Chow Hoo Siong v Lee Dawn Audrey
[2003] SGHC 235

Case Number : Div P 975/2000, RAS 720084/2003

Decision Date : 10 October 2003

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Raj Singam and Gopinath Pillai (Drew and Napier LLC) for appellant (husband); Ms Loh Wai Mooi (Bih Li and Lee) for respondent (wife)

Parties : Chow Hoo Siong — Lee Dawn Audrey

Family Law – Maintenance – Wife – Taking into account wife's salary – taking into account wife's share of matrimonial assets – Appropriate multiplier and multiplicand to use

Family Law – Matrimonial assets – Division – Whether misdirection for judge to deduct wife's share from husbandÂ's share before apportionment

Family Law – Matrimonial assets – Gifts – Shares in family company and car acquired by husband as gift before marriage – Whether substantial improvement by wife or both parties

1 The Petitioner, Audrey Lee Dawn ("Wife") and the Respondent, Chow Hoo Siong ("Husband") were married in the United States of America on 8 February 1989. The Wife was at that time a citizen of the USA. They relocated to Singapore in 1991 and have since then lived in the Husband's parents' home. There were no children in the marriage. The Husband worked in a family company which was part of a group of companies founded by the Husband's father ("Chow") and the Husband's uncle. The Wife too worked but not in any of the family companies. Teo Tee Teow Pte Ltd and Teo Brothers Pte Ltd ("the Teo companies") which will feature in this appeal were companies within this group. The Husband's parents had, prior to the Husband's marriage, gifted some shares in the Teo companies ("the Teo Shares") to the Husband.

2 Differences arose between the Husband and Wife in late 1999. The Wife left the family home in January 2000. In March 2000, she petitioned for divorce on the grounds of unreasonable behaviour. Decree Nisi was granted on 17 August 2000 on an uncontested basis.

3 The ancillary matters relating to the division of their matrimonial assets and the provision of maintenance for the Wife were dealt with after the grant of the Decree Nisi. These ancillaries were heavily contested. The parties and their witnesses gave oral testimony and were subjected to intense cross-examination. The hearing took a total of 13 days between October 2001 and September 2002.

4 The orders that the District Judge made at the conclusion of the hearing included the following:

(a) The Husband pay the Wife a sum of $1,413,746 being 30% of her share of the Husband's matrimonial assets after deducting the Wife's assets. Payment to be made not later than 1 November 2002.

(b) The Husband pay the Wife a sum of $180,000 being lump sum maintenance to the Wife in full and final settlement of her claim for maintenance. Payment to be made not later than 1 November 2002.

(c) The Husband pay the arrears of maintenance amounting to $24,000. Payment to be

made not later than 11 October 2002.

Dissatisfied with these orders, the Husband appealed. The appeal, heard on 19 May 2003 and 8 October 2003, centered around what assets constituted matrimonial assets available for division and the amount of the lump sum award for maintenance.

Matrimonial assets.

5 Mr Raj Singam, counsel for the Husband, submitted that the District Judge erred in considering the Teo Shares gifted to the Husband by his parents and the value of a Mercedes Benz registered in the name of Chow as part of the matrimonial assets available for division between the parties. He also submitted that the District Judge erred in assessing the value of the shares in Chowiz Pte Ltd, Plene Pte Ltd, Zolton Investments Pte Ltd and Mixtown.com Pte Ltd ("the other shares") held by the Husband and in assessing the amount of the loans given to these companies by the Husband.

6 The court's powers to order the division of matrimonial assets is set out in s 112(1) of the Women's Charter which reads:

> The court shall have power, when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks *just and equitable*. [Emphasis added]

The words "matrimonial assets" are defined in s 112(10) as follows:

> For the purposes of this section, "matrimonial asset" means –
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> (a) any asset acquired before the marriage by one party or both parties to the marriage –
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> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
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> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
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> (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
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> but does not include any asset (not being a matrimonial home) *that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage*. [Emphasis added]

An asset (other than a matrimonial home) acquired by one party as a gift or inheritance would, by reason of this definition, be a matrimonial asset and hence available for division only if that asset has been substantially improved, during the marriage, by the other party to the marriage or by both parties to the marriage.

7 Section 112 came into effect in 1996 when the then s 106 of the Women's Charter was repealed and re-enacted. Prior to this repeal and re-enactment, there was no specific definition of

"matrimonial asset" and no specific reference in s 106 to gifts and inheritances. The previous s 106(1) empowered the court to order the division between the parties of any assets acquired *during* the marriage by their *joint* efforts having regard to the consideration set out in s 106(2), while s 106(3) empowered the court to order the division of assets acquired *during* the marriage by the *sole* effort of one party to the marriage having regard to the considerations set out in s 106(4). Section 106(5) extended the meaning of "assets acquired during marriage" to assets owned before the marriage by one party which have been *substantially improved during the marriage by the other party or by their joint efforts*. In effect, therefore, even under the previous provisions of s 106, gifts or inheritances – acquired by one party before the marriage – were divisible between the parties upon divorce if those assets had been substantially improved during the marriage by the other party or by their joint efforts.

