

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 268

Originating Application No 204 of 2023

Between

Tan Siew Kheng (Personal
Representative of the estate of
Tan Siew Cheng (deceased))

... Claimant

And

Teo Kian Kian (Personal
Representative of Tan Siew
Hiang (deceased))

... Defendant

GROUND OF DECISION

[Land — Sale of land]

[Probate and Administration — Personal representatives]

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Tan Siew Kheng (personal representative of the estate of Tan Siew Cheng, deceased)

v

Teo Kian Kian (personal representative of the estate of Tan Siew Hiang, deceased)

[2023] SGHC 268

General Division of the High Court — Originating Application No 204 of 2023

Chua Lee Ming J
23 August 2023

25 September 2023

Chua Lee Ming J:

Introduction

1 This was an application for the sale of a property at No. 20 Hai Sing Road, Singapore 538922 (the “Property”). The claimant’s submissions raised the question as to whether the court can allow one co-owner of a property to compulsorily purchase another co-owner’s share in the property. Differing views have been expressed by the High Court on this question.

Facts

2 The claimant, Ms Tan Siew Kheng (“Siew Kheng”), has four siblings. They are:

- (a) Her eldest brother, who passed away over 40 years ago.
- (b) Her eldest sister, Ms Tan Siew Hiang (“Siew Hiang”). She passed away in 2015 and was survived by her daughter Ms Teo Kian Kian (“Kian Kian”) and her son Mr Teo Yong Kian (“Yong Kian”). Yong Kian claimed that Siew Hiang made a will 25 years ago, but the will had been misplaced.
- (c) Her second sister, Ms Tan Siew Cheng (“Siew Cheng”). She passed away in 2022 leaving a will, and the claimant is the executor of her estate. The beneficiaries under Siew Cheng’s will are Ms Tan Sam Cheng (“Sam Cheng”) (20%), the claimant (60%), and Kian Kian (20%).
- (d) Sam Cheng is the claimant’s third sister. She is 82 years old.

The claimant, aged 76, is the youngest amongst her siblings.

3 Siew Hiang and Siew Cheng were the registered owners of the Property, each owning half a share of the Property. As both had died, the estate of Siew Hiang and the estate of Siew Cheng each held a 50% share in the Property. As beneficiaries of the estate of Siew Hiang, Kian Kian and Yong Kian each had a 25% share in the Property. As beneficiaries under Siew Cheng’s will, the claimant had a 30% share in the Property, Sam Cheng had a 10% share and Kian Kian had a 10% share. The net result was that the claimant had a 30% share in

the Property, Sam Cheng had a 10% share, Kian Kian had a 35% share and Yong Kian had a 25% share.

4 No application for a grant of probate or letters of administration was made with respect to the estate of Siew Hiang. On 27 June 2023, the court appointed Kian Kian to represent the estate of Siew Hiang in these proceedings pursuant to O 4 r 4(2) of the Rules of Court 2021. Kian Kian acted in person in these proceedings. While it appeared that she had initially consented to the sale of the Property, it became clear by 9 May 2023 during a Registrar’s Case Conference that both Yong Kian and Kian Kian were objecting to the sale of the Property.

5 In this application, the claimant, as the executrix of Siew Cheng’s estate, sought an order for the Property to be sold in the open market at or above the valuation of \$2,400,000.00. The defendant did not produce any valuation.

Whether the Property should be sold

6 It was clear that the court had the power to order a sale of the Property under s 18(2) read with the First Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the “SCJA”). Section 18(2) states that the General Division of the High Court has the powers set out in the First Schedule, and paragraph 2 of the First Schedule sets out the court’s power to direct a sale of land in lieu of partition. Paragraph 2 reads as follows:

Partition and sale in lieu of partition

2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

7 In *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222, the Court of Appeal set out the following principles to be applied in determining whether a sale was “necessary or expedient” (at [57]):

(a) The court will conduct a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to cooperate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a “clean-break” would be preferable.

(b) The court will have regard to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.

