TSM Development Pte Ltd v Leonard Stephanie Celine nee Pereira
[2005] SGCA 41

Case Number : CA 118/2004

Decision Date : 13 September 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; Yong Pung How CJ

Counsel Name(s) : Hee Theng Fong, Tay Wee Chong and Paul Tan (Hee Theng Fong and Co) for the appellant; Gan Hiang Chye and Ang Keng Ling (Khattar Wong) for the respondent

Parties : TSM Development Pte Ltd — Leonard Stephanie Celine nee Pereira

Land – Adverse possession – Adverse possessor acquiring possessory title to part of property which was unregistered land – Property subsequently converted to registered land – Whether registered proprietor's title to portion of land extinguished by adverse possession – Sections 50, 172(7), 172(8) Land Titles Act (Cap 157, 1994 Rev Ed)

13 September 2005 *Judgment reserved.*

Chao Hick Tin JA (delivering the judgment of the court):

1 The present appeal raises the question as to whether the appellant's title to a strip of land ("the disputed strip") had been extinguished by adverse possession on the part of the respondent. The High Court held that the appellant's title had been extinguished. This is the appellant's appeal against that ruling.

The facts

2 The appellant, a property development company, acquired 45 Cotswold Close ("No 45") in December 2002. The respondent is the registered owner of the immediate adjacent property, 43 Cotswold Close ("No 43"). The disputed strip is part of No 45. However, it currently lies within the compound of No 43.

3 No 45 and No 43 were part of a housing estate called Braddell Heights Estate which was developed in the early 1950s by a company called Braddell Heights Estate Limited ("BHE Ltd"). The original purchaser of No 45 from BHE Ltd was one Bherumal Atmaram Lalwani ("Lalwani"). In 1963, Lalwani sold it to Chua Chee Ming, who in 1968, in turn, sold it to Chua Fond Nam and two others ("CFN"). In 1971, CFN sold the property to Chee Hoe Hong (Private) Limited ("CHH Ltd"). In March 1985, the property was brought under the Land Titles Act by the Registrar of Titles and a qualified certificate of title ("qualified title") was issued. In 1989, CHH Ltd sold the property to a couple, Roy and Carol Eapen ("the Eapens"). On 23 December 2002, the Eapens sold and transferred the property to the appellant. A year later, on 23 December 2003, the caution on the certificate of title of the property was cancelled at the appellant's request.

4 As regards No 43, in 1951, one Chang Hoi Phin purchased it from BHE Ltd. In 1971, Chang sold it to Edward George Leonard ("Leonard"), who was the husband of the respondent. A qualified title was issued for No 43 on 8 May 1976. The respondent inherited the property from her husband who passed away on 8 April 2003. The transfer of the property to the respondent was registered on 3 December 2003 and on the same day, the caution on the certificate of title was cancelled.

5 From as far back as 1971, when Leonard and the respondent moved into No 43, there was a

chain fence and brick wall ("the fence") separating No 43 and No 45. However, due probably to an error in the erection of the fence, the disputed strip, which belonged to No 45, fell on that side of the fence which lay within the compound of No 43. Leonard and the respondent had all along been using the disputed strip as part of their garden.

6 It was only in September 2003, when the appellant commissioned a topographical survey, that it was discovered that the fence separating No 45 and No 43 was not erected correctly along the legal boundary between the two properties but had, in fact, encroached onto the land falling within No 45. Accordingly, the appellant requested the respondent to move the fence to its proper place. The respondent replied in December 2003 claiming that in view of the prolonged adverse possession of the disputed strip by the respondent and her predecessors-in-title, which was for more than 30 years, the appellant's title to the disputed strip had been extinguished.

7 Thus, the appellant instituted the present action seeking, *inter alia*, a declaration that its title to the disputed strip had not been extinguished by adverse possession on the part of the respondent. The respondent in turn counterclaimed for a declaration that she had acquired title to that strip by adverse possession.

8 There is no dispute that the fence has been in that position since the respondent moved into No 43 in 1971. The issue is whether, as a matter of law, the respondent had complied with the statutory requirements to extinguish the appellant's title to the disputed strip.

The statutory scheme

9 Prior to 1 March 1994, the date on which the Land Titles Act 1993 (No 27 of 1993) ("the 1993 LTA") came into operation ("operative date"), adverse possession of unregistered land was governed by ss 9(1) and 18 of the Limitation Act (Cap 163, 1985 Rev Ed). As for registered land, it was governed by s 42 of the Land Titles Act (Cap 157, 1985 Rev Ed) ("the 1985 LTA"): see *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726 ("*Balwant Singh*") at 729–730, [12]–[13]. The 1993 LTA repealed the 1985 LTA.

