

Tan Ah Suan v Ng Aik Kern and Others
[2002] SGHC 231

Case Number : Suit 697/1998
Decision Date : 03 October 2002
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Vincent Yeoh (Vincent Yeoh & Co) (instructed) and Loo Khee Sheng (KS Loo & Co) for the plaintiff; Shrinivas Rai and A Ravi (Hin Rai & Tan) for the fifth and sixth defendants
Parties : Tan Ah Suan — Ng Aik Kern

Land – Conveyance – Acquisition of title by 12-year adverse possession – Whether plaintiff acquires such title – Whether physical occupation of house necessary to support claim of adverse possession – Whether collecting rent amounts to exercising act of ownership adverse to title of registered owners

and fourth defendants did not enter appearance in the action, Madam Tan obtained judgment in her favour. However, the judgment was set aside on the application of the personal representatives of OSB's estate, who were then joined as the fifth and sixth defendants in this action. The fifth defendant, Madam Ng Chwee Lwee, and the sixth defendant, Mr Ong Geok Seng ("OGS"), claimed that the Jalan Daud property is owned by the estate and that Madam Tan did not acquire the title to the property by adverse possession because rent for the said property was paid to the late OSB and subsequently to his estate from 1944 to early 1996. OGS asserted that he collected the rent for the Jalan Daud property until around March 1996, when OST said that rent would no longer be paid because he discovered that OSB did not register his interest in the property under the Registration of Deeds Act.

Held

, dismissing the claim:

(1) For adverse possession, there must be both factual possession of the property as well as the requisite intention to possess it or *animus possidendi*; *Powell v McFarlane & Anor* (1979) 38 P & CR 452 followed. There was no evidence that OSB occupied the property by staying there. However, that was not fatal to his case as a possessor need not personally be in occupation of the land to be in factual possession or to have the requisite *animus possidendi*. It is the exercise of the acts of ownership which is crucial and the receipt of rent or grant of licence in respect of the property would be an act of ownership that is adverse to the title of the owner; *Soon Peng Yam v Maimon bte Ahmad* [1996] 2 SLR 609 followed (see 6-8).

(2) From 1944 until his death in 1961, OSB collected rent from Madam Tan and her husband. As such, he exercised an act of ownership adverse to the title of the registered owners of the Jalan Daud property for more than 12 years. OSB had thus adversely possessed the property for more than 12 years before his death in 1961 (see 9-10).

(3) There is also no room for Madam Tan to contend that OSB's estate did not exercise rights of ownership with respect to the Jalan Daud property between 1961, when OSB died, and March 1980. Madam Tan accepted that her tenancy did not end with OSB's death and she admitted that she continued to pay rent to OSB's first wife, his daughter or his eldest son from 1968 to 1980. In addition, some 10 years after OSB's death, Madam Tan transferred her husband's Public Utilities Board ("PUB") account to her name with the assistance of someone from OSB's family. The letter addressed

to the PUB was signed on behalf of OSB and stated that the Jalan Daud property was rented to Madam Tan (see 11-13).

(4) The certified public accountant who audited the accounts of Ong Siong Bee Private Ltd, the holding company for OSB's family, testified that he personally checked the receipts issued from 1985 to March 1996 with respect to the rent paid for the Jalan Daud property. The handing over of the rent by the estate to Ong Siong Bee Pte Ltd did not affect the estate's claim to the Jalan Daud property (see 17-19).

(5) A Notice and Return was sent by the Inland Revenue Department ("IRD") in August 1994 to No. 24 Jalan Daud seeking information regarding the owner of the property and whether or not any rent was paid for it. Someone in Madam Tan's household completed the form by stating that the "owner or agent" to whom a monthly rent was paid was "Ong Gek Seng". This must surely be a reference to OGS. As such, the information in the IRD's Notice and Return in 1994 corroborates the evidence of OGS that he is known to Madam Tan's family because he had appeared much earlier than 1996 to collect rent for the Jalan Daud property (see 20-22).

