

“THE ‘WE’ DREAM IS OVER, THE ‘YOURS’ OR ‘MINE’ REALITY BEGINS”¹

*Lau Choong Choo v. Chou We Chuan*²

This case involved a dispute over the beneficial interests in a matrimonial home. The vital circumstances were these. The parties were both teachers who after their marriage bought a house (the property in question). The property was conveyed to the husband alone. Matrimonial disharmony set in and the husband moved out of the house in March 1973. The wife instituted divorce proceedings and obtained a decree on the ground of cruelty.

The wife applied to the High Court under section 55 of the Women’s Charter³ for a determination of her interests in that matrimonial home.

Section 55⁴ reads thus:

In any question between husband and wife as to title or possession of property, either party may apply by summons or otherwise in a summary way to any Judge of the Supreme Court, and the Judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as *he thinks fit*, or may direct such application to stand over, and any inquiry touching the matters in question to be in such manner as he thinks fit.

The section does not enable the courts to vary property rights; all that it permits is the exercise of a discretion over the enforcement or realisation of those rights. Its main function is simply to give spouses the advantage of a speedy summary procedure to resolve their disputes relating to property. In every case the court has to inquire what rights the parties had and to give effect to them accordingly. It is the ordinary rules of property which determine what rights each spouse holds in relation to the ownership of the matrimonial home. Speaking generally, the fact that the parties are married to one another is irrelevant *except* that the rights and powers normally incidental to land ownership may be curtailed by the various obligations arising from the marital tie.

The applicant sought an order that the matrimonial home was owned by the applicant and respondent in equal shares or in such other shares that the court thought just. Further, or alternatively, the applicant sought an order that she was entitled to proceeds of the sale of the above property in equal shares and for costs.

A preliminary point must be taken up at this juncture. At first blush it seems as if the application was a follow up from the divorce. This, it is submitted, is not allowed under section 55 which speaks of property disputes between husband and wife and is not available where disputes arise at the time of the divorce decree or thereafter.

¹ The title is taken from the J. Unger Memorial Lecture, 1971 —“Matrimonial Property. Where Do We Go From Here?” delivered by the late Professor Kahn-Freund.

² [1980] 1 M.L.J. 6.

³ Cap. 47, Singapore Statutes, Rev. Ed. 1970.

⁴ The equivalent U.K. section is s. 17 of the Married Women’s Property Act 1882. That section has been made available to spouses for 3 years after the termination of the marriage.

An amendment has been passed to extend the scope of section 55 to cover the period following the termination of the marriage but this has not come into force as yet.⁵ However a close reading of the case shows that the application by way of originating summons had been made before the decree absolute, at the time the parties were still "husband and wife".

As indicated above, the right each spouse has in the matrimonial home is determined by the same property rules as govern rights between strangers. The starting point in answering the question "To whom does it belong?" must always be the title deed in order to ascertain whose name appears as owner in the conveyance. The conveyance⁶ is not conclusive of ownership because the legal owner may be a trustee holding the land for the benefit of a beneficiary. This distinction between legal and equitable ownership is fundamental to our law and is of prime importance in any determination of spouses' rights in the matrimonial home.

To return to the conveyance, this document does not always reflect the actual mode of purchase. Both husband and wife may buy the house and have the conveyance taken in the husband's name. He is therefore the legal owner. Is the beneficial ownership his also, or does this belong to both husband and wife since they both provided the money?

In determining the beneficial entitlement of spouses the court can avail itself of any evidence of an agreement or a declaration of trust or an inference that would allow the court to hold that the legal Owner holds the property, wholly or partially, on trust for his spouse. Where the matrimonial home is conveyed to the husband only, as was the case here, the wife may acquire a beneficial interest in it in a number of ways. She may rely upon a resulting trust in her favour by reason of her contribution in money or money's worth⁷ towards its purchase, or upon an agreement that she owns a part of the property.⁸

The wife in the instant case led evidence to prove contribution on her part towards the acquisition of the home. She proved that she contributed \$13,000 towards the purchase of the matrimonial home which cost \$41,750 and that the balance of \$29,000 was obtained by the husband by way of a mortgage loan. Further, from 1968 to 1972, she had contributed to expenses in the running of the matrimonial home quite apart from the gifts she had made to her husband during the years 1967-1972. On the basis of these contributions she claimed that she was a beneficial owner of the matrimonial home and she sought a share thereof.

