Buthmanaban s/o Vaithilingam *v* Krishnavanny d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another
[2015] SGHC 35

Case Number : Suit No 817 of 2012

Decision Date : 04 February 2015

Tribunal/Court : High Court

Coram : Vinodh Coomaraswamy J

Counsel Name(s) : N Kanagavijayan (Kana & Co) for the plaintiff; Muralli Rajaram and Lim Min (Straits Law Practice LLC) for the first defendant; A Thamilselvan (Subra TT Law LLC) for the second defendant.

Parties : Buthmanaban s/o Vaithilingam — Krishnavanny d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another

Trusts – Resulting trusts – Presumed resulting trusts

Trusts – Constructive trusts

Equity – Estoppel – Proprietary estoppel Equity – Defences – Laches

4 February 2015

Vinodh Coomaraswamy J:

Introduction

1 Ponnusamy Sivapakiam died intestate on 14 February 2008. [note: 1] The single largest asset of her estate is the property known as 43 Swan Lake Avenue, Singapore 455725. She purchased the property in her sole name in 1966 at a price of $28,600. Her estate sold it 2012 at a price of $2.65m. This suit arises out of a claim by her eldest son, the plaintiff, that he has an interest in the property in equity over and above his interest in it arising from Sivapakiam's intestacy. [note: 2]

2 Sivapakiam had six children: three daughters and three sons. In order of their birth, her children are: [note: 3]

(a) Krishnavanny d/o Vaithilingam, a daughter and the first defendant;

(b) Buthmanaban s/o Vaithilingam, a son and the plaintiff;

(c) Olagaysbery d/o Vaithilingam a daughter;

(d) V Nithia, a daughter and the second defendant;

(e) Olagappan Vaithilingam Thirumall, a son; and

(f) V Davadass, a son.

3 The two defendants in these proceedings are the two administrators of Sivapakiam's estate.

Although they are sued jointly in their capacity as administrators, they have chosen to be represented separately in these proceedings. That is because they each oppose the plaintiff's claim to a different extent and for a different reason.

4 Four of Sivapakiam's six children gave oral evidence at trial. They are the plaintiff, the two defendants and Olagaysbery. It is fair to say that the plaintiff and the first defendant are broadly aligned in their evidence and approach, while the second defendant and Olagaysbery are broadly aligned in their evidence and approach. Thirumall and Davadass did not give evidence at trial. However, at my direction, they each filed an affidavit in the course of the trial stating their position. They aligned themselves with the second defendant's case.

Purchase of the property

5 Sivapakiam's husband, the late A O Vaithilingam, worked as an overseer in the Singapore City Council. [note: 4] He and his family resided in staff quarters along Veerasamy Road. [note: 5] On 18 October 1961, he passed away intestate. [note: 6] The principal asset of his estate was the money in his Municipal Provident Fund account amounting to $21,195.77. [note: 7] This money was subsequently paid out to and held in the estate account. Sivapakiam, as his widow, was entitled to 50% of this money, with her six children entitled to share the remaining 50% equally. [note: 8] But no separate distributions were made and this money was kept on deposit as a single fund.

6 Following Vaithilingam's death, his family had to vacate the staff quarters which they occupied. [note: 9] Sivapakiam's brother, Nadarajan s/o Punnosamy, took the family in. The family lived behind his residence at 3 Woo Mon Chew Road, Singapore 455057 [note: 10] for the next few years. The plaintiff and the first defendant (on the one hand) and the second defendant and Olagaysbery (on the other hand) provide differing accounts of the conditions in which they lived there. The evidence of the plaintiff and the first defendant is that the family lived simply but comfortably in an "attap *house*" at the back of Nadarajan's property at Woo Mon Chew Road. [note: 11] The evidence of the second defendant and Olagaysbery is that the family lived in squalid conditions [note: 12] in an "attap *hut*… amongst a goat shed, a chicken coop and three bucket system toilets". [note: 13]

7 This difference of recollection leads the plaintiff and the second defendant to differ on the reason Sivapakiam purchased the property. The plaintiff says that she purchased it as an investment. [note: 14] His evidence is that she consulted Nadarajan over what to do with Vaithilingam's money. [note: 15] Nadarajan advised her to invest it in a landed property, [note: 16] and so she did. [note: 17] The second defendant denies this and avers that Sivapakiam bought the property not as an investment, but as a home for the family: in order to escape the squalid conditions in which they lived at Nadarajan's property at Woo Mon Chew Road. [note: 18] I record these disputes of fact – concerning the living conditions at Woo Mon Chew Road and whether the property was bought as an investment or as a home – as background only. It is not necessary for me to resolve them in order to determine the plaintiff's claim.

8 In 1966, the vendor of the property advertised it for sale in *The Straits Times*. [note: 19] Olagaysbery saw the advertisement and told Nadarajan and Sivapakiam's brother-in-law, A Govindasamy about it. Govindasamy went to view the property and immediately paid $500 to the broker in order to secure the property. He then asked Sivapakiam and her mother to view the property. They viewed it and liked it. The plaintiff then viewed the property and he liked it too. Govindasamy negotiated a purchase price of $28,600. The plaintiff encouraged Sivapakiam to

purchase the property at that price. [note: 20]

9 On 19 October 1966, [note: 21] Sivapakiam purchased the property in her sole name. [note: 22] The total cost of acquiring the property (including all transaction costs) was $30,177.70. [note: 23] The acquisition was funded by a sum of at least $20,000 from the late Vaithilingam's estate, with the balance sum provided by Govindasamy. [note: 24]

Sale of the property

10 As mentioned, Sivapakiam died intestate on 14 February 2008. [note: 25] In September 2010, the first and second defendants were appointed the administrators of Sivapakiam's estate. [note: 26] At that time, the plaintiff and Thirumall were living at the property.

11 It is fair to say that the two administrators are estranged. [note: 27] Differences emerged between them after their appointment as to how quickly the property ought to be sold. That led the second defendant to commence proceedings in February 2012 [note: 28] against the plaintiff and the first defendant (as her co-administrator) seeking an order that the property be sold within three months and that the plaintiff vacate the property to enable the conveyance to take place. In August 2012, the second defendant obtained an order that the property be sold within three months. [note: 29] The property was sold in October 2012 at a price of $2.65m with completion taking place in January 2013. [note: 30] The sale proceeds, net of all transaction costs, amounts to $2,609,417.66. [note: 31]

The parties' cases

The plaintiff's case

12 Under Rule 3 of s 7 of the Intestate Succession Act (Cap 146, 1985 Rev Ed), each of the six beneficiaries is entitled to an equal share in the property *ie*, a one-sixth share, or 16.667% each. The plaintiff, however, claims that he is entitled in equity to a one-third share in the property *before* any distribution to his siblings. [note: 32] He therefore claims that one-third share in equity in addition to his one-sixth share in the remainder of the property under the intestacy. [note: 33] If the plaintiff's claim is put in terms of percentages, he claims to be entitled to a 44.44% share (four-ninths) in the property comprising a 33.33% share (one-third) in equity plus an additional 11.11% share (one-sixth of the remaining two-thirds) under the intestacy.

13 He bases his claim for a one-third share in equity on three alternative grounds: first, that he is the beneficiary under a resulting trust; second, that he is the beneficiary under a constructive trust; and third, that a proprietary estoppel over one-third of the sale proceeds has arisen in his favour. [note: 34]

Resulting trust

14 The plaintiff argues that a resulting trust arises in his favour because he made monetary contributions to the purchase of the property. [note: 35] His case is that he agreed with Govindasamy in 1966 that the money which Govindasamy paid towards the acquisition cost of the property (see [9] above) would be treated as an interest-free loan which the plaintiff, being the eldest son of the

family, would be responsible for repaying to Govindasamy. [note: 36] Over the next 10 years, from 1966 to 1975, the plaintiff duly repaid the loan to Govindasamy in half-yearly instalments of $500 each. [note: 37] Govindasamy was content to treat his loan as satisfied upon payment of a rounded-down sum of $10,000. [note: 38]

Common intention constructive trust

15 Alternatively, the plaintiff argues that he is the owner in equity of a one-third beneficial interest in the property by virtue of a common intention constructive trust. [note: 39] The plaintiff contends that Sivapakiam told him that she wished him to have a beneficial interest in the property after she learned that he was making repayments to Govindasamy. [note: 40] In particular, the plaintiff says that Sivapakiam told him that she wished him to have a beneficial interest amounting to "at least" one-third of the value of the property. [note: 41]

Proprietary estoppel

16 Finally, the plaintiff relies on the doctrine of proprietary estoppel. He contends that:

(a) Sivapakiam assured him that he had a beneficial interest in the property even though he was not its legal owner; [note: 42]

(b) he relied on this assurance by repaying the loan to Govindasamy; [note: 43] and

(c) the plaintiff suffered a detriment because he paid part of the purchase price of the property, but is now denied his beneficial interest. [note: 44]

17 Although the plaintiff did not expressly plead reliance on proprietary estoppel, the second defendant, quite rightly, did not take objection in her closing submissions to his right to rely on it as an alternative basis for his claimed beneficial interest. The plaintiff relies on the very same facts to advance his claim on proprietary estoppel as he does in respect of his claim for a resulting trust and for a constructive trust. The only additional issues raised by the alternative claim in proprietary estoppel are pure issues of law. The second defendant addressed those issues of law in her closing submissions.

