

Ng Tsorng Chinn and another v Vijaykumar Nanalal Shah (executor of the estate of Nanalal Shamji Shah, deceased)
[2012] SGHC 55

Case Number : Suit No 921 of 2010
Decision Date : 15 March 2012
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Wong Tze Roy and Koh Su Chern (Goh JP & Wong) for the plaintiffs; G Raman and Khaleel Namazie (G R Law Corporation) for the defendant.
Parties : Ng Tsorng Chinn and another — Vijaykumar Nanalal Shah (executor of the estate of Nanalal Shamji Shah, deceased)

Land

15 March 2012

Judgment reserved.

Andrew Ang J:

Introduction

1 This action was commenced by Mr and Mrs Ng Tsorng Chinn (“the Plaintiffs”) claiming rights of adverse possession over a plot of land in Jalan Lana, Singapore (“Plot D”) against Vijaykumar Nanalal Shah (“the Defendant”) acting as executor of the estate of Nanalal Shamji Shah (son of Shamji Premji) (“the Deceased”).

The background and chronology of events

2 The Plaintiffs are currently the registered proprietors of 17 Jalan Lana Singapore 419041, Land Lot No MK28-389P (“Lot 389P”) while the Deceased was at all material times the registered proprietor of an adjacent parcel of land bearing Land Lot No MK28-388V (“Lot 388V”). Part of Lot 388V comprises Plot D which adjoins Lot 389P. In and prior to 1964, Lot 389P together with Lot 388V formed a larger plot of land which, for convenience, shall be referred to as “Lot 23-150”.

3 As regards the size of Plot D, one Goh Chin Cheng, a registered land surveyor under the Land Surveyors Act (Cap 156, 2006 Rev Ed), prepared a report dated 17 October 2011 testifying on behalf of the Plaintiffs that Plot D covers 172.1m² of land in Lot 388V. The Defendant has not controverted Goh Chin Cheng’s evidence in that regard.

4 The key events pertaining to the ownership and possession of Lot 389P, Lot 388V and Plot D are summarised in the table below:

Date	Event
5 July 1962	The Deceased purchased, <i>inter alia</i> , Lot 23-150.
26 December 1963	Planning decision made for Lot 388V to be subdivided for a “septic tank plot”. The septic tank was situated subterranean within Plot D.

3 February 1964	<p>By way of an Indenture of Conveyance, the Deceased conveyed Lot 389P to one Kew Carey with restrictive covenants attached. The Deceased also granted Kew Carey the right and liberty, <i>inter alia</i>, "to make all necessary connections to the septic tank and disposal plant constructed by [the Deceased] ... on [Lot 388V]".</p> <p>Shortly thereafter, mesh-wire boundary fences were erected by Kew Carey enclosing Plot D together with Lot 389P.</p>
20 April 1970	Kew Carey conveyed Lot 389P to one Heng Jee Lek and one Huang Soon May, subject to the same restrictive covenants.
18 November 1970	Lot 389P became registered land under the Land Titles Register.
In or around 1976 to 1977	The septic tank situated within Plot D was removed following Public Utilities Board's implementation of the national sewage system.
27 January 1982	<p>Heng Jee Lek and Huang Soon May conveyed Lot 389P to a company known as Pacific Steel Furnitures Factory Pte Ltd ("Pacific Steel"), subject to the same restrictive covenants.</p> <p>Shortly thereafter, renovation works were carried out replacing the mesh-wire boundary fences enclosing Plot D and Lot 389P with a concrete boundary fence. The concrete boundary fence, erected along the same boundary line as the mesh-wire boundary fence, still remains in the present day.</p>
26 May 1984	<p>Pacific Steel conveyed Lot 389P to one Poh Wee Lee and one Ong Ah Keah, subject to the same restrictive covenants.</p> <p>Poh Wee Lee and Ong Ah Keah mortgaged Lot 389P to OCBC Bank.</p>
10 October 1990	Mortgagee OCBC Bank, in exercise of its power of sale, conveyed Lot 389P to one Tng Chin Kok and one Lee Ming Lee.
30 January 1993	Tng Chin Kok and Lee Ming Lee mortgaged Lot 389P to Tat Lee Bank Ltd (later known as Keppel TatLee Bank Ltd).
6 June 1993	The Deceased passed away in Singapore.
1 March 1994	The doctrine of adverse possession was abolished under the Land Titles Act 1993 (Act 27 of 1993).
29 October 2001	Mortgagee Keppel TatLee Bank Ltd in exercise of its power of sale conveyed Lot 389P to the Plaintiffs.
29 November 2001	Lot 388V became registered land under the Land Titles Register with a qualified title and a caution in respect of the title was entered.
4 February 2009	The Plaintiffs lodged a caveat against Lot 388V to notify their interest in Plot D acquired by way of adverse possession.

The parties' main arguments

5 At the hearing, copious arguments were canvassed. I do not propose to go further than to summarise the main arguments put forth by both parties.

6 The Plaintiffs contend that their claim is established by the aggregation of separate but continuous periods of adverse possession by the various parties who owned Lot 389P from the year 1964 onwards. They aver that the law recognises that a person can transfer rights in respect of land under his or her adverse possession to a successor possessor of the land, whether by sale, gift or any other manner of disposition.