8 I have in the above paragraph outlined the position under the previous s 106 because it was submitted by Mr Raj Singam that the District Judge had misdirected herself by referring to cases relating to gifts and inheritances – in particular *Koh Kim Lan Angela v Choong Kian Haw* [1994] 1 SLR 22 – decided under the old law. I see no merit in that submission as even under the old law gifts and inheritances held by one party at the time of marriage were divisible as a matrimonial asset provided that asset had been substantially improved during the marriage either by the sole effort of the other party or the joint effort of both parties. The principles enunciated in those cases are to that extent still relevant.

The Teo Shares.

9 The fact that the Teo Shares were gifts to the Husband from his parents was not disputed. As they were gifts they would, by reason of s 112(10) be available for division between the parties only if they had been "substantially improved" during the marriage by the Wife or by both the Husband and the Wife. The Teo companies, as noted earlier, were within a group of family-run companies founded by Chow and Chow's brother and the Husband was employed by one of the companies in the group. A group company – Top Global Ltd – had, during the marriage, been publicly listed and this had led to an appreciation in value of the Teo Shares. The question at issue was whether this "improvement" of the value of the Teo Shares could be said to be a substantial improvement attributable to the efforts of the Wife or the Wife and the Husband jointly.

10 The court had, for the purposes of the division of the matrimonial assets, appointed an accountant to value the Teo Shares and the other shares held by the Husband. The Husband, however, refused to make full disclosure to the accountant and the District Judge drew an adverse inference from such refusal. In her words:

> The real problem in this case was that the Respondent [Husband] refused to allow inspection of the accounting and financial records of the TTT and Teo Bros to the Court Appointed Accountant ("Goh"). That would have enabled the court to make a considered decision as to whether the nature of the shares remained the same as when they were given to the Respondent or had been substantially improved by *one or both parties* during the marriage.
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> …
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> I was of the view that the lack of evidence concerning the shares should not be held against the Petitioner [Wife] in the division of the matrimonial assets. *I could only conclude that his refusal to disclose was because the value of the shares was substantially improved by his efforts and indirectly by her financial contribution towards the welfare of the family*. [Emphasis added]

It will be seen that the inference that the District Judge drew from the conduct of the Husband was that the value of the Teo Shares had been substantially improved by the efforts of the Husband and indirectly improved by the Wife's financial contribution towards the family.

11 The test in s 112(10) is not whether substantial improvements had been made to the gift by "one or both parties" as adverted to by the District Judge: the test is whether substantial improvements had been made by "the other party or by both parties to the marriage". The fact that the Husband may have made substantial improvements to the Teo companies was not, by itself, a relevant consideration in determining whether those shares constituted matrimonial assets as defined. The relevant consideration in this case was whether the Wife (who in this case was the other party) had substantially improved the asset or whether the asset had been substantially improved by both the Husband and the Wife.

12 The District Judge cannot be faulted for having drawn an adverse inference against the Husband in respect of improvements made to the Teo companies by the Husband but the question arises: was the District Judge entitled by reason of the conduct of the Husband to draw the inference that the Wife too had contributed to the said improvements?

13 The Wife was not a director, shareholder, employee of or advisor to any of the companies in the group: her only link was that she was the wife of the Husband. That being so, the affairs of the Teo companies, even if fully disclosed by the Husband to the court, would not have revealed any contributions by the Wife: even the Wife did not claim that she had made any direct contribution to the Teo Shares. Any "indirect" contribution she may have made – such as looking after the welfare of the family – would not appear in the records of the Teo companies. There was therefore no basis for the District Judge to have made the inference from the Husband's conduct that had he made full disclosure the Wife's contribution would have been revealed.

14 Apart from the adverse inference that the District Judge drew from the Husband's conduct, the District Judge enumerated the following "indirect contributions" by the Wife towards the "improvement" of the Teo Shares:

> It was pertinent to note that the Respondent's admission that his salary in ESC [Eng Seng Cement Products – a company controlled by the Teo companies] remained the same "since graduation. I am the lowest paid because I'm youngest in the generation hierarchy". Clearly Chow has enhanced the shares through his employment in ESC. By accepting no increment in salary over 13 years of service to the company, he has in fact enhanced the profits of the company and in turn the value of the shares of the companies. *His sacrifice would also affect the lifestyle of his wife who, according to the Respondent, was required to share in the family expenses. She also had contributed financially towards the household and hence had participated towards the acquisition of the asset by her efforts towards the family life*. [Emphasis added]

These "contributions" were, in my view, far too remote and far too insignificant to justify the conclusion that the District Judge arrived at that the Teo Shares have been improved by the contributions of the Wife during the marriage.

