Loo Chay Sit v Estate of Loo Chay Loo, deceased
[2009] SGCA 47

Case Number : CA 30/2009

Decision Date : 07 October 2009

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Low Chai Chong, Mark Seah and Zhulkarnain Abdul Rahim (Rodyk & Davidson LLP) for the appellant; Chiah Kok Khun and Diana Ho (Wee Swee Teow & Co) for the respondent

Parties : Loo Chay Sit — Estate of Loo Chay Loo, deceased

Trusts – Resulting trusts

Evidence – Proof of evidence

7 October 2009 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This appeal was filed by Loo Chay Sit (the plaintiff in Suit No 265 of 2005 ("Suit 265/2005")) against the decision of the trial judge ("the Judge") in *Tan Chan Tee v Chen Tsui Yu* [2009] SGHC 36 ("the Judgment"). The Judge had allowed the respondent's counterclaim against the appellant for the sale proceeds of the property at 7 Margate Road ("the Property").

Background

The facts

2 The present appeal concerns a dispute between members of the same family, the Loo family. The appellant, Loo Chay Sit, is the elder brother, being five years the senior of the late Loo Chay Loo (we shall refer to them collectively as "the brothers"). The respondent is Loo Chay Loo's estate ("the Estate") and it is represented by Loo Chay Loo's wife, Mdm Chen Tsui Yu ("Mdm Chen"), and her brother, Chen John-son, who were appointed administrators after Loo Chay Loo passed away on or about 16 May 2005.

3 The genesis of the present appeal is an unfortunate and, indeed, tragic one. In September 2004, while in the United States, Loo Chay Loo killed his adopted son, attempted suicide and was arrested and charged for murder. On 26 February 2005, while in custody awaiting his trial, Loo Chay Loo attempted suicide again and slipped into a coma. While Loo Chay Loo was in a coma, the appellant initiated Suit 265/2005 on 21 April 2005 and named his brother as defendant, giving his hospital bed as one of the addresses. The writ was, however, not served. Less than a month later, on 16 May 2005, Loo Chay Loo succumbed to his injuries and passed away. The appellant then amended the writ to name the Estate as defendant. In his eagerness, he served the writ on Mdm Chen even before there was time to appoint her as administratrix (although she was eventually so appointed along with her brother as co-administrator).

4 The appellant claimed that the Property, which was registered in Loo Chay Loo's name, was

held by the Estate for him on a resulting trust because he had paid for it. The Property was, at one time, Loo Chay Loo and Mdm Chen's matrimonial home and, after the couple had migrated to the United States in 1993, the residence of the appellant and his parents. The Loo family did not always reside at the Property. They initially occupied a neighbouring property, 11 Margate Road, which was a stone's throw away from the Property. In 1978, while the family was still residing at 11 Margate Road, the brothers' mother, Mdm Tan Chan Tee ("Mdm Tan"), came to learn through the neighbourhood grapevine that the owners of the Property intended to sell it. Her elder son, the appellant, then stepped in to conduct the negotiations for its purchase. At the time when these negotiations were under way, the appellant was going through divorce proceedings with his first wife.

5 Although the appellant was involved in the negotiations with the sellers of the Property, the Property was eventually conveyed to Loo Chay Loo in early 1979 for $195,000. Documentary evidence suggested that Loo Chay Loo had paid for the Property. Tendered in evidence were three receipts from M/s Tang & Tan, solicitors for the purchaser of the Property. The first receipt dated 9 November 1978 was for the sum of $19,500 "being payment of 10% purchase price Re: No. 7, Margate Rd., S'pore 15"[note: 1] and the other two receipts dated 3 January 1979 were for the sums of $85,510.65 described as "Completion money" and $7,150.50 being payment of solicitor's fees and disbursements.[note: 2] All three receipts reflected the source of the moneys as Loo Chay Loo's account with Lian Cheong (Loo Kee) ("LCLK").[note: 3]

6 LCLK was a business partnership first entered into between Loo Siong Loo, the brothers' uncle, and the appellant in 1971. The younger brother, Loo Chay Loo, joined as a partner in 1975 after his National Service. The receipts reflected the purchase moneys and the payment of solicitor's fees as coming from Loo Chay Loo's account with LCLK. Due to the passage of time, perhaps, some of the other receipts were lost. This is why the purchase moneys stated in the receipts (for $19,500 and the $85,510.65) do not add up to $195,000 (the purchase price of the Property); they add up only to $105,010.65. Unfortunately, there is no documentary evidence of the origins of the remaining $89,989.35 of the purchase moneys.

7 After the Property was conveyed to Loo Chay Loo in early 1979, it was (curiously) the appellant who moved into it. Loo Chay Loo continued to reside at 11 Margate Road. However, a year and a half later, in June 1980, Loo Chay Loo married Mdm Chen and they moved into the Property; the appellant moved back to 11 Margate Road. Loo Chay Loo and his wife occupied the Property until their migration to the United States in 1993. In the period before their migration, the Property was mortgaged twice: first, in September 1983 to United Overseas Bank Ltd ("UOB") to secure a facility granted by UOB to Lian Cheong Travel Services Pte Ltd, a travel company incorporated by the brothers as well as other members of the Loo family and in which Loo Chay Loo had the largest shareholding; and, secondly, in May 1990 in favour of Asia Commercial Bank to secure facilities granted to Loo Chay Loo. This second mortgage was eventually discharged using moneys remitted by Loo Chay Loo and Mdm Chen from the United States.