⁵ Women's Charter (Amendment) Act (No. 26 of 1980) by appending subsection (4) — "An application may be made under this section by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of 3 years beginning with the date on which the marriage was dissolved or annulled and references in this section to a husband or a wife shall be construed accordingly."

⁶ The formal legal document whereby land is transferred to a purchaser.

⁷ Anon. (1683) 2 Ventr. 361, *Dyer v. Dyer* (1788) 2 Cox Eq. 902, *Cowcher*

^{v.} *Cowcher* [1972] 1 W.L.R. 425.

⁸ *Gissing v. Gissing* [1971] A.C. 886, *Pettitt v. Pettitt* [1969] 2 All E.R. 385.

The court was faced with two questions. The first was whether she does own any share in the property. The second was the quantum of the share each spouse owned.

Beneficial Interests — Whether Shared

The judge, Mr. Justice D'Cotta, addressed the first issue in the following manner. He examined the spouses' conduct carefully to see if it was possible to draw an inference that they intended that the applicant should have a share in the beneficial ownership of the house. He accepted the applicant's assertion that she had paid \$13,000 towards the purchase of it and that she had made financial contributions to the running of the house. The judge then imputed a common intention to both spouses that both were to share the beneficial interest in the house. The applicant therefore succeeded in her claim.

The willingness of the judge to impute a common intention calls for comment. Can the court impute a constructive common intention which in the court's opinion would have been formed by reasonable spouses in the circumstances? Or is the court restricted to considering such evidence which may enable it to reach the conclusion that the parties had made an agreement on their interests? In *Pettitt v. Pettitt*⁹ the House of Lords considered whether the court could impute a "constructive common intention. The divergence in the House on this matter was acute: Lords Morris,¹⁰ Upjohn¹¹ and Hodson¹² with varying degrees of emphasis rejected the approach. They said that the court was restricted to such evidence which would enable the court to reach the conclusion that the parties had made an agreement on their interests.

Lords Reid¹³ and Diplock¹⁴ differed and were prepared to impute a constructive common intention. The willingness of D'Cotta J. in the instant case to impute a common intention is laudable considering that three members of the House in *Pettitt* rejected this approach.

Both Lords Reid and Diplock sat in *Gissing v. Gissing*¹⁵ a year after *Pettitt* and set the tide in favour of the imputed intention approach. D'Cotta J. in the instant case relied on their judgments in *Gissing* in

⁹ *Supra.*, fn. 8.

¹⁰ *Per* Lord Morris: But each of these conclusions would have to be the result of some agreement. Sometimes an agreement, though not put into express words would be clearly implied from what the parties did. But there must be evidence which establishes an agreement before it can be held that one spouse has acquired a beneficial interest in the property.... But when an application is made under section 17 there is no power in the court to make a contract for the parties which they have not themselves made. Nor is there power to decide what the court thinks the parties would have agreed had they discussed the possible break-down or ending of their relationship.

¹¹ *Per* Lord Upjohn: Then in some of the recent cases, before the true scope of section 17 was resolved a number of judicial observations have been made to effect that when a marriage is broken it is the function of the court to fill in the gap by doing what the parties as reasonable spouses would have agreed was to happen on the break-up had they thought about it. This cannot be right.

¹² *Ibid.*, at p. 403E.

¹³ *Ibid.*, at p. 390.

¹⁴ *Ibid.*, at p. 414.

¹⁵ *Supra.*, fn. 8.

following the imputed intention approach. This seems to be the accepted approach now.¹⁶ It is submitted that this approach is correct. One can hardly expect a married couple to spend long hours hammering out agreements as to how their property should be split in the event of a breakdown. While the marriage continues, most couples do not see any need to define their respective rights in the home. Whatever the strict legal position may be, they are content in the unspoken understanding that it is "theirs". It is for the court in all such cases, after seeing and hearing the witnesses, to try and conclude what at the time was in the spouses' minds and then make an order which would give effect in law to that intention.

It is unfortunate that the court was not referred to local precedents on this approach. In *Evelyn Tan v. Tan Lim Tai*,¹⁷ Winslow J. credited the wife with a half-share of the proceeds from the sale of the matrimonial home by inferring a trust. His Lordship did not embark upon a search of an agreement between the spouses in order to so credit the wife. He was prepared to draw an inference of a trust from the conduct of the parties even in the absence of any express agreement. Again in the Malaysian decision of *Chin Shak Len v. Lin Fah*,¹⁸ Gill J., in holding that the wife was entitled to a share in the home on a resulting trust, did not concern himself with the existence or non-existence of any agreement between the parties.

