Joshua Steven v Joshua Deborah Steven and Others
[2004] SGHC 166

Case Number : OS 1403/2002

Decision Date : 16 August 2004

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : James Ponniah (Wong and Lim) for plaintiff; Daniel John (John Tan and Chan) for first, second and fifth to tenth defendants; Third and fourth defendants in person

Parties : Joshua Steven — Joshua Deborah Steven; Rachel Jacob; Issac Benjamin; Rebekah Issac; Anne Joseph Aaron; Joseph Aaron; Samuel Abraham; Lydia Samuel Abraham alias Audrey Shanthi David; Aquila Moses alias Abraham Vijayan s/o Charlie Davanason; Priscilla Aquila Moses

Civil Procedure – Pleadings – Amendment – Whether leave to amend pleadings should be granted after conclusion of trial

Trusts – Express trusts – Certainties – Certainty of intention – Certainty of subject matter – Certainty of objects of trust – Whether all three certainties present for creation of alleged trust

16 August 2004 Judgment reserved.

Tan Lee Meng J:

1 The plaintiff, Mr Steven Joshua ("SJ"), one of five registered owners of 577A Sembawang Place, sought an order for the sale of the said property and for the distribution of the net sale proceeds to all the co-owners. He also sought an order that the fifth to tenth defendants vacate the premises and pay damages for ignoring his notice in February 2003 to do so. Two of the property's co-owners, SJ's brother-in-law and sister, Mr Isaac Benjamin and Mdm Rebekah Issac (together "Mr and Mrs Benjamin") who are the third and fourth defendants respectively, supported his position. However, the remaining two coowners, namely SJ's former wife, Mrs Deborah Steven Joshua ("Mdm Joshua"), who is the first defendant, and SJ's sister, Mdm Rachel Jacob ("Mdm Jacob"), who is the second defendant, opposed the application for the sale of the property on the ground that it is trust property that is intended to accommodate, among others, the fifth to tenth defendants. The fifth to tenth defendants filed a counterclaim with respect to their right to remain on the property by virtue of the alleged trust.

Background

2 The background of the present dispute, shorn of details, is as follows. In 1981, SJ acquired 29 Fulton Road while his brother, Mr John Abraham ("JA"), a lawyer, acquired 46 Fulton Road. SJ did not move into 29 Fulton Road, which was occupied by JA, who rented out 46 Fulton Road and shared the rent with SJ.

3 In 1984, JA's wife left him and his three children. To help JA look after his family, SJ and his then wife (Mdm Joshua) moved into 29 Fulton Road. At that time, 46 Fulton Road was vacant and JA invited the fifth defendant, Mrs Anne Joseph Aaron ("Mrs Aaron"), and her family to stay there rent-free to help him look after his children. In due course, more people moved into the two Fulton Road

houses owned by SJ and JA. In August 1985, Mrs Aaron's sister, Mdm Grace George, moved into 46 Fulton Road. In September 1985, Mdm Jacob and her daughter joined SJ and JA at 29 Fulton Road. Mr and Mrs Benjamin also claimed to have moved to 29 Fulton Road in late 1985 but this was denied by some of the other defendants.

4 Apparently, the occupants of the two Fulton properties owned by SJ and JA enjoyed living together. The working members of the group decided to contribute their earnings to maintain the families living there. Mrs Aaron managed the group's finances together with Mdm Joshua.

5 In 1986, SJ and JA sold their Fulton Road properties. In early 1987, SJ and the first to fourth defendants completed the purchase of 577A Sembawang Place, which was bought for $700,000. A very large portion of the purchase price was paid with funds withdrawn from the Central Provident Fund ("CPF") accounts of the five registered owners. A loan of $200,000 was obtained from OCBC Finance (Singapore) Limited ("OCBC Finance") to facilitate the purchase of the property. The instalment payments with respect to the housing loan were partially paid with monthly withdrawals from the CPF accounts of some of the registered owners of the property.

6 At the same time, JA and Mrs Aaron's sister, Mdm Grace George, completed the purchase of an adjoining property, 577 Sembawang Place, which was also bought for $700,000.

