

Chan Siew Fong v Chan Fook Kee
[2002] SGCA 4

Case Number : CA 600032/2001
Decision Date : 17 January 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Amarjit Kour d/o Balwant Singh (Peter Low Tang & Belinda Ang) for the appellant; John Tan (instructed) and Low Wee Jee (Thomas Tham & Co) for the respondent
Parties : Chan Siew Fong — Chan Fook Kee

Family Law – Matrimonial home – Division – Distribution of proceeds of sale of matrimonial home – Factors to be taken into account – Just and equitable division – Direct and indirect contributions – Whether to award matrimonial home solely to wife – s 112 Women's Charter (Cap 353, 1997 Ed)

Judgment

GROUND OF DECISION

1. This appeal concerned the division of a matrimonial asset, which is the apartment known as 30 Ah Hood Road, #12-02 Nadia Mansions, Singapore, between a former married couple, namely, the appellant, Madam Chan Siew Fong, and the respondent, Mr Chan Fook Kee, following the dissolution of their marriage. The district court, which heard the ancillary matters in the divorce proceedings, ordered, inter alia, that the apartment be sold in the open market and that the sale proceeds, after payment of the outstanding mortgage loan and the expenses incurred in the sale, be divided in the proportion of 65% to the appellant and 35% to the respondent. On appeal, the High Court increased the share of the appellant to 80% of the net balance and reduced the share of the respondent to 20%, and in all other respects affirmed the order below. Against this decision, the appellant appealed contending that, on the basis of a just and equitable division under s 112 of the Women's Charter (Cap 353, 1997 ed), the entire property should be awarded to her solely. We allowed the appeal and now give our reasons.

Background facts

2. The appellant and the respondent first met while they were both working in a textile company: he was then the manager and she was his assistant. After they had known each other for about three months, they both left the employment of the company at the same time. The appellant went to work as a nurse in a governmental hospital at Thomson Road, while the respondent proceeded to set up his own business. He started his own textile business trading in garments sometime in January 1969. The appellant assisted the respondent in the setting up of his business by, among other things, providing him with some monies, which she had saved. The respondent persuaded the appellant to resign from her job as a nurse and to assist him in his business, which she later agreed. They were married on 23 June 1969.

3. The respondent registered his business under the name and style of International Industrial & Trading Company on 1 July 1969. The appellant started to work for the respondent at about that time. She took on a variety of roles, from designing the garments and marketing the company's products to handling the company's secretarial and accounting needs. In 1971, the respondent extended his business into manufacturing garments and set up a factory of which the appellant took

charge. From 1971 to 1977, she worked and lived in the factory. Through her initiatives and creativity, she 'invented' a novel management method, the 'Colour-Dotted Management Method', which boosted the productivity of the factory. The business grew and at one stage the respondent had over 20 employees. For all the work she did, the appellant was not paid a salary or staff allowance. Nor was she given a share of the profits.

4. They have three children, two sons born on 12 December 1970 and 24 May 1972, and one daughter born on 11 August 1973. All of them are above 21 years old. Both their sons graduated from a polytechnic, and their daughter completed her university education. The appellant is 54 years old and the respondent 60 years.

5. In late 1977 or thereabouts, the appellant discovered that the respondent had an affair with a seamstress in his employ. She left the business but continued to maintain the marriage for the sake of the children. She became a private tutor, giving tuition to students over extremely long hours at her residence. Apart from giving private tuition, she also had to attend to the usual household chores like cooking, washing and looking after the children. By 1984, she managed to save some moneys amounting to about \$100,000 which she placed on fixed deposits with United Overseas Finance Ltd and DBS Bank.

6. Meanwhile, the respondent continued to carry on the business, which subsequently ran into difficulties. By November 1980, he was unable to pay the rent for the factory and the salaries of his staff. In March 1982, the factory was closed and the business ceased. He sold all the assets of the business but did not pay the appellant any part of the proceeds of sale. He then left for Indonesia, leaving the appellant and the children. There, he worked for a garment factory known as PT Busuana Indah Inter Industri, and was appointed the manager. While he was in Indonesia, he only returned once or twice a month and did not provide any maintenance for the appellant and the children. It was left to the appellant to maintain herself and the children. The production at the factory of which he was in charge was unsatisfactory. In the following year, at his urgent request, the appellant went to Indonesia to help him, leaving her mother to look after the three children. She helped him implement the 'Colour Dotted Management Method' in the factory, and as a result, the factory's production increased significantly; her efforts in the factory saved the respondent his job. She worked there for about three months and thereafter returned to Singapore.

