

Liwen Holdings Pte Ltd v Ng Ker San and Another and Other Actions
[2001] SGHC 74

Case Number : OS 1628, 1629, 1925/2000 And 600154/2001
Decision Date : 16 April 2001
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Sim Lin Piah (Toh Tan & Partners) for the plaintiff; Lee Mun Hooi and Liew Chen Chen (Lee Mun Hooi & Co) for the defendants
Parties : Liwen Holdings Pte Ltd — Ng Ker San and Another and Other Actions

Land – Caveats – effect of caveat-Adverse possession – Whether adverse possession acquired by 1st March 1994 – Failure to lodge caveat against disputed plot of land before lapsing of caution – Whether such interest can be defeated by bona fide purchaser's interest under Land Titles Act (Cap 157, 1994 Ed)

: These are four related originating summonses heard together and they concern a plot of land, one part of which has been assimilated by 1 Bedok Rise and the other by 3 Bedok Rise. The plaintiff in OS 1628 and 1629 of 2000 is a company (‘the company’) which owns 7A Bedok Rise which adjoins both 1 and 3 Bedok Rise. The company claims against the owners of 1 and 3 Bedok Rise possession of the respective portion of the plot in issue together with an injunction to restrain them from remaining on the said plot, mesne profits and/or damages from the date of trespass until the delivery up of possession, interest and costs on an indemnity basis.

Originating Summons 1925 of 2000 and OS 600154 of 2001 are the actions by the owners of 3 and 1 Bedok Rise respectively against the company for a declaration that they are the owners of the relevant portion of the plot of land in question by virtue of adverse possession. They also seek an order that the Singapore Land Registry be directed to rectify the entries in the registry to exclude the plot in question from the title of 7A Bedok Rise.

The portion of the plot occupied by 3 Bedok Rise is about 48.10sq m with an estimated market value of \$210,000 while the portion occupied by 1 Bedok Rise is about 80.16sq m with an estimated market value of \$345,000.

The company’s case

The company is the registered owner of the piece of land described as Lot 8187W Mukim 27 Bedok (‘the property’) of which 7A Bedok Rise is a part. The property’s parent lot used to be known as Lot 235-25 Mukim 27 Bedok/Lot 98170L Mukim 27 Bedok.

The company purchased the property from another company known as Double L & T Pte Ltd which had in turn acquired it from one Thulasi Velayutham. Pursuant to an Indenture of Conveyance dated 17 December 1993, Thulasi conveyed the land known as Lot 235-25 Mukim 27 Bedok to Double L & T Pte Ltd. Thereafter, Double L & T Pte Ltd applied for the parent lot (comprising the property) to be registered under the Land Titles Act.

On 20 June 1994, Double L & T Pte Ltd obtained a qualified certificate of title of the parent lot which was subdivided into Lot 8187W (the property), Lot 8188V and Lot 8189P.

On 15 June 1996, the property was transferred from Double L & T Pte Ltd and registered in the name

of the company. The company, which is a housing developer, then built houses on the property. The company intends to sell the house now known as 7A Bedok Rise together with its compound. The plot in dispute falls within the compound of 7A Bedok Rise but the respective portions thereof have been fenced up and assimilated by 1 and 3 Bedok Rise.

On 9 April 1996, the company's solicitors wrote to the owner of 1 Bedok Rise in the following terms:

Dear Sirs,

re: Lots 235-25 and 4236 Mukim 27 Bedok Close Singapore

We act for M/s Liwen Holdings Pte Ltd who are the purchasers of No. 16 Bedok Close, Singapore i.e. Lots No. 235-25 and 4236, Mukim 27, Singapore.

We are instructed that you have encroached onto the portion of our clients' aforesaid land, more particularly marked 'D' in the enclosed plan.

TAKE NOTICE that as our clients need the said land for their development they will require you to set back your fencing to its proper boundary within the next fourteen (14) days.

In any event, please let us have your written response within the next seven (7) days.

A similar letter was written to the owners of 3 Bedok Rise on the same day.

On 21 June 1996, the company's solicitors followed up with another letter to the respective owners which reads:

Dear Sir,

re: Lots 8187 (previously 235-25) Mukim 27 Bedok Close Singapore

We act for M/s Liwen Holdings Pte Ltd who are now the owners of the above property.