8 In 1999, six years after Loo Chay Loo's move to the United States, the appellant and his parents moved into the Property and resided there till its sale on 1 September 2006. After the tragic event mentioned earlier (at [3] above) had happened, the appellant brought the claim in Suit 265/2005 against the respondent and obtained, on 29 March 2006, judgment in default of appearance. He procured the transfer of the Property to himself and sold it for $4.8m in a contract dated 1 September 2006. A year later, on 27 July 2007, the respondent successfully set aside the default judgment, and, on 3 August 2007, filed a counterclaim for the sale proceeds of the Property. On 18 January 2008, the respondent obtained an "unless order" against the appellant for he had failed to disclose, as required in an earlier court order, the details of the sale proceeds of the Property and

to pay the amount into Court. The appellant failed to set aside the "unless order" and did not comply with it. In the result, his claim to the Property was dismissed.

9 The respondent's counterclaim for the sale proceeds of the Property thus fell to be decided by the Judge in the present proceedings.

The Judge's decision

10 On the preliminary question as to whether the respondent was entitled to adduce evidence to prove that Loo Chay Loo had paid for the Property, the appellant had objected to the adduction of such evidence on the ground that the respondent had failed to plead that Loo Chay Loo had paid for the property. The Judge acknowledged this omission in the respondent's pleadings but held that because the respondent had denied the appellant's plea that he had paid for the Property, the respondent was entitled to adduce evidence to show that Loo Chay Loo had paid for the Property.

11 The Judge then proceeded to consider the merits of the appellant's claim and, in particular, the following arguments:

Arguments *for* the appellant's claim

(a) The appellant had sufficient funds to purchase the Property. His current account with LCLK in 31 December 1978 had fallen by approximately $193,400 from $248,925.77 to $55,522.83. This amount was close to that paid for the Property ($195,000 was provided as the purchase price).

(b) The appellant had moved into the property on the completion of the purchase in early 1979 and only moved out in October 1980 after his brother married Mdm Chen.

(c) The title deed to the Property was kept by Mdm Tan and both the appellant and Mdm Tan herself confirmed that Loo Chay Loo had given her the title deeds for safe keeping.

(d) The relatives of the brothers had testified that the Property belonged to the appellant. The common understanding was that the appellant had bought the property and it was being held on trust for him by Loo Chay Loo.

(e) The appellant's evidence that he had conducted the negotiations for the purchase of the Property in 1978 with its then owners had not been challenged. Loo Chay Loo had not been involved in the negotiations.

(f) The Property was also used to store the business merchandise of LCLK even after the appellant moved out in 1980.

(g) Some years after Loo Chay Loo migrated to the United States, the appellant and his parents moved into the Property and remained there until the property was sold in 2006. Loo Chay Loo made no attempt to collect rental from either his brother or his parents.

(h) In June 1999, the appellant in a letter to Loo Chay Loo and Mdm Chen had stated "if you want to talk about No 7 Margate Road, I want to say that I came up with most of the money for the purchase of the property".[note: 4] Mdm Chen, in a reply to this letter, did not deny this claim but stated instead that: "As for the property at 7 Margate Road, grandfather told us personally when he was still alive that no 7 was for Chay Loo and no 11 was for Chay Sit, but you said [illegible text] money."[note: 5]

(i) Loo Chay Loo was, at the time of the purchase of the Property, barely 24 years old and had only started working at LCLK after he had finished serving National Service. By 31 December 1978, Loo Chay Loo's gross earnings totalled less than $195,000 (which was, it will be recalled, the cost of the Property).

Arguments *against* the appellant's claim

(a) The two receipts stating a total of $105,010.65 as going towards the payment of the Property issued by M/s Tang & Tan reflects the origins of the payment as Loo Chay Loo's account with LCLK. This is also the case for the receipt for $7,150.50 for payment of solicitors' fees and disbursements.

(b) The Property was Loo Chay Loo's matrimonial home from the time of his marriage to Mdm Chen in 1980 up to 1993 (when they migrated to the United States).

(c) Loo Chay Loo continued to pay the property tax and outgoings of the Property even after he had migrated to the United States.

(d) The appellant's claim to have arranged for the Property to be registered in Loo Chay Loo's name so as to put this property out of his ex-wife's hands in the matrimonial proceedings is dubious. After the conclusion of the matrimonial proceedings, he had his shares in LCLK which he transferred to other persons to avoid disclosure of these shares transferred back to him. However, he did not do the same for the Property.

(e) The Property was mortgaged twice to secure Loo Chay Loo's indebtedness.

12 Having considered these arguments, the Judge held that the appellant had failed to discharge his burden of proof to demonstrate that he had provided the purchase moneys for the Property so as to establish a resulting trust in his favour. In the result, the Judge allowed the respondent's counterclaim for the sale proceeds of the Property.

The sole issue before this court and the concept as well as burden of proof

13 The appellant's defence against the respondent's counterclaim for the sale proceeds of the Property is premised on his assertion that he had paid for the Property with the result that it was held by the respondent on a resulting trust for him. The respondent's reply has been to deny this assertion. We agree with counsel for the appellant, Mr Low Chai Chong, that the manner in which the parties had run their respective cases leads to only one issue before this court: whether the appellant or Loo Chay Loo had paid for the Property.

