

Kwok Wai Leng v Chan Sooi Hong
[2004] SGHC 58

Case Number : Div P 600186/2002, RAS 720086/2003, 720087/2003, SIC 650177/2004
Decision Date : 22 March 2004
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Seenivasan Lalita (Virginia Quek, Lalita and Partners) for petitioner; Tan Yew Cheng (Leong Partnership) for respondent
Parties : Kwok Wai Leng — Chan Sooi Hong

Family Law – Maintenance – Wife – Whether relative financial positions of parties properly considered – Section 114(1) Women's Charter (Cap 353, 1997 Rev Ed)

Family Law – Matrimonial assets – Division – Whether division of matrimonial property just and equitable – Section 112 Women's Charter (Cap 353, 1997 Rev Ed)

22 March 2004

Tan Lee Meng J:

1 The petitioner, Mdm Kwok Wai Leng, and the respondent, Mr Chan Sooi Hong, who were both dissatisfied with the decision of District Judge Hoo Sheau Peng with respect to the payment of maintenance and the division of their matrimonial home following their divorce, appealed against her decision. I dismissed both the appeals and now give my reasons for having done so.

Background

2 Mdm Kwok and Mr Chan, who are both 64 years old, were married in June 1966. In the following year, their son, Ka Chi, was born. Mr Chan was then working in a bank and Mdm Kwok was a homemaker. In May 1969, they purchased a three-room Housing and Development Board flat in their joint names for \$7,800. This flat, their matrimonial home and main asset, is at Block 152 Mei Ling Street, #06-06, Singapore 140152.

3 The marriage turned sour by 1981. By then, both parties lived in separate bedrooms. According to Mr Chan, Mdm Kwok did not cook or look after the family and he had to do housework and take care of their son. This was corroborated to some extent by their son, Ka Chi. Mdm Kwok denied these allegations.

4 After more than two decades of *de facto* separation, Mdm Kwok decided in the autumn of their lives to end her marriage to Mr Chan on the ground that they had separated since 1981. On 6 August 2002, a decree *nisi* to dissolve the marriage was granted. The district judge, who dealt with the ancillary matters, made the following orders:

(a) The husband is to pay \$200 per month as maintenance for the wife with effect from 15 September 2003 and thereafter on the 15th day of each month.

(b) At the option of the husband to be exercised within six months of the order, the wife is to transfer or sell her right, title and interest in the matrimonial property at Block 152 Mei Ling Street, #06-06, Singapore 140152 to the husband and/or nominee, upon the husband paying the wife 35% of the valuation price of the property. From the payment, the wife is to refund to

her Central Provident Fund ("CPF") account the moneys withdrawn for the purchase of the flat, plus interest. The husband is to bear the costs and expenses of the transfer of the property.

(c) Should the husband not be able to effect the transfer as set out above, the property is to be sold in the open market within ten months of the order, with the net sale proceeds, after payment of the costs and expenses of sale, to be divided in the proportion of 35% to the wife and 65% to the husband. Each party is to refund to his or her CPF accounts the moneys used to purchase the flat and the accrued interest.

5 Both Mdm Kwok and Mr Chan appealed against the decision of the district judge. Mdm Kwok contended that she was entitled to more than \$200 for monthly maintenance and that she ought to have been given an 80% share of the matrimonial home. On the other hand, Mr Chan took the view that his former wife was not entitled to any maintenance and that she ought to have been awarded a smaller share of the matrimonial home.

Maintenance

6 When considering whether or not the district judge's order for maintenance ought to be altered in any way, account must be taken of s 114(1) of the Women's Charter (Cap 353, 1997 Rev Ed), which provides as follows:

In determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; ...

7 Mr Chan, who is presently a taxi driver, said that he earns around \$800 per month. Mdm Kwok, who claimed to have been unemployed for the last five years, asked for a monthly maintenance of \$500.

8 The district judge, who carefully considered the parties' respective financial positions, noted that while both parties had alleged in their affidavits that the other had undisclosed assets, these were bare and unsubstantiated assertions. She accepted that Mdm Kwok's monthly expenses were around \$600 per month and noted that the latter received \$250 per month from an annuity. She did not believe that Mdm Kwok had been unemployed during the last five years. The district judge took into account the amount that Mdm Kwok earned or could earn by working as well as the money from the annuity and concluded that the latter ought to receive a monthly maintenance of \$200 from her

former husband.

9 Mr Chan's counsel, Ms Seenivasan Lalita, pointed out that her client was already 64 years old and that he might not be able in the future to continue to pay his former wife \$200 per month. The simple answer to this is that if Mr Chan's circumstances change to such an extent that he cannot afford to pay his former wife any maintenance, an application can be made at that time to vary the present maintenance order.

