

Tan Poh Cheng v Kwan Wei Beng
[2000] SGHC 175

Case Number : D 4017/1998, RAS 720011/2000
Decision Date : 29 August 2000
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Koh Geok Jen (Koh Ong & Partners) for the petitioner; Lee Mong Jen (Leong Chua & Wong) for the respondent
Parties : Tan Poh Cheng — Kwan Wei Beng

JUDGMENT:

Grounds of Decision

1. The couple involved in this appeal were married in March 1993 and divorced in April 1999. They have two sons aged five and two and a half respectively.

2. When the ancillary matters were heard in the Family Court in January this year, the District Judge made orders to the following effect:

- (1) the wife was granted custody of the sons and the husband continued to have access in accordance with a previous interim order;
- (2) the husband had to pay the wife \$1,200 per month as maintenance for herself and the two children;
- (3) the matrimonial flat was ordered to be surrendered to the HDB; and
- (4) each party was allowed to retain his/her respective CPF monies.

3. The husband appealed against the first three orders. In relation to the children, he wanted joint custody, alternatively, increased access. Whilst wanting the maintenance payment to be reduced to \$500 per month and be in respect of the children only, he was also willing to pay half their school fees right up to the tertiary level. Thirdly, in relation to the flat, in his notice of appeal the husband asked for the wife to be ordered to transfer all her right, title and interest in it to him in consideration of him paying her 50% of the 'net value' of the flat as defined by him. In consideration of such payment, the wife was to forego all claims for maintenance for herself.

4. The appeal was first heard before me on 13 April. I confirmed the custody order made by the District Judge but varied the access arrangements. In relation to maintenance, I allowed the husband's appeal in part by varying the order in that I reduced the maintenance payable from \$1,200 for the wife and children to \$800 for the children and \$200 for the wife. This was a net reduction of \$200. As there was not sufficient information about the value of the matrimonial flat in order to make a decision, I adjourned this issue to 11 May in order to enable the parties to obtain a valuation. Subsequently, the wife wrote in for further arguments on the question of maintenance and I acceded to her request. She also filed an affidavit outlining her expenses and income situation. In the event, these issues were fixed to be heard together with the submissions on the flat.

5. At the hearing on 11 May I was informed that the valuation of the flat had only been received the previous day and that the wife was suggesting a global settlement. The matter was further adjourned to 22 May to allow parties to explore this opportunity. Unfortunately, no settlement was reached. Having been unable to achieve a settlement, the wife filed a further affidavit on 19 May, this one dealing with the matrimonial flat. The husband filed a reply on 22 May and as the wife wanted to file a further reply, the matter was adjourned to 26 May.

6. On 26 May, the hearing proceeded on the issues of the division of the flat and maintenance. After taking time for consideration, I made my decision on 31 May 2000. I allowed the husband's appeal in relation to the matrimonial flat and set aside the order below directing the parties to surrender the flat to the HDB. I further ordered the wife to transfer her right, title and interest to the flat to the husband upon the husband paying her such sum as was equivalent to 43% of the amount derived by deducting the outstanding loan due on the flat as at the date of transfer from the commercial value of the flat pegged at \$480,000. I further ordered that if the husband did not submit the application for transfer to the HDB within four months of my order he was to pay the wife interest on the amount due to her calculated at 6% per annum. In relation to maintenance, I confirmed my order of 13 April. Finally, I ordered the wife to pay a portion of the husband's costs of appeal fixed at \$3,000. The wife has appealed against all of these orders.

Maintenance

7. In October 1999, when the parties first filed their affidavits in relation to the ancillary matters, both parties were in steady employment and earning regular incomes. The husband was an industrial engineer with a gross monthly salary of \$4,000 and a take home pay of \$3,200. He estimated his expenses as being \$2,929 per month and this included expenditure on his children when they were with him, an allowance for his parents and transport costs. He resided in the matrimonial flat and the instalments for the flat were met in equal parts by contributions from his and the wife's CPF monies.

