sale must be distinct and identifiable (at [15]);

(b) A joint tenant has no distinct and identifiable interest in land for as long as the joint

tenancy subsists (*ibid*);

(c) To seize one joint tenant's interest is to seize also the interest of his co-owner when they are not subject to the judgment which is being enforced (*ibid*);

(d) A writ of seizure and sale cannot therefore attach the interest of a joint tenant unless it concomitantly severs the joint tenancy (*ibid*);

(e) A writ of seizure and sale, when registered, does not sever a joint tenancy (at [18]) because a writ of seizure and sale does not necessarily lead to a sale (at [17]).

6 I assume *arguendo* the validity of the proposition (at [5(b)] *supra*) that a joint tenant has no distinct and identifiable interest in land for as long as the joint tenancy exists. It is trite that a tenant-in-common owns a distinct and identifiable interest in land (*Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 3 SLR 364 ("*Goh Teh Lee*") at [13]): each tenant-in-common has a separate title and holds a fixed beneficial interest immune from the right of survivorship (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [84] and [85]). Indeed it would not be possible for the interest of a tenant-in-common to be the subject of a testamentary disposition if it were not distinct and identifiable.

7 Furthermore *Malayan Banking* took severance of a joint tenancy to be an essential prerequisite for a writ of seizure and sale to be exigible. At risk of stating the obvious, a joint tenancy is converted into a tenancy in common upon severance. It was thereby implicitly assumed that the interest of a tenant-in-common is exigible to a writ of seizure of and sale.

8 *Chan Shwe Ching* is similar in this respect. The court, in the context of comparing the prejudice suffered by joint tenants and tenants-in-common when property is sold pursuant to a writ of seizure and sale, mentioned that the prejudice suffered by joint tenants would be "very similar in cases involving the [writ of seizure and sale] of an immovable property held as tenants-in-common" (at [22]). This presupposes that the interest of a tenant-in-common is exigible to a writ of seizure and sale.

9 I leave the preceding aside for the ensuing paragraphs. If the interest of a joint tenant is exigible to a writ of seizure of sale, it follows *a fortiori* that the interest of a tenant-in-common would also be so exigible. This is because a joint tenancy must, by definition, fulfil the four unities of interest, title, time and possession (*Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 3 SLR 364 at [17]) whereas a tenancy in common only requires unity of possession (*Jack Chia-MPH Ltd v Malayan Credit Ltd* [1983-1984] SLR(R) 420 at [11]). Therefore if *Chan Shwe Ching* was correct in declining to follow *Malayan Banking*, the interest of a tenant-in-common should *a fortiori* be exigible to a writ of seizure and sale.

10 On the assumption that I am bound by the decisions of High Court Judges due to the doctrine of *stare decisis*, I am neither bound by *Malayan Banking* nor *Chan Shwe Ching* because they conflict with each other (see *eg*, *Hughes and Vale Proprietary Ld v State of New South Wales and others* [1955] 1 AC 241 at 308).

11 In any event, I am not so bound. Horizontal *stare decisis* does not prevail in Singapore with the Court of Appeal expressly affirming that the High Court is not bound by its previous decisions (*Attorney-General v Shadrake Alan* [2010] SGHC 327 at [4]). Section 62 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) provides that an Assistant Registrar shall have such jurisdiction, powers and duties as may be prescribed by the Rules of Court (Cap 322, R 5, 2014 Rev

Ed); and O 32 r 9 of the same provides that an Assistant Registrar exercises "all such authority and jurisdiction under any written law as may be transacted and exercised by a Judge in Chambers". Therefore an "assistant registrar has the same powers and jurisdiction as a judge in chambers" (*Attorney-General v Chee Soon Juan* [2006] 2 SLR(R) 650 at [12]).

12 *Chan Shwe Ching* declined to follow *Malayan Banking* for the reasons summarised below:

(a) The wording of O 47 r 4 of the Rules of Court refers to "any interest therein" and there is nothing which would support a restrictive interpretation (at [10]);

(b) Prior to *Malayan Banking* severance of a joint tenancy was not a prerequisite for the issuance of a writ of seizure and sale against a joint tenant's interest in land (at [11]);

(c) As the interest of a joint tenant in land is capable of being alienated and identified, and it is commonly accepted that severance occurs when the sheriff sells the land pursuant to a writ of seizure and sale, there is no reason why a writ of seizure and sale cannot be issued against a joint tenant's interest in land (at [13]);

(d) Other Commonwealth jurisdictions do not consider the question and assume that the interest of a joint tenant can be taken in execution (at [15] and [16]);

(e) Courts should not treat judgment debtors differently based on the type of co-ownership by which their property is held, and the risk of unfairness is endemic to any form of co-ownership (at [22] and [23]).

