

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1968] SGHC 15

Suit 824/1965

Between

Chua Cheow Tien

... Plaintiff

And

Chua Geok Eng
Another

... Defendant

GROUND OF DECISION

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Chua Cheow Tien v Chua Geok Eng and Another

[1968] SGHC 15

Suit 824/1965

Chua F A J

31 May 1968

1 The plaintiff in this case is the father of the first defendant and the husband of the second defendant and he claims as beneficiary of the properties known as Lots 186-9, 186-22 and 186-25 of Mukim I, Singapore (hereinafter referred to as `the Tiong Bahru property`) against the defendants as co-trustees of the Tiong Bahru property and personally for:

(1) A declaration that the Tiong Bahru property now standing in the names of the defendants as tenants in common in equal shares is held by them on trust for the plaintiff absolutely.

(2) An order that the first defendant do join with the second defendant in conveying the Tiong Bahru property to the plaintiff or as he shall direct.

2 The defendants in their defence admit that the consideration for the conveyance of the Tiong Bahru property to them was paid by the plaintiff but say that the purpose of the plaintiff in placing the said property in their names jointly was in order to make a gift of the said property to them and they counterclaim:

- (1) A declaration that they are beneficially entitled to one-half share each in the said property.
- (2) A declaration that the plaintiff has no interest in the same property.
- (3) An account of the rents and profits of the said property.

3 The first defendant further counterclaims for an account of the rents and profits of No 2 Rochalie Drive, Singapore, which was the subject matter in ***Chua Kah Wee & Ors v Chua Geok Eng*** [1965-1968] SLR 860 in which the plaintiff was not a party but in whose interest the suit was brought against the first defendant. I will hereafter refer to it as the Rochalie Drive property.

4 The plaintiff's evidence was shortly this. He is now 70 years old. In 1951 he was the managing director and principal shareholder of Tian Hup Co Ltd (hereinafter referred to as 'the company'). The company owned the Tiong Bahru property. At the beginning of 1951 he was ill (he was then 54 years old) and he thought of making provisions for his twenty-four children in case he should die. He had not yet made a will. He discussed the matter with the first defendant and the first defendant suggested that he transfer to her the Tiong Bahru property, which was a large property, so that each child's share would be substantial. He reflected over the matter and thought it wise to put the said property into the names of the first defendant and the second defendant. He then instructed his solicitor, PY Tan, to prepare the conveyance accordingly but he did not inform his solicitor about the trust. He gave to his solicitor his personal cheque for \$70,000 and this sum was eventually paid over to the company. In addition he paid the stamp fees and the solicitor's fees. The conveyance (exh P1) was executed by him as director and by his son Chua Hong Tian as manager on behalf of the company. His solicitor then asked the two defendants to sign an acknowledgment that they had received the title deeds and they handed the title deeds to him. As regards the trust his evidence was as follows:

The two defendants came to my Wilkinson Road house and I told them that the property was conveyed to them in trust for me and in the event of my death the property was to be shared among the 24 children. I reserved the liberty to sell or mortgage or recover the property. They agreed to hold the property in trust for me in the presence of one or two of my children; these children heard what was going on.

5 After the Tiong Bahru property had been conveyed to the defendants the rent from the said property was collected by Tan Choo Keng, the husband of the first defendant, who also collected the rents from his other properties. Tan Choo Keng then paid over the rents collected to him after deducting 21/2% commission. He paid the property tax on the Tiong Bahru property. He instructed his daughter Chua Kah Wee to make out a cheque for \$400 every year and give it to the first defendant for the first defendant to pay the income tax due on the Tiong Bahru property as well as the Rochalie Drive property. He also paid for the second defendant's income tax due on the Tiong Bahru property, which was included in his tax returns. In 1959 the company entered into a contract with the Commander-in-Chief, Far East Land Forces, Singapore, and the United Chinese Bank, Ltd guaranteed the due fulfilment and performance by the company of all the terms and conditions of the contract between the company and the Commander-in-Chief and the payment for all losses and damages. He discussed the matter with the defendants and they agreed to mortgage the Tiong Bahru property to the bank. On 21 October 1959 the defendants at his request mortgaged the Tiong Bahru property to the United Chinese Bank Ltd for \$100,000 (exh P2) to keep the bank indemnified against all actions, proceedings, liabilities, claims, damages, costs and expenses in relation to or arising out of the guarantee which the bank had signed. In 1960 the mortgage was discharged and the Tiong Bahru property was reconveyed to the defendants by the bank on 10 September 1960. In 1960 the company entered into a similar contract with the Commander-in-Chief, Far East Land Forces,