Despite our letter of 9th April 1996, you have not set back your fencing to its proper boundary.

TAKE NOTICE that if you refuse, neglect or otherwise fail to do so within the next SEVEN (7) days, we have instructions to commence proceedings against you without further reference in which event you shall be liable for costs and damages incurred.

On 15 July 1996, the company's solicitors wrote again to the owner of 1 Bedok Rise the following letter:

Dear Sir,

re: Lot 8187 (previously 235-25) Mukim 27 Bedok Close Singapore

We act for M/s Liwen Holdings Pte Ltd who are the owners of the above property.

We are instructed that you have encroached onto the portion of our clients' land, more particularly marked "D" in the enclosed plan.

TAKE NOTICE that our clients require you to set back your fencing to its proper boundary within the next fourteen (14) days.

In any event, please let us have your written response within the next seven (7) days.

A similar letter did not appear to have been sent to 3 Bedok Rise.

Some four years later, on 9 October 2000, the company's solicitors wrote:

Ngo Ong Chung

(NRIC No. S2503404/Z)

and all other persons occupying

the plot of land belonging to

No. 7A Bedok Rise and adjoining

No. 1 Bedok Rise

Singapore 469574

Dear Sir/Madam

NOTICE TO CEASE AND DESIST TRESPASS OF THE PLOT OF LAND BELONGING TO NO. 7A BEDOK RISE (LOT 8187W) AND ADJOINING NO. 1 BEDOK RISE (LOT 3877A)

We act for Liwen Holdings Pte Ltd, the owners of No. 7A Bedok Rise, Singapore i.e. Lot No. 8187W Mukim 27, Singapore.

We are instructed that you have encroached onto our clients' land and thereby

committed trespass. Accordingly, we hereby demand that you cease and desist from trespassing onto our clients` land within 7 days hereof.

In this regard, we enclose a plan of the land which sets out the relevant encroachment in red. Kindly remove the unlawful fencing and give vacant possession of the said plot of land immediately.

TAKE NOTICE that our clients are property developers and shall require the said land for their business purposes urgently. Our clients shall look to you for all damages and costs which they may suffer as a result of your wrongful conduct.

In the event that you persist with the trespass after the stipulated deadline, we have our clients` instructions to institute legal proceedings without further reference.

A letter in similar terms was sent to 3 Bedok Rise. However, there was no response from either 1 or 3 Bedok Rise.

The company claims that its title has become absolute on 17 December 1998, five years after the Indenture of Conveyance by Thulasi to Double L & T Pte Ltd. No one has filed a caveat against the property alleging an interest in it.

The defendants` case

The case of the owners of 1 and 3 Bedok Rise is contained in their affidavits filed in OS 1925/2000 and OS 600154/2001.

1 Bedok Rise was transferred to the present owner on 25 April 1988. The previous owner bought this property in 1975.

1 Bedok Rise was part of a housing project developed by Lucky Realty Co Ltd. An application was made sometime in 1973 by the developer to subdivide the parent lot (Lot 235-24 Mukim 27 Bedok) into individual lots which included 1 Bedok Rise.

When the present owner purchased 1 Bedok Rise, it was separated along its entire boundary with 3 Bedok Rise by a brick wall with metal grilles at the top. In 1978, this brick wall was built in place of the chain fencing put up by the developer and it has been in continuous existence since then. The first owner of 1 Bedok Rise was in continuous possession of the relevant portion of the plot of land in dispute since the date of purchase of 1 Bedok Rise from the developer and there was undisturbed possession for more than 12 years before this property was transferred to the present owner in 1988.

The company reiterates its position set out in its originating summons in respect of 1 Bedok Rise. None of the directors of the company has any knowledge of the owner`s allegations spelt out above and the company does not admit them as the truth. The company points out that the assertion that the chain fencing put up by the developer had annexed the disputed plot is a bare one. In fact, the site plan of the developer attached to its application for subdivision in 1973 clearly indicated that the plot in issue was excluded from 1 Bedok Rise. The company also points out that the present owner has no personal knowledge about the developer`s chain fencing nor any documents as to the date of

construction of the brick wall. In the ordinary course of events, there ought to have been various queries regarding the unauthorised use of the plot in issue in the purchases of 1 Bedok Rise in 1971, 1975 and 1988 but no documentary evidence of such has been adduced. There was also no response when the company and its predecessor demanded the cessation of encroachment.