10 Under the 1985 LTA, adverse possession of registered land was allowed only to the extent provided in s 42 which read:

> **42.**—(1) Any person in adverse possession of registered land who, if that land had not been brought under the provisions of this Act would have become entitled thereto by virtue of that adverse possession, may apply to the Registrar for a certificate of title to that land, provided that not less than 12 years have elapsed since the land was brought under the provisions of this Act, or since the entry in the land-register of the most recent memorial of registration or notification of an instrument (other than an instrument of statutory obligation) affecting that land.
>
> (2) Except as in this Division provided, no title to land adverse to or in derogation of the title of a proprietor shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor be extinguished by the operation of that Act.
>
> (3) Nothing in this Act affects the operation of the Limitation Act with respect to the right of a person in adverse possession of land comprised in a qualified certificate of title where the possession commenced before the land was brought under the provisions of this Act and that right has been protected by caveat.

11 Before 1 March 1994, in the case of unregistered land, it was possible to acquire possessory title provided that the adverse possessor satisfied s 9 of the Limitation Act which read:

> **9.**—(1) No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.
>
> (2) Nothing in this section or in section 11(2) shall be deemed to affect the provisions of the Government Proceedings Act, or to apply to any person registered under or by virtue of the provisions of the Land Titles Act as the proprietor of the land sought to be recovered, or to any person claiming through a person so registered, except to the extent that such Act so provides or permits.

Section 18 of the same Act provided that at the end of the limitation period laid down in s 9(1), the right and title of the owner to the land would be extinguished.

12 The 1993 LTA brought significant changes to the law on adverse possession with regard to both unregistered and registered land. The object of this Act was to abolish adverse possession altogether, subject to the preservation, through certain transitional provisions, of possessory rights which had already crystallised.

13 With regard to unregistered land, the 1993 LTA effected this through s 177(1) which inserted a new sub-s (3) to s 9 of the Limitation Act as follows:

> This section shall not apply to an action to recover land from a person by reason only of his unauthorised occupation of the land.

By s 177(2), the 1993 LTA also repealed s 16 of the Limitation Act (which does not concern us here). However, as regards adverse possession rights which had already crystallised as at 1 March 1994, s 177(3) provided that:

> Nothing in this section [s 177, which inserted s 9(3) to, and repealed s 16 of the Limitation Act] shall —
>
> (*a*) enable any action to be brought which was barred by the Limitation Act immediately before the commencement of the Land Titles Act 1993 (referred to in this subsection as the appointed day);
>
> (*b*) affect any action commenced before the appointed day; or
>
> (*c*) revive any title to land which was extinguished by the operation of the Limitation Act in force immediately before the appointed day.

The effect of s 177(3) was to preserve possessory title to unregistered land which had already been acquired as at 1 March 1994.

14 With the omission of some sections, the 1993 LTA became the Land Titles Act (Cap 157, 1994 Rev Ed) ("the new LTA") with effect from 15 March 1994. Section 177(3), being a transitional provision, was one of the provisions omitted from the new LTA. It is clear, however, from *Balwant Singh* at 732, [24] that this subsection remains in force by virtue of s 5 of the Revised Edition of the Laws Act (Cap 275, 1995 Rev Ed).

15 The abolition of adverse possession with regard to registered land was addressed in s 50 of the new LTA which read as follows:

> Except as provided in section 172(7) and (8), no title to land adverse to or in derogation of the title of a proprietor of registered land shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor of registered land be extinguished by the operation of that Act.

16 Thus, possessory title which had already been acquired under s 42 of the 1985 LTA was preserved in accordance with ss 172(7) and 172(8) of the new LTA which read:

> (7) Where at any time before 1st March 1994 a person —
>
> (*a*) was in adverse possession of any registered land; and
>
> (*b*) has lodged an application for a possessory title to the land under the provisions of the repealed Act [the 1985 LTA] and the application has not been withdrawn but is on that date pending in the Land Titles Registry,
>
> the application shall be dealt with in accordance with the provisions of the repealed Act in force immediately before that date.
>
> (8) Where at any time before 1st March 1994 a person —
>
> (*a*) was in adverse possession of any registered land; and
>
> (*b*) was entitled to lodge an application for a possessory title to the land under the provisions of the repealed Act which were in force immediately before that date,
>
> he may, within 6 months of that date make an application to court for an order to vest the title in him or lodge an application for a possessory title to the land and the application shall be dealt with in accordance with the provisions of the repealed Act in force immediately before that date.

17 The combined effect of ss 50, 172(7) and 172(8) was that unless by 1 March 1994 the adverse possessor of a registered land had already acquired possessory title thereto, whatever inchoate interest he might have at that point in time would be extinguished. If, by that date, the adverse possessor had already acquired possessory title, then if he did not fall within the scenario covered by s 172(7) (*ie*, application for possessory title already lodged with and pending at the Land Titles Registry), he must comply with s 172(8) to preserve his rights. If he failed to do so, his possessory title would be extinguished.

18 It will be recalled that in the present action, No 45 was brought under the land titles scheme in 1985. As at 1 March 1994, there was no pending application made under the 1985 LTA by the respondent or her husband for a possessory title; neither did she nor her husband make any such application after 1 March 1994.

19 A technical point to note at this juncture is that the 2004 Revised Edition of the Land Titles Act superseded the 1994 Revised Edition on 31 July 2004. However, since the appellant's action commenced before that date, we shall hereafter continue to refer to the 1994 Revised Edition of the Act, which was earlier referred to as "the new LTA" (see [14] above).

