

Re Lot 114-69 Mukim 22, Singapore and another action
[2001] SGHC 79

Case Number : OS 569/1984 And 955/1996

Decision Date : 24 April 2001

Tribunal/Court : High Court

Coram : Tay Yong Kwang JC

Counsel Name(s) : Cavinder Bull (Drew & Napier) for the applicant; Asanthi S Mendis (Attorney GeneralÂ's Chambers) for the Attorney General

Parties : —

Charities – Whether adverse possession may be obtained against charitable trust – Whether "person" who may bring action to recover land includes charitable trust – Whether Attorney General may bring action to recover land on behalf of charitable trust which had no surviving trustee – Whether charitable trust bound by limitation statute – ss 9(1), 12 Limitation Act (Cap 163, 1996 Ed)

Land – Strata titles-adverse possession-factual possession for decades and intention to exclude world at large – Whether adverse possession made out – Whether adverse possession may be obtained against charitable trust – Whether "person" who may bring action to recover land includes charitable trust- s 9(1),s 12 Limitation Act (Cap 163, 1996 Ed)

Words and Phrases – "Any person" – s 9(1) Limitation Act (Cap 163, 1996 Ed) , s 2(1) Interpretation Act (Cap 1, 1999 Ed)

: Originating Summons 569/84 is an application made by one Ong Yew Kew of 779-A, Upper Serangoon Road pursuant to s 9 of the Limitation Act (Cap 163, 1996 Ed) for the following orders (as indicated in p 14 of the applicant`s solicitors` further submissions):

(a) A Declaration that Ong Yew Kew is entitled to possession of all the land described as Lot 7823 Mukim 22 in the District of Amokioh, Singapore.

(b) A Declaration that all the rights and title to Lot 7823 Mukim 22 in the District of Amokioh, Singapore be vested in Ong Yew Kew and that any rights and title or recovery thereof by any party known or unknown have been extinguished by virtue of the provisions of the Limitation Act.

(c) That the Registrar of Deeds do register in the Register of Deeds the Orders and Declarations made herein.

(d) That Ong Yew Kew be entitled to Lot 7823 Mukim 22 of the District of Amokioh, Singapore by virtue of adverse possession.

(e) A Declaration that Ong Yew Kew acquired title to Lot 114-69 Mukim 22 in the District of Amokioh, Singapore prior to 1 March 1994.

This originating summons was commenced on 11 July 1984. It was last adjourned **sine die** on 28 September 1984 and it laid dormant until December 2000 when it was restored for hearing by the present solicitors for the applicant. After the commencement of this originating summons, Lot 114-69 Mukim 22 was sub-divided into Lot 7822 Mukim 22 and Lot 7823 Mukim 22. Lot 7822 has been compulsorily acquired by the state while the applicant continues to be in adverse possession of Lot

7823.

Originating Summons 955/96 is the ex parte application by the Collector of Land Revenue under s 40(2) of the Land Acquisition Act (Cap 152) to pay into court \$225,000 being the balance compensation award payable in respect of the acquisition of Lot 114-69pt Mukim 22 in October 1995. In 1996, the possessory owner lodged an appeal against this award with the Appeals Board (Land Acquisition). A supplementary award of \$1,322,906.85 (including interest) was made in June 1998 and that was also subsequently paid into court.

The background

The following facts appear in the affidavit of Ong Yew Kew filed on 6 December 2000.

Prior to 17 May 1920, the property in question was owned by one Lim Kit Fah. By an indenture dated 17 May 1920, Lim Kit Fah sold the property for \$6,500 to five purchasers - Ong Choo Kee, Ong Khay Gim, Quek Chay Hong, Tan Yew Thye and Goh Chin Kee. The said indenture stated that the five persons were to hold the property as `joint-tenants and trustees` but no reference was made to any particular trust and no trust deed was registered against the property. Ong Choo Kee was the grandfather of the applicant.

In 1921, a Chinese temple called the Kew Ong Yah Temple was built on part of the property which had an area of some 33,000sq ft. From what his mother told him, the applicant learned that, while on a business trip to Penang in 1902, his grandfather heard of the deity called Kew Ong Yah. He brought an amulet of the deity back to Singapore for the family altar. One night, his grandfather had a dream in which the deity directed him to build a temple in his honour. Thus, as the family`s tradition would have it, it was the applicant`s grandfather who built the temple.