14 As a starting point, on the question of burden of proof, it is indisputable that the burden lies, in the context of the present proceedings, on the appellant to prove, on a balance of probabilities, that it was he who had paid for the property. While the respondent, as the party bringing the counterclaim, bears the legal burden of establishing Loo Chay Loo's title to the Property, it is entitled to rely on the presumption of indefeasibility of title to the Property accorded to Loo Chay Loo as registered owner of the Property to discharge this burden (see s 46 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA")). Therefore, to establish Loo Chay Loo's title to the Property, the respondent need not prove that Loo Chay Loo had paid for it; all it needs to show is that Loo Chay Loo was the registered owner of the Property. If, of course, the respondent can prove that Loo Chay Loo had, in fact, paid for the Property, this would establish its case on an *a fortiori* basis. On the part of the appellant, in order to impugn Loo Chay Loo's title so as to fend off the counterclaim, the appellant has

to prove the exceptional circumstances in the LTA, as a result of which the presumption of indefeasibility of title is displaced. In so far as the appellant relies on the doctrine of resulting trusts as one such exception, he has to prove that he had paid for the property so as to establish a resulting trust in his favour. It goes without saying that the appellant bears the legal burden of establishing his case (see s 103 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Evidence Act") which encapsulates the same principle at common law). In this connection, it is pertinent to note that, while the appellant bears the legal burden of proving that he had paid for the Property throughout the proceedings, the *evidential* burdens might shift as between the parties, depending on the precise evidence adduced before the court (see, for example, Sripada Venkata Joga Rao, *Sir John Woodroffe & Syed Amir Ali's Law of Evidence* (LexisNexis, 17th Ed, 2002) at p 3617, where the learned editor (citing the Gujerat decision of *Ranchhodbhai Somabhai v Babubhai Bhailalbhai* AIR 1982 Guj 308 at [6]) observes that the legal burden of proof is embodied (as we have already noted) within s 101 of the Indian Evidence Act, 1872 (Act 1 of 1872) (which is *in pari materia* with s 103 of the Evidence Act), whereas the burden of proof in relation to adducing evidence is encompassed within s 102 of the Indian Evidence Act, 1872 (which is *in pari materia* with s 104 of the Evidence Act)). In this regard (and to reiterate a point already made above), if, of course, the respondent can go further and prove that Loo Chay Loo had, in fact, paid for the Property, this would establish its case on an *a fortiori* basis.

15 At the expense of repetition, it is of the first importance to emphasise that if the appellant can prove, on a balance of probabilities, that he had in fact paid for the Property, then the appeal must succeed. However, if the appellant cannot prove this particular fact, then, although he would fail in his appeal, this might not necessarily be because the respondent has succeeded in proving that Loo Chay Loo had paid for the property. This requires a little elaboration and, in this regard, a few *other* possible permutations ought to be noted. But before addressing this, we need to consider the various concepts of proof.

16 Under the Evidence Act, there are three possibilities in so far as the concept of proof is concerned. The first is where a fact is said to be "proved." In this regard, s 3(3) of the Evidence Act states as follows:

> A fact is said to be "proved" when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

The second is where a fact is said to be "disproved". In this regard, s 3(4) of the Evidence Act states as follows:

> A fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

The third is where a fact is said to have been "not proved". In this regard, s 3(5) of the Evidence Act states as follows:

> A fact is said to be "not proved" when it is neither proved nor disproved.

With regard to these concepts of proof, M H Beg J, in the Allahabad Full Bench decision of *Rishi Kesh Singh v The State* AIR 1970 All 51, observed, as follows (at [100]):

> The concepts of 'proved', 'disproved', and 'not proved', defined in alluringly simple terms in the [Indian Evidence Act, 1872 upon which the Evidence Act is based], compress a great deal of judicial wisdom with history and processes of evolution and development behind them which have not yet ended.

17 While reservations were initially expressed in local jurisprudence on the compatibility of the common law standards of proof on a balance of probabilities and proof beyond a reasonable doubt on the one hand with these concepts of proof in s 3 of the Evidence Act on the other (see, for example, the Singapore Court of Criminal Appeal decision of *Tikan bin Sulaiman v Regina* [1953] MLJ 131; as well as the Federation of Malaya Court of Appeal decisions of *Liew Kaling v Public Prosecutor* [1960] MLJ 306 and *Looi Wooi Saik v Public Prosecutor* [1962] MLJ 337), the pronouncement of the Board in the Malaysian Privy Council decision of *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89 of the continuing applicability of these standards of proof in the local context has dispelled any such reservations (see also *Butterworths' Annotated Statutes of Singapore – Evidence* vol 5 (Butterworths Asia, 1997 Issue) at pp 25–26 and *Halsbury's Laws of Singapore* vol 10(2) (LexisNexis, 2006) at para 120.392).

18 In so far as the statutory definitions in s 3 of the Evidence Act are concerned, we would also add the following observations. First, where the party asserting a particular fact has discharged his burden of proof on a balance of probabilities (in civil suits) to allow the court to make the finding that a particular fact *exists*, that fact is "proved". Secondly, where the party seeking to challenge a particular fact sought to be proved by the opposing party adduces sufficient evidence to allow the court to make the finding that the fact does not exist, the said fact is "disproved". Now, it is equally possible that the party seeking to challenge the particular fact sought to be proved by the opposing party has proven a fact *mutually exclusive* from the fact sought to be proved by the opposing party. In this case, the fact sought to be proved by the opposing party has also been disproved. In other words, the party adduces sufficient evidence for the court to make a finding that Fact X exists and since Fact X and the fact sought to be proved by the opposing party, Fact Y, are mutually exclusive, Fact Y has been disproved.

