TSM Development Pte Ltd v Leonard Stephanie Celine nee Pereira
[2005] SGHC 42

Case Number : OS 925/2004

Decision Date : 01 March 2005

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Hee Theng Fong and Paul Tan (Hee Theng Fong and Co) for the plaintiff; Gan Hiang Chye and Ang Keng Ling (Khattar Wong and Partners) for the defendant

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

Land – Adverse possession – Defendant occupying land under common law system from 1971 to 1983 – Land brought under Land Titles Act in 1985 – Whether defendant entitled to claim adverse possession of land – Sections 50, 172(7), 172(8) Land Titles Act (Cap 157, 1994 Rev Ed)

Land – Caveats – Adverse possession by defendant of land under common law system – Whether defendant required to lodge caveat to protect interest – Section 42(3) Land Titles Act (Cap 157, 1985 Rev Ed)

1 March 2005

Lai Siu Chiu J:

The facts

1 TSM Development Pte Ltd ("the plaintiff") applied by the above originating summons ("the application") against Stephanie Celine Leonard *née* Pereira ("the defendant") for the following orders:

> 1. a declaration that the portion of land as indicated in the Topographical Survey referred to in the affidavit of **TAN TIEN SENG** … made in support of the [plaintiff's] application filed on 16 July 2004 ("the [Plaintiff's] Affidavit") between:
>
> a. legal boundary of 43 and 45 Cotswold Close (edged and indicated in red); and
>
> b. the chain fence (edged and indicated in purple) and brick wall (edged and indicated in green), on 45 Cotswold Close.
>
> ("the Land in Dispute") is not subject to any adverse possession rights by the Defendant and all legal and beneficial rights title and interests are retained by the [plaintiff];
>
> 2. the Defendant returns possession of the Land in Dispute to the [plaintiff] and an injunction to restrain the Defendant, her servants, agents, contractors or otherwise howsoever whosoever from remaining, entering or using the Land in Dispute;
>
> 3. the Defendant do at her own expense and costs within a reasonable period and minimal disruption to 45 Cotswold Close:
>
> a. remove the existing chain fence and brick wall on 45 Cotswold Close and to replace a new chain fence and brick wall along the legal boundary of 43 and 45 Cotswold Close indicated in the Topographical Survey referred to in the [Plaintiff's] Affidavit;
>
> b. repair and reinstate the garden landscaping works and the retaining and front brick

wall around the Land in Dispute after installing the new chain fence and brick wall as reasonably possible to its original condition;

c. ensure that all drainages and rebuilding works pursuant to reinstating the Land in Dispute are in compliance with Building & Construction Authority's and/or Land Transport Authority's regulations and directions (if any) and all necessary consents for such works are obtained (paragraphs 3(a), 3(b) and 3(c) collectively referred to as "the Reinstatement Works"); and

d. if the Defendant fails to comply with any of the sub-clauses hereinabove, the [plaintiff is] entitled to engage a contractor to conduct the Reinstatement Works and the Defendant will indemnify the [plaintiff] in full, the costs and expense of the Reinstatement Works;

4. mesne profits and/or damages from the date of trespass until the delivery of possession;

5. interests;

6. costs on an indemnity basis; and

7. such other reliefs as this Honourable Court shall deem fit.

2 I dismissed the application and granted, *inter alia*, the defendant's cross-application for a declaration that she and her predecessors-in-title had been in continuous adverse possession of the Land in Dispute as defined in the application (see [1] above) and that all rights, title and interest of the plaintiff or any person claiming under the plaintiff to that land had been extinguished by reason of the provisions of the Limitation Act (Cap 163, 1996 Rev Ed). The plaintiff has appealed against my decision (in Civil Appeal No 118 of 2004).

The affidavits

3 As stated earlier, the application was supported by an affidavit filed by the plaintiff's director Tan Tien Seng ("Tan") who described the plaintiff as a property acquisition and development company. The plaintiff had purchased 45 Cotswold Close ("No 45") on 23 December 2002. The defendant's property, 43 Cotswold Close ("No 43"), adjoins No 45.

