Twiss, Christopher James Hans *v* Twiss, Yvonne Prendergast [2015] SGCA 52

Case Number	: Civil Appeal No 22 of 2015
Decision Date	: 02 October 2015
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Judith Prakash J; Quentin Loh J
Counsel Name(s)	: Tan Xuan Qi Dorothy (PKWA Law Practice LLC) for the appellant; Isaac Tito Shane, Justin Chan Yew Loong and Zee Ning En Jasmine Mildred (Tito Isaac & Co LLP) for the respondent.
Parties	: Twiss, Christopher James Hans — Twiss, Yvonne Prendergast

Family Law – Matrimonial assets – Division

2 October 2015

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 This was the husband's appeal in relation to the questions of division of matrimonial assets and maintenance of the wife following the grant of an interim judgment for divorce. The judge below ("the Judge") had ordered that (i) the matrimonial home and the sale proceeds of a Malaysian property, which were the only assets up for division, be given entirely to the wife, and (ii) the husband pay the wife maintenance in the sum of $4,000 a month. The husband was dissatisfied on both counts.

2 Having heard parties, we allowed the appeal in part. We affirmed the Judge's order that the husband pay the wife maintenance in the sum of $4,000 a month but ordered that the assets be divided instead, in the proportions of 75% to the wife and 25% to the husband. We now explain in greater detail our decision to allow the appeal in relation to the division of matrimonial assets. We do so with a view to reaffirm the principles and approach set out in this court's recent decision of *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*").

Background facts

3 The husband is 49 years old and the wife is 51. They are both UK citizens and they were married there on 4 August 1989. They have two sons: the older son is 21 years old while the younger son is 19. The husband filed a writ for divorce in July 2008 and interim judgment was granted two years later in June 2010. The marriage spanned about 20 years.

4 At the hearing before us, Mr Tito Isaac, appearing for the wife, put forward a version of the facts which Miss Dorothy Tan, appearing for the husband, did not object to and which we therefore accepted as true. In 1991, not long after the parties were married, the husband moved to Hong Kong for work. The wife gave up her job to follow him. In 1994, the older son was born. In April 1995, when the wife was pregnant with the younger son and the older son was 10 months old, the husband had to relocate for work once again, this time to Seattle. Again, the family moved with him. The younger son was born in 1996, and when he was just 10 days old, the husband lost his job and the family was compelled to move to Geneva. In 1997, the family moved one last time, to Singapore.

5 If the first decade of the marriage was characterised by continual geographical displacement,

the second was defined by the husband's infidelities. In 2000, when the sons were five and three years old, the husband left the family for his first mistress, returning after six months. In 2004, the husband left for his second mistress. This time, he stayed out for a year before returning home. Finally, in 2007, the husband embarked on his third affair. On this occasion, he left and never came back.

The matrimonial assets

6 Before the Judge, it was agreed that each party would keep the assets held in their own names. That left two assets to be divided. The first was the matrimonial home. This was registered in the parties' joint names. Its value was approximately $3.8 million, with an outstanding loan of $536,103.

7 The second was a property in Malaysia that had been sold at some point prior to the proceedings before the Judge. The proceeds from the sale, converted from Malaysian to local currency, amounted to $287,802. The husband said that this entire sum was kept by the wife and she did not seem to dispute this.

The Judge's decision

8 The Judge gave his decision in an oral judgment which does not appear to have been published. In relation to the matrimonial home, he found that the parties' direct financial contributions were as follows. On the wife's part, she had contributed $275,698.01 in CPF monies, $190,000 in cash towards the deposit and initial payment, and $389,427 in mortgage payments – these payments were in cash as well as CPF monies. On the husband's part, he had contributed $118,486.23 in CPF monies and $190,000 in cash towards the deposit and initial payment. On this basis, the Judge held that parties' direct financial contributions towards the matrimonial home were in the ratio of 75:25 (in the round) in the wife's favour.

