

In the matter of Lot 114-69 Mukim XXII, Singapore (No 2)
[2003] SGHC 13

Case Number : OS 569/1984

Decision Date : 27 January 2003

Tribunal/Court : High Court

Coram : Tay Yong Kwang JC

Counsel Name(s) : Cavinder Bull and Low Sze Gin (Drew & Napier) for the applicant; Jeffrey Chan and Leonard Goh (Attorney-General's Chambers) for the Attorney-General

Parties : —

*Land – Strata titles – Adverse possession – Whether applicant had requisite exclusive possession
– Whether those in joint possession with him had intention of excluding true owners of the land
– Whether use of land following adverse possession must also be adverse to owner*

1 On 12 February 2001, I granted Ong Yew Kew, the Applicant, a declaration that all rights and title to Lot 7823 Mukim 22 in the District of Amokioh, Singapore be vested in him by virtue of adverse possession (see [2001] 2 SLR 509). The Kew Ong Yah Temple and other structures stand on the land in question. The hearing was conducted using only affidavit evidence.

2 The Attorney-General, as the Protector of Charities, lodged an appeal against my decision (Civil Appeal No. 600021 of 2001) and subsequently filed a Motion to adduce further evidence on the ground that the Attorney-General's Chambers ("AGC") had been contacted by certain members of the public after my decision was reported in the newspapers and that these members could testify to matters adverse to the claims made by the Applicant. The Court of Appeal adjourned the appeal indefinitely and ordered that the case be remitted to me for the hearing of further oral evidence including that of the Applicant here.

3 The parties then attended before me for directions as to the further conduct of the case. An advertisement about this Originating Summons was ordered to be published in one issue each of the Straits Times and of the Lian He Zao Bao newspapers. All witnesses who would be called by the parties had to swear an affidavit each.

4 It was argued by the Applicant at one of these pre-trial sessions that the Court of Appeal's order meant that I was only to take oral evidence and should not make any adjudication on the facts. The AGC disagreed with this interpretation of the Court of Appeal's order. I was of the view that I was directed to rehear the matter, make findings of fact on the oral testimony of all the witnesses and decide whether such findings would cause me to change my earlier decision made on the basis of affidavit evidence alone.

5 On the first day of the re-hearing, the AGC submitted that the hearing could proceed on the affidavits filed by both parties, without the need for oral testimony, as they were of the view that the evidence as it stood was not sufficient for the Applicant to prove his case. I held that unless there

was an agreed statement of facts, cross-examination of the witnesses would be necessary whenever there was a dispute as to facts.

6 I was also told by the AGC that one of their five witnesses who had sworn an affidavit (Ong Hock Siong) was working in Shanghai, China and would not be able to return here to testify as he was in poor health. In the end, one of his siblings (Ong Pang Lek) took his place and swore an affidavit on essentially the same matters dealt with in the affidavit of Ong Hock Siong.

The AGC's witnesses

Tan Lee Choo

7 Tan Lee Choo, the 82 year old aunt of the Applicant's sister-in-law, testified that she had been living at 779 Upper Serangoon Road for some 64 years since her marriage in 1938. She was presently still living in the zinc house which stood on the land in question. It was built by her father-in-law before she married his son, Lim Hoon Leong. Both men were now deceased, her late husband having passed away in 1981.

8 She denied that the Applicant had exclusive possession of the land in issue or that he gave her permission to stay in that zinc house after 1966. She asserted she had been living there as of right throughout the 64 years of her occupation. The Applicant was only 4 years old when she went to live in that house. She had never asked him at any time for permission to remain there.

9 She agreed that the Applicant had been paying the property tax on the zinc house since the early 1970s. This was an informal arrangement she had made with him as he was the caretaker of the Kew Ong Yah Temple. There were two toilets behind the zinc house which were used by members of the public who went to the temple. It was the agreement that Tan Lee Choo's family would pay the utility bills for those two toilets while the Applicant paid the property tax on the house. To date, she was doing the same.

10 She added that she viewed the Applicant as a caretaker of the temple at all times and never as the owner of the land in question nor of the house.

11 Her family was not on good terms with the Applicant. She denied that her late husband had asked

the Applicant in 1966 for permission to continue living on the land or that he sought his permission before installing some water pipes leading from the house to the main road. The two toilets at the back of her house were built by the Applicant but she used to pay him \$6 a month. When he subsequently refused to let her family use those toilets, they constructed another one inside the house. She agreed later that she did not have the informal arrangement with the Applicant described above.

