

Fones Christina v Cheong Eng Khoon Roland
[2005] SGCA 43

Case Number : CA 22/2005
Decision Date : 19 September 2005
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JC; Yong Pung How CJ
Counsel Name(s) : Khoo Boo Jin (Wee Swee Teow and Co) for the appellant; Marina Chin (Tan Kok Quan Partnership) for the respondent
Parties : Fones Christina — Cheong Eng Khoon Roland

Land – Adverse possession – Adverse possessor completing period of adverse possession while land unregistered – Land later converted to registered land – Whether adverse possessor's possessory title extinguished by failure to lodge application for possessory title within six months of Land Titles Act 1993 coming into operation – Whether adverse possessor's possessory title extinguished by failure to lodge caveat before caution on land title cancelled – Sections 50, 172(8), 172(9) Land Titles Act 1993 (Act No 27 of 1993), ss 50, 172(7), 172(8) Land Titles Act (Cap 157, 1994 Rev Ed)

Land – Adverse possession – Whether adverse possessor's interest in land subject to mortgagee's interest in same land – Whether adverse possessor's interest extinguished by subsequent redemption of mortgage by mortgagor

19 September 2005

Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

1 This is an appeal against the decision of the High Court ([2005] SGHC 87) which held that the title to a strip of land ("plot A"), falling within the legal boundary of the land belonging to the plaintiff-appellant, had been extinguished by adverse possession on the part of the owner of the adjacent plot of land, who is the defendant-respondent in this appeal.

The facts

2 As this case involves an interpretation of the Land Titles Act and there have been, over the years, different editions of it, it may be expedient if we should, at the outset, identify the different versions of this Act. The statute which introduced registered land in Singapore was the Land Titles Ordinance 1956 (Ordinance No 21 of 1956) ("1956 LTO"). In the 1970 Revised Statutes of the Republic of Singapore, the 1956 LTO became the Land Titles Act (Cap 276) ("1970 LTA"). A new revised edition of this Act, incorporating all prior amendments, came into being in 1985 (Cap 157, 1985 Rev Ed) ("1985 LTA"). It was this 1985 LTA that was repealed by the Land Titles Act 1993 (Act No 27 of 1993) ("1993 LTA") and which also abolished adverse possession (subject to certain saving provisions) as a means of acquiring registered land. With the omission of certain transitional provisions which appeared in the 1993 LTA, a revised edition of it was brought into being in 1994 (Cap 157, 1994 Rev Ed) ("1994 LTA"). In 2004, a further revised edition of the 1994 LTA, incorporating all prior amendments, was prepared and published (Cap 157, 2004 Rev Ed) ("2004 LTA").

3 The appellant is the owner of the property known as 12 Toronto Road ("No 12") and the respondent is the owner of the adjacent property, 10 Toronto Road ("No 10"). As one looks at the two properties from the road, No 12 is on the left and No 10 on the right. The whole area is not level, as it slopes downwards, with No 12 being on higher ground. Pursuant to the 1956 LTO, No 12 was

bought under the Torrens system on 20 December 1966. The title remained qualified until 2 April 2002 when the caution against it was cancelled on the application of the appellant.

4 In July 1954 one Francis Anthony Rodrigues ("Rodrigues") became the owner of No 12. In September 1966, Rodrigues sold and transferred the property to the appellant who has been the owner ever since. No 10 was bought by one Emile Le Mercier ("Mercier") in July 1954. In May 1960, he sold it to Cheong Chee Hock ("Cheong"). In April 1991, the respondent bought the property from Cheong.

5 The physical boundary separating the two properties has undergone changes over the years. The legal boundary of the two properties runs along the middle of a sloping strip which separates the two properties. It would appear that in the 1950s and 1960s, there was an L-shaped hedge which ran along the top of the slope from the rear to the front of No 12 and continued along the front portion of No 12. The front part of this hedge was again not on the legal boundary but a little distance away from it. As for No 10, there was also a hedge which ran along its front portion but stopped at precisely the legal boundary of the two properties. There was thus a gap between the hedge of No 10 and that of No 12. A rough sketch depicting the positions of the two properties and the disputed plot A is at the Appendix hereto.

6 In the 1970s, the L-shaped hedge on No 12 was replaced by a fence which was also erected along the top of the sloping strip separating the two properties. In the 1980s, this fence was replaced by a new chain-linked fence erected very much along the same position. Up to the time of the trial, this chain-linked fence was in place.