The present owners of 3 Bedok Rise are a married couple who bought it in 1986. The husband was told by the previous owner that he bought this property from Lucky Realty Co Ltd in 1971 and was given possession in August 1973. The previous owner also told him a chain fencing had been constructed between 1 and 3 Bedok Rise at the time he took possession of his property and that it enclosed the disputed plot as well.

He was further told that sometime in 1978, the chain fencing was replaced by a brick wall with metal grilles on top. Beyond the boundary walls of 1 and 3 Bedok Rise (ie the company`s property) was a strip of land reserved as a backlane or access which was covered with wild vegetation and which had never been used. In fact, the access to this strip was sealed up with a wooden fence.

The previous owner of 3 Bedok Rise is now residing in Canada. An affidavit was filed by him confirming what has been stated by the present owner. The previous owner also confirms that he was in continuous possession of the relevant part of the disputed plot since the time he took possession of 3 Bedok Rise from the developer in 1973. He had also maintained, repaired and carried out improvements to the disputed plot.

The company filed an affidavit raising the same points as it did in the case of 1 Bedok Rise.

The issues

On 1 March 1994, acquisition of title by adverse possession was effectively abolished. The present owners of 1 and 3 Bedok Rise who took possession in 1988 and 1986 respectively would therefore not have satisfied the requirement of 12 years of continuous adverse possession in their own right. The issues for determination are therefore the following:

(1) whether by 1 March 1994, the owners of 1 and 3 Bedok Rise have acquired the disputed plot through adverse possession;

(2) if they have so acquired, whether such interest can be defeated by the company`s interest as bona fide purchaser under the Land Titles Act and whether the company`s title to the disputed plot has become an unqualified title on 17 December 1998.

The decision of the court

The first issue is one of fact. In the light of the documentary evidence which shows that the disputed plot was not included as part of 1 and 3 Bedok Rise, the assertions of the present owners and those of the previous owner of 3 Bedok Rise must be tested by cross-examination in court. I therefore ordered a trial of this factual issue and directed that all affidavits on record stand as the affidavits of evidence-in-chief of the respective witnesses. I also directed the parties to proceed for a pre-trial conference before the Registrar on the question of the need for further witnesses and to take dates for the trial of the issue. This part of my decision is not under appeal by the company.

The second issue is a question of law. The company`s case is that its title has become an absolute

one with effect from 17 December 1998, five years after the conveyance from Thulasi to Double L & T Pte Ltd, as no caveat was lodged before 17 December 1998 to assert any claim against the property. On 20 June 1994, when the property was brought within the regime of the Land Titles Act, the conveyance which was cancelled upon the issuance of the qualified certificate of title to Double L & T Pte Ltd was Thulasi's 17 December 1993 conveyance. The company's certificate of title dated 15 June 1996 was also a qualified title.

Sections 19 and 20 of the Land Titles Act set out the process of bringing land within the said Act. The relevant parts of these sections provide:

19	(1)	Land not subject to the provisions of this Act may be brought under the provisions of this Act.
	(2)	Subject to this section, a primary application may be made by -
		(a) a person entitled whether at law or in equity to an estate in fee simple or in perpetuity in the land to which the application relates; or
		(b) a person entitled either at law or in equity to a leasehold estate having an unexpired term of not less than 10 years on the date of the lodgment of the application in the land to which the application relates.
	...	
20		When land has been brought under the provisions of this Act pursuant to a primary application, the Registrar shall -
		(a) upon the creation of a folio unqualified as to title, cancel all assurances lodged to support the primary application in so far as they relate to the registered land, and retain in his possession or under his control such assurances as have been wholly cancelled; and
		(b) upon the creation of a folio qualified as to title, cancel the last conveyance passing title to the person who is recorded in the folio as the registered proprietor of the land comprised in the folio.

Section 3(1) provides:

Except as hereinafter provided, all Acts, regulations, rules, and other laws, and all practices, relating to estates and interests in land and operative at 1st March 1994, so far as they are inconsistent with the provisions of this Act in their application to registered land, are repealed.

