

Tham Lai Hoong v Fong Weng Sun Peter Vincent
[2002] SGHC 45

Case Number : Div P 681/1999, RA 720045/2001, 720046/2001
Decision Date : 05 March 2002
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : John Thomas (Colin Ng & Partners) for the petitioner; Cheva Yu (Madhavan Partnership) for the respondent
Parties : Tham Lai Hoong — Fong Weng Sun Peter Vincent

Family Law – Matrimonial assets – Division – District judge ordering division of matrimonial home only while allowing parties to retain other assets in their own names – Whether such approach possible – Whether such approach advisable – Appropriate approach in determining just and equitable division – s 112 Women's Charter (Cap 353, 1997 Ed)

Judgment

GROUNDS OF DECISION

1 This is an appeal against the decision of the District Judge in respect of division of matrimonial assets and maintenance. These ancillary matters were heard on 23 April 2001 and the following orders were made by the District Judge on 24 July 2001:

- (1) The matrimonial property at 43 Charlton Road, shall be sold in the open market within 6 months from the date hereof;
- (2) Parties shall have joint conduct of the sale;
- (3) The proceeds of sale of the matrimonial property, after deducting:
 - (a) the outstanding bank loans;
 - (b) the sum of \$300,000 owing to the Respondent's father;
and
 - (c) the costs and expenses of sale

shall be divided in the proportion of 35% to the Petitioner and 65% to the Respondent;

- (4) Thereafter each party shall refund to his or her own CPF account all monies withdrawn therefrom for the purchase of the matrimonial property and interest accrued thereon;
- (5) The said sum of \$300,000 payable to the Respondent's father shall be forwarded to the Respondent's Counsel upon the Respondent's Counsel obtaining from the Respondent's father his acknowledgement of receipt in writing of the said sum of \$300,000;
- (6) Both parties shall vacate the matrimonial property at least one week before the Date of Completion;

(7) The Respondent shall pay the sum of \$2,000 per month to the Petitioner as maintenance for the Petitioner with effect from 1 August 2001. Payment thereafter shall be made on the first day of each subsequent month and directly into the Petitioner's bank account;

(8) Each party shall retain whatever other matrimonial assets that are now in his or her own name;

(9) Each party shall have no further claims against the other (other than the payment of the monthly maintenance to the Petitioner);

(10) The Respondent shall pay the Petitioner the costs of these ancillary matters' hearing fixed at \$3,500; and

(11) Parties shall have liberty to apply.

2 In RAS 720045/2001, the Petitioner appealed against those orders of the District Judge. In RAS 720046/2001, the Respondent also appealed against the decision of the District Judge. Both appeals were heard by me on 14 January 2002, at the end of which I dismissed the Respondent's appeal and allowed the Petitioner's appeal in part. I had made the following orders:

(1) Petitioner's assets as listed in paragraph 8 of the Grounds of Decision [below] totalling \$157,000, and Respondent's assets listed in paragraph 13 (except for Singapore Island Country Club membership which is not matrimonial asset) totalling \$192,000, should be taken into consideration in division.

(2) Division of 40% and 60% (in Respondent's favour) is the just and equitable division in the circumstances, and therefore the District Judge's orders number 3 and 8 are varied as follows:

The total matrimonial assets, including the \$157,000 in Petitioner's name and \$192,000 in Respondent's name, and net proceeds of sale of matrimonial home to be divided in the ratio of 40% and 60% to Petitioner and Respondent respectively; net proceeds of sale of matrimonial home being proceeds of sale after deducting (a), (b) and (c) (as in order (3)).

(3) Petitioner's appeal against maintenance order of \$2,000 and costs of \$3,500 is dismissed.

(4) Respondent's appeal is dismissed.

3 On 8 February 2002 the Petitioner filed a notice of appeal against the following parts of my decision:

(i) that the Petitioner's assets totalling \$157,000 should be taken into consideration in the division;

(ii) that the Respondent's membership in the Singapore Island Country Club is not a matrimonial asset;

(iii) the division of the total matrimonial assets in the proportions of 40% and 60% (in the Respondent's favour), total matrimonial assets being the Petitioner's assets totalling \$157,000 and the Respondent's assets totalling \$192,000 and the net proceeds of sale of the matrimonial home (after deduction of outstanding bank loan, repayment of \$300,000 to Respondent's father and costs and expenses of sale); and

(iv) the dismissal of the Petitioner's appeal against the maintenance order of \$2,000 and costs fixed at \$3,500.