7 The families who were residing at 29 and 46 Fulton Road moved into 577 and 577A Sembawang Place. The group, which called itself the "House of Israel" ("HOI"), had its ups and downs and this is not the first law suit regarding the ownership of 577 and 577A Sembawang Place. In the first suit, Originating Summons No 290 of 1991, Mdm Grace George, one of the two registered owners of 577 Sembawang Road, sought an order for the sale of that property and for the distribution of the sale proceeds. That suit was settled after JA, the other registered owner, agreed to pay Mdm Grace George $80,000 in full and final settlement of her claim.

8 In September 1993, the third and fourth defendants, Mr and Mrs Benjamin, who are two of the five registered owners of 577A Sembawang Place, left the group. In 1996, they instituted Originating Summons No 729 of 1996 to obtain an order for the sale of that property. The fifth to tenth defendants did not intervene in that action to claim a stake in the property. This suit was settled after all the registered owners agreed that Mr and Mrs Benjamin had a 20% share of 577A Sembawang Place.

9 Apart from property disputes, the HOI was involved in other legal proceedings. For instance, in 1989, the fifth and sixth defendants and JA instituted Suit No 999 of 1989 to recover damages for defamation from, among others, The Straits Times Press (1975) Limited, after the HOI was described by The Straits Times as a sect. This suit was dismissed by the High Court and an appeal to the Court of Appeal was unsuccessful.

10 In July 2002, SJ left the group. Shortly thereafter, he instituted the present action. While SJ's application for the sale of 577A Sembawang Place was supported by Mr and Mrs Benjamin who wanted 20% of the net proceeds of sale, it was opposed by the two other registered owners of the property, and by six other members of the HOI, who intervened in these proceedings. By an order of court dated 20 February 2003, the six persons who intervened in this action were named as the fifth to tenth defendants in the action. It was further ordered that the proceedings continue as if they had been commenced by a writ of summons. In their counterclaim, the fifth to tenth defendants sought a declaration that SJ and the other four registered owners of the property hold 80% of 577A Sembawang Place in trust for themselves as well as the fifth to tenth defendants in equal shares. For convenience, the first, second and fifth to tenth defendants, who all oppose SJ's

application, will be referred to as the "HOI defendants" in the rest of this judgment.

Whether the fifth to tenth defendants have a beneficial interest

11 Whether the fifth to tenth defendants have a beneficial interest in 577A Sembawang Place will first be considered. Their case, as pleaded and canvassed throughout the trial, was that their rights rested on an alleged trust in relation to both 577 and 577A Sembawang Place and that this alleged trust may be traced to a covenant made in 1985 at Fulton Road. The fifth defendant, Mrs Aaron, the acknowledged leader of the group, explained the position in para 7 of her affidavit of evidence-in-chief in the following terms:

> My husband and I, together with the 1st and 2nd defendants and the 7th to 10th defendants say that we all have an equal beneficial interest in an undivided 80% share of the property together with the plaintiff by virtue of a solemn covenant that all of us had entered into when the property had been purchased. Under this covenant, the property though bought in the name of 5 people … was for the purpose of housing the plaintiff and all 10 defendants as well as all the members of our respective families comfortably for generations to come and not for investment or enrichment.

12 In *Knight v Knight* (1840) 3 Beav 148; 49 ER 58, Lord Langdale explained (at 173) that three certainties are required for the creation of a trust. These are certainty of intention, certainty of the subject matter of the trust and certainty of the objects of the trust. In the present case, none of the three certainties were established. For a start, during the trial, Mrs Aaron contradicted her affidavit of evidence-in-chief and totally shifted her position by testifying that the covenant that was made at Fulton Road in 1985, which she termed a "property covenant", was intended to benefit only those who were living at 29 and 46 Fulton Road properties in 1985. By doing so, she destroyed the foundation of the claim to a share of the property by the eighth and ninth defendants, Mrs Lydia Samuel Abraham and Mr Aquila Moses, as both of them were not living at 29 or 46 Fulton Road when the property covenant was made in 1985.

13 The first and second defendants readily agreed with Mrs Aaron's new evidence on the scope of the alleged trust. However, both of them were really quite confused as they were unable to comprehend, when cross-examined, that if they supported Mrs Aaron's new version of the trust, Mrs Lydia Samuel Abraham and Mr Aquila Moses were outside the ambit of the alleged trust.