The temple was and is a private one, with access given to the public to enter, pray and make offerings. The applicant`s family has had its own private shrine and altar on the property since the temple was built in 1921.

In 1921, a big stone tablet was engraved and erected on the property. It recorded the names of the donors and the management committee members of the temple. Ten persons were named as members of the management committee. These included three of the `trustees` mentioned earlier - Ong Choo Kee, Tan Yew Thye and Quek Chay Hong.

In 1925, a smaller stone tablet was erected next to the big one. It was `signed` by Ong Choo Kee as `temple owner`. (The translated inscriptions state: `Person Taking Charge of this Temple: Wang Zhu Ji`). Wang Zhu Ji is the hanyu pinyin version of Ong Choo Kee.

Ong Choo Kee, who died in 1927, had two children. His wife and children continued to live on the property and his son, Ong Chin Hua, took over the management of the temple. The applicant is the son of Ong Chin Hua. Ong Chin Hua, his wife, the applicant and the applicant`s brother lived on the property. Since his birth on 19 April 1934, the applicant has been living on the property save for the years 1958 to 1963 when he was studying in Australia.

By an indenture dated 24 October 1933, Goh Chin Kee (one of the five `trustees` named in the 1920 indenture) purported to appoint Lim Kit Fah and Choong Swee Nyong to be `new trustees` and purported to vest all his rights and interests in the property held on trust in the new trustees. This indenture further stated that the `trust` referred to in the 1920 indenture was a trust in respect of

the Kew Ong Yah Temple. The 1933 indenture was not registered until 1947, two years after the death of Goh Chin Kee and more than 11 years after the death of the applicant's father in 1936.

After his father's death, the applicant, his mother and his brother continued to have exclusive possession of the property. His mother took charge of the management of the temple, assisted by his brother. The applicant produced a copy of a receipt from the Ponggol Bus Service stating that the monthly rent of \$200 for the use of the temple's yard as a bus depot was paid to the applicant's mother until April 1960. He also produced a signed typewritten statement of one Daniel Elijah Sundram dated September 1961. Sundram, whose address was stated as 166-8 Upper Serangoon Road, stated that he had known the applicant's brother since childhood in 1935. He also stated that he had known the applicant's father, who was a student of Paya Lebar Methodist School, where he was a teacher and principal between 1931 and 1935. He also knew the applicant's mother as a close friend for over 25 years and stated that the family had been living on the property since the time of the marriage of the applicant's parents.

The applicant further produced a letter dated 9 November 1961 from the law firm of Laycock & Ong, who were acting as solicitors for the applicant's mother and his brother, to the Ponggol Bus Co inquiring about the dates when the bus company used the property's compound as a garage and the monthly rental paid. This letter appears to me to be the reason for the earlier undated 'receipt' from the bus company which seems more like a handwritten reply to this letter rather than a receipt.

On 19 February 1962, Lim Kit Fah (one of the 'new trustees') caused a writ of summons (Suit 207/62) to be issued against the applicant's brother. The statement of claim dated 9 October 1962 was in the following terms:

STATEMENT OF CLAIM

- 1. By an Indenture of Conveyance and Assignment dated the 31st day of December 1918 (Registered in Volume CDLXXX No. 19) and made between Dr. Narainasamy Veerasamy of the one part and the Plaintiff of the other part the said lands were purchased by the Plaintiff TO HOLD to the Plaintiff according to the nature and tenure thereof.*
- 2. By an Indenture (hereinafter referred to as the said Conveyance) dated the 17th day of May 1920 (Registered in Volume DXXXI No. 118) and made between the Plaintiff of the one part and Ong Choo Kee, Ong Khay Gim, Quek Chay Hong, Tan Yew Thye and Goh Chin Kee of the other part (hereinafter collectively referred to as the Purchasers) the said lands were conveyed and assigned by the Plaintiff to the Purchasers at the price of \$6,500/- TO HOLD the same unto the Purchasers as joint tenants and trustees.*
- 3. The trust is not disclosed in the said Conveyance but the Plaintiff states that it was a trust for the erection and upkeep of a Chinese Temple on the said lands to be known as Kew Ong Yah Temple.*
- 4. The original price agreed upon by the Plaintiff and the said Ong Choo Kee for the said land was the sum of \$13,000/-.*
- 5. The Plaintiff agreed with the said Ong Choo Kee to reduce the price to \$6,500/-, the balance of \$6,500/- being the Plaintiff's donation towards the proposed Chinese Temple to be erected on the said land.*