7 On the facts of the present case, the Plaintiffs suggest that 12 years adverse possession necessary to give rise to a valid claim against the Defendant commenced either in 1976 (taking reference from the time Kew Carey allegedly asserted adverse possession over Plot D by erecting the mesh-wire boundary fence around it) or, at the latest, in 1989 (taking reference from the time the septic tank was removed from Plot D in or around 1976 to 1977). In the later case, the Plaintiffs claim that all restrictive covenants, rights and liberties in connection with the maintenance of the septic tank in Plot D would have ceased to operate with the consequence that any continuing possession of Plot D by the owners of Lot 389P thereafter could only amount to adverse possession.

8 In either of the two cases, the requisite 12 years of adverse possession would have crystallised before the abolition of the doctrine of adverse possession on 1 March 1994 and the conversion of Lot 388V (comprising Plot D) to registered land on 29 November 2001. In this last regard, the Plaintiffs added that possessory title to Plot D, which they allegedly acquired upon their purchase of Lot 389P on 29 October 2001, was preserved by Caveat No IB/277242H ("the Caveat"), which they had lodged against Lot 388V on 4 February 2009.

9 The Defendant, on the other hand, argues that adverse possession is not made out in the present case for a host of reasons. Firstly, the Defendant claims that Kew Carey's possession of Plot D after the Deceased's conveyance of Lot 389P to her on 3 February 1964 was permissive and not adverse. The basis for this contention can be found in paras 21 and 23 of the Defendant's written submissions:

21. The Defendant's main defence to the action is that the Conveyance of Lot 389P ... by the Deceased to Kew Carey granting her right of entry into, laying underground sewer and drainage pipes in, and to use and maintain the septic tank and disposal plant in the Deceased's land Lot 388V, in return for restrictive covenants, constitutes written license or permission to Kew Carey and her successors in title to enter, remain and make use of the Lot 388V. ... the relevant grant of right and the restrictive covenants expressly [intended] that both the benefit of the right and the burden should pass and bind the successors and assigns of the respective parties. The right to enter is express, and if not, is certainly implied. The grant of entry in the Conveyance is not limited for any duration.

...

23. The Defence submits that the license to enter and use the land in a Deed of Conveyance would remain valid until discharged by the parties concerned or their assigns in a deed. In the premises any entry and occupation of Lot 388V at any time by any of the owners of Lot 38[9]P, was permissive, by license of the owner of Lot 388[V] and no action for trespass could lie, nor any adverse possession could commence for reckoning time running against the Deceased under the Limitation Act. Further, any entry to possession that commences under license/permission can never later change to an adverse possession.

10 The Defendant further adds that where possession of a piece of land at its inception is permissive, there must be strong proof of *animus possidendi* before permissive possession may be successfully converted into adverse possession. In other words, evidence must be led of conduct

demonstrating an overt intent to oust the true owner of the land to the latter's knowledge. That being the state of law as contended by the Defendant, the Defendant argued that the Plaintiffs' claim must fail because:

(a) Kew Carey's act of erecting the mesh-wire boundary fence in 1964 was "by itself not determinative of ouster, [let] alone being overt"; and

(b) Apart from the fence, there was no other assertion of adverse title by any of the previous owners of Lot 389P to the knowledge of the Deceased.

11 Secondly, the Defendant challenges the Plaintiffs' claim that possession by the various owners of Lot 389P and Plot D from 1964 onwards was continuous and unbroken. He does this by contending that, as a matter of law, no right of adverse possession is transferrable under a mortgagee's exercise of its power of sale. The Defendant further argues that:

41. Pacific Steel sold Lot 389P to Poh Wee Lee and Ong Ah Keah on 17th September 1984. The joint owners were second-hand car dealers and appear on evidence for the Plaintiffs to have used the property to station their cars. The owners were not called as witnesses and there is no evidence if they were aware of the separate Lot 388V, if they intended to acquire adverse title to oust the true owner and *for how long they abandoned possession of the entire property before their mortgagee bank OCBC's forced sale of [Lot 389P]. The burden of proof of adverse possession, and its continuity, if any, is on the claimant Plaintiffs. The evidence in cross examination of Tng Chin Kok on his visit to inspect [Lot 389P] prior to his purchase from OCBC establishes a long time abandonment of the premises by the mortgagor debtors.* There is no evidence of operative adverse possession or its continuity during the long period of ownership by Poh Wee Lee and Ong Ah Keah, for 6 years, from 1984 to 1990. The long break in the continuity is very clear.

[emphasis added]

12 Thirdly, the Defendant submits that as a matter of law when registered land is mortgaged, any periods of adverse possession accumulated by the predecessors-in-title of that registered land do not pass on to the mortgagee. As such, contrary to the Plaintiffs' contentions, OCBC Bank's sale of Lot 389P to Tng Chin Kok and Lee Ming Lee in 1990 could not have conveyed any right arising from an earlier adverse possession of Plot D. Taking the Defendant's argument to its logical conclusion, this would also mean that a conveyance of title under a mortgagee's power of sale (*ie*, Keppel TatLee Bank Ltd) would not entail the conveyance of any *crystallised* title to a neighbouring property which was acquired by adverse possession. Accordingly, the Plaintiffs could not have acquired any good claim of adverse possession against Plot D when Keppel TatLee Bank Ltd transferred Lot 389P to them on 29 October 2001.