8. The wife was also an industrial engineer. At the time of the hearing, she and the children were living with her sister and brother-in-law and their children. The wife received a gross pay of \$3,574 and after deductions for CPF (\$714) and an item called ESPP, her take-home pay each month amounted to \$2,499.60. She put her own monthly and household expenses at \$1,542. This included salary and levy for the maid amounting to \$700, food of \$400 and transport of \$200. She estimated the children's monthly expenses as coming to \$1,599 per month, a figure that the husband challenged. He considered their expenses to be not more than \$800 a month.

9. In an affidavit filed in late December 1999, the wife stated that she had been given notice that her services with her then employer would no longer be required and that she would be retrenched with effect from 31 January 2000.

10. The learned District Judge awarded a total sum of \$1,200 as monthly maintenance for the wife and children as she was of the view that this amount was reasonable in the light of the wife and children's expenses. This was a sum that was well within the husband's capabilities considering that he took home \$3,200 a month. The District Judge noted that monthly he spent \$950 on his car and some \$300 on insurance policies. She was obviously of the view that these were luxuries and the expenditure could, if necessary, be reduced so as to allow him to meet his maintenance obligations.

11. When I first heard the appeal on this issue, the material before me was the same as that which had been before the District Judge. At that stage, I considered that the children's expenses had been somewhat inflated by the wife and that at the tender ages of five and two, they were unlikely to require as many expensive classes as she had put in her list. I thought it would also be useful to distinguish between the maintenance paid for the children and that paid for the wife as these were separate issues and a lump sum would have a tax impact that could be reduced if separate awards were made.

12. The children's monthly expenses as itemised by the wife were as follows:

Child care for Ren Xiang (older son)	\$ 250
Phonics classes	\$ 40

Medical	\$ 40
Diapers	\$ 55
Milk powder	\$ 130
Fish	\$ 80
Haircut	\$ 12
Entertainment/toys	\$ 251
Clothing	\$ 111
Festive occasions (birthday/Lantern festival/Chinese New Year)	\$ 57
Stationery	\$ 30
Books	\$ 123
Swimming/organ classes	\$ 200
Tuition	\$ 120
Pocket money	\$ 60
Savings for children	\$ 40
	\$1,599

13. Looking at that list, I considered the expenses to be on the high side especially in relation to entertainment, stationery and books, swimming classes and tuition. The items listed as 'pocket money' and 'savings for children' were unnecessary. I considered that \$1,200 a month would be more than adequate to maintain these children at this stage. Once they went to primary school, the expenses might increase but, for the moment, the sum would be sufficient. I also considered that the father should bear a higher proportion of the children's expenses than the mother should since he was the higher income earner. I therefore ordered him to pay \$800 a month as their maintenance.

14. As for the wife's expenses, I considered that most of these could be met from her own income. The husband, however,

should contribute to her maintenance as he was in a financial position to do so and the wife should be able to maintain a reasonable standard of living. For the time being I considered a contribution of \$200 a month from the husband to be sufficient. In this connection, I noted that although the wife had been retrenched from her previous employment, the terms of the entrenchment were generous. She was entitled to receive one month's salary for each year of service with her former employer. As she had worked there since 1989, this amounted to about ten months' salary. Further, she would get compensation for accumulated leave. Although she had been retrenched, it seemed unlikely that the wife would be unemployed for long. At that stage, the wife appeared to be well capable of continuing to earn a decent living. She also had considerable financial resources.

15. As stated earlier, on 28 April, the wife filed a further affidavit. In this, she set out tables of the family's revised monthly expenses with effect from January 2000. In total these amounted to \$4,131.83 an increase of almost \$1,000 or 31.5% over the figures given only seven months earlier. The wife also gave information about her then employment position. She stated that she was working as a software engineer on a three-month contract ending on 20 May 2000. As such, she earned a basic salary of \$2,300 per month and had a net salary of \$1,839 per month. She had been employed on a project basis and had flexible hours. She had a certain quota of work to complete a day, which she did by working on her computer at home.