Thomas Boo Wee Seng

12 Thomas Boo Wee Seng, 72 years old, started going to the temple in the early 1950s after he married the 'adopted' daughter of Tan Suan Neo, the Applicant's mother. He got to know the Applicant and Lim Poh Hong (the Applicant's sister-in-law) and her family. Thomas would go to the temple during the ninth lunar month festivities and at least once every month.

13 The Applicant used to greet him whenever he was at the temple visiting Lim Poh Hong and her family. After the Applicant's mother passed away, the Applicant became cold towards Thomas because of the latter's family's good relationship with Lim Poh Hong and her family. There was a dispute between the families of the Applicant and of Lim Poh Hong.

14 Thomas asserted that the temple was a public one. He used to park his car on the temple grounds in the 1970s and the 1980s whenever he went there. Others did the same thing. The main gate would be open all the time and he never needed anyone's permission to enter the temple or its grounds.

15 The temple was sustained by donations from the members of the public who worshipped there. On a number of occasions in the 1970s, he saw the Applicant and his family counting the collections during the ninth lunar month festivities. Lim Poh Hong's family was never involved in the counting of money from the collections.

16 Thomas viewed the Applicant as the main caretaker of the temple and not its owner as he had taken over that role from his mother. His mother did not own the temple or its grounds.

17 In cross-examination, Thomas agreed there was never any reason for the Applicant to have to ask him to leave the temple grounds. He had not been to the Applicant's house which also sat on the land in issue. He had also not gone up the pagoda inside the temple although his wife had. It was a

sacred area like those in other temples where access was restricted to the caretakers and the workers. His wife had gone up the pagoda as she used to sew curtains for the temple and needed to take measurements there.

18 The temple's management used to reside in a committee but as the members of the committee passed away one after the other, the Applicant's mother took over and eventually so did the Applicant. No formality was involved.

Koh Nam Kwang

19 Koh Nam Kwang, 68 years old, started going to the temple about 50 years ago to pray and to help out during the ninth lunar month festivities. He would be given some money by way of 'ang pow' by the then caretaker of the temple, Ong Siang Keng, the elder brother of the Applicant, for the help rendered. He would also visit Ong Siang Keng and his family who were living on the land in issue. He also knew the Applicant's mother. When Ong Siang Keng passed away in 1963, he continued to visit his widow, Lim Poh Hong, and her children. The Applicant did not like him as he was close to Ong Siang Keng's family. He never asked the Applicant for 'ang pows' and the Applicant did not give him any either. He denied he was unhappy with the Applicant because of this.

20 He helped out during the said festivities every year until around 1989. The festivities would last nine days and thousands of devotees would go to the temple, some of whom would stay overnight there. He would help Lim Poh Hong sell incense paper and joss sticks and help to carry the sedan chair of the deity in a procession as part of the celebrations. He would also help to man the stalls on the temple grounds and keep watch over the temple on some nights as it would be open at all hours during the festivities.

21 He also asserted that the temple was a public, not a private, one. The main gates to the temple grounds would be open at all times and he and members of the public had unrestricted access to the temple and its grounds despite the sign "Private Property" at the gates. He agreed that the Applicant's house, built in the 1970s, was out of bounds to the public. Access to the pagoda in the temple was restricted to those who worked in the temple. He agreed there was a room at one side of the altar which was used for ancestral worship by only the Applicant's family.

22 He believed that the Applicant was only a caretaker of the temple having taken over the role from his predecessors. Sometime in 1963, while he was helping out at the temple during the ninth lunar month, he overheard a conversation between the Applicant's mother and her relative (one Ker Pek). The relative asked her whom the temple belonged to and her reply was that it belonged to no one but

to the public.

Ang Eng Huat

23 Ang Eng Huat, the 42 year old grandson of Ong Khay Gim, said that his grandfather was one of the purchasers and original trustees of the land on which the temple stood. He was told by his mother that Ong Khay Gim appointed the Applicant's grandfather, Ong Choo Kee, as caretaker of the temple. Ong Khay Gim passed away around 1933 and the ancestral tablet bearing his name was kept in the temple together with the tablets of some 10 relatives of Ang Eng Huat.

24 He testified that Ong Choo Kee was never the owner of the temple. The smaller stone tablet on the temple grounds, erected in 1925, described Ong Choo Kee in the Chinese language as "person taking charge of the temple" and not as "owner". When Ong Choo Kee passed away, his son (the Applicant's father) took over his role. He was in turn succeeded by the Applicant's mother and the Applicant's elder brother and finally by the Applicant.

