

City Developments Ltd v Estate of Syed Allowee bin Ally Aljunied, deceased
[2008] SGHC 237

Case Number : OS 126/2008
Decision Date : 22 December 2008
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Kenneth Pereira and Rajaram Muralli Raja (Allen & Gledhill LLP) for the plaintiff;
Leslie Netto and Bevin Netto (Netto & Magin LLC) for the interested parties;
Syed Noah Aljunied in person
Parties : City Developments Ltd — Estate of Syed Allowee bin Ally Aljunied, deceased

Land – Adverse possession – Physical possession – Intention to possess – Categories of adverse possession claims – Plot of unregistered land – Developer bought land which enclosed plot – Whether developer, through predecessors of land, was entitled to plot by adverse possession – Whether 12-year period necessary to establish title by adverse possession could be constituted by aggregate of separate but continuous periods of adverse possession by different people – Whether adverse possessor had to know he was trespassing on another's land – Section 177(3) Land Titles Act 1993 (Act 27 of 1993) and s 9 Limitation Act (Cap 163, 1996 Rev Ed)

22 December 2008

Tay Yong Kwang J:

Introduction

1 The plaintiff, City Developments Limited, commenced this originating summons (“OS 126”), seeking a declaration that it is entitled to and that it be vested with the legal possessory title of a strip of unregistered land known as Lot 1019M of Town Sub Division 28 (“the plot”), which measures some 324 square metres. The plot is situated off Buckley Road in the Newton area. The basis of the plaintiff’s claim is that the plaintiff, through its predecessors, have been in adverse possession of the plot for a continuous period of 12 years prior to 1 March 1994 and that the rights and title of the defendant or his personal representatives or any person claiming an interest in the plot have been extinguished by virtue of the Limitation Act (Cap 163, 1996 Rev Ed). The defendant, Syed Allowee Bin Ally Aljunied deceased (“Syed Allowee”), is the last known owner of the plot as listed in the Registry of Titles. After the substituted service of OS 126 was effected, one Syed Noah Aljunied (“Syed Noah”) came forward claiming to be the great grandson of Syed Allowee. Two other persons, Harun Bin Syed Hussain Aljunied @ Harun Aljunied (“Harun”) and Sharifah Fatimah Binte Abdul Kader Aljunied, also came forward claiming to be interested parties in the estate of Syed Allowee. The latter two were joined in these proceedings as interested parties by Judith Prakash J at the first hearing of OS 126 on 13 March 2008.

2 After hearing the parties, I allowed the plaintiff’s application and held that the plaintiff was the rightful owner of the plot by adverse possession. I made no order on costs.

The facts

3 The plaintiff is a public listed company engaged in the business of real estate investment and development. In September 1999, the plaintiff purchased a property known as Lot 178V of Town Sub Division 29 (“the property”) from Kerr Leong Heng Private Limited (“KLH”) for the purposes of

redeveloping the property into residential apartments. KLH was in possession of the property since 1981 and it built the existing block of apartments on the property.

4 Unknown to KLH and the plaintiff (at the time when it purchased the property), the land occupied by KLH and subsequently the plaintiff enclosed both the property and the plot by a chain link fence ("the fence"). The plot was a thin strip of land situated right at the back of the property and it was landlocked by all the surrounding properties so that it had no access whatsoever to any road. The fence separated both the property and the plot from the neighbouring properties. Both KLH and the plaintiff had thus assumed that all the land enclosed by the fence was their property. It was only sometime in August 2000 while preparing its development plans that the plaintiff discovered that the fence also enclosed the plot. Upon further investigations, it was found that the plot was one of the five child lots belonging to a parent lot, *ie*, Lot 311N of Town Sub Division 28 ("the parent lot") that had been partitioned in a successful petition for adverse possession by the plaintiff's neighbours under originating summons 119 of 1996 ("OS 119").