4 Before proceeding further, it is necessary to set out the chain of titles of the parties to the two properties in question. I reproduce below from the defendant's affidavit, the chart which shows how the plaintiff and the defendant derived their titles to No 45 and No 43 respectively. Both properties were originally part of a landed housing estate called Braddell Heights Estate developed by a company called Braddell Heights Estate Limited ("the developers") in the 1950s.

BRADDELL HEIGHTS ESTATE LTD (DEVELOPER)

Housing Estate called "Braddell Heights Estate"

↓

———————————————————————————

↓ ↓

No. 45 Cotswold Drive No. 43 Cotswold Drive

↓	↓
1951 – Bhermul Atmaram Lalwani (son of Atmaram)	1951 – Chang Hoi Phin
Conveyance Vol. 1102 No. 43	Conveyance Vol. 1107 No. 152
↓	↓
1963 – Chua Chee Ming	↓
Conveyance Vol. 1489 No.164	
↓	↓
1968 – Chua Fond Nam, Helen Wan Moon Yeen & Wang Yuen Ngian	↓
Conveyance Vol. 1871 No. 75	
↓	↓
1971 – Chee Hoe Hong (Private) Limited	1971 – Edward George Leonard
Conveyance Vol. 1871 No. 75	Conveyance Vol. 1845 No. 131
↓	↓
23.3.1985 – Conversion to Land Titles Act system of registration	↓
↓	↓
2002 – TSM Development Pte Ltd	↓
	2003 – Mrs Leonard Stephanie Celine née Pereira

5 I will first elaborate on the plaintiff's title to No 45. In 1951, the developers sold the property to one Bhermul Atmaram Lalwani ("Lalwani"). In 1963, Lalwani sold the property to one Chua Chee Ming who sold it in 1968 to Chua Fond Nam and two others. In 1971, Chua Fond Nam and his co-owners sold the property to Chee Hoe Hong (Private) Limited ("the company"). On 23 March 1985, while the company was still the owner, the property was brought under the Land Titles Act by the Registrar of Titles ("the ROT"). Pursuant to the conversion exercise, a qualified certificate of title (Vol 277 Folio 182) was issued by the ROT.

6 In 1989, the company sold No 45 to Roy and Carol Eapen ("the Eapens"). The Eapens subsequently sold the property to the plaintiff and the Transfer to the latter was dated 23 December 2002. The caution on the certificate of title for No 45 was cancelled (at the request of the plaintiff's solicitiors) on 23 December 2003.

7 As for the defendant's property, No 43 was first sold to one Chang Hoi Phin in 1951. In 1971, Chang Hoi Phin sold No 43 to Edward George Leonard ("Leonard"), the defendant's husband. The Indenture of Conveyance to Leonard was dated 3 April 1971. A qualified certificate of title was issued for No 43 on 8 May 1976. Leonard passed away on 8 April 2003 and title to No 43 devolved to the defendant as the sole beneficiary under his will. The Transfer to the defendant was registered on 3 December 2003. On the same day, the caution on the certificate of title was cancelled.

8 According to Tan's affidavit, the plaintiff arranged for a boundary map to be made of No 45 in September 2003 by T H Lim Registered Surveyor ("the plaintiff's surveyor"). The plaintiff's surveyor

carried out a topographical survey of No 45 which indicated that the existing chain fence and brick wall separating the property from No 43 was not erected on the legal boundary but on the compound of No 45. The encroached portion, *viz* the portion of land between: (a) the legal boundary of the two properties and (b) the chain fence and brick wall, is the Land in Dispute referred to in the application. The plaintiff's surveyor filed a separate affidavit to confirm his survey findings.

9 Unaware of his demise, the plaintiff wrote to Leonard on 12 September 2003 to inform him of the unlawful encroachment and requested that he rectify the situation by setting the chain fence back to the legal boundary line. The plaintiff's solicitors only discovered from a search conducted in the Registry of Titles, that No 43 had been transferred to the defendant on 3 December 2003 by a grant of probate.

