

LAU PIN SIEN v KONG CHUNG SNG

CaseAnalysis

| [2015] MLJU 354

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Malayan Law Journal Unreported

HIGH COURT (SIBU)

LEE HENG CHEONG

CIVIL APPEAL NO. SBW-12B-4/11-2013

28 May 2015

Paul Liong for the plaintiff.

Yap Hoi Liong for the defendant.

Lee Heng Cheong J:

GROUNDS OF DECISION

[APPELLANT/PLAINTIFF'S NOTICE OF APPEAL DATED 04/11/2013]

INTRODUCTION

[1]This is an appeal by the Appellant/Plaintiff ["the Plaintiff"] against the whole of the decision given by the Learned Sessions Court Judge on 27/12/2013 after a full trial of this action which dismissed her claim for damages from the Respondent/Defendant's ["the Defendant"] for breach of promise to marry the Plaintiff.

[2]The Plaintiff's main contention is that after knowing the Plaintiff is still married, the Defendant still befriended with her in 2002. The Defendant promised to marry her and cohabited with her in 2004. However, when the Plaintiff's husband passed away in 2011, the Plaintiff was able, willing and ready to register a formal marriage with the Defendant but the Defendant repudiated his promise to marry the Plaintiff.

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[3] From the Record of Appeal, this Court finds that the following evidence was adduced as follows:

- [i] in year 2002, the Plaintiff left Bintulu and befriended with the Defendant. At that material time, the Defendant is single and he knew that the Plaintiff is married but living separately from her husband;
- [ii] in the year 2004 and in reliance of the Defendant's promise to marry, the Plaintiff cohabited with the Defendant in a wooden house situated at Kampung Bahagia Jaya, Sibul. The said cohabitation is supported by photographs taken as seen in pages 111-113 of the Record of Appeal;
- [iii] the Plaintiff had incurred expenses for travelling overseas with the Defendant, taking marriage photographs, buying furniture and marriage ceremony with relatives and friends with the Defendant;
- [iv] In 2011 when the Plaintiff's husband passed away, the Defendant had breached his promise to marry the Plaintiff when she is able, willing and ready to register a formal marriage with the Defendant;

FINDINGS OF THE COURT

[4] Based on the Plaintiff's Statement of claim, this Court finds that it showed that the Plaintiff's cause of action is grounded on a breach of promise to marry and for special and general damages and not on a contract of marriage and for damages.

[5] From the evidence adduced, this Court finds that the Defendant did promise to marry the Plaintiff and was in breach of that promise to marry. In the present case, there are evidences of the followings:-

- [i] the cohabitation of the Plaintiff and the Defendant [at pages 111-113 of Record of Appeal];
- [ii] the taking of marriage photographs [at pages 106 - 107 of Record of Appeal];
- [iii] the incurring expenses for buying furniture and overseas trip [at pages 115 and 108 of Record of Appeal];
- [iv] the marriage/engagement ceremony taking place [At pages 108 - 110 of Record of Appeal]; and
- [v] that the Defendant had even went to the extent of bringing the Plaintiff to a longhouse to solemnise their purported marriage [at page 105 of Record of Appeal] as evidenced by the 'Surat Tikah', though dated 20/09/2000 and documented according to IBan Custom in a long house [see Exhibit PB2 at page 105 of Record of Appeal and page 29 of Record of Appeal].

[6] This Court also finds that it is apparent from the evidence adduced that the Defendant's promise to marry the Plaintiff had been made orally. It is also clear that whilst there might be some errors in the pleadings and/or the Plaintiff may have made some errors in the dates i.e. the dates when the Plaintiff left Bintulu, Sarawak and befriended with the Defendant, the dates of cohabitation, incurring expenses, overseas trip and the time when the

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Defendant's breach of his promise to marry occurred but such errors are reasonable and acceptable by this Court as those incidents happened many years ago.

