Joshua Steven v Joshua Deborah Steven and Others (No 2)
[2004] SGHC 184

Case Number : OS 1403/2002, SIC 3273/2004

Decision Date : 26 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

Parties : Joshua Steven — Joshua Deborah Steven; Jacob Rachel (formerly known as Karam Kaur); Benjamin Isaac (formerly known as Isaac Harcharan); Isaac Rebekah (formerly known as Manjit Kaur); Aaron Anne Joseph; Aaron Joseph; Samuel Abraham; Lydia Smauel Abraham @ Audrey Shanthi David; Moses Aquila @ Abraham Vijayan s/o Charlie Davanason; Moses Priscilla Aquila (formerly known as Priscilla Abraham)

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

Equity – Estoppel – Proprietary estoppel – Whether defendants had beneficial interest in property on basis of estoppel – Whether plea of estoppel justified based on evidence already adduced

26 August 2004

Tan Lee Meng J:

1 The first, second and fifth to tenth defendants in Originating Summons No 1403 of 2002, who are members of a religious group called the "House of Israel" ("HOI"), sought leave to amend their Counterclaim against the plaintiff, Mr Steven Joshua ("SJ"), a few weeks after the conclusion of the trial. I dismissed the application and now give the reasons for my decision.

Background

2 As the facts in this case have been referred to in [2004] SGHC 166, they will only be briefly mentioned here. SJ, one of five registered owners of 577A Sembawang Place, sought, *inter alia*, an order for the sale of the said property. The first, second and fifth to tenth defendants (the "HOI defendants") filed a Counterclaim in which they asserted that SJ had no right to sell the property because it is trust property that is intended to accommodate members of the HOI. They also claimed to have a share in the said property by virtue of the alleged trust. The HOI defendants' case, as pleaded and canvassed throughout the trial, was based entirely on trust law. However, after the conclusion of the trial, their counsel, Mr Daniel John, stated in his written submissions that his clients had decided to abandon all their claims based on trust law. When Mr John was asked why his clients still claimed a beneficial interest in 577A Sembawang Place after destroying the foundation of their counterclaim by abandoning all their claims based on trust law, he thought about the matter and submitted Supplementary Closing Submissions, in which he disclosed for the first time that his clients claimed a beneficial interest in the property on the basis of estoppel.

3 On 16 June 2004, the HOI defendants, who initially contended that they were entitled to rely on estoppel without amending their Counterclaim, sought leave to amend their Counterclaim to introduce the issue of estoppel. This application which was heard on 2 July 2004 was, understandably, strenuously opposed by SJ.

Whether the amendment to the Counterclaim should be allowed

4 Whether an amendment of a Counterclaim should be allowed is a matter for the discretion of the trial judge. While it has been said that an amendment to pleadings should be allowed if there is no injustice to the other side that cannot be compensated by costs, in *Ketteman v Hansel Properties Ltd* [1988] 1 All ER 38 at 62, a decision of the House of Lords, Lord Griffiths put the matter in its proper perspective when he stated:

> [W]hatever may have been the rule of conduct a hundred years ago, today it is not the practice invariably to allow a defence which is wholly different from that pleaded to be raised by amendment *at the end of the trial* even on terms that an adjournment is granted and that the defendant pays all the costs thrown away. *There is a clear difference between allowing amendments to clarify the issues in dispute and those that permit a distinct defence to be raised for the first time*.
>
> [emphasis added]

5 An assertion of proprietary estoppel is clearly distinct from an assertion that rights arise under a trust. In their affidavit in support of their application to amend the Counterclaim, two of the HOI defendants declared that SJ would not be prejudiced by the proposed amendment because they had not sought to adduce any fresh evidence in support of their case. However, SJ's counsel, Mr James Ponniah, rightly pointed out that there would be a need for further cross-examination of witnesses if the counterclaim was amended as he had conducted his cross-examination during the trial solely on the basis that the counterclaim rested on the law of trust. As such, he had not cross-examined the HOI defendants on matters such as the nature of the alleged representation that led to the estoppel, the detriment suffered by them as a result of the alleged representation or how the representation altered their position. He also pointed out that during the trial, the HOI defendants decided not to call Mr James Abraham ("JA"), one of their witnesses, to testify after it became obvious that the latter would, if cross-examined, face embarrassing questions as to why he, a lawyer, helped to create a trust in favour of foreigners in violation of the Residential Property Act (Cap 274, 1985 Rev Ed) when he knew that some of the HOI defendants were foreigners at the time 577A Sembawang Place was purchased. As the HOI defendants now contended that JA was one of those who made representations that led to the alleged estoppel, Mr Ponniah argued that he should be allowed to cross-examine JA if the Counterclaim was amended.