13 Finally, the Defendant raises a secondary defence that the Plaintiffs ought to have lodged the Caveat before end November 2006 (*ie*, five years from the date Lot 388V was converted to registered land in November 2001). The basis for this, according to the Defendant, is found in ss 19(2) and (3) of the repealed Land Titles Act (Cap 157, 1985 Rev Ed) ("the 1985 LTA"):

19. — (1) Upon the issue of a qualified certificate of title the Registrar shall endorse on the relevant folio of the land-register a caution warning persons dealing with the proprietor that the land therein comprised is held subject to any interest which affected it at the date of issue of the qualified certificate of title, and so long as the caution remains on the folio the land shall be so held.

(2) *In favour of any purchaser from the proprietor, a caution lapses at the expiration of 5 years from the date of issue of the qualified certificate of title, and the purchaser may request the Registrar to enter on the folio of the land-register a notification of the lapsing.*

(3) When the lapsing of a caution has been notified on the folio of the land-register, the certificate of title ceases to be qualified, and the land therein comprised is thenceforth held subject only to such interests as are registered or notified on the folio of the land-register and to such interests as are otherwise excepted by section 38.

...

[emphasis added]

As can be seen from the wording of the provisions, once a caution has lapsed the registered land ceases to be subject to any interest other than those reflected on the register at that point in time. However, the Caveat reflecting the Plaintiffs' interest in Plot D was only lodged on 4 February 2009. According to the Defendant, by this time the Plaintiffs had lost any alleged interest they had in Plot D.

The issues and my decision

14 Having regard to the arguments put forth by the parties, I have identified the issues for the present case as follows:

- (a) Was Kew Carey's possession of Plot D permissive or adverse in nature?
- (b) Were there at least 12 years in aggregate of continuous adverse possession of Plot D by the previous owners of Lot 389P between 1964 and the date on which the doctrine of adverse possession was abolished (*ie*, 1 March 1994)?
- (c) In any event, did the caution in respect of Lot 388V's qualified title lapse before the Caveat was lodged on 4 February 2009?

15 I shall deal with the issues in the order set out above.

Kew Carey's possession of Plot D – permissive or adverse?

16 In Kevin Gray and Susan Francis Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) ("*Gray and Gray*") at para 9.1.43, the meaning of adverse possession was explained as follows:

... the element of possessory control required of any successful squatter is constituted by a distinctive combination of elements. 'Possession' is attributed to the squatter (and his possession is 'adverse') only if he has both factual possession (*factum possessionis*) and the requisite intention to possess (*animus possidendi*). These elements of *factum* and *animus* interact significantly and must coincide continuously throughout the entirety of the required period of possession. ...

17 As to what constitutes an *animus possidendi* sufficient to support a finding of adverse possession, the Plaintiffs quoted (rather economically) from Charles Harpum *et al*, *The Law of Real Property by Megarry and Wade* (Sweet & Maxwell, 7th Ed, 2008) at para 35-019 for support:

(2) *animus possidendi*. The squatter must have 'an intention for the time being to possess the land to the exclusion of all other persons, including the owner with the paper title'. As regards that intention:

(i) ***It is an intention to possess and not an intention to own.***

...

(iii) ***It is an intention to possess and not an intention to dispossess. Accordingly, the animus can be sufficiently established even if both the true owner and the squatter mistakenly believe that the land belongs to the latter, or where a squatter did not realise that he was trespassing on another's land.***

...

[emphasis added in bold italics]

18 On the same point, I also found *Gray and Gray* at para 9.1.53 to be of some useful guidance in the present action:

... This mental element has been said to comprise an 'intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow'. The necessary intent is, of course, heavily qualified by the reality that, until his possessory title is perfected, the squatter's ability to exclude *all* persons from the land is inevitably limited. ***In recent years, however, the relevant animus seems to have been commuted into little more than an intention on the part of the squatter to 'stay as long as he can for his own benefit'. There need be no intention to own, or acquire an estate in, the land.*** Ironically, the modern relaxation of the requirements of adverse possession has emerged at just the point in time when, by virtue of the changes effected by the Land Registration Act 2002, the acquisition of title by long possession appears likely to become a relatively unusual occurrence in English law. [emphasis in original in italics; emphasis added in bold italics]

19 The Defendant, on the other hand, cited *Thomas v Thomas* [1855] 25 LJ Ch 159 at 161 for the proposition that "possession is never to be considered adverse if it can be referred to lawful authority". The Defendant claimed that the Indenture of Conveyance dated 3 February 1964 gave rise to a licence under which Kew Carey was authorised by the Deceased to enter Lot 388V for the purpose of maintaining the septic tank which was then kept in the part of Lot 388V which later came to be referred to as Plot D. It was on this premise that the Defendant contended that the requisite *animus possidendi* in the present case should be held to a higher standard, viz, adverse possession would only be made out in the present case where the adverse possessor has an overt intent to oust the true owner of the land by way of asserting adverse title to the property to the knowledge of the true owner (see [\[9\]](#)–[\[10\]](#) above).

