

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 286

Originating Application No 237 of 2022

In the matter of Section 18(2) of the
Supreme Court of Judicature Act 1969

And

In the matter of the Housing and
Development Board Flat situated at
Apt Blk 91 Bedok North Street
[unit number redacted] Singapore 460091

Between

Sun Yanyuan

... Applicant

And

Ng Yit Beng

... Respondent

EX TEMPORE JUDGMENT

[Land — Sale of land — Sale under court order]

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Sun Yanyuan

v

Ng Yit Beng

[2022] SGHC 286

General Division of the High Court — Originating Application No 237 of 2022

Goh Yihan JC

13 October 2022

14 November 2022

Goh Yihan JC:

- 1 This is the applicant's application for the following orders:
 - (a) That the property known as Apt Blk 91 Bedok North Street [unit number redacted] Singapore 460091 ("the Flat") shall be sold in the open market within six (6) months from the date of the Order herein and the sale proceeds to be divided in a just and equitable manner;
 - (b) That the applicant shall have sole conduct of the sale of the Flat;
 - (c) That the Registrar or Assistant Registrar of the Supreme Court shall be empowered to execute, sign or indorse all necessary documents relating to matters contained in the order, on behalf of either party should either party fail to do so within seven (7) days of written request;

- (d) That the costs and incidentals of this application be fixed by this Honourable Court and be paid by the respondent from his share of the net sales proceeds of the Flat.

The applicant has not asked for her name to be included as an owner of the Flat as she is neither a Singapore Citizen nor a Permanent Resident. In any case, she is also unable to continue staying with the respondent due to their acrimonious history.

2 At the end of the hearing before me on 13 October 2022, having provided some general directions as to the parties' respective positions, I asked the parties to consider negotiating towards an agreed set of orders. Unfortunately, the parties have been unable to come to an agreement. By way of letters dated 8 November 2022, the parties' respective solicitors wrote in to ask for my decision in relation to the areas where they could not reach an agreement.

3 I provide my brief reasons for my decision in this *ex tempore* judgment as the applicant's submissions raise an issue of law that is worth clarifying, which is whether a court can order one co-owner to compulsorily purchase a property from the other owner. Two High Court decisions have taken contrary positions on this issue. Given that this must be a relatively common arrangement prayed for by applicants, I respectfully add my views on the issue. However, I would have preferred not to have done this had the parties in the present case been able to come to an agreement.

Background facts

4 By way of background, the applicant is the lawful widow of the deceased, Mr Ng Yit Yew, who passed away on 15 September 2020. The

deceased appointed the applicant as his executrix and sole beneficiary pursuant to his Last Will and Testament dated 5 August 2020. The applicant applied for the Grant of Probate and was issued such on 15 February 2022.

5 The deceased's estate consisted of his 30% share in the Flat. The remaining 70% share in the Flat is owned by the deceased's brother, Mr Ng Yit Beng, who is the respondent.

6 After the deceased's death, the applicant had several difficulties communicating with the respondent. The respondent had exhibited family violence against the applicant. Indeed, the applicant had sought a personal protection order against the respondent but discontinued this application at the urging of the mediator at a Family Court mediation on 6 November 2020. The respondent also locked the applicant out of the Flat on 20 November 2021 and only let her in after the applicant called the police.

The parties' respective positions

7 In essence, the respondent allegedly made several promises to the applicant to sell the Flat but never followed up. The applicant has therefore made the present application to effect the sale of the Flat.

8 The respondent has instead submitted that the applicant's proposed order would prejudice his interest as the owner of 70% share in the Flat. It would also deny him the right of first refusal to buy over the applicant's 30% share of the Flat. Instead, he proposes the following orders at the hearing before me:

- (a) Within six (6) months from the date of the Order, the respondent shall have the right of first refusal to purchase the applicant's 30% share of the Flat at market value or higher;

(b) If the respondent is unable to purchase the applicant’s 30% share of the Flat at market value or higher within six (6) months from the date of the Order, parties shall then be at liberty to market the Flat for sale on the open market. Parties shall have joint conduct over the sale of the Flat on the open market, and such sale shall be completed within nine (9) months from the date of the Order.

9 In sum, the respondent does not object to the sale of the Flat. However, he wishes to have the right of first refusal to “buy over” the applicant’s share of the Flat. This, as the applicant argues, raises the issue of whether I have the power to order that a co-owner compulsorily purchase the other co-owner’s share.