25 Ang Eng Huat started going to the temple with his mother since young to worship the deity as well as to pay respects to their ancestors. They would be there at least once or twice a year. Presently, he would go to the temple at least four or five times per year, not including the ninth lunar month festivities. Like the witnesses before him, he also said he was able to walk or drive into the temple grounds freely at any time as the main gates were always open and there was no cause for the Applicant to ask him to leave the grounds. He did not go into the Applicant's house.

26 He found out about the Applicant's application to the Court only as a result of the advertisement placed in the Lian He Zao Bao newspaper on 7 December 2001 and proceeded to contact the AGC about the matter.

Ong Pang Lek

27 The final witness called by the AGC was Ong Pang Lek, a 51 year old businessman. He was the fourth child (out of nine) of Ong Siang Keng (the elder brother of the Applicant and 8 years his senior) and Lim Poh Hong. He asserted that his uncle, the Applicant, never had exclusive possession of the land in issue.

28 His father, Ong Siang Keng, lived on the land in issue with his grand parents all his life. After his father married his mother in 1944, she also lived on the temple grounds and was still living there presently with her 52 year old daughter. The rest of the siblings were also born and brought up on the temple grounds. They moved out one by one after getting married. The Applicant was only 10 years old in 1944.

29 After his grandfather passed away, his grandmother controlled the finances of the temple while his father organized the ninth lunar month festivities which would take place over nine days. His mother would do daily housework such as cleaning the house, sweeping the temple floor, unlocking the temple doors at 7 am each day and locking up at 8 pm each night. She also cooked and did the washing for everyone in the house, including the Applicant.

30 When his father died in 1963, Ong Pang Lek was only 12 years old while his siblings ranged in age between 7 and 18. The Applicant returned to Singapore from his studies in Australia soon after Ong Siang Keng's death and took over the role of organizing the said festivities. Around 1965, the Applicant married Lee Aye Chin. When the grandmother died in 1966, the Applicant took over the management of the temple.

31 Ong Pang Lek and his siblings helped out during the 1966 festivities by carrying things, cleaning up and supervising the workers in the temple. At the end of the festivities, the Applicant showed his mother and several of his siblings a piece of paper and said that their family would have to contribute about \$3,000 to cover the shortfall for future expenses. That was understood to mean the expenses for the temple and the families living on the temple grounds. As that was a huge amount in 1966 and their family could ill afford it, Ong Pang Lek's eldest brother told their uncle they could not believe it. The Applicant responded by telling them they could organize the festivities the following year if they did not believe him. He became angry and threw a bunch of keys on the floor. Those were the keys for the donation boxes and the safe which belonged to their grandmother. The siblings were frightened by the Applicant's actions. As they were young and had no means of organizing the festivities, they backed off and let the Applicant continue organizing the festivities in subsequent years. This incident was denied by the Applicant.

32 He disagreed with the Applicant's evidence that the latter paid for the expenses of the temple and of his (Ong Pang Lek's) family out of his personal funds. He maintained that the expenses were paid for primarily out of the donations given by the devotees of the temple, the rentals collected from vendors during the festivities and the proceeds from sale of joss sticks and incense paper by his mother. That had always been the case and the income from those sources was even enough for their grandmother to purchase shophouses and kelongs and to send the Applicant for his overseas studies. The grandmother also used to tell the siblings that if the temple was taken over by others, they would all have no source of income and would be homeless. This was after Lim Kit Fah issued the

33 The Applicant kept all the income. The money earned by Ong Pang Lek's mother from the sale of joss sticks and incense paper during the ninth lunar month festivities was handed over to the Applicant. She only kept the proceeds from sales outside those festivities.

34 Ong Pang Lek's family's relationship with their aunt, the Applicant's wife, began to deteriorate in the late 1960s. Quarrels broke out between the two families. One such incident concerned Ong Pang Lek's family's claim to a share of the sale proceeds of the items for worship as they felt they had an equal right to such. After some argument, the Applicant agreed to pay their family \$1,500 per year which was paid through the law firm of Laycock and Ong.

35 In the late 1970s, the Applicant's wife started selling joss sticks at the temple as well. Ong Pang Lek's mother therefore stopped giving the sale proceeds during the festivities to the Applicant who retaliated by stopping the annual \$1,500 payment to their family.