5 The plaintiff's initial searches on the plot revealed that Syed Allowee was the last known owner of the plot listed in the Registry of Titles. He was thus named as the defendant. Despite its efforts, the plaintiff was unable to locate the last known address or identification number of Syed Allowee. It therefore applied for substituted service of the court documents whereby advertisements were published in the local newspapers to invite the personal representatives of the estate of Syed Allowee as well as any other person who has an interest in the estate or is related to Syed Allowee to come forward. As mentioned, Syed Noah and the interested parties subsequently came forward to participate in the proceedings.

6 The interested parties are allegedly trustees of the Aljunied trust, which they claimed included properties held in trust by the estates of Syed Allowee and one Omar Bin Ally Aljunied. They became trustees of the Aljunied trust pursuant to an order of court in originating summons 69 of 1998 ("the Order of Court"). The interested parties averred that the plot was one of the trust properties and that the plot had actually been transferred by Syed Allowee to Omar Bin Ally Aljunied, both of whom held the plot in trust for the Aljunied trust.

7 In view of this, the plaintiff commissioned the law firm, Ramdas & Wong, to conduct an independent review of the title of the plot and a report was eventually produced ("the report"). The findings, unfortunately, were equivocal. The title search pointed to Syed Allowee as the owner. However, the plot was part of a much larger piece of land, in which a series of conveyances had taken place since Syed Allowee owned the plot in 1884. This larger piece of land was conveyed to Omar Bin Ally Aljunied but a series of further conveyances took place thereafter. The report concluded that the beneficial interest of the plot rested with four individuals, namely, Chung Boon Chiong, Toh Ah, Toh Eng Hong and Gan Tiong Liong.

8 Given the findings of the report, the plaintiff took up an application to place an advertisement in the local newspapers, inviting the personal representatives of the estates of Chung Boon Chiong, Toh Ah, Toh Eng Hong and Gan Tiong Liong and all other interested parties who may have an interest in the plot to come forward and make their interest known. To date, no one has come forward save for Syed Noah and the interested parties.

The parties' arguments

9 The plaintiff first submitted that the interested parties simply had no *locus standi* in the present proceedings. It averred that the interested parties were neither the direct descendants of Syed Allowee or Omar Bin Ally Aljunied nor had any links with their estates. The plaintiff also claimed that

the interested parties had deliberately obfuscated their standing by bringing a lineage going back to one Omar Bin Ally Aljunied, known as Sir Omar ("Sir Omar"), who was not the same person as Omar Bin Ally Aljunied (who shared the same name), to whom Syed Allowee had conveyed the plot. Further, the plaintiff pointed out, from the Order of Court, it could be deduced that the interested parties were only the trustees of the trust of the will dated 4 May 1984 of one Syed Ahmad Bin Abdulrahman Bin Ahmat Aljunied ("Syed Ahmad") and not the so-called Aljunied trust for the entire Aljunied family. The plaintiff further pointed out that the Order of Court listed the properties that were administered under this trust in an amended schedule annexed to the Order of Court and the plot was not one of them.

10 Secondly, the plaintiff submitted that, in any event, regardless of who the rightful owner of the plot was, it has established that its predecessors in title had adverse possession of the plot for the requisite period in law such that the plaintiff was now the rightful owner of the plot. I will deal with the evidence adduced by the plaintiff in support of its claim later in this judgment (see [25]-[28] below).

11 The interested parties maintained that, as trustees of the Aljunied trust, they have an interest in the plot and an undoubted right to challenge the plaintiff's claim to adverse possession of the plot. In Harun's affidavit filed on 5 May 2008, he explained that Sir Omar was one of the first Aljunieds that had come to Singapore and he had purchased many properties here, including the plot. Sir Omar subsequently set up a trust that was passed down eventually to the interested parties over the generations. It was the interested parties' contention that both Syed Allowee and Omar Bin Ally Aljunied were the sons of Sir Omar's cousin, Ali Bin Muhammad Bin Harun Aljunied (on this basis, Omar Bin Ally Aljunied was not Sir Omar and the interested parties could not be said to have deliberately equated the two as contended by the plaintiff) and that Syed Allowee had come to hold in trust some properties, including the plot, of the Aljunied family. The interested parties contended that Syed Allowee was not the rightful owner of the plot as it had been conveyed to Omar Bin Ally Aljunied and questioned if the proceedings could proceed with Syed Allowee as the named defendant. They further contended that, in any event, both Syed Allowee and Omar Bin Ally Aljunied held the plot in trust for the Aljunied trust.