(6) Madam Tan has therefore not discharged the burden of proving that she has become the owner of the Jalan Daud property by adverse possession for 12 years from March 1980. Her claim is accordingly dismissed and she is required to deliver vacant possession of the Jalan Daud property to the estate of OSB within three months from the date of the judgment (see 23).

(7) Before the end of the trial, counsel for the fifth and sixth defendants stated that if Madam Tan's claim is dismissed and the title of the Jalan Daud property is vested in the estate of OSB, the estate would sell the property within six months and help Madam Tan relocate to another property by giving her \$250,000 after the sale. In view of this, the fifth and sixth defendants amended their defence and counterclaim and applied for an order that Madam Tan be paid \$250,000 after the Jalan Daud property has been sold by the estate within six months from the date of this judgment. Madam Tan did not object to the amendment. The said order was accordingly granted (see 24).

Cases referred to

Balwant Singh v Double L & T Pte Ltd

[1996] 2 SLR 726 (refd)

Leigh v Jack

(1879) 5 Ex D 264 (refd)

Powell v McFarlane & Anor

(1979) 38 P & CR 452 (folld)

Soon Peng Yam v Maimon bte Ahmad

[1996] 2 SLR 609 (folld)

Legislation referred to

Limitation Act (Cap 163) s 9

Registration of Deeds Act (Cap 269)

Judgment

GROUND OF DECISION

Cur Adv Vult

1. The plaintiff, Madam Tan Ah Suan, sought a declaration that she acquired the title to and the ownership of No 24, Jalan Daud, Singapore 419567 (the "Jalan Daud property") by adverse possession. The first, second, third and fourth defendants, who are the registered owners of the Jalan Daud property under the Registration of Deeds Act, Cap 269, did not enter appearance in the action. The fifth defendant, Madam Ng Chwee Lwee, and the sixth defendant, Mr Ong Geok Seng ("OGS"), who are both personal representatives of the estate of the late Mr Ong Siong Bee ("OSB"), claimed that the Jalan Daud property is owned by the said estate and that Madam Tan did not acquire the title to and ownership of the said property by adverse possession because rent for the said property was paid to the late OSB and subsequently to his estate from 1944 to early 1996.

Background

2. Madam Tan, who is presently residing at the Jalan Daud property, and her late husband, Mr Ong Chwee Siak, first occupied a wooden house in the said property in 1944. It is common ground that they moved into the Jalan Daud property with the permission of OSB and that they paid him rent. The tenancy arrangements were not in writing.

3. The monthly rent for the Jalan Daud property, which was initially \$15, was increased to \$40 in 1968. Madam Tan said that the money was paid to OSB and subsequently to his widow, Madam Tan Lai Ho, his daughter, Ms Ong Chwee Lian, and his son, Mr Ong Teck Chuan ("Ah Chuan"), until March or April 1980. She claimed that no rent has been paid for the said property to anyone since March or April 1980. This was vehemently denied by the sixth defendant, OGS, who asserted that he collected the rent for the Jalan Daud property until around March 1996, when Madam Tan's son, Mr Ong Swee Thay ("OST"), said that rent would no longer be paid because he had discovered that OSB did not register his interest in the said property under the Registration of Deeds Act.

4. In May 1998, Madam Tan instituted an action against the first, second, third and fourth defendants, claiming that because of her continued, uninterrupted and exclusive possession of the property from 1 April 1980 to 31 March 1992, a period of more than 12 years, she acquired ownership of the said property by virtue of adverse possession by 31 March 1992 at the latest.

5. As the first, second, third and fourth defendants did not enter appearance, Madam Tan obtained judgment in her favour on 14 August 1998. However, two personal representatives of the estate of OSB, who claimed the property on behalf of the estate of OSB, applied to have the judgment in Madam Tan's favour set aside. On 3 September 2001, the judgment in question was set aside and it was ordered that these two personal representatives of the estate of OSB be joined as the fifth and sixth defendants in Madam Tan's action.