19 Thirdly, a finding that a particular fact is "not proved" is not the same as a finding that the fact is "disproved". As C M Lodha J remarked in the Rajasthan High Court decision of *Shrikishan v Bhanwarlal* AIR 1974 Raj 96 at [11], "the Evidence Act has drawn a clear distinction between the words 'disproved' and 'not proved'". Indeed, Amaresh Kumar Singh J in the Rajasthan High Court decision of *Late Shri Amar Singh v Doongar Singh* RLW 1997(1) Raj 210 at 213 ("*Shri Amar Singh*") has observed thus:

> Section 3 of the [Indian] Evidence Act [which is *in pari materia* with s 3 of the Evidence Act classifies] all the findings of the facts into 3 categories: (1) Proved, (2) Dis-proved and (3) that which is neither proved nor dis-proved, the third category of cases described as not proved is wide enough to include all those cases which are neither proved nor dis-proved. … [M]erely because a person fails to prove his case, it cannot be said that his case has been disproved. To equate the cases which are not proved with the cases which have been disproved is such an error of law which can cause disaster in the administration of justice particularly in those cases when the inability of citizen to prove his case is used as a circumstance for drawing unwarranted inferences against him.

It has also been observed by A S Bhate J, delivering the judgment of the court in the Andhra Pradesh High Court decision of *Naval Kishore Somani v Poonam Somani* AIR 1999 AP 1 ("*Naval Kishore Somani*"), that (at [13]):

> *In our view a fact which is not proved does not necessarily mean it is a false one*. We may refer to the provisions of Section 3 of the [Indian] Evidence Act [which is *in pari materia* with s 3 of the Evidence Act]. Section 3 of the Evidence Act gives definitions of various words and expressions. The expression 'proved' is followed by the definition of the expression 'disproved'. This is followed by the definition of 'not proved'. … *The word 'disproved' is akin to [the] word 'false'. What is 'disproved' is normally said to be a false thing. It will thus be seen that a fact not proved is not necessarily a fact disproved*. [emphasis added]

The finding that a particular fact has been "disproved" is an affirmative finding as to the non-existence of that fact. Likewise, the finding that the fact has been "proved" is an affirmative finding as to the existence of the fact. It follows that the finding that the fact is "not proved" means that no affirmative pronouncement as such is made by the court as to either its existence or non-existence. Thus, in the Bombay High Court decision of *Emperor v Shafi Ahmed Nabi Ahmed* (1925) 31 Bom LR 515, Crump J not only observed (logically and commonsensically, in our view (at 516)) that "disproved" is "merely the converse" of "proved" but also (at 517) that "not proved" represents "a state of mind between two states of mind when you are unable to say precisely how the matter stands".

20 In a case where a fact is said to be "not proved", the court is unable to say precisely how the matter stands because of a lingering doubt as to the existence *and* non-existence of the fact; put simply, the court is unable to decide one way or the other. The court thus refrains from making an affirmative pronouncement as to the existence or non-existence of the fact. As recognised by A S Bhate J in *Naval Kishore Somani* (at [13]):

> A fact which is not proved may be true or may be false. A doubt lingers about [its] truth. Merely because it [is] not proved, one may not jump to the conclusion that it is disproved. A fact is disproved normally by the person, who claims that an alleged fact is not true. For disproving a fact the burden is always on the person, who alleges that the fact is not true.

Just because a fact has not been proved does not mean that it is "disproved" for, unless the party alleging that the fact is not true discharges his burden and proves the non-existence of the fact, the court will not be able to make such a finding.

21 The general position we have sought to explain in the foregoing analysis is neatly summarised in a leading textbook as follows (see Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *Ratanlal & Dhirajlal's The Law of Evidence* (Wadhwa and Company Nagpur, 22nd Ed, 2006) by the Honourable Justice Y V Chandrachud, Mr V R Manohar, Dr Avtar Singh, Dr Shakil Ahmad Khan and The Publishers' Editorial Board, at pp 147–148):

> The word 'disproved' is akin to [the] word 'false'. What is 'disproved' is normally said to be [a] false thing. A fact is disproved normally by the person, who claims that an alleged fact is not true.
>
> This is merely the converse of the definition of 'proved'.
>
> …
>
> The definition of 'proved' is the embodiment of a sound rule of commonsense. It describes what degree of certainty must be arrived at before a fact can be said to be proved. Proof means anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. It is apparent from the definitions of the words 'proved',

> 'disproved' and 'not proved' in this section that the Act applies the same standard of proof in all civil cases. *The term 'not proved' indicates a state of mind between two states of mind ('proved' and 'disproved') when one is unable to say precisely how the matter stands. A fact which is not proved does not necessarily mean that it is a false one. A fact not proved is not necessarily a fact disproved. A fact is said 'not proved' when it is neither proved nor disproved. A fact which is not proved may be true or may be false. A doubt lingers about its truth*.
>
> [emphasis added]

The doubt referred to in both the preceding quotation as well as in *Naval Kishore Somani* ([19] *supra*), we might add, exists owing to the gap between the amount of evidence adduced in support of a party's assertion of the existence or non-existence of a particular fact and the standard of proof the party is required to meet to satisfy the court as to either its existence or non-existence. In other words, where there is an insufficiency in the evidence adduced to meet the standard of proof required for the proof of the existence or non-existence of a particular fact, the averred fact is said to be "not proved" (the requisite standard of proof, of course, being, in civil cases, on a balance of probabilities and, in criminal cases, beyond a reasonable doubt (see also above at [17])). The insufficiency in the evidence could be a result of the failure of a party to adduce sufficient supporting evidence in the first place to support his assertion. In this regard, Amaresh Kumar Singh J observed in *Shri Amar Singh* ([19] *supra* at 213) that:

> It may be that a person may not be in a position to prove his case. He may not be having sufficient evidence with him to prove the fact alleged by him, or the evidence on which he proposes to rely may be destroyed or may be tamper[ed] with and there[by] it may [lose] its capability of proving the alleged fact or the rules applied for appreciation of evidence and for drawing inferences may be such [as to prevent] them from proving his case.

