Epolar System Enterprise Pte Ltd and Others v Lee Hock Chuan and Others [2003] SGCA 10

Case Number : CA 109/2002

Decision Date : 21 March 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ

Counsel Name(s) : Gn Chiang Soon (Gn & Co) for Appellants; Cheong Yuen Hee (instructed); Govinda Gopalan, Cheong Aik Chye (Lim & Gopalan) for Respondents

Parties : Epolar System Enterprise Pte Ltd; Nam Yew Furniture (suing as a firm); Stevic (Singapore) Pte Ltd; Mok Ah Mui; Chew Suan Tin; Chew Tuan Lim; Chew Suan Ching; Heng Soon Koon — Lee Hock Chuan; Lee Poh Chuan; Lee Poh Huat; Lee Chen Guan; Lee Chui Huat; Lee Chen Chon

Tort – Nuisance – Private nuisance – Fire damage – Fire caused by faulty fuse on property – Whether landlord liable in nuisance

Tort – Nuisance – Private nuisance – Standing to sue – Whether pleadings disclosed sufficient capacity to sue – Person(s) pleading as "occupying and carrying on business" – Persons pleading as "owners" – Whether this disclosed sufficient standing to sue

Delivered by Chao Hick Tin JA

1 This was an appeal against a decision of the High Court dismissing the appellants' claims for damages on account of a fire which started in the premises owned by the respondents but let out to tenants and which spread to the adjoining premises occupied/belonging to the appellants. We heard the appeal on 18 February 2003 and dismissed it. These grounds are issued as certain pronouncements made by the court below, in relation to the tort of nuisance, require some clarification.

The facts

2 The first to third appellants were the occupiers of factory premises Nos 21, 35 and 37, Senang Crescent respectively (Nos 21, 35 and 37) and were carrying on their businesses therein. The fourth and fifth appellants were the owners of Nos 35 and 37. The owner of No. 21 was a party to the proceedings in the court below but had decided not to pursue the matter further. The respondents were the owners of No. 25 Senang Crescent (No. 25). The appellants sued in both negligence and nuisance.

3 On 20 February 1999, a fire broke out at No. 25. At the time, the property was leased out by the respondents to Great Wall Interior Décor Pte Ltd ("Great Wall"), which in turn had sublet the lower floor to Teamwood Decoration & Construction Pte Ltd ("Teamwood"). The cause of the fire would appear to be a short circuit in the wiring which generated sparks, igniting material in the front yard of No. 25. Three fuses in the fuse box of No. 25 were found to contain old copper wires (in Imperial measurement) not in use after 1978. These wires had a greater capacity than what was permitted for use and this had apparently resulted in the fuses not "blowing" to interrupt the flow of electricity. The fuse box was located in the front yard of No. 25 occupied by Teamwood.

4 We should mention that there was an earlier action, in relation to the same fire, which was commenced by the owners and tenants of No. 23 Senang Crescent against the respondents, as well as Great Wall and Teamwood (Suit No. 1777/1999). At the end of the trial of that action, the High Court dismissed the plaintiffs' claim against the owners of No. 25, the respondents herein, as well as their claim against Great Wall. But the court there held Teamwood liable in negligence for the damages caused by the fire. The decision was affirmed by this Court on appeal.

5 In the present action, the case as presented to the court below was that the three tampered fuses, with wire thickness greater than those in use after 1978, were installed sometime before 1978 or, at the latest, before 1991, i.e., before Great Wall commenced occupation of No. 25. The appellants alleged that the respondents, as the landlords of No. 25, upon resuming possession of the premises from the previous tenant, and before leasing the property out to Great Wall, should have ensured that all electrical fittings were in order. In letting out the premises to Great Wall with the tampered fuses, the respondents were negligent and were thus liable for damages suffered by the appellants.

6 The trial judge found that the appellants had failed to establish that the respondents had breached any duty of care owed to them and dismissed the action.

7 In order to prove that the old wires were installed in the tampered fuses before Great Wall took possession of No. 25, the appellants relied on the fact that the old wires were wires authorized before 1978 and such wires were no longer permitted to be in use after 1978. We did not think that this fact alone was sufficient proof that the tampered fuses must have been in place before 1978 or at any rate before 1991. We did not see how it necessarily followed that just because the wires were old, they must have been in place before 1991. While we accept that a licenced electrician would most likely have used wires currently authorized, a change of fuse wires could be undertaken by any handyman. Findings must be made based on evidence, and speculation does not constitute evidence. Great Wall and Teamwork should have been called to testify that they did not do anything with regard to the fuses.

