

Lim Choon Lai v Chew Kim Heng
[2001] SGCA 48

Case Number : CA 141/2000

Decision Date : 22 June 2001

Tribunal/Court : Court of Appeal

Coram : Lai Kew Chai J; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Tan Kok Heng Leroy Solomon (Lee & Lee) for the appellant; Raymond Lye and Alvin Chang (Tay Lye & Ngaw Partnership) for the respondent

Parties : Lim Choon Lai — Chew Kim Heng

Family Law – Divorce – Division of matrimonial home – Just and equitable division – Proper approach to making just and equitable division – Financial and non-financial contributions by each party – Wife making comparatively larger contributions to family and marriage

JUDGMENT:

Grounds of Judgment

1. This was an appeal from the decision of the High Court dismissing an appeal from the District Court on the issue of division of matrimonial assets following the dissolution of the marriage between the appellant and the respondent. We allowed the appeal and now give our reasons.

Background facts

2. The appellant, Mdm Lim Choon Lai ('Mdm Lim') and the respondent, Mr Chew Kim Heng ('Mr Chew') had had a long marriage of about 30 years. Unfortunately, their marriage was dissolved on 20 April 1999 on Mdm Lim's petition and Mr Chew's cross-petition on the ground that the marriage had irretrievably broken down.

3. The parties had had a long relationship even before their marriage. They first started living together as from December 1962, when Mdm Lim was still a student. She went on to pursue her university education and graduated in 1968. They eventually got married in 1970. At the time of their marriage, both were employed in the Government service, Mr Chew as a clerk and Mdm Lim as a school teacher. He had been working as a clerk since 1958 and retired on 1 May 1998. She, on the other hand, started work in 1968 and continues to be so employed today. The parties have a daughter and a son from the marriage, and both of them are over 21 years old.

4. With regard to the parties' housing arrangements during the 38 years that they were together, they first stayed at Mr Chew's family home for the period from 1963 to 1970. In 1972, they rented a place at 9A Clover Avenue. Soon thereafter and in the same year, they rented a flat at Block 60, Commonwealth Drive from the Housing and Development Board ('HDB'). They stayed there until they bought their own flat in 1974. The new flat was at Block 8, Holland Avenue ('the Holland Avenue flat'), and it was purchased in their joint names from the HDB in early 1974 for \$15,500. The downpayment and monthly instalments were paid for out of Mdm Lim's Central Provident Fund ('CPF'), while Mr Chew paid for the furnishings and renovations and was responsible for the other household expenses. The Holland Avenue flat was later sold in November 1979 for \$30,273, and they purchased the present matrimonial property, 83 Namly Avenue, Singapore ('83 Namly Avenue'), which is a two-storey semi-detached house. The total purchase price of the house, including renovations and other expenses, amounted to \$229,000. A government loan of \$90,000 was taken to finance the purchase of the house, while the remaining sum of \$139,000 was paid for directly by the parties.

Proceedings below

5. With respect to the ancillary matters in the divorce proceedings before the District Court, the only contentious issue was the division of the matrimonial property, 83 Namly Avenue. The district judge made the following orders on 19 July 2000:

(i) That the matrimonial property known as 83 Namly Avenue, Singapore, be sold in the open market within six months from the date of this order and the proceeds of sale, less the expenses connected with the sale, be divided equally between the parties.

(ii) That the wife be given the first option, to be exercised within one month, to purchase the husband's share.

(iii) No order as to maintenance.

(iv) No order as to costs.

6. Mdm Lim appealed only against the order relating to the division of the matrimonial property. The High Court dismissed her appeal and she appealed to this Court.

The appeal

7. The starting point in our consideration of this appeal is s 112 of the Women's Charter (Cap 353, 1997 ed). Sub-section (1) thereof confers on the court the power to order a division of matrimonial assets, and it provides:

(1) 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.