10 Tan deposed that the plaintiff's solicitors' letter of 12 September 2003 received a reply dated 10 December 2003 from the defendant's solicitors in which they claimed that the defendant and her predecessors-in-title had been in adverse possession of the Land in Dispute for the past 30 years.

11 On 14 January 2004, the plaintiff's solicitors wrote to the defendant's solicitors to reject her claim of adverse possession and requested for evidence in support thereof. No evidence was furnished by the defendant to support her claim that the chain fence had been in place "all these years". Consequently, the plaintiff filed the application.

12 In her affidavit, the defendant deposed that when she and Leonard first viewed and inspected No 43 in 1971 (they were then already married), the present day chain fence was already in existence and divided the two properties. Immediately next to the chain fence on the side of No 45 were a few mature trees. No 45 slopes gently towards No 43. Next to the chain fence on the side of No 43 was a 3ft high brick wall that still stands today.

13 According to the defendant, over the years before his demise, her husband (and she) had used the plot of land next to the brick wall on the side of No 43 as a garden to plant trees, palms, flowering plants and other foliage. She exhibited photographs taken as far back as June 1972 and as recent as 2004 to support her claims. She asserted she (and her husband before his demise) had been in continuous occupation of No 43 and the Land in Dispute since 1971.

14 The defendant deposed that before the plaintiff became its owner, all previous occupants of No 45 had never claimed the Land in Dispute as part of No 45. None of those occupants had attempted to breach the chain fence to cross over to No 43. Had they done so, she and her husband would have treated them as trespassers.

15 The defendant disputed the findings in the topographical survey done by the plaintiff's surveyor; the survey included, within the legal boundary of No 45, land that was more than the Land in Dispute. She had shown the topographical survey to a registered surveyor, Leong Kai Weng, who had carried out a survey on her behalf and which survey cured the shortcomings in the topographical survey. The survey showed the Land in Dispute to be very close to the front gate of No 43.

The submissions

16 Mr Hee, counsel for the plaintiff, relied on ss 50, 172(7) and 172(8) of the Land Titles Act (Cap 157, 1994 Rev Ed) ("the Act") for his submissions. The Act has since been replaced by the Land Titles Act (Cap 157, 2004 Rev Ed) ("the revised edition") but the provisions remain the same. The pertinent sections in the Act read:

No title by adverse possession

50 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.

Savings

172.—(1) ...

(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 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 such 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 such date.

17 Section 177 of the Land Titles Act 1993 (Act No 27 of 1993), which is also relevant, reads as follows:

Amendment of the Limitation Act

177.—(1) Section 9 of the Limitation Act is amended by inserting immediately after subsection (2), the following subsection:

(2) Section 16 of the Limitation Act is repealed.

(3) Nothing in this section 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.

18 The repealed Act referred to in s 172 of the Act (and the corresponding provision in the revised edition) was the Land Titles Act (Cap 157, 1985 Rev Ed) and will henceforth be referred to as "the repealed Act". The 1993 Act will henceforth be referred to as "the 1993 Act".

19 Mr Hee argued that the above sections of the Act (which came into effect on 1 March 1994) meant that the defendant could no longer claim adverse possession to defeat the plaintiff's title to the Land in Dispute, as she had failed to comply with the requirements of ss 172(7) and 172(8) thereof. He added that s 177(3) of the 1993 Act did not apply as the Land in Dispute was not unregistered land as at 1 March 1994. He relied on *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726 ("*Balwant Singh*") and *Liwen Holdings Pte Ltd v Ng Ker San* [2001] 2 SLR 533 to support his submission.

20 Mr Gan, counsel for the defendant, on the other hand interpreted the two cases as supporting the defendant's claim to adverse possession of the Land in Dispute. He distinguished the defendant's situation from the facts in *Ho Lam Phoh v Tan Swee Beng* [1998] 3 SLR 629 and *Shell Eastern Petroleum (Pte) Ltd v Goh Chor Cheok* [2000] 1 SLR 45 ("*Shell Eastern Petroleum*"). *Tan Siok Gek v Ng Kim Neo* [1997] 2 SLR 691 and *Lo Sook Ling Adela v Au Mei Yin Christina* [2002] 1 SLR 408 were also relied on by Mr Gan for his submission that the defendant's claim to adverse possession had already crystallised before the application and the plaintiff's attempt to obtain a declaration to the contrary came too late in the day.