(c) The court would not generally grant a sale if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

8 Applying these principles to the present case, I agreed with the claimant that it was necessary or expedient to order that the Property be sold. First, considering that the relationship between the parties had since broken down, and that the claimant and Sam Cheng were of advanced ages, I was of the view that a “clean-break” was preferable.

9 Second, any prejudice caused to Kian Kian and Yong Kian (as the beneficiaries of the estate of Siew Hiang) if the Property were sold did not outweigh the prejudice to the beneficiaries of the estate of Siew Cheng if the Property were not sold. Kian Kian and Yong Kian may have been residing in the Property but Siew Kheng and Sam Cheng (being two of the beneficiaries

under Siew Cheng’s will) were entitled to the benefit of the estate’s half-share in the Property. It was impractical to order a partition of the Property and it was unlikely that the co-owners would cooperate to partition because the relationship had broken down between the parties (see *Tan Bee Hoon (executrix for the estate of Quek Cher Choi, deceased) and another v Quek Hung Heong and others* [2015] SGHC 229 at [73]–[78]; *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 (“*Sumoi*”) at [97]). The defendant, too, did not ask for partition.

10 In my view, it was neither right nor just to allow Kian Kian and Yong Kian to continue enjoying the use of the Property for themselves. Kian Kian and Yong Kian would be able to find alternative accommodation using their respective shares of the proceeds of the sale of the Property.

11 Third, there was no prior agreement between the owners of the Property as to how the Property may be disposed of. The defendant said that the claimant and she had signed documents agreeing to donate 10% of the proceeds of the sale of the Property to a temple. In my view, even if true, that was a matter between each of them and the temple and was irrelevant to the present application.

12 In her submissions, the claimant raised two other issues:

- (a) whether s 35(2) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) (“CLPA”) meant that Kian Kian or Yong Kian was not entitled to deal with the Property; and
- (b) whether the court can allow a co-owner to compulsorily buy out another co-owner under s 18(2) of the SCJA read with para 2 of the First Schedule.

Section 35(2) of the CLPA

13 The claimant submitted that she was the only person entitled by law to deal with the Property and that neither Kian Kian nor Yong Kian was entitled to deal with the Property because more than six years had passed since Siew Hiang’s death. The claimant relied on s 35(2) of the CLPA, which states as follows:

(2) No sale or mortgage of land belonging to the estate of a deceased person shall be made by the legal personal representative of that person after the expiration of 6 years from his death unless with the sanction of the court, or unless the sale or mortgage is made in pursuance of a power of sale or trust for sale or mortgage which is expressly contained in or may be implied from the terms of the will of the deceased.

14 In my view, this was a non-issue. Section 35(2) of the CLPA was not applicable in the present case as it was not the personal representative of Siew Hiang’s estate who sought to sell the Property. Section 35(2) of the CLPA did not apply to the claimant as she was seeking a sale of the Property within the six-year period after Siew Cheng’s death.

15 I note in passing that it may be appropriate to review the necessity for the requirement to obtain the sanction of the court under s 35(2) of the CLPA. The origin of s 35 of the CLPA can be traced to s 33 of The Conveyancing and Law of Property Ordinance (SS Ord No 6 of 1886) of the Straits Settlements (the “CLP Ordinance”). The CLP Ordinance was described as an adaptation of the following English Acts: The Vendor and Purchaser Act, 1874 (37 & 38 Vict, c 78), The Conveyancing and Law of Property Act 1881 (44 & 45 Vict, c 41) (the “CLPA 1881 (UK)”), and “The Conveyancing and Law of Property Amendment Act, 1882”: *Straits Settlement Government Gazette* (31 December 1885) at p 2001. The reference to “The Conveyancing and Law of Property Amendment Act, 1882” was likely a reference to the Conveyancing Act 1882

(45 & 46 Vict, c 39) instead: see *Supplement to the Singapore Free Press, Legislative Council* (29 December 1885) at p 4.