Relief sought

18 Accordingly, the plaintiff's seeks the following relief:

(a) a declaration that he has a beneficial interest in the property;

(b) an order that he be given 33% of the net sale proceeds of the property; and

(c) an order that the balance of the net sale proceeds of the property be divided equally amongst the six children of Sivapakiam, including himself.

The first defendant's case

19 The plaintiff's and the first defendant's case differ only as to the size of the plaintiff's beneficial interest. In her three-paragraph defence filed in these proceedings, the first defendant admits all of

the facts pleaded in the plaintiff's statement of claim, avers that she accepts that the plaintiff has a beneficial interest in the property, and states that she will abide by the court's decision as to the size of his rightful share. In keeping with her position, the first defendant made no submissions on the disputed evidence and confined her submissions to the undisputed evidence and the law.

20 In her evidence in chief, the first defendant accepts that Sivapakiam intended to give the plaintiff a larger share in the property than the other children in recognition of his contributions to the family. [note: 45] She also testified that she wishes to give effect to her mother's intention, so long as the plaintiff is reasonable in his claim. She explained in cross-examination that his claim for a one-third interest in addition to his interest under the intestacy to be reasonable. When I asked her during cross-examination what she thought was a reasonable share for the plaintiff, she said it would be between 20% and 25% of the property. [note: 46] She was reluctant to venture those figures, however, and did so only after I pressed her on the issue. Those figures are not part of her case in this action.

The second defendant's case

21 The second defendant denies that Sivapakiam ever intended that the plaintiff should have a larger share of the property and rejects any legal basis on which the plaintiff can claim that larger share.

Whether the decision of the court binds the beneficiaries who are not parties to this suit

22 There is a preliminary issue I should deal with before proceeding to determine the factual and legal disputes. That issue is the extent to which the judgment in this suit will bind the three beneficiaries of Sivapakiam's estate who are not parties to this suit. These three beneficiaries are Olagaysbery, Thirumall and Davadass. It will be recalled that Olagaysbery gave evidence at trial as a witness for the defence. She opposes the plaintiff's claim. Thirumall and Davadass did not give evidence at trial but informed me by separate affidavits that they too oppose the plaintiff's claim.

23 The position of these three non-party beneficiaries is governed by O 15 r 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). That rule provides that any judgment or order given or made in proceedings brought by or against the administrators of an estate in their capacity as such is binding on all persons having a beneficial interest in that estate. Accordingly, the non-party beneficiaries are bound by this judgment because the plaintiff has brought these proceedings against both administrators of Sivapakiam's estate in that capacity.

24 The second defendant submits that the non-party beneficiaries ought to have been joined as parties to these proceedings and, because the plaintiff has failed to do so, they are not bound. [note: 47] For this submission, she first relies on the uncontroversial principle that the administrators of an estate must act jointly in order to bind the estate (see *Tacplas Property Services Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Ching Miow, deceased)* [2000] 1 SLR(R) 159 at [37]–[39]). She then relies on the proviso to O 15 r 14. The effect of that proviso is that non-party beneficiaries are not bound by the outcome proceedings against the administrators of an estate if "the Court in the same or other proceedings [so] orders on the ground that the…administrators…could not or did not in fact represent the interests of those persons in the first-mentioned proceedings." The second defendant argues that the proviso applies in this case because the administrators are not acting jointly in these proceedings, as they are obliged to do. Instead, they have taken different positions through different solicitors in defending the plaintiff's claim. It is only the second defendant who resists the plaintiff's claim in its entirety; by contrast, the first defendant supports the plaintiff's

claim, at least in part. Therefore, she submits, one of the two administrators before the court does not represent the non-party beneficiaries' interests in these proceedings, thereby bringing these proceedings within the proviso to O 15 r 14.

25 This argument misconstrues the meaning of "represent". "Represent", as is used in O 15 r 14 means to "act or speak for (another) by a deputed right": *The New Shorter Oxford English Dictionary on Historical Principles* vol 2 (Lesley Brown ed) (Clarendon Press, 1993) at p 2552. It is the base for the word "representative", which has been defined in *Black's Law Dictionary* (Bryan A Garner ed) (Thomson West, 10th Ed, 2014) at p 1494 as "[s]omeone who stands for or acts on behalf of another". Examples of "lawful representative[s]" given include "executor[s]" and "administrator[s]".

26 It is in this sense that the Court of Appeal decided that the trustees in earlier proceedings did not *represent* the respondent in *Seah Peng Koon and others (the trustees of the estate of Seah Liang Seah, deceased) v Seah Peng Song* [1993] 1 SLR(R) 480 ("*Seah Peng Koon*"). At [15], the Court of Appeal held that the respondent's interest as a contingent *corpus* beneficiary arose not through the estate of his father but in his own right. Therefore, the trustees of the estate of his father were incapable of representing the respondent in the earlier proceedings because the respondent's interest was not held through the trustees. There is no doubt in the present case that the three non-party beneficiaries' interest arises through, and only through, the intestacy. The non-party beneficiaries' position is advanced in this litigation by at least one of the administrators: the second defendant. Indeed, as her affidavit of evidence in chief makes clear, she takes the position which she does in these proceedings not only on her own behalf as both a beneficiary and a co-administrator but also on behalf of all of her siblings, leaving aside only the plaintiff and the first defendant. [note: 48] The second defendant therefore represents the non-party beneficiaries in every sense of the word.

27 The case of *Tacplas*, which the second defendant cites, concerns a different situation. In *Tacplas*, the issue before the court was whether an agreement for the sale of property owned by an estate, which had been entered into by one of the two administrators of an estate acting alone, bound the estate. The Court of Appeal held, at [39], that it did not. *Tacplus* therefore stands for the proposition that the administrators of an estate must act jointly in concluding a contract in order for the contract to bind the estate as principal; it does not oblige administrators of an estate to take identical positions in litigation. The principle articulated in *Tacplus* is irrelevant to the question of whether a court's *decision in proceedings against the administrators of an estate (in their capacity as administrators)* binds the beneficiaries of the estate.

28 The fact that the administrators' positions in this litigation are not aligned therefore does not mean that they do not represent the three non-party beneficiaries of the estate in these proceedings for the purposes of O 15 r 14. All six beneficiaries of Sivapakiam's estate are bound by my decision.

Disputed issues of fact

29 There are four key issues of fact which are disputed:

(a) The sum of money originating from Vaithilingam's estate account which Sivapakiam used to purchase the property and, by implication, the balance sum paid by Govindasamy upon completion; [note: 49]

(b) Whether the balance sum paid by Govindasamy was a gift to the family or a loan to the family that the plaintiff was to repay; [note: 50]

(c) Whether the plaintiff repaid Govindasamy the sum of $10,000 over 10 years; [note: 51] and

(d) Whether Sivapakiam acknowledged during her lifetime that the plaintiff was to have a larger share in the property than her five other children. [note: 52]

Exact amount of funds from the estate account and Govindasamy

30 The first issue is relevant only if a resulting trust arises in favour of the plaintiff. I hold at [80] that no resulting trust arises on the law. It is therefore not necessary for me to resolve the disputes of fact on the first issue.

31 In any event, I note that the parties' pleaded positions on the first issue are in fact fairly close. The plaintiff pleads in his Statement of Claim that he went with Sivapakiam to withdraw the round figure of $20,000 from the estate account to fund the purchase of the property. [note: 53] The first defendant admits the plaintiff's case in her defence, but during cross-examination said that the amount was "20,000-plus". The second defendant pleads in her Defence that the entire balance in the estate account [note: 54] went towards the purchase price. [note: 55] The plaintiff's account in his evidence differs somewhat from his pleaded position. It is not necessary for me to detail and resolve those differences either.

32 The key undisputed point is that the family paid about $20,000 towards the purchase of the property leaving a balance of about $10,000 which Govindasamy funded.

Whether the balance paid by Govindasamy was a loan or a gift

33 The second issue concerns Govindasamy's intent in paying the balance sum towards the purchase of the property. The plaintiff and the first defendant (on the one hand) and the second defendant and Olagaysbery (on the other hand) take diametrically opposed positions. The plaintiff claims the money was advanced from the outset as a loan to him, which he duly repaid over 10 years. The second defendant claims Govindasamy advanced the money as an outright gift to Sivapakiam. [note: 56]

34 To support his case that the Govindasamy lent the balance sum rather than making a gift of it, the plaintiff paints him as a person who would not be likely to make a gift of that magnitude. The plaintiff highlights the following facts about Govindasamy:

(a) Govindasamy was a licensed moneylender [note: 57] and a "materialistic" [note: 58] person who extended the loan only after securing an assurance from the plaintiff that he would repay it; [note: 59]

(b) Govindasamy and Vaithilingam had had an acrimonious relationship;

(c) Govindasamy had seven children of his own to provide for; [note: 60] and

(d) Govindasamy was living in rented premises in 1966 and could not have been so generous as to make a gift of a sum of money which he could put towards purchasing a property of his own. [note: 61]

35 The second defendant's evidence, supported by Olagaysbery, is that Govindasamy paid the

balance sum as a gift to Sivapakiam and out of respect for Vaithilingam. [note: 62] Sivapakiam disliked the feeling of being obliged to anyone, and so repaid Govindasamy in full over the years. She did so out of money which was regularly given to her for her own use by those of her children who were then earning a salary and living with her: namely, the plaintiff, the second defendant and Olagaysbery.

