Heng Chye Poh v Heng Peng Sing
[2005] SGHC 230

Case Number : OS 531/2005

Decision Date : 22 December 2005

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Kenneth Au-Yong Kok Keong (Ramdas and Wong) for the plaintiff; Irving Choh (Rajah and Tann) for the defendant

Parties : Heng Chye Poh — Heng Peng Sing

Land – Interest in land – Property registered solely in plaintiff's name – Whether defendant entitled to beneficial interest in property – Whether defendant or plaintiff paying for property and related outgoings substantially or totally

22 December 2005 *Judgment reserved.*

Lai Siu Chiu J:

The facts

1 Heng Chye Poh ("the plaintiff") is the 43-year-old son of Heng Peng Sing ("the defendant") who is 90 years of age. The plaintiff is the registered owner of a three-room Housing and Development Board ("HDB") flat situated at Block 526 Bedok North Street 3, #10-454, Singapore 460526 ("the flat") which he purportedly sold in February 2005 for $162,000 ("the sale proceeds"). The flat was purchased as a joint tenancy by the plaintiff and his mother, Ng Wee Kiau ("the deceased"), for $41,000 in 1986. Upon the demise of the deceased on 15 September 2003, the plaintiff became the sole owner, after filing a notice of her death.

2 On 3 May 2005, the plaintiff issued the above Originating Summons ("the OS") against the defendant, praying that the defendant's caveat lodged against the flat on 23 March 2005 be withdrawn or removed forthwith. The defendant filed a cross-application by way of Summons in Chambers No 3187 of 2005 ("SIC 3187/2005") praying, *inter alia*, for the following reliefs:

(a) a declaration that he is entitled to a share in the flat in such proportion as the court deems fit;

(b) an order that the plaintiff pay the defendant his share of the sale proceeds of the flat in accordance with the court's declaration.

3 When the OS and SIC 3187/2005 first came up for hearing before me on 28 June 2005, I informed counsel that I could not dispose of either matter based on the affidavits alone as the allegations contained therein were highly contentious. I directed that the deponents be cross-examined on their affidavits. For that reason, the plaintiff, the defendant, another son of the defendant (Heng Liang Hock) and a sister-in-law of the plaintiff attended court.

The evidence

4 The plaintiff[note: 1] was the only witness for his case. He deposed in his two affidavits as well as in his oral testimony that he had purchased the flat in 1986 by using his Central Provident

Fund ("CPF") contributions totalling $9,034.05 and by paying monthly instalments of $166 towards the balance purchase price. He also paid the conservancy charges to the East Coast town council ("the town council"). He claimed to have paid more than $20,000 towards the flat.

5 Because the plaintiff was still single in 1986, he explained that he needed a family nucleus to be eligible to buy the flat. Consequently he included the deceased's name as joint owner. After his marriage in1984, the plaintiff's parents continued to live with him, his wife and his daughter. The plaintiff claimed his parents did not and could not make any contribution towards the purchase of the flat as the deceased was a housewife while the defendant was illiterate. He blamed his eight siblings, in particular his second brother (Heng Liang Hock) and his third sister-in-law, Ng Hooi Wang ("Ng"), for instigating the defendant to file the caveat. In fact, it was Ng who brought the defendant to see a lawyer. The plaintiff alleged the defendant had demanded $80,000 from the sale proceeds as a condition for withdrawing the caveat.

6 The defendant,[note: 2] on the other hand, alleged that he had paid for the flat using part of the compensation moneys ($20,000 to $30,000) obtained from the Government in 1978 for his resettlement from Kampong Ubi. He claimed that he and the deceased made the down-payment of $10,000 cash. Further, he and the deceased paid about $3,000 for renovations and for other expenses. They serviced the monthly instalments and other outgoings from their savings. (In court, however, the defendant said he did not pay for the furniture in the flat). Over the years, their savings were considerable. Before their resettlement, the defendant and his family lived in a kampong in the 1960s and 1970s where he and the deceased reared pigs for a living and the defendant also collected rent from tenants.

