

Subramaniam s/o Gurusamy and Others v Sagadevan s/o Gurusamy and Others
[2004] SGHC 70

Case Number : OS 724/2002, RA 61/2003
Decision Date : 12 April 2004
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Martin DeCruz (Ang and Lee) for plaintiffs; Balagopal P (M P Kanisan and Partners) for first defendant
Parties : Subramaniam s/o Gurusamy; Summayah s/o S. Kurusamy; G. Erlepasamy — Sagadevan s/o Gurusamy; Gurusamy Tamilveni; G Punnamma; Sathupathi s/o Gurusamy

Civil Procedure – Judgments and orders – Whether Assistant Registrar's Order covered the consequential orders and all elements of dispute – Whether Assistant Registrar's order should be varied.

12 April
2004

Judgment reserved.

Woo Bih Li J:

Introduction

1 This is an action involving seven siblings, three of whom are the plaintiffs. Eventually the dispute was between the three plaintiffs and the first defendant.

Background

2 The parties' father was the owner of a property at 224 Jalan Kayu, Singapore. He died in 1984 without leaving a will. Accordingly, half of his interest in the property went to his wife and the rest to his children.

3 In 1989, the family agreed to develop two houses on the property. A development loan was obtained from United Overseas Finance Ltd ("UOF") and a contractor was engaged. Construction commenced in 1990 and the Temporary Occupation Permit was issued in September 1992. The two houses had the addresses 224 and 224A Jalan Kayu.

4 The mother died in 1996 and apparently her half share was transferred to the seven children as tenants-in-common in equal shares according to the terms of her will.

5 224A Jalan Kayu was sold in March 2001. The sale proceeds were used to pay the development loan which had been converted to a housing loan. 224 Jalan Kayu will be sold. The plaintiffs sought an accounting from the first defendant as he was managing the construction and other financial affairs for most of the time. However, as I shall elaborate below, the parties appeared ill-prepared to handle such a claim and there was considerable confusion.

6 On 21 August 2002, the first defendant obtained an order that accounts be taken of all moneys paid or received by the seven siblings, with particular focus on the first defendant and the first plaintiff.

7 However, at the accounting taken before an assistant registrar, the focus was on how much the first defendant was to pay the other siblings. Hence, there was no order in relation to the other siblings after the accounting was completed.

8 To make matters worse, the order as extracted after the accounting was done was for the first defendant to pay the three plaintiffs on behalf of the estate of the mother the aggregate sum as determined by the assistant registrar. This was not correct, as plaintiffs' counsel admitted, because the assistant registrar's determination was in respect of the first defendant's accounting to all the seven siblings. The mother had an interest in only half of the two houses.

9 Thirdly, although the assistant registrar had set out various figures for the items comprising the aggregate sum, no reasons were given and the parties before me were unable to explain the sub-items or the composition of one of the items amounting to \$118,758.51 which was for contributions from family members and rent from 224A Jalan Kayu. Counsel for the first defendant had ceased to represent him when accounts were taken before the assistant registrar and was re-appointed to act in the appeal before me, but, apparently, the first defendant was unable to shed light on this figure, as his counsel was in turn unable to do so. Plaintiffs' counsel was present before the assistant registrar but he too was unable to assist me.

10 Fourthly, it transpired that consequential orders should have been made regarding the sale of the remaining property, *ie* 224 Jalan Kayu. Such orders would have included when this property was to be sold, who was to have conduct of the sale and whether a valuation report should be obtained before the sale was effected and whether the first defendant was to be entitled to set off whatever he was to account for against his share of the sale proceeds. The questions as to whether any interest should be paid by him and, if so, the rate thereof and whether interest should be paid by other parties should also have been dealt with specifically below but were not. Accordingly, counsel for the parties sought to and were allowed to make submissions thereon before me with a view to avoid having to present arguments again before the assistant registrar.

11 Plaintiffs' counsel also informed me after the close of submissions that after my decision on the appeal and even if I were to make consequential orders, another accounting would have to be done among the seven siblings regarding their respective contributions to the construction costs, as the first defendant had paid more than his one-seventh share thereof.

12 Furthermore, in the accounting exercise before the assistant registrar, the first defendant did not produce the contract documents with the contractor and did not produce most of the progress claims of the contractor. Even before me, figures were changed from time to time for the first defendant and, at times, both sides did not have supporting documents to support the allegations and counter-allegations.

13 Both counsel's approach in the appeal was to use the various items determined by the assistant registrar as a basis for making submissions. Adopting that approach, I now set out the outcome of the appeal with my reasons. For ease of reference, I will summarise the outcome near the end of my judgment in tabular form.