6. *It was verbally agreed between the Plaintiff and the said Ong Choo Kee that unless the said Chinese Temple was erected on the said land, the Plaintiff would not be selling the said lands to the said Ong Choo Kee at the price of \$6,500/-.*
7. *In order to bind the said Ong Choo Kee to this arrangement it was verbally agreed between the Plaintiff and the said Ong Choo Kee that the names of three other persons be inserted in the Assignment of Trustees of the said Temple together with the said Ong Choo Kee.*
8. *In order further to bind the said Ong Choo Kee to the said arrangement and to protect the Plaintiff's interest in the property it was agreed that the Plaintiff himself be named as one of the purchasers and trustees of the said land but that since the Plaintiff's name already appeared as Vendor, it was verbally agreed that he should nominate some other person as the fifth purchaser and trustee.*
9. *The Plaintiff was paid the sum of \$5,200/- on completion of the sale, his share of \$1,300/- part thereof being deducted from the said purchase price of \$6,500/-.*
10. *The said Temple was erected by the said Ong Choo Kee and others in or about the year 1921.*
11. *All the Purchasers have since died. The said Quek Chay Hong died on the 3rd day of September 1923, the said Ong Choo Kee died on the 3rd day of June 1927, the said Tan Yew Thye died on the 29th day of January 1931 and the said Ong Khay Gim died on the 2nd day of October 1932.*
12. *By a Deed of Appointment of New Trustees dated the 24th day of October 1933 (Registered in Volume 1013 No. 153) and made between the said Goh Chin Kee of the one part and the Plaintiff and Choong Swee Nyong of the other part the said Goh Chin Kee retired from the trusts of the said Temple and appointed in his stead the Plaintiff and the said Choong Swee Nyong to act jointly in his place as Trustees of the trusts of the said Temple.*
13. *The said Goh Chin Kee died in Singapore on or about the 31st day of March 1945.*
14. *The said Choong Swee Nyong died in Singapore on the 15th day of March 1958 leaving the Plaintiff the sole surviving Trustee of the trusts of the said Temple.*
15. *The Defendant is in occupation of the said lands as a caretaker thereof and has been in such occupation since the year 1945.*
16. *Despite repeated demands by the Plaintiff to the Defendant for possession of the said lands and for the accounts of the said Temple the Defendant has not furnished the same and wrongfully remains in possession of the said lands.*
17. *The Plaintiff claims as Trustee of the said Kew Ong Yah Temple :-*

(i) an Account of all moneys received and paid by the Defendant as the caretaker of the said lands as from the 1st day of January 1945 to the date of the Writ herein;

(ii) a Receiver of the rents and profits of the said Temple;

(iii) payment of the said rents and profits so received;

(iv) possession of the said lands.

18. In the alternative and if it is held that no valid trust of the said Temple was created, the Plaintiff claims

(i) a declaration that he is entitled to the whole of the said lands on a resulting trust or alternative to one individual equal fifth share thereof;

(ii) a Receiver of the rents and profits of the said lands;

(iii) an Account of the said rents and profits received by the Defendant from the 1st day of January 1945 to the date of the Writ herein;

(iv) payment of the said rents and profits so received;

(v) possession of the said lands;

(vi) further or other relief; and

(vii) Costs.

Nothing happened in that action after the filing of the statement of claim. The applicant's brother (the defendant in that action) passed away in 1963 followed by Lim Kit Fah (the plaintiff in that action) in 1967. On 15 May 1969, a certificate of abatement was filed by Lim Kit Fah's solicitors.

The management of the temple remained with the applicant's mother until her death in 1966. By two letters dated 13 September 1968, the applicant's solicitors (acting for him as administrator of his mother's estate) wrote to the Commissioner of Estate Duties and the Commissioner of Land stating that his mother's estate was claiming adverse possession of the property.

