

33/84

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

B E T W E E N:

CHOO KOK BENG

Appellant
(Plaintiff)

- and -

1. CHOO KOK HOE

2. CHOO KOH ENG

10 3. CHOO CHENG CHEW and CHOO KOK HOE as Administrators
of the Estate of CHOO KOK LEONG, deceased

4. CHOO ENG HAI

5. HENRY CHENG CHEW CHOO

Respondents
(Defendants)

CASE FOR THE APPELLANT

RECORD

20 1. This is an appeal from the Order dated 17th
February 1982 of the Court of Appeal of the Republic
of Singapore (Wee Chong Jin, C.J., F.A. Chua and
T.S. Sinnathuray, J.J.), allowing the appeals of the
Respondents and substantially setting aside the
Order dated 5th December 1980 of A.P. Rajah, J. pp.130-2
pp.84-6

2. The grounds for A.P. Rajah, J.'s decision
and for that of the Court of Appeal were
respectively pronounced on 23rd February 1981
and 23rd July 1982. pp.87-94
pp.133-143

30 3. The basic dispute in this case concerns the
equitable ownership, immediately after its
acquisition in 1954, of certain land situate at, and
now known as, Numbers 1,3,5,7,9,11,15,17,19 and 21
Jalan Jermin, Singapore ("the Property")

4. It is common ground that the First Respondent
Choo Kok Hoe ("RI") successfully bid for (i) the
Property, which then consisted of 5 lots of vacant
land and (ii) 2 additional lots, which are not the
subject of this litigation ("the 2 lots") at an
auction held in 1954. p.63
11.40-47

- p.64
11.20-22
5. It is further common ground that the Property was conveyed into and subsequently registered in the Appellant's name and the 2 lots in RI's name.
- p.63
11.6-12
p.46
11.9-15
6. RI was at all material times one of 2 partners, together with Choo Kok Leong ("CKL") in a construction firm styled "Chin Choon Company" ("the Firm"). CKL, who like the Appellant was a brother of RI, was originally the Third Defendant, but he died in about 1973 and was replaced by Choo Cheng Chew and RI, his personal representatives, who are now jointly the Third Respondent. 10
- p.49
11.36-38
p.64 11.42-44
p.65 11.1-3
7. The Respondents' case before the Courts below was that the Appellant provided no part of the purchase money for the Property, and that it was RI and CKL who, between them supplied that money. The only reason for the Property being conveyed to the Appellant was that RI and CKL were apprehensive that, if the Property had been conveyed to them and the Firm's business had failed, the Property might have been available to the Firm's creditors. 20
- p.46 11.28-32
8. The Appellant's case, on the other hand, is that RI bid for the Property as the Appellant's agent and that the Appellant supplied RI with the purchase money for the Property in cash in 2 instalments, and also bore the legal costs of the acquisitions.
- p.14 11.27-34
9. Although the Second Respondent, in paragraph 3 of his Defence, pleaded that the purchase money for the Property was provided equally by the 4 brothers, this point was not pursued before the Courts below. 30
- p.92.
11.21-26
10. It is again common ground that the Property was developed in about 1966-1967 at the expense of the Firm by the erection thereon of 10 semi-detached houses ("the Houses"), with the Appellant's full knowledge and consent.
11. However, at first instance, there was a stark conflict as to the circumstances in which the Firm came to carry out the development. 40
- p.46 11.40-46
p.47 11.1-5
p.47 11.28-49
12. The Appellant contended that the development was done in part repayment of a loan of \$200,000/- ("the Loan") which he had advanced to RI in 4 equal tranches between 1954 and 1959. The Respondents, on the other hand, asserted that the Firm had developed the Property, because its 2 partners were the beneficial owners of it.

13. Further, at first instance, the Appellant alleged that in 1967 an oral agreement was reached between him, RI, the Second Respondent and CKL, whereby each of the latter 3 agreed to exchange certain properties belonging to them respectively for a total of 8 of the Houses ("the Exchange Agreement")

p.9 11.21-39
p.48 11.1-17

10 14. On 26th December 1972, the Appellant Issued a Writ of Summons in the High Court of The Republic of Singapore claiming, inter alia, specific performance of the Exchange Agreement and, in the alternative, a declaration that he was the beneficial and absolute owner of the Property and the Houses.