6 In the present case, there was ample time before and during the trial for the HOI defendants to deal with the defence of proprietary estoppel. In *Ketteman v Hansel Properties Ltd* (*supra* at [4]), Lord Griffiths rightly noted (at 62) that "[allowing] an amendment before a trial begins is quite different from allowing it at the end of the trial to give an apparently unsuccessful defendant an opportunity to renew the fight on an entirely different defence". His Lordship explained:

> Another factor that a judge must weigh in the balance is the pressure on the courts caused by the great increase in litigation and the consequent necessity that, in the interests of the whole community, legal business should be conducted efficiently. We can no longer afford the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age.

7 After taking all circumstances into account, I dismissed the HOI defendants' application to amend their Counterclaim.

Another reason for dismissing the application to amend the Counterclaim

8 Another reason for dismissing the HOI defendants' application to amend the Counterclaim after the trial had ended was that even if proprietary estoppel had been pleaded, this would not have advanced the HOI defendants' case very far because of inherent difficulties in their case. It may be recalled that the HOI defendants made it clear that if their application to amend their Counterclaim was allowed, they did not intend to introduce any further evidence. Based on the evidence already furnished by them, the plea of estoppel was totally misconceived for a number of reasons.

9 To begin with, for the question of estoppel to arise, there must have been an unambiguous course of dealing between the parties that legitimately gave rise to certain expectations. In para 6 of his Supplementary Closing Submissions, Mr John explained why his clients claimed that there was an estoppel in the following terms:

> [I]t is submitted that because of the Christian covenant which the parties had with one another, there was an established course of dealing in relation to the communal living and pooling of resources whereby an estoppel by convention had arisen. Accordingly the Plaintiff was no longer at liberty to assert that only the registered proprietors were to control its use and disposition.

10 As far as the so-called "Christian covenant" was concerned, the HOI defendants conceded in their counsel's closing submissions that they had:

> … 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.

The HOI defendants did not furnish evidence as to why a "Christian covenant" that is not binding in the eyes of the law should be enforced on the basis of estoppel. In any case, far too many versions of the said covenant were furnished by the HOI defendants during the trial. The same uncertainties regarding the nature and effect of the said covenant that led the HOI defendants to abandon all their claims based on trust law, plague any attempt by them to prove that there was an established course of dealing that resulted in an estoppel.

11 Secondly, there was no concrete evidence to prove the HOI defendants' assertion that they suffered detriment by contributing large sums of money for the acquisition of 577A Sembawang Place. That they had the burden of proving their assertion is not in doubt: see *Ong Siong Tong (Tong San) Sam Kar Lau Chor Shih Taoism Religious Society Singapore v Tan Boon Quee* [1998] 2 SLR 335. The main problem faced by the HOI defendants, who claimed to have contributed money to a "biscuit tin" ("the tin") to pay for their living expenses as well as the purchase of 577A Sembawang Place, was that there were no accounts relating to the tin. No one shed any light as to how much was put into the tin by anyone, and most of the HOI defendants did not know how much money was taken out from the tin. The HOI defendants tried to negate the problems posed by the lack of accounts relating to the tin by saying that they all shared the beneficial interest equally but to justify this assertion, they had to rely on the uncertain terms of the "Christian covenant", which they conceded was not legally binding.