Since his mother's death in 1966, the applicant has been in exclusive possession and control of the property and has managed the temple. Since that time, no one has challenged his right to possession of the property nor has anyone made a competing claim of ownership or possession of the property.

The applicant then proceeded to describe the various structures on the property in 1966. There existed a wayang stage which was used for performances during festival months. That stage stood until 1998 when the frontage of the property on which it stood was acquired by the government for road widening purposes.

There is still a long open shed along one edge of the property which was and is used as a carpark by the applicant and as a store for his belongings, which includes items connected with the operation of

the temple as well as things having nothing to do with the temple.

In 1966, there was also a wooden house on the property. That was known as 945 Upper Serangoon Road while the rest of the property was known as 945-A Upper Serangoon Road. They were subsequently re-numbered as 779 and 779-A respectively. Before 1966, the house was occupied by the applicant's sister-in-law's uncle, aunt and their children. They remained there with the applicant's permission. The children have since moved out of the property and the said uncle has passed away while the said aunt continues to reside in that wooden house, with the property tax paid by the applicant since 1971.

Behind the temple stood a concrete/brick structure which has been in existence since the Second World War. The applicant was informed by his mother that it was rebuilt by her in 1949. The structure has four rooms. Originally, the applicant lived in one room, his mother in another while the other two rooms were occupied by the applicant's sister-in-law. When his mother passed away, the applicant and his family occupied his room as well as his late mother's room.

In 1978, the applicant built a house on the property next to and as an extension of the abovementioned structure. A brick wall and fence were erected to separate the house and the structure from the temple and other parts of the property. Worshippers in the temple did not have access to the house and the structure. The applicant and his family have lived in the house from the time it was built. Two of his three sons have grown up and left the property. His sister-in-law and her two daughters continue to live in the two rooms of the said structure while the other two rooms are used by the applicant's maid and for storage of his family's possessions.

As evidence of his exclusive possession of the property since 1966 and of the fact that he considered himself the owner and was regarded as such by other people, the applicant produced his Statutory Declaration for a Claim of Long Possession filed in the Land Office on 3 September 1971. This Statutory Declaration, made on 15 May 1971, repeated essentially what he was stating in the affidavit here.

On 16 November 1971, the applicant granted an equitable mortgage of the property to one Ong Oon Teck for a loan of \$5,000 which was subsequently repaid. The Indenture of Reassignment was executed on 21 October 1978.

Since 1971, the applicant had a sign put up at the gates indicating that it was a private property. He had also been paying quit rent to the government as owner of the property until 1992 when such rent was abolished. The applicant, and his family before him, has been paying property tax, bills and licence fees in respect of the property. Since 1972, he has been registered as the owner of the property with the Property Tax Department. He has been paying property tax on 779 and 779-A separately. He also paid the fire insurance premium and renovation and repair costs of the temple and the property.

In 1969, he applied for permits from various government bodies for matters relating to the temple's activities in his own name. In 1971, he placed a notice in the Chinese newspapers in his name as the owner of the temple to warn the public against unauthorized solicitation for funds for the temple. He has also been described as the temple's owner in newspaper reports in 1980 about a case in which he had been threatened.

In addition, a Buddhist monk, one Lim Loh, born in 1897, had made a declaration before a Commissioner for Oaths in 1970 which corroborated what the applicant has said in his affidavit.

On 1 February 1983, the applicant lodged a caveat against the property in the Registry of Deeds.

Since 1966, the applicant has collected and kept all income derived from renting out space in the temple during festivals to stall-holders. There were also donation boxes in the temple which existed since the time of his father. Donations were never solicited actively. All donations were kept by the applicant and mixed with his personal funds.

Since his return from his studies in Australia, the applicant had been gainfully employed in various companies until his retirement at the age of 62. He paid for all the expenses of the temple out of his personal funds. During festivals, he even paid for an open kitchen to be run and any member of the public could go in and have a free meal.