Cash advances from the contractor

14 The contractor, Townscope Design & Development Pte Ltd, had received payment from time to time from UOF and it had also made cash advances to the first defendant ostensibly for him to make payments for various expenses such as development charges, tiles and sanitary fittings. It was not disputed that he did receive cash advances but the issues were (a) how much he had received

and (b) how much he had used from these cash advances to develop the property.

15 The first defendant said he had received \$132,801.12 from the contractor. The plaintiffs, however, argued that the first defendant had received another \$24,947.12, relying on one of the provisional accounts he had supplied through his solicitors in October 2001.

16 The first defendant's position was that the \$24,947.12 was only in the provisional accounts and should be disregarded. However, he stopped short of saying that it was part of the \$132,801.12 which he was admitting to. Neither did he explain why the \$24,947.12 was reflected in the provisional accounts instead of the \$132,801.12 since the latter must already have been received by him when the provisional accounts were provided.

17 Accordingly, I draw an adverse inference against him. In my view, he has received both sums \$132,801.12 and \$24,947.12, totalling \$157,748.24.

18 As for the deductions, the first defendant claimed he had paid \$58,691.75 to the Urban Redevelopment Authority ("URA") as development charges in the following manner. He had borrowed \$40,400, \$10,600 and \$10,000 from three relatives or friends, Mr Seeni, Mr Govindasamy and Mr Pandian, to pay the development charges first and then used the cash advances from the contractor to re-pay these persons together with interest. The first defendant's written submission enclosed a receipt from URA for \$58,691.75 which was in the name of the second plaintiff.

19 The plaintiffs did not dispute that the first defendant did make some payment for the development charges. According to the first plaintiff, only \$40,000 and \$10,000 were borrowed from Mr Seeni and Mr Govindasamy respectively. The rest of the charges were paid from contributions by the mother and the third plaintiff. The plaintiffs' position was that \$42,000 and \$10,600 were re-paid to these lenders and these sums covered both principal and interest.

20 The first defendant failed to provide an affidavit from Mr Pandian although he was required to do so.[\[1\]](#)

21 Accordingly, I am prepared to allow a deduction of \$42,000 and \$10,600 = \$52,600 only, for the loan and interest in respect of the development charges.

22 The first defendant also claimed that he had made various payments from the cash advances for:

- (a) diversion of waterline,
- (b) sewerage fees, and
- (c) sanitation and electrical works,

totalling \$16,500. However, as there was no supporting evidence that he paid for these items, I will not allow a deduction for them.

Contributions from family members and rent from 224A Jalan Kayu less any deduction for various invoices and household expenses

23 The first defendant's position was that total contributions from family members amounted to \$244,200. The second plaintiff's position was that the total was higher, *ie* \$273,016.68. Neither side had sufficient documentary evidence to establish its allegation. The burden is on the plaintiffs to

establish the higher figure for this item even though the general responsibility to account is that of the first defendant. Accordingly, my view is that the first defendant received only \$244,200.

24 As for the amount of rent from 224A Jalan Kayu received by the first defendant, the difference in the respective amounts cited by each side was a small sum. Accordingly, plaintiffs' counsel accepted that the rent received should be \$94,647.50.

25 The first defendant asserted that he paid 95 invoices amounting to \$209,158.53. The plaintiffs disputed only six of the invoices.

26 The first three invoices in dispute were items 1 to 3 of an exhibit D tendered by the plaintiff:

(a)	Item 1 - 1990 Liang Hawkin architect fee	\$5,655
(b)	Item 2 - 1990 Liang Hawkin architect fee	\$2,795
(c)	Item 3 - 1990 Liang Hawkin printing charges	<u>\$ 95</u>
		<u>\$8,545</u>

The first defendant said in cross-examination^[2] that \$755 of this \$8,545 came from the mother and the balance (\$7,790) came from him.

27 The other three invoices in dispute were items 8, 9 and 74 of exhibit D:

(a)	Item 8 - 1991 Liang Hawkin architect fee	\$6,600
(b)	Item 9 - 1991 Raman & Partners legal fee	\$7,454
(c)	Item 74 - 1996 NBL Construction & Trading being renovation for 224A Jalan Kayu	\$7,800

The first defendant accepted that item 8 was paid by the mother but said in cross-examination^[3] that he had provided the mother with the funds to make the payment. As for item 9, the first defendant said in cross-examination^[4] that this was paid by the first plaintiff. For item 74, the first defendant maintained that he had paid the same. Plaintiffs' counsel did not specifically challenge the first defendant's assertions during the hearing before the assistant registrar but he did say he would leave the six items for submissions.

28 As the first defendant has not provided any other evidence of his alleged payments of the six invoices, I will not allow any deduction for the six invoices. So there is to be a deduction for the remaining 89 invoices only, *ie* \$209,158.53 (being the total of 95 invoices) - \$30,399 (for the total of the six invoices) = \$178,759.53.

29 The first defendant also claimed for household expenses, in addition to the 95 invoices. There were four items under this claim.