12 On the question of adverse possession, the interested parties submitted that for the plaintiff to succeed in its claim for adverse possession, it was necessary for the plaintiff to show both physical possession and an intention to possess for a period of 12 years before 1 March 1994, *ie*, from 1 March 1982 to 28 February 1994. The interested parties argued that the plaintiff has failed to adduce evidence to prove both elements. In particular, where the intention to possess was concerned, they highlighted the fact that building plans drawn up by Descon Chartered Architects and Planners ("the Descon plans"), the architects of KLH, for planning permission had inserted a fence which excluded the plot. The interested parties contended that this must be written evidence of intention not to possess the plot during the relevant period. I will similarly deal with the rest of the evidence raised by the interested parties at the relevant part of this judgment below (see [29]-[30]).

13 Like the plaintiff, Syed Noah was of the view that the interested parties have no links whatsoever to the plot and thus have no *locus standi* in these proceedings. He claimed to be the direct descendant of Syed Allowee, who was his great grandfather. At the hearing, Syed Noah did not make any submissions that he or his siblings were entitled to the plot. He informed me that he was happy to let the court decide the issue of the ownership of the plot.

My decision

14 Flowing from the parties' arguments, the primary question to be decided is whether the plaintiff

has made out its claim for adverse possession. If the plaintiff succeeds in its claim, it would not really matter who the rightful owner of the plot is because the plaintiff would be entitled to the plot by virtue of adverse possession.

15 In my opinion, contrary to what the interested parties contended, there was nothing untoward in naming Syed Allowee as the defendant and there was no reason why the proceedings could not proceed with Syed Allowee as the named defendant. Syed Allowee was indeed the legal owner of the plot as listed in the Registry of Titles. I note that in OS 119 which concerned the plaintiff's neighbours' claim for adverse possession of the other child lots derived from the parent lot, Syed Allowee was also named as the defendant and the plaintiff's neighbours succeeded in their claim. The plaintiff has also made all reasonable attempts to find out who the true owner of the plot was and to invite all possible parties interested to come forward to take part in the proceedings (see [5] and [8] above). Indeed, Syed Noah and the interested parties have joined the proceedings and it would appear that all parties interested were already present.

16 The question who the rightful owner of the plot is would become relevant if I find that the plaintiff has not made out a case of adverse possession, but, as mentioned earlier, this is not the case here.

Law of adverse possession

17 The law of adverse possession in Singapore is well-settled after a series of decisions from the Court of Appeal on this topic. In short, with the enactment of the Land Titles Act 1993 (No 27 of 1993) ("the 1993 LTA") which came into effect on 1 March 1994, adverse possession in Singapore was abolished such that no land, registered or unregistered, may be acquired by way of adverse possession save under transitional statutory provisions (see the decisions of the Court of Appeal in *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726 ("*Balwant Singh*") at 732, *TSM Development Pte Ltd v Leonard Stephanie Celine nee Pereira* [2005] 4 SLR 721 ("*TSM Development Pte Ltd*") at [48] and *Fones Christina v Cheong Eng Khoon Roland* [2005] 4 SLR 803 ("*Fones Christina*") at [16]; see also Tan Sook Yee, *Principles of Singapore Land Law* (Butterworths Asia, 2nd Ed, 2001) at p 701). With the omission of some sections (including s 177(3), one of the transitional provisions) of the 1993 LTA, a revised edition of the Act was enacted in 1994 (Cap 157, 1994 Rev Ed) ("the 1994 LTA"), and in 2004, a further revised edition of the 1994 LTA, incorporating all prior amendments, was prepared and enacted (Cap 157, 2004 Rev Ed) ("the present Act"). These subsequent revisions did not alter the substantive law of adverse possession: s 50 of the 1993 LTA, which was the general provision that provided for the abolition of adverse possession for registered land save under the transitional provisions, remained as s 50 in the 1994 LTA as well as in the present Act; s 177(3) of the 1993 LTA, which preserves the possessory interest of unregistered land as of 1 March 1994 that had crystallised prior to 1 March 1994, remains in force to date by virtue of s 5 of Revised Edition of the Laws Act (Cap 275, 1995 Re Ed) (*Balwant Singh* at 732; *TSM Development Pte Ltd* at [14]); and the other two transitional provisions, namely ss 172(8) and 172(9) of the 1993 LTA, were renumbered as ss 172(7) and 172(8) in the 1994 LTA and subsequently as ss 174(7) and 174 (8) in the present Act.