Singapore, and the United Chinese Bank Ltd gave a similar guarantee. On 30 September 1960 the defendants at his request again mortgaged the Tiong Bahru property to the United Chinese Bank Ltd for a similar purpose but this time for the sum of \$11,000 (exh P3). He did not put pressure on the defendants on either occasion. In 1962 he asked the defendants to return the Tiong Bahru property to him and the defendants agreed. On 5 December 1962 he took the two defendant`s to the office of PY Tan and PY Tan`s clerk, Tan Tiat Hee, Prepared a letter addressed to Messrs PY Tan & Co which was signed voluntarily by the defendants after it was read and explained to them and witnessed by Tan Tiat Hee. The letter (exh P15) reads as follows:

Dear Sirs,

Re: Freehold Lands at Yong Siak Street.

Mukim I Lot No 186-9 = 1,027 sq ft

Mukim I Lot No 186-22 = 2,789 sq ft

Mukim I Lot No 186-25 = 80,885 sq ft

We, the undersigned, Mesdames Tan Ah Chua and Chua Geok Eng hereby inform you that the above properties are purchased by us but in fact the whole of the purchase money was provided by Mr Chua Cheow Tian.

6 Now we authorised the said Mr Chua Cheow Tian to sell the said properties and if the sale is put through we requested the said Chua Cheow Tian to pay off the mortgage money owing by us to the bank and the balance are to be paid to the said Chua Cheow Tian.

7 A conveyance could not be prepared at that time as the title deeds were still with the bank. Later when the title deeds were returned by the bank he instructed his solicitors Messrs Drew & Napier to prepare a conveyance to convey the Tiong Bahru property to him. The second defendant signed the conveyance (exh P15) but the first defendant refused to sign. In April 1965 he

and the second defendant went to the office of Messrs Drew & Napier and gave instructions to the solicitors to sue the first defendant for the return of the Tiong Bahru property to him. In May 1965 the present proceedings were commenced against the first defendant by him and the second defendant. In September 1966 his three sons by the second defendant absconded with some money of his. The matter was reported to the police and he disowned his three sons. Trouble then arose between him and the second defendant. (By an order of court dated 3 April 1967 the name of Tan Ah Chua was struck out of the writ of summons as plaintiff and added as the second defendant.)

8 In cross-examination the witness was shown exh D4, a letter dated 10 December 1962 addressed to Messrs PY Tan & Co concerning the Tiong Bahru property. He admitted that the signature on the letter was his but said that the letter was not written by him. He said that the letter was written by someone on one of the blank pieces of paper which he signed and gave to his son-in-law, Tan Choo Keng, as to which he had given evidence in suit 823 of 1965. Exhibit D4 reads as follows:

In reference to the letter to you from Mesdames Tan Ah Chua and Chua Geok Eng dated 5 December 1962 I hereby confirm that the money provided for the purchase of the above properties were made by me.

9 In the circumstances, I hold myself personally responsible for the full repayment to the mortgagee of all sums due to them under the mortgage or for the redemption thereof.

10 Chua Kah Bin and Chua Kah Wee, daughters of the plaintiff, gave evidence that they went with the plaintiff, Ong Kah Leong and the second defendant sometime in April 1965 to the office of Mr O'Connor of Messrs Drew & Napier and there the second defendant said in their presence that the first

defendant should be sued for the recovery of the Tiong Bahru property and that the plaintiff and the second defendant then gave such instructions to the solicitors.

11 Chua Kah Wee also gave evidence to the effect that at the request of the plaintiff she made out in all five cheques for \$400 each in favour of the first defendant in November 1959, May 1960, April 1961, March 1962 and March 1963. (Exhibits P7 to P11.) These cheques were handed to the first defendant for her to pay the income tax in respect of the Tiong Bahru and Rochalie Drive properties.

