Lee Yong Chuan Edwin v Tan Soan Lian
[2000] SGCA 68

Case Number : CA 39/2000

Decision Date : 05 December 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Harry Elias SC and Yeo Yen Ping (Harry Elias Partnership) for the appellant; Raj Singam and Edmund Kronenburg (Drew & Napier) for the respondent

Parties : Lee Yong Chuan Edwin — Tan Soan Lian

Family Law – Divorce – Division of matrimonial assets – Gift of shares received prior to marriage – Original shares exchanged for new shares following amalgamations -Whether new shares part of matrimonial assets

Family Law – Divorce – Division of matrimonial home – Value of wife's share in matrimonial home – Whether husband can object to use of valuation report by district court in appeal to Court of Appeal

Family Law – Divorce – Maintenance – Whether lump sum maintenance order appropriate

: This is an appeal concerning the division of matrimonial assets following the divorce of the appellant and the respondent. The appellant contended that Kan Ting Chiu J, who heard the parties` respective appeals against the decision of District Judge Khoo Oon Soo, erred on three counts. The first concerned the amount which the appellant was required to pay the respondent for her share of their matrimonial home. The second concerned the quantum of the lump sum maintenance payable by the appellant to the respondent. The third concerned Kan J`s ruling that the appellant`s shares in two companies, which were received in exchange for shares given to him by his grandparents and father before and after his marriage to the respondent, formed part of the matrimonial assets available for division between the parties.

Background

The appellant married the respondent on 4 July 1980. The appellant and the respondent have two children. Their first child, their only son, was born in September 1981 and their second child, their only daughter, was born in January 1984.

Throughout the marriage, the appellant worked in his family`s group of companies. He was a director of many of the companies within the group, and was an executive director of the public-listed Lee Kim Tah Holdings Ltd. The respondent was a full-time housewife, who took charge of the household and the welfare of their children.

The parties` marriage broke down after almost 12 years. On 1 July 1992, the parties entered into a deed of separation, following which the husband [appellant] moved out of their then matrimonial home. On 14 March 1997, the respondent filed a petition for divorce against the appellant on the ground that the marriage had broken down irretrievably, in that the couple had been separated for at least three years. The petition was not opposed. A decree nisi was granted on 3 June 1997. At an ancillary hearing which followed, the respondent was awarded sole custody, care and control of the two children, with reasonable access to the husband.

The district judge`s decision

The hearing on the remaining ancillary matters took place subsequently before District Judge Khoo Oon Soo, who gave his decision on 7 May 1999.

The district judge`s first order, which concerned the matrimonial home of the parties, was as follows:

> *45% of the value of Astrid Meadows (45% of $4,380,000 [equals] $1,971,000) (round up - $2m).*
>
> *If sale, respondent to make his own refunds to CPF, to pay outstanding mortgage fees and expenses relating to sale.*

As for the question of maintenance, the district judge awarded the respondent a lump sum of $960,000. The lump sum was calculated on the basis of a monthly maintenance of $8,000 over a period of ten years.

As for the parties` other matrimonial assets, the district judge held that the respondent was entitled to 25% of the value of these assets. He also ruled that the appellant`s shares in two companies, Lee Kim Tah Holdings Limited (hereinafter referred to as `LKTH`) and Lee Kim Tah Investments Pte Ltd (hereinafter referred to as `LKTI`) were to be excluded from the pool of matrimonial assets available for division between the parties.

Whether or not the LKTH and LKTI shares formed part of the matrimonial assets was a hotly contested issue in the courts below and in this court. As such, the history of these shares ought to be considered at this juncture. Between 1977 to 1982, the appellant`s grandparents and father gave him a substantial number of shares in three companies within the Lee Kim Tah group of companies. The shares were as follows:

(a) 10,407 shares in Lee Realty (Pte) Ltd

(b) 278,285 shares in Lee Development (Pte) Ltd

(c) 28,000 shares in Lee Kim Tah (Pte) Ltd.

In August 1982, two years after the parties were married, the Lee Kim Tah group of companies underwent an amalgamation exercise. As a result of this exercise, all the shareholders of Lee Realty (Pte) Ltd, Lee Development Pte Ltd and Lee Kim Tah (Pte) Ltd transferred their shares to LKTH in exchange for shares of the same value. The purpose of the exchange of shares was to make LKTH the holding company of Lee Realty (Pte) Ltd, Lee Development Pte Ltd and Lee Kim Tah (Pte) Ltd, so that LKTH could be listed on the board of the Singapore Stock Exchange. As the transfers and exchange of shares were made pursuant to a scheme of amalgamation, no ad volarem stamp duty was payable. At the time of the hearing, the appellant owned 1,800,000 shares in LKTH.