Case law

20 Before we proceed to examine how these statutory provisions in the 1993 LTA and the new LTA should be applied to the present case, it would be useful to review some of the cases dealt with both under these two Acts as well as under the 1985 LTA.

21 We begin with the case of *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] SLR798 ("*Tan Eng Khiam*"), where the disputed strip was part of the land which the defendant purchased in October 1988. At that time, the title to the land was held under the common law system. On 25 May 1989, the land was brought under the 1985 LTA with the issue of a qualified title. In March 1990, the defendant discovered that the wall of the plaintiff's adjoining property encroached on its land. The defendant's solicitors informed the plaintiff of the encroachment and asked him to realign the wall with the true legal boundary separating the two properties. The plaintiff replied, claiming adverse possession of the disputed strip of land. He then filed a writ seeking a declaration, *inter alia*, that he was entitled to possession of the disputed land falling within the wall. In the interim, a mortgage in favour of Citibank NA was registered on 15 March 1990 against the defendant's qualified title, and the defendant registered a reassertion of ownership over the strip pursuant to s 44 of the 1985 LTA on 27 September 1990. On 16 January 1991, the plaintiff lodged a caveat claiming possessory title to the strip. The defendant sought to strike out the plaintiff's suit on the basis, among other grounds, that it disclosed no reasonable cause of action in light of ss 42(1) and 44 of the 1985 LTA. In considering the defendant's application, the court proceeded on the assumption that the plaintiff had already been in adverse possession of the strip for a period of 12 years as at 25 May 1989. G P Selvam JC (as he then was) held that by virtue of s 42(3) of the 1985 LTA, the plaintiff must protect his possessory title by lodging a caveat within five years of the issue of the qualified title, which he did in 1991. As such, the plaintiff had an arguable case both on the facts and in law. The defendant's application to strike out the plaintiff's claim as being without merit was accordingly disallowed.

22 The decision in *Tan Eng Khiam* was wholly in line with the views expressed by John Baalman in *The Singapore Torrens System* (The Government of the State of Singapore, 1961) at p 99:

> A person in adverse possession of land at the time when a qualified certificate of title issues, continues to have the same rights as he would otherwise have had, provided that he protects his rights by entering a caveat within five years of the issuing of the qualified certificate of title. If he does not enter a caveat within that time, his rights become the same as those of a trespasser who goes into adverse possession of registered land.

Mr Baalman was the draftsman of the Land Titles Ordinance 1956, the statute that introduced the Torrens system of land registration into Singapore and the precursor of the 1985 LTA.

23 The next case is *Wong Kok Chin v Mah Ten Kui Joseph* [1992] 2 SLR 161 ("*Wong Kok Chin*"), a decision of this court. There, the problem arose because the fence between two neighbouring properties, owned by the appellant ("Wong") and the respondent ("Mah") respectively, encroached on part of Wong's land. The encroachment occurred before both parties took possession of their respective properties in 1969. Wong's land was brought under the Land Titles Act (Cap 276, 1970 Ed) with a qualified title on 23 August 1974. Sometime in early 1988, Wong discovered the encroachment and on 23 June 1988 lodged a notice of reassertion of ownership pursuant to s 44 of the 1985 LTA. On 27 June 1988, Mah lodged a caveat against Wong's land claiming possessory title. The question that arose for determination was whether Wong's reassertion of title prevailed over the possessory title of Mah in respect of which Mah had lodged a caveat a few days later. This court upheld the decision of the High Court that Wong's title to the encroached strip had been extinguished by Mah's adverse possession for more than 12 years. Although when the land was converted into registered

land in 1974 Mah had been in adverse possession for only five years, he nevertheless had an inchoate interest which was caveatable at any time before the title to Wong's land became unqualified. By 1981, Mah would have acquired a possessory title. Thus, Wong's reassertion of ownership, though lodged before Mah's caveat, could not destroy Mah's possessory title. This court said at 172, [31]:

> Now, in this case, the respondent did not lodge his caveat to protect his interest until the appellant had lodged his reassertion of ownership. His inchoate interest had crystallized into an indefeasible right against the appellant by December 1981. The question therefore is whether the lodgment of a reassertion of ownership has destroyed the interest that the respondent had obtained by adverse possession. Having regard to the policy of the LTA in continuing to apply the Limitation Act to registered land, subject only to the provisions of Div 2 of the Act, the short answer must be that unless Div 2 expressly provides to the contrary, the appellant's title was was [*sic*] extinguished long before he lodged his reassertion of ownership. In our view, the lodgment of the reassertion of ownership could not have the effect of reviving a title which had been extinguished by limitation as there is no provision in Div 2 which so provides. A reassertion of ownership is not intended by the LTA to revive an extinct title but to stop the accruing right of an adverse possessor before limitation sets in.

