IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1996] SGCA 8

CA 146/1994, 65/1995

Between

Jubilee Electronics Pte Ltd

… *Appellant*

And

Tai Wah Garments & Knitting Factory Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Land — Adverse possession; Land — Adverse possession; Landlord and Tenant — Duration of tenancy — Periodic tenancies; Landlord and Tenant — Assignment of leases

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Jubilee Electronics Pte Ltd and Others v Tai Wah Garments & Knitting Factory Pte Ltd

[1996] SGCA 8

CA 146/1994, 65/1995
Chao Hick Tin J; Karthigesu JA; L P Thean JA
05 March 1996

1 **Judgment:**

2 **CHAO HICK TIN J**

3 Cur Adv Vult

4 This is an appeal against a decision of the High Court which reversed a decision of a district court declaring that the plaintiffs` (owners`) claim for the recovery of the possession of the property at 406 North Bridge Road had been barred by virtue of adverse possession on the part of the second and fourth defendants.

5 In this judgment, for consistency, the owners shall be referred to as the plaintiffs and the various occupiers (second to fourth defendants) as the defendants.

6 The first defendant, Tan Pui Liang, was the tenant of the property from 1950 until 1969. It was a monthly tenancy. There was no formal tenancy

agreement. During that period, Lim Meng Joon (second defendant), the sole proprietor of Daguerre Studio, was the subtenant of the first defendant occupying the first floor of that property. While Lim Meng Joon had since the commencement of this action passed away, his partner Chong Jeng Chong, whom he had taken in in 1980, is in occupation thereat and is still carrying on the business of a studio.

7 In 1967, the plaintiffs` predecessors-in-title bought over the property from the previous owners. The plaintiffs became the owners in 1977. Nothing turns on that. The purchase was subject to the tenancy of the first defendant. In the receipts issued by the plaintiffs to the first defendant, it was stated, inter alia, that the tenancy was not to be assigned without the prior consent of the landlord.

8 On 23 July 1969 the first defendant sought to assign the tenancy to one Tan Kheng Guan, who was the father-in-law of the fourth defendant, Tan Cheon Hock. An agreement to assign (undated) was executed between them. On 30 July 1969 notice of the assignment was given by the first defendant to the plaintiffs. The fourth defendant, occupied the whole of the ground floor of the premises and traded there as Jubilee Records Trading Co (JRTC). The third defendant continued to occupy the first floor as a studio. At the trial the fourth defendant gave evidence to say that the assignment was made in favour of Tan Kheng Guan (his father-in-law) pursuant to certain financial arrangement between them but he would be the one in actual occupation of the premises.

9 On 3 November 1969, Tan Kheng Guan`s solicitors (M/s Tang & Tan) tendered $660 being rental for the property for `the eighth, ninth and tenth Moons, ***Chi Iu*** Year.` On 12 December 1969, M/s Tang & Tan forwarded on

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behalf of Tan Kheng Guan another cheque for $440, being rent for `the 11th and 12th Moons, ***Chi Iu*** Year.`

10 On 12 December 1969, M/s CS Tay & Co, acting for the plaintiffs, acknowledged receipt of the two cheques and asked for information as to how Tan Kheng Guan took over occupation of the property. There was no response. On 13 February 1970, M/s CS Tay & Co, pursuant to s 21 of the Control of Rent Ordinance (Cap 242) wrote directly to Tan Kheng Guan seeking the following information:

> *1 The commencing date of your occupying the said premises, and if there is any tenancy agreement, please furnish same to us for our inspection.*
>
> (2) From whom did you take over the tenancy.
>
> (3) Any rent receipts or previous rent receipts, for our inspection.
>
> (4) Whom did you tender rent before.
>
> (5) Any other tenants occupying the premises … .

11 We would observe that it is a little strange that some of these questions should be asked when notice of the assignment of the tenancy from the first defendant to Tan Kheng Guan was given on 30 July 1969.