In June 1984, some four years after the marriage of the parties, the shareholders of LKTH transferred a portion of their shares in exchange for shares of equivalent value in LKTI. This was also done pursuant to an amalgamation scheme, which was intended to ensure that the Lee family continued to have collective control over LKTH after its public listing, which took place in July 1984. Again, no ad volarem stamp duty was payable as the transfer and exchange of shares were made pursuant to a scheme of amalgamation. At the time of the hearing, the appellant had 3,606,279 shares in LKTI.

The appellant contended that the restructuring of his family companies did not alter the nature of the original gifts given to him by his grandparents and father. This argument was accepted by the district judge, who ruled that the appellant`s LKTH shares and LKTI shares, which were valued at $4,956,279 in April 1999, were not to be included in the pool of assets to be divided between the parties.

The appeal to the high court

Both parties appealed to the High Court on varying grounds. Although neither party appealed against the order relating to the division of the matrimonial home, Kan J, who heard the appeal, decided to alter the wording of the district judge`s order so as to `reflect its effect more succinctly`. The redrafted order provided as follows:

> *The [respondent] is to receive $2m as her share of the property at Block 48 Henley Court [num]06-04 Astrid Meadows, Coronation Road West, Singapore 269263.*

The judge further ordered the appellant to pay the $2m to the respondent within three months from the date of the redrafted order.

As for the question of maintenance for the respondent, the judge upheld the district judge`s order that a lump sum payment of $960,000 be made by the appellant.

With respect to the appellant`s shares in LKTH and LKTI, the judge allowed the wife`s appeal and reversed the district judge`s finding that the said shares were not matrimonial assets. His Honour noted that the shares which had been given to the appellant by his grandparents and father had been exchanged for shares in LKTH and LKTI and said:

> *The husband argued that the LKTH and LKTI shares are not matrimonial assets under s 112(10) [of the Women`s Charter], but I disagreed with him. The gift in the original companies were no longer in existence at the time of division. He had accepted the offer to exchange them for new shares. The new shares did not come from the donors and were not gifts received in the course of amalgamation.*

The present appeal

The appellant, who was dissatisfied with the judgment of Kan J, appealed against his decision. His counsel asserted the following:

(a) The judge erred when he ordered the appellant to pay the respondent $2m for her share of the matrimonial home at Astrid Meadows.

(b) The judge erred when he upheld the district judge`s award of a lump sum payment of $960,000 to the respondent as maintenance.

(c) The judge erred when he overruled the district judge`s ruling that the appellants` shares in LKTH and LKTI be excluded from the pool of matrimonial assets available for division between the parties.

The matrimonial home at Astrid Meadows

The reason for the appeal concerning the matrimonial home at Astrid Meadows is simple. The district judge awarded the respondent $2m for her share of the matrimonial home on the basis that the property was worth $4.38m, a value ascribed to it by M/s Edmund Tie & Company in their valuation report dated 24 October 1997. The sum awarded is approximately 45% of $4.38m. As it turned out, the property was finally sold for $3.5m. The appellant pointed out that if he was required to pay $2m to the respondent out of the gross proceeds of sale, the respondent would in fact receive 57% of the proceeds of the sale of the property.

The problem which has arisen has its roots in the manner in which the district judge`s order was worded. Admittedly, the original order should have been in clearer terms. All the same, it is important to note that no evidence was furnished with respect to the value of the matrimonial home at the hearing before the district judge other than the valuation report of M/s Edmund Tie, which valued the property at $4.38m. No one objected to the reliance by the district judge on this report for the purpose of dividing the matrimonial home during the hearing of the ancillary matters. Indeed, the appellant did not appeal against the district judge`s order on the division of the matrimonial home when he lodged his appeal to the High Court with respect to the district judge`s other orders. In our view, it is now too late for the appellant to object to the reliance by the district judge on the valuation report of M/s Edmund Tie.

The appellant explained that he did not appeal against the district judge`s order with respect to the division of the matrimonial home because he was prepared to let her have $2m if he kept the property for himself. On the other hand, if the matrimonial home was sold in the market, the respondent should only have 45% of the gross sale proceeds. There is nothing in the district judge`s order which supports the approach suggested by the appellant. In fact, in [para] 59 of his grounds of decision, the district judge said as follows:

> *... I gave the [husband], in respect of Astrid Meadows, a choice of either paying [the wife] $2m without sale or to pay **this sum** from the gross proceeds of sale. [Emphasis added.]*

When the appellant appealed to the High Court, he appeared to have accepted that he had to pay the respondent $2m. In his written submissions, counsel for the appellant stated as follows:

> *It was also ordered by the learned district judge on 7 May 1999 that the [wife] be entitled to 45% of the matrimonial home at Astrid Meadows, which share shall be ascribed the rounded-off value of $2m, the said $2m to be paid by the [husband] to [wife] forthwith, either from the net proceeds of the sale of the matrimonial property or otherwise. The [husband] has not appealed against this order ...*

We see no merit in the appellant`s appeal on the division of the matrimonial home and we accordingly dismiss it.