7 Initially, the defendant said his family moved to Block 524 at Bedok North ("the Block 524 flat"). However, it was crowded as 11 persons resided there. As a result, there were misunderstandings between the plaintiff's siblings and their wives. That was why the defendant decided to purchase the flat in 1986.

8 The defendant explained that at the time of purchase, the HDB officer who attended to him advised the defendant he could not obtain loans as he was past 55 years of age. The defendant was advised that he and the deceased would qualify for a loan if they could form a family nucleus with one of their children. That was how he came to use the plaintiff's name as the latter was their youngest son, was still single and lived with them. When Ng[note: 3] testified, she said the deceased was then in her 60s while the defendant was in his 70s. Unfortunately the HDB officer forgot to include the defendant's name as occupier. The family only discovered the omission when they visited the HDB's office after the deceased passed away and the plaintiff attempted to sell the flat.

9 The defendant deposed that the plaintiff could not have had the means to pay for the flat in 1986 because he was then only 24 years of age and did not earn enough. The plaintiff was also a heavy gambler who borrowed money frequently from the defendant. On countless occasions, the defendant alleged, he had to pay the conservancy charges because the plaintiff did not have the means to do so. The plaintiff was also often in arrears on various bills including electricity charges. The defendant alleged that loan sharks from whom the plaintiff borrowed to pay his gambling debts used to come to the flat to demand repayment.

10 Questioned by the court, the plaintiff did not deny he had gambled and had incurred debts in the past as a result. He further admitted he had borrowed money from loan sharks previously but claimed to have stopped doing so four years ago. The plaintiff contended he no longer gambled and although he was still in debt to the tune of $100,000, he claimed it was due to business failures but did not elaborate. The $100,000 debt was owed to friends, his mother-in-law and brother-in-law. The

plaintiff did not deny that loan sharks came to the flat (once) two years ago and defaced the flat with paint. He denied he was a compulsive gambler but admitted he sold the flat because he needed money.

11 When Heng Liang Hock ("the brother") testified, he[note: 4] said the plaintiff had stopped making the monthly instalments on the flat for the past three to four years because the plaintiff was in financial difficulties. It was the defendant who continued making the payments. Questioned on the defendant's means to do so, the brother testified he and his other siblings (apart from the plaintiff) gave regular allowances to the defendant which came to more than $700–$800 a month.

12 The brother's testimony was corroborated by Ng, a feisty lady who described the plaintiff as an inveterate gambler who gambled on anything and everything,[note: 5] including football, horses, cards and mahjong. She alleged the plaintiff started gambling before his marriage and his bets increased over the years. She said the plaintiff owed money to many loan sharks after his marriage. She, her husband and the plaintiff's other siblings helped the plaintiff to settle his gambling debts in 1993–1994. Less than a year later, the plaintiff was again indebted to loan sharks. She revealed that the plaintiff won a lottery in 1995 of around $100,000 to $200,000 which winnings he used to settle his debts. Nine months later, he lost everything and was heavily indebted again.

13 Ng said she was very close to her in-laws whose third son she had married in 1976. She accused the plaintiff of cheating the deceased of the latter's savings. Ng alleged the plaintiff had lied to the deceased that the bank where the deceased had deposited her savings was going into liquidation. He had asked the deceased to withdraw her savings saying he would deposit the funds in another bank but he did not; the deceased was heartbroken when she found out about the plaintiff's deception. The defendant made a similar accusation against the plaintiff regarding the defendant's own fixed deposits.

14 Ng testified the plaintiff only paid the instalments for the flat once or twice a year. The defendant, on the other hand, had a regular income when he and the deceased resided in the kampong and even after they were resettled by the Government. The defendant sold soya bean drinks in the 1960s until the 1970s.

The issue

15 The only issue for my determination is: Who paid for the flat substantially or totally?

The findings

16 In support of his claim, the plaintiff had produced his CPF statement dated 23 November 2004 ("the Statement"). It showed a payment of $9,034.05 to the HDB for the purchase of the flat and that interest accrued on the sum up to October 2004 was $3,027.27. It was incorrect of the plaintiff's counsel, however, to add on the interest element and submit that the plaintiff had utilised $12,061.32 of his CPF savings towards the purchase.