18 In the recent decision of the Court of Appeal in *TSM Development Pte Ltd*, Chao Hick Tin JA ("Chao JA"), delivering the judgment of the court, considered at length the past local cases that have touched on adverse possession (after the enactment of the 1993 LTA) and summarised the present law as follows (at [48]; reaffirmed in the subsequent case of *Fones Christina* at [20]):

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 [ie, the 1994 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. [emphasis added]

19 In other words, there are three categories of adverse possession claims that are presently allowed under the transitional provisions, one for unregistered land and two for registered land (*Balwant Singh* at 732):

To sum up the position as of 1 March 1994, there were thus three categories of adverse possession claims. Firstly, for land held under the common law system if the adverse possessor did not have 12 years of adverse possession as of 1 March 1994, he would now not be able to make a claim — see s 9(3) of the Limitation Act. Conversely, if he had the requisite 12 years, he could rely on s 177(3) of the 1993 LTA to preserve his possessory title. Secondly, for registered land held under the provisions of the repealed LTA, the adverse possessor could rely on s 172(7) and (8) of the new LTA [ie, the 1994 LTA]. Thirdly, for registered land held under the provisions of the new LTA, no adverse possession claims are now allowed unless s 172(7) or (8) of the new LTA applies. [emphasis added]

20 As pointed out by Chao JA (see [18] above), it would thus be important to distinguish between registered and unregistered land for purposes of adverse possession claims and the relevant date for determining whether the land in question is registered or not for the purposes of such claims is 1 March 1994. If on *that* date, “the land had already been brought under the Torrens system.. then *regardless of* whether the adverse possessor’s right crystallised *before* or *after* the land was registered, s 50.. would apply” [emphasis added] (*TSM Development Pte Ltd* at [35]). Hence, even if the adverse possessor had been in possession of the land for more than 12 years prior to 1 March 1994, if the land was registered land as of 1 March 1994, s 50 would still apply and not s 177(3) of the 1993 LTA. In an earlier passage in *TSM Development Pte Ltd*, Chao JA, after referring to the case of *Balwant Singh*, emphasised this point as follows (at [28]):

... Section 50 of the new LTA [ie, the 1994 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). [original emphasis in italics]

21 It was for this reason that the High Court’s decision in *Shell Eastern Petroleum (Pte) Ltd v Goh Chor Cheok* [2000] 1 SLR 45 (“*Shell Eastern Petroleum*”), which held that an adverse possessor’s possessory interest over a piece of unregistered land that had crystallised in 1973 was preserved by

s 177(3) of the 1993 LTA although the land was subsequently converted into registered land in November 1992 (before 1 March 1994), was criticised by the Court of Appeal in *TSM Development Pte Ltd* (at [27] and [38]) as having misinterpreted and misapplied *Balwant Singh*. The Court of Appeal pointed out that there was an important distinction between *Balwant Singh* and *Shell Eastern Petroleum* although in both cases the possessory interest had crystallised before 1 March 1994; in *Balwant Singh*, the land which was the subject of the action became registered land only *after* 1 March 1994 (*cf Shell Eastern Petroleum*). As such, the land in *Balwant Singh* was rightfully not caught by s 50 (as well as ss 172(7) and 172(8)) of the 1994 LTA, while the same cannot be said about the land in *Shell Eastern Petroleum* (*TSM Development Pte Ltd* at [38]).

