

Rengarajoo Prema nee Rethnamani (m.w.) v Rengarajoo s/o Rengasamy Balasamy
[2010] SGHC 197

Case Number : Divorce Petition No 604142 of 2001 (RAS No 720006 of 2010)
Decision Date : 15 July 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Lim Poh Choo (Alan Shankar & Lim) for the appellant/petitioner; Richard Sam (Sam & Associates) for the respondent.
Parties : Rengarajoo Prema nee Rethnamani (m.w.) — Rengarajoo s/o Rengasamy Balasamy

Family Law

15 July 2010

Woo Bih Li J:

Introduction

1 In this action, *ie*, Divorce Petition No 604142 of 2001, the petitioner Prema Rengarajoo nee Rethnamani (“the Wife”) had sought to divorce the respondent Rengarajoo s/o Rengasamy Balasamy (“the Husband”).

2 On 7 August 2003, a District Judge (“DJ”) made an order (“the 2003 Order”) on the ancillaries. The relevant part thereof was para 2 which states:

2. The matrimonial home at No. 14 Moonbeam Drive Singapore 277353 shall be sold in the open market and the proceeds of the sale, after repayment of outstanding loans on the property and deductions for costs and expenses incurred for the sale, shall be divided equally between the parties and the [Wife] shall make a payment of \$50,000.00 from her share of the sales proceeds to the [Husband]. The [Wife] shall have an option to purchase the share of the [Husband] in the matrimonial home based on the value of \$1,700,000.00;

...

3 I will refer to 14 Moonbeam Drive Singapore 277353 as (“the Property”). The Wife and Husband were joint tenants of the Property. After the 2003 Order, the Wife did not elect to purchase the Husband’s interest in the Property. Neither was the Property sold. This state of affairs continued until 2010.

4 On 19 March 2010, the Husband filed an application by way of Summons-in-Chambers No 650044 of 2010 (“the Husband’s 2010 application”). He sought an order for the Wife to consent to a sale of the Property to any purchaser at \$3,500,000 or above and consequential orders.

5 Then, on 6 or 7 April 2010, the Wife in turn filed an application by way of Summons-in-Chambers No 650056 of 2010 (“the Wife’s 2010 application”). The Wife was purporting to exercise her option to buy the Husband’s interest in the Property at half of the value of \$1,700,000 (*ie*, \$850,000)

which was fixed in 2003 and she was seeking an order for the transfer of his interest to her upon payment of \$850,000 and consequential orders.

6 Both applications were heard on 13 May 2010 by a DJ who granted the Husband's 2010 application and dismissed the Wife's 2010 application with costs.

7 The Wife appealed against that decision on 30 June 2010. I dismissed her substantive appeal with costs but I granted her a right of first refusal to buy the Property, meaning the Husband's interest in the Property, based on the valuation of the Property as at 30 June 2010 instead of the price fixed under the 2003 Order as the value of the Property had increased substantially between 2003 and 2010. The right of first refusal was to be exercised by 5pm of 14 August 2010 failing which it would lapse and then the Property was to be sold in the open market. I also made various consequential orders. I set out my reasons below but before I do so, I will elaborate on the background facts leading to the current application and appeal.

Background

8 If the Wife wished to purchase the Husband's interest under the 2003 Order, she was entitled to do so then based on the value of \$1,700,000 for the entire Property but she was not obliged to purchase.

9 After the 2003 Order was made, the Wife did not elect to purchase the Husband's interest. Instead, she appointed agents to sell the Property which apparently was valued at \$1,650,000 (according to a letter dated 15 September 2003 from her solicitors, Jacob Mansur & Pillai). According to para 6 of the Wife's affidavit of 5 April 2010, the best offer so far received then was \$1,550,000. So, apparently, the Property fell short of the \$1,700,000 price tag stipulated in the 2003 Order.

10 Apparently, the Wife did not follow-up too vigorously to get a purchaser then. To be fair, I would mention that the Husband too did not try to get a purchaser then.

11 The Wife said she did not pursue a sale because the Husband had changed his mind about selling the Property. She said that in 2004, he had made promises to their sons, or one of them, and to her that he would give his interest to their three sons. She was also diagnosed with breast cancer in May 2004 and was undergoing various forms of medical treatment. In 2005 and/or 2006, the house at the Property was painted and some repair and replacement work were also undertaken by the Husband or the Wife.

12 The Husband said he did not push for a sale as the Wife was suffering from cancer and the sons were young then.

13 In June 2008, the Wife applied to enforce an order for maintenance which was part of the 2003 Order. In July 2008, the Husband filed an application by way of Summons-in-Chambers No 650293 of 2008 ("SIC 650293/2008") for directions to be given for compliance with, *inter alia*, para 2 of the 2003 Order and for an order that the value of the Property be varied to reflect its market value.

14 The Wife's application to enforce an earlier order for maintenance and SIC 650293/2008 came on for hearing on 12 February 2009. The DJ who heard both applications made no order on SIC 650293/2008 but ordered the Husband to pay the Wife costs thereof fixed at \$500. I was not informed as to what decision he made on the Wife's application to enforce maintenance.