7 In issue in the present action and this appeal is plot A which lies between the legal boundary of the two properties and the chain-linked fence on No 12, which plot is estimated to contain an area of 40m². The appellant asserts that the title to plot A still remains with her on two grounds. First, the respondent's predecessors-in-title had not satisfied the requirements necessary to obtain a possessory title. Second, even if the respondent's predecessors-in-title had obtained possessory title to plot A by adverse possession, and the possessory title had duly passed down to the respondent, such possessory title of the respondent had been extinguished because the respondent had failed to comply with s 172(8) of the 1994 LTA.

8 The judge below held against the appellant on both grounds. He found that the possessory title to plot A had been acquired by the respondent's predecessors-in-title and that such title had been transferred to the respondent by the latter being the owner of No 10. With regard to s 172(8) of the 1994 LTA, the judge found that as the possessory title of the respondent to plot A had already crystallised by December 1966, before No 12 had become registered land, the 1994 LTA could not have operated retrospectively to defeat the respondent's possessory title. The judge in conclusion stated at [33] that:

[T]he defendant's possessory title had already crystallised before 20 December 1966 when No 12 was brought under the provisions of the 1956 LTO. Accordingly, the plaintiff's title to [plot A] was extinguished by the operation of the Limitation Ordinance in force at the material time when No 12 was still under the common law system. The plaintiff's claim in this action therefore fails.

Issues on appeal

9 Before us, three main issues were raised in the Appellant's Case. First is the factual question whether the respondent had proved that his predecessors-in-title had, by December 1966, acquired possessory title to the disputed strip. Second, even if possessory title had been acquired by the

respondent's predecessors-in-title, the interest so acquired would only be in respect of the equity of redemption as No 12 was then under mortgage. Third, even if a possessory title to the disputed strip had been acquired by the respondent's predecessors-in-title, such a possessory title had been extinguished by virtue of the fact that the title to No 12 had become unqualified on 2 April 2002 and there was no caveat lodged to protect that interest. In this regard, we should also point out that in the court below, the legal point argued was whether ss 172(7) and 172(8) of the 1994 LTA applied to extinguish the respondent's possessory title. The judge held that they did not apply. However, during oral submission, this point was also touched on and we will deal with it.

10 For the purposes of this judgment, we do not propose to go into the first ground, which is essentially a question of fact. The appellant argued, in particular, that there was no evidence that Mercier had exclusive possession of, or *animus possidendi* over plot A, bearing in mind that the hedge at the front of No 10 did not link up with the L-shaped hedge of No 12. As stated before, the hedge of No 10 stopped at the legal boundary line and did not go beyond so as to enclose plot A within No 10. In view of our conclusion on the legal points in the third issue, which will dispose of this appeal, it will be quite unnecessary for us to examine the first issue. We shall assume:

- (a) that the judge's finding that Mercier and Cheong were in adverse possession of plot A for a period of at least 12 years preceding December 1966 is correct; and
- (b) that Mercier and Cheong had acquired a possessory title thereto which had been passed down to the respondent as the successor owner of No 10.

Effect of mortgage on adverse possession

11 Before we address the third issue, we shall briefly touch on the second issue. During the period September 1954 to May 1961, No 12 was mortgaged by the then owner, Rodrigues, to the Building Society of Malaya Limited ("the Building Society"). In September 1966, the appellant, upon acquiring No 12, also mortgaged the property to the Building Society. It remained so mortgaged until July 1974. The appellant argued that as on 19 December 1966, the date on which the respondent's predecessors-in-title acquired possessory title to the disputed strip, No 12 was under mortgage, what the respondent's predecessors-in-title would have acquired would be just the equity of redemption. Upon the appellant redeeming the mortgage in 1974, and obtaining a reconveyance of the whole of No 12 in her favour, it was too late for Cheong's estate (or now the respondent as successor-owner to No 10) to claim an equity of redemption. In making this submission, the appellant relied upon the following passage from Kevin Gray & Susan Francis Gray, *Elements of Land Law*, (Oxford University Press, 4th Ed, 2004) at para 6.47:

In unregistered land the adverse possessor simply emerges with an unimpeachable legal title in fee simple, although he inevitably holds this title subject to all valid pre-existing legal and equitable rights over the land. Adverse possession against a paper owner extinguishes only the paper owner's title and not the interest of any third party to which that title was already subordinated. Thus, for example, a successful adverse possessor is bound by any mortgage charge affecting the land, the squatter effectively acquiring only the equity of redemption.