12 On 17 February 1970 Tan Kheng Guan`s solicitors forwarded a cheque for $440 being rent for the `first and second Moons of the current year` and stated they would write soon. However, nothing further came. On 8 April 1970, M/s CS Tay & Co wrote to Tan Kheng Guan`s solicitors as follows:

> *We refer to our letter dated 19 December 1969 and to our letter dated 13 February 1970 to your client upon which we have not received any reply.*

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13 We are instructed by our clients that your client came into the premises without our clients` consent and therefore he has no right of occupation in the said premises therein. Our clients recognize Tan Puay Lian as their tenant and there was an agreement between them that he cannot sublet or assign or transfer any part of the said premises to anyone unless written consent has been obtained from our clients.

14 In view of the above premises your client has not sought any consent from our clients, therefore our clients reject him as their tenant and therefore he is unlawfully occupying the said premises as a trespasser.

15 We return herewith the three cheques paid by your client. Kindly acknowledge receipt.

16 We hereby give your client notice and demand that he should remove and vacate the said premises within two (2) weeks or else our clients may have to take out legal proceedings to recover the said premises from your client.

17 It would be noted that the communications were between the plaintiffs` solicitors and Tan Kheng Guan or his solicitors. Thereafter, no further rent was tendered by Tan Kheng Guan to the plaintiffs.

18 Then on 8 February 1971 Tan Kheng Guan`s solicitors wrote to CS Tay & Co offering $5,000 `with a view to rectifying the relationship.` This offer was rejected by the plaintiffs. The plaintiffs say that thereafter they tried to locate the first defendant in order to terminate the contractual tenancy. The evidence shows that some feeble attempts were made in that regard. It was only in 1989 that the plaintiffs located him, leading to the commencement of this action.

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19 In 1978 the second defendant was incorporated by the fourth defendant to take over the business, assets and liabilities of JRTC. The only shareholders of the second defendant are the fourth defendant, his wife and daughter.

20 On 17 November 1988 the plaintiffs` solicitors (M/s Abraham Low & Partners) wrote to JRTC, the business name of the fourth defendant, and Daguerre Photo Studio (third defendant) asking them how they came to occupy the property, the amount paid for such occupation, the party to whom the amount was paid and the addresses of all the occupiers of the premises.

21 On 22 November 1988, M/s Drew & Napier, acting for Jubilee Electronic Pte Ltd (second defendant) replied as follows:

> *We act for Jubilee Electronic Pte Ltd and would refer to your AR Registered letter of 17 November to Jubilee Records Trading Co whose business and assets were taken over by our clients.*

22 Neither our clients nor their predecessors, Jubilee Records Trading Co, have paid any rent to the true owner nor have they acknowledged his title to the property for a considerable time.

23 Your clients as the owners have lost their right and our clients are not obliged to furnish to them the information they require.

24 On 2 May 1989 M/s Abraham Low & Partners served a notice to quit on the first defendant and instituted the present action against the first three defendants for the recovery of the possession of the property and for damages and other ancillary reliefs. The fourth defendant was added by an amendment. At the time there was no change in the position as regards the occupants of the premises: the second defendants were in occupation of the ground floor and the third defendants, Daguerre Studio, the first floor. The third defendants` have

always regarded themselves as tenant and have since the assignment been paying rent to the fourth defendant.

25 No appearance to the action was entered by the first defendant and a default judgment was accordingly entered against him. The second and/or fourth defendants claim to have acquired title to the premises by virtue of adverse possession for a period exceeding 12 years commencing 1970 and that the plaintiffs` right to recovery had thereby been barred. They contended that time began to run from the time after the plaintiffs refused to accept the assignment to Tan Kheng Guan and the fourth defendant continued to occupy the property.

26 The plaintiffs` case is that until they served the notice to quit upon the first defendant the latter remained the tenant of the premises and that their right of action only accrued on the expiry of the notice to quit.

27 ***District court decision***

28 The district court proceeded on the basis that the fourth defendant has been in occupation of the property since 1969 without paying any rent to anybody. It was also agreed between counsel that the property comes under the Control of Rent Act (Cap 58). The district court held that in view of the evidence the plaintiffs` claim to recover the property must fail as the second/fourth defendants have proven title based on 12-year adverse possession.