12 Kwa Choo Ping, general manager, of the United Chinese Bank Ltd Singapore, gave evidence to this effect. The plaintiff was a customer of the bank. On 22 May 1957 the title deeds of the Tiong Bahru property were deposited with the bank to secure the account of Tian Hup & Co Ltd. He did not know Tan Ah Chuan or Chua Geok Eng but it was the plaintiff who brought the title deeds to the bank. In October 1959, the title deeds of the Tiong Bahru property were sent by the bank to Messrs PY Tan & Co for a mortgage to be prepared.

13 Mr PY Tan also gave evidence. He said that the conveyance, exh P1, was prepared by him and he was a witness. Two receipts were issued both in the names of Tan Ah Chuan and Chua Geok Eng; one was for \$70,420, of which \$70,000 was the purchase money and \$420 stamp fees, for the conveyance. The other receipt was for \$380 being the costs for the conveyance. He could not remember if both the ladies actually paid these two sums but it was the practice of his office to issue receipts for costs and consideration money in favour of the transferees on a conveyance. Later the consideration money was paid to the vendor Tian Hup & Co Ltd. He had a chief clerk called Tan Tiat Hee who is now dead. Tan Tiat Hee was in charge of this conveyance and he dealt directly

with the plaintiff. In 1959 he prepared the mortgage exh P2 and he witnessed the signature of the plaintiff. He, told the other mortgagors as they were owners of the property to get a separate lawyer who advise them and they went to KC Khoo who witnessed the signatures of the other mortgagors. The mortgage exh P3 was also prepared by him and he again witnessed the signature of the plaintiff while the signatures of the other mortgagors were witnessed by KC Khoo. As regards the letter exh P5 he recognised the signature of his clerk Tan Tiat Hee who signed as a witness. He did not know it was prepared by his clerk and signed by the two defendants. Not long after it was done it was brought to his notice. The plaintiff wanted him to keep the letter but he refused as it was not prepared by him.

14 HF Sheppard, advocate and solicitor in Messrs Drew & Napier gave evidence to this effect. The plaintiff came to consult him about the recovery of the Tiong Bahru property from the two defendants. He prepared a conveyance (exh P15) in which it was declared that the two defendants were the trustees for the plaintiff of the Tiong Bahru property and that the two defendants, at the request of the plaintiff, conveyed the Tiong Bahru property to the plaintiff. On or a few days before 14 December 1964 the second defendant came to his office with two witnesses. He explained the gist of the contents of exh P15 to the second defendant in the presence of the witnesses. His secretary, Tan Boon San, acted as interpreter. The second defendant affixed her thumbprint willingly and then the two witnesses signed. He could not now remember the precise date when the second defendant affixed her thumbprint, he made no note of it. On 14 December 1964 he wrote a letter to the first defendant enclosing a copy of exh P15, and informing her that the second defendant had already signed the conveyance and requesting her to attend at his office to execute the conveyance. The first defendant never signed the conveyance.

15 Tan Boon San gave evidence to this effect. Sheppard summarised the contents of exh P15 and translated it to the second defendant in Hokkien. The second defendant affixed her thumbprint to exh P15; the second defendant did not say anything. The two witnesses then signed.

16 Ong Kah Leong, a son-in-law of the plaintiff, gave evidence to this effect. He was one of the witnesses present when the second defendant affixed her thumbprint to exh P15. The other witness was the second defendant's son Chua Hong Tien. The contents of exh P15 were explained to the second defendant by Tan Boon San. The second defendant was asked by Tan Boon San if she agreed and she answered in the affirmative. The second defendant then affixed her thumbprint to exh P15 and then Chua Hong Tien signed followed by him. A month later in April 1961 he went to the office of O'Connor with the plaintiff, the second defendant, Chua Kah Wee and Chua Kah Bin. He acted as interpreter. The second defendant asked the plaintiff to instruct O'Connor to take legal proceedings against the first defendant for the recovery of the Tiong Bahru property.