12 The last sentence in the passage above rests on the case of *Carroll v Manek and Bank of India* (2000) 79 P&CR 173 ("*Carroll*"). However, it is important to bear in mind that in *Carroll* the mortgage was granted before the period of adverse possession had commenced. This is a critical fact which differentiates the position here from that in *Carroll*. In the present case, it would appear that Mercier had already commenced adverse possession of plot A (having bought No 10 in July 1954) before Rodrigues mortgaged No 12 to the Building Society in September 1954. Cheong continued with

the adverse possession when he bought over No 10 in May 1960. Thus, upon Cheong acquiring possessory title over the strip, Cheong's interest would overreach that of the mortgagee.

13 In any event, even in a case where adverse possession only commences after the property has been mortgaged and the squatter acquires only an equity of redemption by adverse possession, redemption of the mortgage confers the squatter, rather than the original owner, with an indefeasible possessory title to the property. In *Thornton v France* [1897] 2 QB 143 at 155–156, the court rejected the argument that an owner against whom time had begun to run acquired the mortgagee's right of entry when he paid off the mortgage. As Chitty LJ rightly pointed out, to hold otherwise would permit the owner of a property to arbitrarily defeat an adverse possessor's inchoate interest by simply granting a mortgage when the limitation period was about to expire and subsequently discharging it. Thus, in the present case, the appellant's act of redeeming the mortgage would merely have freed Cheong's possessory title of any encumbrances. It would not have re-vested the fee simple of plot A in the appellant.

Section 172(8) of the 1994 LTA

14 In the present case, the respondent had acquired a possessory title to plot A before No 12 was converted to registered land on 20 December 1966. The appellant contended that although upon the conversion of No 12, the possessory title was preserved by s 32 of the 1956 LTO (which section was re-numbered as s 38 of the 1970 LTA and s 42 of the 1985 LTA), the respondent's possessory title had lapsed by virtue of ss 50, 172(8) and 172(9) of the 1993 LTA which repealed the 1985 LTA. Sections 172(8) and 172(9) were renumbered as ss 172(7) and 172(8) in the 1994 LTA. For expedience, we will hereinafter adopt the numbering of these two provisions in the 1994 LTA.

15 Section 32 of the 1956 LTO read:

32.—(1) Any person in adverse possession of registered land who, if that land had not been brought under the provisions of this Ordinance would have become entitled thereto by virtue of such adverse possession, may apply to the Registrar for a certificate of title to that land, provided that not less than twelve years have elapsed since the land was brought under the provisions of this Ordinance, or since the entry in the land-register of the most recent memorial of registration or notification of an instrument (other than an instrument of statutory obligation) affecting that land.

(2) Except as in this Division provided, no title to land adverse to or in derogation of the title of a proprietor shall be acquired by any length of possession by virtue of the Limitation Ordinance or otherwise, nor shall the title of any proprietor be extinguished by the operation of that Ordinance.

(3) Nothing in this Ordinance shall affect the operation of the Limitation Ordinance in respect to the right of a person in adverse possession of land comprised in a qualified certificate of title where the possession commenced before the land was brought under the provisions of this Ordinance and such right has been protected by caveat.

Except for certain formal changes such as "Ordinance" to "Act", the substance of this provision remained the same in the 1985 LTA (being renumbered as s 42).

16 The 1993 LTA repealed the 1985 LTA and brought about significant changes to the law on adverse possession with regard to both registered and unregistered land. One of the provisions which was not reproduced in the 1993 LTA was s 42. The object of this Act was to abolish adverse

possession altogether, subject to the preservation, through certain transitional provisions, of possessory rights which had already crystallised. Section 50 of the 1994 LTA (which also appeared, *mutatis mutandis*, as s 50 in the 1993 LTA) read:

Except as provided in section 172(7) and (8), no title to land adverse to or in derogation of the title of a proprietor of registered land shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor of registered land be extinguished by the operation of that Act.