29 ***High Court decision***

30 In its judgment [1995] 3 SLR 399 , the High Court felt that the district court in coming to its decision had failed to take into account one important aspect of the matter. The plaintiffs` case was that they had always considered

the first defendant to be the contractual tenant until the contractual tenancy was terminated for a breach of the terms of the tenancy agreement. Plaintiffs could take no action against the other defendants while the contractual tenancy between the plaintiffs and the first defendant was in existence. Thus the default judgment obtained against the first defendant for the recovery of possession of the property was crucial and proper consideration should be given to it. The learned judge said:

> *The fourth defendant unquestionably had actual possession of the property for more than 12 years before the commencement of this suit against him and the other defendants. The plaintiffs, however, at all times considered and accepted only the first defendant as the tenant. Until the contractual tenancy was terminated as a prelude and precondition to the filing of the suit for possession under the Control of Rent Act, it continued to exist. Accordingly, while that contractual tenancy between the plaintiffs and the first defendant existed, the plaintiffs could not take any action for possession against any of the defendants. The legal possession by the first defendant and the actual possession by the other defendants was lawful and was not adverse against plaintiffs. In particular, the plaintiffs could take no action against the fourth defendant as he derived his right of possession from the first defendant. His possession could not be adverse to the plaintiffs: see* ***Jessamine Investment Co v Schwartz****[1978] QB 264.*

31 The judge also found that the fourth defendant `was merely interested in getting an assignment of the tenancy to his father-in-law and there was no clear intention on his part to oust the plaintiffs as owners of the property.` We would observe that this finding is amply supported by the evidence.

32 ***Appeal***

33 The second to fourth defendants, being dissatisfied with the decision of the High Court, have appealed to this court.

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34 The arguments before us centred on (i) the applicability or otherwise of s 13(2) and (3) of the Limitation Act (Cap 163), (ii) the meaning of `adverse possession` in the context of s 15(1) of the Limitation Act and how it is to apply in the circumstances of this case; and (iii) the extent to which the answers to the first two issues is affected where the property comes within the Control of Rent Act. Wewould mention that the district judge thought that the Control of Rent Act posed no legal obstacle to the operation of the Limitation Act. However, the High Court judge felt it was clear that plaintiffs` delay in taking action against the defendants was because of the fact that the property is affected by the Control of Rent Act.

35 ***Defendants` arguments***

36 The defendants` argued that `adverse possession` under s 15(1) just simply means `the possession of some person in whose favour the period of limitation can run.` The word `adverse` refers to the effect of such possession on the potential plaintiffs against whom time is running. It does not mean there must be some mental attitude to own on the part of the possessor of the land. The mental state required of the adverse possessor is `possession` not `ownership`.

37 The defendant also submitted that the High Court was wrong to have held that for there to be adverse possession there must be an intention on the part of the fourth defendant to oust the plaintiffs as owner. Whether the fourth defendant had the knowledge that he was in adverse possession is immaterial. Adverse possession should be inferred from the factual circumstances.

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38 The defendants further contended that while it is true that possession under permission (tenancy or licence) cannot be adverse against the person granting the tenancy or licence, that must be subject to the application of s 13(2) and (3). Otherwise it would render those two provisions completely otiose. In any event the second to fourth defendants were not tenants of the plaintiffs. They were in actual occupation. Though told by the plaintiffs not to occupy the premises, the fourth defendant, and later the second defendant, continued to do so. No rent was paid by them to the plaintiffs since January 1970. Until 1978, the fourth defendant was maintaining the upkeep of the premises. From 1978, it was the second defendant. The defendants submitted that the learned High Court Judge was wrong to have relied upon the case ***Jessamine Investment Co v Schwartz*** [1978] QB 264 because the fact situation there was quite different. In ***Jessamine*** there was a fixed term of 99-year lease and thus the court held that the sub-tenant`s possession could only be adverse against the holder of the 99-year lease and not against the freeholder. However, in our case, by virtue of s 13(2), and for the purposes of that Act, the tenancy of the first defendant is deemed determined. The fact that the plaintiffs did not formally determine it contractually is immaterial.

39 ***Plaintiffs` case***

40 The plaintiffs` case is that until the contractual tenancy of the first defendant was determined time did not run. The plaintiffs reiterated that this was a point which the High Court felt to be crucial.