The cases

21 As both parties relied on the same authorities to support opposite arguments, I now turn to consider them, starting with *Balwant Singh*.

22 In that case, the Court of Appeal (whose judgment was delivered by Goh Joon Seng J) in allowing the appeal, held (according to the headnote of the revised edition of the report):

> (1) As of 1 March 1994, there were only three categories of claims for adverse possession: (a) for land under the common law system, the adverse possessor must have had at least 12 years of adverse possession as of 1 March 1994 to make a claim and rely on s 177(3) of [the 1993 Act] to preserve his title; (b) for registered land held under the provisions of the repealed Act, the adverse possessor could rely on s 172(7) and (8) of [the Act]; and (c) for registered land held under the provisions of [the Act], no adverse possession claims were allowed unless s 172(7) or (8) applied.
>
> (2) Section 50 of the new Act was not retrospective in operation and applied 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 which had crystallised. In the latter situation, the title of the documentary owner would already have been extinguished at the time of the conversion to registered land.
>
> (3) In this case, as the land was only registered after 1 March 1994, s 177(3)(a) and (c) of [the 1993 Act] applied. Since Balwant [the appellant] had completed the requisite 12 years' possession before the land was registered, his title was preserved by s 177(3) and s 50 did not apply to defeat his claim.

23 In *Balwant Singh*, the material dates were as follows:

(a) In 1971, Balwant purchased Lot 3886 Mukim 27 ("Balwant's lot") with a house to be known as 114 Jalan Langgar, Bedok, then under construction.

(b) Balwant went into occupation of his house on 18 July1973.

(c) Part of Lot 235-25, Mukim 27 ("Lot 235-25") with a triangular area of 70.4m² (the disputed lot) was contiguous to Balwant's lot. It was enclosed on two sides (including the part bordering Balwant's lot) by a chainlink fence;

(d) Balwant removed the chain link fence and annexed the disputed lot to his land. He claimed to be in uninterrupted possession of the disputed lot since September 1973, having maintained and turfed the previously unkempt area with carpet grass.

(e) In 1941, one Thulasi Velayutham ("Thulasi") entered into occupation of Lot 235-25. He built a single storey wooden house and lived there with the knowledge of its owner Dr V K Samy.

(f) On 17 December 1993, Thulasi obtained a consent judgment against the estate of Dr V K Samy, declaring himself to be in adverse possession of and the owner of Lot 235-25. The consent judgment was registered in the Registry of Deeds on 22 December 1993.

(g) On the same day, Thulasi conveyed Lot 235-25 (including the disputed lot) to Double L & T Pte Ltd ("Double L").

(h) On 20 June 1994, Lot 235-25 (including the disputed lot) was brought under the provisions of the Act, with Double L as the registered proprietor under a qualified certificate of title.

(i) On 17 February 1995, Balwant lodged a caveat against Lot 235-25 claiming an interest in the disputed lot as an adverse possessor.

24 Mr Hee argued that as the defendant had failed to lodge a caveat (which the appellant did in *Balwant Singh*), she had lost her right to claim adverse possession. Mr Gan, however, submitted that the holding of the Court of Appeal in sub-para (3) of [22] above, supported his client's claim. As the defendant had occupied the Land in Dispute without interruption since 1971, she had completed 12 years of adverse possession by 1983. Since No 45 was only converted to registered land on 23 March 1985 *after* the defendant's rights as adverse possessor had already crystallised, she had extinguished the rights of the plaintiff and its predecessor- in-title. The defendant was not obliged to take any action to preserve her claim, let alone file a caveat. Neither s 50 of the Act nor s 177(3) of the 1993 Act applied to the defendant. Indeed, s 177(3) of the 1993 Act applied to the plaintiff, as limitation had set in after 1983 to extinguish the title of its vendor, the company, when the defendant acquired possessory title to the Land in Dispute. The plaintiff could no longer claim that land by the application.