20 It is not in dispute that Kew Carey came into possession of Plot D after she built the mesh-wire boundary fence around the premises. The question is thus whether such possession was permissive or adverse in nature.

21 I accept that the Indenture of Conveyance dated 3 February 1964 did in fact give rise to a licence in favour of Kew Carey to *enter* Lot 388V for the narrow purposes stipulated in the Schedule to the Indenture of Conveyance which stated:

THE SCHEDULE ABOVE REFERRED TO

...

TOGETHER with full and free right and liberty for the Sub-Purchaser his executors administrators and assigns the owners and occupiers for the time being of the said land and premises his and their tenants and servants and all other persons authorized by him or them in common with the [Deceased] and all persons from time to time having the like right and liberty to make all necessary connections to and thereafter to use the pipes and cables under or over the Estate for the purpose of the supply of water gas and electricity to or from the said land and premises and to make all necessary connections to the septic tank and disposal plant constructed by the [Deceased] on the land edged 'blue' on the plan annexed hereto and marked as Lot 23-150 pt. of Mukim XXVIII containing an area of 2,035 square feet (subject to the adjoining owner for the time being known as Private Lot 12 making use of the said pipes and septic tank the cost being shared in equal proportion with the said adjoining owner for the time being making use of the said pipes and septic tank) Reserving Nevertheless to the [Deceased] and to all others to whom the [Deceased] may grant or has already granted the same similar rights of drainage and the right to construct lay and use any drains pipes or cables under the said land and premises which the [Deceased] may consider necessary for the purpose of serving other pieces or parcels of land forming part of the Estate and to make all necessary connections thereto.

...

22 However, I am unable to accept that the Deceased by the terms of the licence further permitted Kew Carey to *occupy* any part of the premises in Lot 388V as nothing in the Schedule reproduced above indicated so. Indeed, nothing in the Indenture of Conveyance or its Schedule conferred exclusive possession of Plot D to Kew Carey. This meant that mere access to Lot 388V was granted by the Deceased to Kew Carey at the material time. As such, permissive possession of Plot D as contended by the Defendant is not made out in the present case.

23 In the circumstances, any possession of Plot D asserted by Kew Carey must therefore be adverse in nature, and I find that the elements of adverse possession in respect of Plot D were present at the material time. Factual possession (or *factum possessionis*) has been held to comprise a "complete and exclusive physical control" over the land in question: see *Buckinghamshire County Council v Moran* [1990] 1 Ch 623 at 641 ("*Buckinghamshire CC v Moran*"); *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 at [41]. In *Buckinghamshire CC v Moran* at 641–642, Slade LJ held:

As a number of authorities indicate, enclosure by itself *prima facie* indicates the requisite animus possidendi. As Cockburn C.J. said in *Seddon v. Smith* (1877) 36 L.T. 168, 169: 'Enclosure is the strongest possible evidence of adverse possession.' Russell L.J. in *George Wimpey & Co. Ltd. v. Sohn* [1967] Ch. 487, 511A, similarly observed: 'Ordinarily, of course, enclosure is the most cogent evidence of adverse possession and of dispossession of the true owner.' While Mr. Douglas pointed out that the plot was always accessible from the north where no boundary demarcation existed, it was only accessible from the defendant's own property, Dolphin Place. In my judgment, therefore, he must be treated as having enclosed it.

Mr. Douglas, however, submitted that even if enclosure had occurred, the defendant's intention must be assessed in the light of the particular circumstances of this case. The defendant knew that the council had acquired and retained the plot with the specific intention of building a road across it at some future time. The council had no use for the land in the interim. It was for all practical purposes waste land. None of the defendant's acts, he submitted, were inconsistent

with the council's known future intentions. He invoked, inter alia, the words of Cockburn C.J. in *Leigh v. Jack*, 5 Ex.D. 264, 271, which, he submitted, applied in the present case:

'I do not think that any of the defendant's acts were done with the view of defeating the purpose of the parties to the conveyances; his acts were those of a man who did not intend to be a trespasser, or to infringe upon another's right. The defendant simply used the land until the time should come for carrying out the object originally contemplated.'

If the defendant had stopped short of placing a new lock and chain on the gate, I might perhaps have felt able to accept these submissions. Mr. Douglas submitted that this act did not unequivocally show an intention to exclude the council as well as other people. (It is well established that it is no use for an alleged adverse possessor to rely on acts which are merely equivocal as regards the intention to exclude the true owner: see for example *Tecbild Ltd. v. Chamberlain*, 20 P. & C.R. 633, 642, per Sachs L.J.) In my judgment, however, the placing of the new lock and chain and gate did amount to a final unequivocal demonstration of the defendant's intention to possess the land. I agree with the judge in his saying (1988) 86 L.G.R. 472, 479:

'... I do not think that if the council, on making an inspection, had found the gate newly padlocked, they could have come to any conclusion other than that [the defendant] was intending to exclude everyone, including themselves, from the land.'