Section 25 (on which the company relies for its assertion that its qualified title has become absolute on 17 December 1998) reads:

(1) Upon the creation of a qualified folio, the Registrar shall enter thereon a caution warning persons dealing with the registered proprietor therein named that the land comprised therein is held subject to any interest which affected it at the date of the creation of that folio, and so long as the caution remains on that folio that land shall be so held.

(2) In favour of any purchaser of an entire estate or interest in any land comprised in a qualified folio who is registered as the proprietor in the qualified folio, a caution entered on the qualified folio whether before or after 1st March 1994 lapses, in respect of that estate or interest, on the expiration of 5 years from the date of the last conveyance which was cancelled by the Registrar upon the creation of the qualified folio.

(3) A mortgagee or chargee shall not be regarded as a purchaser for the purposes of subsection (2).

(4) When a caution lapses pursuant to subsection (2), the lapsed caution shall constitute a defunct entry and the Registrar shall, after the lodgment of an application in the approved form made by the proprietor of the land cause an entry to be made in respect of the lapsing of the caution.

(5) Upon the lapsing of a caution pursuant to subsection (2), the folio shall cease to be qualified and the land comprised therein shall thenceforth be held subject only to such interests as are registered or notified on the folio and to such interests as are otherwise excepted by section 46.

(6) Any person deprived of land by the operation of this section shall not by reason of that deprivation have any claim against the assurance fund.

(7) For the purposes of subsection (2),

"conveyance" has the same meaning as in section 21 (6).

Section 45 of the Land Titles Act states that instruments are ineffectual to pass any estate or interest in land under the Land Titles Act until they are registered. The estate of the proprietor of registered land is paramount as provided in:

46(1)	Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, and notwithstanding any failure to observe the procedural requirements of this Act, any person who becomes the proprietor of registered land, whether or not he dealt with a proprietor, and notwithstanding any lack of good faith on the part of the person through whom he claims, shall hold that land free from all encumbrances, liens, estates and interests whatsoever except such as may be registered or notified in the land-register, ...
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This subsection is subject to seven exceptions. The registered title of a proprietor may also be defeated on the ground of fraud or forgery. Section 46(3) further provides:

Nothing in this section shall confer on a proprietor claiming otherwise than as a purchaser any better title than was held by his immediate predecessor.

Knowledge of the existence of any unregistered interest shall not of itself be imputed as fraud (ss 47(1) and 49(2) of the Land Titles Act). No fraud has been alleged against the company in these proceedings. Finally, s 157(1) provides:

Notwithstanding anything in this Act, no purchaser who has become a proprietor shall be subject to action for the recovery of land or of money on the plea that his vendor, or any predecessor in title, may have acted in bad faith.

In **Sum Keong Realty v Syed Jafaralsadeg Alhadad** [1996] 3 SLR 55 at 61, Chao Hick Tin J held that in the light of s 25(2) of the Land Titles Act, it was clear that a caution stated on a qualified title lapsed on the expiry of five years from the date of the last conveyance which was cancelled by the Registrar upon the creation of the qualified folio and the fact that no entry had yet been made in respect of the lapsing of the caution was immaterial. This was because under s 25(4), the caution constituted a defunct entry and the making of an entry regarding its lapsing was a purely administrative act in which the Registrar had no discretion. It is therefore of no consequence that no such entry has been made in the present case before me.

Balwant Singh v Double L & T [1996] 2 SLR 726 was a case involving the same property as the one in the present case. In that case, Balwant Singh had been in adverse possession of a triangular plot of some 70.4sq m which formed part of Lot 235-25 Mukim 27 belonging to one VK Samy. This plot of land was in the adverse possession of Thulasi since 1941. On 17 December 1993, Thulasi obtained consent judgment against VK Samy and was declared owner in fee simple by virtue of adverse possession. On the same day, Thulasi conveyed Lot 235-25 including the said triangular plot to Double L & T Pte Ltd. This conveyance was duly registered in the Registry of Deeds. On 1 March 1994, the new Land Titles Act came into force. On 20 June 1994, the property was brought within the new Land Titles Act with Double L & T Pte Ltd as the registered proprietor under a qualified certificate of title. On 17 February 1995, Balwant Singh lodged a caveat against the property claiming an interest in the triangular plot as an adverse possessor.