The insufficiency of the evidence adduced to prove the fact asserted could also be a result of the adduction of evidence by the opposing party which undermines that assertion. For instance, a party may be seeking to prove the existence of a particular fact and has adduced evidence in support of it. The opposing party, however, may be able to adduce some evidence as to the *non-existence* of that fact. Such evidence may not be sufficient on its own for the court to conclude that, on a balance of probabilities, the fact does not exist so as to be "disproved". Such evidence may, nevertheless, sufficiently undermine the case of the party asserting the fact so as to cause doubt as to its existence with the result that the party is unable to discharge his burden of proving the fact. As a result, the fact concerned is "*not proved*".

22 Where, however, the amount of evidence adduced is sufficient to satisfy the court as to the existence of a particular fact, then that fact will be held to have been "*proved*"; conversely, where the amount of evidence adduced is sufficient to satisfy the court as to the *non-existence* of a particular fact, then that fact will be held to have been "*disproved*". In contrast to the situations in which a fact is said to be "not proved" (such as that described by way of example in the preceding paragraph), in both these last-mentioned instances, the sufficiency of evidence is such that *no gap* exists (and, hence, no doubt arises on the part of the court concerned). The court is thus able to make an affirmative finding as to the existence or non-existence of the fact in question.

23 Looked at in this light, whether or not a particular fact is "proved" or "disproved" or "not proved" *will depend, in the final analysis, on, the particular factual matrix concerned, and, in this connection, the evidence adduced by the parties*; indeed, it would be no exaggeration to state that this will be of the first importance.

24 Applying the aforementioned principles, we find there to be several possible permutations with regard to the finding as to whether – in the context of the present appeal – either the appellant or Loo Chay Loo had paid for the property. Based on the parties' respective case theories (and the factual context set out above (especially in [14])), the (albeit non-exhaustive) list of the possible findings and the consequent results are as follows:

	Possible Findings	**Result**	**Whether the appellant paid for the property**	**Whether Loo Chay Loo paid for the property**
1	The appellant proves that he had paid for the Property.	The appellant succeeds. The respondent holds the Property on a resulting trust in the appellant's favour.	Proved.	Disproved.
2	The respondent proves that Loo Chay Loo had paid for the Property.	The respondent succeeds in its claim to the sale proceeds of the Property.	Disproved.	Proved.
3	The appellant proves that Loo Chay Loo had not paid for the Property but is unable to prove that he himself had paid.	The respondent succeeds in its claim for the sale proceeds since it is entitled to rely on the presumption of indefeasibility of title accorded to Loo Chay Loo as registered owner.	Not proved.	Disproved.
4	The respondent proves that the appellant had not paid for the Property but is unable to prove that Loo Chay Loo had paid.	The respondent succeeds in its claim for the sale proceeds since it is entitled to rely on the presumption of indefeasibility of title accorded to Loo Chay Loo as registered owner.	Disproved.	Not proved.

25 In so far as the first two scenarios in the preceding paragraph are concerned, proof by either party that he had paid for the Property results in the fact that the other party had paid being disproved. This is so as the fact that one party had paid is mutually exclusive from the fact that the

other party had paid; more importantly, if it is proved that one party had paid for the Property, it is logically impossible to arrive at the (completely opposite) conclusion that the other party had also paid for the Property. That much is clear. The third and fourth scenarios in the preceding paragraph are situations in which either party is able to prove that the opposing party had not paid for the property but is unable to prove that he himself had paid. Leaving aside the difficulties in proving a negative, the result would be the same. The appellant would still have yet to have discharged his burden to prove that he had paid for the property and, as a result, the respondent, being entitled to rely on the presumption of indefeasibility of title, would succeed in its counterclaim to the sale proceeds.

26 Indeed, the above analyses might give us a clue as to why the Judge had focused in the court below on whether or not there was sufficient evidence to prove (on a balance of probabilities) that the appellant had paid for the Property. One should note that it is *only* in the *first* scenario (where the appellant has proven that he had paid for the Property) that he could succeed. If the appellant fails to prove this, he fails in his claim and it becomes unnecessary to consider whether Loo Chay Loo had paid for the Property.

27 Let us now turn to the respective arguments of the parties themselves.

The parties' respective cases

28 On appeal, the parties raised basically the same arguments made before the Judge (see [11] above). The appellant reiterated his position that payment of the Property had been made from funds he had withdrawn from his current account with LCLK amounting to approximately $193,400. The respondent responded to this particular argument by pointing out that the appellant had admitted in cross-examination that of the $193,400, approximately $113,000 had been repaid to the appellant in 1980 (a year after the Property had been purchased), making it impossible to claim that the funds had been used for the purchase. The respondent also raised a point it had made before the Judge, namely, that the receipts issued by M/s Tang & Tan reflects the origins of the purchase moneys as Loo Chay Loo's LCLK account; it also added the argument that Loo Chay Loo's withdrawals from his LCLK account in 1978 and 1979 were commensurate with the payments recorded in the receipts issued in those two years.