The Petitioner contended that she was entitled to the following:

(a) in respect of the matrimonial assets, she should get \$400,000 from the proceeds of sale of the matrimonial property (after deduction of outstanding bank loan, repayment of \$300,000 to Respondent's father and costs and expenses of sale);

(b) maintenance of \$2,500 per month; and

(c) costs fixed at \$7,000.

4 On 1 March 2002, the Respondent filed a notice of appeal against the whole of my decision. I now give my grounds in writing.

Background

5 The parties were married on 6 June 1979. They resided at various places after the marriage and the last was at 43 Charlton Road. They have two sons born in 1980 and 1985. The Petitioner is a housewife. The Respondent is a Training Director with the Institute of Certified Public Accounts of Singapore. On 24 April 1999, the Petitioner filed this Divorce Petition on the ground of the unreasonable behaviour of the Respondent. He filed a Cross-Petition based on the Petitioner's unreasonable behaviour, but later withdrew it. On 5 September 2000 the Decree Nisi was granted. Custody, care and control of the two children were, by consent, given to the Respondent with reasonable access to the Petitioner. The Respondent also agreed to pay the Petitioner \$10,000 as costs of the divorce hearing.

6 The Petitioner was last employed as a tour guide before marriage. She claimed that she had spent a considerable amount of her own money in decorating and furnishing the matrimonial home. But apart from this, it is not disputed that the Respondent had borne all repayments of the housing loan and all household expenses. In 1994, with part of the overdraft of \$300,000 secured by the second mortgage on the matrimonial home, the Respondent got into the childcare business through a company called the London Montessori Centre (Singapore) Pte Ltd. ("LMC"). He had used \$180,000 of the overdraft for this business. The Petitioner withdrew the remaining \$120,000 for her investments. It was around that time that their marriage became strained. In fact the Petitioner had in 1995 filed an earlier petition, Divorce Petition No. 2168 of 1995. They then executed a Settlement Agreement dated 13 August 1996 wherein the Petitioner was to have custody of the two children and the Respondent would pay \$1,500 as monthly maintenance for her and the children. In the Settlement Agreement the Petitioner agreed to receiving 25% of the matrimonial assets.

Matrimonial home

7 The matrimonial home at 43 Charlton Road is worth about \$1.4 million. It was purchased in their joint names in 1989 for \$800,000. Of this, \$550,000 came from the Respondent's CPF account and \$14,000 from the Petitioner's CPF account. The balance of \$250,000 was from a housing loan in which the outstanding balance by February 2001 was about \$100,000. The monthly installments of \$2,218 were paid from the Respondent's CPF account.

8 In 1994, the parties took out a second mortgage on the matrimonial home to secure a \$300,000 overdraft facility. The Respondent subsequently borrowed \$300,000 from his father to clear the overdraft and the parties became indebted to him instead. This loan is evidenced by a written Agreement signed by the three of them on 4 September 1998. This provides that the parties would repay him the \$300,000 if they sold or transferred the property in any manner or by Order of Court. Therefore the parties' equity in the matrimonial home would be its value less: (i) the costs and expenses of sale; (ii) the outstanding housing loan; and (iii) the \$300,000 owed to the Respondent's father.

Other assets of the parties

9 The Petitioner disclosed that she had the following assets apart from her share in the matrimonial home:

(a) Credit Balance in bank accounts	\$132,916.39
(b) Shares in Singapore companies	\$ 19,285.00
(c) Shares in Malaysian companies (S\$ equivalent)	\$ 11,000.00

The Respondent disclosed that his assets apart from the matrimonial home were as follows:

(a) Credit balance in his CPF ordinary and special accounts	\$ 46,354
(b) 22,500 shares in his company, LMC (estimated value)	\$ 50,000
(c) 70,000 shares in Cross Holdings Pte Ltd (estimated value)	\$ 50,000
(d) Shares in Singapore and Malaysian listed companies (value as at February 2000)	\$19,910
(e) 2 club memberships	\$197,000
(f) Two Insurance Policies the beneficiaries of which are his two sons	

10 Before the District Judge, counsel for the Respondent said that he would not make a claim on the Malaysian shares of the Petitioner and counsel for the Petitioner said that she was not making a claim on his Malaysian shares as well as the insurance policies. As for items (a) to (d) of the Respondent's list, it was not disputed that they were matrimonial assets. As regards item (e), the two club memberships are those in the Singapore Island Country Club ("SICC") and the Seletar Country Club ("SCC"). The SCC was purchased by the Respondent sometime in the early 1980s and there was no dispute that this was matrimonial property. The Respondent estimated its value at \$50,000 with a transfer fee of \$30,000. As for the SICC, the Respondent said that his father had purchased the membership for him before his marriage, having paid a sum of \$5,000 to convert the junior membership to full membership when he turned 21 years. The Respondent argued that as it was acquired before marriage, it was therefore not a matrimonial asset. Both counsel agreed that on this basis, the

Petitioner's other assets total \$157,000 and the Respondent's other assets total \$192,000.