36 According to the second defendant, Govindasamy was a kind-hearted person who was likely to have made a gift of that magnitude. [note: 63] She gives the following examples to illustrate his generosity:

(a) Govindasamy gave the family household provisions and necessities after Vaithilingam passed away; [note: 64]

(b) Govindasamy permitted the first defendant to stay at his Braddell Road property rent-free from 1963 to 1972; [note: 65]

(c) Govindasamy paid part of the first defendant's wedding expenses; [note: 66] and

(d) Govindasamy paid for Olagaysbery's English tuition. [note: 67]

37 She also points out that there is no documentary evidence produced that Govindasamy advanced the money as a loan, for example, a promissory note or an IOU given to Govindasamy. [note: 68] Indeed, there is no suggestion that any such documentation was ever brought into existence.

38 I find that Govindasamy advanced the balance sum neither as a loan nor as a gift. I find that Govindasamy the paid the money towards the purchase price out of a genuine desire to help Sivapakiam and her family in their straitened circumstances at a time of need and with an expectation that he would be repaid but without seeking to extract in advance of his payment any agreement from Sivapakiam or from the plaintiff to repay him. I make this finding for a number of reasons.

39 First, I accept that Govindasamy was indeed a kind-hearted person. The alleged acrimonious relationship between Govindasamy and Vaithilingam seems to have originated from Vaithilingam and appears to have been confined to relations between the two men. The acrimony does not appear to have affected Govindasamy's relationship with the rest of the family, at least after Vaithilingam passed away. The evidence given of his generosity after Vaithilingam's death is largely undisputed. Even the plaintiff accepts that Govindasamy was generous to the daughters of the family and did the things described at [36]. In addition, the plaintiff accepts that Govindasamy gave the second defendant a job. [note: 69] Govindasamy clearly displayed a genuine and enduring concern for the family's welfare. [note: 70]

40 Second, Govindasamy was prepared to pay other sums towards the purchase of the property even without a prior assurance of repayment. It is common ground [note: 71] that Govindasamy paid $500 (the equivalent today of over $40,000 measured against the value of the property) as a deposit to secure [note: 72] the property on the spot at the time of his first viewing, even before he approached Sivapakiam and the plaintiff to ask them if they wanted to purchase it. The plaintiff concedes that when Govindasamy negotiated the purchase price, he "would not have known… whether [the plaintiff] could afford to pay". [note: 73] Tellingly, Govindasamy paid the $500 knowing that it might be forfeit if Sivapakiam declined to go through with the transaction. Of course, if

Sivapakiam declined the opportunity, Govindasamy might have intended to purchase the house for himself. But it is in itself an act of generosity for Govindasamy to offer Sivapakiam a right of first refusal over an investment opportunity which Govindasamy had put his own money at risk to secure.

41 Most tellingly, however, was the consistent evidence from the parties is that Govindasamy never pressed for repayment. Given that Govindasamy was a moneylender, this suggests to me very strongly that Govindasamy did not seek or secure from any member of the family the benefit of a promise to repay before he agreed to pay or actually paid the balance sum.

42 I do not accept the plaintiff's assertion that Govindasamy was generous only to the daughters of the family because (according to the plaintiff) he made the plaintiff shoulder the financial responsibility of repaying the balance sum. [note: 74] Even taking the plaintiff's case to be true, Govindasamy's generosity is apparent. Govindasamy was advancing approximately one-third of the value of the property. Measured against the value of the property, that is the equivalent today of over $850,000. Yet, if the plaintiff is to be believed, Govindasamy agreed to extend the loan interest free and allowed the plaintiff indefinite time to repay the loan. He also did not fix how frequently the part-payments had to be made. And Govindasamy rounded down the sum to be repaid, thereby forgiving the plaintiff's obligation to repay the full amount of the loan.

43 The circumstances therefore suggest that Govindasamy was a man of means and a generous man who was willing to extend financial assistance to the family in 1966 out of love and affection and without conditions in order to help them purchase the property as their home.

44 These findings do not, however, necessarily lead to a finding that the advance was a gift. I bear in mind first of all that the balance sum, measured against the value of the property, is the equivalent today of over $850,000. There is absolutely no evidence before me that Govindasamy ever made any positive statement that he intended the balance sum to be a gift to the family. The sole basis upon which the second defendant and Olagaysbery assert that the money was a gift is an oral promise that Govindasamy and Vaithilingam made to each other and which was later allegedly recounted to Olagaysbery. [note: 75] That promise was that whichever man survived the other would take care of the other's family. Olagaysbery's evidence is that, in fulfilment of that promise, Govindasamy said he would "take care" of the shortfall in the purchase price. [note: 76] But even if Govindasamy made that promise to Vaithilingam, it does not necessarily lead to the conclusion that Govindasamy made a *gift* of the balance sum. Extending financial assistance in a time of need without seeking any assurance of repayment is in itself a generous act which is of undoubted assistance.

45 There is no evidence before me that Govindasamy ever agreed with the plaintiff that he would have to repay the balance sum. I cannot therefore find on the balance of probabilities that the advance was a loan. But by the same token, there is no evidence before me that Govindasamy ever agreed with the family that they would not have to repay the balance sum. I cannot therefore find that on the balance of probabilities that money was a gift. To my mind, it is more likely than not that Govindasamy advanced the balance sum to the family without indicating whether it was a loan or a gift, with at most an unexpressed, internal expectation that the money would be repaid, but with a willingness to wait for repayment – however long that might take – and with a willingness to forgive whatever could not be repaid.

46 I therefore find that the plaintiff's assertion that Govindasamy advanced the balance sum as a loan has been disproved. My finding that the advance was made without any indication or agreement as to whether it was to be advanced as a loan or as a gift necessarily excludes the plaintiff's assertion that that the advance was a loan (*cf Loo Chay Sit v Estate of Loo Chay Loo, deceased*

[2010] 1 SLR 286 at [18]).

Whether the plaintiff repaid Govindasamy

47 The third issue is whether the plaintiff actually repaid Govindasamy.

48 The plaintiff's case is that he repaid Govindasamy $500 every six months over a period of 10 years from 1966 to 1975. In order to scrape together enough money to make those payments, the plaintiff worked two jobs. His main work was with the Public Utilities Board, and his part-time work was as a tutor. His account of repaying Govindasamy is corroborated by the first defendant and Nadarajan. All three are consistent in their evidence that the plaintiff did make loan repayments, [note: 77] although the amounts which they claim that the plaintiff repaid to Govindasamy differ. I am inclined to accept their evidence.

49 The second defendant cannot contradict the plaintiff's direct evidence with direct evidence of her own, *ie* evidence given from her own personal knowledge. She points out, however, that there is no documentary proof of repayment, for example, in the form of receipts given by Govindasamy. [note: 78] The plaintiff says that there were no receipts or other formal documentation generated and exchanged between the parties to evidence the repayments because he and Govindasamy trusted each other. I accept the plaintiff's evidence. While the sum of $10,000 was indeed a large sum for the time, the family context of the case has to be borne in mind. It is to be expected that family members approach matters – even financial matters for large amounts – with a substantial degree of informality and trust. Thus, the second defendant's submission that the absence of formal documentation contradicts the plaintiff's case on repayment is not one which I can accept. It is entirely possible that the Plaintiff and Govindasamy may each have kept their own, informal, records but it is not at all surprising that those records should not be available today.

50 As such, I find that the plaintiff did repay Govindasamy. I do not need make a finding on the exact amount which the plaintiff repaid because of my finding at [80] that there is no resulting trust. The only finding which is important, and which I do make, is that the plaintiff paid a substantial sum to Govindasamy over a period of 10 years which was referable to the balance sum which Govindasamy had paid to enable Sivapakiam to purchase the property.

Whether Sivapakiam acknowledged that the plaintiff was to have a beneficial interest in the property

51 I turn now to the fourth issue, which pertains on an alleged understanding between Sivapakiam and the plaintiff as to the plaintiff's interest in the property. Again, the parties are diametrically opposed.

