Tang Wai Kum Beatrice and others *v* Tang Chun Choy
[2011] SGHC 125

Case Number : Suit No 116 of 2010

Decision Date : 20 May 2011

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Tan Teng Muan and Sharifah Farhana Binte Hasan Alsagoff (Mallal & Namazie) for the plaintiffs; Chelva Rajah SC, Han Kee Fong, Millie Yeo and Megan Chia (Tan Rajah & Cheah) for the defendant.

Parties : Tang Wai Kum Beatrice and others — Tang Chun Choy

Gifts – presumptions against – resulting trust

20 May 2011 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The parties to this suit are four siblings who claim beneficial ownership of the property known as 67 Greenwood Avenue, Singapore ("the Property"). The background to the matter is as follows. The parties' father, Tang Yuen Seng ("the Father") ran a laundry business out of rented premises in Cairnhill Road ("Cairnhill shop") since the 1930s. The Father married Loo Poh Lin ("the Mother"), and they had five children. The eldest is a daughter, Wai Kheng ("Kheng") born in 1943; she is the only sibling who is not a party to this suit. The second child, also a daughter is Wai Kum ("the first plaintiff") born in 1945. The third child is the only son, Chun Choy ("the defendant"), born in 1948. The last two are daughters, Wai Ying ("the second plaintiff") born in 1950, and Wai Kuen ("the third plaintiff") born in 1953.

2 The purchase of the Property was completed on 9 March 1971 for $84,000. It was registered in the name of the defendant. The purchase price was paid partly by way of a housing loan of $20,000 taken out in the defendant's name. The remainder was paid in cash. According to the defendant, this comprised the parents' savings and a personal loan from a friend of $20,000 to $30,000. At the time the Property was purchased, the defendant was 22 years old and had just started work at Esso Refinery after graduating from the University of Singapore with an engineering degree. The housing loan was serviced by the Father and the defendant did not make any direct contribution towards its discharge. However the defendant claimed that from the time he started work, he handed to the Mother half his monthly salary amounting to about $600. All three plaintiffs also claimed that they gave the Mother substantial parts of their monthly salary when they started working.

3 The family, with the exception of Kheng who was married by then, moved from the Cairnhill shop to the Property. There they lived for the next 18 years, with the three youngest daughters moving out as each one got married, in 1971, 1978 and 1980. The defendant got married in 1981 but continued to reside with his parents in the Property except for the periods that he was working overseas. In 1989, the defendant moved with his family and parents to 16 Jalan Kampong Chantek ("Jalan Kampong Chantek") which he had purchased two years earlier. In December of that year, the Father died. The Mother continued to live with the defendant at Jalan Kampong Chantek until 2002

when they moved to 90A Binjai Park. There she lived out the last years of her life, passing on in October 2006.

The plaintiffs' case

4 The plaintiffs' case is simply that the Father had intended for the Property to be divided equally among his five children and that the defendant held it on a resulting trust. The plaintiffs submitted that, to the extent that there was a presumption of advancement, this was rebutted on the following grounds:

(a) The circumstances surrounding the purchase of the Property clearly showed that it was meant to be a family home and not a gift to the defendant.

(b) The Father was running an illegal gambling business, and coupled with estate planning concerns, procured the Property to be put in the defendant's name.

(c) The defendant himself had declared at a meeting in 1990 ("Cranborne Road Meeting") that he would distribute the sales proceeds of the Property equally to his siblings, effectively admitting that he was only holding the same on trust for the Father.

(d) The title deeds to the Property were never given to the defendant by the Father or Mother, which is inconsistent with it being a gift to him.

(d) The details of the alleged "gift" were unclear and it can be seen that the defendant had changed his position with regard to this purported "gift" several times.

(e) The Father had treated the Property as his own home whereas the defendant did not.

(f) The defendant had conducted himself in a manner that showed the Property was never a gift to him and that he knew he was holding it in trust for the family after the Father's death.

The plaintiffs relied on the evidence set out in [5] to [9] below to support their case.

5 The Father had dropped out of school as a teenager to take over his father's laundry business after the latter died. It was a struggle to maintain his family from his meagre earnings from the business. According to the plaintiffs, for additional income, the Father turned to operating as a runner for illegal gambling syndicates. He eventually moving up the hierarchy and took on bets on 4D and horse races as a small time illegal bookie. He operated this illicit business from the Cairnhill shop. The Father and Mother were arrested on two occasions after the Cairnhill shop was raided. After they moved to the Property, the Father operated his bookie business from there until he retired sometime in 1977. The plaintiffs' case is that it was the profits from this illicit business that enabled the family to purchase the Property in 1971 and to pay off the housing loan. The plaintiffs' position is that the Property was in the name of the defendant because the Father did not want to attract the attention of the authorities in case he was asked to explain the source of the purchase money, as well as for avoidance of estate duty.