Sub-section (2) of s 112 goes on to provide that the court, in deciding on the question of division, must 'have regard to all the circumstances of the case' and in particular, a number of matters there enumerated. It would be helpful to set out, in so far as material, these provisions which are as follows:

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;

(b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;

(c)

(d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;

(e)

(f)

(g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h)

8. The central issue in this appeal was whether the division of the matrimonial property, 83 Namly Avenue, between the parties was in a proportion which was 'just and equitable'. The approach to be taken in determining what is a 'just and equitable' division of matrimonial assets has been considered in a number of High Court decisions. In *Soh Chan Soon v Tan Choon Yock* (DCA 5017/97, 19 June 1998, unreported), Warren Khoo J advocated the use of a presumption of equal contribution as the starting point. He held, at 4, 9 & 10:

4. Division of matrimonial assets is not a science. It is a judicial attempt to divide what was never intended to be divided in the first place. The legislature and the courts have formulated general guidelines, but it is possible for two judges each doing his or her honest best to come to two significantly different results.

...

9. There is a touch of artificiality in such cases to use as the starting point in a division of the matrimonial assets the amount of money each party has contributed directly towards the acquisition of the home. This ignores the indirect contributions, monetary and otherwise, most of which are incapable of any meaningful ascertainment either because no record was kept or because the nature of the contribution is irreducible into monetary terms. It is closer to reality to use as the starting point the assumption that both parties have contributed jointly and equally throughout the marriage to the acquisition and growth of the equity in the family home. An account can then be taken of other factors to tilt the balance one way or the other. It is more a qualitative than a quantitative exercise.

10. Working out the exact amounts of direct monetary contribution would be worthwhile only in a case, e.g. of a couple who has been married for a short time, with no children, each with independent means and who have not shared a household and its myriad responsibilities. It is hardly worthwhile in the vast majority of cases that come through the divorce courts. It also sometimes adds to the acrimony in ancillary proceedings, not to say anything about the costs of them.

9. In that case, the marriage lasted for about 28 years, and throughout the marriage the wife played a large role in maintaining the family. She even paid the debts of the husband. In terms of the financial contributions made to the purchase of the matrimonial flat, the wife contributed 34%, while the husband paid the balance of 66%. After taking into account the significant indirect contributions made by the wife, the district court awarded the wife a 63% share in the flat. The husband appealed and his appeal was dismissed by Warren Khoo J.

10. In *Louis Pius Gilbert v Louis Anne Lise* [2000] 1 SLR 274, parties were married on 11 July 1980 and their marriage lasted for about 18 years. The matrimonial assets for division between them comprised mainly a HDB flat and the husband's CPF savings.

The wife's contributions were, for the most part, indirect and the district judge awarded her 35% of the value of the assets. In upholding the district judge's decision, Goh Joon Seng J endorsed the approach taken by Warren Khoo J in *Soh Chan Soon v Tan Choon Yock*, and held that the district judge's decision was not shown to be so out of line as to be perverse or that it was clearly wrong on principle.

11. A slightly different approach was, however, taken in *Lau Loon Seng v Sia Peck Eng* [1999] 4 SLR 409, where the High Court was again dealing with a long marriage – a marriage of about 41 years. The wife was a housewife, who looked after the family and also helped the husband in his business. The district court gave the wife a 50% share in the matrimonial assets, but on appeal, the High Court varied the order and reduced the wife's entitlement to only 30%. Kan Ting Chiu J held that the district judge had placed a greater value on the wife's input than she had done so herself. He referred to what he considered the genesis of s 112 of the Women's Charter, which replaced the previous s 106, and held that the principle of equal division was not preserved in the 'just and equitable' formulation, and what was just and equitable must be decided on the facts of each case. The case of *Soh Chan Soon v Tan Choon Yock*, however, was not cited to the judge and was therefore not considered.