In a further affidavit filed on 23 January 2001, the applicant stated that he had always treated the property as his own and not as belonging to any charitable trust. The property was walled and fenced up, a sign saying `Private Property` was installed at the entrance since 1971 and entry into the property and the temple was controlled by the applicant and his family who were the only ones holding the keys. Since 1966, the applicant was the person who decided when people could enter the property and the temple and what time the doors would be closed. He also confined access to the temple only and prohibited people from entering the other buildings on the property. During festival days, he decided on the people who could set up stalls on the property. Anyone wishing to use the wayang stage had to seek his permission first. The property was therefore not one open to the public as he controlled the period, the place, the people and the purpose in respect of the use of the property.

In an affidavit filed on 26 September 1984, the Deputy Director (Welfare Service) stated that she was requested by the Attorney General to make inquiries and investigations as to the nature and functions of the temple. She reported that a group of people who eventually became the trustees of the temple bought the land in 1920 and erected the temple thereon. Their names were inscribed on one of the walls of the temples. All the trustees had passed away and the temple was being managed by the relatives of the original trustees who were living on the property. She then listed out the names of 11 persons shown in the Singapore Parliament Electoral Register of 1982 as residing at 779-A Serangoon Road. The applicant was one of the 11.

The report also stated that the temple was not registered with the Registrar of Societies. It was still managed by the applicant and was open to devotees daily. However, the main festival days were the first to the ninth days of the Lunar Ninth Moon. The revenue collected was used for the maintenance of the temple. The temple was a well-known public place of worship and devotees from all over Singapore went there to worship during the festival month.

The Attorney General`s submissions

The Attorney General, as protector of charities, objected to this application and submitted that the temple ought to be registered as a charity under s 5 of the Charities Act (Cap 37, 1995 Ed) and the Commissioner of Charities be requested to appoint trustees for the temple, including the applicant if he was found suitable. The Attorney General submitted that the applicant`s grandfather (Ong Choo Kee) was one of the trustees of the temple charged with the duty of erection and maintenance of the temple and that a charitable trust was clearly created in 1920.

It was also argued that in the case of religious institutions such as this, usage constituted presumptive evidence of its dedication to charitable trusts. Reliance was placed on **Haji Salleh bin**

Haji Ismail v Haji Abdullah bin Haji Mohamed Salleh [1935] SSLR 5 at 12, where Whitley J quoted Sir John Romilly MR's words in **A-G v St Cross Hospital** (Unreported) :

Undoubtedly, where the whole origin of a charity or a right is lost in obscurity, the Court will presume, from the uniformity of the practice or use, that it is in accordance with the original foundation or right, and will presume whatever may be necessary to give it validity.

In the present case, the Attorney General argued, the temple was for the benefit of the public or, at the least, an appreciably important section thereof. In fact, many such temples were registered charities under the Charities Act. The contention of the applicant that the temple was and is a private temple was untenable since the temple and its surrounding land were open to the public and there was no exclusion by the applicant or anyone else of access by members of the public.

Alternatively, the Attorney General submitted that the court should exercise its discretion in this case in accordance with the equitable principles enunciated in **Hussey v Palmer** [1972] 3 All ER 744 [1972] 1 WLR 1286 and impose a constructive trust because justice and good conscience required it. The applicant had behaved in every aspect like a trustee. He resided on the trust property and maintained and managed the temple and its surrounding land. The temple was open to devotees daily and donations and offerings were collected for its maintenance. The applicant should therefore be holding such moneys as trustee and be accountable to the devotees who were the beneficiaries of the trust.

It was further contended that the applicant was in possession of the trust property with actual notice and that many of his actions were consistent with his position as trustee, for instance, the applications for permits for the temple's activities, payments for renovations and repairs and the collection of rental income. The present case was a charitable trust with no surviving trustees apart from the applicant. His possession was neither exclusive nor adverse as he was managing the temple with notice of the charitable trust. In fact, he was said to be no more than a tenant at will or a licensee permitted to occupy the land by virtue of his position as a caretaker. As Lord Denning MR said in **Wallis's Cayton Bay Holiday Camp v Shell-Mex and BP** [1975] QB 94 [1974] 3 All ER 575:

Possession by itself is not enough to give a title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him. There must be something in the nature of an ouster of the true owner by the wrongful possessor.