30 The first item under household expenses was for \$5,216.30 being Public Utilities Board ("PUB") charges for 23 Lambeth Walk where the family were residing pending construction of the two houses at Jalan Kayu. The plaintiffs' position was that PUB charges had already been claimed under the remaining 89 invoices. It was not clear to me whether the PUB charges already claimed under the 89

invoices were confined to such charges at Jalan Kayu only or not, as the PUB bills were not disclosed. It is for the first defendant to make his claims clear and support them with clear documentary evidence when such evidence should have been available. In the absence of such evidence, I do not allow this item.

31 The second item under household expenses was for rental paid for 23 Lambeth Walk amounting to \$12,560. The first defendant did not produce the rent receipts whereas the plaintiffs produced most of them and their position was that the first defendant did not pay for such rent. Accordingly, I do not allow this item.

32 The third item under household expenses was for general household expenses. The first defendant produced a table without supporting documents. The plaintiffs' position was that others had contributed to such expenses too, but also did not have supporting documents. Moreover, I have some doubt as to whether the siblings intended for any one of them to be making a claim even if the first defendant had somehow contributed more for general household expenses. I disallow this item.

33 The fourth item for household expenses was the mother's funeral expenses. This was obviously not a household expense but the plaintiffs did not object on this basis. The first defendant claimed \$8,712.20 but had no supporting documents. The plaintiffs disputed this item but did not assert who else had in fact paid the mother's funeral expenses. Although this might not have been raised before the assistant registrar and was not part of the development of the property, I am of the view that it would be fair to allow the first defendant to deduct \$5,000 for this claim.

34 So for the alleged household expenses, I allow a deduction of \$5,000 only.

Second mortgage loan

35 It was not disputed that there was a second mortgage loan of \$150,000 which the first defendant was to account for after deducting what he had re-paid. The first defendant's position was that he had re-paid \$61,520.66 and if the court was not prepared to accept that, then the figure should be \$58,853.90 based on an inference being drawn from some bank statements. Although the plaintiffs were of the view that the first defendant had re-paid \$55,399.34, they were prepared to leave it to the court to decide this item without more argument. I am of the view that \$58,853.90 would be a fair figure to use. As the parties agreed that the first defendant had also paid \$10,549.03 from the second mortgage loan as expenses, the total to be deducted is $\$58,853.90 + \$10,549.03 = \$69,402.93$. Accordingly, the first defendant has to account for $\$150,000 - \$69,402.93 = \$80,597.07$.

Third mortgage loan

36 It was also not disputed that there was a third mortgage loan of \$150,000 which the first defendant was to account for. Out of this sum, \$50,000 was taken by the second plaintiff allegedly as an interest-free loan.

37 Secondly, the second plaintiff alleged he had re-paid \$7,200 but the first defendant alleged the re-payment was \$6,100 only. Again, there was insufficient documentary evidence. It is for the second plaintiff to establish how much he repaid and, in the absence of satisfactory documentary evidence, I am of the view that he re-paid \$6,100 only, leaving a balance of \$43,900.

38 Thirdly, interest of \$13,167.20 on the third mortgage loan had been paid. It was not made clear to me whether interest had stopped accruing but in any event, the parties were working on the undisputed figure of \$13,167.20. The plaintiffs say that the first defendant should not deduct the

\$13,167.20 from the \$150,000 as he had had the benefit of the \$150,000 and the assistant registrar had accepted the plaintiffs' position. However, as it was not disputed that the second plaintiff had had the benefit of part of the \$150,000 *ie* \$50,000, I am of the view that the first defendant should be entitled to deduct one third of the \$13,167.20 *ie* \$4,389.07.

39 Accordingly, for the third mortgage loan, the first defendant should account as follows:

\$150,000.00
\$ 50,000.00
\$ \$6,100.00
\$ 4,389.07

\$101,710.93

40 The net sale proceeds of 224A Jalan Kayu received by the first defendant were an undisputed sum of \$143,193.65. It was also undisputed that he paid \$188,338.13 as interest on the development loan and \$122,117.49 as principal on the housing loan.