17 The Statement supported the plaintiff's assertion that he paid monthly instalments of $166 towards the outstanding purchase price. What was interesting about the Statement was it showed a low balance in both his ordinary and special accounts. The Statement showed that the plaintiff only had a balance of $4,516.24 in his ordinary account, $2,277.45 in his special account with $4,928.92 in his medisave account; *there were no monthly contributions*. This meant that *either* the plaintiff was not employed *or* he was self-employed. It also meant (as the defendant and the defendant's witnesses had alleged), that the plaintiff did not have regular employment. How then could the

plaintiff have been able to pay the conservancy charges and other outgoings of the flat? My view is reinforced by the plaintiff's POSB savings book entries which the defendant exhibited in his affidavit. For the period 4 September 1992 to 25 October 1994, the entries showed that the balances in his account were usually small amounts and in one instance (25 March 1994) it went to as low as $1.00. Consequently, the outgoings of the flat must have been paid by the defendant. For reasons that are set out below, it is inconceivable that the plaintiff could have paid $20,000 towards the purchase price of the flat as he claimed.

18 Another observation I would make is that it is more likely than not that the plaintiff is still indebted to loan sharks, contrary to his denials. I am certain his current debts of $100,000 are owed to loan sharks and are not due to business failures. The plaintiff had denied during cross-examination that he hardly stayed at the flat but admitted that his daughter was looked after by his mother-in-law with whom his wife stayed and the wife only returned to the flat occasionally; he offered no explanation therefor. It was the defendant who deposed that the plaintiff stayed away from the flat because the plaintiff was hounded by loan sharks. The loan sharks even created trouble during the wake of the deceased.

19 I believe Ng's testimony that the deceased literally kept her savings in a pillow case and that the defendant's eldest son gave $10,000 to the defendant and the deceased as a form of compensation for their moving out from the Block 524 flat, which sum was then utilised as the down-payment for the flat.

20 I therefore reject the submission of counsel for the plaintiff that there is no evidence of any payment towards the purchase price of the flat or its outgoings by the defendant and the deceased. He has overlooked an important factor, *viz* the plaintiff did not have the means to pay and could not have paid the outgoings or the monthly mortgage instalments over the years. The production of the receipt book showing payment of conservancy charges is neither here nor there. The defendant (whose evidence I much preferred) had testified that he walked to the Town Council's office to make cash payments for the outgoings or he gave cash to the plaintiff to make the payments. I find nothing wrong in the defendant's memory despite his age, as he could recall (quite accurately) that the flat was a resale flat purchased from a Malay couple. The fact that the defendant admitted he did not pay for the furniture in the flat (which counsel for the plaintiff made much of) is neither here nor there as the sum involved ($1,100) was not large.

21 There is no doubt in my mind that the defendant has a beneficial interest in the flat. I reject the submission by counsel for the plaintiff that s 51(4) of the Housing and Development Act (Cap 129, 2004 Rev Ed) does not allow the creation of a trust without the prior written approval of the HDB. This is not a question of the creation of an express trust but of the arrangement between the parties and the reasons for the flat having been registered in the name of the plaintiff at the time of purchase.

Conclusion

22 I therefore found that the purchase of the flat was largely funded by the defendant and/or the deceased. As such, the defendant has a beneficial interest in the flat and in the sale proceeds when the flat is sold. Taking into consideration that the plaintiff did make some payments of both the purchase price and the outgoings of the flat and giving him the benefit of the doubt, he shall be entitled, like the defendant, to an equal share in the flat and in its sale proceeds. I was given to understand by counsel that the plaintiff's purported sale of the flat in February 2005 has since been aborted.

23 Accordingly, I dismissed the OS with costs on 25 November 2005. I granted an order in terms of prayers (a) and (b) of SIC 3187/2005. I further directed the defendant to withdraw the caveat he had filed upon payment of, or in exchange for an undertaking from the plaintiff's solicitors that he would receive, 50% of the net sale proceeds of the flat, when it is sold.

[note: 1]PW1.

[note: 2]DW3.

[note: 3]DW2.

[note: 4]DW1.

[note: 5]NE28.

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