8 In the light of the foregoing, the claim in nuisance could also not be sustained. At the relevant time No. 25 was in the exclusive possession of Great Wall and Teamwood. It was not established that the potentially dangerous situation, caused by the tampered fuses and the combustible material accumulated in the front yard of No. 25, was brought about by the respondents or that they knew about it and did nothing. There was nothing to link the respondents to that state of affairs.

Who may claim in nuisance

9 In dealing with the claim in nuisance, the trial judge, in his judgment, advanced the following propositions:-

"… a plaintiff who sues in private nuisance must first prove that he has an interest in land because nuisance is a tort against land. See *The Law of Torts*, Common Law Series, 2002 Ed, Ch 22 page 901 for a detailed historical background to this tort. Whatever the plaintiff may recover from the defendant depends on the interest that he (the plaintiff) has. Hence, the licensee in *Malone v Laskey* [1907] 2 KB 141 was held to have insufficient interest in land to sue the next door occupier in nuisance. It follows that the plaintiffs must plead and adduce evidence of their respective interests in land. The case for the first, second, and third plaintiffs in this case must fail from the outset because they claim as 'occupiers'. That is clearly insufficient. The fourth, fifth, and sixth plaintiffs claim as owners. Not a single affidavit of evidence-in-chief was filed by any one of the six plaintiffs. If the owner is not in occupation, then he can only succeed if he can show that he had a right of immediate possession, or that he suffered damage in respect of his reversionary interest. See *Shelfer v City of London Electric Lighting Co* [1895] 1 CH 287, 312, per Lindley LJ. Nothing to this effect was pleaded nor proved. The certified true copies of title deeds produced by the solicitor's clerk only prove ownership at best, but, as I said, mere ownership is not sufficient, especially where, as in this case, it is not known who had possession or right to immediate possession of the premises known as 21, 35 and 37 Senang Crescent."

10 The tort of private nuisance protects the right of a person who has possession of land to enjoy his premises undisturbed. The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land: see *Clerk and Lindsell on Torts, 17th Edn,* at 889. Generally, only a person with a proprietary interest, whether by virtue of his freehold or leasehold interest, can bring proceedings. Thus, a tenant can sue. Where an owner has leased out his property, in order to be able to sue, he must prove that the nuisance has damaged or is likely to be adverse to his reversionary interest. As a rule, occupation *per se* will not suffice; there must be something more, something in the nature of proprietary interest or its equivalent. Therefore, an individual who is a husband, wife or lodger of the owner or lessee, who is at the premises with the permission of the latter, will have no cause of action even though he may be said to be in occupation. This principle is elucidated in the case of *Malone v Laskey* [1907] 2 KB 141 where the wife of the manager of a company entitled to live in the premises by virtue of his employment was held to be disentitled to sue in private nuisance. Sir Gorell Barnes P said (at 151):-

"Many cases were cited in the course of the argument in which it had been held that actions for nuisance could be maintained where a person's rights of property had been affected by the nuisance, but no authority was cited, nor in my opinion can any principle of law be formulated, to the effect that a person who has no interest in property, no right of occupation in the proper sense of the term, can maintain an action for a nuisance arising from the vibration caused by the working of an engine in an adjoining house."

11 However, a person in *de facto* possession by way of exclusive occupation may be entitled to sue. This is illustrated by the case *Newcastle-Under-Lyme Corporation v Wolstanton Ltd* [1947] 1 CH 92 where a borough corporation, whose gas mains and pipes laid under roads were damaged due to soil movement caused by works at adjacent mines, was held to be entitled to sue for nuisance as the exclusive occupier. Evershed J said (at 106):-

"… they have by force of the statute the exclusive right to occupy for the purposes of their statutory undertaking the space in the soil taken by the pipes and that (subterranean) part of the soil on which

> the pipes rest; but that exclusive right of occupation, which continues so long as the corporation carry on their undertaking, does not depend upon or involve the vesting in the plaintiff corporation of any legal or equitable estate in the land."

And at p. 109, Evershed J seemed to have endorsed the following statement in *Salmond on Torts (10th Edn)* at 221:-

> "There seems no reason why possession without title should not as a general rule be sufficient to enable a plaintiff to succeed in nuisance so that the jus tertii cannot be set up as a defence."

12 In *Foster v Warblington UDC* [1906] 1 KB 648 an oyster merchant who had set up a business on the lord of the manor's shore was able to sue the defendant for damage caused by the discharge of sewage. He had carried on his trade removing and selling oysters for such a length of time that the court was willing to grant him relief. Fletcher Moulton LJ held (at 679) that:-

> "it is an unquestionable principle of our law that, where there has been long-continued enjoyment of an exclusive character of a right or a property, the law presumes that such enjoyment is rightful, if the property or right is of such a nature that it can have a legal origin."