Maintenance for the respondent

The respondent had asked for a lump sum maintenance of $1,680,000, which was based on a monthly maintenance of $14,000 for ten years. She did not get what she asked for as the district judge awarded her a lump sum maintenance of $960,000, calculated on the basis of $8,000 per month for ten years. This award was upheld by the High Court judge.

The appellant did not object to the award of lump sum maintenance to the respondent. However, he asserted that for the purpose of quantifying the lump sum, the monthly maintenance ought to be pegged at $4,000 a month and not $8,000 a month. As such, he took the view that he should pay the respondent $480,000.

When making maintenance orders, note must be taken of s 114(2) of the Women`s Charter, which provides that the court should endeavour `to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other`. Section 114(1) requires the court to have regard to all the circumstances of the case, including the following matters:

> *(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*
>
> *(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
>
> *(c) the standard of living enjoyed by the family before the breakdown of the marriage;*
>
> *(d) the age of each party to the marriage and the duration of the marriage;*
>
> *(e) any physical or mental disability of either of the parties to the marriage;*
>
> *(f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and*
>
> *(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.*

In this case, the parties had a rather luxurious lifestyle and it is surprising that counsel for the appellant submitted that it was not common ground that the respondent had enjoyed a very high standard of living while she was married to the appellant. To begin with, the parties lived in a large apartment in a luxurious condominium in a prime area. They took expensive holidays, bought first or business class air tickets, stayed at expensive resorts and hotels and dined at the finest and most expensive restaurants at home and abroad. They also had the use of chauffeured cars and the services of maids. Furthermore, the family had the use of facilities at clubs such as the Singapore Island Country Club, the American Club, the British Club and the Bukit Timah Saddle Club. Lavish purchases for the children, such as a grand piano, which cost $85,000, and a computer system, which cost $38,000, also shed some light on the parties` lifestyle.

The respondent is now 45 years old. She was married to the appellant for almost 12 years and bore him two children. She contributed to the welfare of the family during the marriage by looking after the

home and caring for the family. She has not worked for the past 17 years, and the possibility of her being able to return to the workforce to earn enough to sustain the lifestyle she has become used to is rather remote. In the light of the luxurious lifestyle enjoyed by the respondent while married to the appellant, the lump sum maintenance awarded to her by the district judge is not excessive.

The appellant is obviously a man of substantial wealth and means. He is an executive director of LKTH, a well-known company in Singapore`s construction and property development industry. While his monthly salary may have been stated as $16,000, the lavish lifestyle enjoyed by his family during the marriage reveals that he must have had alternative and substantial sources of income. He is also expected to receive bonuses, directors` fees, dividends from his shareholdings, as well as other perks from his family group of companies. The district judge came to the conclusion that the appellant`s monthly income was clearly in excess of $20,000. In short, he is certainly in a position to afford the payment of the lump sum maintenance awarded to the respondent.

For the purpose of determining the appropriate amount of maintenance for the respondent, the division of the parties` matrimonial assets and the property and other financial resources which the parties have or are likely to have in the foreseeable future were also taken into account. The fact that the respondent has been awarded $2m for her share of the matrimonial home was not overlooked. We also noted that, for reasons which will be stated later on in this judgment, the appellant`s LKTH and LKTI shares are not included in the pool of matrimonial assets to be divided between the parties. If all the factors relevant to an order for maintenance including the parties` age, the duration of the marriage, the lifestyle enjoyed during the marriage and the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future are borne in mind, the appellant has no reason to complain about the lump sum maintenance awarded to the respondent. The appellant`s appeal on the quantum of maintenance is thus dismissed.

The LKTH and LKTI shares

The appellant also appealed against the High Court judge`s decision to include his LKTH and LKTI shares in the pool of matrimonial assets.

For the purpose of determining whether or not the LTKH and LTKI shares may be regarded as matrimonial assets, note must be taken of section 112(10) of the Women`s Charter, which provides as follows:

> *For the purposes of this section, `matrimonial asset` means -*
>
> *(a) any asset acquired before the marriage by one party or both parties to the marriage -*
>
> *(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*
>
> *(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and*
>
> *(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage.*

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.

The appellant contended that his LKTH shares and LKTI shares are within the ambit of the proviso in s 112(10) of the Women`s Charter as they were gifts from his grandparents and father. As such, they ought to be excluded from the pool of matrimonial assets available for division because the respondent had done nothing to enhance the value of the said shares. On the other hand, the respondent contended that as the said shares were issued to the appellant in exchange for shares which were given to him by his grandparents and father, the LKTH and LKTI shares were `acquired` during the marriage and thus fell within the ambit of s 112(10)(b) of the Women`s Charter. As such, they ought to be part of the pool of matrimonial assets. She relied on two decisions of this court, **Hoong Khai Soon v Cheng Kwee Eng** [1993] 3 SLR 34 and **Koh Kim Lan Angela v Choong Kian Haw** [1994] 1 SLR 22 , both of which were decided before s 112(10) of the Women`s Charter was enacted.