22 In the present case, unlike *Shell Eastern Petroleum* and *Balwant Singh*, the scenario is much less complicated. The plot, as of 1 March 1994 and as of to date is still *unregistered* land, and the parties agree that to successfully establish a claim of adverse possession for the plot, all that the plaintiff needs to do is to show that it and/or its predecessors had been in adverse possession of the plot for 12 years before the cut off date of 1 March 1994. As demonstrated above, adverse possession of unregistered land is governed by the Limitation Act as amended by s 177 of the 1993 LTA. Section s 177(1) of the 1993 LTA amended s 9 of the Limitation Act thereby abolishing claims by way of adverse possession but, at the same time, s177(3) preserved rights that had accrued as of 1 March 1994 (*Balwant Singh* at 732). Section 177 of the 1993 LTA provides as follows:

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

(3) This section shall not apply to an action to recover land from a person by reason only of his unauthorised occupation of the land. [This subsection is now s 9(3) of the Limitation Act (Cap 163, 1996 Rev Ed) (see below)]

(2) ...

(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.

Section 9 of the Limitation Act (as amended), in turn, provides as follows:

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.

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

In the present case, if the plaintiff succeeds in showing that it and/or its predecessors had been in adverse possession of the plot for 12 years prior to 1 March 1994, its possessory title would be preserved under s 177(3) of the 1993 LTA and it would be entitled to the plot.

23 What then does adverse possession entail? Essentially, adverse possession is made out when the adverse possessor is in physical and/or factual possession of the land as if he was the true owner with the intention to possess and exclude all others, including the owner with the paper title (see the decision of the Court of Appeal in *Soon Peng Yam v Maimon bte Ahmad* [1996] 2 SLR 609 at 615; followed in *Re Lot 114-69 Mukim 22, Singapore and another action* [2001] 2 SLR 509 ("*Re Lot 114-69 Mukim 22*") at [41]). Further, the 12-year period necessary to establish title by adverse possession can be constituted by the aggregate of separate but continuous periods of adverse possession by different people (see the decision of the Court of Appeal in *Jubilee Electronics v Tai Wah Garments & Knitting Factory* [1996] 2 SLR 39 ("*Jubilee Electronics*") at 48-50; followed in *Re Lot 114-69 Mukim 22* at [41]).

24 Indeed, one of the main contentions of the interested parties was that the requisite intention for adverse possession (also known as *animus possidendi*) was lacking in the instant case (see [12] above). I turn now to the question proper of whether the plaintiff has made out a case of adverse possession.

Whether there was adverse possession of the plot

25 In support of its claim, the plaintiff relied mainly on the evidence given by two persons: (1) Mr Lee Jit Seam ("Mr Lee"), who was the owner of a plot of land adjacent to both the property and the plot ("the neighbouring plot"), *ie*, Lot No 1015N and Lot 114A, for the period 1971 to 1998 and who currently owns several units of apartments in the condominium that was built on the neighbouring plot in 1998; and (2) Mr Tang Tuck Lim ("Mr Tang"), a registered surveyor who had reviewed various plans on the property and the plot as well as inspected the property and plot.

26 Mr Lee testified in his affidavit filed on 24 January 2008 that from the neighbouring plot, he could see the portion of the fence that is located at the back of the property which encompasses the plot. He also testified that since 1971, *ie*, the year he purchased the neighbouring plot, the fence, which surrounded the property and plot, separated the plot from the neighbouring properties, and the fence has always enclosed the plot as if it was part of the property. Mr Lee recalled that although the fence was replaced over the years, the position of the fence remained the same throughout. The plaintiff thus submitted that the evidence given by this independent eye-witness would prove that it and/or its predecessors had been in adverse possession of the plot for the requisite 12 years before 1 March 1994.