14 The sixth defendant, Mr Joseph Aaron, took a diametrically different position from his wife (Mrs Aaron) as he testified that anyone who came to live at 577A Sembawang Place after the property covenant was made was entitled to a share of the property.

15 The seventh defendant, Mr Samuel Abraham, declared, when cross-examined, that the alleged trust benefited those who joined the HOI after the property covenant was made in 1985. Shortly thereafter, he contradicted himself by supporting Mrs Aaron's new position. He then conceded that his wife, Mrs Lydia Samuel Abraham, the eighth defendant, had no beneficial interest in 577A Sembawang Place. This was confirmed by Mrs Lydia Samuel Abraham. Soon thereafter, their counsel, Mr Daniel John, informed the court that his instructions were that Mrs Lydia Samuel Abraham did not abandon her claim as a beneficiary of the alleged trust. This was a rather strange position in the face of the testimony of Mr and Mrs Abraham.

16 The ninth defendant, Mr Aquila Moses, who was also not residing at 29 or 46 Fulton Road when the property covenant was made in 1985, contradicted Mrs Aaron's testimony as he believed that he had a beneficial interest in 577A Sembawang Place.

17 Apart from the divergent views on the terms of the alleged trust and the persons who are beneficiaries of the alleged trust, the HOI defendants were also not certain as to what properties were subject to the alleged trust. Eventually, their counsel, Mr John, declared after consulting his clients that their position on the subject matter of the trust was as follows:

> The original trust related to both 577 Sembawang Place and 577A Sembawang Place. However, there was a law suit in 1991 between the two registered owners of 577 Sembawang Place, namely John Abraham and Grace George. Pursuant to a settlement with Grace George, she left the group and was given a refund of her CPF funds of $80,000. Thereafter, John Abraham held 577 Sembawang Place on trust for half the group and the plaintiff and 1st to 4th defendants held 577 A in trust for themselves and the 5th to 10th defendants.

18 No one could shed any light on who authorised the alteration of the terms of the trust that was allegedly created in 1985 at Fulton Road. Furthermore, the HOI defendants could not agree on which half of the group were beneficiaries of the trust in relation to 577 Sembawang Place. While Mr Joseph Aaron and Mr Samuel Abraham testified that they had no interest in No 577 Sembawang Place, Mr Aquila Moses contended that he was entitled to a share of 577 and 577A Sembawang Place.

19 At this juncture, it ought to be noted that 577 and 577A Sembawang Place are within the ambit of the Residential Property Act (Cap 274, 1985 Rev Ed), which restricts the purchase or transfer of residential properties to citizens of Singapore and approved purchasers. When these properties were purchased, three of the six HOI defendants who intervened in this action, namely, Mrs Aaron, Mrs Lydia Samuel Abraham and Mr Aquila Moses, were foreigners and at present, Mrs Aaron is still a foreigner.

20 In the light of the evidence tendered and the provisions of the Residential Property Act, it was not surprising that the HOI defendants finally conceded after the conclusion of the trial that the property covenant of 1985 did not result in the creation of a trust. Their counsel, Mr John, outlined their new position as follows in paras 5 and 6 of his closing submissions:

> [A]s a result of following this trial closely, having given evidence and having been cross-examined, the [HOI defendants] have now *come to realise that the Christian covenant which they consider binding in the sight of God*, and which the Plaintiff had sworn to on oath and staunchly lived by for 16 years *is neither binding nor enforceable in the eyes of the secular law of Singapore*. They realise that because the "three certainties" as required by the common law have not been clearly established, no legal trust exists. Consequently, they concede that there is no legal obligation on the Plaintiff to refrain from requesting this Court to exercise its powers under First Schedule Rule 2, Supreme Court of Judicature Act … to order a sale of the subject matter of this suit … and realise his share.
>
> The [HOI defendants] accordingly hereby abandon *all* their claims based on the law of trust against the Plaintiff.
>
> [emphasis added]

21 By abandoning all their claims based on the law of trust, the HOI defendants removed the foundation of their counterclaim. It was thus surprising that Mr John still maintained in his closing submissions that the fifth to tenth defendants were entitled to a share of the proceeds of sale of 577A Sembawang Place for in *Gissing v Gissing* [1970] 2 All ER 780 at 789, Lord Diplock explained:

> Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the

legal estate is not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the English law of trusts and in particular … the law relating to the creation and operation of 'resulting, implied or constructive trusts'.

