

TAU v TAV
[2015] SGHCF 2

Case Number : Divorce Suit No 4716 2013 (Registrar's Appeal from the Family Court No 231 of 2014)
Decision Date : 01 April 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Appellant in-person; Lee Tau Chye (Lee Brothers) for the respondent.
Parties : TAU — TAV

Family Law —Matrimonial Assets —Division

1 April 2015

Judgment reserved.

Choo Han Teck J:

1 This seems like a straightforward case like so many that pass through the family courts. A husband and wife divorce, fight to retain care and control of their children, and a bigger portion of their matrimonial assets. Post-divorce ancillary matters cannot, unfortunately, be resolved neatly, or fairly, satisfying the expectations of the parties and often, not even pleasantly. "Every happy family", Tolstoy wrote, "is the same. Every unhappy family is unhappy in its own ways."

2 The appellant before me is a safety co-ordinator in a construction company earning \$3,600 a month. After deductions for his Central Provident Fund ("CPF") account, he is left with \$2,934. He is 51 years old, and for some months last year he worked as a security guard earning \$65 a day. He is not well-educated and is uncertain about holding down a job in the long-term. He has medical problems for which he takes medication to alleviate pain in his gall bladder. He complains of chest pains but has no money to see a cardiac specialist.

3 The appellant's wife is 38 years old. They married in 1996 and moved into their first flat which was purchased by him in his sole name. She was a housewife until about ten years ago when she went to work as a factory operator earning \$1,200 a month before CPF deductions.

4 The appellant and his wife have a son who is in Secondary 2, and a daughter who is in Primary 2, aged 14 and 8 respectively. Their first matrimonial flat was sold at a loss of \$34,000. The present matrimonial flat is valued between \$530,000 and \$550,000 but the flat, which is in joint names, is still mortgaged and the outstanding loan is \$210,000.

5 The CPF Board requires the parties to refund their respective CPF accounts from the proceeds of sale before they can divide the proceeds. The appellant would have to refund \$347,987.95 inclusive of interests and the wife, \$44,405.19, to their CPF account. That means, adding their combined CPF of \$392,393.14 and the outstanding mortgage of \$210,000, the sum total of \$602,393.14 means that there will be no cash to distribute after the flat is sold.

6 The lack of cash for division is the main cause for the appellant's concern. He finds it difficult to manage his living expenses, maintaining his children and an ailing father on his net monthly income of \$2,934. His brother also needs medical attention for intestinal problem that might require surgery.

Furthermore, that brother is also suffering from some mental disability. The father receives about \$400 from social welfare handouts and the appellant's aunt pays the monthly \$100 towards the care centre for his mentally handicapped brother. The appellant says he has trouble with his gallstone and might require surgery but he does not have the money for it.

7 The wife's situation is not much better. She married young and became a housewife until the family's inability to cope with just the sole income from the appellant. She is now 38 years old and her net pay is \$1,000 a month.

8 The appellant alleges that the wife has a better family support than him because her three brothers, one of whom is a graduate, are gainfully employed and her sister lives in a private condominium. Mr Lee Tau Chye, counsel for the wife objected to these allegations on the ground that they are not set out in affidavit. Even if that were so, there is still no evidence of how much financial support the wife receives from them. A divorcee in hard times can be expected to receive support from his or her family. In the absence of evidence of large and definite support, this factor is not sufficiently significant in the present case.

9 In these circumstances, the appellant suggested that the orders below should be varied by rescinding the order for the sale of the flat. The appellant will then let out one of the rooms and surrender the entire rental to the wife. He will also take care and control of the children so that no maintenance would be needed to be paid to her. He will continue to pay the \$1,400 monthly maintenance using \$400 from his CPF account and \$200 from his wife's, with the balance in cash to be borne by the appellant. He suggests a further alternative, which is to sell the flat but to divide the proceeds in the ratio of 20:80 in his favour, instead of 40:60 which was ordered by the learned District Judge ("the learned DJ"), similarly in the appellant's favour.

10 The problem in this case is that there are no net proceeds for division after the parties have refunded to CPF accounts their respective drawings. The wife's monetary contribution to the flat was, as the learned DJ below found, no more than 10%. The learned DJ awarded the wife an additional share of 20% on the basis of her non-monetary contribution. This is not an unreasonable apportionment as she was the principal care-giver to the children since their first child was born 14 years ago. There was no evidence to show that the wife had not fulfilled her duties as a mother and wife all those years. The learned DJ also accorded the wife an additional 10% share so that she would be able to secure housing for herself and the children. The learned DJ's apportionment ensured that the refund to the CPF accounts of the respective parties will be fairly borne. I agree with her view that:

... What the parties may face is the possibility of the CPFEB seeking a full refund which any order other than one which leaves the wife with nothing cannot meet. The intention behind the order is for the husband to source for additional funds to top up his CPF account. His is better able between the two and I emphasise that to award otherwise would be to close one's eyes to the needs of the children who are at an age where a home is a crucial factor in providing safety and stability.

11 I am of the view that the learned DJ's orders were just and equitable and there is no basis to vary them. The appeal is therefore dismissed.

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