12. There are two further High Court decisions on the division of matrimonial assets, both of which were decided by Judith Prakash J. In the first case, *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466, the parties were married for 26 years and had three children from ages 12 to 24. The wife played a supporting role in the family business but made less financial contributions than the husband. However, she was the main caregiver of the children and she looked after the family. The district judge awarded the wife 50% of the matrimonial home, 40% of the husband's Singapore assets, and 30% of his foreign assets. Both parties appealed against this decision. Judith Prakash J held that the wife should be given 50% of all the assets. In discussing the principles applicable to the question of division of matrimonial assets, she disagreed with the approach taken in *Soh Chan Soon* that the starting point is the assumption that both parties have contributed jointly and equally throughout the marriage to the matrimonial assets. She felt that such an approach placed too much emphasis on financial contributions towards the acquisition of matrimonial assets and gave too little weight to other contributions made to the marriage. She was of the view that the court should instead first determine the facts of any particular case, consider which of the factors set out in s 112(2) of Women's Charter are applicable on those facts, and thereafter decide, on that basis, what would amount to an equitable division. She said at 32 – 33:

32. ... The court's task in each case now is to consider the marriage before it as a whole and particularly the role played by each of the parties in the physical and emotional care of the family and in their financial dealings, in order to arrive, to the best of its ability, at a fair division of the assets. In doing this, the court will of course have regard to the various factors laid down both in s 112(2) and in s 114 but will not be bound to give pre-eminence to any of those factors in the way it used to have to do under s 106(4). Thus, a party's financial contributions to the acquisition of any particular matrimonial asset can no longer be principally determinative of how it is divided and the court is free to give as much weight or more to other, non-financial, factors.

33. Given that the court's prime function is to make an equitable distribution of matrimonial assets in the light of all the circumstances, it cannot carry out this function properly if it operates on assumptions. In my view, the correct approach would be to first determine the facts of any particular case, consider which of the factors set out in s 112(2) are applicable on those facts and thereafter decide what on that basis would amount to an equitable division. In this regard, I must respectfully disagree with the approach postulated in *Soh Chan Soon's* case that the starting point is the assumption that both parties have contributed jointly and equally throughout the marriage to the acquisition and growth of the equity in the family home (an assumption which in this case the court below applied equally to all other matrimonial assets) and thereafter take account of the other factors mentioned in s 112(2) to tilt the balance between them.

In particular, Prakash J emphasised that a party's financial contributions to the acquisition of any particular matrimonial asset cannot be principally determinative of how it is divided and just as much weight or more can be given to other non-financial factors. She held, at 43:

... marriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The partners often have unequal abilities whether as parents or as income earners but, as between them, this disparity of roles and talent should not result in unequal rewards where the contributions are made consistently and over a long period of time.

13. In the second case of *Neil John Ryan v Rosaline Berger* [2001] 1 SLR 419, Prakash J reiterated her view that a just and equitable division should not be equated with an equal division, although she did conclude that in that particular case, an equal division was just and equitable. She said at 32:

32. Having considered the submissions and the facts, I concur with the judge's conclusion that in this case the just and equitable division of the matrimonial assets was an equal one. I do not think that the judge did equate a just and equitable division with an equal division. I agree with the submission that the two are not the same because just and equitable has to be determined on the basis of the facts before the Court in any proceeding and whilst in one situation it might be just and equitable to divide assets equally between the parties, in another situation such a decision might very well wreak injustice.

Later in relation to the facts of the case, she said at 34:

34. In this particular case, therefore, on the basis of the factors cited by the judge, viz the length of the marriage, the parties' joint involvement in the family business up to 1990, the wife's contributions in the domestic sphere and as a mother thereafter and the wife's efforts to maintain or improve the value of the family's assets by property investment vis--vis the husband's role in running the main income producing asset ie the company after 1990, it was just and it was equitable to order an equal division of all matrimonial assets.