22 When Mr John was asked to clarify why his clients were still staking a claim to 577A Sembawang Place when they had conceded that there was no trust, he reconsidered the position and handed in supplementary closing submissions on 9 June 2004. In his new submissions, he disclosed for the first time that the fifth to tenth defendants now claimed a beneficial interest in the said property on the basis of proprietary estoppel, which was not pleaded or canvassed during the trial or in his closing submissions.

23 Parties are bound by their pleadings and Mr John was clearly off the mark when he said that his clients could rely on proprietary estoppel without amending their counterclaim because they had included a "such further or other relief" prayer in their pleadings. SJ's counsel, Mr James Ponniah, rightly pointed out that cross-examination was conducted on the basis that the HOI defendants' case rested on the law of trust. He added that had the question of estoppel been pleaded, his client would have pleaded that there was no unambiguous representation to support a plea of estoppel, that the HOI defendants did not raise this issue in earlier proceedings regarding 577 and 577A Sembawang Place, that the HOI defendants had suffered no detriment and that estoppel cannot be allowed to undermine the provisions of the Residential Property Act.

24 On 16 June 2004, the HOI defendants applied for leave to amend their pleadings in order to introduce the issue of estoppel. Their application was heard and dismissed on 2 July 2004. Apart from the fact that the HOI defendants had ample time before and during the trial to deal with the question of estoppel, allowing the amendment after the completion of the trial would necessitate the recalling of witnesses for cross-examination under circumstances that clearly did not justify this.

25 In view of the HOI defendants' withdrawal of all their claims based on the law of trust and the dismissal of their application to amend their pleadings to introduce the plea of estoppel at such a late stage, the HOI defendants' counterclaim did not have a single leg to stand on and it is not necessary for me to consider the effect of the Residential Property Act on a trust intended to benefit Singaporeans as well as foreigners such as Mrs Aaron, or the HOI defendants' assertion that they contributed part of the purchase price of 577A Sembawang Place although it might be pointed out that this assertion was not proven. Apart from not keeping proper accounts, the HOI defendants expected the court to accept that large sums of money from the sale of their jewellery and from the sale of Mr and Mrs Aaron's HDB flat had been utilised for the purchase of 577A Sembawang Place without proving that there was jewellery in the first place and without furnishing any bank statement or other relevant document to show that Mr and Mrs Aaron had used their money to pay for part of the purchase price of 577A Sembawang Place.

26 For the reasons already stated, the HOI defendants' counterclaim is dismissed.

Order for the sale of the property and for the premises to be vacated

27 SJ's application for an order for the sale of 577A Sembawang Place will next be considered. In the circumstances of the case, the property ought to be sold and the proceeds of sale distributed to the co-owners. I thus order that 577A Sembawang Place be sold in the open market, with SJ having conduct of the sale. Should any co-owner refuse to sign the relevant papers to facilitate the sale within 14 days after being asked to do so by SJ, the Registrar of the Supreme Court shall sign the

said papers on their behalf. I further order all the occupants of 577A Sembawang Place to vacate the premises within three months from the date of this judgment.

Distribution of the net proceeds of sale

28 The distribution of the net proceeds of the sale of 577A Sembawang Place will next be considered. As all the co-owners agreed that Mr and Mrs Benjamin are entitled to 20% of the net proceeds of sale, I order that they be paid 20% of the net proceeds of sale.

29 The balance 80% of the net sale proceeds will be shared by the other three registered owners, namely SJ, Mdm Joshua and Mdm Jacob. Where two or more coowners contribute unequal amounts to the purchase price of a property, equity presumes, without more, that the proportion of the proceeds of sale to which a co-owner is entitled depends on the amount contributed by him or her (see, for instance, *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [2000] 1 SLR 612 and *Chia Kum Fatt Rolfston v Lim Lay Choo* [1993] 3 SLR 833).