17 So much for the evidence adduced by the plaintiff.

18 The first defendant's evidence was shortly this. In 1951 the plaintiff visited her and told her that he would give to her half share in the Tiong Bahru property. Later he gave her the half share and handed her the title deeds which she kept in a safe deposit box in a bank. Between 1951 and 1957 the plaintiff received the rents from the property and paid the property tax. In 1957 the plaintiff told her he was in need of money and asked her to be his guarantor for a loan. She agreed to help. She handed the title deeds to the plaintiff and they were deposited as security for a loan taken from the United Chinese Bank Ltd by the plaintiff. She never got back the title deeds. In 1959 the plaintiff again

asked her to be his guarantor. She executed a legal mortgage in favour of the bank. The property has now been reconveyed to her. In 1962 the plaintiff told her that he was in need of money and requested her to allow him to sell the Tiong Bahru property to repay the bank. The plaintiff took her to PY Tan's office where he asked PY Tan's clerk Tan Tiat Hee to type a document. The clerk read the contents of the document to her which was to the effect that the Tiong Bahru property was bought with the plaintiff's money as a gift to her and that it was to be sold to raise money to repay the bank. She later told her husband what had taken place. Her husband was very angry and told her that she should not have agreed to give away all the money. The following day she told the plaintiff what her husband had said and he wrote the letter exh D4 to PY Tan. She denied that she received the five cheques (exhs P7 to P11) from her sister Chua Kah Wee to pay the income tax on the Tiong Bahru property. It was her husband who all along paid the income tax on the Tiong Bahru property. She admitted that she willingly signed the two mortgages.

19 The second defendant's evidence was shortly this. She is the second wife of the plaintiff. On 7 December 1951 Tian Hup & Co conveyed the Tiong Bahru property to her and the first defendant. The plaintiff told her that he had bought the property and that he had put it in her name and that of the first defendant, half share each, as a gift. The plaintiff also said that he would collect the rents and pay the income tax and that he would give her \$150 per month. The title deeds were given to the first defendant. In 1959 at the request of the plaintiff and to assist him she willingly mortgaged the Tiong Bahru property. He told her that when he had the money he would redeem the property and give it back to her. She admitted that she signed the letter exh P5 at the lawyer's office. She was brought there by the plaintiff and she was asked to affix her thumb-print to it. No one explained the contents of the letter to her and she did not know what

it was. She thought it was a guarantee. If she knew the contents of exh P15 she would not have signed it. As regards the conveyance exh P15 she said that sometime in December 1964 Ong Rah Leong took her to a lawyer's office. There the plaintiff asked her to affix her thumbprint to exh P15. No one explained the contents of exh P15 to her. The plaintiff told her that he was not on good terms with the first defendant's husband and that by affixing her thumbprint to the document he would be able to take action against the first defendant. She told the plaintiff that the Tiong Bahru property was the only property he had given her and she would have nothing to fall back on if she were to part with it and the plaintiff assured her that he would give her \$150,000 for her half share in the Tiong Bahru property when he succeeded in his action against the first defendant. He said that he would give her the money as soon as he sold the property. When she affixed her thumbprint only Ong Kah Leong, the plaintiff and the lawyer were present. No one else signed the document. She did not remember going back to the same lawyer's office. She never Saw O'Connor before.

20 Chua Hong Tien, the son of the second defendant, gave evidence to this effect. Plaintiff is his father. In 1951 he was a director of Tian Hup & Co Ltd and the plaintiff was the managing director. At that time the Tiong Bahru property was owned by the company. The plaintiff bought the Tiong Bahru property from the company for \$70,000 but it was conveyed to the first and second defendants. The plaintiff gave Messrs PY Tan & Co a cheque for \$70,000 and Messrs PY Tan & Co made out a cheque for the same amount in favour of the company. He and the plaintiff went to see the manager of the bank and there the plaintiff endorsed the cheque on behalf of Tian Hup & Co Ltd and the cheque was paid into the account of the plaintiffs other firm Chop Sim Rim Guan of which the plaintiff was and is still the sole proprietor. Sometimes in

1964 Ong Kah Leong took him to Messrs Drew & Napier. On arrival there they saw an Indian clerk who took them to see Sheppard who asked if he was the second defendant's son. Ong Kah Leong answered in the affirmative and thereupon Sheppard produced the document exh P15 and handed it to the Indian clerk. Sheppard spoke to the Indian clerk in English. The Indian clerk asked him in Malay if the thumb-print on exh P15 was the thumb print of his mother and told him to testify in court, if it was necessary, that he had witnessed his mother putting thumb-print on exh P15. He then signed exh P15. After he had signed he left the office with Ong Kah Leong. At the time he left Ong Kah Leong had not signed exh P15.