D'Cotta J. did not consider that the facts gave rise to any difficulty in imputing a common intention as to the shares. The applicant had made a substantial contribution towards the purchase and his Lordship, following Lord Diplock in *Gissing*, had no hesitation in holding that, in the absence of evidence which makes some other explanation more probable the inference must necessarily be that the common intention was to share the beneficial interests equally.

It is however possible to conceive of other situations which may well arise before the courts in the future. For instance, what ought to happen when a wife does not contribute to the acquisition of the house but does contribute towards household expenses alone? D'Cotta J. in arriving at his decision did take into account the fact that she had made contributions to the running of the house. Nice questions arise as to whether he would have differed in his decision if the applicant had not paid \$13,000 but merely made financial contributions in the running of the house. His Lordship had referred to the English Court of Appeal decision in *Hazell v. Hazell*¹⁹ placing significance on the financial contributions of the applicant to the running of the house.

Hazell concerned a similar dispute over the beneficial interest in a matrimonial home purchased in the husband's name with the aid of a mortgage. The wife made no contribution to the deposit but to help meet the increased expenditure, she went out to work.

¹⁶ *Evelyn Tan v. Tan Lim Tai* [1973] 2 M.L.J. 92; *Hazell v. Hazell* [1972] 1 All E.R. 923.

¹⁷ [1973] 2 M.L.J. 92.

¹⁸ [1962] M.L.J. 418.

¹⁹ [1972] 1 All E.R. 923.

The husband reduced the housekeeping money and the wife's income was used towards the housekeeping expenses. This pattern continued until the parties separated. It was clear that the wife had made no direct financial contribution towards the purchase. The county judge held that since her contributions were not referable to the acquisition of the house, she had acquired no interest in it. Lord Denning M.R. in the Court of Appeal said this was wrong in that her contributions are equally material as she helped him indirectly with the mortgage payments since he had more money in his pocket with which to pay them.²⁰ This view is not easily reconcilable with statements in *Gissing* which indicate that indirect contributions are not adequate to show a common intention as to beneficial ownership unless there is an arrangement so as to enable the other to pay the mortgage²¹ or unless the contribution to the household expenses is referable to the acquisition of the house.²² The current English position is far from clear — the confusion has arisen because several decisions of the Court of Appeal are not entirely consistent with the principle enunciated by the Law Lords in *Gissing*.²³

D'Cotta J. took into account the financial contributions towards the household expenses in imputing the common intention to share. His Lordship did not seem to have in mind the requirement that financial contributions should be referable to the costs of acquisition. It may well be that the coincidence in time between the purchase of the house and the wife's contributions satisfied this requirement. The applicant paid for all household expenses and the salaries of 2 servants. She also gave the respondent about \$50 a week and on festive occasions paid for whatever presents they gave. She expended a sum of about \$500 a month. The approval of Lord Denning's judgment may well indicate that Singapore courts will not demand the requirement of referability and will apply Lord Denning's view in *Hazell*. The subordination of the referability requirement is attractive as it accords with justice and fairness. The only danger in this approach is the uncertainty that would be injected into this already difficult area of the law. Certainty should be the hallmark of every system of law and allowing contributions to family expenses without the referability requirement to be taken into account in determining property interests might push the parties into deep and uncharted waters. D'Cotta J. seems to have paved the way for the local courts to consider contributions to family expenses in imputing a common intention without placing undue emphasis on the requirement of referability.

Shared Beneficial Interests: How Quantified

Once it has been determined that both spouses are beneficially entitled, the second question is their respective shares therein. It is

²⁰ *Ibid.*, at p. 926.

²¹ [1971] A.C. 886, 903, *per* Lord Pearson.

²² *Ibid.*, at p. 909 *per* Lord Diplock.