In ***Hoong Khai Soon v Cheng Kwee Eng*** , a question arose as to whether or not a husband`s undivided half share in a house, No 1B Haji Salam, was a matrimonial asset to be divided between the husband and the wife. It was accepted that half the payment for the said house came from the proceeds of the sale of another house, No 7 Bedok Rise, which was a gift to the husband from his parents. Notwithstanding this, it was held that No 1B Jalan Haji Salam was a matrimonial asset to be divided between the husband and the wife. Lai Kew Chai J, who delivered the judgment of the Court of Appeal, said that it would be inimical to the concept of a matrimonial partnership if the source of funds for every asset acquired during marriage had to be shown not to originate from the generosity of a third party.

A similar approach was adopted by this court in **Koh Kim Lan Angela v Choong Kian Haw** [1994] 1 SLR 22 . In that case, the husband and his father each owned 50% of a partnership, Glamourette. His shares in Glamourette were a gift from his father. The husband also had shares in two other family companies. He owned 50% of the shares in Glamourette Plus Pte Ltd (`Plus`) and 20% of the shares in Glamourette Shops Pte Ltd (`Shops`). After his marriage, the family business was reorganised with a view to expanding it jointly with an outsider, Ambassador. For this purpose, the business of Glamourette was injected into Plus and the capital of Plus was increased to $2m. 49% of the capital of Plus was issued to the husband and his father while the remaining 51% was issued to Shops. The husband and his father then sold their shares in Plus to Ambassador for four million Ambassador shares of $1 each, with the husband and his father each having two million shares in Ambassador. It was held by the Court of Appeal, overruling the trial judge, that the two million Ambassador shares were acquired during the marriage. Karthigesu JA made it clear that the fact that the Ambassador shares had been acquired in exchange for the husband`s shares in Plus did not prevent the asset from being an asset which could be divided between the husband and the wife.

It is evident that the fact that property is acquired during a marriage in exchange for a gift to a husband or wife does not, without more, prevent the new asset from becoming a matrimonial asset to be divided between the husband and wife. However, different considerations arise where the true nature of a gift remains intact. For instance, if a husband, who received a gift of 500,000 shares in X Company before his marriage from his father, was issued 500,000 new share certificates after his marriage following X Company`s change of name to Y Company, it would, without more, be inequitable to hold that the husband`s shares in Y Company are matrimonial assets on the ground that they were

`acquired` after his marriage.

The present case is of course different from that of a mere change of name but it is nonetheless distinguishable from ***Angela Koh*** `s case [1994] 1 SLR 22, where the gift shares were injected into another family business before being exchanged for shares in a totally unrelated company for the purpose of expanding the family business jointly with that other company. The present case is also distinguishable from ***Hoong Khai Soon*** `s case [1993] 3 SLR 34, where the proceeds from the sale of a house, which was a gift to the husband, were used to pay for part of the purchase price of another house.

In the present case, what the appellant received as gifts from his grandparents and father were, in essence, 20% of the value of the family business. The asset which the appellant had at the time of the hearing before the district judge, namely shareholdings in LKTH and LKTI, was the same asset which he had been given between 1977 to 1982, namely a proportionate share in the family business. In short, the appellant retained his proportionate share in the underlying business throughout the amalgamations, which did not change the nature or substance of the gift. It would thus be wrong to place the LTKH and LTKI shares into the pool of matrimonial assets to be divided between the appellant and the respondent.

The only remaining question is whether or not the respondent had done anything to enhance the value of the shares. If she had, either on her own or jointly with the appellant, the shares would, by virtue of s 112(10) of the Women`s Charter, be part of the pool of matrimonial assets. It is evident from ***Hoong Khai Soon*** `s case [1993] 3 SLR 34 that there must be a direct causal link between the efforts, if any, and the substantial improvement. There was no evidence whatsoever of how the wife had substantially improved the value of the shares. In view of this, the appellant`s shares in LKTH and LKTI do not form part of the pool of matrimonial assets to be divided between the appellant and the respondent. The appellant`s appeal in relation to these shares is thus allowed.

Costs

When considering the question of costs, it must be borne in mind that while the appellant succeeded in his appeal with respect to the exclusion of his LKTH and LKTI shares from the pool of matrimonial assets to be divided, he failed in his appeal regarding the amount due to the respondent for her share of the matrimonial home and in his appeal on the quantum of lump sum maintenance. Taking all circumstances into account, we are of the view that each party should bear his or her own costs of the appeal and of the hearing in the High Court.

Outcome:

Appeal allowed in part.

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