15 As the Wife had not on her own or together with the Husband contributed in any way to the improvement of the Teo Shares, these shares should not be included in the pool of matrimonial assets available for division between the parties.

The Mercedes Benz.

16 The Wife claimed that a Mercedes Benz car, purchased by Chow and registered in Chow's name, was nevertheless a matrimonial asset available for division as the car was purchased by Chow for the use of the Husband. The Husband's case was that the car belonged to Chow and was not a matrimonial asset. He conceded, however, that he paid for its upkeep, its season parking fees and he enjoyed the use of the car.

17 The District Judge concluded from these facts that the Husband was in fact the beneficial owner of the car and that it was a matrimonial asset. She also found that by bearing the costs of the upkeep of the car the Husband had made "improvements" to the car.

18 The District Judge's finding that the Husband was the beneficial owner of the car meant, in effect, that the car had been gifted to the Husband by Chow. As the car was a gift, it would be a matrimonial asset available for division only if the provisions of s 112(10) are fulfilled, ie it has to be demonstrated that the other party (in this case the Wife) had "substantially improved" the gift or that the Husband and Wife have together "substantially improved" the gift.

19 As in the case of the Teo Shares, there was no evidence of any improvement to the car attributable to the Wife. Indeed, there was no evidence even of the Husband having "improved" the car: the fact that the Husband bore the costs of the upkeep of the car can hardly be said to be an "improvement" to the gift. The car was not, therefore, a matrimonial asset as defined in s 112(10) and was not a divisible asset. The value attributed to the car will therefore have to be deleted from the matrimonial assets available for division.

The other shares and the loans.

20 The shares in Chowiz, Plene, Zolton and Mixtown were all acquired by the Husband during the marriage. They were therefore matrimonial assets divisible between the parties upon divorce. The Husband's main complaint at the hearing of this appeal was that the District Judge had attributed too high a value to these shares and further that the District Judge had wrongly imputed the loans to these companies as being from him. The Husband also complained that there had been some double counting in respect of these loans.

21 I find little merit in these complaints. The Husband had not been forthcoming about the financial affairs of these companies and the nature of the businesses that these companies did. The District Judge found the Husband "most obstructive and un-cooperative" in the investigations of these companies by the court-appointed accountant. This lack of co-operation by the Husband necessarily made the work of assessing the worth of these companies – including an analysis of the loans – difficult: the District Judge, in the circumstances, was entitled to draw adverse inferences against the Husband and was entitled to accept, as she did, the accountant's valuation of the shares and analysis of the loans. I see no reason to disturb the District Judge's findings in this regard.

The division of matrimonial assets.

22 The District Judge assessed the total value of matrimonial assets held by the Husband to be $5,028,482.90. If one removes the Teo Shares and the Mercedes Benz (together valued at $2,616,200) from the list of matrimonial assets, the value of the assets held by the Husband available for distribution ($5,028,482.90 less $2,616,200) would be $2,412,282.90. The District Judge assessed the matrimonial assets held by the Wife to be $315,995.78. Adding these two figures, the total value of the matrimonial assets available for division would be $2,728,278.68: it is this amount which has to be divided between the Husband and Wife in such proportion as is just and equitable.

23 The District Judge did not total up the matrimonial assets held by the Husband and the Wife. Instead, she deducted the matrimonial assets held by the Wife from the matrimonial assets held by the Husband ($5,028,482.90 less $315,995.78 = $4,712,487) and gave the Wife 30% of $4,712.487, which worked out to $1,413,746. The Wife's share of the matrimonial assets, as ordered by the District Judge, would therefore be $1,413,746 plus the $315,995.78 which she held, making a total of $1,729,742 whilst the Husband's share would be the remaining $3,615,737 held by him. The Wife's share of the total matrimonial assets (inclusive of the Teo Shares and Mercedes Benz) would work out to 32.3% under the division made by the District Judge.

24 I do not see the rationale on which the District Judge deducted the matrimonial assets held by the Wife from the matrimonial assets held by the Husband before making the apportionment. It may be – and I put it to no higher than that – that in certain circumstances there could be different apportionments of different matrimonial assets but that was not a proposition that was canvassed in this case. In the absence of any such special circumstances the matrimonial assets, whoever it may be held by, should – and both counsel before me agreed on this – be taken as a pool for the purposes of division. It was not in dispute that as there was a misdirection in this regard it would be necessary for this court to consider the question of apportionment afresh.