24 The first case which came before this court after the coming into force of the 1993 LTA was *Balwant Singh* ([9] *supra*). There, the appellant ("BS") annexed an unoccupied plot of about 70.4m² ("the plot") as part of his house at 114 Jalan Langgar Bedok by removing the chain-link fence separating the plot from his compound. That was in September 1973. On 17 December 1993, the court granted one Thulasi a declaration that he was the owner of lot 235-25 by adverse possession, which lot encompassed the plot. On the same day, Thulasi conveyed lot 235-25, including the plot, to the respondent ("Double LT"). Later, on 20 June 1994, lot 235-25 was brought under the new LTA with the issue of a qualified title to Double LT. It was only on 17 February 1995 that BS lodged a caveat against lot 235-25 claiming an interest in the plot as an adverse possessor. By an originating summons, Double LT sought to have the caveat removed. BS also instituted an originating summons for a declaration that he had obtained title to the plot by adverse possession. The High Court dismissed BS's application, holding that under the new LTA, in the case of registered land, unless the circumstances came within ss 172(7) and 172(8) of the Act, no adverse possession was possible against the registered proprietor, whether his title was qualified or unqualified. On appeal, this court reversed that decision, holding that as at 1 March 1994 (the date on which the 1993 LTA came into operation) lot 235-25 was still unregistered and BS's possessory title to the plot had already crystallised, BS's interest was protected under s 177(3) of the 1993 LTA. In coming to this view, the court took into account the report of the Select Committee of Parliament which was reiterated by the Minister for Law when he moved for the Land Titles Bill to be read for the third time (*Singapore Parliamentary Debates, Official Report* (30 August 1993), vol 61 at col 475):

> I also wish to stress that the amendment is not retrospective. It will not affect those in possession who have already acquired their title by adverse possession prior to the amendment coming into force. Nor will such persons in possession be required to apply within a time-frame to the court for an order as to their title to the land.
>
> *I should point out that should any land become registered land through the issue of a qualified certificate of title, an adverse possessor's claim to the land will remain protected only as long as, first, a caution as to title remains on the certificate of title; and second, the adverse possessor lodges a caveat before such caution has lapsed or been cancelled.*
>
> Secondly, cl 172(9) [which became s 172(8) of the new LTA] enables persons who have, prior to the coming into operation of the Bill, established their title by way of adverse possession of

registered land to apply to court for an order or to the Registrar of Titles for a possessory title. Clause 172(9) has been amended to give such persons six months instead of three months to do so as it was represented to the Select Committee that six months would give more flexibility.

[emphasis added]

25 What should be noted about *Balwant Singh* is that first, the land was not brought under the land titles regime until after 1 March 1994. Second, as the possessory title of BS had by then already crystallised, by virtue of s 177(3) of the 1993 LTA, his adverse possession right was preserved. Third, BS entered a caveat soon after the land became registered land while title to it was still qualified.

26 However, there is a passage in *Balwant Singh* (at 733, [27]) which requires clarification. It reads:

> In dealing with this issue, the starting point was s 50 of the new LTA which states that except as provided in s 172(7) and (8), no title to registered land 'shall be' acquired by adverse possession nor shall the title of any proprietor of registered land 'be extinguished' by operation of the Limitation Act. Based on a plain reading of s 50 it applies only in respect of adverse possession which had not crystallised into a possessory title when the land became registered land and not to adverse possession that had so crystallised. In the latter situation, the title of the documentary owner would already have been extinguished at the time of conversion to registered land.

There is a similar passage in [5] of this court's judgment in *Lo Sook Ling Adela v Au Mei Yin Christina* [2002] 1 SLR 408 which referred to the above passage from *Balwant Singh*.

27 This passage has been misinterpreted in several of the adverse possession cases dealt with in the High Court after *Balwant Singh*, including *Tan Siok Gek v Ng Kim Neo* [1997] 2 SLR 691 ("*Tan Siok Gek*") and *Shell Eastern Petroleum (Pte) Ltd v Goh Chor Cheok* [2000] 1 SLR 45 ("*Shell Eastern Petroleum*"), both of which will be discussed in greater detail below. These cases have taken the above passage to mean that s 50 of the new LTA is inapplicable whenever possessory title crystallises before the land in question becomes registered land. This is incorrect. The above passage is prefaced with the remark "[i]n dealing with this issue". "[T]his issue", as set out at 733, [26] of *Balwant Singh*, was:

> [W]hether the new LTA was intended to apply to claims by way of adverse possession even in respect of registered land in circumstances where the adverse possessor had already acquired title before the land became registered land under the provisions of the *new* LTA, where a qualified certificate of title was issued and where the adverse possessor had lodged a caveat in respect of his claim. [emphasis added]

28 In other words, the position stated at 733, [27] of *Balwant Singh* is confined to the specific factual scenario delineated at 733, [26] of the case. Section 50 of the new LTA does not apply only where adverse possession has crystallised before the land becomes registered land under the *new* LTA – *ie*, before the land, which is still *unregistered* as at 1 March 1994, becomes registered land at some point after that date. Conversely, where the land in question is already registered land as at 1 March 1994, s 50 applies even if possessory title was acquired before the land became registered land. In the latter scenario, the adverse possessor, if he wishes to preserve his possessory rights, must either have applied for a possessory title under the 1985 LTA as stated in s 172(7) of the new LTA, or comply with s 172(8).