36 In 1977, the Applicant decided to build an extension to the existing house on the temple grounds and, in order to do that, wanted Ong Pang Lek's mother and his sisters to temporarily vacate the room they were occupying. His mother refused to do so and the Applicant threatened legal action. The Applicant's solicitors wrote to Ong Pang Lek's mother claiming to represent the Applicant as "the present owner" of 779-A Upper Serangoon Road. His mother also engaged solicitors who replied to the Applicant's solicitors on 12 July 1977 as follows :

"It is incredible that your client is now claiming ownership of the premises when a search at the Registry of Deeds shows otherwise. Perhaps your client would want to substantiate his claim by producing his document of title, if any.

Contrary to your instructions, our client states that your client's attitude has been unreasonable in the extreme both in the past and at present. Our client has as much right to occupy the premises as yours and sees no reason why she should be accommodating when your client has offered her a raw deal.

Your client's threat of litigation has been conveyed to our client and our client says that your client is welcome to proceed in any way he deems fit. Our client will, of course, strongly resist any claims made by yours."

The result was that the Applicant eventually changed his plans and rebuilt the extension without affecting the room occupied by Ong Pang Lek's mother.

37 In 1984, the Applicant built a wall in the hallway separating the rooms occupied by Ong Pang Lek's family from the main entrance to the house, making access difficult. Two of his brothers hacked the wall down and the Applicant called the police. The police advised them to settle the matter privately and nothing further happened. The Applicant did not attempt to re-build the wall.

38 In 1992, Ong Pang Lek and one of his brothers invited the Chung Hwa Free Clinic to set up a donation box for the clinic during the ninth lunar month festivities as they felt the temple should do some charitable work. They also wanted to show the Applicant that their family had equal rights to the temple grounds. They did not know that the Applicant then wrote to the clinic to inform them that they had obtained permission from a member of the temple who was not authorized to give such permission and that, in future, the clinic should ask permission from the Applicant who was the only person authorized to make such decisions. They only found out about this when the Applicant filed a fourth affidavit in these proceedings.

39 In 1999, the Applicant's wife got an intermediary to ask Ong Pang Lek's mother to move her kitchen utensils and other belongings out of the section of the kitchen cum garage used by their family for cooking and dining purposes for more than 20 years on the pretext that she wanted to re-tile the floor. When Ong Pang Lek's mother agreed and moved her belongings out, the Applicant's wife turned the place into a big cooking area for the temple festivities instead and sealed up the front section used by their family for many years. Ong Pang Lek and two of his brothers then hacked part of the wall down. This caused the Applicant to take out a private summons against Ong Pang Lek, his wife and his brother.

40 For the purposes of the hearing of the private summons, both parties' solicitors worked out an agreed statement of facts. A draft put up by the Applicant's solicitors was objected to on the grounds that the Applicant was only one of the occupiers of the temple and did not have exclusive possession thereof and that he was not the owner of the temple which was trust property. The final version signed on 3 March 2000 merely referred to the Applicant as "one of the occupiers" of the temple and stated that he "took over the temple's management" after the death of his mother. Again the matter was eventually settled out of court with Ong Pang Lek's side agreeing to reinstate a concrete table top and the Applicant agreeing not to seal up the access point of the wall. However, in the course of the hearing, when asked why he described himself as the owner of the temple in his police report, the Applicant replied:

"Because my mother had been in-charge of this temple. So anything concerning the temple, there had been no one questioning me on this any of the time. I handled all the affairs of the temple – am overall in charge of the matters in the temple."

When asked who appointed him to manage the temple, he said "it came down from my great-grandfather, all the line down".

41 Ong Pang Lek then went on to explain that one of his brothers read about the present case in the Chinese newspapers of 3 June 2001 and that was the first time anyone in their family knew that the Applicant had obtained adverse possession of the temple grounds. They did not see the advertisements taken out by the Applicant on 22 December 2000. They then sought legal advice and finally managed to contact the relevant officer in the AGC.

42 He reiterated that while his family had as much right as the Applicant to live on the temple grounds, they never intended to possess the land to the exclusion of anyone. His mother and his sister, presently still living there, were willing to move out of the temple grounds if new trustees of the temple wanted them to do so. His family claimed no interest in the temple land. They only wished to see the temple and the land administered as a charity.