6 The plaintiffs gave evidence that, prior to the purchase of the Property, around 1967, the Father and first Plaintiff (a state-registered nurse) jointly applied for an HDB flat, taking advantage of a special scheme for state-registered nurses. However this did not materialise as the Father was eventually persuaded to purchase a private property instead. The plaintiffs' evidence was that the Father "disclosed to the Family members that he would put the [Property] in the Defendant's name ...

so as to avoid attracting the authorities' attention" to his illegal gambling business. The plaintiffs also gave evidence that the defendant had no involvement in the events leading to the purchase of the Property. It was his older sisters who helped the Father in looking for a house to purchase and helped with the decision. It was only at completion that the defendant was involved in signing the documents for the mortgage and transfer. The defendant also had no involvement in the funding of the Property.

7 The plaintiffs gave evidence of certain statements made by the defendant at the Cranborne Road Meeting. This was the year after the Father's death in December 1989 and the siblings were quarrelling over some shares that the plaintiffs claimed had been misappropriated by the defendant. The plaintiffs claimed that the defendant had declared at this meeting that the Property did not belong to him alone and he was only holding it on trust. He said that he would distribute the sales proceeds of the Property equally among the five siblings. When Kheng told the defendant that these were merely empty words, he responded by saying that as a Chinese educated person, he was someone who honoured his words unlike the English educated who required agreements to be put in writing.

8 The plaintiffs contended that the title deeds to the Property were kept by the parents until the Mother's death in 2006. The plaintiffs claimed that the defendant had changed his position that the Property was a gift. At various times the defendant claimed that the gift was from the Father, or the Mother, or from both of them and had been inconsistent with providing details of the alleged gift. The plaintiffs contended that this shows that the Property was never intended as a gift. The plaintiffs also pointed to the fact that the Father had treated the Property as his own home whereas the defendant had not done so; in particularly the major decisions concerning the Property were made by the Father and not the defendant.

9 Finally, the defendant knew that he was holding the Property on trust for all the siblings and that explained his behaviour at the Cranborne Road Meeting.

The defendant's case

10 The defendant said that in early 1971, after he had obtained a job offer from Esso Refinery, the Mother told him that she and the Father had decided to purchase the Property and that they had intended it for him. From the time he started work, he had given his parents half his monthly salary which, in 1971, amounted to $600. This sum rose as his salary increased until he was giving $1,000 each month and the Mother told him not to give any more than that. The defendant had been giving such money to his parents except for the two years he was doing his MBA in Vancouver. Even during this period, he had deposited $12,800 in a joint account with the Mother for her use. It was only after the Father's death in December 1989 that the sum was reduced to $500 at the Mother's behest. The defendant said that the Mother had told him that these contributions from him had helped to repay the loan from the friend that they had taken out to purchase the Property.

11 The defendant said that upon his return to Singapore in 1985 from his overseas posting, he moved back to the Property with his family to live with his parents. The Mother told him that she was handing over the management of the household and family finances to him, including that related to the Property. The Mother also handed over the certificate of title to the Property that she had been keeping custody of. Meanwhile the defendant had done well in his career and rose to become the general manager of the Singapore branch of Chemical Bank in 1985. In 1987 he purchased a bungalow at Jalan Kampong Chantek and he moved there with his parents and his family in 1989. He then renovated the Property and rented it out from November 1990. He kept all rental proceeds.

12 Kheng, the oldest sibling gave evidence that the Father and Mother were traditional Chinese parents who doted on their only son, the defendant. She said that such was the emphasis on the defendant that the Mother was at first not prepared to allow her to attend university even though she did well in school for fear that they might not have enough money to pay for the defendant's university education. It was only after Kheng managed to obtain a bursary and with the Father's persuasion that the Mother relented. Kheng testified that at the time the Property was purchased, her parents asked her for advice on whether it should be registered in their names or in the defendant's name. She asked them whom they intended to give it to and they replied that it was intended for the defendant as he was the only son. Kheng advised them to register it in the defendant's name as this would save the stamp fee of a subsequent transfer. Kheng said that this was the reason that the Property was in the name of the defendant from the outset. She also related an incident in 1988, during which the Father had jokingly suggested to her that she should purchase the Property from the defendant once they moved to the house at Jalan Kampong Chantek that the defendant had purchased. Kheng said that the Mother reacted angrily to this, insisting that the Property was to remain with the defendant as he bore the Tang family name. Kheng said that she recounted this to her sisters, but not to the defendant. Kheng also recounted a number of events that indicated that their parents' intention was that the defendant should have the Property and that the plaintiffs were aware of this.