pp.1-6
p.3 11.22-25
p.4 11.20-28

15. The following pleadings were served:-

- (i) The Statement of Claim - 26.12.72 pp.7-12
- (ii) The Defence and Counterclaim of the Second Defendant - 5.3.73 pp.14-17
- (iii) Defence of the Fourth Defendant - 5.3.73 p.18
- 20 (iv) Particulars of the Statement of Claim - 21.3.73 pp.12-13
- (v) Reply and Defence to the Counterclaim of the Second Defendant - 21.3.73 pp.19
- (vi) Defence and Counterclaim of the First, Third and Fifth Defendants - 3.5.73 pp.20-22
- (vii) Particulars of (vi) - 27.7.73 pp.22-23
- (viii) Reply and Defence to Counterclaim, relating to (vi) - 10.8.73 pp.24-25
- 30 (ix) Amended Defence and Counterclaim of the First, Third and Fifth Defendants - 16.10.79 pp.36-43
- (x) Defence to the Amended Counterclaim in (ix) - 25.10.79 p.44

16. The hearing before A.P. Rajah, J. took place on the 17th, 18th, 19th, 20th, 21st and the 31st March, and 1st, 2nd and 23rd April, and 28th November 1980. pp.45-83

17. Formal judgment was delivered on 5th December 1980, and the learned judge pronounced the grounds for his Order on 23rd February 1981. pp.84-86
pp.87-94

Record

p.92 11.16-20 11.27-30	18. In the event, A.P. Rajah, J. rejected much of the evidence of both the Appellant and RI (the main witness for the Respondents) holding, on the one hand, that neither the loan nor the Exchange Agreement was established, but also deciding, on the other hand, that RI had acted as the Appellant's agent in the purchase of the Property and that the Appellant had provided the purchase money from his own funds.	10
p.92 11.13-15		
p.84 11.32-35		
p.93 11.25-29 p.123 1.24 to p.124 1.32 p.85 11.24-48	19. With the agreement of the parties, and after hearing argument as to whether he had the necessary jurisdiction, the learned Judge made an Order in essence giving RI and CKL's Administrators an equitable charge on the Property in respect of the money expended by the Firm in developing the Property, together with interest.	
pp.97-105 pp.106-107 pp.130-132	20. All the Defendants (but not the Appellant) appealed, and the Court of Appeal reversed A.P. Rajah, J. on the facts on 17th February 1982.	20
pp.133-143	21. In giving their reasons for allowing the appeal on 23rd July 1982, the members of the Court of Appeal expressed the view that they "were satisfied, having regard to all the oral and documentary evidence, that the trial judge was plainly wrong in deciding that" the Appellant paid the purchase price of the Property.	
p.143 11.7-11		
	22. The Appellant respectfully contends that the Court of Appeal were not justified in arriving at that view because inter alia:	30
	(1) the dispute turned on questions of primary fact, and the Court of Appeal, who did not hear the witnesses, was not in a position to assess their evidence	
	(2) there was ample oral evidence to support A.P. Rajah, J's finding	
p.49 11.36-38 p.64 11.42-44 p.65 11.1-3	23. The Appellant further respectfully submits that even if the Respondents' evidence is wholly accepted, it is clear that the Property was conveyed into the Appellant's name for the sole purpose of delaying or defeating the creditors of the Firm. In those circumstances, the Court will, on settled principles, not assist a claim by a beneficiary against the legal owner. This point was argued before the Court of Appeal by the Appellant's Counsel.	40

24. By Order dated 17th May 1982, the Court of Appeal (Wee Chong Jin, C.J., Kulasekaram and Lai Kew Chai, JJ.) granted the Appellant leave to appeal to Her Majesty in Council.

pp.144-145

25. The Appellant respectfully submits that the judgment of the Court of Appeal of the Republic of Singapore was wrong and ought to be reversed, and the judgment of A.P. Rajah, J. ought to be restored, and this appeal ought to be allowed with costs, for the following (amongst other)

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R E A S O N S

1. BECAUSE there was no justification in the instant case for disturbing the findings of the trial judge based on verbal testimony.
2. BECAUSE it would be against public policy to uphold the claim of the First and Third Respondents, based as that claim is on the Property having been conveyed to the Appellant for an improper purpose.
3. BECAUSE the Court of Appeal had no sufficient grounds upon which to reverse the trial judge's findings of fact.
4. BECAUSE the trial judges findings of fact were supported by the evidence which he heard.

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ALAN SEBESTYEN

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 4. CHOO ENG HAI
 5. HENRY CHENG CHEW CHOO
- Respondents
(Defendants)

CASE FOR THE APPELLANT

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Agents for the Appellant