

Official Assignee of the estate of Tang Hsiu Lan, A Bankrupt v Pua Ai Seok and Others
[2001] SGCA 23

Case Number : CA 72/2000
Decision Date : 09 April 2001
Tribunal/Court : Court of Appeal
Coram : Tan Lee Meng J; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : James Ponniah (instructed) and Tan Lu Seng (Tan Lu Seng & Co) for the appellant; Tan Soo Kiang and Simon Jones (Wee Swee Teow & Co) for the first, second and third respondents; Anamah Tan and Sarjeet Singh (Ann Tan & Associates) for the fourth respondent
Parties : Official Assignee of the estate of Tang Hsiu Lan, A Bankrupt — Pua Ai Seok
Equity – Estoppel – Whether issue estoppel applicable – Whether same issue re-opened?

(delivering the grounds of judgment of the court): In this case, the appellant, the official assignee of the estate of Madam Tang Hsiu Lan, a bankrupt, claimed that Madam Tang had a share in No 23 Margoliouth Road, Singapore, which is registered in the names of the first, second and third respondents. The appellant sought, among other things, an order that the said property be sold in the open market and that Madam Tang be paid the amount due to her after the sale of the said property. The trial judge refused to make the orders requested. We dismissed the appeal against his judgment and now set out the reasons for our decision.

Background

The first respondent, Madam Pua Ai Seok, is the mother of the second, third and fourth respondents. The second respondent, Mr Lee Siong, and the third respondent, Mr Lee Boon, are the younger brothers of the fourth respondent, Mr Lee Ee, who is Madam Tang`s former husband.

Madam Tang, who is from Taiwan, married Mr Lee Ee in 1983. After their marriage, Madam Tang and Mr Lee Ee lived at No 505, Dunman Road, Singapore, together with Mr Lee Ee`s parents and his two brothers. In 1987, Madam Pua and her husband purchased a detached house at No 23, Margoliouth Road (hereinafter referred to as `the Margoliouth property`). The said property was registered in the names of Madam Pua, her husband and their three sons, Mr Lee Siong, Mr Lee Boon and Mr Lee Ee, as joint tenants. At that time, Mr Lee Siong and Mr Lee Boon were still students.

After the purchase of the Margoliouth property, Madam Tang lived there with Mr Lee Ee, his parents and his two brothers. It was not disputed that the said property was her matrimonial home.

In 1992, Mr Lee Ee transferred his one-fifth share in the Margoliouth property to Madam Pua, Mr Lee Siong and Mr Lee Boon as joint tenants without any consideration being furnished by them. At the same time, he also transferred his share in the family business to his father, without any consideration.

By 1995, Madam Tang`s marriage to Mr Lee Ee had broken down. In 1996, they were divorced. Justice Sinnathuray, who dealt with the division of matrimonial property, divided the property on the basis that Mr Lee Ee still had a 20% share in the Margoliouth property. As such, he made the following order:

[Madam Tang] be given 40% of the one-fifth share of [the fourth respondent] in

the property known as 23 Margoliouth Road, Singapore, that is, the sum of \$760,000 and [the fourth respondent] to make payment to [Madam Tang] by 1 May 1997.

The \$760,000 referred to in Justice Sinnathuray`s order was calculated on the basis that the Margoliouth property was worth \$9.5m. Mr Lee Ee`s 20% share of this amount was \$1.9m and Madam Tang`s 40% share of Mr Lee Ee`s share was \$760,000.

Mr Lee Ee appealed against the ancillary orders, including the order for the division of matrimonial property. The Court of Appeal dismissed the appeal and allowed him to pay the sum of \$760,000 to Madam Tang in two instalments.

Mr Lee Ee failed to pay Madam Tang the amount due to her. In view of this, she obtained a writ of seizure and sale of one-fifth of the Margoliouth property on 23 December 1998.

On 6 January 1999, Madam Pua`s husband died. As a result, she and her two younger sons, Mr Lee Siong and Mr Lee Boon, were the owners of the Margoliouth property by way of survivorship.

On 3 February 1999, the Registry of Land Titles informed Madam Pua, Mr Lee Siong and Mr Lee Boon that a writ of seizure and sale had been registered by Madam Tang against the Margoliouth property.