29 In this appeal, counsel for the respondent advanced yet another alternative interpretation of s 50, namely, that it applies only to land which is registered land as at 1 March 1994 but in respect of which 12 years of adverse possession had not been completed at that date. We found this argument untenable in light of the wording of ss 172(7) and 172(8). These provisions refer to a person in adverse possession of registered land at any time before 1 March 1994 who, as at that date, either had already lodged an application for a possessory title under the 1985 LTA (s 172(7) of the new LTA), or was already entitled to lodge such an application (s 172(8)). For an adverse possessor to fall within either of these factual scenarios, he must necessarily have completed the requisite period of adverse possession by 1 March 1994.

30 A case which came after *Balwant Singh* was *Tan Siok Gek* ([27] *supra*). There, the plaintiff had already completed 12 years of adverse possession of a strip of land belonging to the defendant when that land was brought under the Torrens system in February 1992 with the issue of a qualified title. The defendant discovered the encroachment only on 9 November 1993. Following a notice from the defendant of the encroachment, the plaintiff lodged a caveat dated 12 December 1993 claiming adverse possession of the strip. She subsequently brought a claim for a declaration that she was the owner in fee simple of the strip of land in question. Applying *Balwant Singh*, the judicial commissioner held that s 50 of the new LTA was inapplicable since the plaintiff had acquired title by adverse possession even before the land was brought under the land titles regime. His Honour considered it immaterial that the land in question was already registered land as at 1 March 1994, whereas the land in *Balwant Singh* became registered land only after that date. It was further held at [12] that:

> [B]y the time the defendants' property was brought under the [1985] LTA in 1992, the property so converted was the original plot less the strip of land adversely possessed.

For these reasons, judgment was given for the plaintiff.

31 With respect, there were two flaws in the above analysis of the judicial commissioner.

32 First, as we have stated earlier (see [29] above), since the land was already registered land as at 1 March 1994, s 50 of the new LTA was applicable. This section does not apply only where adverse possession crystallised before the land became registered land and it continued to be *unregistered land as at 1 March 1994*. As the plaintiff in *Tan Siok Gek* had not complied with either s 172(7) or s 172(8), her claim should have been dismissed.

33 Second, although the defendants' title to the strip of land had, by February 1992, been extinguished by the adverse possession of the plaintiff, it did not follow that the land which was converted to registered land was therefore "the original plot less the strip of land adversely possessed" (*Tan Siok Gek* at [12]). As the Court of Appeal pointed out in *Wong Kok Chin* ([23] *supra*) at 166, [15], "[l]imitation merely has the effect of extinguishing the title of the true owner". Where there has been 12 years of adverse possession before the land becomes registered land, although the rights of the documentary owner would already have been extinguished before the conversion to registered land (*Balwant Singh* at [33]), such extinguishment of his rights has effect only at common law. For the purposes of the land titles regime, the documentary owner would still be regarded as the registered proprietor of the entire plot of land including the part affected by adverse possession.

34 A year later, the case of *Ho Lam Phoh v Tan Swee Beng* [1998] 3 SLR 629 ("*Ho Lam Phoh*") brought into focus the application of ss 172(7) and 172(8) of the 1993 LTA. There, the boundary wall of two neighbouring lots was erected in 1971, although in the defendants' pleading, the relevant year was stated to be 1974. At that time, the two lots belonged to the plaintiff's and the defendants' predecessors-in-title. On 26 July 1974, the defendants' lot was converted to registered land. The

plaintiff's lot was only converted on 20 June 1984 with the issue of a qualified title. In early 1996, the plaintiff discovered that the boundary wall was encroaching on his land and asked the defendants to shift the wall. Instead, the defendants lodged a caveat claiming adverse possession to the strip. The High Court ruled that the defendants failed in their claim for adverse possession and ordered that the boundary wall be re-sited correctly at the plaintiff's expense. This decision was upheld on appeal by this court which stated at [12] and [13]:

> 12 Reverting now to the matter before us, the disputed land became registered land on 20 June 1984. As of 1 March 1994, the defendants did not have 12 years of adverse possession under the common law system. Their rights were therefore not preserved by s 177(3) of the 1993 LTA.
>
> 13 The disputed land is registered land as at 1 March 1994. Therefore, s 172(7) and (8) of the new LTA [Cap 157, 1994 Ed] apply. As they had not lodged any application for possessory title or made an application to court for an order to vest the title in them, their claim was abolished by s 50 of the new LTA.

35 Read on its own, [12] of *Ho Lam Phoh* might give the impression that whenever there has been 12 years of adverse possession under the common law system, the relevant legislative provision is s 177(3) of the 1993 LTA and not s 50 of the new LTA. However, the Court of Appeal went on to point out in [13] that s 50 applied since the disputed land was registered land as at 1 March 1994. Taking [12] and [13] together, the decision in *Ho Lam Phoh* made it clear that in considering adverse possession claims relating to registered land, in the context of the 1993 LTA, the important factor was whether the land was already registered land as at 1 March 1994. If the land had already been brought under the Torrens system by that date, then regardless of whether the adverse possessor's right crystallised before or after the land was registered, s 50 of the new LTA would apply.