14. In our respectful view, the approach adopted by Judith Prakash J in *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 is correct. In determining a 'just and equitable' division of matrimonial assets under s 112(1) of the Women's Charter, the court must, as directed by s 112(2), have regard to all the relevant circumstances of the case at hand, and in particular the matters enumerated in that sub-section, in so far as they are applicable, and on that basis determine what a 'just and equitable', division should be. The matters enumerated there comprise both financial and non-financial contributions made by the parties. Where financial contributions are concerned, the court must, of course, take into account the sums contributed by each party; these are the matters specifically mentioned in paragraphs (a) and (b) of s 112(2). However, this does not mean that the court should engage in a meticulous investigation and take an account of every minute sum each party has paid or incurred in the acquisition of the matrimonial assets and/or discharge of any obligation for the benefit of any member of the family, and then make exact calculations of each party's contributions. The court must necessarily take a broader view than that. As for the non-financial contributions, they also play an important role, and depending on the circumstances of the case, they can be just as important. At the end of the day, taking into account both the financial and non-financial contributions, the court would adopt a broad-brush approach to the issue and make a determination on the basis of what the court considers as a 'just and equitable' division.

15. It is true that a division of matrimonial assets under s 112(1) of the Act is not an exact science, and that each judge would have his own view in a particular case as to what is a just and equitable division. It all depends on the facts of the case before him. That is what is directed by that section. Bearing in mind what the section directs, the judge in any particular case is doing the best he can in making a division of the assets between the husband and wife. Such an exercise, in principle, is analogous to that of assessment of damages or losses, which a judge does frequently. Having regard to what the court is statutorily directed to do, we do not think, with respect, that it is correct to say that 'it is closer to reality to use as the starting point the assumption that both husband and wife have contributed jointly and equally throughout the marriage to the acquisition and growth of the equity in the family home', whether the marriage be a long or a short one. The proper approach should be to have regard to all the circumstances of the case and in particular those set out in s 112(2) and make a division on the basis of what the court considers is a 'just and equitable' division between the parties.

Direct contributions

16. We now turn to the facts in this case. It was undisputed that the purchase price of 83 Namly Avenue was \$229,000 and that a loan of \$90,000 was taken to finance the purchase, which was to be repaid over 18 years with each party making equal contributions of \$316.50 per month. The loan had since been fully repaid and there was no outstanding mortgage over the property. What was really in contention between the parties before us and also below was the extent of each party's contributions to the balance sum of \$139,000.

17. Mr Chew claimed that he paid \$125,000 as direct financial contributions to the purchase price of 83 Namly Avenue. A sum of \$100,000 was his savings from his salary earned during the period from 1958 to 1979, \$16,054 from his MPF benefits and \$9,000 from his share of the compensation paid by the government for the acquisition of his family home at Lorong Tamok. Mdm Lim conceded that he paid only the sum of \$22,768 altogether: being \$16,054 from his MPF and \$6,714 from the government compensation, but disputed that he paid the \$100,000 from his alleged accumulated savings. It seemed to us that Mr Chew's claim on the amount of his salary savings was exaggerated. His income for the 10-year period from 1970 to 1979 was only about \$68,000. Having regard to the kind of job in which he was employed, he could not have earned more than that amount for the earlier 10-year period from 1958 to 1969. On that basis, his income would be about \$136,000 or less for the period of 20 years from 1958 to 1979. In order to have accumulated savings of \$100,000 over that same period, Mr Chew would have had to spend less than \$36,000 in the 20 years, which would be less than \$150 per month. This was highly improbable when he also claimed to have helped out with the household expenses, paying for the taxes and other charges.

18. Mdm Lim, on the other hand, claimed that she paid \$107,047 as her direct contribution for the purchase of 83 Namly Avenue. This was made up of \$76,774 from her accumulated savings from her salary and other sources of income, and \$30,273 from the sale proceeds of the Holland Avenue flat. Mdm Lim said that during the 10-year period from 1970 to 1980, her total income was \$116,885, which was almost double that of Mr Chew for the same period. It was therefore submitted that she must have made more contributions to the purchase price. In our view, her claim was similarly inflated. Firstly, the actual nett proceeds arising from the sale of the Holland Avenue flat was only \$6,995 and not \$30,273, and of this \$6,995, half belonged to Mr Chew. Having regard to this, if she contributed the sum of \$107,047, it could only have come from her savings, which would not have been possible with her level of income at that time, especially if her assertion that she had paid for most of the household expenses was to be believed.