15 Thereafter, the Husband's then solicitors S H Koh & Co wrote on 27 February 2009 to the Wife's

solicitors Alan Shankar & Lim to say that he would like to sell the Property as soon as possible and asked whether the Wife had any objections to the sale. Her solicitors replied on 20 March 2009 that she had no objection to a sale of the Property. There was apparently no further development until 2010.

16 By a letter dated 19 January 2010, S H Koh & Co wrote to the Wife to say that there was a firm offer to purchase the Property at \$3,550,000 but that the Wife was obstructing the viewing of the Property by the potential purchaser. According to the Wife, she then allowed the Property to be viewed.

17 The Wife's explanation as to why her solicitors said in 2009 that she had no objections to a sale of the Property was that she wanted to appease the Husband in one of his mood swings. She expected that after he calmed down, he would again assure her that the Property would belong to her and their sons.

18 As for the Wife having allowed the Property to be viewed in January or February 2010, the Wife said she "had no alternative but to allow viewing" (see para 29 of her 6 April 2010 affidavit) but actually she did not intend to sell the Property since she believed the Property would belong to her and their sons in the light of the Husband's previous promises.

19 On 25 February 2010, Alan Shankar & Lim wrote to the Husband's current solicitors Sam & Associates to refer to the order of 12 February 2009 which dismissed SIC 650293/2008 and to forward a draft of a sale and purchase agreement under which the Wife was to purchase the Husband's interest in the Property for \$850,000 (being half of \$1,700,000). The Husband did not agree to such a sale and instead filed his 2010 application and the Wife filed hers as I mentioned above.

The court's reasons

20 Although the Wife stressed the Husband's oral promises to give his interest to their sons so that their sons and her would be the co-owners of the Property, she was not seeking to enforce those oral promises. Instead, she was purporting to exercise her right under the 2003 Order. Her position was that under the 2003 Order, she was entitled to exercise her option six or seven years later. The Husband's position was that any such exercise so many years later must be based on the current value of the Property.

21 Also, both sides seemed to think that the Husband's 2010 application was an attempt to vary the 2003 Order.

22 I was of the view that one reasonable interpretation of the 2003 Order was that the Wife was to exercise her option, if at all, within a reasonable time since the value of the Property was already fixed otherwise she would have an undue advantage whereby she could exercise her right at any time at the fixed value even though property prices are known to vary greatly over the years. If she did not exercise her option within a reasonable time, then her option would lapse. Alternatively, it was implied under the 2003 Order that if she did not exercise her option within a reasonable time, then any exercise of that option thereafter would be subject to the current value of the Property at the time when she chose to exercise it. If the Property was to be sold in the open market, this would obviously be at the market price at the time of the sale.

23 I would have thought that a reasonable time for the Wife to exercise her option at the fixed value under the 2003 Order would be one to three months. It would certainly not be more than a year.

24 Since the Husband was not objecting to the Wife purchasing his interest at the current value, I adopted the alternative interpretation so that the Wife would still have a chance to purchase the Property although there was, as yet, no suggestion that she wanted to exercise her right based on current valuation. For convenience, I adopted the date of my decision, *ie*, 30 June 2010 as the date for valuation if she wished to purchase. I did not use the date of the 25 February 2010 letter from her solicitors as that was not a date advocated by her counsel. In any event, that letter was not a valid exercise of her option as it was based on the 2003 value and not the current value (whether it be as at 25 February 2010 or 30 June 2010).

25 I was of the view that my decision was not a variation of the 2003 Order but to give effect to what must have been implied under it.

26 I did not agree with the Wife that the Husband was trying to enrich himself at her expense. Rather, the shoe was on the other foot. If the Husband had broken his oral promises made after the 2003 Order, that was a different matter but, as I mentioned, the Wife was not seeking to enforce those promises (and neither were the sons).

27 I would add that apparently the wife has a Bachelor of Laws degree from the University of London and she had access to legal advice at all material time. The Husband is a practising lawyer. This was not a case where the Wife was unaware of what steps to take to give effect to the Husband's oral promises in 2004 or later if the promises had indeed been made and she had wanted to bind him to them.

28 There is one other point I would mention. I did consider whether the 12 February 2009 order precluded the Husband from filing his 2010 application.

29 Although the Wife's counsel mentioned this order, the counsel stopped short of arguing that the Husband was so precluded. The counsel was unable to shed any light on the reason for that decision. The present counsel for the Husband was Mr Sam. He said he had checked with the previous counsel, Mr Eddy Koh who said that the court then had wanted to focus on the application for enforcement of maintenance.

30 In addition, at the time of SIC 650293/2008, there was no suggestion that the Wife wanted to exercise her option although the Husband might have been concerned that she might do so.

31 Furthermore, the court had simply made no order on the application instead of dismissing it. Again, no submission was made on this point.

32 In the circumstances, I did not think that the Husband was precluded from making his 2010 application.

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