Further, as there was no surviving trustee, there was no one capable of suing or who had been dispossessed of his title. There was therefore no right of action that existed or which had been extinguished. If there was no one capable of suing, a right of action did not exist and therefore could not have accrued. Accordingly, the period of limitation would not begin to run.

Even if the applicant's possession of the land was adverse, he could not claim adverse possession against a charitable trust. For this proposition, the Attorney General relied on **Charitable Donations and Bequests Comrs v Wybrants** (Unreported) at 198 where the Lord Chancellor said:

By the ancient rule of Equity, no one could acquire an estate, with notice of a charitable use, without being liable to it.

Further, as a matter of public policy, if such claims were allowed, it would mean that caretakers of pre-war temples, which had no surviving trustee, would be able to claim adverse possession of such temples and sell the land to developers for a fortune. They would be unjustly enriched at the expense of the devotees.

The decision of the court

The property was unregistered land and the applicant must prove that he was in adverse possession for at least 12 years prior to 1 March 1994 (the date the 1993 Land Titles Act came into operation). It was not in dispute that the amendments effected by the 1993 Land Titles Act, which effectively abolished acquisition of title by adverse possession, did not affect the questions to be decided here. In any event, s 177(3) of that Act preserved all rights which had accrued before 1 March 1994. A good exegesis of the 1993 Land Titles Act is found in the Court of Appeal's judgment in **Balwant Singh v Double L & T** [\[1996\] 2 SLR 726](#).

Adverse possession is made out when the adverse possessor is in possession of the land as if he was the true owner with the intention to exclude all others, including the owner with the paper title (see **Soon Peng Yam v Maimon bte Ahmad** [\[1996\] 2 SLR 609](#)). The 12-year period necessary to establish title by adverse possession can be constituted by the aggregate of separate but continuous periods of adverse possession by different people (see **Jubilee Electronics v Tai Wah Garments & Knitting Factory** [\[1996\] 2 SLR 39](#)).

The evidence detailed in the applicant's affidavits showed that his family had been in factual possession of the property for many decades after the death of his grandfather in 1927. The applicant's personal knowledge of the factual possession would have gone back to around 1950 by which time he would have been 16 years old. When he returned from his studies in Australia in 1963, he resumed living with his mother on the property. When his mother died in 1966, he continued the factual possession without disruption.

The applicant raised his family on the property. He constructed a house on the property. He lived there as owner and even licensed others to live on the property. He enjoyed all the privileges of ownership and also undertook all the responsibilities that went along with it. He filed legal documents to claim adverse possession. The totality of his and his family's actions over the decades established quite clearly both the factual possession and the intention to exclude the world at large.

Despite the court action in 1962 seeking possession of the property, the applicant and his family remained steadfastly on the property. The said court action put it beyond doubt that the factual possession of the property was without the permission of the true owner or holder of the paper title. The statement of claim filed therein also made it clear that the applicant's family had been refusing to acknowledge Lim Kit Fah as the owner since at least 1945.

The applicant has therefore proved adverse possession for more than 12 years before 1 March 1994, whether in his own right or in conjunction with his parents.

The applicant and his family had always maintained the position that the property and the temple were never the subjects of any trust. Even if the trust existed from 1920, there was no reason why notice of the trust would render the possession not to be adverse. Surely possession in spite of notice or knowledge of the trust or of the true owner made that possession all the more adverse. If the applicant was said to be a tenant at will, there was no evidence of such tenancy or by whom it was granted. Such a tenancy at will would be deemed to be determined at the expiration of one year

from its commencement anyway (s 13(1) of the Limitation Act). The facts, particularly the statement of claim filed in 1962, also showed quite clearly there was no question of the applicant being a licensee. If ever there was such a licence, it would have been terminated upon the commencement of the action in 1962.

Can the applicant claim adverse possession against a charitable trust? 28 **Halsbury's Laws of England** (4th Ed) para 855 states:

If a trespasser, or a person who claims independently of the right of the charity, comes into possession of charity land, time will run against the charity's title just as it would against any beneficiary entitled under a trust if the trustees were out of possession and the property was held by a stranger.

The case of **President and Governors of Magdalen Hospital v Knotts** [1879] 4 App Cas 324 demonstrates that a charity could be barred by limitation from recovering possession of its land.