16. When the issue of maintenance was brought up again on 26 May, I had to consider whether I should restore the District Judge's order on maintenance or whether the variation I had made to that order should stand. There was no question of my raising the total amount awarded as maintenance since the wife had not appealed against the lower court's decision. Despite having filed an affidavit that showed an apparent increase in her expenses, the wife made little attempt to argue that the original maintenance order should be restored. Instead, her main focus was the flat and through her counsel she indicated that she was willing to waive all claim for maintenance for herself and the children in return for an order that the flat be transferred to her on the basis that she had a 50% share in it and would pay the husband accordingly.

17. Looking through the wife's affidavit of 18 April, I noted that instead of claiming an expense of \$700 a month for the maid's employment expenses, she claimed a sum of \$600 a month as a fee paid to her sister for the use of the maid's services and lodging. It turned out that the maid was employed by the sister rather than the wife. Then there was a substantial increase in the family's food needs: from \$610 in October to \$1,350 in April (calculated on the basis of five dollars per person per meal per day for each of three daily meals). Her expenditure on insurance policies had increased by \$100 and she also claimed the cost of course fees at \$5,253 per annum or \$487.75 per month.

18. As for the children, the older child's expenses came up to \$519 a month of which \$126 was for toys and outings and \$50 was for books and stationery whilst the younger's came up to \$487 a month of which \$80 was for entertainment and \$35 for books and study aids. Even on the revised figures, the children's expenses totalled only \$1,006 (including milk powder but excluding other food). Once food costs were added, I estimated her expenditure on the boys would not exceed \$1,300. The maintenance award I had made was not out of line with these expenses and I did not think it was necessary to change it.

19. As for the wife's own expenses, it seemed to me that she was re-calculating them for maximum benefit. I could not understand how they could have changed so much in a few months especially considering that over those few months her income had, according to her, gone down. Yet her expenditure had increased. The wife produced a receipt from a computer school showing that she had paid them fees of \$3,283.64 in December 1999 and a receipt from the Singapore Institute of Management dated 20 January 2000 for \$5,253 which was apparently charged to her as fees for three separate courses. It appeared that the wife had decided to undertake these courses after the divorce. There was no explanation as to why she had found it necessary to do this (or take so many courses) and whilst professional upgrading is always a commendable undertaking, I did not think that in the present circumstances she could use the expenditure to justify a reinstatement of the original maintenance order. In any case, it was clear that the wife was quite willing to give up maintenance from the husband in return for the flat. It appeared to me that in making this offer, she must have done her sums and decided that she was able to support herself even if she had to forego any contribution from the husband. In that light, I considered there was no good reason why I should vary the decision I had made on maintenance on 13 April.

The matrimonial flat

20. The matrimonial flat was unit #14-644 at Block 587 Hougang Avenue 4. It was purchased in January 1997 and thus at the time of the ancillary hearing, five years had not elapsed from the date of purchase. Accordingly, it could not be sold in the open market. The learned District Judge held that in these circumstances, the flat had no market value. She also noted that the wife would not be in a financial position to keep the flat and assume the mortgage loan of over \$200,000. In fact the wife had not even asked for this. Neither could the husband retain the flat because he did not have a family nucleus. That being the case, the learned District Judge decided that the flat was not an asset that could be divided between the parties and the only option left to her was to order that it be surrendered to the HDB.

21. The husband's position on appeal was that he would be able to form the family nucleus needed to take over the flat as his parents were willing to sell their own flat and move in with him. He therefore wanted the District Judge's decision set aside and the wife ordered to transfer her share in the flat to him. It should be noted that his original submission that the flat should be transferred to him was based on his application for custody of the children, which, if successful, would have given him the required family nucleus. At the hearing below, once it was decided that custody should remain with the wife, the husband did not, apparently, qualify to retain the flat. By the time the matter was heard before me, however, the situation had changed. The HDB had indicated that they would be willing to regard the husband and his parents as a family unit as long as the parents sold their existing flat.