21 So much for the evidence adduced by the defendants.

22 To put it shortly the undisputed facts are these:

- (1) The consideration for the conveyance was paid by the plaintiff, who also paid the stamp fees and the solicitor's fees.
- (2) The rents of the property were paid over to the plaintiff.
- (3) The plaintiff paid the property tax.
- (4) The property was voluntarily mortgaged twice by the defendants at the request of the plaintiff and for the benefit of the plaintiff.

I have to find the answers to the following questions:

- (1) Who held the title deeds, the plaintiff or the first defendant?;
- (2) Who paid the income tax on the property?;
- (3) Did the defendants know the contents of exh P57;
- (4) Is exh D4 an authentic document;
- (5) Were the contents of exh P5 explained to the second defendant?

23 I should first of all state what I think of the credibility of the plaintiff and the defendants as witnesses. The impression I gained from seeing and hearing the plaintiff giving evidence in the witness box was that he was telling the truth. On the other hand the first and second defendants struck me as witnesses who were not telling the truth.

24 As regards the question who held the title deeds it appears to me to be more probable that they were held by the plaintiff. It is clear from the evidence of the bank manager, Kwa Choo Ping, that the title deeds of the Tiong Bahru property were with the bank between 1955 and 1960, whereas the first defendant said that she handed the title deeds to her father in 1957.

25 As regards the payment of income tax, the second defendant admitted that her income tax was paid by the plaintiff. The plaintiff said that he gave the first defendant the money to pay the income tax due on her share in the property and in this he was supported by the evidence of his daughter Chua Kah Wee. I find that the income tax on the property was provided for by the plaintiff.

26 As regards whether the defendants knew the content's of exh P5 the evidence of the first defendant shows that she knew its contents. The second defendant said in evidence that no one explained the contents of exh P5 to her and she did not know what it was. If the first defendant knew its contents, the second defendant must also know its contents, as the letter was explained to both of them by the clerk at PY Tan's office. I find that both the defendants knew the contents of exh P5 and that they signed it voluntarily.

27 As to the authenticity of exh D4, I find, as I have said in my judgment in *Chua Kah Wee & Ors v Chua Geok Eng*, supra, that the plaintiff's story of signing eight pieces of blank paper and handing them to his son-in-law, the

first defendant's husband, was probably true. It will be noticed that whereas exh P5 was witnessed by PY Tan's clerk, Tan Tiat Hee, exh D4 was not witnessed by that clerk. If the first defendant's story about exh D4 is true then exh D4 would in all probability have also been prepared by Tan Tiat Hee. But, the paper of exh D4 is different from the paper of exh P5 and exh D4 was typed on a different typewriter. I find that exh D4 is not an authentic document.

28 After considering the evidence that has been adduced regarding the conveyance exh P15, I have no doubt that its contents were explained to the second defendant and her thumb-print was affixed voluntarily and in the presence of Ong Kah Leong and Chua Hong Tien. There is also no doubt that she and the plaintiff gave instructions to the solicitors to sue the first defendant for the recovery of the property.

29 The main question in this case is whether or not there is evidence establishing that in 1951 the plaintiff intended that his daughter the first defendant and his wife the second defendant should hold the Tiong Bahru property as trustees for him.

30 The settled law is that if **A** buys property in the name of **B**, who is no relative, **B** is held to be trustee of that property for **A** but if **B** is a child or a wife of **A** no such trust is presumed and the law presumes that the legal and beneficial ownership is in the child or the wife so that the onus is on those who seek to rebut the presumption and establish an absolute trust for the father.

31 The question then arises by what evidence can the presumption be rebutted?

32 The admissible evidence in rebuttal, (according to the authorities), is limited to acts, circumstances and declarations leading to or to forming part of the transaction or so immediately following and connected with it as in effect to be contemporaneous with or form part of it and such admissible evidence can be used either for or against the party who did the act or made the declaration. Subsequent acts and declarations are admissible as evidence only against the party who did the acts or made the declarations and not in his favour.