36 Moreover, there is another aspect of [12] of *Ho Lam Phoh* which we ought also to clarify. There, it was stated that "[a]s of 1 March 1994, the defendants did not have 12 years of adverse possession under the common law system". That is factually correct as the defendants had not possessed the land as unregistered land for 12 years as at the date the land was converted to registered land. However, thereafter, the defendants continued to be in adverse possession. By 1 March 1994, the defendants would have been in adverse possession for almost 20 years. As at that date, they had not lodged an application for a possessory title under the provisions of the repealed LTA for the purposes of s 172(7) of the new LTA; neither did they make such an application within six months of 1 March 1994 as required by s 172(8) of the new LTA. Accordingly, s 50 of the LTA extinguished whatever possessory rights the defendants in *Ho Lam Phoh* might have had to the land in question as at 1 March 1994.

37 Next was the case of *Shell Eastern Petroleum* ([27] *supra*) where the defendants, in developing their land in or about 1961, built a retaining wall which encroached onto the neighbouring plaintiff's land. The defendants' possessory title crystallised in 1973. Much later, in November 1992, the plaintiff's land was converted to registered land and a qualified title issued. On 2 May 1996, pursuant to an application made on 7 March 1996 by the plaintiff, the caution on the title was removed. The High Court, apparently applying *Balwant Singh*, held that as the defendants' right of adverse possession had been crystallised in 1973 long before the plaintiff's land became registered land, s 177(3) of the 1993 LTA applied to preserve the possessory title of the defendants and the plaintiff was barred from reviving its title to the disputed plot. The judge held that while the plaintiff's registered title had become unqualified on the plaintiff's own application, such an act could not be treated as a definitive event to bring about indefeasibility of title in favour of the plaintiff as the main objective of the Torrens system was to protect a *bona fide* purchaser. Reference was made by the

judge to *Gibbs v Messer* [1891] AC 248 at 254. The judge also held that the fact that the defendants had not lodged any caveat while the plaintiff's title was qualified was not of any material significance as far as the defendants' possessory rights *vis-à-vis* the plaintiff, who was the original registered proprietor, were concerned, and would be detrimental to the defendants' rights only in relation to a purchaser from the plaintiff.

38 With respect, we have some reservations about this decision. There is one very important distinction between *Balwant Singh* and *Shell Eastern Petroleum* which, it would appear, the judge in *Shell Eastern Petroleum* did not appreciate. In *Balwant Singh*, the land which was the subject of the action became registered land only after 1 March 1994. It was a situation which was not caught by ss 50, 172(7) and 172(8) of the new LTA. In contrast, in *Shell Eastern Petroleum*, the land was brought under the Torrens system before 1 March 1994 and therefore the case fell squarely within these provisions of the new LTA. To preserve their possessory title, the defendants ought to have, within six months from 1 March 1994, either applied to court for an order to vest the title in the disputed lot in the defendants or lodged an application with the Registrar of Land Titles for a possessory title to the land as required under s 172(8). By not so applying, the defendants' possessory rights lapsed through the operation of s 50, read with ss 172(7) and 172(8).

39 Another aspect of *Shell Eastern Petroleum* which we found questionable was the ruling that the adverse possessors' failure to lodge a caveat would have a detrimental effect on their rights only in relation to a purchaser from the proprietor, but not in relation to the proprietor himself. The judge cited the following extract from *Wong Kok Chin* ([23] *supra*) at 173, [35] as authority for this holding:

> The only person who is able to obtain a title free from any prior interests affecting such land is a purchaser when that caution expires against him after five years from the date of conversion and when the caution is cancelled on his application. The caveat referred to in s 42(3) [of the 1985 LTA] is intended to protect the rights of an adverse possessor against a purchaser and not against the registered proprietor.

While the decision in *Wong Kok Chin* was undoubtedly correct on the facts, we note that under the 1985 LTA, the purchaser referred to in the above passage was not the only person who could obtain a title free from prior existing interests. According to s 19(5) of the Act, the original registered proprietor could likewise obtain an unqualified title if he could prove that there were no outstanding interests which had yet to be notified on the folio for the property. It would thus appear that the caveat in s 42(3) of the 1985 LTA was equally intended to protect an adverse possessor's rights against the original registered proprietor.

40 We also doubt whether the distinction drawn in *Shell Eastern Petroleum* between the cancellation of a caution pursuant to the original registered proprietor's application and the lapsing of a caution in favour of a purchaser (see [38] above) is tenable in principle. The judge stated at [33] of the case that:

> [T]he cancellation of a caution on the application of the original proprietor cannot be reliably treated as a definitive event to bring about indefeasibility in the way that a sale to a purchaser ... would be.

It should be noted that under s 26(1) of the new LTA as it then stood, the original proprietor could have a caution cancelled only if he could (a) deduce a title for a continuous period of not less than 12 years at the date of his application for cancellation and (b) satisfy the Registrar of Land Titles that there were no outstanding interests which were not notified on the folio. This entailed, by implication, that upon the cancellation of a caution, the registered proprietor would hold his land

subject to those interests notified on the folio and the overriding interests under s 46(1) (see [44] below). The same consequence ensued when a title became unqualified through the lapsing of a caution: see s 25(5). As such, it should not make any difference whether a qualified title becomes unqualified through the lapsing or the cancellation of a caution.