41 The plaintiffs also placed emphasis on the fact that the fourth defendant admitted he was at all times prepared to pay rent to the plaintiffs if the plaintiffs were willing to accept his father-in-law Tan Kheng Guan as tenant. The fourth

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defendant never intended to exclude the rights of the owner or to occupy the premises in his own right other than as a tenant. The district judge gave undue weightage to the fact that the plaintiffs regarded the defendants as trespassers.

42 Another submission made by the plaintiffs is that neither the fourth defendant nor the second defendant has separately been in possession for 12 years - the fourth defendant was from 1970 to 1978 and the second defendant from 1978 to1989 - to bar the action. It is not permissible to aggregate the two periods as the fourth defendant and the second defendant are separate legal entities.

43 ***Does s 13(2) and (3) apply***

44 The first question to be addressed is, does s 13(2) and (3) of the Limitation Act (Cap 163) apply in the circumstances of the present case. We will at this juncture set out those two provisions:

> *(2) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination.*
>
> (3) Where any rent has subsequently to the determination of any tenancy been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

45 Notwithstanding that certain terms were written on the receipt issued by the plaintiffs to the first defendant, that was clearly not a lease in writing. There was no specification as to the duration of the lease. It was clearly a monthly tenancy. Thus, s 13(2) and (3) applies and the effect of those two provisions is

that a right of action against the tenant accrues in favour of the landlord as from the date the tenant first fails to pay rent. Once the period covered by the last payment of rent has expired, the tenant ceases to be regarded by the Limitation Act as a tenant. Thereafter, he is considered to be in adverse possession. If the tenant continues to omit to pay rent and yet be in possession of the premises, then after a period of 12 years the tenant would have acquired possessory title thereto as against the landlord by adverse possession: ***Jessamine Investment Co v Schwartz*** [1978] QB 264; ***Lodge v City of Wakefield Metropolitan*** [1995] 38 EG 136; and ***Moses v Lovegrove*** [1952] 2 QB 533 per Romer LJ at p 543. Therefore, to the extent that the learned judge seemed to think that even in the case of a periodic tenancy within the meaning of s 13(2) something more than mere continuation of possession by the tenant without paying rent is necessary to establish ***animus possidendi*** , and thus adverse possession, we would respectfully differ from him.

46 However, the position here is quite different. While the first defendant has since 1969 ceased to pay any rent, he has also ceased to occupy the premises. In so far as he was concerned, he had assigned the tenancy to Tan Kheng Guan. He had vacated the premises and had effectively ceased to be a tenant. He is not claiming any adverse possession. Admittedly, the assignment to Tan Kheng Guan was not accepted. As arranged between Tan Kheng Guan and the fourth defendant, the latter proceeded to occupy the whole of the ground floor and collected rent from the third defendant who was occupying the second floor. Before this the third defendant was paying rent to the first defendant.

47 ***Validity of assignment***

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48 In the circumstances, what then is the relationship between the parties. A number of questions arise for consideration. Has Tan Kheng Guan become a tenant in view of the assignment. Has the first defendant ceased in law to be a tenant following his notice of assignment? The High Court seems to think that until thenotice to quit was given by the plaintiffs to the first defendant in 1989, the contractual tenancy between them continued. We have considerable doubts whether that view could be sustained since the first defendant had given notice of the assignment and had in fact moved out of the premises in 1969 and Tan Kheng Guan had followed that up by tendering rent as tenant. Both by words and by actions, the first defendant had demonstrated that he had ceased to be a tenant. It would be contrary to these undisputed facts to suggest that the first defendant still remained thereafter as a tenant and that the contractual tenancy between them was only determined in 1989.

49 Turning to the question whether the assignment is valid, the arguments revolved round a term in the receipt issued by the plaintiffs to the first defendant where it was stated that the first defendant may not assign without the prior consent of the plaintiffs. It is common ground that the first defendant was a tenant of the premises before the plaintiffs became the owners thereof. There is no evidence that such a term against assignment was a term of the tenancy between the previous owner and the first defendant. Be that as it may, and even assuming that the provision formed a term of the tenancy, any assignment in breach of that provision is not void: see ***Williams v Earle*** (1868) LR 3 QB 739. ***Hill and Redman on the Law of Landlord and Tenant*** (1994 Ed) states at p 1149 as follows:

> *A lessee for years or a tenant from year to year or other term has, in the absence of provision to the contrary, the right to assign his term or tenancy, or to create sub-leases or subtenancies; but a restraint on assignment or underletting is valid, and such a*

> *restraint may be created either by a condition making the lease void in those events, or by a covenant not to assign or underlet. The usual form of restriction is a covenant, breach of which may give rise to forfeiture of the lease. There are three commonly found categories of such covenants. One is an absolute covenant not to assign or underlet. The second is a covenant not to assign or underlet without the consent of the landlord. The third is a covenant not to assign or underlet without the consent of the landlord which consent is not to be unreasonably withheld. The second and third categories are usually called qualified covenants. Whichever form the restraint takes, an assignment in breach of the condition or covenant is not void. It is effectual to vest the term in the assignee, subject to the right of the landlord to forfeit the lease.*

50 In ***Old Grovebury Manor Farm Ltd v Seymour (W) Plant Sales & Hire Ltd (No 2)*** [1979] 1 WLR 1397; [1979] 3 All ER 504 a lease of business premises contained a covenant not to assign without the lessor`s written consent. In breach of that covenant the second defendant executed an assignment of the remainder of the term of the lease to the first defendant. The plaintiff served a notice under s 146 of the Law of Property Act 1925 on the assignor prior to commencing forfeiture proceedings. The Court of Appeal held that the notice should have been served on the assignee who was the lessee and, as it was not so served, the writ was commenced prematurely. This was what Lord Russell of Killowen said on the effect of the assignment in breach of the covenant (at pp 1398-1399):

> *Although that was without the consent of the plaintiff it is, in my judgment, perfectly plain that the assignment operated to vest the remainder of the term in the first defendant. The fact that it was done by the second defendant in breach of his covenant not to do it cannot in any way affect that situation as a matter of law. From 23 September, therefore, the owner of the term, whose relationship by privity of estate with the plaintiff was one of lessor and lessee, became the first defendant.*

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51 ... It is the fact, of course, that the assignment was in breach of covenant, but all that means is that there is an occasion offered to the lessor to forfeit the lease and put an end to it.

52 In ***Governors of Peabody Donation Fund v Higgins*** [1983] 3 All ER 122 there was an absolute prohibition on assignment. The tenant, assigned the tenancy to the daughter. The issue before the court was what impact Ch II of the Housing Act 1980 had on a tenancy granted nine years before the enactment of the 1980 Act which tenancy had a clause containing an absolute prohibition of assignment. The law on assignment in breach of covenant as stated in ***Old Grovebury Manor Farm*** was approved when Cumming-Bruce LJ said (at pp 126-127):

> *If the ratio of the judgment of Lord Russell, with which Browne LJ agreed, cannot be distinguished from the instant case, then the law to be applied is as follows. Although there was a prohibition on assignment, the effect of the purported assignment was that the interest of the assignor validly passed to the assignee, and if the landlords wished to terminate it their duty then was to serve a s 146 notice on the assignee and proceed against the assignee for forfeiture on the grounds of breach of a covenant in the lease. It was submitted before us that that case could be distinguished because, on the facts, it was dealing with a lease for a term certain of three years and in his judgment Lord Russell described the interest of the lessee as a property right.*

53 For my part I am unable to accept that the distinction is, for this purpose, a valid distinction. This was a periodical tenancy, but as long as it survived the father had an interest in the land which may reasonably be described as a legal right of property. The attempt of counsel for the landlords to persuade me that, in spite of the terms of the particulars of claim, this was a licence and not a lease did not appear to me to have any force. I would regard the principle in the ***Old Grovebury Manor Farm*** case as applying in the instant case and although the

assignment was in breach of a condition of the lease, its effect was to transfer the father`s interest to the daughter.

54 The law on such an assignment was also touched on in the Singapore case ***Nagappan v Chen Chi Ya*** [1949] MLJ 271 where the Court of Appeal seemed to affirm what was set out in an earlier edition of ***Hill and Redman*** .