SIC No 3391 of 1999 and OS No 841 of 1999

In May 1999, Madam Tang filed SIC 3391/99 for the purpose of enforcing the writ of seizure and sale. She sought an order permitting her to sell the Margoliouth property by private treaty or public auction or an order that her beneficial interest in the said property be sold to Madam Pua, Mr Lee Siong and Mr Lee Boon for \$760,000.

On 1 June 1999, Madam Pua, Mr Lee Siong and Mr Lee Boon filed OS 841/99, seeking, inter alia, a declaration that Madam Tang had no claim or interest in the Margoliouth property.

Although OS 841/99 involved a dispute between Madam Tang and Madam Pua, Mr Lee Siong and Mr Lee Boon while SIC 3391/99 involved a dispute between Madam Tang and Mr Lee Ee, Chao Hick Tin J, as he then was, heard OS 841/99 together with SIC 3391/99 as they both concerned Madam Tang`s claim that she had a share in the Margoliouth property. He then made the following order on 23 July 1999:

(1) On the basis of the Order of the High Court dated 31 January 1997 in Divorce Petition No 2385 of 1995 and the judgment of the Court of Appeal in Civil Appeal No 30 of 1997 dated 26 September 1997, [Madam Tang] has no claim or interest in the [property] which is registered in the name of the [first, second and third respondents].

(2) The application for registration of the Order of Court Instrument I/51426M registered by [Madam Tang] against the said property be cancelled or removed from the land register and that the Registrar of Titles be directed to register the Order made herein against the said property.

Madam Tang`s new action - OS 423/2000

Madam Tang did not appeal against Justice Chao`s order. Instead, on 20 March 2000, she filed OS 423/2000, the subject of the present appeal.

In this new action, she sought, inter alia, a declaration to the effect that Madam Pua, Mr Lee Siong and Mr Lee Boon, as registered proprietors of the Margoliouth property, are `constructive trustees accountable to her for 40% of one-fifth share in the said property`. She also applied for an order for the valuation and sale of the property and for 8% of the gross proceeds of the sale to be paid to her.

The trial judge, Justice Lai Kew Chai, made a number of findings in relation to whether or not there was a trust and on the nature of the trust created. What is relevant for the purpose of the present appeal is that although he agreed that a resulting trust had been created, he dismissed Madam Tang`s application on the ground that the same issues had arisen, or arguably might have arisen, in the earlier proceedings before Chao J. He summed up the position as follows in para 18 of his judgment:

The Order made by Chao Hick Tin J stated that it was made on the basis of the decision of the High Court and the Court of Appeal. If that be the correct interpretation, and that therefore the learned Judge made no pronouncement about the interest of the 4th defendant under the doctrine of resulting trust, it was clear that that particular point was raised and, in any case, it was clear that that particular point might have been raised but was not raised.

The present appeal

In the appeal before us, the appellant`s counsel said that the relevant issues were as follows:

- (i) The scope and effect of an order made pursuant to the powers of the court under s 106 of the Women`s Charter (Cap 353, 1997 Ed) on matrimonial property of an equitable nature, legal title to which was transferred by one spouse to other parties during the marriage.
- (ii) The circumstances in which the extended doctrine of res judicata can be applied to oust a spouse from enforcing vested proprietary rights against third parties.
- (iii) The circumstances under which relief by way of a declaration to impose a constructive trust on third parties may be sought to enforce proprietary rights vested by virtue of s 106 of the Women`s Charter.

We do not agree that the relevant issues in this appeal are those stated by the appellant`s counsel for the simple reason that this is a case in which the question of issue estoppel clearly arises.

The rule of issue estoppel was explained in **Arnold v National Westminster Bank plc** [1991] 2 AC 93[1991] 3 All ER 41 at 47 by Lord Keith in the following terms:

Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to

which the same issue is relevant one of the parties seeks to re-open that issue ... The name `issue estoppel` was first attributed to it by Higgins J in the High Court of Australia in **Hoysted v Federal Commissioner of Taxation** [1921] 29 CLR 537. It was adopted by Diplock LJ in **Thoday v Thoday** [1964] P 181. Having described cause of action estoppel as one form of estoppel per rem judicatam, he said, at p 198:

`The second species, which I will call "issue estoppel", is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such cause of action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was.`

Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action, to which the same issue is relevant, one of the parties seeks to re-open that issue.