16 Section 33 of the CLP Ordinance repealed and re-enacted the provisions of the Indian Act 20 of 1837 (the “Indian Act 20”), which provided that all land should devolve on the personal representative of the deceased owner instead of his heirs, thus facilitating its sale: *Straits Settlement Government Gazette* (31 December 1885) at pp 1999 and 2002. This removed the dichotomy at common law under which the freehold estate of the deceased devolved on his heirs (in accordance with his will or intestacy laws) whilst his personal property (which included leasehold interests) devolved on his personal representative (to be distributed according to his will or intestacy laws): see *Syed Ali Redha Alsagoff (administrator of the estate of Mohamed bin Ali bin Faraj Basalamah, deceased) v Syed Salim Alhadad bin Syed Ahmad Alhadad and others and another matter* [1996] 2 SLR 470 (“*Alsagoff*”) at [30]–[32]. The reason for this dichotomy at common law appears to be due to the separation of the ecclesiastical courts from the secular courts in England after the Norman Conquest; the ecclesiastical courts acquired jurisdiction of succession to personalty while the secular courts retained jurisdiction of succession to freehold interests in realty (see Eugene M Haertle, “The History of the Probate Court” (1962) 45 Marq L Rev 546 at p 546; Frederic W Maitland and Sir Frederick Pollock, *The History of English Law before the Time of Edward I, Reprint of 2nd Edition, volume 2* (Liberty Fund, 2010) at p 341).

17 However, the Indian Act 20 did not apply to cases of a trustee or mortgagee dying possessed of trust of mortgage estates, which meant that in those cases, the estate devolved on the heirs. Section 33 of the CLP Ordinance remedied the omission by providing for the property in such cases to devolve

on the personal representative of the deceased: *Straits Settlement Government Gazette* (31 December 1885) at p 2002.

18 When The Conveyancing and Law of Property Bill was first introduced in 1885 in the Straits Settlements, it did not have the equivalent of s 35(2) of the CLPA. When the Legislative Council of the Straits Settlements considered the Bill in 1886, it was suggested that the following provision be added as s 33(2) (see *Straits Settlements Government Gazette* (9 July 1886) at p 1069–1070):

(2) – Provided that where a sale or mortgage of land belonging to the estate of a deceased person is made after the commencement of this Ordinance by the legal personal representatives or representative of such person after the expiration of a period of six years from his death *the purchaser or mortgagee shall be bound to enquire as to the necessity and propriety of such sale or mortgage* and shall (notwithstanding any stipulation to the contrary) be entitled to require evidence that such sale or mortgage is necessary and proper.

[emphasis added]

19 The proposed amendment was adopted: see *Straits Settlements Government Gazette* (9 July 1886) at pp 1072–1104. The origin of s 33(2) of the CLP Ordinance is not apparent (see *Tan Soo Hean v Tan Eng Beng* [1980] 04 MC 1); no equivalent is found in the English Acts from which the CLP Ordinance was adapted, or the Indian Act 20. It appears that the provision was introduced to protect beneficiaries from wrongful dealings by executors or administrators with the property of a deceased person vested in them: see *Straits Settlements Government Gazette* (22 September 1911) at p 1720; *Herman Iskandar v Shaikh Esa and another* [1992] 2 SLR(R) 395 at [16].

20 In 1911, s 33(2) of the CLP Ordinance was amended by The Conveyancing and Law of Property Ordinance 1886 Amendment Ordinance 1911 (SS Ord No 17 of 1911): *Straits Settlements Government Gazette*

(1 December 1911) at p 2161. The obligation on the purchaser or mortgage to enquire as to the necessity and propriety of a sale or mortgage (where such sale or mortgage was being made more than six years after the death of the owner) was removed and replaced by a requirement to obtain the sanction of the court. The amendment was made because the obligation on the purchaser or mortgage was seen to entail “great hardships upon a *bona fide* purchase or mortgage, in that [s 33(2) was] silent as to what inquiries should be made or from whom they should be made, nor [did] it lay down any rule of construction by which the necessity or propriety of the mortgage of sale should be tested”: see *Straits Settlements Government Gazette* (22 September 1911) at p 1720.