[7]Furthermore, this Court finds that the Plaintiff's version of events are sufficiently corroborated and/or substantiated by photographs, documents, the most credible are the photographs pertaining to marriage ceremony, cohabitation, family photographs, purchase of furniture, overseas trip.

[8]This Court also finds that the Plaintiff's reliance on Exhibit PB.2, the Surat Penerang Ari Tuai Rumah Pasai Tikah to show that the Defendant had made those promises to marry, is in order as this Court finds that the Defendant had arranged for this ceremony to deceive and/or appease the Plaintiff.

[9]From the evidence adduced this Court finds that the Defendant he had taken advantage of the position of the Plaintiff and the Plaintiff had acted on the Defendant's promise to marry her, lived with the Defendant as husband and wife and expended substantial expenses in doing so.

[10]This Court is guided by the case of *RS Thanalachimi v Sundararaju Mattaya* [2011] 7 CLJ 197 where the Plaintiff sued the Defendant for a breach of promise to marry her as she had relied on the Defendant's promise to marry her, gave up her home and career to start a new life with the Defendant. The Court there held inter alia as follows:

A promise to marry must be one which results in a valid and lawful marriage in which the plaintiff would be able to avail herself of legal remedies flowing from it. The fact that this was not the case is amply shown by the events that took place in the California court and thereafter.

[11]In *RS Thanalachimi v Sundararaju Mattaya* supra, the Plaintiff is a Singaporean whilst the Defendant is a Malaysian and they underwent a engagement ceremony in Singapore and Malaysia but it was not officially registered and officiated by the Registrar of Marriage as required under the Law Reform (Marriage & Divorce) Act 1976, hence the marriage was void in law pursuant to section 22(4) of the said Act. However, the Court held inter alia as follows:-

Had that Hindu marriage ceremony been officiated by a priest who is also an Assistant Registrar of Marriages, as is customary nowadays, and the marriage registered according to the said Act, then the plaintiff would have been entitled to all legal rights and remedies, including maintenance.

[12]Further guidance can be found in the case of *Doris Rodrigues v Bala Krishnan* [1980] 1 LNS 205 where the Court there held inter alia as follows:-

On the third issue which is the crux of the matter whether or not the plaintiff has proved her case I need not go into the

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details of the large amount of evidence that has been adduced in this case both oral and documentary. However, after giving due consideration to all the evidence in this case I have come to the conclusion that the plaintiff is entitled to succeed. I accept her evidence that the defendant had promised to marry her and that he had later broken the promise. After hearing the evidence of the plaintiff and observing her demeanour against the whole of the evidence adduced in this case I believe that the plaintiff is a witness of truth. She might have made errors in dates and certain facts but they were not material enough to affect her credibility. On the other hand I found the defendant shrewd and unscrupulous and he had taken advantage of the position of the plaintiff. I also accept the evidence of the plaintiff that she had lived with the defendant as husband and wife and that they had sexual intercourse from the time they started living together although these do not constitute ingredients which the plaintiff has to prove. As I said earlier from all the evidence I have heard in this case I accept the plaintiff as a truthful witness. In the circumstances therefore I allow the plaintiff's claim for damages for breach of promise of marriage. As far as damages are concerned I am generally in agreement with the submission advanced by Mr. Ramachandran that exemplary damages ought not to be awarded in this case. In all the circumstances I am of the view that the plaintiff is entitled to some damages. I therefore award a sum of \$5,000 as damages and costs.

[13]In the light of this Court's above findings, this Court thus finds that the Plaintiff had proved her case upon balance of probability against the Defendant.