41 The next High Court decision of significance after *Shell Eastern Petroleum* was *Liwen Holdings Pte Ltd v Ng Ker San* [2001] 2 SLR 533 ("*Liwen Holdings*"). There, the adverse possessors' title crystallised while the land in question was unregistered land. The land was converted to registered land under a qualified title only on 20 June 1994, but no caveat was lodged by the adverse possessors. Subsequently, the land was transferred by the original registered owner to a *bona fide* purchaser ("Liwen"). Liwen informed the adverse possessors that they were encroaching on its land and requested them to take the appropriate remedial action. Nothing, however, was done by the adverse possessors. On 17 December 1998, Liwen's qualified title became absolute pursuant to s 25(2) of the Act. Liwen later applied for an injunction to restrain the adverse possessors from remaining on its land. In turn, the latter sought a declaration that they had become the owners of part of Liwen's land by virtue of adverse possession. On the issue of fact as to whether the adverse possessors had acquired a possessory title by 1 March 1994, the judge ordered that a trial be held. On the question of law as to whether the adverse possessors' claim could be defeated by Liwen's interest as a *bona fide* purchaser under the new LTA, the judge held that as the adverse possessors' rights had crystallised before 1 March 1994 and as the land in question was still unregistered land at that date, s 177(3) of the 1993 LTA preserved their rights. In his view, the fact that the adverse possessors had not lodged any caveat before the qualified title of Liwen became unqualified did not adversely affect their possessory title.

42 While the principles laid down in *Balwant Singh* were correctly applied on the facts of *Liwen Holdings*, it appears that the judge in the latter case did not give adequate consideration to one important fact, namely, that the adverse possessor in *Balwant Singh* lodged a caveat in respect of his possessory right before the title to the land became unqualified. In contrast, in *Liwen Holdings*, no such caveat was lodged by the adverse possessors while title to the affected land was qualified. The judge nonetheless held that since the adverse possessors' rights as at 1 March 1994 were preserved by s 177(3) of the 1993 LTA, events thereafter could not overreach these rights. With respect, the judge erred on this point. Although s 177(3) of the 1993 LTA preserves adverse possession rights which have crystallised in land that remains unregistered on 1 March 1994, it does not preserve such rights indefinitely. This was made clear during the debate in Parliament on the Land Titles Bill ([24] *supra*) by the Minister for Law's emphasis at col 475 that:

> [S]hould any land become registered land through the issue of a qualified certificate of title, an adverse possessor's claim to the land will remain protected only so long as, first, a caution as to title remains on the certificate of title; and, second, the adverse possessor lodges a caveat before such caution has lapsed or been cancelled.

43 To say that the rights of an adverse possessor of unregistered land survives without the lodgment of a caveat, even after the land is converted to registered land and title to it becomes unqualified, would undermine the principle of indefeasibility which lies at the very core of the Torrens system. As the Court of Appeal explained in *Wong Kok Chin* ([23] *supra*) at 163, [7]:

> The object of the LTA was to simplify dealings in land by the introduction of a register of titles to mirror land ownership ('the register is everything' principle or the 'what you see is what you get' principle). As a corollary to that principle, the bona fide purchaser will obtain the title of the vendor as mirrored in the land register ('the indefeasibility principle'). The system was intended to supersede, in the course of time, the registration of deeds system which had been in force in

Singapore since 1886.

44 To give effect to the above principles, s 46 of the new LTA provides that any person who becomes the proprietor of registered land shall hold the land free from all encumbrances, liens, estates and interests except for (a) those notified or registered in the land register and (b) the overriding interests listed in s 46(1). Interests subsisting in land at the time such land is brought under the Torrens system may be protected by lodging a caveat while title to the land is qualified: s 27(2). If this is not done, then by virtue of s 25(5), once title to the land becomes unqualified, all unprotected interests which are not overriding interests under s 46 will be overreached. Furthermore, in accordance with the mirror principle outlined above, a *bona fide* purchaser need not concern himself with any unregistered interests, notwithstanding any common law or equitable rules to the contrary (s 47(1)), even if he knows of the existence of an unregistered interest which has not been protected by a caveat (s 49(2)).

45 As such, in the light of the framework underlying our land titles regime, we are of the view that even though crystallised possessory title in land which remains unregistered land as at 1 March 1994 is preserved by s 177(3) of the 1993 LTA, and even though the documentary owner's rights to the affected land would have been extinguished at common law upon the expiry of the 12-year limitation period, when the land in question becomes registered land, the documentary owner still appears as the registered proprietor of the entire parcel of land, including the part affected by adverse possession, in the land register (see [33] above). The adverse possessor may protect his possessory title by lodging a caveat while the registered proprietor's title remains qualified, as stated in s 27(2). However, if he does not do so, once the registered proprietor's title becomes unqualified, the former's rights which were preserved by s 177(3) of the 1993 LTA will effectively lapse: s 25(5) read with s 46(1) of the new LTA.