7. In 1984, the couple decided to buy the apartment, 30 Ah Hood Road, #12-02, Nadia Mansions, Singapore at the price of \$500,544. They signed the sale and purchase agreement on 20 March 1984 with the developer. The flat was then still under development, and it was completed only in July 1985. The parties agreed to pay 40% of the purchase price in cash in four equal instalments, with the balance to be financed by the bank on an overdraft account to be secured by a mortgage over the flat. The appellant paid for all the four instalments. It was also the appellant who was mainly responsible for servicing the overdraft.

8. In 1986, the respondent's fortunes again waned and he returned to Singapore and worked for the company, Tex Line Associates Pte Ltd. The respondent still did not pay for any of the household expenses; nor did he pay the monthly instalments for the apartment. The appellant shouldered the main burden of maintaining the family. The respondent's refusal to contribute to supporting the family and servicing the housing loan caused the couple to have frequent quarrels where the respondent behaved aggressively towards the appellant. In 1989, as a result of one such incident, the appellant reported the matter to the police. With the help and intervention of some of the couple's mutual friends, the respondent agreed to pay monthly a sum of \$1,000 towards the household expenses. It was during these times that, on 26 June 1989, the respondent agreed to withdraw \$50,000 from his CPF account to pay in part the term loan owed to United Overseas Finance Ltd ('UOF'). He also

agreed that a sum of \$1,000 be deducted monthly from his CPF account to pay for the instalments of the UOF loan with the appellant topping up the balance.

9. The respondent, however, did pay for his sons' polytechnic education using his CPF account, but his sons had since repaid him for all the costs incurred. The respondent promised to pay for his daughter's university education, but as the finances were often not forthcoming, the appellant ended up paying a large part of her daughter's education.

10. The respondent did not keep his promise to pay the monthly sum of \$1,000 for the household expenses. In the result, the appellant had great difficulties in trying to service the housing loan and maintain the family. Finally, in 1990 she resorted to applying to the court for maintenance, whereupon he agreed to pay \$1,260 per month towards the family's maintenance. An order was made against him for payment of such maintenance. The figure was arrived at on the basis of what he told the appellant, that is, that he was earning about \$3,000 a month. In actual fact, he earned much more.

11. The judge in the High Court found that it was at about this time that the appellant took in a number of lodgers who were Indonesia students, and that she 'did earn no insubstantial sums' from such lodgers. The judge also found that the moneys she earned from 'the lodging enterprise' accounted for the expenditure for the renovations of the apartment that were carried out and also enabled her to defray the household expenses and the instalments for the housing loan. There was no dispute on such findings.

12. The respondent left the family in 1992 without a forwarding address and defaulted in paying the maintenance ordered by the court. The appellant could only enforce the payment of the arrears, when he returned to Singapore, which he did in 1994. At that time, upon the respondent's application, the maintenance was reduced to \$315 per month on the ground that all the children were by then sui juris. The respondent defaulted in payment of maintenance again from 1996 onwards. The appellant was only able to enforce the payment of the arrears in 1999, when he returned to Singapore. After his return, he filed the petition for divorce based on the fact that the parties had lived apart for a continuous period of not less than 4 years. The petition was uncontested, and the decree nisi was granted on 8 July 1999.

13. The appellant has since discovered that the respondent has settled in South Africa, living with a woman, Tso Kum Yung. He and Tso Kum Yung are directors of two companies in South Africa trading in garments namely, Korsum Trading and Texline Import and Export. The respondent, however, claimed that since December 2000, after Tso Kum Yung had sold her property, he had been working as a farm assistant and living in the farm. There was no indication that he intended to return to Singapore.