27 Besides Mr Lee, Mr Tang also gave evidence in two affidavits that various survey plans and drawings have shown that the plaintiff and/or its predecessors had adverse possession of the plot. In his first affidavit filed on 24 January 2008, Mr Tang referred to two survey plans of 1936 and 1986 of the area which comprised the property and the plot. He testified that in the 1936 survey plan, it was indicated that a barbed wire fence enclosed the plot such that the plot formed a contiguous part of the property. Similarly, the 1986 survey plan showed that a fence included the plot to form part of the property. He further concluded that the position of the fence in both the survey plans was about the same as that at the time when the plaintiff purchased the property as well as that at present.

28 In his second affidavit filed on 22 July 2008, further reference was made to a symbol sheet for title survey plans that was used by the Survey Department ("the symbol sheet") around the time when the survey plans of 1986 were prepared and a drawing from the surveyor's field book (prepared on site by a surveyor) from which the 1986 survey plan was derived ("the drawing"). Referring to the 1986 survey plan, Mr Tang explained that the area marked as "Reserve" was actually the plot and the line that ran along that area is either a Mukim and Town Subdivision Boundary line or a fence according to the symbol sheet. However, based on the drawing, he confirmed that this line is actually a fence and that the position of this fence was about the same as the fence presently on site.

29 In respect of Mr Lee's evidence, the interested parties first took an objection with para 6 of his affidavit where he had said that "I have no reason to doubt that the Fence demarcating the land belonging to the Plaintiff (and previously the predecessors in title, including a gentleman whom I had known from many years ago who lived on the property) similarly demarcates the boundary of my own property". This, according to the interested parties, was hearsay evidence. They also doubted Mr Lee's evidence that the fence has remained in the same position since 1971 given that the present fence looks relatively new and they suggested that the fence was only put up recently in a bid to support the plaintiff's claim for adverse possession. The interested parties further pointed out that there were a retaining wall demarcating the property from the plot and a flight of steps along the slope of the plot. They claimed that the retaining wall and the steps were constructed by the trustees of the estate of Omar bin Ally Aljunied and contended that anybody who had intended to treat the plot as his own would have demolished the retaining wall and the steps and landscaped the area. The interested parties further pointed out that the plot looked unmaintained, and this could only mean that the plaintiff and/or its predecessors had no intention to possess the plot.

30 The interested parties also relied heavily on the Descon plans. The Descon plans had excluded the plot from the rest of the property by a fence. The interested parties thus submitted that this clearly showed an intention on the part of the plaintiff's predecessors not to possess the plot. They also pointed out that before the property was purchased by KLH, it was two separate lots, namely, Lot 309 of Town Sub Division 28 ("Lot 309") and Lot 307 of Town Sub Division 28 ("Lot 307"), (Lot 307 was purchased on 29 October 1977 and Lot 309 was purchased on 17 August 1981) and that subsequently the property was developed by KLH into a condominium with 23 units before all the units were repurchased by KLH again and sold to the plaintiff. Given this history, they questioned if the predecessors of the property (including the 23 subsidiary proprietors of the condominium) could be said to have the continuous requisite intention to possess the plot.

31 After considering the evidence before me, I found that the plaintiff, on a balance of probabilities, had made out a case of adverse possession, having established both physical possession as well as the intention to possess for the requisite 12-year period.

32 Physical possession can be derived collectively from the survey plans, the drawing as well as Mr Lee's evidence that the fence has always enclosed the plot with the property for at least the requisite 12 years, *ie*, between 1 March 1982 and 28 February 1994. Both Mr Lee and Mr Tang have also confirmed that the fence has remained in more or less the same position over the years. I disagree with the interested parties that para 6 of Mr Lee's affidavit (concerning the ownership of the fence) is hearsay. It must be borne in mind that the fence is a *continuous* one that encloses both the property (which is much larger than the plot) and the plot. The only logical conclusion must be that the fence was put up by the plaintiff's predecessors who owned the property. The fact that the fence looked new does not suggest that the *whole* fence was only recently erected. In fact, it appears that the photographs adduced by the interested parties showing that the fence was new were photographs of a specific segment of the fence located between the property and Lot 305 of Town Sub Division 28 ("Lot 305") and not the segment of the fence enclosing the plot. Mr Tang