21 In my view, it is not clear how s 35(2) of the CLPA protects beneficiaries from wrongful dealings by executors or administrators when they seek to sell or mortgage property belonging to the estate after six years. A sale or mortgage within six years does not require the sanction of the court. It is not clear why a sale or mortgage more than six years after the death of the deceased would be more susceptible to wrongful dealings by the executor or administrator.

22 An executor or administrator has a duty to distribute the assets of the estate in accordance with the terms of the will or intestacy laws. This requires assets to be sold so that the proceeds can be distributed, unless the will (where applicable) provides otherwise or the beneficiaries agree otherwise. The purpose of a sale after the six-year period has expired is likewise to enable the executor or administrator to distribute the proceeds of sale to the beneficiaries. It is not clear why the sanction of court should be required for the sale. The requirement to obtain the sanction of the court is an additional expense for the estate.

23 There is very little guidance on how the court should exercise its discretion to grant its sanction for a sale after the six-year period has expired. In *Re Safiah Binte Tahar Also Known As Safiah Binte Taga Deceased* [1940] SSLR 253, the Supreme Court of the Straits Settlements referred to s 33(2) of the CLP Ordinance, by then renumbered as s 35(2) by virtue of the Statute Laws (Revised Edition) Operation Ordinance 1921 (read with *The Laws of the Straits Settlements 1835–1919 vol 1* at pp 371–428) which came into force on 28 November 1921, and observed that:

The sanction of the Court is not granted as a matter of course or upon an ex parte application, and one or more of the beneficiaries should always be made respondents to the summons. The Court may require to be satisfied as to the reasons for the delay, and will in every case where infants are interested require an affidavit of value so as to ensure that the property is not being sold at an undervalue.

If, however, the Court is satisfied on these points the sanction will be given. ...

24 The consequence of not granting sanction is that there would be no proceeds of sale for the executor or administrator to distribute. It is not clear why the reasons for the delay should cause the court to refuse to grant its sanction. If the delay by the executor or administrator amounts to a breach of his duties, it is open to the beneficiaries to take the necessary action. As for ensuring that sales are not at an undervalue where infants are involved, it is not clear why the court’s sanction is required only if the sale is taking place after the six-year period. In any event, the executor or administrator would be liable for breaches of his duty in selling the property at an undervalue.

Whether a co-owner can be ordered to buy out another co-owner

25 The claimant submitted that, if needed, the court may give Kian Kian and Yong Kian the option to buy out Siew Kheng’s and Sam Cheng’s shares in

the Property. The claimant referred me to three High Court decisions: *Sumoi*, *Tan Chor Hong v Ng Cheng Hock* [2019] SGHC 257 (“*Tan Chor Hong*”) and *Sun Yanyuan v Ng Yit Beng* [2023] 3 SLR 1727 (“*Sun Yanyuan*”).

26 In *Sumoi*, the plaintiff and the defendants were registered as joint tenants of a property. The plaintiff sought a declaration of her interest in the property as well as an order of sale in lieu of partition. The High Court held that the plaintiff had a 10% beneficial interest in the property and ordered a sale in lieu of partition, with a right of first refusal to be given to the defendants. The sale was to be made at “market value” (at [107]).

27 In *Tan Chor Hong*, the plaintiff and the defendant owned a flat as tenants-in-common, with the plaintiff holding a 95% share and the defendant holding a 5% share. The plaintiff sought an order for the flat to be sold. She also sought an order that she be allowed to buy over the defendant’s share in the flat at valuation price in lieu of putting the flat up for sale. The High Court held that paragraph 2 of the First Schedule of the SCJA did not empower the court to allow one co-owner to “compulsorily purchase the other co-owner’s share” (at [53]).

28 In *Sun Yanyuan*, the applicant was the executrix and sole beneficiary under a will. The deceased had a 30% share in a flat; the respondent (who was the deceased’s brother) had the balance 70% share. The respondent did not object to the application for the sale of the flat but asked to have the right of first refusal to buy over the applicant’s share of the flat. The High Court referred to *Sumoi* and *Tan Chor Hong* and concluded that the court had the power to order the sale of a property to a co-owner (at [14]). The court reasoned as follows:

(a) As a matter of precedent, the right of first refusal was granted in the High Court in *Sumoi* to a co-owner who held 90% of the legal and beneficial interest in the property. *Sumoi* was decided before *Tan Chor Hong* (at [53]).