Goh Joon Seng J, delivering the judgment of the Court of Appeal, set out the issues before the court and the law on adverse possession of both common law land and registered land as follows (at pp 729-731):

The issues on appeal were essentially the same as those raised in the court below, namely:

(a) did s 50 of the new LTA abolish Balwant's claim by way of adverse possession of the disputed plot which became registered land on 20 June 1994;

(b) did s 177(3) of the 1993 LTA apply to preserve Balwant's claim.

Before we proceed, it would be convenient to trace briefly the development of the law relating to acquisition of title to land by adverse possession with regard to registered and unregistered land. Prior to 1 March 1994, for land which was held under the common law system, title acquired by adverse possession need not be registered since all that was required to acquire the same was the necessary intention and physical possession to extinguish the documentary owner's title. The Limitation Act also provided that if the documentary owner did not assert title to the land within 12 years, his claim would be barred and his title extinguished and the person in adverse possession would then acquire a possessory title. See ss 9(1) and 18 of the Limitation Act.

On the other hand, claims to adverse possession of registered land were governed by s 42 of the repealed LTA which read:

'(1) Any person in adverse possession of registered land who, if that land had not been brought under the provisions of this Act would have become entitled thereto by virtue of that adverse possession, may apply to the Registrar for a certificate of title to that land, provided that not less than 12 years have elapsed since the land was brought under the provisions of this Act, 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 Act or otherwise, nor shall the title of any proprietor be extinguished by the operation of that Act.

(3) Nothing in this Act affects the operation of the Limitation Act with 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 Act and that right has been protected by caveat.'

Section 42(2) is the precursor of s 50 of the new LTA. In **Wong Kok Chin v Mah Ten Kui Joseph** [\[1992\] 2 SLR 161](#), Chan Sek Keong J (as he then was) in delivering the judgment of this court dealt comprehensively with the provisions

of the repealed LTA. There the adverse possessor's occupation of the encroached land began in 1969. On 23 August 1974, the land, of which the encroached land was a part, was brought under the provisions of the repealed LTA then applicable and a qualified certificate of title issued. On 23 June 1988, the registered proprietor of the land lodged a notice of reassertion of ownership. On 27 June 1988, the adverse possessor lodged a caveat claiming an interest as an adverse possessor of the encroached land. It was held that the adverse possessor's claim fell within s 42(3) in that he had five years' adverse possession before the land became registered land. This was an inchoate interest which crystallised into an indefeasible title by December 1981 and the registered proprietor's title was thereby extinguished long before he lodged his reassertion of ownership. At p 172 *Chan Sek Keong J* stated:

'... Having regard to the policy of the LTA in continuing to apply the Limitation Act to registered land, subject only to the provisions of Div 2 of the Act, the short answer must be that unless Div 2 expressly provides to the contrary, the appellant's title was extinguished long before he lodged his reassertion of ownership. In our view, the lodgment of the reassertion of ownership could not have the effect of reviving a title which had been extinguished by limitation as there is no provision in Div 2 which so provides. 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.'

As Baalman in ***The Singapore Torrens Systems* [1961]** at p 96 described, these permitted exceptions under the repealed LTA effectively steered a middle course between exposing the land-register entirely to claims based on adverse possession, and excluding entirely the principle of limitation of action.

However, as of 1 March 1994, the repealed LTA was repealed by the 1993 LTA. Section 50 of the 1993 LTA is now s 50 of the new LTA. It reads:

'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.'

Section 50 of the new LTA is thus similarly worded as s 42(2) of the repealed LTA except for the transitional provisions. Effectively under s 50 of the new LTA, except in limited instances falling within the transitional provisions, no title to registered land could be acquired by adverse possession. These transitional provisions are found in s 172(7) and (8) of the new LTA. Section 172(7) states:

'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.

Section 172(8) states:

'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 such 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.'

Section 50 of the new LTA therefore provides for the preservation of an adverse possessor's claim to title in two situations. Firstly, under s 172(7), where the land was registered under the repealed LTA and an application for possessory title had been lodged prior to 1 March 1994. Secondly, under s 172(8) where there was a subsisting entitlement to lodge such an application in respect of such registered land as of 1 March 1994 and the adverse possessor, within six months, makes an application to the court for an order to vest the title in him or lodges an application for possessory title.