43 Asked why his eldest brother (Ong Hock Siong) made no mention of the 1966 incident in his affidavit (which was filed but not admitted in evidence as the deponent could not attend the hearing), Ong Pang Lek surmised that he could have forgotten about it after more than 30 years. His impression all along was that all the income from the temple was kept by the Applicant, who also paid for all the expenses of the families. He felt that the Applicant had the right to collect and use the money as he was the caretaker, not the owner, of the temple. His siblings were young then and they respected the Applicant. It was natural for the Applicant as the only living son of Ong Pang Lek's grandmother to take charge but whatever authority the Applicant had, the family had the same. He agreed that the Applicant paid for Ong Hock Siong's tertiary education but added that he had the obligation to do so.

44 Ong Pang Lek could not really recall the years that the annual payment of \$1,500 was made by the Applicant to his family. In a statement made to the AGC, his mother had stated it was until 1968. From his recollection, it was paid between the late 1960s and the mid-1970s. It should be noted that in a letter dated 25 June 1977, his mother's solicitors wrote to the Applicant's solicitors to state that one of her conditions for vacating her accommodation in the house was that "the annual amount payable to our client be increased to \$3,000.00 per annum". In that letter, it was also stated that "we are instructed that you act for the temple". Asked whether this showed that the Applicant was synonymous with the temple, he replied that it was a legal issue and the words were the solicitors'.

45 Ong Pang Lek added that in the 1970s, his family constructed a toilet with a flush system without having to ask the Applicant for permission. The applicant was aware of the construction as he spoke to the workers who were doing the construction there. While they were in the Subordinate Courts for the hearing of the private summons taken out by the Applicant, he did hear the lawyers mentioning a pending High Court suit but did not know it was a claim for adverse possession. His family's concern then was about the matter at hand and he did not know what adverse possession was in any event.

The applicant's evidence

46 Only the 68 year old Applicant testified in support of his claim for adverse possession. He maintained his stand that he allowed his deceased brother's wife and her family to live on the temple land rent free. They did not have to pay property tax. He paid their utilities bills and continued to do so presently. The family paid their telephone bills themselves. He gave his sister-in-law's children money for their education. He allowed her to run a stall on the temple grounds selling joss sticks so that she could have some income.

47 His deceased brother never managed the temple or its grounds when he was alive. He merely assisted their mother who looked after the temple. On her death bed, she told the Applicant, and not his brother, to look after the property.

48 The relationship between the Applicant and his deceased brother's family was very good until the Applicant's marriage in 1972. His wife and his sister-in-law could not get along with each other. The relationship became so strained that they only dealt with each other through solicitors.

49 He agreed that he paid his sister-in-law \$1,500 yearly. This was to help her financially and was paid because she helped to run the temple. He paid her until at least 1977. He produced copies of some receipts evidencing this. He stopped the payment because of the deterioration in their relationship.

50 The building of the extension to the house in 1978 cost about \$70,500 which was financed by the Applicant selling a property at 20 Saraca Road and not with funds from the collections in the temple. He wanted to build a partition in the house so that there would be two separate households each having its own entrance as the relationship had deteriorated. He did not have to ask his sister-in-law for permission to do so as he was the owner of the property.

51 In 1999, renovations had to be done to one of the two open kitchens as that was required by the Ministry of the Environment. The kitchens used wood for fire but the Ministry wanted them to use gas and to tile up the sides of the open kitchen. His sister-in-law was not denied access to the kitchen as it remained open despite having two sides tiled up.

52 According to the Applicant, Tan Lee Choo was married to Lim Hoon Leong whose father was Lim Poon Guan. Lim Poon Guan's name appeared on the large stone tablet in the temple grounds as one of the Management Committee members. The Applicant's mother told him that because Lim Poon Guan used to help his grandfather with the temple's paperwork, his grandfather erected an attap house on the temple grounds for him. When the said Lim died during the second World War, his son and subsequently the son's wife (Tan Lee Choo) were permitted to remain on the property now designated as 779 Upper Serangoon Road. Shortly after the Applicant's mother passed away in 1966, the son visited the Applicant and asked him whether he and his family could continue living in the house on the temple grounds. The Applicant informed him that he did not have any problems with that. On another occasion, the son also asked him for permission to run water pipes across the grounds from 779 to the main road.

53 Lim Hoon Leong passed away but his wife continued living there. The property tax on 779 was paid by the Applicant since the 1970s. There was no informal arrangement of any sort alleged by Tan Lee Choo.

54 In 1977, the Applicant installed modern sanitation on the temple grounds resulting in the two toilets behind 779. Tan Lee Choo and her family did not have to pay for the water used in the toilets. It was paid by the Applicant. Tan Lee Choo merely paid the sanitary appliance fee. Later, Lim Hoon Leong asked the Applicant for permission to connect the toilet inside his house to the sewerage pipes used by the two modern toilets. The Applicant gave his consent.