17 The effect of s 50 of the 1994 LTA was that upon the coming into operation of the 1993 LTA, ie, on 1 March 1994 ("the operative date"), no title of a registered owner, whether qualified or otherwise, could be extinguished by adverse possession except where the circumstances fell within ss 172(7) and 172(8) which read:

(7) Where at any time before 1st March 1994 a person —

(a) was in adverse possession of any registered land; and

(b) has lodged an application for a possessory title to the land under the provisions of the repealed Act and the application has not been withdrawn but is on such date pending in the Land Titles Registry,

the application shall be dealt with in accordance with the provisions of the repealed Act in force immediately before such date.

(8) Where at any time before 1st March 1994 a person —

(a) was in adverse possession of any registered land; and

(b) was entitled to lodge an application for a possessory title to the land under the provisions of the repealed Act which were in force immediately before that date,

he may, within 6 months of such date make an application to court for an order to vest the title in him or lodge an application for a possessory title to the land and the application shall be dealt with in accordance with the provisions of the repealed Act in force immediately before such date.

18 Section 172(7) covered the case where, at the operative date, an adverse possessor had lodged an application for a possessory title under the 1985 LTA which was pending in the Land Titles Registry. That application would be dealt with in accordance with the repealed Act. Section 172(8) covered the case where an adverse possessor had already acquired possessory title to registered land but had not yet lodged an application for a possessory title under the repealed Act. In this situation, the adverse possessor was given six months from the operative date to make an application to court for an order to vest the title in him or lodge an application for a possessory title to the land and the application would be dealt with in accordance with the 1985 LTA.

19 Both ss 172(7) and 172(8) did not differentiate between:

(a) possessory title acquired entirely while the land was unregistered;

(b) possessory title acquired entirely while the land was registered; and,

(c) possessory title acquired by a combination of both such periods.

The adverse possessor who had acquired possessory title before the land was registered was no less a person entitled to lodge an application for a possessory title under the 1985 LTA. However, for either of these provisions to apply, the land must have been brought under the 1985 LTA as at the date immediately before the operative date.

20 In a recent decision of this court in the case of *TSM Development Pte Ltd v Leonard Stephanie Celine née Pereira* [2005] SGCA 41 ("*TSM Development*"), at [48], we summarised the changes brought about by the 1993 LTA as follows:

To summarise, the object of the 1993 LTA was to abolish adverse possession as a means of acquiring title to land, whether registered or unregistered, subject to the saving provisions for possessory title already acquired as at 1 March 1994 when this Act came into operation. In dealing with adverse possession claims, the key question to consider is whether or not the land was registered land on that date. If the land was already registered land by that time and 12 years of adverse possession had not been completed yet, s 50 of the new LTA would preclude the adverse possessor from perfecting his inchoate title. In contrast, if the land was registered land as at 1 March 1994 and possessory title had already been acquired, such title would be upheld only if the case came within s 172(7) or the adverse possessor complied with s 172(8). As for land which was still unregistered as at 1 March 1994, if possessory title had not crystallised by then, the adverse possessor would likewise no longer be able to perfect his inchoate interest in view of s 9(3) of the Limitation Act. In contrast, possessory title to such land which had already been acquired by 1 March 1994 would be preserved by s 177(3) of the 1993 LTA. Upon the land becoming registered land, however, such accrued possessory rights would remain protected only if the adverse possessor lodged a caveat in respect of his interest while title to the land was qualified.

21 As immediately before the operative date the respondent had a possessory title to plot A, which was part of No 12, a registered land, and as the respondent had not within six months thereof complied with s 172(8), the possessory title of the respondent had thereby lapsed in accordance with s 50. In the premises, the title of the appellant to plot A remains intact. The circumstances of the present case are similar to those in *TSM Development* as well as those in *Tan Siok Gek v Ng Kim Neo* [1997] 2 SLR 691 ("*Tan Siok Gek*") and *Shell Eastern Petroleum (Pte) Ltd v Goh Chor Cheok* [2000] 1 SLR 45 ("*Shell Eastern Petroleum*"): see the discussions of these two latter cases in *TSM Development* at [30] to [33] and [37] to [40].

Need for lodging a caveat

22 We now turn to the alternative legal argument raised by the appellant that the respondent's possessory title had lapsed because of the failure on the part of the respondent to lodge a caveat in relation to that possessory title before the qualified title of No 12 became absolute.