33 It is submitted by counsel for the first defendant that the acts of the defendants in mortgaging the property in 1959 and 1960 do not form part of the transactions of 1951 and therefore are not admissible evidence in rebuttal of the presumption of advancement.

34 It is true that the subsequent acts of the defendants cannot be admitted in evidence as part of the original transaction but, in my view, it can be admitted to rebut the presumption because they were in the nature of admissions by the defendants against interest: ***Shepherd v Cartwright*** [1955] AC 431.

35 In my view the declarations of the defendants in exh P5 and the act of the second defendant in signing the conveyance exh P15 are also admissible evidence in rebuttal of the presumption for the same reason.

36 In considering whether the presumption has been rebutted I have taken into consideration the following facts:

- (1) The plaintiff enjoyed the rents.
- (2) The plaintiff held the title deeds.
- (3) The plaintiff paid the property tax and income tax.

- (4) The acts of the defendants in mortgaging the property was at the direction of the plaintiff and for his benefit,
- (5) The declarations of the defendants contained in exh P5.
- (6) The act of the second defendant in signing the conveyance exh P15 with full knowledge of the material facts.

37 By collecting the rents, paying the property tax and the income tax the plaintiff is in fact exercising all the functions of an owner.

38 The fact that the plaintiff held the title deeds is a very significant factor. In **Scawin v Scawin** (1841) 1 Y & CCC 65; 62 ER 792 a father bought shares in the name of his son but retained the share certificate. It was observed by Knight Bruce VC (at p 793):

The father may certainly, even in cases where the doctrine of advancement is held to take place, receive the title deeds and the dividends; but although those circumstances may exist in such cases, yet they are circumstances in favour of the father, especially where the son is adult.

39 In the case of **Warren v Gurney** [1944] 2 All ER 472 a father bought a house in the name of his daughter but the title deeds were retained by the father. Morton LJ said this (at p 473):

*The second contention put forward by counsel for the appellants was that, on the admissible evidence, the judge was not justified in coming to the conclusion that the defendants had rebutted the presumption of advancement. In my view, there was ample evidence to justify that conclusion of the judge. In the first place, there is the fact that the father retained the title deeds from the time of purchase to the time of his death. I think that is a very significant fact, because title deeds, as it was said in **Coke on Littleton**, are 'sinews of the land.' One would have expected the father to have handed them over, either to the plaintiff or her husband, if he had intended the gift.*

40 It is clear that the defendants mortgaged the Tiong Bahru property the request of the plaintiff and that they did it voluntarily and with full knowledge

of the material facts. They made no claim on the Tiong Bahru property and their acts are strong evidence that they are trustees for the plaintiff.

41 In my view the plaintiff has discharged the burden which rests on him of rebutting the presumption of advancement and it has been established that the defendants hold the property in trust for the plaintiff.

42 It is submitted by counsel for the first defendant that the object of the conveyance to the defendants was to enable the plaintiff to defraud the income tax department and that the court should not assist the plaintiff to achieve this illegal object. There is no evidence that the object of the conveyance was to defraud the income tax department. The act of the plaintiff in purchasing the property in the names of the defendants is not illegal. Furthermore, (as I have said in my judgment in *Chua Koh Wee & Ors v Chua Geok Eng*). I do not think that the first defendant should be allowed to suggest that the transaction was entered into for a fraudulent or illegal purpose when she had not pleaded it distinctly and she had not given any evidence about it. In this case the plaintiff has no reason to disclose any illegality and did not do so. Therein lies the distinction between *Palaniappa Chettiar v Arunasalam Chettiar* [1962] MLJ 143 ; [1962] 1 All ER 494 (PC) on which the first defendant relies, and the present case.

43 In the result there will be judgment for the plaintiff with costs and the counterclaim of the defendants is dismissed with costs.

44 There will be an order in terms of prayers 1 and 2 of the plaintiff's claim.

45 ***Plaintiff's claim allowed.***

Chua F A J

KA O'Connor (Drew & Napier) for the plaintiff
CH Smith (Laycock & Ong) for the first defendant
RE Redrup (RE Redrup) for the second defendant