My decision and orders

Whether it is “necessary or expedient” for a sale to be ordered

10 I turn now to the applicable law. To begin with, the present application is based on s 18(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (“SCJA”) read with the First Schedule of the SCJA (“First Schedule”). Section 18(2) of the SCJA provides that the General Division of the High Court shall have the powers set out in the First Schedule. Relevantly, paragraph 2 of the First Schedule provides as follows (“Paragraph 2”):

Partition and sale in lieu of partition

2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

11 In deciding whether it is “necessary or expedient” for a sale to be ordered, the Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel*

Anne and another [2016] 3 SLR 1222 held that this had to be done through a balancing exercise of various factors as follows (at [57]):

- (a) In deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a “clean-break” would be preferable.
- (b) Regard should be had to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.
- (c) A sale would not generally be ordered if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

12 Applying these factors to the present case, I am of the view that the relationship between the parties has clearly broken down. As such, I conclude that it is indeed “necessary or expedient” that the Flat should be sold so as to resolve the conflict between the parties. Indeed, as I alluded to above, the respondent does not challenge the sale of the Flat. The only issue is how the Flat is to be sold.

Whether I can order the respondent to buy over the applicant’s share

13 In this respect, the applicant has submitted on the basis of the High Court decision of *Tan Chor Heng v Ng Cheng Hock* [2019] SGHC 257 (“*Tan Chor Heng*”) (at [54]) that the court is *not* empowered by Paragraph 2 to order one co-owner to compulsorily purchase a property from the other owner, which is effectively what the respondent is seeking to do by way of the right of first refusal to “buy over” the applicant’s share of the Flat. In *Tan Chor Heng*, the court had held as follows (at [53]):

It was noteworthy that even though I had granted an adjournment for Mdm Tan’s counsel to do further research, she was not able to furnish any authorities in support of such an order [that she be given the right to buy over Mr Ng’s share in the Flat]. The wording of para 2 of the First Schedule of the SCJA is clear. It empowers the court to “order the land or any part of it to be sold”. It does not empower the court to allow one co-owner to compulsorily purchase the other co-owner’s share.

As such, the court had concluded that it did not have the power to allow one co-owner to compulsorily purchase the other co-owner’s share in a property based on (a) the lack of precedents, and (b) the wording of Paragraph 2 not being wide enough to confer such a power.

14 I respectfully disagree with the approach taken in *Tan Chor Heng* based on precedent, principle, and policy.

15 First, as to precedent, contrary to what was found by counsel in *Tan Chor Heng* (at [53]), there is in fact local case law that supports an order for the right of first refusal when ordering a sale in lieu of partition as between co-owners. In the High Court decision of *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302, which was decided before *Tan Chor Heng*, after Aedit Abdullah JC (as he then was) found that the plaintiff held a 10% legal and beneficial interest in the property, he ordered a sale in lieu of partition of that 10% interest, with a right of first refusal being given to the defendants (at [107]). The reason why the right of first refusal was given to the defendants was that “they are in occupation of the greater portion of the property” (at [97]). It is apposite to refer to this case as it also concerned the court’s exercise of powers under s 18(2) of the SCJA read with Paragraph 2 (at [10]). In any event, I do not view the lack of a precedent (even if true) as a determinative factor, since a court’s statutory power is ultimately derived from the power-conferring legislation, as opposed to prior case law.

16 Second, as to principle, I am of the view that the words “and to give all necessary and consequential directions” in Paragraph 2 are wide enough to allow me to order the respondent to be given the first right to buy over the Flat. Indeed, when Paragraph 2 is read with paragraph 3 of the First Schedule (“Paragraph 3”), it must be the case that the court is empowered to order the sale to a particular party. This is because Paragraph 3 provides as follows: “power to order land to be charged or mortgaged (as the case may be) in any case in which there is jurisdiction to order a sale”. It must be that Paragraph 3 allows the court the power to order land to be charged or mortgaged *to a particular party* because, unlike the sale of land, there is no sense in construing Paragraph 3 to mean a charge or mortgage “in the open market”. However, if it is accepted that Paragraph 3 gives the court the power to direct *to whom* the land is to be charged or mortgaged to despite the lack of specific wording in this regard, then it must follow that the court is similarly empowered under Paragraph 2 to direct *to whom* the sale of land ought to be to.

17 Third, as to policy, an order for the sale to be made to a particular party does not prejudice the applicant if the court has considered all the circumstances of the case. In fact, it might be appropriate in certain cases.

18 For all these reasons, I respectfully decline to adopt the approach taken in *Tan Chor Heng*. Instead, I conclude that I have the power under Paragraph 2 to order the sale of the Flat to the respondent, at least on the basis of a right of first refusal.

The appropriate orders

19 As such, I come to the appropriate orders in the present case. Before I come to the specific orders, I first explain some general points.