13 In *Khorasandjian v Bush* [1993] QB 727, the English Court of Appeal attempted to relax somewhat the strict view on the question of entitlement to sue. There, the daughter was living in a house owned by the mother. She was pestered and threatened by unwanted telephone calls. Dillon LJ, giving the majority judgment, held that she had a cause of action in private nuisance. He felt that the court should reconsider earlier decisions in the light of changed social conditions. He said it was –

> "ridiculous if in this present age the law is that the making of deliberately harassing and pestering telephone calls to a person is only actionable in the civil courts if the recipient of the calls happens to have the freehold or a leasehold proprietary interest in the premises in which he or she has received the calls."

Peter Gibson J, dissenting, held it was wrong in principle that a mere licensee should be able to sue in private nuisance.

14 However, in *Hunter v Canary Wharf Ltd* [1997] AC 655 where the House of Lords had the occasion to review this entire area of the law, it overruled the majority decision in *Khorasandjian v Bush* and put a stop to the attempted departure from the strict position. At first instance, Judge Havery QC held (i) that interference with television reception is capable of constituting an actionable nuisance; (ii) but the plaintiff must have a right of exclusive possession of the land to be entitled to sue for private nuisance. The Court of Appeal reversed him on both points. On the second point, the Court of Appeal held that occupation of property as a home, as had the daughter in *Khorasandjian v Bush*, provided a sufficiently substantial link to enable the occupier to sue in private nuisance. This view was rejected by the House of Lords by a 4-1 majority. Lord Goff of Chieveley, after reviewing the authorities, concluded (at 692):-

"It follows that, on the authorities as they stand, an action in private nuisance will only lie at the suit of a person who has a right to the land affected. Ordinarily, such a person can only sue if he has the right to exclusive possession of the land, such as a freeholder or tenant in possession, or even a licensee with exclusive possession. Exceptionally however, as *Foster v Warblington Urban District Council* shows, this category may include a person in actual possession who has no right to be there; and in any event a reversioner can sue in so far his reversionary interest is affected. But a mere licensee on the land has no right to sue…"

15 Thus for a plaintiff to be entitled to sue in private nuisance he must show an interest in land. There must be a right to occupation.

16 Reverting to the pleading in this case, we noted that the plaintiffs had clearly pleaded the capacity in which they were suing when they stated:-

"1. On 20 February 1999 ('the eventful day') the 1st, 2nd and 3rd plaintiffs were occupying and carrying on their business and/or trade at No. 21, 35 and 37 Senang Crescent, Singapore, respectively (Nos 21, 35 and 37)

2. On the eventful day, the 4th, 5th and 6th plaintiffs were the owners of Nos 21, 35 and 37 respectively."

17 The trial judge said that "the case for the first, second and third plaintiffs in this case must fail from the outset because they claim as 'occupiers'." He seemed to have relied on the case of *Malone v Laskey*. But as seen above, *Malone v Laskey* was concerned with a pure licensee. The wife had no right of occupation. Here, however, the first three plaintiffs had pleaded "occupying and carrying on their business" at the premises. They were in actual possession of the premises in their own right. They were certainly not in the position of the wife in *Malone v Laskey* nor the daughter in *Khorasaudjian v Bush*. In our opinion, they were entitled to sue in accordance with the principle enunciated by Lord Goff in *Hunter* quoted in ¶14 above.

18 As regards the other appellants who were owners of Nos 35 & 37 (and of No. 21 as well, although the owner did not appeal), the trial judge held that proof of ownership *per se* was not good enough to claim in nuisance. He was quite right to say that the owners must show that they had suffered damage in respect of their reversionary interest. But where there was, as in this case, clear evidence that the fire that began at No. 25 had spread to Nos 21, 35 and 37 and caused substantial damage thereto, the reversionary interest of the owners was surely affected. Nuisance arising from smoke and dust may be transient and it would be difficult to establish permanent damage being caused thereby. But fire damage is permanent. Thus, the owners of Nos 21, 35 and 37 would have a right to claim in nuisance. This is illustrated in *Shelfer v City of London Electric Lighting Co* [1895] 1 CH 287 where the defendant erected powerful engines and other works on land near to a house occupied by lessee. The vibration and noise from the excavation works caused structural damage to the house and annoyance and discomfort to the lessee. The lessee and the reversioners brought separate action and reliefs were granted to both.

19 Notwithstanding the foregoing, the appellants failed in their claim in nuisance against the respondents because, as stated above, they had not proved that the respondents were in any way responsible for the alleged nuisance.