Whether OSB became the owner of the Jalan Daud property

6. Although it was asserted that OSB purchased the Jalan Daud property during the Japanese occupation, no evidence of this was furnished. As such, it is necessary to determine whether or not OSB became the owner of the said property by virtue of adverse possession.

7. At the outset, it ought to be noted that when section 9 of the Limitation Act was amended in 1994 to abolish claims by way of adverse possession, the Jalan Daud property was held under the common law system regarding the registration of ownership of land. The effect of the 1994 amendments on a claim for adverse possession of land held under the common law system was considered by the Court of Appeal in *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726. In that case, Goh Joon Seng J, who delivered the judgment of the Court of Appeal, said as follows at p 732:

Thus s 177 of the [1993 Land Titles Act] by sub-s 1 amended section 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...

To sum up the position as of 1 March 1994, ... 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 section 9(3) of the Limitation Act. Conversely, if he had the requisite 12 years, he could rely on s 177(3) of the 1993 [Land Titles Act] to preserve his possessory title.

(emphasis added)

8. What constitutes adverse possession has been considered by the courts on innumerable occasions. In *Leigh v Jack* (1879) 5 Ex D 264, Bramwell LJ made it clear that a claimant who is relying on adverse possession must have acted inconsistently with the owner's enjoyment of the soil for the purposes for which he intended to use it. More recently, in *Powell v McFarlane & Anor* (1979) 38 P & CR 452, Slade J pointed out that for adverse possession, there must be both factual possession of the property as well as the requisite intention to possess it or *animus possidendi*. Admittedly, there is no evidence that OSB occupied the Jalan Daud property by staying there. However, this is not fatal to his case for in *Soon Peng Yam v Maimon bte Ahmad* [1996] 2 SLR 609, 615, Goh Joon Seng J, who delivered the judgment of the Court of Appeal, said:

It is clear to us that a possessor need not personally be in occupation of the land to be in factual possession or to have the requisite *animus possidendi*. As Slade J said in [*Powell v McFarlane & Anor*], factual possession is constituted by a possessor 'dealing with the land in question as an occupying owner might have been expected to deal with it'. This clearly contemplates physical possession but it certainly encompasses much more. It is the exercise of acts of ownership which is crucial. *Receipt of rent or grant of licence in respect of the property ... would be an act of ownership which is adverse to the title of the [owner]. This is clear from Nesbitt v Mablethorpe Urban District Council [1918] 2 KB 1.*

(emphasis added)

9. It is not disputed that from 1944 until his death in 1961, OSB collected rent from Madam Tan and her husband. As such, he exercised an act of ownership adverse to the title of the registered owners of the Jalan Daud property for more than 12 years. Madam Tan had no doubt as to who exercised rights of ownership of the Jalan Daud property when she first moved there. When cross-examined, she said as follows:

Q. You came to Jalan Daud to stay with Ong Siong Bee's permission?

A. Yes. He gave permission to my husband.

Q. You regarded Ong Siong Bee as the owner of the property.

A. Yes.

10. I thus hold that OSB had adversely possessed the Jalan Daud property for more than 12 years long before his death in 1961.

11. I now turn to the events following OSB's death in 1961. Madam Tan accepted that her tenancy did not end with OSB's death as she admitted that she continued to pay rent to OSB's first wife, Madam Tan Lai Ho, his daughter, Ong Chwee Lian, or his eldest son, Ah Chuan, from 1968 to 1980. There is no evidence that these persons did not receive the rent on behalf of OSB's estate. Furthermore, after OSB's death, the monthly rent was increased from \$15 to \$40 in 1968.

12. When cross-examined, Madam Tan accepted that she would have continued to pay rent to OSB's eldest son, Ah Chuan, "had he turned up to collect it" in 1984 or 1985. It is also worth noting that after her husband passed away, some 10 years after OSB's death, Madam Tan transferred her husband's Public Utilities Board ("PUB") account to her name with the assistance of someone from OSB's family. A letter dated 27 November 1978 was addressed to the PUB in the following terms:

Dear Sir/Madam,

24 Jalan Daud, Singapore 14

This is to inform you that the above locality is rented to Madam Tan Ah Suan (formerly rented to her husband ..., who is now deceased).

