

Court lets retiree cancel gift of HDB flat to wife

69-year-old thought he would die soon when he made wife joint tenant

By K. C. VIJAYAN

FEARING he did not have long to live, retiree Koh Cheong Heng made his wife a joint tenant of his HDB flat so she would have a home after he was gone.

But his health unexpectedly improved while his wife suffered head injuries in a fall, leaving her with memory loss.

Mr Koh, now 69, was worried she would be unable to make a will and her relatives, rather than his, would end up inheriting the property.

So he tried to cancel the gift and make himself sole owner again. But there was

one major hurdle - it was unclear if HDB rules allowed re-transfers of this nature.

Now, in a landmark judgment, the High Court has approved the deal, with industry players calling it the first case of its kind.

The court had to make clear whether HDB rules take precedence over an ancient common law doctrine allowing deathbed gifts to be revoked.

Justice Judith Prakash made clear in the written grounds for her judgment that a re-transfer in these circumstances does not break the HDB rules.

She added: "To come to such a conclusion would unfairly, and unnecessarily impinge upon the rights of HDB flat owners to deal with their flats."

Mr Koh bought the three-room flat in Stirling Road in 1972 with his own funds.

He became ill in 1993 and underwent several operations, eventually suffering a

serious infection in July 2006 that left him hospitalised for more than two months.

Believing he could not recover, Mr Koh realised he needed to provide for his wife Ho Yee Fong, now 71, after his death. The couple have been married for 41 years but have no children.

In August 2006, the former factory supervisor signed the transfer of a share of his flat as a gift to his wife without any payment in the presence of an HDB officer. By making his wife a joint tenant, it meant she would inherit the entire flat when he died.

Mr Koh subsequently recovered but in 2008, Madam Ho had a bad fall, suffered head injuries and underwent treatment for a year. She is partially immobile, has short-term memory loss and requires help in her daily activities.

The couple lives at an old people's home in Hougang and the Stirling Road flat is rented out to help cover living expenses.

Mr Koh was concerned that since her condition left her unable to make a will, the property would go to her relatives after her death.

He had not intended to benefit her relatives as he had relatives of his own.

Through lawyer Sim Bock Eng of Wong Partnership, he applied to revoke the gift and re-transfer the share to make him the sole owner. He would then leave it to her in his will and state who it should go to after her death.

Justice Prakash ruled there were valid grounds for the re-transfer to Mr Koh under a common law doctrine dating from Roman times. Called *donatio mortis causa*, it allows a gift to be revoked if it was made conditional on the donor's death.

However the issue was whether current HDB rules prevented the re-transfer.

The judge said when Mr Koh revoked the gift to his wife, she held the item in trust for him, with him as the beneficiary.

HDB rules do not usually allow properties to be held in trust in this way.

It is understood this is to prevent people who are not eligible to buy a flat from cheating the system by getting someone else to hold a property in trust for them.

But in this case Mr Koh was eligible to own the flat and was therefore entitled to be the beneficiary.

"...resulting and constructive trusts are not precluded by the Housing and Development Act if the beneficiary is eligible to own an HDB flat," said the judge.

She said it "would be going too far to infer" that Mr Koh was not entitled to make a conditional gift and then revoke and re-acquire the sole interest.

Madam Ho's niece, as her representative and who had hired lawyer Corinne Taylor of Legal Solutions, agreed to the move. Mr Koh said the niece visits them regularly at the home.

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