22. The wife's initial position as shown in the submissions of her counsel tendered on 13 April was that the decision of the District Judge was correct as the wife had obtained custody of the children and the husband was unable to form a separate family nucleus. She also submitted that she would not be in a financial position to retain the flat and thus the only option open to the court was to confirm the surrender of the flat to the HDB.

23. By the time the issue of the division of the flat was argued at length on 26 May, the wife had completely changed her position. She now wanted the flat to be transferred to her on the basis that she needed a home for herself and the children and that this would be the best home. She was willing to forego maintenance for herself and the children if the court would order that the transfer take place on the basis of each party having an equal share in the premises. It should be noted here that the husband was willing to allow the wife an equal share in the flat if it was transferred to him and she agreed to forego maintenance. If not, he considered that her interest in it did not exceed 35%.

24. Since the parties were now actively disputing each other's share in the flat, my first task was to determine what financial contributions each of them had made to its acquisition. The wife calculated her contributions as amounting to \$87,104.74 whilst the husband's contributions were \$124,818.06. In coming to these totals, she attributed the amount of \$70,000, which had been spent on renovating the flat, to the parties in equal shares. This sum had been derived from the parties' gains from the sale of an earlier flat at Bedok and the wife's contention was that they were equally entitled to these. In terms of direct contributions therefore, the wife averred that she had contributed 41% of the cost of acquisition of the flat and the husband had contributed 58%.

25. The husband did not accept that the proceeds of sale of the Bedok flat belonged equally to the parties. He calculated his contributions to the acquisition of that flat as amounting to \$40,000 (67% of the cost), made up of \$27,000 from CPF and \$13,000 cash contribution. He put the wife's contributions at \$20,000 (33%) coming entirely from CPF. In her affidavit in reply the wife accepted that the husband had contributed \$40,000 to the Bedok flat in the manner asserted by him. She, however, disagreed that her contribution had been only \$20,000. She said that the payment from her CPF funds had been \$20,709.50. Additionally, she had paid \$1,000 as a cash deposit, a further \$5,000 in cash and the agent's fee of \$660. The documents which the wife produced showed that she had withdrawn \$3,000 from her savings account in October 1992 and a further \$660, described as agent's fees, in December 1992. She also produced evidence from the CPF Board showing the withdrawal of \$20,709.50. All in all, the wife was able to show a contribution of \$24,369.50 to the Bedok flat. This meant she had contributed 37.8% of its cost and the husband had contributed 62.2%.

26. Coming back to the matrimonial flat, I accepted that the wife's share of the \$70,000 spent on renovation was \$26,600 (having

rounded up the 37.8% to 38%) and thus together with her CPF contributions she had contributed altogether \$66,419.06. As for the husband, I took his CPF contributions of \$83,267.57 and added the sum of \$47,400 representing his share of the renovation cost and the sum of \$8,000 that he had paid in cash. This \$8,000 was evidenced to my satisfaction by the husband's POSB account book. The husband's total contribution was therefore \$134,667.37. In terms of percentage therefore, the wife contributed 33% and the husband 67%.

27. I next had to consider the wife's non-financial contributions. She asked the court to take into account the following factors:

- (a) after she left the matrimonial flat in October 1998, the husband had rent free occupation of the flat;
- (b) he paid no maintenance for the children and her until the ancillary orders were made in January 2000;
- (c) she had been and still was the children's primary care giver.

28. I noted that this was a relatively short marriage: the parties lived together for five and a half years. Throughout the marriage, the wife held down a full time job. Once the children came, they were looked after by babysitters for substantial periods though the main responsibility remained with the wife especially when the husband was away in 1995/1996. After the wife left the matrimonial home, the children were cared for by the husband and his parents until June 1999 when she was able to gain their custody pursuant to an interim custody order to which the husband consented. In the circumstances, I put the wife's non-financial contribution to the marriage at ten percent.