24 Similarly, in our present case, in erecting the boundary fence, Kew Carey must have intended to exercise control over Plot D since nothing in the Schedule to the Indenture of Conveyance dated 3 February 1964 created a licence to occupy Lot 388V or any part thereof in the first place. I am not convinced that the Deceased or any other reasonable third party, upon discovering the mesh-wire fence boundary enclosing Plot D together with Lot 389P, would have come to any conclusion other than that Kew Carey was intending to exclude everyone, including the Deceased, from Plot D. Further, it emerged in evidence that access by any third party to Plot D could only be gained via entering and passing through Lot 389P, thereby providing additional support to the conclusion that the enclosure of Plot D was exclusionary against the whole world, including the Deceased. The building of a mesh-wire boundary fence around Plot D and Lot 389P therefore demonstrated Kew Carey's intention to possess (or *animus possidendi*). Accordingly, I find that Kew Carey was in adverse possession of Plot D at the relevant time from the year 1964 onwards.

Continuity in the adverse possession of Plot D

25 It is not disputed in the present case that aggregation of more than one period of adverse possession between successive adverse possessors is in law permitted. In *Gray and Gray* ([16] *supra*) at para 9.1.4, the authors explain:

For the purpose of establishing the expiration of the limitation period in unregistered land, immediately consecutive periods of adverse possession may be aggregated: the statutory period can be accumulated by possession on the part of a series of squatters. In other words, if X (the original 'paper owner') is dispossessed by A, who later transfers his 'estate, right and interest' to B, B is then entitled to add the period of A's adverse possession to his own in defence against any action for recovery brought by X, provided that these two periods together total at least the statutory period (ie normally 12 years). However, the adverse possession of successive squatters can operate cumulatively to extinguish a pre-existing title only if the periods of adverse possession are strictly continuous. If A abandons his adverse possession within the limitation period and, after an interval, B begins adversely to possess, B cannot 'tack' to his own possession the period of adverse possession earlier established by A. The break in adverse

possession restores X's title to its pristine force. The statutory period therefore starts afresh from the inception of B's possession and B must establish the full period independently on his own behalf.

26 The authorities relied upon by the Plaintiffs are also instructive in this regard. In *Jubilee Electronics Pte Ltd v Tai Wah Garments and Knitting Factory Pte Ltd* [1996] 1 SLR(R) 352 ("*Jubilee Electronics Pte Ltd*"), the Court of Appeal has held at [42] that:

In the light of these authorities it is clear that aggregation of separate periods of adverse possession is permitted so long as there is continuity. There should not be any break in the two or more periods of adverse possession by different persons. So long as adverse possession continues unbroken, it makes no difference who continues it. Thus, there is no merit in the point made by the plaintiffs.

27 In *Jubilee Electronics Pte Ltd*, the Court of Appeal reached its conclusion after reviewing, *inter alia*, the cases of *Willis v Earl Howe* [1893] 2 Ch 545 ("*Willis v Earl Howe*") and *Mulcahy v Curramore Pty Ltd* [1974] 2 NSWLR 464 ("*Mulcahy v Curramore Pty Ltd*"). In *Willis v Earl Howe*, Kay LJ held at 553:

... It was suggested in reply that, as the alleged brother was not really the brother of *George*, his taking possession formed a new departure, and that the statute would begin to run from that entry, and that the previous possession of *George* was not material. The effect of that would be that if a series of occupiers, not claiming under one another, kept out the real owner for 100 years, time would only run against him from the moment when the last of such occupiers entered into possession. I am of opinion that this is not the law. A continuous adverse possession for the statutory period, though by a succession of persons not claiming under one another, does, in my opinion, bar the true owner. ...

28 In *Mulcahy v Curramore Pty Ltd* where *Willis v Earl Howe* was considered and followed, Bowen CJ stated at 476:

... Where there has been a series of persons in adverse possession by virtue of successive transmissions of the inchoate possessory title for a total period of twenty years or any extended period required by the Act, s. 34 will operate to extinguish the true owner's title. At that point of time the last successor being then in possession will acquire a title in fee simple to the land good against all the world including the true owner: *Allen v Roughley* [1955] 94 C.L.R. 98]; see generally Lightwood, *The Time Limit on Actions* (1909) p. 118; Voumard, *The Sale of Land*, 2nd ed., p. 431.

Where there is a series of trespassers, not deriving title from each other, who have been in adverse possession for a continuous period of twenty years or any extended period required by the Act, s. 34 will operate to extinguish the true owner's title: *Willis v. Earl Howe* [[1893] 2 Ch 545]; *Allen v. Roughley* [(1995) 94 CLR 98]; *Salter v. Clarke* [(1904) 4 SR (NSW) 280]. ...

[emphasis added in bold italics]

29 Returning to the facts of the present case, there were a series of owners of Lot 389P who had possession of Plot D from 1964 onwards, starting from Kew Carey. Kew Carey's possession of Plot D, as I have held, was in the nature of an adverse possession as opposed to possession by permission (see [20]–[24] above). Accordingly, the question that remains is whether the adverse possession of

Plot D was continuous for at least 12 years as required by law.