55 In the light of these authorities it seems to us clear that Tan Kheng Guan has become the tenant in place of the first defendant notwithstanding that the assignment was effected without the consent of the plaintiffs. Of course the assignment may be liable to be forfeited. In that connection consideration would have to be given by the plaintiffs to the Control of Rent Act. Whatever may be the restrictions imposed by the Control of Rent Act on the plaintiffs` right to forfeit, still, until forfeiture, Tan Kheng Guan remained a tenant. As the fourth defendant was allowed by Tan Kheng Guan to occupy and make use of that premises, there is no basis for him to make any claim of adverse possession. It is not suggested that there was a further assignment of the tenancy by Tan Kheng Guan to the fourth defendant. There is no evidence of that. Indeed, the evidence of the fourth defendant clearly shows that the assignment was made in favour of Tan Kheng Guan because of certain financial arrangement between the fourth defendant and Tan Kheng Guan. Thus the second and fourth defendants` claim to adverse possession must fail.

56 ***Twelve years` continuous possession***

57 The above should suffice to dispose of this appeal. We do not propose to deal with the other points raised in arguments except to offer some brief comments on oneof the submissions made by the plaintiffs which we think may

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be of general interest. This relates to the argument that for a person to succeed in a claim for adverse possession he must show that he, and he alone, has been in continuous and unbroken adverse possession of the land for the requisite 12 years. This argument was made in the context that the fourth defendant was in possession of the property from 1969 to 1978 and the second defendant from 1978 to 1989, none of whom in himself being in possession for 12 years or more.

58 In ***Willis v Earl Howe*** [1893] 2 Ch 545 this very point was addressed by Kay LJ when he said (at p 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 the 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.*

59 ***Willis v Earl Howe***

60 was considered and followed in the later case ***Mulcahy v Curramore Pty Ltd*** [1974] 2 NSWLR, a decision of the New South Wales Court of Appeal. The whole question was succinctly set out and explained by Bowen CJ in Exchequer in the following passages (at p 476):

> *When a person enters into adverse possession, and so long as he continues in possession before the expiry of the statutory period, he has title to the land in the nature of a fee simple, good against all the world except the true owner, and his title may be conveyed or devised to, or devolve upon, another person:* ***Asher v Whitlock*** *(1865) LR 1 QB 1;* ***Perry v Clissold*** *[1907] AC 73;*

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> ***Wheeler v Baldwin*** *(1955) 94 CLR 98;* ***Allen v Roughley*** *(1955) 94 CLR 98. 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 20 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;*** *see generally Lightwood,* ***The Time Limit on Actions*** *(1909) p 118; Voumard,* ***The Sale of Land****(2nd Ed) p 431.*

61 Where there is a series of trespassers, not deriving title from each other, who have been in adverse possession for a continuous period of 20 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; Salter v Clarke*** (1904) 4 SR (NSW) 280. It is emphasized that possession by successive trespassers must be continuous to have this effect. An 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 will, as we have seen, restore the true owner`s title to its pristine force.

62 In ***Megarry and Wade on the Law of Real Property*** (5th Ed), the learned authors state (at p 1036):

> *... a squatter has a title based on his own possession, and this title is good against everyone except the true owner. Accordingly, if a squatter who has not barred the true owner sells the land he can give the purchaser a right to the land which is as good as his own. The same applies to devises, gifts or other dispositions by the squatter, and to devolution on his intestacy: in each case the person taking the squatter`s interest canadd the squatter`s period of possession to his own. Thus if X, who has occupied A`s land for eight years, sells the land to Y, A will be barred after Y has held the land for a further four years.*

63 Finally, we would refer to 28 ***Halsbury`s Laws of England*** (4th Ed), at para 779 where a similar principle is stated:

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> *If a series of trespassers, adverse to one another and to the rightful owner, take and keep possession of land continuously in succession for various periods, each less than, but exceeding in the whole, 12 years, the rightful owner is barred. The earliest possessor within the 12 years has the best title.*

64 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.

65 ***Procedural point***

66 In passing we wish to touch briefly on a procedural matter which is the subject of CA 146/94. This is the second and fourth defendants` appeal against the decision of the High Court refusing the defendants` application to (i) amend their defence to include a reference to s 13 of the Limitation Act and (ii) file a respondents` notice to include s 13 of the Limitation Act. Notwithstanding such refusal the High Court did hear arguments on s 13 and decided that s 13 did not advance the defendants` case. Before us, counsel for the plaintiffs did not seek to exclude an argument based on s 13. The appeal in CA 146/94 has thus become quite academic.