[14]This Court adopts the case quoted by the Plaintiff namely the case of Mary Joseph Arokiasamy by her Next Friend *S P Arokiasamy v G S Sundram* [1937] 1 LNS 41 where the infant plaintiff sued a married Defendant for breach of promise of marriage and claimed damages. The facts of the case in brief, is that the Defendant deceived the Plaintiff into believing that he was not married and hence seduced her. Terrell AGCJ held inter alia as follows:

Although it has been held to be contrary to public policy to enforce a promise to marry when the plaintiff knew that the defendant was married already, no such question arises when the plaintiff did not know that the defendant was married, a fortiori a defendant who is married cannot escape the consequences of a breach of promise when he has deceived the plaintiff into thinking that he was not married. As Wilde CJ said in *Weld v Harris*, 7 CB at p 1005 "It would be strange indeed to allow the defendant to rely upon his own wrong - to set up his fraudulent concealment of his marriage - in order to discharge himself from his promise.

[15]From the evidence adduced during the trial, this Court finds that the Defendant had befriended with the Plaintiff. At that material time, the Defendant knew that the Plaintiff is married. Based on the promise to marry her, the Defendant had proceeded to cohabit with her, by taking advantage of the Plaintiff's position that she is married. Subsequently when the Plaintiff's husband passed away in 2011 and the Plaintiff was ready able and willing to undergo a proper and valid marriage ceremony but the Defendant breached his promise to marry the Plaintiff.

[16]Thus this Court finds that in the circumstances of the instant case, that the Defendant should not be allowed to take advantage of the position of married woman and benefited by his own wrong and subsequently relied on illegality, contrary to public policy, uncertainty and unenforceability to discharge his promise to marry".

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[17]This Court also finds and holds that the instant case would be an appropriate and fitting case to apply the principle laid down in the abovequoted case of Mary Joseph Arokiasamy by her Next Friend *S P Arokiasamy v G S Sundram* supra in that the Defendant herein should not be permitted to rely upon his own wrong that is inducing the Plaintiff to cohabit with him, expend substantial expenses and underwent a marriage which is not valid, and sought to discharge himself from the promise to marry, made to the Plaintiff, and later contending that the Plaintiff was an married woman.

[18]This Court is also guided by the case of Oh, *Thevesa V Sia Hok Chai* [1992] 3 CLJ Rep 148 which dealt with the validity of a promise of marriage made by a defendant who was at the time of making the promise already married and the plaintiff to whom he made the promise was aware of his status. The Defendant applied to strike out the Plaintiff's case. The issue arises as to whether the promise, if existed, is contrary to public policy. The court in this case held inter alia as follows:-

Here the Judges appear to have thought that a promise made in such circumstances tended to cause immoral relations. They may be right; speaking for myself I really do not know whether that result would follow as a rule. I can only say that if the lady yields to a promise with such an indefinite date she is probably of a yielding disposition, and it would appear difficult to predicate that immorality is either facilitated or accelerated by the promise. As to the suggestion that such a promise is bad because it tends to induce the husband to murder his wife, I reject this ground altogether.

Lord Thankerton likewise indicated his doubt about the correctness of the decisions made in the Spier case and the Carnley case when he said at pp. 24-25:

This consideration makes it clear to my mind, with all respect to my noble and learned friends who hold a contrary view, that **there is no general principle of public policy that no contract is enforceable, which is inconsistent with maintenance of the obligations of the marriage tie or, to phrase it otherwise, with loyalty to the other spouse.** I am therefore not surprised on consideration of the cases of *Spiers v Hunt* and *Wilson v Carnley* to find that these decisions are mainly based on **the general tendency of the contracts under consideration to immorality or crime.** In both these cases a spouse promised to marry a third party after the death of his wife, a future and uncertain point of time. The only other of these decisions rests upon the reference to the opinion of the Chief Justice in the American case of *Noice v Brown* which is based on protection of married state. But, in my opinion, the law in this country as to separation agreements is inconsistent with the American law, as stated by the Chief Justice. **There can be no justification for expanding the principles of public policy in this country by reference to the public policy of another country.** [Emphasis is mine]

ORDER

[19]In the light of this Court's above findings, this Court allows this appeal with costs to the Appellant.

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