After referring briefly to an Australian case, the Court of Appeal went on to say (at pp 732-733):

It is therefore clear that, under the new LTA, adverse possession for registered land was to be abolished once and for all, save for the transitional provisions as provided in s 172(7) and (8). But adverse possession of unregistered land is still governed by the Limitation Act as amended by s 177(1) of the 1993 LTA. Section 177 of the 1993 LTA provides as follows:

'(1) Section 9 of the Limitation Act is amended by inserting, immediately after subsection (2), the following subsection:

(3) This section [referring to s 9 of the Limitation Act] shall not apply to an action to recover land from a person by reason only of his unauthorised occupation of the land. [This subsection is now s 9(3) of the Limitation Act.]

(2) ...

(3) Nothing in this section [referring to s 177 of the 1993 LTA] shall -

(a) enable any action to be brought which was barred by the Limitation Act immediately before the commencement of the Land Titles Act 1993 (referred to in this subsection as the appointed day);

(b) affect any action commenced before the appointed day; or

(c) revive any title to land which was extinguished by the operation of the Limitation Act in force immediately before the appointed day. `

For convenient reference we set out below the provisions of s 9(1) and (2) of the Limitation Act:

`(1) 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.

(2) Nothing in this section or in section 11(2) shall be deemed to affect the provisions of the Government Proceedings Act, or to apply to any person registered under or by virtue of the provisions of the Land Titles Act as the proprietor of the land sought to be recovered, or to any person claiming through a person so registered, except to the extent that such Act so provides or permits. `

Thus s 177 of the 1993 LTA by sub-s 1 amended s 9 of the Limitation Act thereby abolishing claim by way of adverse possession. At the same time by sub-s 3 it preserved rights that had accrued as of 1 March 1994.

Section 177(3) of the 1993 LTA was omitted from the new LTA. But though omitted, it remains in force by virtue of s 5 of the Revised Edition of the Laws Act (Cap 275) which reads:

`(1) The Commissioners shall omit from the revised edition of Acts such Acts as may be specified by the President by notification in the Gazette.

(2) Notwithstanding anything to the contrary in this Act, such Acts and any Parts, sections or other divisions of such Acts shall remain in force until they have been expressly repealed or have expired or become spent or had effect. `

To sum up the position as of 1 March 1994, there were thus three categories of adverse possession claims. Firstly, for land held under the common law system if the adverse possessor did not have 12 years of adverse possession as of 1 March 1994, he would now not be able to make a claim - see s 9(3) of the Limitation Act. Conversely, if he had the requisite 12 years, he could rely on s 177(3) of the 1993 LTA to preserve his possessory title. Secondly, for registered land held under the provisions of the repealed LTA, the adverse possessor could rely on s 172(7) and (8) of the new LTA. Thirdly, for registered land held under the provisions of the new LTA, no adverse possession claims are now allowed unless s 172(7) or (8) of the new LTA applies.

The question we had to consider was whether the new LTA was intended to apply to claims by way of adverse possession even in respect of registered land in circumstances where the adverse possessor had already acquired title before

the land became registered land under the provisions of the new LTA, where a qualified certificate of title was issued and where the adverse possessor had lodged a caveat in respect of his claim.

The Court of Appeal then considered the views of the Select Committee on the Land Titles Bill as well as the Parliamentary debates on that Bill (at pp 733-734):

In the Report on the Land Titles Bill, the Select Committee had this to say:

` ...

The amendment will not be retrospective. They will not affect squatters or mortgagees in possession who have already perfected their title by effluxion of time prior to the amendments.

An adverse possessor who has perfected his claim to a possessory title to unregistered land will not be required to apply to court for a vesting order within a specified time-frame. However, should the land be brought under the Land Titles Act through the issue of a qualified certificate of title, the adverse possessor`s claim will remain protected so long as -

(a) a caution as to title remains on the certificate of title; or

(b) the adverse possessor lodges a caveat before such caution has lapsed or been cancelled. `

This view was reiterated by the Minister for Law, Professor S Jayakumar, when he moved that the Land Titles Bill be read for the third time:

` ...

I also wish to stress that the amendment is not retrospective. It will not affect those in possession who have already acquired their title by adverse possession prior to the amendment coming into force. Nor will such persons in possession be required to apply within a time-frame to the court for an order as to their title to the land.

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.