20 First, I agree with the respondent that the immediate (or relatively immediate) sale of the Flat would cause him and his family hardship. It would also not be fair since he is the majority owner and should have the right to purchase the Flat in the first instance. Second, while the applicant has said she has difficulty staying with the respondent, I must consider the respective ownership percentages of the parties. In my view, it is a relevant factor that the applicant is not a majority owner of the Flat and, on balance, cannot be seen as “dictating” terms to the respondent. Finally, although the applicant has asked for sole conduct of the sale, I similarly consider that the applicant is the minority owner of the Flat. In this regard, the respondent’s interest in how the sale is conducted will be greater as he is the 70% owner. Given that the parties are aligned that the Flat should be sold, I see no reason not to order that the sale be conducted jointly. Ultimately, the manner of the sale should be such to minimise conflict between the parties and provide a definite resolution to the situation.

21 Taking the parties’ respective positions into account, I make the following Order:

- (a) Within six (6) months from the date of this Order (the “Moratorium Period”), neither the applicant nor respondent shall market the Flat for sale on the open market.
- (b) During the Moratorium Period, the respondent shall have the right to purchase the applicant’s 30% share in the Flat at a price of 30% of the market valuation of the Flat or higher.
- (c) Parties shall obtain a market valuation of the Flat (“Market Valuation”), from the Housing & Development Board (“HDB”) or a property valuer which is on the panel of approval valuers for the HDB, three (3) months from the date of this Order.

(i) Parties shall endeavour to agree upon the said valuer (be it the HDB or otherwise), and the applicant and respondent shall share the cost of the valuation report in proportion to each of their respective shares of the Flat (*ie*, 30% and 70%).

(ii) If parties are unable to agree on the valuer to be appointed, each party shall procure his/her own valuation report at his/her own cost (either from the HDB or a property valuer which is on the panel of approved valuers for the HDB), and the Market Valuation shall be the average of the two valuations obtained.

(d) Upon the expiry of the Moratorium Period, if the applicant's 30% share of the Flat has not been sold to the respondent, parties shall be at liberty to market the Flat for sale in the open market in the manner below:

(i) Parties shall have joint conduct over the sale of the Flat.

(ii) Once either party receives an offer to purchase the Flat at Market Valuation or higher, the said party shall accept such offer and sell the Flat to the offeror.

(iii) For the avoidance of doubt, an offer by the respondent to purchase the applicant's 30% share in the Flat at 30% of the Market Valuation shall be considered an offer under paragraph (d)(ii) above, and the applicant shall accept such an offer to sell her 30% share of the Flat to the respondent.

(iv) If the applicant receives an offer from a third-party to purchase the Flat at Market Valuation or higher, the applicant

shall inform the respondent of such third-party offer within forty-eight (48) hours of receiving the third-party's offer.

(v) The respondent shall have the right of first refusal to purchase the applicant's 30% share of the Flat at 30% of the price of such third-party offer or higher.

(vi) Such right of first refusal shall be exercised by the respondent giving the applicant an offer to purchase the applicant's 30% share of the Flat at 30% of the price of the third-party offer, within four (4) working days of being informed of such third-party offer, failing which the applicant shall be at liberty to accept the third-party offer.

(vii) If the Flat is sold to a third-party:

(A) The sales proceeds shall be used to pay for the conveyancing, stamp, registration and administrative fees of the sale of the Flat (including the property agent's fees), and/or such expenses as may be necessary to complete the sale; and

(B) The net sales proceeds shall be divided in the following proportions – 30% to the applicant and 70% to the respondent.

(e) The Registrar or Assistant Registrar of the Supreme Court shall be empowered to execute, sign or indorse all necessary documents relating to matters contained in the Order, on behalf of either party should either party fail to do so within three (3) working days of written request.

- (f) There shall be liberty to apply.

Conclusion

22 I therefore make the Order as indicated above. As for the costs of this application, I order that each party is to bear its own costs. I have decided thus because the Order incorporates aspects of each party’s respective positions.

23 Finally, I thank the parties, as well as their solicitors, Ms Jamie Neo for the applicant, and Mr Kenii Takashima for the respondent, for attempting to resolve this in an amicable manner. Indeed, despite not being able to reach an agreement, both Ms Neo and Mr Takashima provided clear and reasonable indications as to their clients’ respective positions. This greatly assisted me, and I am thankful to them.

Goh Yihan
Judicial Commissioner

Neo Jie Min Jamie (Hoh Law Corporation) for the applicant;
Koh Kok Kwang and Kenii Takashima (CTLG Law Corporation) for
the respondent.