25 To reinforce his argument, Mr Gan referred to *Lo Sook Ling Adela v Au Mei Yin Christina* ([20] *supra*) where the Chao Hick Tin JA, delivering the judgment of the Court of Appeal, said (at [5]):

> In 1994, a significant change in the law took place in Singapore, By virtue of what is now s 50 of the Land Titles Act (Cap 157, 1994 Ed) no one may, after 1 March 1994, acquire any registered land by adverse possession. *But the new law does not affect a person who has been in adverse possession of registered land for 12 years or more before 1 March 1994. In other words, the new law does not affect title already acquired by adverse possession*: *Balwant Singh …*

[emphasis added]

26 The principles enunciated in *Balwant Singh* were followed in the subsequent cases cited in [20] above. Coincidentally, Goh Joon Seng J, who delivered the judgment in *Balwant Singh*, also delivered the judgment of the Court of Appeal in *Ho Lam Phoh v Tan Swee Beng*. The headnote in the revised edition of the report reads as follows:

> The appellant and the respondent Tan were owners of adjoining properties. A retaining wall and fence, which demarcated the boundary between their respective properties encroached onto Tan's property. The retaining wall and fence was erected latest by 1971, when both parties' properties were developed as part of a housing estate. Both the appellants and Tan were not the original owners of their property. On 24 June 1974, the appellants' property was converted to registered land and the same was done for Tan's property on 20 June 1984. Tan was issued with a qualified certificate of title. When Tan discovered the encroachment by the retaining wall and fence, he requested that the appellants set back the wall, but they refused. Tan then commenced these proceedings for an order, inter alia, to resite the retaining wall and fence to its proper boundary line. The [trial] judge agreed and the appellants appealed, claiming adverse possession over that portion of Tan's property.

27 In dismissing the appeal, the Court of Appeal held that the appellants had no claim under the common law system or under the registered land titles system. The disputed land was registered land as at 1 March 1994. As such, ss 172(7) and 172(8) of the Act applied. Since the appellants did not lodge any application for possessory title or apply to court for an order to vest the title in them, their claim was abolished by s 50 of the Act.

28 Mr Gan drew the court's attention to an extract at 636, [12] of the judgment where Goh J said:

> [T]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 Act].

29 It would not be necessary to review *Liwen Holdings Pte Ltd v Ng Ker San* ([19] *supra*) since Tay Yong Kwang JC (as he then was) followed *Balwant Singh* in arriving at his decision to allow the claim of the adverse possessor.

30 I turn my attention instead to *Shell Eastern Petroleum* which case also followed *Balwant Singh*. However, the parties differed in their understanding of Warren L H Khoo J's judgment. Mr Hee had relied on this case to buttress his argument that the defendant needed to lodge a caveat to preserve her rights as an adverse possessor against a *bona fide* purchaser for value (*viz* the plaintiff). As she failed to do so, her claim failed. Mr Gan, on the other hand, submitted that his opponent had misread Khoo J's following remarks which were, in any case, *obiter*:

> 12 Similarly, in the instant case, the plaintiffs' title to the disputed land had been extinguished when the land was brought under the provisions of the Act. The failure of the defendants to lodge a caveat would only have had an adverse effect on them in relation to a purchaser from the plaintiffs. Vis-à-vis the plaintiffs as the original registered proprietor against whom the defendants had acquired title by adverse possession, the absence of a caveat had no effect on the defendants' title.
>
> 35 It is my conclusion, therefore, that the defendants' adverse title, which had matured

long before the land was brought under the provisions of the Land Titles Act, remains valid notwithstanding the fact that they never lodged any caveat while the land was subject to qualified title and notwithstanding that the plaintiffs' title has since become unqualified as a result of the cancellation of the caution. The defendants' title, however, stands on an extremely precarious footing. It is exposed to the risk of being over-reached by a purchaser from the plaintiffs, as it has not been notified on the register. That is a consequence to which all persons who have an interest in registered land which is not within the exceptions in s 46 or which has not been notified on the register, are exposed. Whether the defendants can still protect their interest by lodging a caveat in accordance with the general provisions of s 115 is not a matter before me.