confirmed this in his second affidavit by explaining that the blue aluminium panels that could be seen behind the fence in the interested parties' photographs were actually those placed in Lot 305 for construction purposes. There were no such aluminium panels behind the segment of the fence enclosing the plot. Photographs were also produced by the plaintiff to show that although segments of the fence may appear new, the fence posts were, however, old and rusty. The fact that the old fence posts remained in usage would only mean that the whole fence could not have been newly constructed or that it had been shifted recently. The interested parties have also tendered no other evidence such as survey plans or drawings to prove that the fence was newly built and/or it did not exist throughout the requisite 12-year period.

33 In my view, the evidence established that although certain portions of the fence were replaced over the years (perhaps due to wear and tear), the fence has always remained in the same position. It must be borne in mind that "[t]he type of conduct which indicates possession must vary with the type of land" (*Wuta-Ofei v Danquah* [1961] 1 WLR 1238 at 1243 per Lord Guest). The plot in question here is a piece of sloping land. It has been said that "enclosure by fencing is the clearest, and perhaps the most classic, way of establishing exclusive possession" (*Simpson v Fergus* (2000) 79 P & CR 398 ("*Simpson*") at 402 per Robert Walker LJ), although it is not necessarily enough or conclusive (*ibid*; see also *Littledale v Liverpool College* [1900] 1 Ch 19). For the type of land such as the plot in the present case, I am of the view that enclosure by fencing would be the best evidence of exclusive and factual possession. Given the evidence, I am satisfied that the plaintiff's predecessors have been in physical possession of the plot for at least the requisite 12-year period.

34 On the issue of the requisite intention for adverse possession, the fact that the retaining wall and the steps on the plot have not been demolished cannot demonstrate that the plaintiff and/or its predecessors had no such intention to possess. Mr Tang has pointed out in his second affidavit that there are in fact two retaining walls, and the bottom retaining wall is actually situated within the property. Further, the back of the property and the plot are not level ground; the ground slopes upwards from the back of the property to the plot (as can be seen from the photographs and the topographical survey adduced by the plaintiff). Quite clearly and logically, the retaining walls were not built to separate the plot from the property but to prevent soil erosion. The flight of steps leads to nowhere in particular and ends above the halfway mark of the plot. There is no gate at the fence at the back of the plot or any road beyond it. As mentioned, the plot is completely landlocked. The logical conclusion must be that the purpose of the steps was to provide access from the property to the plot. This, if any, would support the plaintiff's case that it had the necessary intention for adverse possession. Besides making a bare assertion, the interested parties have not given any other evidence that the trustees of the estate of Omar bin Ally Aljunied were the ones who actually built the retaining walls and the steps. The interested parties' argument that the fact that the plot looked unmaintained (based on recent photographs taken of the plot) would mean that the plaintiff and/or its predecessors had no intention to possess the plot is also unmeritorious. The plaintiff had bought the property (and the plot) with a view of developing the place. It is therefore not surprising that the plot was left relatively unattended in these circumstances. In any case, the recent state of the plot does not in any way prove that the plot was also similarly not maintained in the requisite 12-year period.

35 As for the Descon plans, Mr Tang offered an explanation that the architect could have drawn the fence on the building plans based on what he envisaged as the position where the fence should be and not where the fence was actually positioned. He also pointed out that the existence of a fence on a building plan is usually marked with the words "Existing Fence" but these words were missing in the Descon plans. Bearing in mind that the Descon plans were drawn for planning permission, Mr Tang's explanation is entirely plausible. I do not think that the Descon plans evinced an intention on the part of the plaintiff and/or its predecessors not to claim the plot as their property.