55 Thomas Boo was acquainted with the Applicant's sister-in-law, Lim Poh Hong. Thomas Boo's wife's mother and the Applicant's mother were friends. The Applicant did not really know him. He recognized him as someone who went to the temple and knew that he was the husband of someone whom his mother had some affection for.

56 In the 1970s, Koh Nam Kwang was ticked off by the Applicant for carrying the ceremonial sedan chair carelessly. Since then, he appeared unhappy with the Applicant. Koh also asked for "ang pow" but was refused as none of the devotees who carried the sedan chair was given any. He did not ask Koh to watch over the temple on some nights. It was impossible that Koh overheard the Applicant's mother saying that the temple land belonged to nobody as she had always told the Applicant that it belonged to their family.

57 Ang Eng Huat was the great grandson of Ong Boon Chuan who, according to the Applicant's mother, was a close friend of his grandfather. When the friend died, his grandfather allowed the son to place a tablet for his deceased father inside the temple for ancestral worship. The other tablets

were for the Applicant's relatives.

58 The Applicant denied that his grandfather was appointed caretaker by Ang Eng Huat's grandfather as it did not accord with what he was told by his mother. He maintained that the three Chinese characters on the stone tablet described his grandfather as the owner, with the first and the third words meaning "owner" and the middle word meaning "temple".

59 In response to the allegation that the Applicant's mother had used collections at the temple to purchase property, he said his mother was a hardworking and enterprising woman who reared chicken, sold eggs and coffee, did some very small scale coconut oil refining and made paper. The Applicant used to help her with these "entrepreneurial efforts" which earned income for her.

60 He denied that his sister-in-law gave him the money she made from selling joss sticks and incense paper. It was she who first threatened legal proceedings through her solicitors' letter of 25 June 1977. She had a set of keys of the temple. Sometimes she woke up first and therefore unlocked the temple doors. On other occasions, the Applicant's wife woke up first and she unlocked the doors.

61 The final version of the Agreed Statement of Facts was merely to facilitate matters at the trial of the private summons. The Applicant said he had always claimed to be in exclusive possession, as seen in the original draft prepared by his solicitors. The issue of exclusive possession or ownership of the temple was not relevant to the private summons. While he said he was the occupier of the temple, he also made the statement that he had a pending action in the High Court in respect of adverse possession of the land in question.

62 The Applicant reiterated that the temple was a private one belonging to him and that he had been in exclusive possession of the temple land. He allowed the public to go inside the temple for worship and continued to do so after he was granted the title by my earlier decision.

63 In the room to the right of the altar, he stored things for use in the temple. There was also a sturdy metal cabinet left there by his late mother and he held the key to it. It was not a safe. The money from the collections would be kept in that cabinet. The room to the left of the altar was where the ancestral tablets were kept. The pagoda was where the statue of the deity was kept. A wooden door with a lock prevented the members of the public from going up. All these three areas of the temple were not open to the public. If anyone wanted to spend the night on the temple grounds

during the ninth lunar month festivities, he would have to seek the Applicant's permission.

64 His house designated as 779-A was 208 square metres in area while the temple had an area of 191 square metres. On 15 June 2001, he was registered as the owner of the land in issue in place of the trustees of the temple.

65 In cross-examination the Applicant explained that he studied accounting in Australia but did not hold a degree in accountancy. He began working in Singapore in 1964 and his last employment was as a manager of the property division of a large trading company with a large property division.

66 He said that his mother told him that his grandfather had only \$700 but with the help of several persons, they bought the temple land for \$6,500 in 1919. When the temple was completed in 1921, his grandfather managed it with the help of a management committee. He was however not a trustee. After his grandfather's death, the temple and the land were "passed down" to the Applicant's father, then to his mother and finally to himself. He did try to locate the persons in whose names the land was registered but they had all passed away and he could not trace them or their families.

67 In 1984, when he returned home, he saw a surveyor taking measurements and was told that the government wanted to acquire the land for road widening. He then went to consult his lawyers and was advised he could apply for legal recognition as the owner of the land. He also wanted to own the temple and make it an even better place for worship. That was his greatest wish. He was even willing to have the temple declared a conservation property. This Originating Summons was then filed. Although his lawyers had written to the Commissioner of Estate Duties in 1968 to state that the Applicant's mother's estate was claiming adverse possession of the temple land, there was no response. The present claim was in his own right. He did not need to tell his brother's family about his claim for adverse possession as the land was his anyway.