31 Khoo J dismissed the plaintiffs' claim. He noted at [35] that the defendants' adverse title had matured long before the land was brought under the provisions of the Land Titles Act. It remained valid notwithstanding that the defendants did not lodge any caveat while the land was the subject of a qualified title and notwithstanding that the plaintiffs' title had since become unqualified as a result of the cancellation of the caution.

32 The chronology of events in *Shell Eastern Petroleum* was as follows:

(a) In 1961, there was encroachment by the defendants of the plaintiffs' land.

(b) In 1973, 12 years of adverse possession was completed by the defendants.

(c) In 1992, the plaintiffs' land was converted to registered land and a qualified certificate of title was issued.

(d) In 1993, the Act abolished adverse possession.

(e) In 1996, the caution on the certificate of title was cancelled.

(g) In 1997, the plaintiffs commenced Originating Summons No 827 of 1997 against the defendants.

33 In the course of his judgment (before making his remarks as set out in [30] above), Khoo J had also referred to the Court of Appeal's judgment (delivered by Chan Sek Keong J) in *Wong Kok Chin v Mah Ten Kui Joseph* [1992] 2 SLR 161. I shall return to this case later.

34 Mr Gan pointed out that neither counsel nor Khoo J referred to *Tan Siok Gek v Ng Kim Neo* ([20] *supra*). In that case, Choo Han Teck JC (as he then was), in allowing the plaintiff's claim for adverse possession, said (at [12]):

The plaintiffs in this case acquired [her] interest by way of adverse possession even before the land was brought under the LTA. Upon her acquisition, the defendants' rights were correspondingly extinguished. Hence, by the time the defendants' property was brought under the LTA in 1992, the property so converted was the original plot less the strip of land adversely possessed.

The decision

35 I disagreed with Khoo J's views and rejected the plaintiff's argument that the defendant was required to, but had failed, to file a caveat or comply with ss 172(7) and 172(8) of the Act in order to

assert her rights as an adverse possessor. With respect, that is not the requirement either under the Act or established case law, in particular, *Balwant Singh*.

36 The chronology set out in [4] above showed that Leonard, together with the defendant, had completed 12 years of adverse possession by 1983 since their occupation of the Land in Dispute began at the latest on 3 April 1971, that being the date of the Indenture of Conveyance. By 1983, Leonard had obtained an indefeasible title to, and had extinguished, the title of the then owner, *viz*, the company (see [5] above) to the Land in Dispute. When No 45 was brought under the Act two years later on 23 March 1985, the Land in Dispute was not part of the registered land as it was no longer owned by the company. Hence, when No 45 was transferred to the plaintiff on 23 December 2002, the plaintiff did not have any title to the Land in Dispute. It is trite law that a vendor cannot convey to a purchaser a better title than what he has. I should point out at this juncture that the plaintiff did not dispute the facts the defendant had deposed to in her affidavit. Consequently, the fact of her adverse possession of the Land in Dispute since 1971 was not denied.

37 Mr Hee's arguments, relying on ss 172(7) and 172(8) of the Act, were misconceived. The two subsections specifically referred to adverse possession of "registered land". The Land in Dispute was not registered land before 1 March 1994; it was common law land up to 23 March 1985. The defendant therefore came within the first category of claims for adverse possession – she had more than 12 years of uninterrupted occupation as of 1 March 1994. *Balwant Singh* (see [22] above) also made it clear that s 50 of the Act was not retrospective in operation. Subsequent events (conversion of No 45 to registered land) cannot overreach the defendant's prior existing rights as an adverse possessor.

38 Earlier at [33], I had adverted to *Wong Kok Chin v Mah Ten Kui Joseph.* That case centred on s 42(3) of the repealed Act which stated:

> 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.

Khoo J was probably influenced by the case when he made his comments on the need for an adverse possessor to lodge a caveat to protect his interest.