41 In summary:

(a) Cash advance from contractor

(i)	Undisputed	-	\$132,801.12
(ii)	Add	-	<u>\$ 24,947.12</u>
			\$157,748.24
(iii)	To deduct repayments on loans	-	<u>\$ 52,600.00</u>
			<u>\$105,148.24</u>

(b) Contributions from family members and rental receipts

(i)	Contribution	-	\$244,200.00
(ii)	Add rental	-	\$ 94,647.50
(iii)	To deduct from 89 invoices	-	\$178,759.53
(iv)	To deduct for household expenses (<i>ie</i> funeral expenses of mother)	-	<u>\$ 5,000.00</u>
			<u>\$155,087.97</u>

(c) Second mortgage loan

(i)	Add loan	-	\$150,000.00
(ii)	Deduct repayment to loan and expenses	-	<u>\$ 69,402.93</u>

\$ 80,597.07

(d) Third mortgage loan

(i) Add loan - \$150,000.00

(ii) Deduct partial sum used by second plaintiff (\$50,000-\$6,100) - \$ 43,900.00

(c) Deduct 1/3 of interest - \$ 4,389.07

\$101,710.93

(e) Add sale proceeds of 224A Jalan Kayu - \$143,193.65

(f) Deduct for

(i) payment of interest on development loan - \$188,338.13

(ii) Payment of principal of housing loan - \$122,117.49

\$310,455.62

42 The aggregate of all the above is:

(a) \$105,148.24

(b) + \$155,087.97

(c) + \$ 80,597.07

(d) + \$101,710.93

(e) + \$143,193.65

(f) - \$310,455.62

\$275,282.24

43 However, this aggregate sum is even higher than what the assistant registrar had determined the first defendant to be liable for, which was \$247,896.46. Although I have reduced the sums the first defendant is liable for under the second and third mortgage loans, I have increased the sum he is liable for under contributions from family members and rental receipts. As I have mentioned, there was no breakdown for this item in the assistant registrar's determination of \$118,758.51 and counsel were unable to assist me as to how the assistant registrar arrived at her figure.

44 In any event, as the assistant registrar's figure is lower than mine, and there is no appeal by the plaintiffs, the first defendant will remain liable for \$247,896.46 to all seven siblings, including himself.

45 As for the consequential orders, I order that the first defendant may defer payment of the sum of \$247,896.46 until 224 Jalan Kayu is sold whereupon he may set off his share of the net sale proceeds thereof against the \$247,896.46. This is subject to any subsequent variation of my order if the sale is delayed beyond 31 August 2004 or for any other reason. The first defendant is to pay interest, as elaborated below, on the \$247,896.46 unless he pays the sum to the plaintiffs' solicitors to be held by them as stakeholders for all seven parties in an interest-bearing account.

46 The parties should complete the remaining accounting exercise mentioned by plaintiffs' counsel as soon as possible so that by the time 224 Jalan Kayu is sold and the net sale proceeds are received, the first defendant knows just how much he has to pay. This part of my judgment need not be reflected in the order to be extracted as it is only a suggestion on my part.

47 I direct that 224 Jalan Kayu is to be sold by 31 August 2004, *ie* the contract of sale or the exercise of the option of sale is to be achieved by that date. The date of completion will be in accordance with such reasonable time frame as is stated in the agreement or option to sell. The deadline for the sale, which is different from the date of completion, may be extended by agreement in writing between the first plaintiff and the first defendant.

48 The first plaintiff is to have conduct of the sale. However, all other parties may refer buyers to the first plaintiff for consideration. The sale price is to be at a price not less than that agreed to by at least six out of the seven parties in writing. If there is no such agreement within 21 days of the date of this judgment, the first plaintiff is to obtain one independent valuation and seek a buyer at a price not less than the valuation. The expenses for that valuation is to be paid by all seven parties in equal shares. Any subsequent written agreement on the price by at least six out of the seven parties will supersede any valuation obtained.

49 All seven parties are to sign all necessary documents to give complete effect to the sale including any agreement or option to sell and the instrument of transfer. If any party should refuse to sign any such document, the Registrar of the Supreme Court is to do so.

50 The first defendant and first plaintiff are to agree on appointing a solicitor to act for all seven parties in the sale and failing such agreement within 21 days of the date of this judgment, the first defendant and the first plaintiff may each nominate three independent solicitors to this court and write in for an appointment for the court to determine which solicitor should be acting for all seven parties in the sale.

51 The first defendant is to pay interest on the \$247,896.46 at the rate of 3% per annum from 21 February 2003, being the date of the assistant registrar's order.

52 All seven parties have liberty to apply. This will include any application for earlier payment by the first defendant if the sale of 224 Jalan Kayu is delayed beyond 31 August 2004 or for any other reason.

53 Accordingly, the order made below by the assistant registrar is varied to the extent set out in my judgment.

54 The first defendant is to pay the plaintiffs' costs of the appeal fixed at \$3,000.

55 The plaintiffs' solicitors are to forward a copy of this judgment within seven days from the date hereof to the second to fourth defendants or their solicitors.

56 I am not making any order regarding the second plaintiff who has given an undertaking to pay the balance of the loan he took on the same terms as what I would order in respect of the first defendant. In view of my decision, the balance of the loan is \$43,900.

Assistant registrar's order varied.

[\[1\]](#)Notes of Evidence page 46

[\[2\]](#)Notes of Evidence page 83

[\[3\]](#)Notes of Evidence page 83

[\[4\]](#)Notes of Evidence page 83

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