29. The matrimonial flat is an executive apartment with a floor area of approximately 140 square metres. It has three bedrooms, a study, a storeroom, two bathrooms, a living cum dining and a kitchen. The valuation carried out in April 2000 valued it at \$480,000. This valuation was made on the basis of what the flat would be considered worth if the parties wanted a mortgage loan. The flat could not be valued on an open market basis as it was not saleable. At that time, the outstanding mortgage loan was approximately \$205,000. The equity which the parties had in the flat was therefore worth around \$275,000.

30. As I had found that the wife should be given a 43% share in the flat for both her financial and non-financial contributions to the flat and the family, she would have had to pay the husband some \$156,750 in order to buy over his 57% share in it. The wife had urged me very strongly to let her take over the flat by paying the husband only 50% of its equity value on the basis that she would forego maintenance for herself and the boys. I did not accept this submission. The children are young. Their expenses are likely to increase and I did not consider it correct to take away their right to maintenance from their father at this early stage of their lives. The wife might be confident of being able to support them in the future but one cannot discount any number of contingencies happening which could either impair or remove her ability to support the family. Further, the husband's ability to support his children might increase over time and if such an order was made it would prevent the children from enjoying the fruits of such an increase in income.

31. The wife also sought to impress upon me that she had the better claim to the flat as the children needed a roof over their heads. This was true. It was not in my judgment necessary, however, that they should have that particular roof over their heads. They were young and adaptable and were not of an age to be adversely affected by a change in homes. There was nothing to stop the wife from purchasing a smaller but adequate flat in the resale market. In any case, until the appeal she had not found it necessary to ask for the flat. She was quite content for it to go back to the HDB and for herself and the boys to remain at her sister's home for the time being.

32. In this case, there was no question of selling the flat in the open market. It had to go to either the husband or the wife. Whilst I could have ordered the husband to transfer his share in the flat to the wife in return for payment of \$156,750 or thereabouts, I did not consider that the wise course to take. According to the submissions made on behalf of the wife in early April, she was not in a financial position to retain the flat. Nothing had changed in May. Further, the wife's CPF monies were not sufficient to pay the husband off entirely. She would have had to find cash of at least \$50,000 and would also have to take on the burden of the existing mortgage that was at that time being serviced equally by both parties. That would have been a financial strain. I did

not think it right to put the wife in that position. On the face of it, the husband was the higher income earner and would find it easier to service the loan. He would have also help from his parents. With the money that the wife got from the husband and her existing funds in CPF, she would be in a very good position to buy an adequate home for herself and the children without burdening herself too greatly.

33. For the above reasons, I allowed the husband's appeal in relation to the flat and ordered the wife to transfer her share in it to him.

34. Having thought about the matter further, there is one additional order that I should have made in order to be fair to the wife. That is that the husband should, as from the date of my order, service 57% of the monthly instalment due on the mortgage loan on the flat. Alternatively, he would at the time of transfer have to reimburse her, in addition to her share in its equity, the total excess amount she had contributed to all instalments from the date of my order. This, however, is something that can be remedied by the appellate court if the wife does not succeed in her appeal.

Costs

35. The husband asked for the costs of the appeal. He pointed out that he had largely succeeded in that he had obtained more liberal access, the maintenance amount payable to the wife had been reduced and his appeal on the matrimonial property had been allowed. Further, the wife had prolonged the appeal by making further arguments on access and maintenance on which she did not succeed. I considered that the husband had been largely successful in his appeal although he had failed to change the custody order. I therefore ordered that the wife pay a portion of the husband's costs of appeal fixed at \$3,000 which sum was to be deducted from the entitlement in respect of the transfer of the flat.

Judith Prakash

Judge

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