10 As I saw no reason to fault the decision of the district judge with respect to the question of maintenance, both the appeals against her order on this matter were dismissed.

The matrimonial home

11 I now turn to the question of division of matrimonial assets. As has been mentioned, the only bone of contention between the parties relates to the division of their matrimonial home. When considering the division of matrimonial assets, note must be taken of s 112(1) of the Women's Charter, which provides that the division of matrimonial assets shall be in such proportions as the court thinks just and equitable. Note must next be taken of s 112(2) of the Women's Charter, which requires the court to take into account matters such as the extent of the contributions made by each party towards acquiring, improving or maintaining the matrimonial assets and the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family.

12 That the division of matrimonial assets is not an exact science cannot be overstated. In *Lim Choon Lai v Chew Kim Heng* [2001] 3 SLR 225 at [14], L P Thean JA, who delivered the judgment of the Court of Appeal, summed up the position when he said as follows:

In determining a "just and equitable" division of matrimonial assets under s 112(1) of the Women's Charter, the court must, as directed by s 112(2), have regard to all the relevant circumstances of the case at hand, and in particular the matters enumerated in that subsection, in so far as they are applicable, and on that basis determine what a "just and equitable", division should be. The matters enumerated there comprise both financial and non-financial contributions made by the parties. Where financial contributions are concerned, the court must, of course, take into account the sums contributed by each party; these are the matters specifically mentioned in paras (a) and (b) of s 112(2). However, this does not mean that the court should engage in a meticulous investigation and take an account of every minute sum each party has paid or incurred in the acquisition of the matrimonial assets and/or discharge of any obligation for the benefit of any member of the family, and then make exact calculations of each party's contributions. The court must necessarily take a broader view than that. As for the non-financial contributions, they also play an important role, and depending on the circumstances of the case, they can be just as important. At the end of the day, taking into account both the financial and non-financial contributions, the court would adopt a broad-brush approach to the issue and make a determination on the basis of what the court considers as a "just and equitable" division.

13 Both Mr Chan and Mdm Kwok took very unreasonable positions regarding the division of their matrimonial property. The district judge understandably viewed Mr Chan's proposal that Mdm Kwok be refunded her CPF money and be given nothing else for the matrimonial property as an extremely unfair suggestion. She also rejected Mdm Kwok's claim that she was entitled to 80% of the matrimonial

home.

14 The district judge was mindful of the fact that that she was required to take into account s 112 of the Women's Charter. In regard to financial contributions to the purchase of the matrimonial home, she found that Mr Chan had contributed 83.3% of the amount paid to the Housing and Development Board whereas Mdm Kwok had only contributed 16.7%. She then took into account the non-financial contribution by Mdm Kwok and noted that the parties' only son, Ka Chi, now 36 years old and a music teacher, had pointed out that he only remembered his father taking care of him and that he could not remember his mother doing any cooking or marketing. He said that his mother did not eat with the family and that she refused to do housework. In fact, he recalled that when he was younger, he had to help his father with household chores after finishing his homework. The district judge summed up the position as follows in [14] and [15] of her judgment ([2003] SGDC 255):

14 ... This was a very long marriage of 37 years. However, I noted that the parties have been living separately since 1981, more than 20 years ago. There was only one child. While the wife was also working since 1981, I accepted that the husband paid for the outgoings of the property, including the substantial renovation costs ... He also paid for most of the household expenses. I also found that the husband shouldered most of the responsibility of the household, while the wife played a minimal role in taking care of the husband and the child. In coming to these findings, I gave due weight to the clear evidence of the child ...

15 The overall picture that emerged was that despite the length of the marriage, the wife contributed little to the marriage, and to the family, either financially or non-financially, in the later years of the marriage. Her contributions were mainly in the earlier years of the union.

15 The district judge thought that although Mdm Kwok had only contributed 16.7% of the money required for the purchase of the flat in question, she was entitled to a higher share of the property than 16.7% because of her non-financial contribution. She pointed out that in the ordinary course of events, 50% of the property ought to be given to a wife after such a long marriage. However, as Mdm Kwok's non-financial contribution was rather minimal for a long period of the marriage, she was only awarded 35% of the property. To accommodate Mr Chan's wish to continue staying in the property, the district judge gave him the option of retaining it by paying his former wife 35% of the valuation of the property. If he was unable or unwilling to do so, the property was to be sold and the sale proceeds divided between the parties on the basis of 35% for Mdm Kwok and 65% for Mr Chan.

16 In the final analysis, each judge will have his or her own view as to what is a just and equitable division of matrimonial assets in a particular case. What is evident in this case is that if a broad brush approach is adopted, the district judge's decision on the division of the matrimonial property is a sensible one. As such, I also affirmed her decision on this matter.