52 The plaintiff contends that Sivapakiam knew that he had paid Govindasamy a sum equivalent to and referable to the balance sum, was grateful to him as a result, and was motivated by that feeling of gratitude to give him a beneficial interest in the property. In particular, the plaintiff claims that Sivapakiam told him that she would not have become the owner of the property if not for him, and that, as he was the only child who paid anything towards the purchase of the property, he was entitled to at least a one-third share in the property. [note: 79]

53 This is entirely denied by the second defendant. Her evidence is that Sivapakiam never acknowledged that the plaintiff was to have a beneficial interest in the property. It is the second defendant's primary position: (a) that Govindasamy made a gift to Sivapakiam of the balance sum and

(b) that the plaintiff never repaid Govindasamy. On that basis, the second defendant asserts that Sivapakiam had no reason to be grateful to the plaintiff and no reason to make a gift to him of a beneficial interest in the property. I add, parenthetically, that as a matter of law, the plaintiff's argument that he is the beneficiary under a resulting trust would fail if it were established either that (a) Govindasamy made a gift of the balance sum; or (b) that the Plaintiff did not repay Govindasamy.

54 The second defendant also points out that, if Sivapakiam had indeed wanted the plaintiff to have a beneficial interest in the property, she could or would have done the following:

(a) Informed her other children of that intention; [note: 80]

(b) Written a will to make clear her intention; and

(c) Registered the plaintiff as a co-owner of the property. [note: 81]

Sivapakiam did none of these things.

55 The plaintiff deals with these three points as follows:

(a) First, according to the plaintiff, Sivapakiam did not inform the other beneficiaries of her intention because she was not on good terms with them. Specifically, Sivapakiam would not have confided in the second defendant and Olagaysbery [note: 82] because they married out of their clan [note: 83] and were therefore "estranged" from Sivapakiam. [note: 84] Sivapakiam also did not tell her younger sons, Thirumall and Davadass, because she did not trust them. [note: 85] Therefore, only the plaintiff, the first defendant and Sivapakiam herself knew of her intention.

(b) Second, the plaintiff says that he did prompt Sivapakiam to make a will in 1995. She was unwilling to make one at that time but told him that she would do so "later on". [note: 86]

(c) Third, the plaintiff says that while Sivapakiam could easily have registered the plaintiff as a co-owner of the property, he did not broach the topic with her as he did not want to hurt her feelings. [note: 87]

56 The first defendant's evidence is that Sivapakiam told her on several occasions that if the property were sold, the plaintiff should receive a higher proportion of the proceeds of sale. [note: 88] This is evidence against the first defendant's own financial interest. I therefore attach great weight to it and accept it as true. This evidence refutes the second defendant's argument that Sivapakiam made no acknowledgement about the division of the property during her lifetime other than it should left "to the government", which the second defendant took to mean an equal division between the six children. [note: 89]

57 On the other hand, however, I cannot accept the plaintiff's evidence that Sivapakiam acknowledged then that the plaintiff had a *present beneficial interest* in the property. I draw a distinction here between a present beneficial or other proprietary interest in the property and an indication of a *future* interest in the *proceeds of sale* of that property. The fact remains that Sivapakiam never (a) acknowledged to anyone other than the plaintiff that he had a present beneficial interest in the property itself or (b) took any steps or gave any indication of an intent to convey any sort of present interest in the property to him, for example by registering him as a co-owner.

58 Thus, I find myself again unable to accept on the balance of probabilities the whole of either the plaintiff's or the second defendant's case. I now set out what I find to have happened. It is common ground that Sivapakiam was a woman who prided herself on her family's self-reliance and who did not want to be obliged to anyone. [note: 90] It is also common ground that Sivapakiam knew that Govindasamy had made the purchase of the property possible by advancing the balance sum. I have found that Govindasamy advanced that sum with an unexpressed, internal expectation of repayment, but was content to set no terms for repayment and also to forgive whatever sums could not be repaid. I accept the plaintiff's evidence that he and Sivapakiam discussed these matters at the time the property was purchased or soon after. But I accept only two features of the plaintiff's evidence about this discussion. First, I accept that the plaintiff undertook to Sivapakiam – it does not matter whether it was of his own initiative or at her request – that he would make payments to Govindasamy to discharge the family's moral obligation to him. Second, I accept also that Sivapakiam told the plaintiff that if he did so, she would give him a larger share in the proceeds of sale of the property. I have already found (at [50]) that the plaintiff made the payments which he undertook to Sivapakiam to make to Govindasamy. I accept the plaintiff's evidence that Sivapakiam knew of this at the time that he was making the payments and that she knew when he finished making the payments. The resulting feeling of gratitude motivated and sustained Sivapakiam's intention over the years to give a larger proportion of the proceeds of sale of the property to the plaintiff. That remained her intention until her death.

59 I find, however, that Sivapakiam never intended or agreed to give the plaintiff a present, quantified beneficial interest in the property or that she ever acknowledged that he had any such interest. There is no independent evidence, whether from the first defendant or any other source, to support the plaintiff's case that Sivapakiam intended and acknowledged that he had such an interest in the property. Indeed, both aspects are inconsistent with the first defendant's evidence that Sivapakiam expressed an intention that the plaintiff should receive an *unquantified* higher proportion of the *proceeds of sale* of the property at some point *in the future*.

60 In conclusion, I find on the balance of probabilities that Sivapakiam was grateful to the plaintiff and told him that she would give effect to her gratitude by giving him a larger than equal share in the proceeds of sale of the property at some point in the future. However, I find that Sivapakiam never agreed to give the plaintiff a present, quantified beneficial interest in the property or that she ever acknowledged that he had any such interest.

Disputed issues of law

61 Having determined the factual disputes, I now turn to the legal issues. I start my analysis with the legal title to the property. In the present case, the property was conveyed upon purchase to Sivapakiam in her sole name. Upon conveyance, therefore, Sivapakiam held the entire legal title to the property. I should point out that about two-thirds of the funds to purchase the property came from the estate account of Vaithilingam. In strict legal terms, therefore, each child had a one-twelfth interest in those funds arising from Vaithilingam's intestacy with Sivapakiam having the remaining one-half interest. But no party suggests that that one-twelfth interest of each child ought to be followed in equity into the property which Sivapakiam purchased with that money. So I take as my starting point the fact that Sivapakiam was the sole legal owner of the property upon its conveyance to her, with her legal interest standing alone, entirely free of any underlying equitable interests.

62 The presumption is that an owner of a legal estate in land is absolutely entitled to every incident of ownership of that land to the extent reflected in the legal title. At this point in the inquiry, there are no equitable interests in the land to speak of. Equitable interests are not inherent in property, created and existing automatically and in parallel with legal interests: *Westdeutsche*

Landesbank Girozentrale v Islington London Borough Council [1996] 1 AC 669 ("*Westdeutsche*") at 706. An equitable interest in property comes into existence only when one of a limited number of sets of events takes place which are legally significant in that equity attaches consequences to them which have proprietary effect.

63 There is one exception to this general statement which must be borne in mind, lest it cause confusion when reading the English cases. The exception arises when there is an allegation of a beneficial interest in co-owned land. In Singapore land law, it is perfectly permissible for two or more persons to hold land at law as joint tenants or as tenants in common. As with any other species of property, their legal title will be subject to no equitable interests save as a consequence of one of the specified sets of legally significant events taking place. In Singapore, therefore, there are always two distinct questions to be resolved when dealing with an allegation of a beneficial interest in land: (a) whether, and if so how, a beneficial interest arises; and (b) if it does, what is the extent of that beneficial interest. This is so whether legal title to the land is held solely or jointly.

64 The position in English land law is quite different, at least where land is co-owned. In English land law, every conveyance of land to two or more persons as co-owners gives rise automatically to a statutory trust under which the co-owners hold the land as joint tenants at law as trustee for all of the co-owners (see s 34(2), s 34(3) and s 36(1) of the English Law of Property Act 1925 (c. 20)). Thus English land law, in this specific context, *does* create beneficial interests in parallel with, and upon the conveyance of, the legal title and does so automatically, without regard to the intention of the person conveying the land or of the persons taking the conveyance. The result is that in cases of this nature, there is no need to resolve the question whether any beneficial interests exist: they exist axiomatically. The only question to be resolved is the extent of the co-owners' beneficial interests.

65 As mentioned at [13], the plaintiff now relies on any one of three sets of legally-significant events to show that he has acquired an equitable interest in the property. First, he argues that the fact that he funded the purchase of the property confers upon him a beneficial interest under a purchase-money resulting trust. Second, he argues that he and Sivapakiam had a common intention, up until the point of her death, that he be given a one-third share in the property in reliance of which he repaid Govindasamy a sum of about $10,000. That, he argues, confers upon him a beneficial interest under a common intention constructive trust. Third, he argues that Sivapakiam promised him a one-third share in the property in reliance of which he paid Govindasamy over the years a sum of about $10,000. Thus, he argues that an equity has arisen in his favour estopping the estate from denying that he has a beneficial interest in the property, with the court empowered to satisfy that equity with proprietary relief.