30 In *Mulcahy v Curramore Pty Ltd* at 476, Bowen CJ held that continuity in adverse possession would not be made out if there was “abandonment by one adverse possessor *followed by a break in time when the land is not in possession of some person adversely to the true owner*” [emphasis added]. In the present case, the Defendant’s argument against continuity of adverse possession of Plot D for at least 12 years is two-fold. First, the Defendant argued that possession of Plot D by the various owners of Lot 389P was in the nature of a permissive rather than adverse possession. I have ruled that this point was incorrect. Second, the Defendant contended that when OCBC Bank exercised its power of sale in 1990 to convey to Tng Chin Kok and Lee Ming Lee title over Lot 389P, no rights over Plot D were transferred; likewise for Keppel TatLee Bank Ltd’s sale of Lot 389P to the Plaintiffs themselves in 2001.

31 It is not entirely clear why the Defendant raises the latter argument. As mentioned earlier, it is well settled that adverse possession consists of two basic elements – factual possession and the *animus possidendi* (see [16] above). If the Defendant is trying to demonstrate a break in the continuity of *factual* possession upon the mortgagee’s exercise of its power of sale, I would say that he is wholly misguided. The evidence shows that the boundary fence enclosing Plot D together with Lot 389P remained in place at all material times before, during and after the sales were effected in 1990 and 2001. At no time during the trial was there any suggestion made to the contrary. As such, I see no reason to find that the continuity of *factual* possession of Plot D was disrupted by the mortgagees’ power of sale at the relevant times. The fact that Plot D continued to be fenced off is also cogent evidence of the *animus possidendi* of whoever were in possession of Plot D: see [23] and [24] above.

32 If, however, the Defendant is trying to show that, over the course of many conveyances over the years, a lapse in the transfer of the rights accruing out of adverse possession in respect of Plot D had occurred, then I would have more to say. In the fairly recent English decision of *Site Developments (Ferndown) Ltd v Cuthbury Ltd* [2011] Ch 226 (“*Site Developments*”), a dispute on land access rights arose principally between the second claimant who was the registered proprietor of a property (referred to in the judgment as “the brown land”) and the first defendant who held title to an adjoining plot of land (referred to as “the blue land”). In that case, the action commenced by the claimants were for, *inter alia*, an order that the second claimant be registered as the proprietor of the blue land and an order for possession thereof, the ground being that the blue land, prior to its transfer to the first defendant, was acquired via adverse possession by the second claimant’s predecessors-in-title who, in turn, transferred their rights over the blue land to the second claimant. Before the English High Court, one of the key issues was whether the adverse possession rights in respect of the blue land had been properly passed down through a series of, *inter alia*, transfers and liquidation processes which had occurred. *On that particular issue*, Vos J found that the rights over the blue land acquired by way of adverse possession had not been properly passed.

33 In his analysis of the issue, Vos J rejected, *inter alia*, the argument that adverse possessory rights passed under s 62 of the Law of Property Act 1925 (which is in *pari materia* with our s 6 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) (“CLPA”)) each time the brown land was transferred. His analysis is as follows (see [168]–[171] of his judgment):

168 In my judgment, the section 62 argument does not work. It is important to realise that we are talking here about supposed rights over a piece of adjoining land with a separate registered title. What is suggested is that, when the owner of the brown land transfers that land, he transfers with it any adverse possession rights he may have in an adjoining piece of land without making any mention of the fact that he is doing so. I will look at the matter first as a question of

statutory construction, and then consider the authorities on the point.

169 Section 62(1) does not, in my judgment go far enough to achieve what Mr Dagnall has argued. The relevant words of the section are that:

'A conveyance of land shall be deemed to include ... with the land, all buildings ... liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.'

The question is whether these adverse possession rights can properly be regarded as liberties, rights, or advantages appertaining to the land or occupied or enjoyed with the land. The simple point, in my judgment is that they are not rights occupied or even enjoyed with the [brown] land. They are rights in respect of an entirely different piece of land which happens to adjoin it. Even the fact that the two pieces of land have been enjoyed together, in the sense of being used for the same purpose, is not, in my judgment, enough.

170 There are three, not entirely consistent, cases that bear on this point as follows. (1) In *St Marylebone Property Co Ltd v Fairweather* [1962] 1 QB 498, the Court of Appeal held that the owner of a house could pass squatter's rights to his lessee adversely to possess a shed built partly on adjoining land, when the entrance was on the owner's land. The decision here seems to me to be clearly within the words of section 62 since the shed was indeed a 'building ... appertaining to the land ... or, at the time of conveyance, occupied, or enjoyed with ... the land'. (2) In *Fleet v Silverstein* [1963] 1 OR 153, McRuer CJHC held that squatter's rights to a strip of land adjoining a house and enjoyed with it did pass to a successor in title under the Ontario equivalent of section 62. In an ex tempore judgment, the judge simply said, at pp 15-157:

'although I do not have to come to a definite conclusion on it, my view at present is that the conveyance of the land on which the house sat would be quite sufficient to carry with it all the rights which Mrs Osborne had and had acquired by possession or otherwise over this strip of land which was enjoyed and used as part and parcel of the property ...'