Our decision

29 We do not propose to address in detail the arguments raised by the parties with regard to the circumstantial evidence as to the identity of the purchaser of the Property. The available circumstantial evidence in this case is, at best, equivocal. For instance, the appellant had pointed out that at the time of the purchase of the Property, Loo Chay Loo had only been working for four years and could not have had enough funds to pay for the Property. This, however, did not preclude the possibility of other sources of funds. That the circumstantial evidence suggests that Loo Chay Loo could not afford to pay for the Property using his own funds was inconclusive as to whether he had actually paid for it (for he could have done so with the assistance of other persons and/or with a loan from LCLK). Further, it was also possible that Loo Chay Loo had paid for the Property with his own funds for, as the Judge noted (at [64] of the Judgment), the circumstantial evidence suggested that Loo Chay Loo had more means than the appellant had given him credit for. Given the equivocal nature of the circumstantial evidence, these arguments do not take us very far in determining who had paid for the Property for the purposes of the present appeal.

30 The respondent also sought to advance arguments based on circumstantial evidence. It argued, *inter alia*, that since the appellant had purchased another property at 10 Lorong Nangka for around

$300,000 in 1981, barely two years after the purchase of the Property, he could not possibly have purchased the Property since he would not have had enough funds left over for this other purchase if he had in fact paid for the Property. To accept this argument, the court would have to make a finding with regard to the appellant's means to pay for the two properties. It was not possible for us to make this finding given the evidence (or, to be more accurate, the lack of evidence) before us. While the appellant might not have earned enough from his involvement in local businesses to pay for both properties, the evidence suggested that he had other businesses in Indonesia and that it was possible that he could have earned enough from these other businesses to pay for the property at 10 Lorong Nangka as well. In totality, the circumstantial evidence raises, at best, possibilities as to whether either of the brothers had paid for the Property but does not (unfortunately) lead us to any definitive conclusion, one way or the other.

31 We should also mention that the respondent had argued that the appellant ought not to be allowed to rely on evidence pertaining to his act of concealing his assets in the matrimonial proceedings as an explanation as to why he might have had the Property registered in Loo Chay Loo's name even though he had paid for it. According to the respondent, the appellant ought not to be allowed to rely on what was an illegality to establish his claim. In so far as this particular argument is concerned, we note that any such evidence would be circumstantial at best and, for the foregoing reasons, would not be a significant factor for our consideration, if at all, in the subsequent analysis. We are more concerned with whether the parties are able to adduce *direct* evidence to show that either the appellant or Loo Chay Loo had purchased the Property. On this note, we turn to consider, first, the appellant's claim that he had purchased the Property with the $193,400 withdrawn from his LCLK account.

32 The LCLK accounts show that on 31 December 1976, the appellant had $248,925.77 in his account with the partnership[note: 6] and this amount fell to $55,522.83 by 31 December 1978.[note: 7] The latter sum of $55,522.83 was recorded as an outstanding interest-free loan from appellant to LCLK.[note: 8] It was probably recorded as such because at that time, in 1978, due to the appellant's marital woes, he had withdrawn from the partnership and his shares were being held on trust for him by Loo Chay Loo and his aunt, Loo Gek Kuan, and eventually by his Indonesian girlfriend, Lim Gek Hong, in 1979. The LCLK accounts therefore support the appellant's claim that he had withdrawn approximately $193,400 in the period between 31 December 1976 and 31 December 1978. On this point, we note that the Judge (at [54] of the Judgment) had drawn an adverse inference against the appellant as to the veracity of his claim for failing to produce the 1977 LCLK accounts. The Judge expressed the view that it was unacceptable that the appellant was able to produce the accounts for 1971 to 1976 and for 1978 and the following years but was unable to produce the 1977 accounts. It was clarified on appeal that the appellant had only produced the accounts for 1971 to 1976 and that it was the respondent that had produced the accounts for 1978 and the following years. In the light of this clarification, it appears that the adverse inference ought not to have been drawn against the appellant. However, for the reasons set out below, this finding does not, in any event, advance the appellant's case.

33 Returning to the point that the documentary evidence shows that the appellant had withdrawn $193,400 from his LCLK account, this only establishes the fact that the appellant had withdrawn a significant sum from his LCLK account and *could have* used these funds to pay for the Property. The documentary evidence, however, does not show that the funds actually went towards the purchase of the Property. On the contrary, the receipts issued by M/s Tang & Tan show that part of the payment ($105,010.65) for the Property came from Loo Chay Loo's account with LCLK.[note: 9] It is also pertinent to note that M/s Tang & Tan had also previously written to Loo Chay Loo in a letter dated 11 December 1978 seeking payment for the Property.[note: 10] The documentary evidence thus

contradicted the appellant's claim that the $193,400 had been used to pay for the Property.