Whether a resulting trust arises in favour of the plaintiff

The law on purchase money resulting trusts

66 The purchase money resulting trust is the consequence which equity attaches to one set of legally-significant events which can bring into existence an equitable interest. A purchase money resulting trust arises in favour of A where A pays, wholly or in part, for the purchase of property, legal title to which is vested in B alone or in the joint names of A and B (*Westdeutsche* at 708; approved in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [34]). The legally significant event which equity responds to in this case is the payment made by a person for the purchase of property for which he does not receive a corresponding part of the legal title. That event gives rise to a rebuttable presumption of law that A did not intend to pass a beneficial interest to B. The result is that B holds his legal title to the property on trust for A such that A's beneficial interest in the property is of the same proportion to the whole of the property as A's

contribution was to the whole of the purchase price (*Lau Siew Kim* at [46]). This presumption of law can be rebutted by evidence that A had a contrary intention (for example, either that A intended to benefit B by the advance or that A intended the advance to be a loan following which B would be liable to A *in personam* for the payment of a debt).

67 Under a purchase money resulting trust, therefore, two consequences follow at the same time from the same set of legally-significant events: (a) beneficial interests are created; (b) the relative size of those beneficial interests are fixed. This makes the purchase money resulting trust inflexible in two respects. First, the parties' beneficial interests are created only at the time the property is purchased (*Lau Siew Kim* at [112]). Each party's beneficial interest vests immediately and immutably at that time. The purchase money resulting trust is incapable of taking into account events which occur *after* the parties purchase the property. It disregards entirely all such events, such as changes in the parties' intentions or changes in the parties' circumstances.

68 Second, the strict calculus of the resulting trust takes into account only *financial* contributions at the time of purchase (*Lau Siew Kim* at [114]). Non-financial contributions made at whatever time are disregarded. Even financial contributions referable to the property but which are made *after* the property is purchased are disregarded. This includes subsequent contributions in the form of part-repayments of principal or interest under a purchase-money loan, even though such contributions are financial in nature, and even though they are referable to the purchase price.

69 Exceptionally, repayments of a loan will be taken into account in computing the parties' beneficial interests under a purchase money resulting trust if, and only if, they are made pursuant to an agreement reached at the time of the purchase between the parties as to the ultimate source of the funds for the purchase (*Lau Siew Kim* at [116] and [117]). The existence of such an agreement critically distinguishes a financial contribution to the purchase price (which is capable of giving rise to an equitable interest under this species of trust) from a payment to reduce an existing monetary debt (which is not). As explained in *The Law of Trusts and Equitable Obligations* by Robert Pearce, John Stevens and Warren Barr (Oxford University Press, 5th Ed, 2010) at p 276:

> … unless there is a repayment agreement made before the mortgage was entered into, payment of the mortgage instalments on a property will not give rise to the presumption of resulting trust, as they are technically not payments to the purchase price, but the reduction of an existing monetary debt.

No resulting trust

70 I have found that Govindasamy paid the balance sum towards the purchase price at the time of purchase; and that the plaintiff paid a sum equivalent to the balance sum to Govindasamy over the next ten years. All of the contributions to the purchase price which the plaintiff claims to have made came after the purchase. The only way in which these post-purchase payments can be counted as a financial contribution to the purchase price sufficient to give rise to a resulting trust is if the financial contributor (the plaintiff) reached an agreement with the legal owner (Sivapakiam) at the time she acquired her legal interest in the property (in 1966) that the plaintiff was to be treated as the ultimate source of the balance sum by virtue of his undertaking to make repayments to Govindasamy in the future.

71 The plaintiff appears to assert the existence of such an agreement: [note: 91]

> I then told my mother that although I would be putting her name as the sole proprietor of the… property, I have beneficial interests in the property and that I was paying to Govindasamy in

> monthly instalments the sum of money that Govindasamy had paid towards the purchase of the property inclusive of the deposit payment of $500.00. My mother acknowledged that I had a beneficial interests [sic] in the…property although my name was not included as a co-owner.

72 I do not accept this evidence. I would be very surprised indeed if two lay persons in 1966 contemplating the purchase of a property would even have known what a beneficial interest was, let alone have had a conversation like the one that the plaintiff describes. I would find it even more surprising if it were revealed that such a conversation took place between parent and child in the context of purchasing a family home in circumstances where there was a pressing need to house a family which had lost its breadwinner. It is undisputed that Sivapakiam was not a sophisticated person and lacked formal education. Thus, I find the plaintiff's account of his agreement with Sivapakiam to be fanciful. I find that the plaintiff and Sivapakiam reached no agreement at the time the property was purchased that the plaintiff was to be treated as the "ultimate source of funds" (see *Lau Siew Kim* at [116]) by virtue of his undertaking to repay the balance sum that Govindasamy had advanced. Thus, there is no basis for finding that a resulting trust had arisen in his favour.

73 The only other agreement pleaded by the plaintiff is an agreement between himself and Govindasamy. The plaintiff pleads in paragraph 10 of the Statement of Claim that: "[t]he Plaintiff then requested if…Govindasamy could pay the balance purchase price plus other outgoings towards the purchase of the property and that the Plaintiff undertook to return to Govindasamy the balance purchase price". I have found that there was no such request or undertaking. But even if there had been, it is irrelevant on a resulting trust analysis. The plaintiff does not claim a beneficial interest as against Govindasamy but as against Sivapakiam. Any such agreement between the plaintiff and Govindasamy can relate only to the repayment of a loan and cannot have the consequence of creating a beneficial interest in the property.

Chan Yuen Lan

74 At the time I delivered my decision in this case, the Court of Appeal had yet to release its decision in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"). The Court of Appeal's judgment in that case is now available. In it, the Court of Appeal expresses certain views on resulting trusts which might be thought to affect my determination of the plaintiff's claim to a beneficial interest under a resulting trust.

75 In *Chan Yuen Lan* (at [53]–[57]), the Court of Appeal states that it is minded to consider whether, in order to take into account the realities of mortgage repayment, it ought to relax the strict rule distinguishing between the consequences on a resulting trust analysis of: (a) contributions made towards the discharge of a mortgage pursuant to a prior agreement made at the time of purchase; and (b) contributions made towards the discharge of a mortgage without any such prior agreement.

76 For four reasons, I do not consider that this observation affects my conclusion that the plaintiff does not have a beneficial interest in the property on the resulting trust analysis. First, I read what the Court of Appeal stated in *Chan Yuen Lan* as an observation rather than a conclusion. In this part of its judgment, the Court of Appeal acknowledges academic and judicial criticism in other jurisdictions of the strict rule and accepts that relaxing the rule is an approach which it ought to consider. But it does not express a concluded view on the matter. I therefore do not read the Court of Appeal's judgment in *Chan Yuen Lan* as actually having relaxed the strict rule in Singapore law, as opposed to foreshadowing the possibility that the Court of Appeal might one day do so.

77 Second, the Court of Appeal's observation in *Chan Yuen Lan* was *obiter dicta*. *Chan Yuen Lan*

did not involve mortgage finance and therefore did not require the Court of Appeal to decide how repayments towards a mortgage should be treated on the resulting trust analysis. By contrast, the Court of Appeal in *Lau Siew Kim* adopted and applied the strict rule to hold that a subsequent repayment of an overdraft in one co-owner's sole name by a loan taken in both co-owners' joint names could not be treated as a contribution to the purchase price by both co-owners because there was no evidence that, at the time of purchase, the co-owners had agreed that the joint loan would be taken out and treated as the ultimate source of part of the purchase money for the property. The strict rule therefore formed part of *Lau Siew Kim's ratio decidendi* (see [119] and [123]). I continue to be bound by *Lau Siew Kim*, despite the doubt cast on it in *Chan Yuen Lan*.

78 Third, *Chan Yuen Lan* referred to the rule only in the context of repayments made towards the discharge of a *mortgage*. Repayments towards the discharge of a mortgage do more than simply reduce the personal liability of the borrower. These repayments also have proprietary consequences in equity for the mortgagor because they enlarge his equity of redemption. It is not at all clear to me that the Court of Appeal in *Chan Yuen Lan* intended to revisit the strict rule in respect of repayments which go to reduce a *personal* obligation, even if that obligation is ultimately referable to the purchase of the property. On the facts of the present case, of course, there was no mortgage. And I have found that the plaintiff was not even subject to a personal obligation to repay the balance money.

79 Finally, the presumption of resulting trust is rebutted by evidence that the contributor intended to benefit the recipient. For this purpose, it is the contributor's intention at the time of purchase which is determinative, not any intention he may have formed at some later point in time. Insofar as the plaintiff resolved and undertook to Sivapakiam at or around the time she purchased the property that he would make payments to Govindasamy which were referable to the balance sum, I find that he did so out of love for his mother and family, out of a sense of duty to them as the oldest son and principal breadwinner, and to discharge the family's moral obligation to Govindasamy. He did not, at the time the property was purchased, resolve and undertake to make these payments in exchange for a beneficial interest in the property for himself.

Conclusion on resulting trust

80 I therefore hold that the plaintiff has no beneficial interest under a purchase-money resulting trust, both on the law as it stood at the date of my decision and in light of the subsequent development in the law in *Chan Yuen Lan*.