That was anyway a clearer case than this, since the strip had no independent life or use to Mrs Osborne other than use alongside the house. Here the blue land could well be used separately from the brown land. (3) Finally, in *Kirk v Sutherland* [1949] VLR 33 (which was not apparently cited in the previous decisions), Lowe J in the Supreme Court of Victoria held that an allotment holder who had acquired adverse possessory rights over an adjoining allotment by enclosing part of it into his own allotment. [sic] Lowe J said, at p 36:

'I am clearly of the opinion that neither of these provisions help the plaintiffs. Whatever may be the scope of the words used, the words 'rights powers and privileges' 'belonging or appertaining' to the estate or interest of the proprietor, they cannot be construed as extending to rights acquired by adverse possession in land in another certificate of title registered under the Transfer of Land Act. Nor do I think that section 62 of the Property Law Act 1928 ... is of any avail to the plaintiffs. It cannot be contended that what Robert Hawley enjoyed comes within 'liberties privileges [or] easements'. Is it a right or advantage 'appertaining or reputed to appertain to the land' or 'occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof'? The governing words are 'rights and advantages'. These words are not appropriate to describe land itself, and in my opinion, do not include it.'

171 In my opinion, the more carefully reasoned reserved decision in *Kirk's* case is to be preferred to the ex tempore decision in *Fleet's* case. Moreover, this case is even stronger than the facts in *Kirk's* case, since the brown land and the blue land are separate plots in separate titles, and though the brown land is bigger, the blue land is not just a strip adjoining the brown land; it is a plot in its own right.

[emphasis in original in italics; emphasis added underlined]

34 It should nevertheless be noted that despite the holding quoted above, Vos J ultimately granted the orders sought by the claimants on their alternative argument that "each of Mr Knott's companies [ie, the material successors-in-title of the brown land] [factually] took over possession of the blue land with the consent of the preceding squatter, so that time continued to run and the successor could assert the possession of itself and its predecessors against the owner of the paper title": see *Site Developments* at [173].

35 Coming back to the case before me, as was the case in *Site Developments*, Lot 389P had undergone several conveyances over the years. In agreement with Vos J as to the effect of s 62 of the Law of Property Act 1925 (which is in *pari materia* with s 6 of the CLPA), I hold that the mortgagees' sale of Lot 389P in 1990 and 2001 did not as such transfer to the purchasers any adverse possessory rights in respect of Plot D. I further add that there was no evidence adduced by the Plaintiffs to show that each and every one of the conveyances in respect of Lot 389P over years was made expressly to include the transfer of rights in respect of Plot D (*contra Buckinghamshire CC v Moran* ([23] *supra*)).

36 Nevertheless, I find that by continuity of possession, albeit by successive owners of Lot 389P, the Plaintiffs acquired adverse possessory rights over Plot D (see *Jubilee Electronics Pte Ltd* ([26] *supra*). I should perhaps add, for completeness, that the Plaintiffs' rights are unaffected by the abolition of the doctrine of adverse possession in Singapore with effect from 1 March 1994. In *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR(R) 7, the Court of Appeal reviewed the effect of the repeal of the Land Titles Act 1993 (Act 27 of 1993) ("the 1993 LTA") and the enactment of the Land Titles Act (Cap 157, 1994 Rev Ed) ("the 1994 LTA"), and concluded at [24] as follows:

To sum up the position as of 1 March 1994, there were ... 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. ...

37 In the present case, continuous adverse possession of Plot D commenced as early as 1976. The requisite 12 years was thus achieved as of 1988. Such possessory title to Plot D was preserved pursuant to s 177(3) of the 1993 LTA (see [36] above). This period of adverse possession continued until the present day even despite Keppel TatLee Bank Ltd exercising its power of sale over Lot 389P in favour of the Plaintiffs in 2001.

Preservation of possessory title via the Caveat lodged on 4 February 2009

38 I now come to the issue of whether the Plaintiffs' title in respect of Plot D was preserved by the Caveat they lodged on 4 February 2009 against Lot 388V. To recap, Lot 388V became registered land on 29 November 2001. A qualified certificate of title was issued and a caution entered in respect of title. The Caveat which sought to preserve the Plaintiffs' adverse title to Plot D was lodged against Lot 388V on 4 February 2009, slightly more than seven years after Lot 388V became registered land.

39 The parties disagreed over the latest date by which the Caveat ought to have been lodged against Lot 388V. On the one hand, the Defendant claimed that under s 19(2) of the 1985 LTA, the Plaintiffs ought to have lodged the Caveat no later than five years from the date Lot 388V was converted to registered land (see [\[13\]](#) above).

