

Shaan Taseer and others v Aamna Taseer
[2012] SGCA 52

Case Number : Civil Appeal No 22 of 2012
Decision Date : 17 September 2012
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : Tan Chee Meng SC, Sim Bock Eng and Joel Chng (WongPartnership LLP) for the appellants; Tan Chuan Thye, Daniel Chia and Emily Choo (Stamford Law Corporation) for the respondent.
Parties : Shaan Taseer and others — Aamna Taseer

Land – Caveats – Wrongful lodgment

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2012\] SGHC 32.](#)]

17 September 2012

Chan Sek Keong CJ (delivering the grounds of decision of the court):

1 This is an appeal by the Appellants against the decision of the judge (“the Judge”) in *Aamna Taseer v Shaan Taseer and others* [2012] SGHC 32 (“the Judgment”), ordering the removal of a caveat lodged by the Appellants against a registered land with a house erected thereon, known as 82 Cove Drive, Sentosa (“the House”).

2 The question of law in this appeal was whether the beneficiaries of an estate had the legal right to lodge a caveat against registered land on behalf of the estate of a deceased (“the Deceased”) on the basis that the property in dispute was held on a resulting trust for the Deceased. At the conclusion of the hearing, we answered the question in the negative and dismissed the appeal with costs. We now give our reasons.

Background

3 The Deceased was a Pakistani businessman and politician who died intestate in Pakistan. The Appellants are the adult children of the Deceased’s first marriage and the Respondent is his second wife of 27 years’ standing. All the parties are Muslims.

4 The dispute concerned the House, which was registered in the names of the Deceased and the Respondent as joint tenants. The House was purchased in January 2008, although negotiations began in late 2007. The Deceased obtained a loan from Standard Chartered Bank (“the Bank”) for approximately 55% of the purchase price which was secured by a mortgage on the House and also a guarantee signed by the joint owners on 6 September 2007. [\[note: 1\]](#) The Deceased registered the House in his and the Respondent’s joint names on 3 January 2008. The Bank registered a mortgagee’s caveat against the House on 30 January 2008. Additional banking facilities were obtained on 5 August 2008 to construct the House. The Respondent did not contribute to the purchase price as she had no independent source of income.

5 At the time of the death of the Deceased on 4 January 2011, the joint owners were already

two months in default on their instalment repayments. [\[note: 2\]](#) Subsequently, the arrears were paid off by a company called Pace Pakistan, one of the Deceased's companies under the Respondent's control. The Respondent filed a notice of death with the Singapore Land Registry which was registered on 18 March 2011, and procured a change in the Land Register under s 114 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA") resulting in her being registered as the sole owner of the House by the principle of survivorship under the joint tenancy.

6 The Deceased's estate ("the Estate") is subject to and distributable according to the law of Pakistan; it is not disputed that the Appellants and the Respondent are the beneficiaries of the Estate under Pakistani law. However, letters of representation to the Estate have not been taken out, but the third Appellant claimed that she had trusted the Respondent [\[note: 3\]](#) as "de facto head of the household" to deal with the Estate "in a fair and open manner". [\[note: 4\]](#) When the Appellants received a list of the assets of the Estate which did not include the House, they queried the Respondent and, receiving no reply from her for over two months, took action to protect their alleged interests in the House.

7 The Appellants, as beneficiaries of the Estate, lodged a caveat ("the Caveat") against the House on 8 August 2011. The ground of claim as set out in the Caveat was as follows:

By virtue of [the] beneficiaries' interest in the [House] above described on the basis that the registered proprietor [*ie*, the Respondent] held the [House] in trust for [the Deceased].

It may be noted that the Appellants did not lodge the Caveat on behalf of the Estate but had done so on their own behalf as having an interest in the House which was then registered in the name of the Respondent as the sole owner. Notice of the entry of the Caveat was given to the Respondent on 12 August 2011.

8 The Appellants also filed suit in Pakistan on 29 September 2011 against the Respondent for, *inter alia*, an account of the Estate's properties and assets and the appointment of an administrator. An interlocutory injunction was obtained against the Respondent restraining her from dissipating the Estate's properties and assets. This action is outstanding.