68 The matter was then held in abeyance apparently because the High Court in 1984 adjourned it for the Applicant's solicitors to do further research and to conduct any necessary investigations. Despite numerous reminders from the AGC after that, nothing appeared to have been done until the Applicant filed his second affidavit at the end of 2000 through his present solicitors.

69 A lot of devotees addressed him as temple owner in Chinese. He maintained that the inscription on the stone tablet in the temple describing his grandfather meant "temple owner" although an

interpreter of the Courts had rendered the translation as "person taking charge of this temple".

70 As the temple gates were open, outsiders would park their vehicles on the temple land. This led the Applicant to put up the "private property" sign at the gates leading to the temple grounds in 1971. Whatever donations were received from devotees of the temple were treated by the Applicant as his income part of which went towards the upkeep of the temple. He did not keep any record of the income and the expenses. He did not declare this income for tax purposes. However, he did declare the income received from the rentals paid by the vendors during the ninth lunar month festivities.

71 When the Applicant took over the temple in 1966 after the death of his mother, his sister-in-law's aunt's husband, Lim Hoon Leong, asked him for permission to remain in the house his family had been living in for more than 40 years because Lim was afraid the Applicant did not know that the house was built for Lim's family to live in. He agreed that Lim had been paying the fees for the three sanitary appliances in the toilets at the back of Lim's house.

72 The Applicant agreed that his sister-in-law's family had the right to live on the temple land and had the same right to claim adverse possession. Nevertheless, he did not think it necessary to inform them of his claim as he considered himself the owner of the property. Later, he said he could refuse to let his sister-in-law live on the property but because they were related, he allowed her to live there rent-free.

The decision of the court

73 I have already dealt with the law relating to adverse possession in my earlier decision in this matter. I shall confine this judgment to the evidence that was adduced after that decision.

74 From the evidence adduced before me, quite a different picture emerged from that originally painted by the Applicant. The temple was built for the public and was open to the public without any restriction as to access. It was sustained through the devotees' donations. As long as the temple proper was not affected in any way, it was little wonder that the worshippers did not bother too much about the people taking care of the temple erecting a house or adding some extensions to existing premises on the temple land. No doubt they respected the privacy of the occupants of the houses but why should they want to intrude anyway since they were there for worship purposes only? The fact that the pagoda housing the statue of the deity was not open to the public at large was an entirely religious matter rather than evidence of a claim to ownership or exclusive possession. The room for ancestral worship was not for his family alone. Since no one else, besides Ang Eng Huat's family, had any ancestral tablets in that room, it was again not surprising that the public did

not enter that room, in much the same way as they would probably not enter the other room to the right of the altar without reason as that room was effectively an "office" for the person taking charge of the temple.

75 The Applicant's grandfather never professed to be the owner of the temple. His role was literally written in stone as the "person taking charge of the temple", contrary to the Applicant's continued vain attempt to recast the three words in the Chinese language. Even his family described the grandfather as "temple keeper" in the death certificate.

76 Tan Lee Choo and her family had been living on the temple land for decades and did not need the Applicant's permission or indulgence to do so. It was true that her evidence on the alleged informal arrangement she had with the Applicant was unsatisfactory but allowance should be made for her age and the fading of her memory over things she never realized would become contentious many years later.

77 I accepted the evidence of Ong Pang Lek that the Applicant never had exclusive possession of the temple nor its grounds. If the Applicant had the keys to the temple, so did Ong Pang Lek's mother. In the 1960s, Ong and his siblings were young and the family was poor whereas the Applicant was a grown man who had returned from overseas studies. He was the man of the extended family after Ong Siang Keng, the siblings' father and the Applicant's elder brother, passed away. Naturally they would not dare to oppose their uncle then and would defer to him as the virtual head of the extended household. This was a case of submission to avuncular authority and not to property rights.

78 The incidents of the later years demonstrated quite clearly that the siblings had begun to assert their "equal rights" to live on the temple grounds and to make decisions regarding the temple. The Applicant's attempts to elevate himself to de facto ownership of the land and the buildings was opposed at every turn by the siblings. True it was that his actions in calling the police to the house and in issuing the private summons were consistent with someone asserting ownership rights. However, as the events that unfolded showed, he had to cave in to people challenging those same rights and indeed asserting equal ownership rights. Even as recent as March 2000, where the Agreed Statement of Facts in the private summons was concerned, he could not have his way and had to omit any reference to ownership of the temple, conceding instead he was only one of the occupiers of the land. It should be borne in mind that the Agreed Statement of Facts was not prepared at that stage for the purpose of an amicable settlement but was for a hearing in court.