Whether a common intention constructive trust exists

The law on common intention constructive trust

81 The common intention constructive trust is the consequence which equity attaches to another set of legally significant events. A common intention constructive trust arises in favour of A when A acts to his detriment or significantly alters his position in reliance on a common intention held between A and the legal owner of property to share that property beneficially.

82 The common intention constructive trust addresses both inflexibilities which lie at the heart of the purchase money resulting trust. First, it is capable of taking into consideration events occurring after the moment of purchase. This species of constructive trust is therefore capable of giving rise to a beneficial interest in the property which accords with the parties' actual intentions as they evolve over time. Second, the common intention constructive trust does not stipulate a purely arithmetic approach to determining the beneficial interests of the parties based on their contribution to the

purchase price. It permits the court to take into account "all conduct which throws light on the question of what shares were intended": *Midland Bank Plc v Cooke and another* [1995] All ER 562 at 574. The flexibility which lies at the heart of the common intention constructive trust is explained by its origins in the desire of the courts in England to achieve, before the intervention of statute, a fair and equitable division of matrimonial property upon divorce. It remains relevant today in cases where the statutory matrimonial asset-division jurisdiction is unavailable and where the inflexibilities of the resulting trust analysis yield results which are too crude.

83 Until recently, English law on common intention constructive trusts was set out in *Lloyds Bank Plc v Rosset and another* [1991] 1 AC 107 ("*Rosset*"). According to *Rosset*, the parties' common intention may arise *expressly* from an "agreement, arrangement or understanding" or it may be *inferred* from the "conduct of the parties". The necessary conduct is usually financial contributions A made towards the property. Only exceptionally will conduct by A other than financial contributions towards the property suffice (*Rosset* at 132–133). Despite the flexibility of the common intention constructive trust, therefore, it still focuses on *financial* contributions in the same way that the purchase money resulting trust does.

8 4 *Rosset*, though not overruled, no longer represents English law on common intention constructive trusts. In *Stack v Dowden* [2007] 2 AC 432 ("*Stack*") and *Jones v Kernott* [2012] 1 AC 776 ("*Kernott*"), the English courts have redrawn the contours of the doctrine. In both cases, it was common ground that the claimant had a beneficial interest in the property. The only dispute was the quantification of that interest.

85 The majority in *Stack* held that when domestic partners take a conveyance of land in their joint names as co-owners, and without any express declaration of trust, the starting point is that the beneficial interest in that land is held equally, regardless of the parties' financial contributions towards the purchase price. This approach represents a fundamental shift in the way English law approaches co-ownership of property for a specific subset of co-owners. It amounts, effectively, to replacing the presumption that the parties intended beneficial ownership in accordance with their contributions to the purchase price with a presumption for this class of co-owners that they intend equal beneficial ownership.

86 Baroness Hale delivered the leading speech in *Stack*: She said (at [58]):

> The issue as it has been framed before us is whether a conveyance into joint names indicates only that each party is intended to have some beneficial interest but says nothing about the nature and extent of that beneficial interest, or whether a conveyance into joint names establishes a *prima facie* case of joint and equal beneficial interests until the contrary is shown. For the reasons already stated, at least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved.

This factor is of such great weight that Baroness Hale considered (at [69]) that "cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual".

87 In the later case of *Kernott*, the UK Supreme Court confirmed that the reasoning in *Stack* was confined to the domestic context. In their joint speech, Lady Hale and Lord Walker reaffirmed that where two parties purchase property in joint names in that context, the starting point is not the presumption offered by the resulting trust – that the parties have a beneficial interest in the property in proportion to their contributions to the purchase price – but is, instead, that each party has an

equal beneficial interest in the property (*Kernott* at [25]). Lady Hale and Lord Walker also made clear that it was possible for the common intentions of the parties to vary over time, producing what is called an "ambulatory constructive trust" (*Kernott* at [14]).

88 Our Court of Appeal considered the new direction taken in *Stack* and in *Kernott* in *Chan Yuen Lan*. The Court of Appeal chose not to adopt the approach of the majority in these two English cases. Rather, the Court of Appeal preferred the minority approach of Lord Neuberger in *Stack*.

8 9 *Chan Yuen Lan* makes three essential points. First, where the contributions to the purchase price are unequal, the court should start with the presumption of a purchase money resulting trust (*Chan Yuen Lan* at [109], [160(a)]). This mirrors the existing approach in *Lau Siew Kim* at [34] and [46].

90 Second, if there is evidence available to enable the court to find an express common intention or to infer a common intention as to the basis on which the beneficial interests are to be held and there is detrimental reliance, a common intention constructive trust arises, warranting a departure from the strict arithmetic of the resulting trust (*Chan Yuen Lan* at [97]).

91 Evidence of a common intention thus serves a dual purpose: it rebuts the presumption against a gift which operates in a resulting trust claim and (depending on the nature of the common intention) may give rise to a beneficial interest under a common intention constructive trust. The dual purpose is apparent from the reasoning in *Stack*. The majority and Lord Neuberger both concluded that the beneficial interest was held in the proportion of 65:35, but for different reasons. Lord Neuberger concluded on the resulting trust analysis that the parties held the beneficial interest 65:35 and was unable to find a common intention which displaced that conclusion. The majority in *Stack* applied the common intention constructive trust analysis and found on the facts that the (new) presumption of equal beneficial interest was rebutted in the exceptional circumstances of the case because the parties had kept their financial affairs rigidly separate. In the result, they too concluded that the beneficial interest was held in the proportion of 65:35.

92 Third, the imputation of an intention has no place in the common intention constructive trust (*Chan Yuen Lan* at [111], [156], [159]). As Lord Neuberger said at [126]: "[i]mputation involves concluding what the parties would have intended, whereas inference involves concluding what the parties did intend." The danger of imputation is that it permits the law to be applied in an unprincipled way in order to redistribute property rights in accordance with a subjective view of fairness. It is clear from *Chan Yuen Lan* that that approach is to be deprecated (at [159]).

No common intention constructive trust

93 The threshold question in the present case is whether there is any evidence that Sivapakiam and the plaintiff had a common intention that the plaintiff have a beneficial interest in the property. The plaintiff argues that there was a common intention because: (a) he told Sivapakiam that he was making payments to Govindasamy referable to the balance sum, (b) he told Sivapakiam that, notwithstanding the fact that the house was in her sole name, he had a beneficial interest in the property by virtue of the fact that he was making the payments, and (c) she acknowledged that to be true. In essence, the plaintiff relies on the same evidence (alluded to at [71]) which he put forward as proof of a purchase money resulting trust to prove a common intention for the purposes of a common intention constructive trust. I have rejected that evidence as not being credible. I find it unlikely that any conversation about beneficial interests ever occurred. I reject the evidence again, insofar as it is proffered to establish the common intention necessary for a common intention constructive trust.

94 The plaintiff also relies on Sivapakiam's conduct in informing his siblings that he should be given a greater share of the property as supporting an inference that the necessary common intention existed between Sivapakiam and the plaintiff. This argument misses a critical point. What Sivapakiam conveyed to the first defendant was her intention that the plaintiff should obtain a greater share in the proceeds of sale of the property *in the future*. The plaintiffs' case on the common intention constructive trust is that he acquired a beneficial interest in the property itself, *before Sivapakiam's death and before the property was sold*. I accept that Sivapakiam and the plaintiff had a common intention about a future interest in the proceeds of sale of the property. But a future interest is all that Sivapakiam intended the plaintiff to have and is all that the plaintiff expected to have (see [58]–[60] above). Sivapakiam failed to give effect to her intention during her lifetime (for example, by selling the house and distributing the proceeds of sale herself or by making provision for it in her will). In the circumstances, the Sivapakiam's intention as regards the proceeds of sale had been eclipsed by her intestacy.

95 I therefore find that the plaintiff has failed to establish the requisite common intention between him and Sivapakiam that he should have a present beneficial interest in the property. In the absence of such a common intention, the common intention constructive trust which he claims could not have arisen in his favour. Sivapakiam's legal interest in the property is thus unaffected by any equitable interest vested in the plaintiff arising from a common intention constructive trust.

Whether proprietary estoppel is applicable

The doctrine of proprietary estoppel

96 A proprietary estoppel is the consequence which equity attaches to yet another set of legally significant events. Our courts considered the doctrine of proprietary estoppel in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong Singapore Finance*") and more recently in *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 ("*Low Heng Leon Andy*"). A proprietary estoppel arises where:

(a) an owner of property permits (through encouragement or acquiescence) a claimant to believe that he has some right or interest in that property;

(b) the claimant relies on this belief; and

(c) the claimant suffers detriment as a result.

97 Equity gives effect to this set of legally significant events by recognising an inchoate equity in the claimant's favour. It has been said that these three elements are ultimately directed at the question of whether it would be unconscionable to permit the owner of the property to act in accordance with his strict legal rights: *Hong Leong Singapore Finance* at [191] and [192].