39 In *Wong Kok Chin v Mah Ten Kui Joseph*, the encroachment by the respondent of the appellant's land began in 1969 when the parties became registered proprietors of adjoining lots of land. The appellant's land was brought under the provisions of the Land Titles Act (Cap 276, 1970 Rev Ed) on 23 August 1974 and a qualified certificate of title was issued in respect thereof. The respondent's solicitors notified the appellant on 10 June 1988 that his title to the encroached land had been extinguished. On 16 June 1988, the respondent erected a new fence in the same position as the previous fence which the appellant had taken down. On 23 June 1988, the appellant lodged a notice of reassertion of ownership under s 44 of the repealed Act (referred to in the judgment as "the LTA"). On 27 June 1988, the respondent lodged a caveat against the appellant's property claiming an interest as adverse possessor in the encroached land. In his judgment, Chan Sek Keong J held, *inter alia* (according to the headnote of the report):

> (3) The respondent's inchoate interest had crystallized into an indefeasible right against the appellant by December 1981. The appellant's title was extinguished long before he lodged his reassertion of ownership. The lodgement of the reassertion of ownership could not have the effect of reviving a title which had been extinguished by limitation. …

(4) The appellant's contention that the respondent's right of adverse possession had been lost when he failed to lodge his caveat in time was not acceptable. It is clear from s 20 of the LTA that until the registered proprietor of land held under a qualified title obtains the cancellation of the caution on his certificate of title, his title will always be subject to subsisting interests affecting his title. The caveat referred to in s 42(3) is intended to protect the rights of an adverse possessor against a purchaser and not against the registered proprietor. The right of an adverse possessor in a situation envisaged by s 42(3) can only be defeated by a purchaser where such right is not protected by caveat, or by the registered proprietor lodging a reassertion of ownership before his title has been extinguished by limitation.

40 The following passage from his judgment (at 166, [15]) is illuminating on the rights of an adverse possessor:

> The second problem arises from the nature of an adverse possessor's rights in land. He does not acquire the proprietary interest or title of the dispossessed owner of the land. Limitation merely has the effect of extinguishing the title of the true owner. Once extinguished, no corresponding title can vest in the adverse possessor. But, because the true owner is barred by law from recovering possession of the land from the adverse possessor, the latter has thereby acquired a possessory right which is indefeasible by anyone. For that reason, his possessory title is as good as any other title the law can provide.

41 Apart from alerting the registered proprietor (which would not be the desired effect), what purpose would have been served by the lodgment of a caveat by the defendant? Assuming she did lodge a caveat soon after 23 March 1985. The company could not have taken any legal steps to defeat the defendant's possessory title which had crystallised two years earlier. At best, the caveat would have enabled the plaintiff to obtain a reduction of its purchase price ($4.15m) in 2002. When the caution on the plaintiff's certificate of title was cancelled in December 2003, it was far too late and had no effect on the defendant's possessory title either.

42 If indeed a caveat was required to be filed by the defendant, the holding of Chan J in sub-para (4) of [39] above made it clear it was intended to protect her possessory rights against a purchaser, not against the registered proprietor. The plaintiff was *not* a purchaser but a registered proprietor. Even if I am wrong on this count and the plaintiff can be said to be a *bona fide* purchaser for value, I find it difficult to believe that Tan, or any other representative of the plaintiff, could not have noticed that the Land in Dispute was outside the fence of No 45. Indeed, the vendors, *viz*, the Eapens, would have been very surprised had they been told that what they sold to the plaintiff included land over their neighbour's fence. I note too that the Eapens' option to purchase dated 29 August 2002 addressed to "Chia Quee Hock" or nominee (but subsequently exercised by the plaintiff), only referred to No 45 without identifying the lot and/or mukim and/or area of land.

43 I applied the principles laid down in *Balwant Singh* and in subsequent cases. Consequently, I dismissed the application, granted the defendant's cross- application and, *inter alia*, ordered the issue of a separate certificate of title to the defendant for the Land in Dispute, after registering my order vesting the legal, equitable and possessory title of the Land in Dispute in the defendant.

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