67 ***Reconcilability of two appeal cases***

68 We will now address the point made by the learned judge that the decisions of this court in **Lee Martin & Anor v Wama bte Buang** [1994] 3 SLR 689 and ***Soon Peng Yam v Maimon bte Ahmad*** (CA 30/94) (unreported), both concerning adverse possession, are irreconcilable.

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69 In ***Wama*** , the appellants were the personal representatives of the estate of the registered owner of a piece of land. The respondent`s father, Buang, had been a ground tenant since 1945, paying a monthly rent of $2. The respondent was born on the land in 1958 and had lived there all her life. In 1965 Buang stopped paying rent; the circumstances would appear to suggest it was pursuant to some arrangement with the owner. The registered owner died in 1969. In 1976 Buang died. Respondent continued to occupy the land until 1990 when she started proceedings to claim for adverse possession for the period from 1976. The High Court held that she was in adverse possession from 1976 and that the registered owners` title had been extinguished. The judge found that Buang was a tenant at one time but ceased to be so before the registered owner`s death. The Court of Appeal held that after 1965, Buang`s occupation was by permission or tolerance. The court emphasized that for there to be adverse possession there must be an ouster. Where possession at its inception was permissive, it was not possible to put an end to that possession by a secret intention in the mind of the person inpossession. The court held that the position of the respondent, who continued occupying the land, was no different from that of her father.

70 In ***Maimon*** , the respondent`s mother stayed at the premises and paid a ground rent of $1 per month to the appellant, the paper owner. The respondent was then living with her mother. In April 1978 the respondent`s mother passed away and she continued to stay there but paying no rent. In September 1978 the respondent moved out of the house and rented the premises to other people. In 1984 the appellant gave notice purporting to terminate her mother`s tenancy with effect from 30 April 1984. However, no further action was taken by the appellant and no rent was paid by the respondent either. The High Court held, on an action taken by the respondent as the administratrix of her mother`s estate,

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that from April 1978 the respondent was, by virtue of s 13(2) of the Limitation Act, in adverse possession upon the expiry of the period to which the last rent was paid. It rejected the appellant`s assertion that the respondent was merely a licensee. The appeal to the Court of Appeal was dismissed. The Court of Appeal also allowed the respondent to amend the pleadings so that the respondent claimed adverse possession in her personal capacity rather than as the administratrix of her mother`s estate.

71 While there are some similarities between ***Maimon*** and ***Wama,*** the crucial difference lies in the fact that in ***Wama*** the Court of Appeal found that Buang ceased to pay rent pursuant to permission, which was absent in ***Maimon*** . There was further no ouster. In ***Maimon*** , on appeal, it was not seriously disputed by the appellant that the possession of the respondent was adverse to the right of the paper owner. There was clear evidence of ouster; the respondent even leased out the premises and collected rent. One of the main points taken (the other is not relevant) was whether there could be adverse possession by the respondent when she was not in possession and had rented out the premises. To that question the Court of Appeal answered in the affirmative.

72 ***Orders***

73 In the premises, the appeal of the defendants against the decision of the High Court declaring that the defendants have not acquired title to the property is dismissed. As regards the plaintiffs` claim for possession, we note it is based on the ground that the defendants are trespassers. Since we have held that the defendants are occupying the premises pursuant to arrangements with Tan Kheng Guan and there is nothing to suggest that he may not do that, and as no

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other grounds have been advanced to dispossess them, the plaintiffs` claim for possession must also fail.

74 Turning now to the question of costs. The plaintiffs have failed in their action for possession and the defendants have failed in their counterclaim for adverse possession. Bearing in mind that very much more time was spent on the issue of adverse possession we would order that the defendants bear one-third of the costs here and below. There will be no order as to costs in CA 146/94. The security for costs in both CA 146/94 and CA 65/95 shall be paid out to the plaintiffs` solicitors towards account of costs.

75 ***Appeals dismissed; orders varied.***

Chao Hick Tin J
Karthigesu JA
L P Thean JA

Morris John, Philip Lam and Anil Sachdev (Drew & Napier) for the appellants
Harry Elias and Yap Teong Liang (Harry Elias & Pnrs) for the respondents

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