Section 9(1) of our Limitation Act provides:

No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.

There is no reason why 'any person' in the above section ought to be read narrowly to exclude charitable trusts. This is so although our Act does not have an explicit, extended meaning of 'person' unlike the English equivalent considered in cases like **Wybrants** (supra) which extended 'person' to include a body politic, corporate or collegiate. However, we have in s 2(1) of the Interpretation Act (Cap 1, 1999 Ed) the provision that 'person' includes 'any company or association or body of persons, corporate or unincorporate'. In fact, s 12 of the Limitation Act makes it explicit that trusts of land are within the ambit of the Act. It reads:

(1) Subject to section 22 (1), this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as it applies to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

(2) Where any land is held upon trust, including a trust for sale, and the period prescribed by this Act (if any) has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustees shall be extinguished.

(3) Where any land is held upon trust, including a trust for sale, an action to

recover the land may be brought by the trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act notwithstanding that the right of action of the trustees would apart from this provision have been barred by this Act.

(4) Where any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

President, etc of St Mary Magdalen, Oxford v A-G [1857] 6 HL Cas 189(Unreported) is another case which shows that limitation statutes could and did run against charities and could operate to bar actions brought by the Attorney General on the charity's behalf. In that case, land subject to a charitable trust was leased in perpetuity for a fixed rent. Some 60 years after the execution of this lease, the Attorney General sought to recover the land for the charity. It was held that the limitation period of 20 years had expired and the Attorney General therefore failed in his application. As noted in that case (10 ER 1267 at 1275), 'charities are trusts, a favoured sort of trust, no doubt; but still a charity is a trust, and nothing more' even though the word 'charity' may not be specifically mentioned in the statutes of limitation.

Wybrants's case (supra), cited in support of the argument that the applicant here could not claim adverse possession against a charitable trust, in fact decided that the limitation statute in question there applied to charities and that the charity was able to succeed in its claim because it was within the ambit of a specific exception in s 25 of that statute. Charities were, equally with other trusts, bound by the limitation statute.

In response to the Attorney General's arguments that since there was no surviving trustee, there was accordingly no person existing who was capable of suing or was dispossessed of his title, the applicant argued that there was a person capable of suing in the present case and that person was none other than the Attorney General. The applicant again argued that 'any person' in s 9(1) of the Limitation Act could include the Attorney General suing on behalf of the charitable trust. I agree with the applicant. In any event, death of the trustees of a charitable trust does not prevent time from running against the trust. 28 **Halsbury's Laws of England** (4th Ed) para 628 states:

Time which has once begun to run will as a rule continue to do so, even though subsequent events occur which make it impossible that an action should be brought. This rule holds good with respect to all limitation Acts.

Thus, if time has begun to run against a person entitled to sue, or in favour of a person capable of being sued, the fact of his death and that there is an interval between his death and the grant of administration does not prevent time from running against, or in favour of, the administrator, as the case may be.

Whether the 12-year period was computed from the date of Lim Kit Fah's writ action in 1962 or from way before 1950 (as the applicant here has shown), it was certain that limitation had set in years

before this originating summons was commenced in 1984.

In so far as the contention that a constructive trust should be imposed on the applicant here was concerned, the only inequity present in this case was no more than the normal consequence of any other claim of adverse possession. If a constructive trust arose each time a wrongful possessor went onto land and kept the rents and the profits thereof, there would be no scope in our law for adverse possession.

The facts of the present case are unique and are not likely to be repeated. Where public policy considerations are concerned, in order for other `caretakers` (and the applicant here is not acknowledging that he was one) of pre-Second World War temples to found a claim in adverse possession against the temples, they would have to prove that their possession was adverse to the interests of the true owner. If those `caretakers` succeed in their claim against charitable trusts, that is something permitted by the Limitation Act which makes no exception for such trusts.

The applicant thereby succeeded in his claim and I granted him the revised orders sought. As the Attorney General had opposed the application by virtue of his role as protector of charities, I made no order as to costs. Payment out of the compensation money for the acquisition of part of the property has been stayed pending an appeal to the Court of Appeal.

Outcome:

Application allowed.

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