As such, I do not object to her request for transferring the ownership of the Public Utilities Board's Bill Account Number 37-15-0120 from her deceased husband's name to her name.

Yours faithfully,

for ONG SIONG BEE

13. In short, there is no room for Madam Tan to now contend that the estate of OSB did not exercise rights of ownership with respect to the Jalan Daud property between 1961, when OSB died, and March 1980.

Madam Tan's claim to the property

14. The next question to be determined is whether or not Madam Tan had been in adverse possession of the Jalan Daud property for 12 years with effect from March 1980. Her claim rests on her assertion that no rent was paid to the estate of OSB from April 1980 onwards. In paragraph 11A of her Statement of Claim, she added as follows:

The Plaintiff has from April 1980 or thereabouts evinced the intention to exclude the registered owners of the property and everyone else from possession of the property by the following acts in addition and without prejudice to all the matters hereinbefore pleaded.

- a. The plaintiff maintained or caused to be maintained the property and the structures and fixtures therein; and effected or caused to be effected repairs to the property and the structures and fixtures therein.
- b. The plaintiff made or caused to be made substantial and permanent improvements to the property and the structures and fixtures therein.
- c. The utilities and telephone accounts in respect of the property were in the name of the plaintiff and paid by her on her behalf.

15. Madam Tan has the burden of proving her case. As far as payment of rent is concerned, her son, OST, who handled the payment of rent on her behalf, explained in paragraphs 5 and 6 of his affidavit of evidence-in-chief as follows:

5. Around 1975, I took over and paid the rent for my mother. I passed the rent to a person called "Ah Chuan" who collected it on behalf of Ong Chwee Lian or Tan Lye Hoe. It was Ong Chwee Lian or Tan Lye Hoe who issued the receipts....

6. Around July 1980 when I went to ... look for "Ah Chuan" to pass him the rent I was informed that he had shifted away. As I could not find "Ah Chuan" no rent was paid. I went back and informed my mother about it. From then on no rent was paid to Ong Chwee Lian or Tan Lye Hoe or anybody else whether by my mother, by any of our family members, or by me.

16. According to OST, after his mother had ceased to pay rent for the Jalan Daud property for more than one and a half decades, someone, who claimed to be a relative of OSB, tried to collect rent in 1996. He said that as he was suspicious, he conducted a search at the Land Registry and found out that OSB did not register any interest in the Jalan Daud property. Hence, his mother refused to pay the rent demanded.

17. The personal representatives of the estate of OSB had a totally different version of events. They asserted that from 1980 to 1984, the rent for the Jalan Daud property was paid to OSB's eldest son, Mr Ong Teck Chuan, and that from 1985 to 1996, it was paid to OGS. It is their case that the rent was paid in cash at various places, including Funan Centre, the multi-storey complex at Cecil Street and Sims Avenue and that receipts were issued for the payments in question. According to OGS, it was only around March 1996 that Madam Tan's son, OST, informed him that rent would no longer be paid.

18. A certified public accountant, Mr Neo Soon Huat, who audited the accounts of Ong Siong Bee Private Ltd, the holding company for OSB's family, testified that he personally checked the receipts issued with respect to the rent for the Jalan Daud property. When questioned by counsel for the fifth and sixth defendants, Mr Shriniwas Rai, he said:

Q When preparing the accounts for Ong Siong Bee, you personally verified the rental receipts for No 24 Jalan Daud?

A Yes.

Q The period of verification of receipts includes 1985-1995?

A Yes. In fact, the period of verification was up to March 1996.