12 As for the HOI defendants' assertion that the fifth and sixth defendants, Mr and Mrs Aaron, had acted to their detriment by providing significant sums for the purchase of 577A Sembawang Place (including the proceeds of sale of their HDB flat and of their jewellery), SJ's counsel, Mr Ponniah, pointed out that in Suit No 999 of 1989, in which some members of the HOI sued, among others, The Straits Times Press (1975) Limited, for defamation, Mr Aaron testified that 577A Sembawang Place was not his property and that he was "living on the charity" of the other members of the HOI. Mr Ponniah added that if Mr and Mrs Aaron had really provided funds for the purchase of

577A Sembawang Place, it cannot be said that they were living on the charity of other HOI members. In any case, there was no concrete proof that the proceeds of sale of the couple's HDB flat and their jewellery were in fact utilised for the purchase of 577A Sembawang Place.

13 Thirdly, the history of the previous suits in relation to 577A Sembawang Place and the adjoining property, 577 Sembawang Place, as unfolded during the trial, offered no support for the HOI defendants' contention that the question of estoppel arises. In none of these suits was the question of estoppel raised. Indeed, in the first suit, Originating Summons No 290 of 1991, where JA, one of the two registered owners of 577 Sembawang Place, was sued by the other registered owner, Mdm Grace George, for her share of that property, JA stated in para 2(a) of his affidavit that it "was never in the contemplation of the parties at any time that [Mdm George] should acquire any proprietary interest in the same, leave alone as joint-owner". Mdm George was then in the same position as the fifth to tenth defendants are in now and there is no reason why Mdm George should be in a worse position than the said defendants in this case.

14 Fourthly, it was accepted during the trial that all the six HOI defendants who intervened in this action purchased flats from the Housing and Development Board ("HDB") in 2000. In order to purchase such flats directly from the HDB, all of them declared to the HDB that they had no interest in any private property, whether directly or through nominees. Notwithstanding their declarations to the HDB, the six defendants in question are now saying that they have a beneficial interest in 577A Sembawang Place.

15 Finally, it is trite that a party cannot rely on estoppel in defiance of a statute. In *Kok Hoong v Leong Cheong Kweng Mines, Ltd* [1964] 1 All ER 300 at 305, Viscount Radcliffe explained that there are:

> … rules that preclude a court from allowing an estoppel, if to do so would be to act in the face of a statute and to give recognition through the admission of one of the parties to a state of affairs which the law has positively declared not to subsist.

Furthermore, in *Actionstrength Ltd v International Glass Engineering IN. GL. EN SpA* [2003] 2 All ER 615, Lord Hoffmann said that to admit an estoppel when this contravened the provisions of the Statute of Frauds would be tantamount to repealing that statute. In the present case, 577A Sembawang Road is subject to the Residential Property Act which restricts the rights of foreigners to acquire an interest in the said property. Three of the HOI defendants were foreigners when 577A Sembawang Place was purchased. As these foreigners did not apply for and were not given any approval to acquire an interest in 577A Sembawang Road, they cannot hold a beneficial interest in the said property either by means of a trust or an estoppel. Mr John argued in his Supplementary Closing Submissions that these three defendants need not rely on any illegality as their new claim was based on estoppel. He relied on *Tinsley v Milligan* [1994] 1 AC 340 as authority for his assertion. In that case, two ladies, T and M, contributed funds for the purchase of a house on the understanding that they had equal shares in the property. However, the house was registered in T's name so that M could make fraudulent claims for benefit from the Department of Social Security. After the parties quarrelled, T asserted her legal right to the property. M confessed her fraud and counterclaimed for a declaration that the house was held for her and T in equal shares. The House of Lords held, by a majority, that M's counterclaim did not rest on her illegal act but on her equitable interest. What distinguishes *Tinsley v Milligan* from the present case is that it was not illegal for either of the two ladies in that case to own the house in question, and the issue before the court was whether the fact that M had been making fraudulent claims for social security prevented her from asserting her right to the property in respect of which she had paid part of the purchase price. In contrast, in the present case, whether a foreigner can claim a beneficial interest in landed property

such as 577A Sembawang Place on the basis of trust law or of estoppel cannot be considered without reference to the provisions of the Residential Property Act. As such, Mr John's reliance on *Tinsley v Milligan* was totally misplaced.

16 If all the circumstances are taken into account, the inescapable conclusion must be that the HOI defendants' claim to a beneficial interest in 577A Sembawang Place on the basis of estoppel does not rest on solid ground. This is yet another ground for dismissing the HOI defendants' application to amend their Counterclaim.

Costs

17 SJ is entitled to costs.