IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 14

S803/1994

Between

J & V Development Pte Ltd

… *Plaintiff*

And

Tan Hock Tee
Low Gek Eng

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

J & V Development Pte Ltd v Tan Hock Tee and Another

[1995] SGHC 14

S803/1994
Judith Prakash JC
20 January 1995

1 **Judgment:**

2 Coram: Judith Prakash JC

3 **GROUNDS OF DECISION**

4 This case came before me as an appeal from the decision which the learned assistant registrar made in favour of the plaintiffs on their application for summary judgment under O 14 of the Rules of the Supreme Court, 1970. After hearing the arguments of counsel for the defendants, I dismissed the appeal with costs. The defendants have now appealed against my order.

5 The plaintiffs are the paper title holders of the property known as Lot No 102-17 of Mukim 24 together with the house erected thereon and known as No 4, Lorong 33, Geylang, Singapore (`the property'). The first defendant and his wife, the second defendant, are in physical possession of the property. The plaintiffs brought this action to recover possession of the property and were met by the defence that the first defendant was entitled to the beneficial interest in

the property as its adverse possessor and that the second defendant, being his wife, had the consequential right to occupy the property.

6 The material facts leading to the present state of affairs can be gleaned from the pleadings and the affidavits filed by the parties in connection with the O 14 proceedings. They are, largely, common ground and the following recital of the facts is restricted to those facts which are either not in dispute or have been admitted by the first defendant.

7 The property was originally owned by one Mrs Mary Athisayam. Mrs Athisayam had five children among whom were her son, Appajee Athisayam, and her daughters, Esther Athisayam (now known as Mrs Esther Wohlers) and Isabel Athisayam. In 1959 Mrs Athisayam died. She left a will under which, inter alia,

8 (i) she directed her trustees to stand possessed of all her immovable properties in Singapore and to manage the said properties for a period of 20 years and thereafter to distribute the same, and

9 (ii) providing the latter did not die prior to the expiry of the 20 years, the property was to be given to her daughter, Mrs Wohlers, absolutely.

10 It appears that the property was used as a family home both before and after Mrs Athisayam's death. Her son, Appajee Athisayam, lived there until his own death, in October 1969. It does not appear from the affidavits when the other members of the family left the property, but by 1978, its only occupant was Isabel Athisayam. Before 1978, the only connection between the defendants and the property was that their adopted daughter had been employed by Appajee Athisayam.

Version No 1: 29 Oct 2026 (23:45 hrs)

11 Sometime in mid 1978, the first defendant, a motor mechanic running his own business, was informed by his then landlord that the property he was occupying for both business and residential purposes in Lorong 29, Geylang, had been acquired by the government and that he had to vacate it. According to the first defendant, he then turned to his daughter for help and she suggested that he move into the property. He accepted this suggestion and in October 1978, the defendants moved into an outhouse at the rear of the property. According to the first defendant, nobody objected to their presence not even Isabel Athisayam who was then occupying one of the rooms in the main house on the property. The first defendant then used the portion of the property fronting the outhouse (which was on the side of the main house) as his motor workshop and garage. In order to use the place for his business, he laid cement on part of the property and also erected a shade to be used as his garage. At no time did anyone object to any of this work.

12 In the early stages, the first defendant occupied only the outhouse. Gradually (no dates were given), he started to occupy the main house as well and shared the same with Isabel Athisayam. This state of affairs continued until the latter died on 4 January 1988. According to the first defendant: ` < t > hereafter, I occupied the whole of the premises on the Property'.

13 After he moved in, the first defendant also rented out certain portions of the property to various persons. According to his affidavit, he had three tenants, one from March 1979, a second from early 1984 and the third one from sometime in 1985. These three persons were still the first defendant's tenants at the time he swore his affidavit in October 1994. The first defendant did not specify the size or location of the parts of the property which he rented out. The only statement he made in this connection was his statement that after Isabel Athisayam's death he occupied the whole of the main building and earned some

Version No 1: 29 Oct 2026 (23:45 hrs)

income by renting out `the other parts of the property' to his tenants. The first defendant also alleged that he had carried out extensive repairs to the main house and the property over the years. He produced receipts evidencing payment of some $17,000 in connection with these repairs.

14 In October 1991, the first defendant lodged a caveat at the Registry of Deeds to protect his interest in the property. In this caveat, he claimed `an interest as Occupier by adverse possession By virtue of having been in undisturbed possession of < the property > for a period exceeding 12 years to the exclusion of the proprietor of that land and premises and of all persons claiming through him.'

15 In the meantime, on 14 May 1990, the property was conveyed to Mrs Wohlers by the executor of her mother's estate. On 10 September 1991, Mrs Wohlers entered into an agreement to sell the property to one Ms Ong Nya Nya. This sale was not completed. Ms Ong subsequently sold her interest in the property to the plaintiffs and, by an indenture of conveyance dated 1 February 1994 between Mrs Wohlers, Ms Ong and the plaintiffs, the title to the property and all rights and benefits therein were conveyed to the plaintiffs. This indenture was duly registered at the Registry of Deeds.