The proceedings below

9 On 3 October 2011, the Respondent filed Originating Summons No 866 of 2011 to remove the Caveat on the ground that the Appellants had no standing merely as beneficiaries of the Estate to lodge the Caveat against the House (which, in any case, did not belong to the Estate as it devolved to the Respondent as the sole owner by the principle of survivorship). The Judge, after hearing the parties, allowed the Respondent's application, and made an order that the Caveat be removed. The Judge, agreeing with the decisions in *Guardian, Trust, and Executors Company of New Zealand, Limited v Hall* [1938] NZLR 1020, *In re Savage's Caveat* [1956] NZLR 118 and *Gangemi v Gangemi* [2009] WASC 195, held that only persons with a direct interest in a property had a caveatable interest in the property, and that a share in the assets of an unadministered estate was not a claim in respect of specific property of the estate, and therefore would not entitle the claimant to lodge a caveat against the property (see the Judgement at [6]). The Judge also held that the decision of this court in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*") did not assist the Appellants as that case merely decided that the beneficiaries of an estate had the right to bring proceedings to recover assets of the estate under certain circumstances (see the Judgment at [6]). In *Wong Moy*, the estate property had been sold and the beneficiaries brought an action against the executors to prevent them from disposing of the

proceeds of sale until the claims against them were resolved.

10 An issue also arose before the Judge as to whether the Appellants had shown that the beneficial title of the House was vested in the Deceased, on the ground that the Respondent held her undivided half-share in the House on a resulting trust for the Deceased as it was not intended to be a gift to her. The Appellants had argued that the presumption of advancement in favour of the Respondent had been rebutted by the affidavit evidence of the Appellants. The Judge rejected this argument as evidence tendered to rebut a presumption must be tested at trial (see the Judgment at [5]).

11 The Appellants appealed against the Judge's decision on 8 March 2012 but did not seek a stay of the order of the Court to remove the Caveat. After the Caveat was removed, the Respondent gave an option to purchase the House to one Cheung Pui Yuen ("Cheung") who exercised it and registered a purchaser's caveat on 3 May 2012. The sale of the House was completed and the related transfer in favour of Cheung was registered on 3 August 2012.

The issues on appeal

12 The Appellants raised the following issues in the Appellants' Case:

- (a) Whether the Estate has an interest in the House which can be protected by a caveat ("the First Issue");
- (b) Whether the Judge was correct in holding that the presumption of advancement was not rebutted because the Appellants' affidavit evidence was not tested at trial ("the Second Issue");
- (c) Whether the Appellants' claim to an interest in the House was *qua* their capacity as beneficiaries or for and on behalf of the Estate ("the Third Issue"); and
- (d) Whether the Appellants, being the beneficiaries of the Estate, can lodge the Caveat on the Estate's behalf and for the Estate's benefit ("the Fourth Issue").

Our decision

13 We dismissed the appeal on the ground that it was utterly hopeless. Even if the Appellants were successful, this Court would not be able to reinstate the Caveat and restore the Appellants' claim to an interest in the House. The reason was that Cheung had obtained a priority interest in the House by virtue of the caveat he had lodged on 3 May 2012 after the Caveat was removed. The Appellants' claim thus became academic.

14 Nevertheless, as counsel for both parties had made full arguments on the four issues raised by the Appellants, we shall address them. However, we would preface our discussion with the observation that the Judge had substantially decided all the four issues against the Appellants on procedural grounds, ie, these issues should have been pursued and decided in separate proceedings, and not as ancillary issues to the main issue as to whether they had an interest in the House to enable them to lodge the Caveat. We agreed with the decision of the Judge on these issues.

15 The right of a claimant to lodge a caveat against any dealings in registered land is set out in s 115 of the LTA which provides as follows:

115—(1) Any person claiming an interest in land ... or any person otherwise authorised by this

Act or any other written law to do so, may lodge with the Registrar a caveat in the approved form which shall include the following particulars:

...

(2) A caveator may, according to the extent of his interest, forbid the registration under this Act of any dealing affecting the land against which the caveat is directed, either –

(a) unless the dealing is expressed to be subject to the interest claimed by the caveator;
or

(b) unless the caveator or some person nominated by him in the caveat has consented in writing to such registration.