Secondly, cl 172(9) [now s 172(8) of the new LTA] enables persons who have prior to the coming into operation of the Bill, established their title by way of adverse possession of registered land to apply to court for an order or to the Registrar of Titles for a possessory title. Clause 172(9) has been amended to give such persons six months instead of three months to do so as it was represented to the Select Committee that six months would give more

flexibility.

At the end of the analysis, the Court of Appeal concluded (at p 735):

Thus we agreed with the learned judge when he said that as of 1 March 1994 there were only two categories of adverse possession claims in respect of registered land under the new LTA which were found in s 172(7) and (8) of the same Act. However, it is quite clear that these two categories apply to land which was already registered land as of 1 March 1994 as can be seen from the wording of s 172(7) and (8). For unregistered land or land which becomes registered land after that date, the applicable provisions are s 177(3) of the 1993 LTA.

*Consistent with this view is **Wong Kok Chin**'s case and also **Tan Eng Khiam v Ultra Realty Pte Ltd** [1991] 3 MLJ 234 which dealt with a similar claim as that of Balwant's under the repealed LTA. It was held there that where the adverse possessor had completed the requisite period of 12 years' possession before the land was brought under the repealed Act and a qualified certificate of title issued, the adverse possessor's interest would still subsist. This is because where there had been 12 years of adverse possession before the land became registered land, the rights of the documentary owner would already have been extinguished before the conversion to registered land. Accordingly s 50 of the new LTA would not apply to defeat the adverse possessor's accrued claim. The adverse possessor's claim in those circumstances were preserved by s 177(3) of the 1993 LTA.*

In **Shell Eastern Petroleum v Goh Chor Cheok** [2000] 1 SLR 45, in or about 1961, when developers built a block of flats on land adjoining the plaintiffs' land, they built a retaining wall which, it was since discovered, encroached on the plaintiffs' land. By 1973, the plaintiffs' right of action over the encroached portion would have been extinguished. Three events occurred since 1973. Firstly, in November 1992, the plaintiffs' then common law land was brought under the Land Titles Act and a qualified title issued. Secondly, the 1993 amendments to the Land Titles Act limited or abolished the acquisition of title by adverse possession in respect of both common law land and registered land. Thirdly, the caution on the qualified title was cancelled on 2 May 1996 upon the plaintiffs' application and their title became unqualified thereafter. The question before the court was whether any of these three events had any effect on the position, which had been reached by 1973, that action to recover the strip of land in question had become statute-barred. The adverse possessors did not lodge any caveat in respect of the disputed plot.

Warren Khoo J dismissed the plaintiffs' claim. On the question of the failure to lodge a caveat, the judge referred to the judgment of the Court of Appeal delivered by Chan Sek Keong J in **Wong Kok Chin v Mah Ten Kui Joseph** [1992] 2 SLR 161:

11 The relevant provisions of s 20 read as follows:

'(2) any person claiming an interest in land which was subsisting at the date of issue of a qualified certificate of title for that land may, so long as a caution remains on the folio of the land-register, protect that interest by a caveat pursuant to section 104, and the Registrar shall enter a notification of such a caveat in the land-register.'

His honour held that the failure to lodge a caveat did not have the effect of reviving the title of the true owner which had been extinguished by limitation. He said:

`It is clear from s 20 of the Act that until the registered proprietor of land held under qualified title obtains the cancellation of the caution, his title will always be subject to subsisting interests affecting his title.

The only person who is able to obtain 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.`

His honour went on to say:

`The caveat referred to in s 42(3) is intended to protect the rights of an adverse possessor against a purchaser, and not against the registered proprietor. The right of a person in adverse possession of registered land falling within the terms of s 42(3) can only be defeated by a purchaser where such right is not protected by caveat, or by the registered proprietor lodging a reassertion of ownership before his title has been extinguished by limitation.`

12 Similarly, in the instant case, the plaintiffs` title to the disputed land had been extinguished when the land was brought under the provisions of the Act. The failure of the defendants to lodge a caveat would only have had an adverse effect on them in relation to a purchaser from the plaintiffs. Vis-.-vis the plaintiffs as the original registered proprietor against whom the defendants had acquired title by adverse possession, the absence of a caveat had no effect on the defendants` title.

...