98 If a proprietary estoppel is made out, the court has the power to satisfy the equity by awarding the claimant the minimum right or interest necessary to do justice between the parties. As Quentin Loh J observed in *Low Heng Leon Andy*, the main difference between a proprietary estoppel and a constructive trust lies in the remedies which the court can award. A constructive trust, if it is found to have arisen, necessarily establishes a proprietary interest in equity. An inchoate equity arising from a proprietary estoppel may not result in a proprietary interest in equity and may be satisfied in other ways. Despite this difference, it is true that the common intention constructive trust and the doctrine of proprietary estoppel are conceptually similar: per Chadwick LJ in *Oxley v Hiscock* [2004] EWCA Civ

546 at [66] and Robert Walker LJ (as he then was) in *Yaxley v Gotts and another* [2000] Ch 162 at 180.

The plaintiff has established a proprietary estoppel

99 I find that the plaintiff has proven the three elements necessary to give rise to a proprietary estoppel against Sivapakiam's estate.

100 The first element is made out. I have already found that Sivapakiam intended that the plaintiff have a larger share of the sale proceeds of the property when it was sold and that she and the plaintiff spoke about this (see [56]–[60] above).

101 On the second and third elements, reliance and the corresponding detriment arise from the plaintiff's payments to Govindasamy which were referable to the balance sum paid by Govindasamy. I have found that the plaintiff was motivated by filial, fraternal and moral duty when he resolved and undertook to Sivapakiam that he would make payments to Govindasamy (see [79] above). That, however, describes the position at or soon after Sivapakiam purchased the property. I have found, further, that the plaintiff continued his payments to Govindasamy over a 10-year period (see [50] above). Whatever may have prompted him to resolve and undertake to make those payments at the time of purchase, he was under no legal obligation to do so over that entire 10-year period. He could have ceased those payments to Govindasamy at any time. Yet, he made those payments for 10 years. I accept that the plaintiff's payments over that entire 10-year period is evidence of his detrimental reliance on Sivapakiam's assurances to him that he was to have a larger interest than his siblings in the proceeds of sale of the property, once it was sold.

102 That detriment is, in itself, sufficient to support the proprietary estoppel. But it is also undisputed that the plaintiff, as the eldest son of the family, supported the family financially in other ways during Sivapakiam's lifetime. [note: 92] These other contributions include financial support to the family since the plaintiff started working in 1962. Both defendants accept that the plaintiff made such contributions. [note: 93] In fact, an important reason for the first defendant's support for the plaintiff's claim for a larger proportion of the sale proceeds of the property (albeit not to the extent of the one-third share which he claims) is the long years that the plaintiff supported the family: [note: 94]

> Q: And yet you are supporting the plaintiff's claim – although you are not supporting his one-third share, you are supporting the plaintiff's claim that he should be given a higher proportion, right? Why are you saying this?
>
> A: Because he worked for the family. He was with the family for 20 years. The---Olagays was there for 4 years, Nithia was there for about 5 or 6 years. He was there for 20 year[s]. You just compare the years, how long he was supporting the family.

103 I find that a proprietary estoppel binds Sivapakiam's estate and creates an equity in the plaintiff's favour.

104 The next question is how this equity ought to be satisfied. The plaintiff has vacillated significantly in his evidence of the actual size of the larger share in the proceeds of sale of the property which he says Sivapakiam intended to give him. His evidence on this point lacks any credibility. In his affidavit of evidence in chief and in the Statement of Claim, he alleges that Sivapakiam intended him to have a share of "at least 33%". [note: 95] That claim is imprecise: it sets a floor for Sivapakiam's alleged intention but not a ceiling. How much more than 33% does the plaintiff

say Sivapakiam intended? In cross-examination, the plaintiff's evidence was that she intended his share to be exactly one-third. He recounted a conversation in which she allegedly told him that two shares out of three in the property belonged to her and that the remaining one share was to belong to him. [note: 96] That differs from his affidavit evidence in two ways. First, he now says that Sivapakiam intended him to have a precise share rather than to set a floor for that share. Second, the precise share he puts forward is 33.33% (repeating), and not 33%. Further, in separate proceedings which he commenced earlier to claim a larger share of the proceeds of sale, [note: 97] the plaintiff claimed a share of exactly 30%. [note: 98] That figure is different both from a claim of one-third and from a claim of "at least 33%". There is no evidence, apart from the plaintiff's oral evidence, that Sivapakiam intended the plaintiff's larger share to be any of these amounts, *ie*, "at least 33%", one-third or 30%. Further, it is also clear from his evidence that Sivapakiam's intention was that this share should arise only upon the sale of the property and that it should then represent the plaintiff's *entire share* in the property, rather than being his share *over and above* his entitlement upon her intestacy.

105 The only independent evidence I have of a quantum attached to the plaintiff's larger share is Olagaysbery's evidence [note: 99] of a family meeting in 2007. The second defendant accepts and adopts Olagaysbery's account of the meeting. [note: 100] According to Olagaysbery, that meeting took place at the dining table in the hall of the property. The entire family was present, except for the second defendant who chose not to attend. In particular, Sivapakiam was present in the hall during the meeting, but watched television and so took no part in the discussions. The plaintiff informed his siblings, at a time before any issue of intestacy arose and in the presence of Sivapakiam, that the property ought to be divided into 7 shares with him and his brother, Davadass, receiving 1½ shares each. That amounts to 21.43% (rounded off) of the value of the property. The plaintiff confirmed in cross-examination that he mentioned the figure of 1½ shares at the 2007 meeting. [note: 101] His explanation for the variance between this figure and his present claim for a one-third share was that Sivapakiam had wanted to give him a one-third share "maybe say 10 years" [note: 102] after the purchase of the property but had changed her mind more recently, only "[s]ometime in 2002" [note: 103] that he should only have 1½ shares. The first defendant initially accepted, in her cross-examination, that the 2007 meeting took place and that the plaintiff had asked for 1½ shares out of 7. [note: 104] Later in her cross-examination, she asserted that she "did not hear" whether he asked for 1½ shares out of seven or for a one-third share. [note: 105] On balance, however, I am inclined to believe her first response.

106 This is the only evidence which the plaintiff puts forward as to how Sivapakiam quantified his larger share of the sale proceeds of the property which I can accept. It is supported by the evidence of Olagaysbery and, as I have found, by the first defendant. This enlarged share (1½ shares out of 7 shares) is also evidence of Sivapakiam's most recent intention as to the quantum of the share of the property that the plaintiff was to receive. I therefore find that the minimum right to satisfy the plaintiff's equity and to do justice between the plaintiff on the one hand and the estate of Sivapakiam on the other hand is to award the plaintiff 1½ out of 7 shares in the net proceeds of sale of the property, equivalent to 21.43% (rounded off) of the net proceeds.

Whether the plaintiff is barred by laches from seeking equitable relief

107 The second defendant also opposes the plaintiff's claim on the basis of laches. Given that the plaintiff has in any event failed in his resulting trust claim and constructive trust claim, the issue of laches is relevant only to the plaintiff's proprietary estoppel claim.

108 The two factors which the second defendant raises as giving rise to laches are:

(a) First, the plaintiff allowed an inordinately long time to pass before he commenced this action in 2012. He commenced the present action 46 years after Sivapakiam purchased the property in 1966 and 37 years after the plaintiff's final payment to Govindasamy in 1975.

(b) Second, that inordinately long delay has caused prejudice to those who oppose the plaintiff's case. The principal actors who could have corroborated or denied his claim, namely Sivapakiam and Govindasamy, have passed away.

The doctrine of laches

109 The doctrine of laches is a broad doctrine founded on the concept unconscionability. Menon JC (as the Chief Justice then was) considered this doctrine in *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 ("*Tan Kow Quee*") and held as follows (at [33]):

> 33 [The doctrine of laches reflects] a confluence of two factors: delay and the existence of circumstances that make it inequitable to enforce the claim. A claimant in equity is bound to pursue his claim without undue delay… The basis for the equitable intervention of the court is ultimately found in unconscionability. The following passage from the judgment in *Green v Gaul* at [42] is instructive:
>
> > The modern approach to the defences of laches, acquiescence and estoppel was considered by this Court in *Frawley v Neill* ([2002] CP Reports 20, but otherwise unreported, 1 March 1999)… After reviewing the earlier authorities… Aldous LJ (with whom the other members of the court agreed) said:
> >
> > > "In my view the more modern approach should not require an inquiry as to whether the circumstances can be fitted within the confines of a preconceived formula derived from earlier cases. *The inquiry should require a broad approach, directed to ascertaining whether it would in all the circumstances be unconscionable for a party to be permitted to assert his beneficial right.* No doubt the circumstances which gave rise to a particular result in the decided cases are relevant to the question whether or not it would be conscionable or unconscionable for the relief to be asserted, but each case has to be decided on its facts applying the broad approach."