9 Turning then to the indirect contributions, the Judge accepted that the husband "had left the matrimonial home on about three occasions to stay with his mistresses leaving the wife to look after the family". He then found that the wife's "indirect contributions are about 20%". What exactly the Judge meant by this is perhaps obscure, but given that he opined thereafter that "the wife's share of the matrimonial home amounts to 95% of its net value", he must have given a 20% uplift to the wife on account of her indirect contributions which was added to the 75% that represented the wife's direct financial contributions.

10 As for the Malaysian property and the proceeds from its sale, the Judge only said that it "should be included into the pool of matrimonial assets for division". He made no finding on the parties' direct financial contributions to this property. He then expressed the view that "a fair and equitable division of the net value of the matrimonial properties" – which presumably included the sale proceeds of the Malaysian property – was "95:5 in favour of the wife".

11 Although the Judge said that the assets were to be divided in the ratio of 95:5 in the wife's favour, the order he actually made did not seem consistent with that determination. His order was that the husband "transfer his rights, title and interests" in the matrimonial home, with the wife to "bear the related costs and expenses of the transfer". There was no order that the wife furnish consideration or value for this transfer. Neither was there any order that the wife transfer to the husband part of the sale proceeds of the Malaysian property held by her. In these circumstances, notwithstanding the 95:5 ratio expressly articulated by the Judge, we were compelled to conclude that he had actually decided that the assets should be divided in the ratio of 100:0 in the wife's

favour. In other words, he gave all the matrimonial assets, which should have been divided, entirely to the wife.

The husband's contentions

12 Before us, Miss Tan argued that the Judge had understated the husband's direct financial contributions to the matrimonial home to the extent that he had failed to give the husband some credit for the mortgage payments that had been made from the proceeds of renting out the matrimonial home during the period from May 2008 to August 2013. Miss Tan said that if this error was corrected, the ratio of parties' direct financial contributions to the matrimonial home would be 70:30 in the wife's favour and not 75:25 as the Judge had found.

13 Miss Tan further contended that the Judge had also undervalued the husband's indirect contributions to the marriage. She accepted that in the second decade of the marriage, the wife's indirect contributions had been greater than the husband's given that he had left the family on multiple occasions to be with the other women. But she pointed out that the husband had nonetheless contributed to some degree during this second decade, for instance, contributing $4,000 a month to the household and paying the sons' school fees which amounted to some $100,000 a year. Miss Tan argued that the first decade of the marriage had also to be taken into account, and during that period the husband's indirect contributions had been substantial. She said, bearing all these in mind, a fair ratio of the parties' indirect contributions over the entire period of the marriage should be 70:30 in the wife's favour.

14 Relying on *ANJ v ANK*, Miss Tan argued that if the ratio of the parties' direct financial contributions was 70:30 and the ratio of their indirect contributions was precisely the same, the matrimonial assets should be divided in the ratio of 70:30 in favour of the wife.

Our decision

15 In advancing her arguments, Miss Tan highlighted the fact that the Judge had erred in law by applying what was generally known as the "uplift" methodology. This error consisted of taking the view that the wife's indirect contributions should be reflected by applying an "uplift" to the share she would have been entitled to on the basis of her direct financial contributions only. We accepted Miss Tan's contentions on this score and we considered that the Judge had erred in that regard. This court warned against the use of the "uplift" methodology in *ANJ v ANK* and referred to some possible pitfalls of that methodology (at [18]–[20]). We reaffirm what was said there.

16 We were of the view that the Judge's decision to award the entirety of the matrimonial assets to the wife was untenable. Such a division could be justified only in the most exceptional or extreme circumstances, *eg*, where the husband's direct financial contributions and indirect contributions amounted to nothing at all, or where his contributions were very insignificant and it was thought fit to draw an adverse inference against him such as to reduce his share to zero. We did not think that such extreme circumstances obtained in the present case. To all intents and purposes, during the first decade of the marriage, the husband fulfilled his role as a family man, caring and providing for the entire family. While he strayed during the second decade of the marriage, he had nevertheless provided financially for the family.