34 Further, it appeared that the appellant could no longer maintain his claim to have used the $193,400 to pay for the Property when he had conceded in cross-examination that, of the $193,400, $113,000 was eventually repaid to him in 1980 (this was, indeed, one of the main planks in the respondent's case (see above at [28]) and was clearly a point that did not go unnoticed by the Judge (see, especially, [35] of the Judgment)). The relevant exchange in the cross-examination is as follows:[note: 11]

Court:	No, Mr Loo, what I was asking you was: That 235---$248,000 which you had in 1976, when you left the company, when you took your name out of the company, did you take the money out as well or did you leave the money there?
[Appellant]:	Was still in the company.
	…
[Counsel for the respondent]:	Now isn't it true from your last answer that the monies---that you left monies behind in the company after you left in 1976?
[Appellant]:	Yes.
[Counsel for the respondent]:	And we know that at least $113[,000] of those were returned to you in 1980 [deducted from Lim Gek Hong's account and credited as part of the $235,000 into the respondent's account in that year], am I correct?
[Appellant]:	Yes.

35 Indeed, LCLK's 1980 accounts show that about $113,000 had been deducted from the account of Lim Gek Hong, who (as explained above at [32]) was holding her shares in the partnership on trust for the appellant, and $235,491.09 had been credited into the appellant's LCLK account.[note: 12] We note that the appellant had tried to argue in cross-examination that the $113,000 did not come from the $193,400 and that, of the $113,000, $100,000 was from Lim Gek Hong.[note: 13] This argument, however, could not, in our view, be taken seriously. The appellant's testimony during cross-examination constituted, in the final analysis, bare assertions. More specifically, Lim Gek Hong was merely a trustee for the appellant and had no interest whatsoever in LCLK. It is thus unlikely that she would have, as the appellant asserted, transferred $100,000 of her own money from her Indonesian bank account into LCLK simply because she intended to reside in Singapore. Since the accounts do not show that the $100,000 went towards increasing Lim Gek Hong's share in the partnership, it could not be characterised as an investment and would, at best, have been merely a deposit in her account with LCLK. If it were merely a deposit, it made little sense for her to transfer her moneys into LCLK. If Lim Gek Hong had wanted to transfer her funds to Singapore, there were many other (and better) options, such as depositing the money with a local bank. In the circumstances, it was unlikely, and odd even, that LCLK would have been the desired destination of choice for her funds. We are thus of

the view that the appellant's admission in cross-examination contradicts his own case that he had paid for the Property with the $193,400 he had withdrawn from his LCLK account. The Judge was thus justified in rejecting the appellant's claim to have paid for the Property.

36 At this juncture, we note that the respondent had tried to argue that an amount of $137,186.33 recorded under the heading "trust receipts" in LCLK's 1978 accounts[note: 14] was in truth part of the $248,925.77 the appellant had with LCLK in 1976. The respondent argued that these "trust receipts" were in truth the appellant's funds in LCLK which were classified under a different heading so as to enable him to conceal his assets in the matrimonial proceedings. Therefore, the respondent contends, the appellant had not withdrawn the full amount of $193,400 from his LCLK account to use to pay for the Property. We find there to be no basis for this contention. It must be noted that, even in 1976, when there was no issue of the appellant's matrimonial proceedings, the accounts reflected liabilities of $229,920.90 under the heading "trust receipts".[note: 15] There is thus nothing suspicious about the funds recorded under this heading in 1978. This did not appear to us to be some new category of funds created in 1978 in order to allow the appellant to conceal his assets in the matrimonial proceedings. In any event, there was no need for us to accept this argument in order to arrive at the conclusion stated in the preceding paragraph, namely, that the Judge did not err in rejecting the appellant's claim to have paid for the Property with the $193,400.

37 In the result, we find that the appellant's claim to have paid for the Property to be "disproved" by the respondent (within the meaning of s 3(4) of the Evidence Act (reproduced above at [16])), as opposed to being "not proved" (within the meaning of s 3(5) of the Evidence Act (also reproduced above at [16])). This is because whilst it was his (the appellant's) case throughout that he had paid for the Property with the $193,400 he had withdrawn from his account with LCLK, his admission in cross-examination suggests *otherwise*. With this finding, we are left with only scenarios 2 and 4 out of the possible permutations with regard to the finding as to whether either the appellant or Loo Chay Loo had paid for the property (set out above at [24]). It will be noted that in both scenarios the respondent succeeds since it would be entitled to rely on the presumption of indefeasibility of title accorded to Loo Chay Loo as registered owner of the Property at the material time. For the sake of completeness, however, we will consider the respondent's claim that Loo Chay Loo had paid for the Property.

38 Apart from relying on documentary evidence in the form of the receipts issued by M/s Tang & Tan to advance its case (see above at [11]), the respondent argued that there was a correlation between Loo Chay Loo's payment of the purchase moneys to M/s Tang & Tan and his withdrawal of funds from his LCLK account in 1978 and 1979. The receipts issued by M/s Tang & Tan show that payment of $19,500 and $85,510.65 was made on 9 November 1978 and 3 January 1979, respectively.[note: 16] LCLK's accounts show that Loo Chay Loo had withdrawn $29,577.90 in 1978 and $125,047.45 in 1979.[note: 17] The respondent thus argued that the documentary evidence supports its claim that Loo Chay Loo had withdrawn money from his LCLK account to pay for the Property as it demonstrated a correlation between his withdrawal of the sums in 1978 and 1979 and the receipts issued for payment of the Property in those two years.

39 In so far as the withdrawal of the $125,047.45 is concerned, the appellant contends that LCLK could not have lent Loo Chay Loo this amount because it was double LCLK's paid up capital of $60,000. Secondly, the appellant argued that the Judge ought to have accepted the evidence of one of the partners in LCLK, Png Teng Ho, that LCLK had not extended a loan to Loo Chay Loo. With regard to the first argument, it appears, with respect, that the appellant has confused paid-up capital with liquidity. Taken to its logical consequence, the appellant's argument suggests that LCLK's liquidity remains constant as long as the paid-up capital remains unchanged. This could not be right.