27 As for caveats, there is no relevant difference between the provisions of the current Act and those in the repealed Act. Section 27(2) of the current edition of the Act provides as follows:

`Any person claiming an interest in land which is subsisting at the date of the creation of a qualified folio for that land other than an interest excepted by section 46 may, so long as the folio remains qualified as to title, protect that interest by lodging a caveat pursuant to section 115, and the Registrar shall enter a notification of such a caveat in that folio.`

28 It seems clear enough from s 25(2) that when a caution lapses under that subsection, it lapses `in favour of any purchaser` ...

...

34 As for the fact that the defendants have never lodged any caveat to protect

*their title, here again, that failure is of consequence only in relation to a purchaser, but not in relation to the plaintiffs as the original registered proprietor upon the land being brought under the provisions of the Act. I would regard this point as having been settled by the **Wong Kok Chin** case. See the dicta of Chan J in the passages earlier set out. I think what he said there is valid in a case where the title has become unqualified as where it has not.*

Conclusion

35 It is my conclusion, therefore, that the defendants' adverse title, which had matured long before the land was brought under the provisions of the Land Titles Act, remains valid notwithstanding the fact that they never lodged any caveat while the land was subject to qualified title and notwithstanding that the plaintiffs' title has since become unqualified as a result of the cancellation of the caution. The defendants' title, however, stands on an extremely precarious footing. It is exposed to the risk of being over-reached by a purchaser from the plaintiffs, as it has not been notified on the register. That is a consequence to which all persons who have an interest in registered land which is not within the exceptions in s 46 or which has not been notified on the register, are exposed. Whether the defendants can still protect their interest by lodging a caveat in accordance with the general provisions of s 115 is not a matter before me.

Similarly, in **Chuan Hong Auto v Shell Eastern Petroleum** [1996] 1 SLR 415, the Court of Appeal held that the automatic lapsing of the caution did not affect the interest of equitable lessees of the land who had already lodged a caveat before the lapsing.

The question of law in the present case therefore turns entirely on the effect of the owners of 1 and 3 Bedok Rise not having lodged any caveat against the disputed plot before the expiration of the five-year period provided under s 25(2) of the Land Titles Act. Clearly, the company here is a purchaser of the entire estate or interest within the meaning of that subsection and no fraud has been alleged against it.

Section 42 of the repealed Land Titles Act could not have applied to the land here as it was brought within the registered land regime only in June 1994. For the same reason, s 172(7) and (8) of the present Act can have no application to the land here. This is clear from the Court of Appeal's reasoning in **Balwant Singh** (supra). Accordingly, s 177(3) of the 1993 Land Titles Act would protect the existing rights of the owners of 1 and 3 Bedok Rise if adverse possession of the disputed plot has crystallized before 1 March 1994.

However, there is great force in the company's arguments that those owners ought to have been vigilant and lodged caveats, particularly as notice of the purchase of the land was given to them back in 1996, although no notice of the conversion to registered title appears to have been similarly given. It would appear from the Select Committee's Report and the Parliamentary debates that a caveat is an essential step to protecting an adverse possessor's claim should the land become registered land through the issue of a qualified certificate of title. This was also the view of Warren Khoo J in **Shell Eastern Petroleum v Goh Chor Cheok** (supra), at least where protection is sought against a purchaser of the registered land. Lodgment of a caveat is permissible under s 27(2) of the Land Titles Act. This is not an entirely new provision. It has a broad equivalent in s 20(2) of the repealed Act

(see Warren Khoo J`'s judgment in the abovementioned case). However, apart from this general provision which includes interests beyond adverse possession, there is no specific provision along the lines of s 42(3) of the repealed Land Titles Act which spelt out clearly that the right of an adverse possessor was protected only if `that right has been protected by caveat`. I therefore hold that s 177(3) of the 1993 Land Titles Act applies here notwithstanding the failure of the owners to lodge caveats before the lapsing of the caution. The adverse possessors` rights are thereby preserved and Double L & T Pte Ltd`s and the company`s rights have been extinguished.

Accordingly, on the question of law in issue, I held that, if adverse possession has crystallized before 1 March 1994, the owners of 1 and 3 Bedok Rise have become the owners of the disputed plot and their rights and interests over the said plot cannot be overreached by the events thereafter. I also ordered costs to be paid by the company to the said owners in respect of the arguments pertaining to this issue of law.

Outcome:

Order accordingly.

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