(3) For the purposes of this Part, and without limiting its generality, a reference to a person claiming an interest in land shall include a reference to any of the following persons:

(a) any person who has an interest in the proceeds of sale of land, not being an interest arising from a judgment or order for the payment of money; and

(b) a person who has obtained an injunction in respect of an estate or interest in land.

16 The expression “interest in land” is defined in s 4 of the LTA as follows:

“interest”, in relation to land, means any interest in land recognised as such by law, and includes an estate in land

It should be remembered that the LTA introduced a new system of land registration and dealings to replace the old common law system of land tenures and conveyancing under the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) and the Registration of Deeds Act (Cap 269, 1989 Rev Ed). The LTA introduced a new statutory interest in land but continued to recognise the legal and equitable interests in land, but subject to the concept of indefeasibility of titles in registered land. Accordingly, the expression “interest in land” would refer to such legal and equitable interests that subsisted and which continue to subsist after the LTA came into force.

17 Section 115(3) of the LTA has also enlarged the meaning of “an interest in land” to enable persons claiming such an interest in land to protect against adverse dealings by the registered proprietor. The subsection provides that: (a) an interest in the proceeds of sale of land (not arising from a judgment or order for payment of money) is deemed to be an interest in land; and (b) a person who has obtained an injunction in respect of an estate or interest in land is also deemed to have an interest in that land.

The First Issue

18 With these principles in mind, we can now state with reference to the First Issue that the Estate would have an interest in the House which could be protected by a caveat if the following conditions were satisfied:

(a) when the Deceased registered himself and the Respondent as joint tenants of the House, he did not intend to give her an undivided half share in the House, and she was therefore holding her half share on trust for him; and

(b) the joint tenancy of the House was not intended to have any legal effect and it was a sham created for some purpose extraneous to making provision for her as his wife.

The Second Issue

19 This observation brings us to the Second Issue which, in our view, the Judge correctly decided. The only way by which the Estate could show that it had an interest in the House immediately preceding the death of the Deceased (before it became the absolute property of the Respondent on the principle of survivorship) was to adduce evidence of the factual issues referred to above at [18(a)] and [18(b)]. It would require the Estate to adduce evidence to rebut the presumption of advancement which operated in favour of the Respondent as the wife of the Deceased. In this connection, we agreed with the Judge that the Appellants' evidence was not sufficient proof unless it was tested and accepted by the court at trial.

The Third Issue

20 *Apropos* the Third Issue, the Judge held that the Appellants were claiming an interest in the House as beneficiaries of the Estate, but that as such beneficiaries they had no claim to any specific property of the Estate. However, until the Estate has made out a *prima facie* case that the joint tenancy of the House was a sham and that there was a resulting trust of the Respondent's undivided half share, the Appellants had no legal basis to lodge a caveat against the House to prevent the Respondent from dealing with it, even if they were entitled to make the claim as beneficiaries of the Estate on behalf of the Estate.

The Fourth Issue

21 *Apropos* the Fourth Issue, our answer is that the Respondent herself is also a beneficiary of the Estate, and the Appellants have produced no authority that they were entitled to represent the Estate in any proceedings against the Respondent without taking out letters of representation to the Estate.

Conclusion

22 In the present case, the Appellants' lodgement of the Caveat to prevent the Respondent from dealing with the House was wholly misconceived. Essentially, their main concern, as beneficiaries of the Estate, was in the preservation of the proceeds of sale of the House as any attempt to retain ownership of the House would have been futile, having regard to ss 3(3) and 3(4) of the Residential Property Act (Cap 274, 2009 Rev Ed). In fact, the Appellants had already commenced proceedings against the Respondent in Pakistan to protect their interest in the Estate. Instead of pursuing the appropriate proceedings to establish their claims, they took a short cut by lodging the Caveat to achieve this purpose without any basis for doing so, which the Judge correctly cut short by ordering the removal of the Caveat.

[\[note: 1\]](#) Aamna Taseer's 1st affidavit, 1/11/2011, [22] (Found at CB, Vol 2, p 18).

[\[note: 2\]](#) CB, Vol 2, p 93.

[\[note: 3\]](#) Sara Taseer's 2nd Affidavit, 24/11/2011, [14] and [22] (found at CB, Vol 2, p 69).

[\[note: 4\]](#) *Ibid.*, [53].

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