16 On 17 March 1994, and again on 21 April 1994, the plaintiffs, through their solicitors, sent letters to the defendants demanding that the caveat be removed and that the defendants vacate the property. The defendants did not accede to either request. The plaintiffs accordingly commenced this action on 18 May 1994. By their statement of claim, they asserted that the defendants' possession of the property amounted to a trespass, which trespass was continuing. They asserted that they had been deprived of use and enjoyment of

Version No 1: 29 Oct 2026 (23:45 hrs)

the property and had therefore suffered loss and damage which they quantified at $4,500 a month being its fair letting value. The plaintiffs then claimed:

17 (a) possession of the property;

18 (b) a declaration that the defendants had no interest in the property;

19 (c) an order that the first defendant remove the caveat;

20 (d) damages for trespass at $4,500 per month from such date as the court deemed fit until possession was delivered up; and

21 (e) costs.

22 The plaintiffs' application for summary judgment was heard by the learned assistant registrar who awarded them all of the above reliefs. In respect of para (d) he ordered that damages for trespass be paid at $4,500 a month from 17 March 1994 (the date of the plaintiffs' first letter to the defendants asking them to vacate) up till the date that they delivered vacant possession of the property to the plaintiffs. Whilst the defendants appealed against the whole of the judgment below, the main thrust of their argument on appeal was directed at showing that there was an issue to be tried as regards the first defendant's status. They did not dispute the fair letting value put forward by the plaintiffs or adduce any evidence to contradict or rebut the valuation given by the plaintiffs' valuer. Accordingly, in this judgment, I will deal only with the legal issue relating to adverse possession.

23 For the purposes of the O 14 proceedings, the plaintiffs conceded that the first defendant is presently in adverse possession of the property. They asserted, however, that he had not been in such possession long enough to

Version No 1: 29 Oct 2026 (23:45 hrs)

extinguish their own rights. The first defendant's contention was that he had been in adverse possession of the property since October 1988 and therefore the right of the paper title holder (at that time Mrs Wohlers) to recover possession of the property had been extinguished in October 1990. He claimed a declaration that he was entitled to adverse possession of the whole of the property and to an estate in perpetuity of it free from encumbrances since the plaintiffs who derived their title to the property from Mrs Wohlers could be in no better position than she was. The plaintiffs' response was that the first defendant did not become an adverse possessor until the death of Isabel Athisayam on 4 January 1988. On that basis, since 12 years had not elapsed from the effective date of adverse possession, the plaintiffs were not precluded from commencing this action. Citing Banque de Paris v de Naray < 1984 > 1 LLR 21, they contended that the facts relied on by the defendants themselves showed that there was no fair or reasonable probability of the defendants having a real or bona fide defence to the action and thus the judgment awarded below should be upheld.

24 The main case on which the plaintiffs relied was Powell v McFarlane & anor < 1979 > 38 P&CR 452, a decision of Slade J (as he then was). Although the facts of that case are quite different from the facts which were before me, it contains a useful summary of the principles which have to be applied by a court considering a claim of adverse possession. At p 470-472 of the report Slade J states:

25 It will be convenient to begin by restating a few basic principles relating to the concept of possession under English law:

26 (1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance,

ascribe possession either to the paper owner or to the persons who can establish a title as claiming through the paper owner.

27 (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

28 (3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, although there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ...

29 (4) The animus possidendi, which is also necessary to constitute possession was defined by Lindley M.R. in Littledale v Liverpool College (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people". This concept is to some extent an artificial one ... What is really meant, in my judgment, is that the animus possidendi involved the intention in one's own name and on one's own behalf, to exclude the world at large, including the owner if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

30 The facts of the present case as asserted by the first defendant himself showed clearly that he would not be able at a trial of this action to establish that from October 1978 onwards he had "single and conclusive" possession of the property. Although in para 4 of his defence he stated that from that date he had

Version No 1: 29 Oct 2026 (23:45 hrs)

been in "full, free, open and exclusive possession" of the property, he contradicted himself in the particulars to that paragraph. There he asserted that when he first moved into the property he occupied only the outhouse at the rear and he subsequently started to occupy the main house and shared the same with Isabel Athisayam. In his affidavit, the first defendant clarified the position even further by admitting that at the time he had moved into the outhouse, Isabel Athisayam was already in occupation of the main house. As against this, the plaintiffs' position was that Isabel Athisayam's occupation of the property was a permissive one. She was there with the knowledge and consent of the paper title holders. This assertion which appeared in the plaintiffs' pleadings was not contested by either defendant.