Division

11 The District Judge had ordered division of the matrimonial home (sale proceeds less outstanding housing loan, \$300,000 owed to the Respondent's father and sale expenses) in the proportion of 35% to the Petitioner and 65% to the Respondent. In respect of the remaining assets, she did not order distribution and the parties would be entitled to retain what were in their names. In doing so, the judge had regard to the circumstances of the case and the matters set out in Section 112(2) of the Women's Charter. The judge was of the view that the Petitioner should be awarded more than the 25% she had agreed to accept in the Settlement Agreement in view of the long marriage and the need to provide her with sufficient funds to enable her to purchase a home. The judge felt that with 35% of the net proceeds of sale and the other assets she was allowed to retain, she should be able to buy at least an HDB or private apartment.

12 The power to order division of matrimonial assets is given under s 112(1) of the Women's Charter which states as follows:

The court shall have power, when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

The basis of the division shall be what is just and equitable. Section 112(2) provides that in exercising this power the court shall have regard to all the circumstances of the case, including the eight matters listed therein. In order to be able to make such a determination, it is first of all necessary for the court to have a clear idea of the extent of the matrimonial assets available for distribution. What the District Judge did was to order distribution of the matrimonial home only, leaving the other assets of the parties to be retained by them. While I do not say that it is not possible to make an order in this manner, it seems to me that this approach makes it more difficult for the court to arrive at the correct order. In my view the better way to approach the task would be first of all to set out and add up the values, or estimated values, of all the matrimonial assets. Then the court should proceed to compute the direct contributions made by each party. These are, after all, numerical computations which are relatively easy to ascertain. With these numbers out of the way, the court can then proceed with what is really the most difficult part of the exercise, i.e. the determination of a just and equitable division in the light of all the circumstances of the case, including the matters listed in s 112(2). Having decided on the division, it then becomes a simple matter again to decide who should keep what asset and what others should be sold. To exclude some assets from this consideration could contribute to a misapprehension in the mind of the judge as to the extent of the matrimonial assets as well as extent of each party's contribution thereto.

13 Taking that approach, the first step is to add up the matrimonial assets. These total about \$1.35 million, comprising as follows:

<u>Asset</u>	<u>Estimated net value</u>
Matrimonial home	\$1 million
Petitioner's other assets	\$157,000
Respondent's other assets (excluding SICC)	\$192,000

14 The next step is to decide on direct contribution, which is a simple exercise in the present case. She had taken \$120,000 from the \$300,000 overdraft to invest, at the end of which she was able to show total assets of \$157,000. Therefore due to her efforts, the assets had increased by \$37,000. The Petitioner had contributed \$14,000 from her CPF towards the purchase of the matrimonial home. She claimed she spent a substantial sum of money on renovation and the garden, but this is not quantified nor supported by documents. I am prepared to give a generous estimate to the "substantial sum" that she claimed she had spent on renovation and the garden. I put it at \$14,000, which is of the same order as her contribution to the purchase price. Adding these up, her total direct monetary contribution to the matrimonial assets would be \$65,000.

15 The Respondent's direct contributions were as follows. In respect of the family home, he paid \$550,000. He took out a loan of \$250,000 for the balance and paid the monthly installments. By February 2001, there was an outstanding balance left of about \$100,000. Therefore he had contributed another \$150,000 (ignoring interest). He took \$180,000 from the overdraft to invest and his other assets are now worth \$192,000. Therefore he had augmented the assets by \$12,000 which would be his contribution. His total direct monetary contribution would be the sum of \$550,000, \$150,000 and \$12,000, which total \$712,000. Comparing this against the Petitioner's contribution of \$65,000, the ratio of the parties' contribution are 8.4% by the Petitioner and 91.6% by the Respondent. For convenience, I round this to 9% and 91%.

16 I turn to consider the indirect contributions. The marriage lasted 21 years. The Petitioner ceased full-time employment entirely after marriage and she was soon pregnant with their first child. Thereafter she had to look after the family and the matrimonial home. The Respondent claimed that she had led a comfortable life and always had a live-in maid and therefore did not do much housework. However his own mother had admitted that the Petitioner had been a good and loving mother to the boys. The Petitioner claimed that as a result of her sacrifice in giving up working and devoting herself to taking care of the family and the home, the Respondent was able to advance from an employee earning a low income to the owner of various businesses. They were able to upgrade from a smaller house to their current matrimonial home. She said that she had agreed to the Respondent having the custody, care and control of the children because he was financially in a better position to provide for them. She was still staying with them in the matrimonial home. The 1996 Settlement Agreement provided for the Petitioner to get 25% and this is a factor to be taken into account.