30 For the purpose of determining the amounts paid by SJ, Mdm Joshua and Mdm Jacob, their CPF contributions must first be taken into account. According to SJ's counsel, Mr Ponniah, SJ's contribution from his CPF account, inclusive of interest, amounted to $560,259.39, while Mdm Joshua's contribution from her CPF account, inclusive of interest, amounted to $14,913.00. As for Mdm Jacob, her contribution from her CPF account, inclusive of interest, amounted to $41,557.58.

31 The non-CPF funds for the purchase of 577A Sembawang Place will next be considered. These are as follows:

(a) the first 10 % of the purchase price ($70,000);

(b) $94,000 that was paid in January 1987;

(c) $19,000 that was not paid to the vendor before the completion of the property because the latter agreed to accept a guarantee that this amount would subsequently be paid; and

(d) the cash required every month from February 1987 to December 1991 for the payment to OCBC Finance of the housing loan instalments because the monthly CPF withdrawals of some of the registered owners were less than the amount due to OCBC Finance.

32 There is sufficient evidence that SJ paid the first 10% of the purchase price. Mdm Joshua, who kept SJ's bank book, claimed that SJ did not have such an amount in his savings account but she did not furnish the account book for the relevant period because she said that it was lost. SJ asserted that if his former wife had produced his account book, there would be proof that he had the requisite funds to pay the 10% of the purchase price. It is worth noting that in OS 729/1996, where Mr and Mrs Benjamin sought to have 577A Sembawang Place sold, SJ stated in his affidavit, which was also filed on behalf of Mdm Joshua and Mdm Jacob, that he paid the $70,000 in question out of his own funds. Furthermore, when Mdm Grace George instituted OS 290/1991 against JA for the sale of 577 Sembawang Place, JA stated in para 2(b) of his affidavit that the first 10% of the purchase price of that property was provided by his brother, SJ. Both 577 and 577A Sembawang Place were purchased at the same time. If SJ could give his brother, JA, $70,000 to pay the first 10% of the purchase price of 577 Sembawang Place, it is more likely than not that he had $70,000 to pay the first 10% of the purchase price of 577A Sembawang Place. As such, for the purpose of determining SJ's contribution towards the purchase price of 577A Sembawang Place, I am satisfied that that SJ has proven, on a balance of probabilities, that the $70,000 in question was paid by him.

33 As for the $94,000 that was paid to the vendors on 20 January 1987, SJ sold his portfolio of Singapore Airlines shares for $89,000 as well as 29 Fulton Road at the material time. Admittedly, after redeeming his housing loan, he would not have had much money left from the sale proceeds of his Fulton Road property. However, as he had $89,000 from the sale of his SIA shares, I am satisfied that SJ has proven, on a balance of probabilities, that the $94,000 in question was paid by him.

34 As for the $19,000 that was paid after the completion of the purchase of the property, SJ contended that he paid this sum. However, unlike the first 10% of the purchase price and the $94,000 that was paid in January 1987, there was no concrete evidence that he did so. As such, this sum of $19,000 shall be regarded as having been paid equally by SJ, Mdm Joshua and Mdm Jacob.

35 As for the cash required from February 1987 to December 1991 for the part payment of the monthly housing loan instalment because the monthly CPF withdrawals were insufficient to pay the said instalment, SJ offered to regard this sum, which totalled $75,652.26, as having been paid by his former wife and Mdm Jacob even though he claimed to have paid the entire amount. As such, it shall be assumed that Mdm Joshua and Mdm Jacob each contributed half the cash required for the part payment of the housing loan instalments from February 1987 to December 1991.

36 To sum up, 80% of the net proceeds of sale of 577A Sembawang Place shall be shared by SJ, Mdm Joshua and Mdm Jacob in proportion to their individual contributions, as specified in the above paragraphs.

Damages for trespass

37 Although SJ also claimed damages for trespass, his counsel, Mr Ponniah, confirmed that he will not pursue this claim if the occupants vacate 577A Sembawang Place within the period fixed by the court. As such, this claim need not be further considered at this juncture.

Costs

38 SJ is entitled to costs.

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