36 In my opinion, the facts on the whole suggested that the plaintiff as well as its predecessors did not know that the plot was actually a separate piece of land from the property and that they had all along treated the plot as part of the property to the exclusion of all others. The evidence also showed that the plaintiff and/or its predecessors have maintained the fence in the present position over the years. It should be pointed out that the requisite intention for adverse intention is an intention to *possess* the land and not an intention to *dispossess* an owner of his land and thus this requisite intention can still be established even if the adverse possessor did not realise that he was trespassing on another's land, such as in the present case (Charles Harpum, Stuart Bridge and Martin Dixon, *Megarry and Wade on the Law of Real Property* (Sweet & Maxwell, 7th Ed, 2008) at para 35-019; see also *Hughes v Cork* [1994] EGCS 25 and *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85).

37 The requisite 12-year period in this case started from 1 March 1982. By that time, KLH had already acquired both Lot 309 and Lot 307 to form the property, given that the second lot (Lot 307) was purchased on 17 August 1981. The property was then subsequently developed into a condominium with 23 units before all the units were repurchased and sold to the plaintiff. As pointed out at [23] above, the fact that different people took adverse possession of the plot at different times does not mean that the requisite 12-year period for adverse possession is broken. So long as the adverse possession by different people is continuous, adverse possession can still be made out. It would be apposite to have regard to the following passage in *Jubilee Electronics* (at 50):

In the light of these authorities it is clear that aggregation of separate periods of adverse possession is permitted so long as there is continuity. There should not be any break in the two or more periods of adverse possession by different persons. So long as adverse possession continues unbroken, it makes no difference who continues it...

There is no reason why the same reasoning would not apply to the property when it was a strata development with 23 subsidiary proprietors. So long as the proprietors treated the plot as part of their common property (which I accepted was the case here), there is no reason why there cannot be the requisite intention for adverse possession during the period where the property was a strata development.

38 For the above reasons, I was satisfied that the plaintiff has made out a case of adverse possession and I therefore held that the plaintiff was entitled to the plot.

The owner of the plot

39 Given my conclusion, it is unnecessary for me to make a finding as to who was the rightful owner of the plot. I would, however, state here briefly that, in my opinion, neither the interested parties nor Syed Noah have adduced sufficient evidence to prove their interest in the plot. For the former, the Order of Court from which the interested parties derived their jurisdiction as trustees does not in anyway state that they can act for the estate of Syed Allowee or Omar Bin Ally Aljunied (see [9] above). The Order of Court is in respect of the trust of the will dated 4 May 1894 of Syed Ahmad. Further, no concrete evidence was adduced to show that Syed Allowee or Omar Bin Ally Aljunied held the plot as trustees for the trust. The plot was also not one of the specific properties listed under the amended schedule attached to the Order of Court. It has also been established that the plot was conveyed by Syed Allowee to Omar Bin Ally Aljunied and that there were other subsequent conveyances. It would therefore follow that Syed Allowee's descendant (Syed Noah) cannot claim an interest in the plot.

40 The report, which appears to be the most convincing and reliable evidence on the title of the

plot, shows that there were subsequent conveyances after the plot was conveyed by Syed Allowee to Omar Bin Ally Aljunied. If anything, it would appear that the four individuals named in the report would be the rightful owners of the plot. However, the personal representatives of the estates of Chung Boon Chiong, Toh Ah, Toh Eng Hong and Gan Tiong Liong have not come forward in these proceedings.

Conclusion

41 For the above reasons, I allowed the plaintiff's claim for adverse possession of the plot. Since no party could show clearly who the rightful owner of the plot was, the plaintiff's counsel agreed that no order as to costs be made. The interested parties have appealed against my decision by way of Civil Appeal No. 190 of 2008.

42 The narrow sloping plot of land in issue, although located in one of the prime residential districts in Singapore, is of no conceivable practical use to anyone other than the plaintiff now. As mentioned earlier, it is now completely landlocked by the surrounding developments.

Copyright © Government of Singapore.