23 It is not in dispute that at any time after the issue of the qualified title in respect of No 12, the respondent's predecessors-in-title, as well as the respondent, were entitled to lodge a caveat against the property. In view of s 32(3) of the 1956 LTO (and the equivalent provision in the 1985 LTA), the possessory title acquired by the respondent's predecessors-in-title would continue to bind No 12 so long as the title was a qualified one: see s 16(1) of the 1970 LTA and s 19(1) of the 1985 LTA. Under s 20(2) of the 1985 LTA (s 17(2) of the 1970 LTA), an adverse possessor who claimed a possessory title could, so long as the title remained qualified, protect that interest by lodging a caveat. Unless such a subsisting interest was protected by a caveat, it would be wiped out when the title ceased to be qualified. This was spelt out in s 19(3) of the 1985 LTA and s 25(5) of the 1994

LTA which stated that upon a title ceasing to be qualified by the lapsing of the caution, "the land comprised therein shall thenceforth be held subject only to such interests as are registered or notified on the folio". In a case where the title became unqualified due to cancellation pursuant to an application by the registered proprietor, the same consequence should follow: see in *TSM Development* ([20] *supra*) at [40].

24 This interpretation is wholly in line with the ministerial statement made in Parliament during the third reading of the Land Titles Bill (which became the 1993 LTA) when the Minister for Law said (*Singapore Parliamentary Debates, Official Report* (30 August 1993), vol 61 at col 475):

I should point out that should any land become registered land through the issue of a qualified certificate of title, an adverse possessor's claim to the land will remain protected only as long as, first, a caution as to title remains on the certificate of title; and second, the adverse possessor lodges a caveat before such caution has lapsed or been cancelled.

25 Similarly, this court had in *TSM Development*, in dealing with the question whether a caveat should have been lodged in respect of a possessory title already acquired before the land was converted into registered land, held that unless a caveat was lodged, once the registered proprietor's title became unqualified, the adverse possessor's title would have lapsed. The court reasoned at [46]:

Before us, the respondent argued that there is nothing in either the 1993 LTA or the new LTA [*ie*, 1994 LTA] which requires the adverse possessor to lodge a caveat upon the land in question becoming registered land. In our view, the absence of explicit legislative provision to this effect is immaterial. Having regard to the principles underlying the Torrens system as a whole and the legislative intent behind the new LTA, it seems to us that an adverse possessor of unregistered land must give notice of his interest by lodging a caveat when the land is subsequently converted to registered land. To hold otherwise could lead to a scenario where many years after title to a plot of registered land becomes unqualified, the registered proprietor discovers that his land is in fact encumbered by an adverse possessor's claim. This would make a mockery of the indefeasibility of title which s 46 of the new LTA is meant to confer on a registered proprietor, especially if the latter is a *bona fide* purchaser as opposed to the proprietor of the land at the time of its conversion to the Torrens system.

26 While we appreciate that the Parliamentary statement made by the Minister (see [24] above) and the views expressed by this court in *TSM Development* (see [25] above) were in the context of the 1993 LTA, which abolished adverse possession as a means of acquiring possessory title as far as registered land was concerned, their rationale is no less applicable here as they were addressing specifically the situation where possessory title had been acquired before the land was subsequently brought under Torrens system. In the present case the respondent's possessory title had been acquired before No 12 was brought under registered land. The two situations, here and in *TSM Development*, are, in fact, parallel.

27 As by the time the title of No 12 had become unqualified, *ie*, on 2 April 2002, no caveat had yet been lodged by the respondent, his possessory title accordingly lapsed.

28 At this juncture we will refer to three cases cited and relied upon by the respondent. First is the case of *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726 ("*Balwant Singh*") which this court had gone into in some detail in *TSM Development*. The present case and *Balwant Singh* are similar in the sense that in both, the possessory title had crystallised in favour of the adverse possessor before the land was brought under the Torrens system. In *TSM Development* this court noted (at [25]) three special features in *Balwant Singh* but for our purposes here the critical factor is the third one, namely,

that the adverse possessor there “entered a caveat soon after the land became registered land while title to it was still qualified”. In contrast, the respondent here never lodged any caveat against No 12 before its title became unqualified.