31 In those circumstances, it appeared to me that the defendants could not reasonably contend that the first defendant had had exclusive possession of the property from October 1978 up to January 1988. At the most, he had shared occupation with Isabel Athisayam. Since the latter's right of occupation was derived from the owners of the property, she was the person to whom the law would, in the words of Slade J, `ascribe possession' of the property. The first defendant who accepted the status quo of Isabel Athisayam's prior occupancy and who made (and rightly so) no attempts to oust her, could not be regarded as being, legally, in possession of the whole of the property whatever rights of ownership, such as letting out portions of it, he practised. It would be recalled that Slade J also explained that `an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time.' This statement must apply equally when the land is occupied by a licensee and an intruder.

32 The first defendant relied on the legal learning contained in The Law of Limitation and Adverse Possession by K.J. Rustomji. This was a commentary

Version No 1: 29 Oct 2026 (23:45 hrs)

on The Indian Limitation Act, 1908. Unfortunately, it was of little help to the first defendant and in fact supported the case of the plaintiffs. At page 826 of the book, the author states:

33 No matter in what jurisdiction the determination of what constitutes adverse possession may arise, the decisions and text-books are unanimous in declaring that the possession must be actual, visible, exclusive, hostile, and continued during the time necessary to create a bar under the statute of limitation. Whenever any of these elements is lacking, no title by adverse possession can ripen. An adverse possession must not be a mere trespass. It must be visible and notorious, and exclude the exercise of ownership by the other party and must be hostile in such sense as to indicate intent to occupy exclusively ... The word "hostile," when applied to the possession of an occupant holding adversely, is not to be construed as showing ill-will, or that the claimant is an enemy of that person holding the legal title, but means an occupant who holds and is in possession as owner, and therefore, against all other claimants of the land. There need be no ill-will, malevolence, or desire to injure anyone, and the element of hostility in that sense does not necessarily enter into the case. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

34 As long as the first defendant recognised the right of Isabel Athisayam to occupy the property he was in fact admitting (and not denying) the title of the estate of Mrs Athisayam to the property. That the first defendant clearly recognised this right was shown by his admission that he `shared' the property with her from his first occupation until she died although he attempted to minimise the extent of the sharing by stating that she used only one room of the house.

Version No 1: 29 Oct 2026 (23:45 hrs)

35 In the face of the above facts as they related to the exposition of the law given by Rustomji, counsel for the defendants realised that he could not contend that the first defendant had a `hostile' possession of the premises in that he held it against all other claimants of the land. He therefore submitted that in order for a would be adverse possessor to establish exclusive possession, all he had to show was that from the time he occupied the premises, he occupied them to the exclusion of the owner and the rest of the world apart from any person who was in occupation of the premises before he was. I was unable to accept this submission which was unsupported by any authority. On the contrary, it flew in the face of the statement of principle in Powell's case that for the necessary animus possidendi to be present the adverse possessor must intend to exclude the world at large from the land claimed. In this case the world at large would have included Isabel Athisayam.

36 Even more damagingly to his case, in his further and better particulars the first defendant pleaded that when he occupied the outhouse he did so pursuant to an oral agreement reached between Isabel Athisayam and himself. Later on in those same particulars he pleaded that he had been granted exclusive possession of the main house pursuant to an oral agreement with that lady. Although he did not take up these points in his affidavit, the fact that he had pleaded them was an indication that he intended to rely on such oral agreements at the trial. If in fact this had happened he would, to my mind, have acknowledged that his possession was not adverse since his contention appeared to be that he had been permitted to stay on the property by someone who herself was a lawful occupant. The further inference from this would have been that he too was a permitted occupant. In such event no claim of adverse possession would be possible.

Version No 1: 29 Oct 2026 (23:45 hrs)

37 Under s 15(1) of the Limitation Act (Cap 163) the paper title holder's right of action to recover land is not deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run. Until the death of Isabel Athisayam, the first defendant, as he freely admitted, did not have exclusive possession of the property. He shared it with her and he thus could not satisfy an essential element of adverse possession. It was only when Isabel Athisayam died that the first defendant, as he himself asserted in both his defence and his affidavit, occupied the whole of the property. And it was only from that date that he became a person in whose favour the period of limitation could run so that time started to count vis-a-vis the legal owners of the property.

38 In my judgment the first defendant had not acquired any interest in the property by reason of adverse possession as at the date this action was commenced namely 18 May 1994 much less as at the date in October 1991 when he filed a caveat claiming such interest. On any analysis of the situation, time could only have started to run against the legal owners of the property from 4 January 1988. The defendants were trespassers on the property and the plaintiffs were not precluded from recovering possession by reason of the provisions of the Limitation Act (Cap). The defendants being unable to raise any triable issue below, judgment was properly entered against them. I therefore affirmed the order made below.

Judith Prakash JC

Version No 1: 29 Oct 2026 (23:45 hrs)

Davinder Singh with Hri Kumar (Drew & Napier) for the plaintiffs
Patrick Nai (Choo & Yap) for the defendants

Version No 1: 29 Oct 2026 (23:45 hrs)