19. The district judge found that both parties were not able to substantiate their respective claims and that they each exaggerated the extent of their own contributions. The district judge accepted that Mr Chew had contributed \$22,768, as conceded by Mdm Lim. She found that \$6,995 came from the sale of the Holland Avenue flat. In her view, Mdm Lim should not be given the sole credit for this sum of \$6,995, even though she had used her CPF monies to pay for the flat, as credit had to be given to Mr Chew's contributions towards the renovations and household expenses. The district judge felt that it would be futile to go into a minute examination of each party's exact contributions, especially since the sale of the Holland Avenue flat took place 20 years ago, and she thus concluded that they should be entitled to the profit from the sale of the flat in equal shares, i.e. each being entitled to \$3,497.50.

20. On the basis that Mr Chew had contributed \$22,768 and that \$6,995 had come from the sale of the Holland Avenue flat, the

district judge held that only the payment for the balance of \$109,237 was in dispute. In the face of conflicting evidence from both parties, she did not make a finding as to how much each party paid exactly. She took into account the fact that Mr Chew had started working 10 years earlier than Mdm Lim and would have accumulated more savings even though Mdm Lim was earning a higher salary than he was. She found that, at best, each had contributed equally from their savings. On this basis, she held that with regard to the purchase of 83 Namly Avenue, Mr Chew's direct financial contribution was 58% while Mdm Lim's was 42%. On appeal, the High Court upheld the district judge's assessment but noted that the correct calculations of the percentage contributions should instead be 55% and 45% respectively.

21. We were in agreement with the district judge's decision that the nett proceeds from the sale of the Holland Avenue flat should be split equally between the parties. Although the flat was substantially paid for from monies from Mdm Lim's CPF account, all those monies, presumably with interest, had been refunded to her CPF account upon the sale of the flat. Having had the benefit of this repayment, it follows that she should not be entitled to the whole of the nett proceeds of sale. Further, it appeared that Mr Chew had also made financial contributions by paying for the furnishings and renovations and various household expenses. This was admitted by Mdm Lim.

22. We now turn to the balance of \$109,237, which was in dispute. The evidence from the respective parties was conflicting and neither of them was able to prove what were his or her exact contributions. It was not in dispute that in the relevant 10-year period from 1970 to 1980, Mdm Lim earned almost twice the amount earned by Mr Chew. From that alone, it seemed that she was in a much better financial position than Mr Chew and probably had made larger contributions towards the purchase price. The district judge was of the view that Mdm Lim's higher earning power was counter-balanced by the fact that Mr Chew had been working for 10 years more than Mdm Lim and would have had more savings than Mdm Lim by 1979. We had grave doubts on this evaluation. We did not think that Mr Chew would necessarily have had more savings at the end of the period simply because he had a head-start over Mdm Lim, since his earnings then were rather low and, more likely than not, he would have spent most or all of it on the family. It seemed to us that the higher earnings of Mdm Lim during the relevant period would probably result in higher contributions by her which would offset the \$22,768 as the contribution of Mr Chew. Bearing in mind the absence of reliable evidence on the exact monetary contributions made by each party with regard to the purchase, which took place more than 20 years ago, we think that a fairer view would be that the parties made substantially equal contributions towards the purchase of 83 Namly Avenue.