The appeal

14. The only issue in this appeal was whether the division of matrimonial asset between the parties as ordered by the judge in the High Court was 'just and equitable', having regard to all the circumstances of the case. On this issue, we turn first to the direct financial contribution made by the parties for the acquisition of the apartment. The judge found that the appellant had contributed in total a sum of \$884,857.55 representing 87.7%, and the respondent only a total sum of \$123,970.91 representing 12.3%.

15. Before us, the respondent did not accept this finding and disputed the extent of the appellant's contribution. We found that he had not shown that the finding was in error or in any way

unsustainable. In our judgment, this finding was amply supported by the documentary evidence adduced by the appellant. There were documents produced showing that the appellant liquidated two of her UOF fixed deposits and two of her UOB Asian Currency Unit fixed deposits to pay for 40% of the purchase price. She also produced bank statements to prove her contributions to the monthly instalments for servicing the mortgage. The statements also showed that she was the one who paid for expenses such as maintenance fees, property taxes, upgrading levies, insurance and the legal fees incurred in relation to the apartment. Finally, she produced receipts evidencing her expenditure on the renovation of the flat.

16. The documentary evidence adduced by the appellant was considered by the judge in some depth. He said at 8:

8 I go to the substance of the matter. I examined the 14 banking documents exhibited in the wife's affidavit affirmed on 25 October 2000. They proved that the husband did not pay any part of the initial deposit of \$200,217.60. In 1984 they agreed to purchase the flat for \$500,544.00, having exercised the option to purchase on 20 March 1984. The flat was still under development. It was completed in July of the following year. The first 4 initial deposits were of \$50,054.40 each. The couple had in fact agreed to pay for them in equal shares. But the documentary evidence, which she sought to adduce, proved that he did not carry out his part of the bargain. She paid the initial "booking fee" out of her UOF SGD Fixed Deposit Account No. 606-405-729-1. The balance of \$54.40 was withdrawn from her DBS Savings a/c. In April 1984 the second installment became payable. She again lifted another UOF fixed deposit of \$50,000 and paid the balance of \$54.40 from her DBS Savings a/c. When the 3rd and 4th installments fell due in June, 1984 the husband was unable to pay. The wife used her UOB fixed deposit No. 51128 to pay for the third installment. In his letter to United Overseas Bank of 6 June 1984 the husband admitted just as much. As for the payment of the 4th installment, the husband's letter confirmed that he was strapped for cash in his business in Indonesia and again the wife used her UOB fixed deposit under receipt No. 51128 to pay for it.

He then turned to consider the evidence adduced by the respondent and concluded at 10:

10 [T]hey proved that he did not make any direct financial contributions except for the payment of the lump sum and monthly installments from his CPF a/c, which as I had noted, he reluctantly agreed because the wife had by then exhausted all her means to pay for them.

The judge also relied on a further affidavit filed by the appellant which showed that she had borrowed moneys from an Indonesian lady, Amy Lousiana, who is the mother of one the appellant's borders, to pay for the instalments for the house and household expenses. The judge said at 11:

11 On 2 February 2001 the wife sought the admission of another affidavit, which she had filed. She wanted to admit the OCBC banking documents, which confirmed her version that one of her friends, an Indonesian lady by the name of Amy Lousiana, had extended to her financial assistance throughout the years when she needed to pay for the flat and house expenses. This lady was the mother of one of the several Indonesian lodgers who lived in the flat. The wife had incurred liabilities which she has to pay back to Amy Lousiana and this was a relevant factor to take into account.

17. The judge came to the following conclusion at 20:

20 ... In the end, I accepted the figures submitted by the wife. She claimed that she had contributed \$884,857.55. The particulars are set out on p 25 of her written submissions of 5 March 2001. The husband, on the other hand, contributed the sum of \$123,970.91 from his CPF a/c, which I agree, is part of the matrimonial assets to which the wife is entitled to a share. Her direct contributions totalled 87.7%.

In our judgment, the judge was fully justified in making this finding, and we agreed with him entirely.