Plaintiff's proprietary estoppel claim arose only upon the sale of the property

110 The second defendant's difficulty in relying on the doctrine of laches arises from the fact that, as I have found, Sivapakiam's representation to the plaintiff was not that he would have a present beneficial interest in the property but one that would arise in the future, upon the sale of the property and in the proceeds of sale. Thus, the benefit of the equitable claim on which the plaintiff has succeeded accrued to the plaintiff only recently. Although the necessary underlying events (such as the purchase of the property and the payments to Govindasamy) occurred many decades ago, the estoppel against the estate arose, at the earliest, after Sivapakiam passed away and, at the latest, when the property was sold. The plaintiff could therefore not have commenced these proceedings before Sivapakiam passed away in 2008.

111 I therefore find that the plaintiff acted reasonably promptly in bringing this action in 2012. His claim is not defeated by the doctrine of laches.

Conclusion

Conclusion

112 For the reasons set out above, I made the following orders:

(a) I declared that, by reason of my decision, which recognises a proprietary estoppel binding Sivapakiam's estate and its administrators in the plaintiff's favour, the plaintiff has a beneficial interest in the net proceeds of sale of the property known as 43 Swan Lake Avenue, Singapore 455725;

(b) I ordered the administrators to distribute to the plaintiff 21.4285714% (being 1½ shares out of seven) in the net sale proceeds of the said property in satisfaction of his beneficial interest under paragraph (a) above and of his interest under Sivapakiam's intestacy;

(c) I ordered that the plaintiff's costs of and incidental to this action be taxed on the standard basis and paid out of the net proceeds of sale of the property.

[note: 1] Statement of Claim, para 1; Defence (second defendant), para 2.

[note: 2] Statement of Claim, para 1.

[note: 3] Statement of Claim, para 2.

[note: 4] Statement of Claim, para 5; Defence (second defendant), para 4.

[note: 5] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 39.

[note: 6] Statement of Claim, para 5; Defence (second defendant), para 4.

[note: 7] Statement of Claim, paras 5 and 6.

[note: 8] Statement of Claim, paras 5 and 6; Defence (second defendant), para 4.

[note: 9] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 34; Statement of Claim, para 7; Defence (second defendant), para 6.

[note: 10] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 35; Statement of Claim, para 7; Defence (second defendant), para 6.

[note: 11] Statement of Claim, para 7.

[note: 12] Affidavit of Evidence in Chief of V Nithia, para 17.

[note: 13] Defence (second defendant), para 7.

[note: 14] Statement of Claim, para 9.

[note: 15] Statement of Claim, para 9.

[note: 16] Statement of Claim, para 9.

[note: 17] Statement of Claim, para 9.

[note: 18] Defence (second defendant), paras 8 and 10.

[note: 19] Statement of Claim, para 10; Defence (second defendant), para 11.

[note: 20] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 13.

[note: 21] Statement of Claim, para 10.

[note: 22] Statement of Claim, para 1; Defence (second defendant), para 1.

[note: 23] Statement of Claim, para 14.

[note: 24] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 15.

[note: 25] Statement of Claim, para 3; Defence (second defendant), para 2.

[note: 26] OS Probate No DCP 2466 of 2010/L.

[note: 27] Affidavit of Evidence in Chief of V Nithia, para 33.

[note: 28] OS No 169 of 2012/D.

[note: 29] Affidavit of Evidence in Chief of V Nithia, para 34.

[note: 30] Affidavit of Evidence in Chief of Krishnavanny d/o Vaithilingam, para 29.

[note: 31] Affidavit of Evidence in Chief of Krishnavanny d/o Vaithilingam, paras 28 and 31.

[note: 32] Statement of Claim, para 24.

[note: 33] Statement of Claim, para 27.

[note: 34] Closing Submissions (plaintiff), para 87.

[note: 35] Statement of Claim, paras 16 to 19.

[note: 36] Statement of Claim, para 11.

[note: 37] Statement of Claim, paras 18, 19.

[note: 38] Statement of Claim, para 15.

[note: 39] Closing Submissions (plaintiff), para 92.

[note: 40] Statement of Claim, para 16; Closing Submissions (plaintiff), para 101.

[note: 41] Statement of Claim, para 24.

[note: 42] Closing Submissions (plaintiff), para 125.

[note: 43] Closing Submissions (plaintiff), para 126.

[note: 44] Closing Submissions (plaintiff), paras 126 and 128.

[note: 45] Closing Submissions (first defendant), para 27.

[note: 46] Closing Submissions (first defendant), para 28.

[note: 47] Reply Submissions (second defendant), paras 2–3.

[note: 48] Affidavit of Evidence in Chief of V Nithia, para 8.

[note: 49] Closing Submissions (second defendant), paras 48-54.

[note: 50] Defence (seconddefendant), para 12.

[note: 51] Defence (second defendant), para 16.

[note: 52] Defence (second defendant), para 18.

[note: 53] Statement of Claim, para 13.

[note: 54] Statement of Claim, para 6.

[note: 55] Defence (second defendant), para 12.

[note: 56] Defence (second defendant), paras 13 and 17.

[note: 57] Affidavit of Evidence in Chief of V Nithia, para 21.

[note: 58] Closing Submissions (plaintiff), para 15(b).

[note: 59] Statement of Claim, para 11; Closing Submissions (plaintiff), para 15(b).

[note: 60] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 40.

[note: 61] Closing Submissions (second defendant), para 15(j).

[note: 62] Defence (second defendant), paras 13 and 17.

[note: 63] Defence (second defendant), para 62; Notes of Evidence (20 May 2013), p 101, lines 19-21.

[note: 64] Notes of Evidence (20 May 2013), p 100, lines 26-28.

[note: 65] Notes of Evidence (21 May 2013), p 171, lines 12-17; p 172, lines 19-20; p 173, lines 9-13; Closing Submissions (plaintiff), para 13.

[note: 66] Notes of Evidence (20 May 2013), p 100, lines 9-11.

[note: 67] Affidavit of Evidence in Chief of Olagaysbery, para 4; Notes of Evidence (20 May 2013), p 101, lines 5-10.

[note: 68] Closing Submissions (second defendant), para 13.

[note: 69] Notes of Evidence (20 May 2013), p 102, lines 16–21; Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, paras 46–47.

[note: 70] Notes of Evidence (20 May 2013), p 48, line 11.

[note: 71] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, paras 13–14; Notes of Evidence (20 May 2013), p 37, lines 6–9; Affidavit of Evidence in Chief of Olagaysbery, para 7.

[note: 72] Statement of Claim, para 13.

[note: 73] Notes of Evidence (20 May 2013), p 38, lines 1–8.

[note: 74] Closing Submissions (plaintiff), para 13

[note: 75] Affidavit of Evidence in Chief of Olagaysbery d/o Vaithilingam, para 7; Affidavit of Evidence in Chief of V Nithia, para 20.

[note: 76] Notes of Evidence (22 May 2013), p 105, line 15.

[note: 77] Affidavit of Evidence in Chief of Krishnavanny d/o Vaithilingam, paras 20–21; Affidavit of Evidence in Chief of Nadarajan s/o Punnosamy, paras 12–14.

[note: 78] Closing Submissions (second defendant), paras 13 and 74.

[note: 79] Statement of Claim, para 24.

[note: 80] Defence (second defendant), para 18.

[note: 81] Defence (second defendant), para 18.

[note: 82] Notes of Evidence (20 May 2013), p 73, lines 10-13.

[note: 83] Closing Submissions (plaintiff), paras 63-64.

[note: 84] Notes of Evidence (20 May 2013), p 73, lines 10-13.

[note: 85] Notes of Evidence (20 May 2013), p 73, lines 14-15.

[note: 86] Notes of Evidence (20 May 2013), p 82, lines 6-14.

[note: 87] Notes of Evidence (20 May 2013), p 105, lines 16-23.

[note: 88] Notes of Evidence (21 May 2013) p 137, line 29 – p 138, line 8; Affidavit of Evidence in Chief of Krishnavanny d/o Vaithilingam, para 21.

[note: 89] Defence (second defendant), para 25.

[note: 90] Affidavit of Evidence in Chief of V Nithia, para 23.

[note: 91] Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 18.

[note: 92] Affidavit of Evidence in Chief of V Nithia, para 25.

[note: 93] Notes of Evidence (22 May 2013), p 13, lines 8–32; p 14, lines 14–16; p 34, lines 12–22.

[note: 94] Notes of Evidence (21 May 2013), p 144, lines 1–7.

[note: 95] Statement of Claim, para 24; Affidavit of Evidence in Chief of Buthmanaban s/o Vaithilingam, para 27.

[note: 96] Notes of Evidence (20 May 2013), p 134, lines 11–12.

[note: 97] Affidavit of Evidence in Chief of V Nithia, para 34.

[note: 98] OS No 542 of 2012.

[note: 99] Affidavit of Evidence in Chief of Olagaysbery, para 11.

[note: 100] Affidavit of Evidence in Chief of V Nithia, para 27.

[note: 101] Notes of Evidence (22 May 2013), p 139, lines 1–5.

[note: 102] Notes of Evidence (22 May 2013), p 144, line 30.

[note: 103] Notes of Evidence (22 May 2013), p 145, line 16.

[note: 104] Note of Evidence (21 May 2013), p 139.

[note: 105] Note of Evidence (21 May 2013), p 140, line 29.