(b) As a matter of principle, the phrase “and to give all necessary and consequential directions” in paragraph 2 of the First Schedule of the SCJA was broad enough to allow an order for a co-owner to be compelled to sell the property to the co-owner of that property (at [16]).

(c) As a matter of policy, an order for the sale to be made to a particular party does not prejudice the claimant if the court has considered all the circumstances of the case, and it may be appropriate in certain cases (at [17]).

29 The court made the following orders in *Sun Yanyuan*:

(a) For a period of six months, neither the applicant nor the respondent could market the flat for sale in the open market. During this period, the respondent had the right to buy the applicant’s share in the property “at a price of 30% of the market valuation of the Flat or higher.”

(b) If the applicant’s share in the property was not sold to the respondent within the six-month period, the property was to be marketed for sale in the open market. If the respondent offered to buy the applicant’s share at 30% of the market valuation, the applicant “shall accept” the offer. If the applicant received an offer from a third party to purchase the flat at market valuation or higher, the applicant was to inform the respondent and the respondent had the right of first refusal to buy the applicant’s share based on the price offered by the third party or

higher. If the respondent did not exercise his right of first refusal within four working days of being informed of the third party's offer, the applicant was at liberty to accept the third party's offer.

30 The valuation price was not necessarily the best price obtainable. In my view, a distinction had to be drawn between (a) allowing a co-owner to compulsorily purchase another co-owner's share in a property at a price other than the best price obtainable, and (b) giving a co-owner the right of first refusal to purchase another co-owner's share based on the best price obtainable. The latter was not objectionable since the party being bought out was not prejudiced in terms of the price. However, in my view, the court had no power to order the former. Paragraph 2 of the First Schedule of the SCJA does not empower the court to allow a co-owner to compulsorily acquire another co-owner's share at a price that is lower than the best price obtainable. Such an order would amount to judicial expropriation of the other co-owner's share to the extent of the shortfall compared to the best price obtainable. A co-owner is entitled to sell his share in the property at the best price obtainable. Forcing him to sell his share to another co-owner at valuation would clearly prejudice him if the valuation price was lower than what the property could fetch in an open market sale.

31 I therefore agreed with the decision in *Tan Chor Hong*. I noted that in *Sumoi*, the court gave the defendants the right of first refusal to buy the plaintiff's share in the property based on "market value" but it was not clear whether this meant valuation or the highest price offered by a third party in a sale in the open market. I respectfully disagreed with *Sun Yanyuan* to the extent that it decided that the court could order a co-owner to sell his share in a property to another co-owner at valuation regardless of the price that the property could fetch in the open market.

32 In the present case, the claimant's submission was to give (if necessary) Kian Kian and Yong Kian a right of first refusal to buy out Siew Kheng's and Sam Cheng's shares in the Property. However, it was unnecessary for me to consider whether to make such an order as neither Kian Kian nor Yong Kian expressed any interest in buying out Siew Kheng's and Sam Cheng's shares. In fact, Kian Kian said that she did not have financial resources.

Conclusion

33 For the above reasons, I allowed the application and ordered a sale of the Property in the open market (at or above the valuation price of \$2,400,000.00), and for the proceeds of the sale to be distributed to the estates of Siew Hiang and Siew Cheng in accordance with their respective shares in the Property. I also ordered that outstanding property taxes (if any) are to be paid from the proceeds of the sale of the Property.

34 I also ordered costs fixed at \$7,500 (including disbursements) to be paid to the claimant from the proceeds of sale.

Chua Lee Ming
Judge of the High Court

Bernard Sahagar s/o Tanggavelu (Lee Bon Leong & Co) for the
claimant;
the defendant in person and unrepresented.