²³ In three decisions, *Davis v. Vale* [1971] 1 W.L.R. 1022; *Hargrove v. Newton* [1971] 1 W.L.R. 1611; *Falconer v. Falconer* [1970] 1 W.L.R. 1333, the Court of Appeal, spearheaded by Lord Denning, held that beneficial ownership was shared as a result of indirect contributions. "It may be indirect," said Lord Denning in *Falconer* (at p. 1336), "as where both go out to work, and one pays the housekeeping and the other the mortgage instalments so long as there is substantial financial contribution towards the family expenses, it raises the inference of a trust."

an equally difficult task to infer from the conduct of the spouses what the common intention may have been as to the share of the beneficial interest that each spouse holds. It is so since there is normally no evidence of the parties having considered this during the course of their married life. "But the courts cannot refuse to decide a case on the ground that the path to conclusion is not flood-lit by clear evidence."²⁴ His Lordship was faced with the daunting task of quantifying the beneficial interests. Where each has made a cash contribution to the purchase price, the beneficial interest will normally be proportionate to the actual sums provided. Where, as was the case here, the house is bought with the aid of a mortgage loan and the spouses have made varying contributions, the task of quantification is very complicated. The court may infer that the spouses intended an equal division but this is by no means inevitable.²⁵

The court in the instant case, did employ the maxim equality is equity. The applicant had made a substantial contribution towards the purchase price and his Lordship had no difficulty in holding that, in the absence of evidence which makes some other explanation more probable, the inference must necessarily be that the common intention was to share the beneficial interest equally. This is indeed a just result. In the light of the evidence before him it would be difficult to apportion the interest otherwise than in equal shares.

Recent Developments in the Law

Before leaving the case, a word or two must be said about the Women's Charter (Amendment) Act, 1980 which gives the court wide discretionary powers to re-adjust spouses property rights to family assets on the termination of marriage. The scheme proposed does not touch on the question of distribution of property rights during the marriage; each spouse retains his or her existing property and acquisitions during the marriage. It is only upon the occurrence of a specified event, the granting of the court decree, that the court steps in and divides the family assets acquired by the spouses during the marriage. The division, it is hoped, will reflect the aspirations of the parties. Where both have made monetary contributions, the court is to lean towards equality of division.²⁶ An element of flexibility is provided by allowing the court to come to some other division if it finds it necessary in view of the extent of one party's contribution in money, property or work or in view of any debts contracted for their joint benefit, or if any minor children have special needs.²⁷ Where only one spouse paid for the asset the court may still give the non-paying spouse a share in it, having regard to this spouse's contribution to the welfare of the family by looking after the home and also any minor children's needs, but here the paying spouse shall get a greater proportion.²⁸

²⁴ *Per* Lord Morris in *Pettitt v. Pettitt* [1969] 2 All E.R. 385, 397.

²⁵ *Smith v. Baker* [1970] 2 All E.R. 826; *cf. Falconer v. Falconer* [1970] 3 All E.R. 449, 452, *per* Lord Denning M.R.; *Heseltine v. Heseltine* [1971] 1 All E.R. 952.

²⁶ S.100(2) of the Women's Charter (Amendment) Act (No. 26 of 1980).

²⁷ *Ibid.*

²⁸ *Ibid.*, s. 100(4).

This new provision has resulted in there being a difference between the position of the spouses in relation to the ownership of the matrimonial home during marriage and the position on divorce, nullity or judicial separation. This is because during the subsistence of the marriage a non-paying spouse is not entitled to any property interest in the matrimonial home whereas the new provision enables the court to credit the non-paying spouse with a share in the family assets.

The passing of such a provision lends added weight to the instant decision wherein, in the absence of evidence of an intention to the contrary, spouses should be imputed to have intended equal shares.

Conclusion

The instant decision serves to illustrate the difficult and delicate role in which the judge is cast in ascertaining and quantifying the beneficial interests in the matrimonial home. The difficulty judges face is compounded by the fact that the present law on ownership of the matrimonial home during marriage is highly technical and uncertain in application.²⁹

The unsatisfactory way in which the courts have groped for solutions to the problem of sharing family assets led some legislatures to offer some assistance. In Victoria, Australia, the Marriage Act of 1958 provides that spouses shall be presumed to hold or to have held as joint tenants so much of any real property which consists of a dwelling and which was acquired as a matrimonial home.³⁰ In Singapore, no assistance from the legislature has been forthcoming and the judge is left to grope with implied agreements, imputed agreements and the maxim 'equality is equity', in his search for a just solution.

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²⁹ "The present law about the ownership of the matrimonial home during marriage is not only highly technical and sometimes uncertain in application, but inappropriate in substance.... Husband and wife each contributes to the home in their different ways—the wife's contributions are no less real because they may not be financial...." Law Commission—Third Report on Family Property: The Matrimonial Home (Co-ownership and Occupation Rights) and Household goods.

³⁰ Marriage Act 1958, s. 161(4)(b) (Victoria).