19. Madam Tan's counsel, Mr Vincent Yeoh, pointed out that it was strange that the rent for the said property, if collected after March 1980, was put into the kitty of Ong Siong Bee Pte Ltd, the holding company for the family of OSB, and not into the estate's own bank account. OGS explained that as the company ceased its business operations in 1980 and had no revenue thereafter, the rent was handed over to the company for the purpose of paying the property tax for the said property. The company's auditor, Mr Neo, said that the Inland Revenue Department ("IRD") was aware of the fact that the Jalan Daud property was the property of OSB. Following a request for information by the IRD, he informed the IRD on 24 April 1991 that the Jalan Daud property was not included in the balance sheet of the company as it belonged to the estate of OSB. I hold that the handing over of the rent by the estate to Ong Siong Bee Pte Ltd did not affect the estate's claim to the Jalan Daud property.

20. It is pertinent to note that Madam Tan and her son, OST, claimed not to have had any dealings with OGS prior to 1996. In fact, OST was not even sure whether or not he had met OGS although he conceded that the latter might have come to his house to demand rent in 1996. If this is the case, it is indeed odd that in a "Notice and Return" sent by the IRD in August 1994 to No 24 Jalan Daud to seek information regarding the owner of the said property and whether or not any rent was paid for it, someone in Madam Tan's household completed the form by stating that the "owner or agent" to whom a monthly rent of \$40 was paid was "Ong Gek Seng". This must surely be a reference to the sixth defendant, OGS. The existence of the IRD's Notice and Return was confirmed by Ms Go Theng Theng, a valuer in the Inland Revenue Department, who testified that the rental return was sent to 24 Jalan Daud on 25 August 1994 and was received by the IRD on 6 September 1994. Obviously, by 1994, OGS must have acted in a manner to give either Madam Tan or the person in Madam Tan's household who filled up the IRD's Notice and Return the impression that he is the "owner" of the property. As such, it is unlikely that he did not appear on the scene until 1996 to assert the estate's ownership of the property.

21. Madam Tan's counsel submitted that the IRD's Notice and Return, which bore her signature, should be totally ignored as she is illiterate and could not have signed it. It ought to be noted that Madam Tan testified that it was her practice to leave letters on the table so that others can pick them up. Her son, OST, the other occupant of the house, knows enough English to complete the IRD's Notice and Return. However, he denied that he had anything to do with the document. What is relevant is that when cross-examined, he said as follows:

Q. Your mother left the running of the Jalan Daud property to you?

A. Yes.

Q. In 1995, if a property tax return was sent to 24 Jalan Daud to find out if the property has been rented out, you and the other family members would be in a position to reply?

A. Yes.

22. There is no suggestion that the Notice and Return was forwarded to the IRD by anyone other than a person from Madam Tan's household. As such, there can be no doubt that the information in the IRD's Notice and Return in 1994 corroborates the evidence of OGS that he is known to Madam Tan's family because he had appeared on the scene much earlier than 1996 to collect rent for the Jalan Daud property.

23. As has been mentioned, Madam Tan has the burden of establishing that she has become the owner of the Jalan Daud property by adverse possession. After taking into account all the evidence presented as well as the demeanour of the witnesses, I hold that Madam Tan has not discharged the burden of proving her case. The position is not altered even if the Notice and Return forwarded to the IRD in 1994 is not taken into account. In view of this, Madam Tan's claim is dismissed and she is required to deliver vacant possession of the Jalan Daud property to the estate of OSB within three months from the date of this judgment.

24. Before the end of the trial, counsel for the fifth and sixth defendants, Mr Shrinivas Rai, stated that if Madam's Tan claim is dismissed and the title and ownership of the Jalan Daud property is vested in the estate of OSB, the said estate would sell the said property within six months and help Madam Tan relocate to another property by giving her \$250,000 after the said sale. In view of this, the fifth and sixth defendants amended their defence and counterclaim and applied for an order that Madam Tan be paid \$250,000 after the Jalan Daud property has been sold by the estate of OSB within six months from the date of this judgment. Madam Tan, who had, in her pleadings, asked for the granting of "such further or other order or relief as the court shall deem fit", did not object to the amendment in question. The said order sought by the fifth and sixth defendants is granted.

Costs

25. Madam Tan was provided with legal aid even though she was not represented by the Legal Aid Bureau when she commenced the present action. I make no order with respect to costs.

Sgd:

TAN LEE MENG

JUDGE