13 I agree with the reasons above and add my own. Firstly, description should not be conflated with prescription. A joint tenancy possesses the four unities of interest, title, time and possession. There is no doubt that a writ of seizure and sale is repugnant to the unities of interest and title – but the very issue at stake is whether this repugnance should be a bar to the exigibility of the interest of a joint tenant to a writ of seizure and sale. The four unities are not indestructible. If one or more of the unities of interest, title and time are destroyed, the erstwhile joint tenants would be holding the property as tenants-in-common; in established legal parlance the destruction of one or more of the three mentioned unities is termed a severance. If unity of possession is destroyed, in established legal parlance a partition would have occurred. In other words, the definition of what a "joint tenancy" entails cannot control the conditions upon which the law will recognise either transmutation into a tenancy-in-common or outright termination of co-ownership.

14 The question, correctly posed, is whether a writ of seizure and sale ought to be a valid means of severance. *Malayan Banking* did not address this, and instead followed Canadian authority in holding that a joint tenancy is not severed merely by the *registration* of a writ of seizure and sale. But this is neither here nor there, for steps taken after registration could very well sever the joint tenancy. As *Chan Shwe Ching* was at pains to point out (at [15] and [16]), other Commonwealth jurisdictions hold that the interests of joint tenants in realty are seizable by judgment creditors, and this necessarily entails a severance of the joint tenancy. Instead, controversy abounds over when exactly severance takes place. Canada seems to take the position that a judgment creditor needs to take sufficient steps to execute before a severance occurs (*Power v Grace* [1932] 2 DLR 793), and *Chan Shwe Ching* left this to be decided in a future case (at [19]), as do I. I digress to add that the position in England is functionally identical to the rest of the Commonwealth save for dissimilar mechanisms and nomenclature. Judgment creditors can apply for a charging order under s 1 of the Charging Orders Act 1979 (c 53) and it is thoroughly uncontroversial that the (beneficial) interest of a joint tenant can be made the subject of such a charging order (pursuant to s 2(1) of the same; see

eg, *Harman v Glencross* [1986] 2 WLR 637).

15 This runs into two potential objections: *joint* tenants must act jointly in order to bind the estate; and the actions of a stranger to the estate cannot lead to the severance of a joint tenancy. The former is easily dealt with. A joint tenant may unilaterally sever a joint tenancy either through a prescribed statutory procedure (s 66A of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed)) or by an act operating upon his own share (*Williams v Hensman* (1861) 1 John & H 546 at 557). The requirement for joint action pertains only to dealings between the estate and the world at large, and not to the rights and obligations of co-owners *inter se* (*Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 3 SLR 364 at [21]). As for the latter there is no absolute rule that the actions of strangers cannot lead to severance, and I need only mention one example: it is well-settled that where a joint tenant is adjudicated a bankrupt, the joint tenancy is severed by operation of law when his property vests in the Official Assignee (s 76 of the Bankruptcy Act (Cap 20, 2009 Rev Ed)).

16 Secondly, as a matter of legal policy the realisability of a joint tenant's share in realty must surely be accompanied by a corresponding amenability to execution. A joint tenant's share in realty is readily realisable – upon severance she would ordinarily expect to obtain a share equal in size to that of the other joint tenants (*Goodman v Gallant* [1986] 2 WLR 236 at 246–247) unless trust law comes into play (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108); upon a sale she would get a rateable share of the proceeds; and if other joint tenants do not agree to a sale she may apply to court for an order that the land be sold (see *eg*, *Gurnam Kaur d/o Sardara Singh v Harbhajan Singh s/o Jagraj Singh (alias Harbhajan Singh s/o Jogaraj Singh)* [2004] 4 SLR(R) 420). If jointly-owned realty cannot be seized a significant proportion of realisable wealth would be locked away out of the reach of creditors; and a debtor could easily ring-fence his wealth by purchasing realty and holding the same in joint tenancies. Indeed the default position in Singapore appears to be that all realisable assets are liable to execution absent clear and specific *legislative* promulgations to the contrary — with the clearest examples being s 51(6) of the Housing and Development Act (Cap 129, 2004 Rev Ed) and s 24 of the Central Provident Fund Act (Cap 36, 2013 Rev Ed). If the *judge-made* common law adds to that list simply because of the arcane technicalities of the law on joint tenancies, joint tenancies would in effect be arbitrarily singled out for special treatment – treatment that cannot be defended either as a matter of legal policy or for that matter social policy.

17 In conclusion, I hold that the interest of a joint tenant, whose co-ownership features the four unities, is exigible to a writ of seizure and sale. *A fortiori*, the interest of a tenant-in-common, whose co-ownership is only necessarily marked by unity of possession, is also exigible to a writ of seizure and sale. In any event, both *Malayan Banking* and *Chan Shwe Ching* implicitly held that the interest of a tenant-in-common is so exigible.

18 I therefore allow the plaintiff's application. I shall hear the plaintiff on costs.