Indirect contributions

18. It is not disputed that the appellant made substantial contributions to the welfare of the family and the marriage. The parties were married for some 30 years, although during the last 7 years they lived apart. Since 1978, the appellant stayed at home, looked after the children and worked as a private tutor. Later, she took in boarders to supplement her income. The three children were brought up mainly by the appellant. The respondent for a great part of the time was an 'absentee' husband and father. The evidence showed that he had not been a responsible husband and father. The appellant maintained herself and the children for the greater part of the marriage before she sought a maintenance order from the court in 1990. The appellant with her children has been living at the apartment and looking after it since its purchase.

19. In the early days of their marriage, the appellant gave the respondent substantial help in his business without getting anything in return. Such help included giving the respondent financial assistance to set up his garment business under the name of International Industrial Trading Company, and giving up her job to work for the respondent from 1969 to 1977 without any salary or payment. While she was working in his factory, she also 'invented' a new management method called the 'Colour Dotted Management Method' which boosted the productivity of the factory. When the respondent was in Indonesia and requested for her help, she went over there to help him implement the management method in a factory, of which he was in charge. That increased the productivity of the factory and saved him his job.

The respondent's assets

20. There were other assets which the respondent must have acquired during the marriage and these assets did not appear to have been taken into account in the division. These include the respondent's CPF account (apart from the amounts withdrawn for payment of the flat) and his business assets which he must have accumulated over the past thirty years. The respondent appeared to have settled in South Africa and was quite secretive in his business activities there. The judge in the High Court did not accept that he had no assets. Nor did we.

Division

21. The judge did consider whether he should give to the appellant the entire matrimonial home but refrained from so doing on account of the respondent's contributions, direct and indirect. He said at 20:

In view of the wife's substantial indirect contributions to the accumulation of the matrimonial assets, I was sorely tempted to accede to her request that I award her the entire flat and order him to repay his own CPF, as it would mean that he would immediately take out the bulk of it since he is past 55 years old. But I did not do so because it would be out of line with an objective view of the facts. He was not totally derelict. He did pay for half of the daughter's education. Though under compulsion, he did pay maintenance. He did give money to his son when the latter was in need. He had made some contributions. I felt I would fall in error in awarding him no share in the matrimonial flat. I therefore awarded him 20% of the net proceeds of sale. The other terms of my order are set out in an order which I approved.

22. With respect, we were unable to agree with the judge. In the circumstances of this case, an order awarding her the entire apartment would not be out of line. There were ample grounds for such an order.

23. As the judge found and we agreed, the direct financial contributions made by the parties towards the acquisition of the flat were as follows: 87.7% thereof by the appellant, and 12.3% by the respondent. In addition, there were the indirect contributions made by the parties. It is not disputed that the indirect contributions made by the appellant were truly substantial. She shouldered the burden of maintaining the family for the greater part of the marriage, and worked long hours to provide financial means and support for herself and the children. She took on the task of bring up the children single-handedly. In the course of so doing, she incurred substantial debts for the joint benefit of herself and the family and would have to discharge these debts herself. During the earlier part of the marriage, she rendered substantial help to the respondent's business without getting anything in return.

24. It is true that the respondent did pay for half of his daughter's university education and his sons' education at the polytechnic. But, in our view, these contributions were quite insignificant compared to the total contributions made by the appellant to the welfare of the family. The respondent was absent during a substantial part of the marriage: he was in Indonesia during the period between 1982 and 1986, and during that period he did not provide any maintenance for the family. In 1992, he left the family, and while he was away he did not provide any maintenance for the family, and only made good the arrears of maintenance later when he was compelled to do so. He acted irresponsibly and appeared to have no concern or care for his family. The respondent also kept for himself some matrimonial assets, such as the proceeds from the sale of the assets of the garment business and his own CPF account. These and other assets of his should also be taken into account in the division of the matrimonial assets.

25. In the result, at the conclusion of the appeal we had no hesitation in awarding the entire apartment to the appellant and directing the respondent to repay his own CPF account, if required, with his own funds. That, in our judgment, was a just and equitable division of the matrimonial asset between them.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

L P THEAN
Judge of Appeal

Sgd:

CHAO HICK TIN
Judge of Appeal

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