46 Before us, the respondent argued that there is nothing in either the 1993 LTA or the new LTA which requires the adverse possessor to lodge a caveat upon the land in question becoming registered land. In our view, the absence of explicit legislative provision to this effect is immaterial. Having regard to the principles underlying the Torrens system as a whole and the legislative intent behind the new LTA, it seems to us that an adverse possessor of unregistered land must give notice of his interest by lodging a caveat when the land is subsequently converted to registered land. To hold otherwise could lead to a scenario where many years after title to a plot of registered land becomes unqualified, the registered proprietor discovers that his land is in fact encumbered by an adverse possessor's claim. This would make a mockery of the indefeasibility of title which s 46 of the new LTA is meant to confer on a registered proprietor, especially if the latter is a *bona fide* purchaser as opposed to the proprietor of the land at the time of its conversion to the Torrens system. Indeed, the judge in *Liwen Holdings* appeared to have also overlooked the fact that the registered proprietor there was not the owner of the land at the time it became registered land in June 1994, and purchased the property only two years later in June 1996.

47 Finally, we note in passing the first instance decision in *Fones Christina v Cheong Eng Khoon Roland* [2005] SGHC 87. There, the judge, citing *Balwant Singh*, held at [33] that:

> [T]he defendant's possessory title had already crystallised before 20 December 1966 when No 12 was brought under the provision of the 1956 LTO [the Land Titles Ordinance 1956]. Accordingly, the plaintiff's title to the strip of land in issue was extinguished by the operation of the Limitation Ordinance in force at the material time when No 12 was still under the common law system. The plaintiff's claim in this action therefore fails.

As this case is the subject of a pending appeal before this court, we do not intend to comment on it

at present except to reiterate a point which we made earlier (at [27]–[28]), namely, that *Balwant Singh* is not authority for the proposition that s 50 of the new LTA is inapplicable in all cases where possessory title is acquired before the land in question becomes registered land. We emphasise again that in *Balwant Singh*, the land in respect of which adverse possession had crystallised was still unregistered land as at 1 March 1994.

Our decision

48 To summarise, the object of the 1993 LTA was to abolish adverse possession as a means of acquiring title to land, whether registered or unregistered, subject to the saving provisions for possessory title already acquired as at 1 March 1994 when this Act came into operation. In dealing with adverse possession claims, the key question to consider is whether or not the land was registered land on that date. If the land was already registered land by that time and 12 years of adverse possession had not been completed yet, s 50 of the new LTA would preclude the adverse possessor from perfecting his inchoate title. In contrast, if the land was registered land as at 1 March 1994 and possessory title had already been acquired, such title would be upheld only if the case came within s 172(7) or the adverse possessor complied with s 172(8). As for land which was still unregistered as at 1 March 1994, if possessory title had not crystallised by then, the adverse possessor would likewise no longer be able to perfect his inchoate interest in view of s 9(3) of the Limitation Act. In contrast, possessory title to such land which had already been acquired by 1 March 1994 would be preserved by s 177(3) of the 1993 LTA. Upon the land becoming registered land, however, such accrued possessory rights would remain protected only if the adverse possessor lodged a caveat in respect of his interest while title to the land was qualified.

49 Reverting to the present case, No 45 was converted to registered land in March 1985 with the issue of a qualified title. The first purchasers of the property after its conversion were the Eapens in 1989. They held it for some 13 years and sold it to the appellant on 23 December 2002 who, a year later, had the caution on the title removed on 23 December 2003. No caveat was lodged by Leonard or the respondent at any time before the title became unqualified.

50 On these facts, it is clear to us that since No 45 was already registered land as at 1 March 1994, the present case falls within the transitional provision of s 172(8), read with s 50, of the new LTA. In this respect, the judge in the court below was wrong to find that the disputed strip was not registered land before 1 March 1994. The respondent (or her predecessor-in-title) should have, as prescribed, applied for a possessory title within six months of 1 March 1994. Not having done so, the possessory title lapsed, notwithstanding the fact that it had crystallised long before 1 March 1994.

51 As we have stated above (at [38]), the situation in *Balwant Singh* was quite different from that in the present case. In *Balwant Singh*, the land in question was still unregistered land as at 1 March 1994. Thus, ss 50, 172(7) and 172(8) of the new LTA could have no application. Pursuant to s 9 of the Limitation Act as amended and read with s 177 of the 1993 LTA, a possessory title to unregistered land already acquired as of that date was not to be affected by the abolition of adverse possession as a means of acquiring title to such land. Therefore, when the land in *Balwant Singh* was converted to registered land with a qualified title in June 1994, it was subject to the adverse possessor's existing rights. It must also be remembered that the adverse possessor in *Balwant Singh* lodged a caveat against the title while it was still qualified.

52 Accordingly, we would allow this appeal and declare that the appellant's title to the disputed strip has not been extinguished by the respondent's adverse possession. The appellant shall have the costs of these proceedings, here and below.

Appeal allowed.

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