40 The Plaintiffs, on the other hand, looked to s 25(2)(b) of the 1994 LTA as amended by the Land Titles (Amendment) Act 2001 (Act 25 of 2001) for guidance on the period within which they were required to lodge the Caveat to preserve their rights in respect of Plot D. This provision stipulated that a caution would only lapse ten years after the date Lot 388V was converted to registered land or 24 months after the amendment came into effect, whichever is the later. The relevant subsections of s 25 of the 1994 LTA (as amended) are as reproduced below:

Cautions and lapsing of cautions

25. — (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) A caution recorded on any qualified folio (whether created under this Act or the repealed Land Titles Act (Cap. 157, 1985 Ed)) shall lapse in one of the following ways:

(a) if, after the creation of the qualified folio, a purchaser for valuable consideration and without fraud becomes registered as proprietor of an estate or interest in the land comprised in the folio, the caution shall lapse as regards the estate or interest on the expiration of 5 years after the date of the last deed which was cancelled by the Registrar on the creation of the folio; or

(b) if, immediately before the expiration of 10 years after the creation of the qualified folio, the caution affecting *the folio has not lapsed as regards all estates and interests in the land comprised in the folio or has not been cancelled, the caution shall lapse —*

(i) on the expiration of that period; or

(ii) on the expiration of 24 months after the date of commencement of section 8 of the Land Titles (Amendment) Act 2001,

whichever is the later.

...

(4) When a caution lapses pursuant to subsection (2), the lapsed caution shall constitute a defunct entry and the Registrar shall, of his own motion or after the lodgement 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.

...

[emphasis added]

41 On this issue, I am unable to accept the Defendant's argument. In my view, Lot 388V remained as unregistered land under the common law system until its conversion to registered land on 29 November 2001, by which time the 1985 LTA had *already been repealed*. As at 29 November 2001 when Plot D became registered land, the relevant provision in force which governed the lapsing of cautions in respect of registered land with a qualified title was s 25 of the 1994 LTA (as amended).

42 Pausing here to make some comments on how s 25 of the 1994 LTA came to be, prior to the passing of the Land Titles (Amendment) Act 2001 (Act 25 of 2001), the lapsing of cautions could only take place where there was a purchase of land subsequent to the land's conversion into registered land. In the second reading of the Land Titles (Amendment) Bill 2001 (see *Singapore Parliamentary Debates Official Report* (25 July 2001) vol 73 at col 1917 (per Assoc Prof Ho Peng Kee ("Assoc Prof Ho"), Minister of State for Law)), Assoc Prof Ho explained:

Land converted from the common law system is held with a caution stating that the title is subject to pre-existing claims or encumbrances. This means that the State does not guarantee the title to be free from encumbrance and a *buyer of qualified* title must still investigate the pre-existing common law deeds, making the conveyance more expensive. It is only when the caution lapses that the title becomes indefeasible, backed by a State guarantee. *Sir, under the present law, a caution lapses only if there is a sale of the land after title conversion. The Bill will provide for the automatic lapsing of cautions 10 years after the land was converted, or after 2 years from the commencement of this amendment, whichever is later, even if there has been no sale after title conversion.* This will result in more unqualified titles, which benefits the public, as the title investigations are easier and therefore cheaper. This amendment will reduce the number of qualified titles from about 13% to about 7% after 2 years and completely eliminate them after 10 years. [emphasis added]

In fact, the exact text of s 25(2) of the 1994 LTA read as follows:

(2) In favour of *any purchaser* of an entire estate or 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 [see, correspondingly, s 21 of the 1994 LTA]. [emphasis added]

43 In contrast, as alluded to in Assoc Prof Ho's speech at [\[42\]](#) above, after the passing of the Land Titles (Amendment) Act 2001 (Act 25 of 2001) cautions could lapse in one of two ways, namely:

(a) the sale of the land subsequent to its conversion to registered land, in which case in favour of the purchaser the caution would lapse on the expiration of five years after the date of the last deed which was cancelled by the Registrar on the creation of the folio (see s 25(2)(a) of the 1994 LTA (as amended)); or

(b) the automatic lapsing ten years after the creation of a qualified folio pursuant to s 25(2) (b) of the 1994 LTA (as amended) or 24 months after the amendment came into effect, whichever is the later (see [\[42\]](#) above).

44 In the present case, there was no sale of Lot 388V from the time it became registered land with qualified title until the present date. Any suggestion that the caution entered in respect of Lot 388V had lapsed under s 25(2)(a) of the 1994 LTA (as amended) would therefore be untenable. That leaves s 25(2)(b) of the 1994 LTA (as amended) to be considered.

45 As rightly pointed out by the Plaintiffs, the ten-year period (as per s 25(2)(b) of the 1994 LTA) only started running from the time Lot 388V became registered land on 29 November 2001. As such, the lodging of the Caveat by the Plaintiffs on 4 February 2009, about seven years after Lot 388V became registered land was well within time and validly preserved the Plaintiffs title to Plot D under s 27(2) of the 1994 LTA (as amended) which provides:

Any person claiming an interest in land which was subsisting at the date of the creation of a 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.

46 Accordingly, I find that the Plaintiffs' claim for adverse possession in this action has been properly preserved up to the present day.

Conclusion

47 For the reasons stated, I hold that the Deceased's title to Plot D was extinguished by adverse possession. Consequently, the Plaintiffs are entitled to assert ownership rights over Plot D. The Plaintiffs' claim in this action is therefore allowed with costs to be agreed or taxed.

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