Witnesses' demeanour

13 The first plaintiff did not give evidence in court. Counsel for the plaintiffs tendered a letter from her doctor certifying that she was unfit to attend court as she was being treated for cancer. Counsel applied to admit the affidavit evidence-in-chief ("AEIC") she had filed, to which the defence objected. Nevertheless, I find it expedient to admit her AEIC, treating it with the caution befitting evidence given with the benefit of cross-examination.

14 The second plaintiff did not undergo substantive cross-examination. However the third plaintiff did and I find that she had failed to come out of it well. She was an uncooperative witness and did not provide logical answers to crucial questions. Two particular instances showed her attitude towards her obligation as a witness. The first was when she was questioned on whether their parents had treated the defendant much better than their daughters. The third plaintiff was asked whether her parents were proud of the defendant's achievements and she was referred to a 1985 Business Times article reporting that he had risen to general manager of the Singapore Branch of Chemical Bank at the young age of 36 years. The third plaintiff denied any knowledge of the defendant's achievement, a denial that I find difficult to believe and explained only by a desire to downplay the defendant's point that their parents held him in much higher regard than the daughters. The second instance was when she was referred to her letter to the defendant dated 4 October 2007. At the third page, she had stated that the defendant "*had the most privileged childhood*", in that he was spared from having to help with the laundry business as well as the household chores, which all his sisters had to do. The third plaintiff went on to detail how they had to cook meals on Sundays as well as the "*household chores of daily sweeping, washing up after meals as well as look after the laundry shop, dealing with customers and acting as interpreter*" for the Mother whenever the Father was not around. On top of that "*we had to help Mum pamper you by undoing and doing the steel buttons on your Catholic High School uniform instead of you doing them by yourself*". However when cross examined on the plaintiffs' position that their parents were modern in their outlook and did not favour sons over daughters, the third plaintiff was unable to provide a credible explanation to this outburst in her letter which appears to be a genuine outpouring of her emotions.

15 However I found that no side had a monopoly of poor demeanour. The defendant did not come through as a forthright witness either. He had a tendency to change his evidence in cross-

examination to improve his case. The other witness for the defence was the eldest sibling, Kheng. I also found that she was somewhat evasive in cross-examination, particularly in denying knowledge that the Father had operated as illegal bookie.

16 In my view, both sides were guilty of massaging their versions of history to buttress their case. This suit would fall to be determined by an analysis of the evidence not in dispute and the actions and words of the relevant actors as recorded in contemporary letters and two meetings of the siblings at the columbarium that were tape recorded.

Analysis of the evidence

17 The defendant is the legal owner of the Property, but he had made no direct contribution towards the purchase price. There are two presumptions that arise: the presumption of resulting trust which the plaintiffs relied on, and the presumption of advancement which the defendant relied on. The defendant submitted that, as the legal title vests in the defendant, the burden of proof lies on the plaintiff to prove the resulting trust and rebut the presumption of advancement.

18 I have no doubt from the evidence that the Father and Mother were traditional Chinese parents who placed great emphasis on family lineage which can only be extended through sons. This evidence came not just from the defendant and the eldest sister Kheng, but also from the emotional letter of the third plaintiff discussed in [14] above. This was also corroborated by several letters from the Mother to the defendant when he was abroad. In one, written on 24 February 1977, the Mother said (translated in English):

> ... when I received your phone call, your display of filial piety and always speaking in a filial manner made my tears flow naturally. Every letter (you) wrote is filled with concern for your parents. I feel so contented to have such a filial son like you. I felt so comforted. No wonder after he had received your call on the first day of Chinese New Year, your father kept saying, "I have such a filial son, one would be enough". It is correct. One would be enough. ...

The Father himself wrote the following in his letter to the defendant dated 20 April 1977 (translated in English):

> This morning, the postman delivered your mail. When I opened and looked at it, I saw a few sentences written in simple English. I had mixed feelings of surprise and joy. I told your mother immediately. I was really overjoyed. You are the pride of our family and it is what you deserved from your hard work. ...