25 Considering the length of the marriage, the nature of the assets and the contributions towards the marriage by the Husband and the Wife, I am of the view that a division between the Wife and Husband in the ratio 35:65 would be fair. As the total value of the matrimonial assets (after taking out the Teo Shares and the Mercedes Benz) was $2,728,278.68, the Wife's share thereof applying that ratio would be $954,897.50. As the Wife already has $315,995.78 worth of the assets in her name, the Husband will have to pay to the Wife a sum of $638,901.72 to make up for the difference.

Maintenance.

26 The Husband had been ordered to pay the Wife a lump sum maintenance of $180,000. Mr Raj Singam submitted that this sum was exorbitant. In support of this submission, he argued, inter alia, that the District Judge had failed to take into account the amounts already paid to the Wife pursuant to an interim maintenance order and had erroneously taken the Wife's salary as $5,057 per month when it was in fact $6,299 nett per month.

27 I see no basis to conclude that in making her award the District Judge had failed to take into account the interim maintenance payments that the Husband had been making to the Wife. To the contrary, the interim maintenance was obviously in the mind of the District Judge at the time she gave her judgment since one of the specific orders she made was that the Husband pay the arrears of $24,000 due thereunder. Clearly, therefore, the District Judge intended the lump sum maintenance payment to be a sum over and above payments due to the Wife under the interim order. The District Judge was entitled to take this approach and I can see no reason to interfere with her judgment in this regard.

28 As for the Wife's earnings, the figure of $5,057 per month quoted by the District Judge was clearly wrong since, in her evidence given before the District Judge, the Wife had stated that she was earning $6,299 nett per month. The difference between these two figures was fairly substantial and worked to the disadvantage of the Husband. The District Judge, in assessing what the lump sum maintenance amount should be, had used a multiplicand of $5,000 per month and a multiplier of 3 years. It was submitted on behalf of the Husband – and there was some merit in this submission – that the multiplicand of $5,000 should be revised downwards to adjust for the error as to the Wife's earnings.

29 Ms Loh Wai Mooi ("Ms Loh"), who appeared for the Wife, submitted that the error in the Wife's earning should not materially affect the multiplicand of $5,000 used by the District Judge or, if it did, it should only be by a small amount. In support of this submission, Ms Loh pointed out that the dominant reason for the District Judge deciding on a multiplicand of $5,000 was not so much the earnings of the Wife but the fact that the District Judge did not believe the evidence of the Husband in relation to his income and assets. Ms Loh pointed out that the District Judge had in fact even found that the husband had "staged" his unemployment in order to minimise maintenance payments and submitted that, in the circumstances, the District Judge's assessment of the multiplicand at $5,000 per month should not be varied.

30 I accept the submission of Ms Loh that the District Judge had fixed the multiplicand at $5,000 per month mainly because the District Judge disbelieved the Husband and felt that the Husband was concealing his income. The fact remains, however, that the Wife's income was a factor that the District Judge took into account in deciding on the multiplicand. As the income of the Wife was more than what the District Judge thought it was, a downward revision of the multiplicand is called for. I would revise the multiplicand to $4,000 per month.

31 In deciding upon the number of years to use as the multiplier for the lump sum maintenance award, the District Judge had taken into account the fact that the Wife would be receiving a considerable sum (ie $1,728,741.76) as her share of the matrimonial assets and therefore applied a multiplier of 3 years even though, as stated in her Grounds of Decision, she considered that a multiplier of 10 years would, on the facts of this case, not have been unfair. As I have, in this appeal, disallowed the Teo Shares and the Mercedes Benz car from the list of matrimonial assets available for division, the Wife's share of the matrimonial assets is now considerably lower than the figure the District Judge was looking at. That being so, in fairness to the Wife, a review of the multiplier is called for. Bearing in mind that there was, in this case, no "matrimonial home" available for division, that the marriage had lasted more than 10 years and the age of the parties, I considered that the multiplier could, fairly, be set at 10 years with the result that the lump sum maintenance payable to the Wife on a multiplicand of $4,000 per month would be $480,000.

32 This appeal is, accordingly, allowed in part. The orders made by the District Judge in respect of the division of the matrimonial assets and the payment of lump sum maintenance are varied. The Husband is to pay the Wife a sum of $638,901.75 as her share of the matrimonial assets and a sum of $480,000 as lump sum maintenance. All other orders made by the District Judge are to stand. The Wife is to bear half of the Husband's costs in this appeal which I fix at $3,500.

Appeal allowed in part.