79 Despite putting up the "Private Property" sign at the gates of the temple grounds, the evidence showed that the public was never denied access nor had their movements restricted in any way.

Indeed, as the Applicant's evidence showed, it was merely for the purpose of stopping non-worshippers from abusing the temple grounds as an area for free parking. This was something entirely consistent with a caretaker's duty and expected of a person performing such a role. It was not necessarily an act of assertion of ownership.

80 Outsiders dealing with the temple would not know the intricacies of its set up even if they regarded the Applicant as temple owner. It was true that the person they dealt with was essentially the Applicant but, as I have explained earlier, that was due to the Applicant becoming the virtual head of the extended household which was occupying the houses on the temple grounds. I believed Ong Pang Lek's evidence that the siblings were not aware of the Applicant's correspondence with the Chung Hwa Free Clinic regarding the incident of the donation box placed in the temple grounds. Further, payment of property tax does not necessarily make the paying party the owner of the premises in question. Section 2 of the Property Tax Act defines "owner" to mean the person for the time being receiving the rent of any premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if the premises were let to a tenant and includes the person whose name is entered in the Valuation List.

81 I also accepted Ong Pang Lek's testimony that in the course of the hearing of the private summons, he had heard about a High Court action taken out by the Applicant for adverse possession but did not take further steps to find out more about it as their focus was then on the private summons. This was completely understandable as he, his wife and his brother were then accused persons in court facing a criminal charge. At any rate, they did not quite appreciate the concept of adverse possession at that stage although they were certain that the Applicant was not the owner and did not have exclusive possession of the temple and its grounds as evidenced by their solicitors' amendments to the draft Agreed Statement of Facts. They could of course have been more diligent in finding out more but it was the duty of the Applicant to bring this dispute to the attention of the court here as it would obviously have a bearing on the present case. The siblings' actions then and now were consistent anyway and there could be no suggestion that they were now taking a different position. I also accepted that the siblings did not notice the advertisement placed in the newspapers by the Applicant.

82 The final story that emerged was this – for the claim in adverse possession to succeed, the Applicant must commence this action in conjunction with at least Tan Lee Choo and her family and Ong Pang Lek and his family as he alone never had exclusive possession of the temple or its grounds. Further, it was plain that Ong Pang Lek and his family never had the intention of excluding the true owners of the temple, the trustees. The Applicant must therefore fail in this action.

83 I shall deal now with one issue of law raised by the AGC in the written submissions. It was said that the Applicant did not change the use of the land but continued the operations of the temple and did not do anything on the land adverse to the purposes for which the land was acquired in the first

place in 1921. Since his occupation did not contravene the purposes of the trust, it was argued that it could not therefore be adverse possession. Such an argument suggests that the person claiming adverse possession must have changed the use of the land or the premises in question. I do not think that is correct in law. A person who has occupied and lived in residential premises as if they were his has taken possession of the house in a way adverse to the interests of the true owner. Similarly, a person who occupies and rears chicken on land used by its owner to rear chicken as if the land belongs to him (the occupier) has also taken possession of it adversely. It is the possession or the occupation which must be adverse to the owner, not the use following such possession or occupation.

84 Therefore, if the Applicant here could prove he was in exclusive possession of the temple and had operated it as if it were his own and not merely as a caretaker, then he would succeed in his claim. As I have indicated above, he alone never had the requisite exclusive possession and those who were in joint possession with him never had the intention of excluding the true owners of the temple.

My orders

85. (1) I revoked my orders made on 12 February 2001 and dismissed the Applicant's Originating Summons;

(2) I ordered the Registrar of Titles and Deeds to remove the registration of the Applicant as the owner of the land in question effected on 15 June 2001;

(3) I granted the AGC liberty to apply for directions as to the future regulation of the temple and its land; and

(4) I ordered the Applicant to pay to the AGC the costs in respect of Originating Summons 569 of 1984 (the present action) and 955 of 1996 (the application by the Collector of Land Revenue to pay the compensation money for the acquisition of part of the temple land into court in which the Applicant applied for the compensation money to be paid out to him), with such costs to be taxed or agreed.

I also ruled that the costs of CA 600021 of 2001 and of the Motion before the Court of Appeal were not within my province and should be dealt with by the Court of Appeal.

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