19 I do not put it beyond the parents to speak or write to their daughters in like fashion, but there was no evidence of this. Indeed, the use by both parents of the expressions "filial son" and "pride of our family" is consistent with what may be expected of Chinese parents in mid-twentieth century Singapore. It is also common ground that they practised ancestor worship.

20 In the context where the parents register the family home immediately in the name of their only son, the defendant, and leave no will, the inference is strong that they had intended to give it to him as a gift. In my view, the plaintiffs' submission that there was no concrete evidence of such gift, or that the defendant was not involved in making decisions regarding the Property and that the Father treated the Property as his own, is too technical an approach to the matter. The fact is that the Father and Mother have no notion of the law concerning the formalities of a gift. They simply wanted the Property to go to their only son after they themselves have passed on. I have no doubt that, in legal terms, they considered that they have a life interest in the Property. Indeed, if at some point in

their lives, the defendant had given them cause to do so, they would have been entitled to require the defendant to transfer the Property to another person. But so long as they were happy with the defendant, they were contented to give him the Property upon their death. Since that Property was in the defendant's name, they did not believe that there was a need to do anything further to give effect to this intention.

21 Looked at in this manner, most of the plaintiffs' assertions regarding the ambiguity of the gift fall apart. It did not make a difference whether the title deeds had been given to the defendant. Nor that the Father had taken charge of the Property when he was alive. Even the defendant's Hamlet-like struggle with whether to share the sale proceeds of the Property with his sisters (see [7] above) is consistent with the position that his parents had intended to give him the Property.

22 There is also evidence that the plaintiffs knew about their parents' desire regarding the Property. In the first plaintiff's letter of 24 April 2007 to her oldest sister Kheng, she had stated as follows:

> I thought you wanted the house yourself. You yourself were not happy with the house being given to Chun. You were always complaining that you were the one who put the idea of buying a house into dad's mind despite mum's initial objections and that you objected to mum's claim that Chun had contributed to the house.

The first plaintiff's explanation in para 33 of her AEIC, that she was merely repeating back to Kheng her own statement does not adequately explain her acceptance of Kheng's position that the Property was given to the defendant. If the plaintiffs' case was so clear all along, she would have expressed amazement that Kheng should take the position that the Property had been given to the defendant. As it turned out, the first plaintiff was unable to attend court to explain this. I should add that the first plaintiff also reiterated this position in her letter to the defendant dated 26 July 2007 in which she said as follows:

> ... Since you said that I was not to look after mum anymore, I had to tell mum what you said otherwise she would have thought I had abandoned her. I also told you that you SHOULD look after her since she had given you her house. ...

Her explanation in para 35 of her AEIC that this was blurted out in the heat of a quarrel between the siblings also appears contrived.

23 In view of the foregoing, I hold that the parties' parents had intended the Property to belong to the defendant beneficially at least after they have passed on. Therefore the plaintiffs' claim is dismissed.

Order on costs

24 The foregoing represents the analysis of the case based on the evidence before me and the order dismissing the claim is the legal outcome of such analysis. However, this case, with evidence of events spanning more than half a century, is more than a legal dispute. It is, in essence, a family dispute pitting long-held Chinese values of patrimonial continuity against liberal values of gender equality, with the resultant tensions as the family makes the transition from the traditional to the modern in one generation. In truth, it is not a matter in which a court of law can produce the best outcome. Indeed, were I not constrained by the law, I would have been inclined to order a different outcome. It is certainly a matter that would have been better resolved by non-judicial adjudication. The parties have not only benefitted from a modern education but also from the growth story of the

nation: all of them have, with varying degrees of success, done well in their careers and in their lives. The defendant in particular has, on his own steam, amassed assets well in excess of the value of the Property in dispute. I understand that three of the sisters are not far behind him on that score. Therefore, apart from the one sister who perhaps is not as well off as the rest of her siblings, there is absolutely no reason to fight over the Property. There is certainly no reason to go to court to air their dirty linen, as it were, as it had meant making allegations that the Father was, to put it bluntly, a criminal. And there was every reason to take the alternative route. However, puzzling as it was to me that the parties chose to litigate, I had no reason to doubt that they were all intelligent and rational persons, and surmise therefore that there was some other motivation for litigation that the parties have not disclosed to me. Or perhaps it was simply the bitterness, compounded over the decades, of sibling rivalry and discord compounded by the clash of traditional and modern values adverted to above. That much is disclosed in the numerous letters that the sisters have written to one another detailing their quarrels over the Mother and her jewellery and other spats. In my view this is eminently a matter which justifies a ruling that each party bears his own costs and I so order.