For the purpose of applying the rule of issue estoppel, certain conditions must be satisfied. In **The Sennar** [1985] 2 All ER 104 at 110, Lord Brandon stated the position as follows:

[I]n order to create [an issue estoppel], three requirements have to be satisfied. The first requirement is that the judgment in the earlier action relied on as creating an estoppel must be (a) of a court of competent jurisdiction, (b) final and conclusive and (c) on the merits. The second requirement is that the parties (or privies) in the earlier action relied on as creating an estoppel and those in the later action in which that estoppel is raised as a bar must be the same. The third requirement is that the issue in the later action in which the estoppel is raised as a bar must be the same issue as that decided by the judgment in the earlier action.

The requirements of issue estoppel were clearly fulfilled in the present case. In OS 841/99 and in SIC 3391/99, which were heard together by Justice Chao, all the parties to the present proceedings had the opportunity to present their arguments in relation to whether or not there is a trust in relation to Mr Lee Ee`s share of the Margoliouth property and whether or not Madam Tang had a share in the Margoliouth property. As has been mentioned earlier, although OS 841/99 involved a dispute between Madam Tang and Madam Pua, Mr Lee Siong and Mr Lee Boon while SIC 3391/99 involved a dispute between Madam Tang and Mr Lee Ee, Justice Chao heard OS 841/99 together with SIC 3391/99 as they both concerned Madam Tang`s claim that she had a share in the Margoliouth property.

Evidence of the fact that whether or not there is a trust in relation to Mr Lee Ee`s share of the Margoliouth property has been previously argued may be found in Madam Tang`s counsel`s written submissions in SIC 3391/99. The arguments therein were advanced at the hearing where both this SIC and OS 841/99 were heard together. In the said submissions, her counsel noted that one of the questions before the court was the following:

*Whether the High Court and the Court of Appeal made an order that [the deceased] and [the first, second and third respondents] were holding the [20%] share in the property "**in trust**" for the [fourth respondent]. [Emphasis is added.]*

In the said written submissions, Madam Tang`s position with respect to the question posed above was phrased in the following terms:

*[Tang`s] submission is that the issue of whether the High Court and the Court of Appeal had decided whether there was a "trust" is merely pedantic. The courts had ruled that [Tang] is entitled to 40% of the [fourth respondent`s 20%] share in absolute terms. However, for the sake of pedantry, it can be inferred by operation of law that the interest of [the fourth respondent] and [Tang] in [the property] are **beneficial in nature**. [Emphasis is added.]*

It is also pertinent to note that when Madam Tang`s solicitors, Messrs Tan Lu Seng & Co, wrote to the Registrar of the Supreme Court on 29 July 1999 to request Justice Chao to hear further arguments, they stated as follows:

*[Madam Tang] cited the authority of **Hussey v Palmer [1972] 3 All ER 744 at 757** stating as: [A] constructive trust is a trust imposed by law whenever justice and good conscience require it, wherever the defendant cannot conscientiously keep the property for himself alone but ought to allow another to have the property or a share in it.*

*It is therefore [Madam Tang`s] humble submission that the very foundation upon which both the High Court [and ... the Court of Appeal] ruled that the [fourth respondent] had a [20% share] in [the property] was on the recognition that **there was an implied or resulting or constructive trust or even secret trust ...***

*[Madam Tang] respectfully submits that the High Court (as affirmed by the Court of Appeal) even if it had ordered monetary compensation of \$760,000.00 is not in any way constrained from making a further order that [the property] be sold on the basis that it is just and expedient to do so as the [fourth respondent`s] interest is traceable to [the property] on the principle enunciated in **Hussey v Palmer** which has been adopted by the courts. [Madam Tang] respectfully submits that justice and equity would be defeated if the court now does not exercise its inherent discretionary powers of ordering the sale of the property merely because it had ordered a monetary sum of \$760,000.00 to [Madam Tang]. [Emphasis is added.]*

Justice Chao heard further arguments by counsel but he did not change his view that Madam Tang

had no claim to or interest in the Margoliouth property. As there has been a determination of the issue before us in a previous hearing, at which all the parties in the present action were represented, the rule of issue estoppel was applicable. Having not appealed against Justice Chao`s order, Madam Tang is in no position to assert before us that Madam Pua, Mr Lee Siong and Mr Lee Boon are accountable to her for `40% of one-fifth share in the said property`. In the circumstances, the appellant`s appeal was dismissed with costs.

Outcome:

Appeal dismissed.

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