Other financial and non-financial contributions

23. Mdm Lim claimed that throughout the 30-year marriage, she was the one who shouldered the bulk of the household expenses, did most of the housework and looked after the welfare of the family. She highlighted repeatedly the fact that her earnings over that period were significantly higher than Mr Chew's and that she was the one who was able to provide the family with a comfortable living by paying for their overseas holidays, purchases of cars and branded goods. By contrast, Mr Chew's meagre income was not sufficient for him to provide much for the family at all.

24. Mr Chew did not deny that he earned considerably less than Mdm Lim. In fact, he said that it was precisely because they both recognised that Mdm Lim would have better career prospects that they agreed upon the arrangement, whereby she would focus on her career development, while he would be mainly responsible for the family. Mr Chew said that as Mdm Lim was busier with her career, he was the one who did most of the housework and he was the main caregiver of the children. In addition, he had made other financial contributions to the family by paying for the household expenses such as the utilities, taxes, telephone bills, family car, petrol and newspapers. He also paid for the rent and conservancy charges while they were staying in the rented homes as well as for the furnishings and renovations for their Holland Avenue flat. Mr Chew said that he had paid for four years of the daughter's medical course at the university, and this came up to a sum of \$48,000. During that period, he had further provided the daughter with a monthly allowance of \$600 per month. He claimed that the agreement with Mdm Lim was that he would pay for the daughter's medical course, while she would pay for the son's engineering course. Mdm Lim disputed the amount that Mr Chew paid for the daughter's medical course. She said that he paid only \$36,000 for the course for the period from the second year to the fifth, whereas she was the one who paid for the first year. She admitted that Mr Chew paid for some of the household expenses, but claimed that his contributions were little due to his paltry income and that she was still the one who paid for the bulk of the expenses.

25. In dealing with the issue of other financial contributions made by the parties, the district judge's view was that it was not surprising for Mdm Lim to bear the bulk of the household expenses since she earned almost twice Mr Chew's income. However, the judge also chose to give credit to Mr Chew for his payment of the daughter's school fees. With respect to the indirect contributions, no findings were made as to who was the primary caregiver of the children but the district judge appeared to have acknowledged Mdm Lim's role in running the household and bringing up the children.

26. We had no doubt that in the course of the 30-year marriage, it was Mdm Lim who bore the main burden of supporting the family and providing for its welfare. She was a determined woman who had worked very hard for her family, and she strove to improve herself in her career. She took on extra work and assignments, such as relief teaching and marking examination papers, in order to augment the family income. From the available evidence, which was not disputed, it could be observed that by May 1996, Mdm Lim's gross monthly income was about \$5,000 while Mr Chew's was only about \$1,800. Although the parties could not be said to be high income earners, the family was nonetheless able to enjoy a comfortable living. They bought cars and went on packaged tours overseas, and it was apparent that these material comforts were provided largely by Mdm Lim. Of course, due recognition should also be given to Mr Chew for his contributions. He did what his level of income permitted him to, and he paid for the lesser expenses. In our view, the district judge had been too generous towards Mr Chew and had given too much credit to Mr Chew's financial contributions. Whilst he may have paid for part of his daughter's university education, this could hardly be matched with the level of financial input which Mdm Lim had contributed to the welfare and maintenance of the family.

27. As for the indirect contributions made by the parties, we believed that Mdm Lim, being a school teacher, would most probably have had more time to spend with the family and children, whereas Mr Chew, who worked as a clerk, would have had a nine to five vocation and would not have been as likely to spare the time.

Conclusion

28. After taking into consideration all the various factors and weighing the contributions, both monetary and non-monetary, made by each party, we were of the view that Mdm Lim deserved greater credit for the comparatively larger contributions she had made to the family and marriage. Consequently, we held that a just and equitable division would be for Mdm Lim to receive a 60% share in the sale proceeds of 83 Namly Avenue and for Mr Chew to have a 40% share. In the result, we allowed Mdm Lim's appeal.

Sgd:

Yong Pung How
Chief Justice

Sgd:

L P Thean
Judge of Appeal

Sgd:

Chao Hick Tin
Judge of Appeal