17 We were therefore of the opinion that it was just that we should allow the husband's appeal. In determining what would be a fair and equitable division of the assets, we followed the structured approach set out in *ANJ v ANK* (at [22]–[27]), which comprises the following broad steps:

(a) Express as a ratio the parties' direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of the matrimonial assets;

(b) Express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions; and

(c) Derive the parties' overall contributions relative to each other by taking an average of the two ratios above, keeping in mind that, depending on the circumstances of each case, the direct and indirect contributions may not be accorded equal weight and one of the two ratios may be accorded more significance than the other.

18 Applying this structured approach to the matrimonial home, we began with parties' direct financial contributions. In this connection, we accepted Miss Tan's argument that the correct ratio was 70:30 in the wife's favour and not 75:25. We accepted her contention that the husband should be given some measure of credit for the mortgage payments that had been made out of the proceeds of renting out the matrimonial home for the period from May 2008 to August 2013 at $7,800 a month. It was not disputed that the wife had paid $1,500 in CPF monies and $1,405 in cash per month towards the mortgage during that period. The cash component was paid out of the rental proceeds, which ought to be considered as belonging jointly to the parties, as this was income earned on an asset that was jointly owned. Thus, it was only fair that half of the $1,405 cash payment of the mortgage instalments during that period should be regarded as having been contributed by the husband.

19 Doing the arithmetic, it would mean that, having contributed $702.50 per month over the 63 months from May 2008 to August 2013, the husband had contributed $44,257.50 more and the wife $44,257.50 less than what the Judge thought that they had. This meant that the husband's direct financial contributions to the matrimonial home amounted to $352,743.73 and the wife's $810,867.51. The ratio representing their direct financial contributions was therefore approximately 70:30 in the wife's favour.

20 Turning to the question of indirect contributions, as stated in [16] above, there is a need to differentiate between the first and the second decades of the marriage. In the first decade of the marriage, it appeared to us that the parties' indirect contributions were roughly equal, except that the nature of their contributions were different in that the husband met the family's financial needs and took care of the family wherever he could whilst the wife took primary care of the family in the domestic sphere, although we noted that the wife also worked from 1989 to 1991 and so also contributed financially to that extent. In the second decade of the marriage, however, we thought that the wife's indirect contributions far exceeded those of the husband's given his physical absence from the family for substantial lengths of time while recognising that even then he did contribute financially to the family. Still, his indirect contributions paled in comparison to those of the wife who had effectively taken sole charge of raising the sons from the ages of five and three. In all the circumstances, taking a broad-brush approach, we thought that the parties' indirect contributions relative to each other would be fairly represented by a ratio of 75:25 in the wife's favour.

21 In *ANJ v ANK*, this court opined (at [27]) that (i) indirect contributions tend to feature more prominently in long marriages, (ii) direct contributions would command greater weight where the pool of assets was extraordinarily large and all of the assets were accrued by one party's exceptional efforts, and (iii) courts tend to lean in favour of homemakers who have painstakingly raised children to adulthood at the expense of their careers. In the present case, the marriage was a fairly lengthy one, the pool of matrimonial assets was not particularly large, and it seemed to us that the wife had made

career sacrifices for the sake of the family. We were thus of the view that, in this case, the indirect contributions ought to be given more weight than the direct financial contributions.

22 Given that the disparity between the ratio of direct financial contributions, 70:30, and the ratio of the indirect contributions, 75:25, was rather small, we thought that it would not be inapt simply to take the latter ratio as representative of the parties' overall contributions to the matrimonial home. We therefore took the view that a fair and equitable division of the matrimonial home would be in the proportions of 75% to the wife and 25% to the husband.

23 There remained the proceeds of the sale of the Malaysian property. In this regard we were handicapped by a dearth of information as to parties' direct financial contributions to the property. Given such a situation, we thought it would be neither unfair nor inequitable to order that the sale proceeds be divided in the same manner as the matrimonial home.

Conclusion

24 For these reasons, we ordered that the matrimonial home and the proceeds from the sale of the Malaysian property be divided in the proportions of 75% to the wife and 25% to the husband. We left it to the parties to work out the practical implementation of this order, in particular, the question of whether the matrimonial home should be sold and the proceeds divided, or the wife should buy out the husband's share – and if the latter, by what means.

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