17 Taking into account the direct and indirect contributions of the parties and all the other circumstances of this case, I was of the view that a just and equitable division would be 40% to the Petitioner and 60% to the Respondent. This proportion would be applied to the net matrimonial assets as and when each asset becomes realised. Each party would be responsible for refunding his or her CPF account from his or her share of the proceeds of sale of the matrimonial home. So far as the shares are concerned, listed shares are to be valued at the market price on the date of the order, i.e. 14 January 2002. Unlisted shares may be taken at the value attributed to them by the party concerned unless the parties otherwise agree. If the Respondent decides to retain his membership of SCC, then it shall be valued at the prevailing market price at the date of the order.

18 After I made the order on 14 January 2002, the Petitioner applied for further arguments which were heard on 5 February. Counsel argued that the SICC membership was a matrimonial asset because after they were married, the Respondent had paid \$50,000 to convert it to transferable membership, a fact not pointed out at the earlier hearing. I agreed that in the circumstances it would constitute a matrimonial asset. However one of the factors that I had taken into account in deciding on the division was the overall quantum. Had the SICC membership been included I would have adjusted the ratio a little in favour of the Respondent. In view of that I declined to change my order.

19 The Petitioner's counsel also argued that the \$300,000 in connection with the loan from the Respondent's father should be included in the matrimonial assets. However, with respect, I fail to see the logic of his arguments. The simplest way to look at it is to consider what assets are owned by the parties after deduction of their liabilities. In plain language, this money did not belong to them but to the Respondents' father.

20 The Respondent's counsel argued that the money in the Petitioner's CPF account should also be included as matrimonial asset. I have done so in the computation above. With respect to the sums to be refunded to their respective CPF accounts from the sale proceeds, as the refund would come from their respective share of the proceeds, the money in their respective CPF accounts have been treated as matrimonial assets.

Maintenance

21 In respect of her decision on maintenance, the District Judge had said this at 9, 14 and 20 of her Grounds of Decision:

"9. With regard to the matrimonial home, the wife stated that if it was sold, she would have to rent a place or buy a property for herself and be solely responsible for the expenses incurred thereby. She would need no less than \$2,500 per month as maintenance for herself or a lump sum maintenance of \$300,000 to achieve a clean break. She stated that she had been accustomed to a comfortable standard of living during the marriage. She had been chauffeur-driven. She had travelled abroad at least twice a year to various countries and stayed at five or six-star hotels. She had purchased or been given expensive jewellery and luxurious goods. She had also dined at fine restaurants and country clubs.

...

14. With regard to maintenance, the wife had previously agreed and a Consent Order was recorded on 24 November 2000 that he pay her \$1,500 monthly as maintenance for herself alone. He would also have to reimburse her for her groceries and pet care expenses until she moved into her own accommodation. Previously, he earned a total salary of \$6,000 as a Director of LMC and another company, Cross Holdings Pte Ltd. In December 2000, he joined ICPAS and is currently earning \$7,000 per month as a Training Director. His expenses amounted to \$5,144 per month. He was of the view that the wife's present claim for a minimum sum of \$2,500 was excessive. She had inflated her monthly expenses. Furthermore, she had other and substantial assets all of which were acquired from the monies he had given her through the marriage. He submitted that a sum of \$1,500 per month was more than sufficient maintenance for her alone.

...

20. With regard to the amount of maintenance for the wife alone, I took into consideration the fact that the husband was and would be solely responsible for all the expenses of the two children. According to him, both the children would be pursuing their tertiary education and abroad too. He had to put aside some of

his savings for the children's education. The wife had only her own needs to provide for. She is now 44 years old and could still rejoin the workforce for some additional income. Having regard to all the circumstances of the case, including the matters set out in Section 114(1) of the Women's Charter and taking into consideration also sub-section (2), I decided that a sum of \$2,000 per month would be reasonable maintenance for her alone."

22 I fully agree with the judge's decision and find no merit whatsoever in counsel's submission that this was not the appropriate award in the circumstances.

Costs

23 On the question of costs, the District Judge took into account the numerous affidavits filed by both parties, the several pre-trial conferences and the fact that the Respondent had already paid \$10,000 for the divorce hearing. She had decided that \$3,500 rather than the \$5,000 asked by the Petitioner was reasonable costs for the hearing of the ancillary matters. I see no reason to disturb this award and dismissed the Petitioner's appeal in this regard.

Sgd:

LEE SEIU KIN
JUDICIAL COMMISSIONER

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