29 Second is the case of *Wong Kok Chin v Mah Ten Kui Joseph* [1992] 2 SLR 161 (“*Wong Kok Chin*”) where the adverse possession commenced in 1969, the land was brought under registered land in 1974 with the issue of a qualified title, possessory title crystallised in 1981, discovery of encroachment was made in early 1988, lodgment of a notice of re-assertion of ownership was made on 23 June 1988 and a lodgment of a caveat by the adverse possessor was made on 27 June 1988. There, the issue which the court had to decide was whether, in view of the fact that the lodgment of the reassertion of ownership was made before the lodgment of the caveat by the adverse possession, that would have the effect of reviving the registered owner’s title which had been extinguished by limitation and it was answered in the negative. There, the court said at 172, [31]:

A reassertion of ownership is not intended by the LTA to revive an extinct title but to stop the accruing right of an adverse possessor before limitation sets in.

Moreover, it is vitally important to bear in mind that when the adverse possessor in *Wong Kok Chin* lodged a caveat to claim for possessory title, the title of the registered proprietor was still qualified.

30 We acknowledge that there is a passage in *Wong Kok Chin* (at 173, [35]) which seems to suggest that the adverse possessor’s failure to lodge a caveat might not be fatal upon the title becoming unqualified:

The only person who is able to obtain a title free from any prior interests affecting such land is a purchaser when that caution expires against him after five years from the date of conversion and when the caution is cancelled on his application. The caveat referred to in s 42(3) [of the 1985 LTA] is intended to protect the rights of an adverse possessor against a purchaser and not against the registered proprietor.

In *TSM Development* at [39] we had clarified this passage and this was what we said:

While the decision in *Wong Kok Chin* was undoubtedly correct on the facts, we note that under the 1985 LTA, the purchaser referred to in the above passage was not the only person who could obtain a title free from prior existing interests. According to s 19(5) of the Act, the original registered proprietor could likewise obtain an unqualified title if he could prove that there were no outstanding interests which had yet to be notified on the folio for the property. It would thus appear that the caveat in s 42(3) of the 1985 LTA was equally intended to protect an adverse possessor’s rights against the original registered proprietor.

31 Third is the case of *Shell Eastern Petroleum (Pte) Ltd v Goh Chor Cheok* ([21] *supra*) where the High Court thought that there was a difference between the effect of the cancellation of a caution *vis-à-vis* the original registered proprietor and that of the lapsing of a caution *vis-à-vis* a subsequent purchaser. In the opinion of the judge, the cancellation of a caution on the application of the original registered proprietor would not, of itself, bring about indefeasibility; indefeasibility would only set in when the land was sold to a subsequent purchaser. In *TSM Development* at [40], we had set out the reason why we thought the purported distinction was not tenable and do not propose to repeat it here.

32 Tan Sook Yee, *Principles of Singapore Land Law* (Butterworths Asia, 2nd Ed, 2001) at pp 195–196 suggested the following as being a possible reason why the judge in *Shell Eastern*

Petroleum sought to make such a distinction:

... Khoo J seemed to be swayed by the ease with which an existing interest can be swept away merely by the cancellation of the caution. He noted that while the registered proprietor was obliged to make a statement of existing interests known to him, yet it was too easy for a registered proprietor not to remember such an existing interest, as was the case on the facts before him. He found that the plaintiffs were clearly aware that the defendant's retaining wall was within their land and yet no mention was made of this in the application for a cancellation of the caution. But since no argument was made of fraud on the plaintiff's part, the judge did not find fraud or lack of bona fides on the part of the plaintiffs. But his finding that the plaintiffs knew where the retaining wall was built clearly affected his decision. However, it is suggested that rather than give such a wide open construction to section 26, the same result have been achieved by resorting to other reasons *eg* section 160 of the Land Titles Act or the fashionable route of a personal equity based on unconscionable behaviour.

Judgment

33 In the result, we hold that the possessory title which the respondent had over the strip was extinguished by 2 September 1994 (six months after 1 March 1994) when he failed to comply with s 172(8) of the 1994 LTA. Moreover, even if this were not the case, his possessory title would also have lapsed by 2 April 2002, the date on which the appellant's title to No 12 became unqualified.

34 Accordingly, this appeal is allowed. The judgment of the court below is set aside. We declare that the appellant is still the owner of plot A. The appellant shall have the costs of these proceedings, here and below. Pursuant to the oral request by counsel for the respondent at the close of submission, we would clarify that if the appellant should wish to re-site the boundary fence in the correct position, she would have to do that at her own expense.

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