It is evident from the 1979 accounts that even after the $125,047.45 had been deducted from Loo Chay Loo's account, LCLK had net current assets of $138,123.93 and was able to continue to trade.[note: 18] There was thus nothing to suggest that LCLK did not have sufficient funds to extend the loan to Loo Chay Loo.

40 With regard to the appellant's second argument, it must be noted that Png Teng Ho's testimony was inconsistent with LCLK's 1979 accounts which showed that $125,047.45 had indeed been withdrawn from Loo Chay Loo's account. Png Teng Ho did not seek to challenge the veracity of the accounts. In cross-examination, it was revealed that Png Teng Ho was unable to even read the accounts.[note: 19] Further, the documentary evidence also demonstrated that Png Teng Ho was a sleeping partner.[note: 20] As a sleeping partner, he probably did not know very much about the affairs of LCLK. In fact, in cross-examination, he had admitted that he knew very little about the purchase of the Property except for the fact that the appellant had issued cheques.[note: 21] On this point, he was also unable to provide any further details of the instances in which the appellant had issued cheques towards the payment of the Property.[note: 22] On balance, between the documentary evidence which showed that Loo Chay Loo had withdrawn $125,047.45 from his LCLK account and Png Teng Ho's testimony, we prefer the former.

41 We note, however, that it was possible that part of the $125,047.45 was paid to the appellant and did not go towards payment of the Property. It must be remembered that the respondent held one out of six shares in LCLK on trust for the appellant and he therefore held a part of the profits he had received on trust for the latter. According to the appellant, Loo Chay Loo held $76,916 consisting of profits, salaries and bonuses on trust for him. The respondent disputes this figure and contends that Loo Chay Loo only held profits on trust for the appellant. With the dearth of evidence on this point, it is difficult to prefer one view over the other since we cannot tell whether the appellant was entitled to receive bonuses or salaries in 1978. Nonetheless, while it is difficult to determine the precise amount held on trust by the respondent for the appellant, it is clear that Loo Chay Loo held at least a part of the $125,047.25 on trust for the appellant and was likely to have repaid that amount to the appellant in 1979 when he ceased to hold the latter's shares in LCLK on trust for him. This, therefore, presented difficulties in respect of the respondent's claim that Loo Chay Loo had paid for the Property. This, coupled with the lack of evidence as to the source of the payment of the remaining purchase moneys amounting to $89,989.35, leads us to the conclusion that the respondent had not been able to prove, on a balance of probabilities, that Loo Chay Loo had paid for the Property. Consequently, we find that the respondent's claim that Loo Chay Loo had paid for the Property was "not proved" (within the meaning of s 3(5) of the Evidence Act (reproduced above at [16])).

42 This finding, however, does not mean that Loo Chay Loo had not paid for the Property. As explained above (at [19]–[21]), "not proved" does not mean "disproved". It may be that with the passage of time, documents were lost and the respondent was thus unable to produce documentary evidence to prove the source of the payment of the remaining purchase moneys. The finding that the respondent had not proved that Loo Chay Loo had paid for the Property simply means that there was insufficient evidence before us to draw a conclusion one way or the other as to whether he had paid.

43 With this finding, the present case falls within scenario 4 (set out above at [24]). As explained above (at [25]), as a result of this finding, the respondent succeeds because, the appellant having failed to establish an exception to the presumption of the indefeasibility of title accorded to registered owners, the respondent is entitled to rely on the presumption that Loo Chay Loo had indefeasible title to the Property. As a result, the respondent is entitled to the sale proceeds of the Property.

Conclusion

44 In the circumstances, therefore, we find that the Judge did not err in allowing the respondent's counterclaim. The appeal is thus dismissed with costs and the usual consequential orders.

[note: 1]Record of Appeal ("RA") vol 5 Pt B, p 3455.

[note: 2]*Id*.

[note: 3]*Id*.

[note: 4]RA vol 3 Pt E, pp 1358–1359.

[note: 5]*Id*, pp 1361–1362.

[note: 6]Appellant's Core Bundle Vol 2 ("2ACB"), p 223.

[note: 7]*Id*, p 226.

[note: 8]*Id*.

[note: 9]RA vol 5 Pt B, p 3455.

[note: 10]*Id*, p 3430.

[note: 11]See Notes of Evidence ("NE"), 6 May 2008, pp 30 and 49 at RA vol 3 Pt F, pp 1752 and 1771.

[note: 12]2ACB, p 234.

[note: 13]See NE, 6 May 2008, pp 45–49 at RA vol III Pt F, pp 1767–1771.

[note: 14]2ACB, p 226.

[note: 15]*Id*, p 223.

[note: 16]RA vol 5 Pt B, p 3455.

[note: 17]2ACB, pp 225 and 232.

[note: 18]*Id*, pp 232-233.

[note: 19]See NE, 12 May 2008, pp 69–70 at RA vol 3 Pt G, pp 2079–2080.

[note: 20]RA vol 5 Pt A, p 3404.

[note: 21]See NE, 12 May 2008, p 62 at RA vol 3 Pt G, p 2072.

[note: 22]See NE, 12 May 2008, p 63 at RA vol 3 Pt G, p 2073.

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