

37, 1984

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE STATE OF BRUNEI
(APPELLATE JURISDICTION)

B E T W E E N :

10 HAJJAH TAMPOI BTE. HAJI MATUSIN A
HAJI HUSSIN (Suing as the
Administratrix of the Estate of
Pengiran Norsalam Bte Pengiran
Tengah and on her own behalf) First Appellant

- and -

HAJI IBRAHIM BIN HAJI HUSSIN Second Appellant

- and -

PENGIRAN HAJI ISMAIL BIN
PENGIRAN PETRA (Suing as the
Administrator of the Estate
of Dayang Aji bte Haji Hussin) Third Appellant

- and -

20 HAJI ABDUL RAHMAN BIN HAJI
HUSSIN Fourth Appellant

v.

HAJI MATUSSIN BIN PENGARAH
RAHMAN Respondent

CASE FOR THE APPELLANTS

30 1. This is an Appeal from the Judgment and
Order of the Court of Appeal of the State of
Brunei (Briggs, P. Leonard and Kempster C.C.) dated
the 21st day of May, 1983 whereby the Appeal of
the Respondent herein (the Defendant at the Trial)
from the Judgment and Order of the High Court of
the State of Brunei (Jones J.) dated the 4th day of
August, 1982 was allowed. By the said Order of the
High Court the Appellants herein had, inter alia,
been granted an Order for possession of a certain

parcel of land but by the said Order of the Court of Appeal the said Order of the High Court had been set aside and it was declared that the claims of the Appellants were statute barred and it was ordered that the Land Register be rectified to substitute the name of the Respondent herein for the names of the Appellants in relation to the said parcel upon the Counterclaim of the Respondent herein.

2. The principal question that will fall for decision in this Appeal is how far, if at all, it is possible to acquire title to land in the State of Brunei by mere possession. 10

3. Title to land in the State of Brunei is governed by the Land Code (Cap. 40). This is a Torrens System and the following provisions appear material to the questions falling for consideration in the instant Appeal.

"7. The officer in charge of the Land Office shall keep a Register of all land alienated under the provisions of this Code in the Form A in the Schedule with such variations as circumstances may require. The Register shall contain an entry of the special conditions (if any) imposed in respect of any lands. The officer shall also keep a Journal in the Form B in the Schedule of all transactions with regard to land entered in the Register. 20

8. All land shall be held by entry in the Register kept by the officer in charge of the Land Office in pursuance of this Code and the document of title issued to the holder of land shall be an extract from such Register and shall be in the Form C in the Schedule with such variations as circumstances may require. 30

9. (1) Every title by entry in the Register shall vest in the person named therein a surface right only to the land specified therein and such person shall have a permanent transmissible and transferable estate, interest and occupancy of his land subject to the provisions of this section or such lesser estate as shall be specified in the entry. 40

.....

27. No claim to or interest in any land shall be valid unless it has been registered in the Land Office.

28. (1) When any land charge or lease shall have been transferred or transmitted by virtue

of any form of succession or under any order of Court or act of law a record thereof shall be made in the Register and on the extract.

(2) No record shall be made in the Register unless the extract shall have been delivered to the officer in charge of the Land Office except with the permission of the Mentri Besar.

10 (3) Every entry in the Register shall be taken as conclusive evidence that the person named therein as owner of the land is the absolute and indefeasible owner thereof for the estate specified therein subject to the conditions upon which the original entry was made and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be a party."

20 4. Succession to the estates of deceased persons is governed in the State of Brunei by the Probate and Administration Enactment, 1955. It would appear that in the instant case pursuant to Section 58 thereof that such devolution is subject to Muslim law. Sections 13 and 18 appear material to the instant case and read as follows:-

30 "13. (1) No person other than the Probate Officer shall assume possession of, dispose of or deal with the assets of a deceased person unless he has obtained a grant of probate or letters of administration from the Probate Officer or unless he has obtained a grant of probate or letters of administration (within the meaning assigned to those expressions in Part VI) sealed by the Probate Officer in accordance with the provisions of that Part.

40 Provided that a relative or friend of a deceased person may take possession of any asset for the purpose of safe keeping pending the issue of probate or letters of administration by the Probate Officer or the sealing by the Probate Officer of probate or letters of administration as provided in Part VI.

(2) Any person other than the Probate Officer having in his possession custody or control any property or asset of a deceased person shall forthwith report the fact to the Probate Officer.

(3) Any person contravening the provisions of subsection (1) or subsection (2) shall be guilty of an offence: Penalty, a fine of two thousand dollars and/or imprisonment for one year, and, in addition, shall be liable in damages to the estate of the deceased.

.....

18. Where any person dies, whether in the State or elsewhere, leaving estate in the State in respect of which he dies intestate, such estate shall vest in the Probate Officer who may, if he thinks fit, receive and take possession of the same until administration is granted in respect thereof." 10

5. Prior to the coming into force of the Limitation Enactment, 1962 in the State of Brunei, on the 1st day of September, 1967 limitation was governed by the Limitation of Suits Enactment, (Cap 14). Under the repealed Enactment the High Court in Brunei had a discretion to dismiss suits: the material part of Section 3 thereof reads as follows:- 20

"... the High Court shall have a discretion to dismiss -
[There follow specific cases which are not relevant to the instant Appeal]
(g) any suit of any other description whatsoever unless instituted within a period of limitation provided therefor under the Limitation Ordinance of the Straits Settlements." 30

The following provisions of the Limitation Enactment, 1962 appear material to the instant Appeal:-

"3. Subject to sections 4 to 24 inclusive, every suit instituted after the period of limitation prescribed therefor by the Schedule, if limitation has been set up as a defence, shall be dismissed. 40

.....

5. When by any special law now or hereafter in force in the State a period of limitation is especially prescribed for any suit, nothing herein contained shall affect or alter the period so prescribed.

.....

26. At the determination of the period limited by this Enactment to any person for instituting a suit to recover possession of immovable property, the right and title of such person to the immovable property, for the recovery whereof such suit might have been instituted within such period, shall be extinguished.

SCHEDULE

(Sections 3 and 6(1))

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First Column	Second Column Description of Suit	Third Column Period of Limitation	Fourth Column Time from which period begins to run
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PART V. - TWELVE YEARS

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110	For possession of immovable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve Years	The date of the dis-possession or discon-tinuan- ce
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112	For possession of immovable property or any interest therein not hereby otherwise specially provided for."	Twelve Years	When the possession of the defendant becomes adverse to the plaintiff
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6. The parcel of land with which the instant Appeal is concerned is Lot Number 234 recorded in the Land Office District Register as E.D.R. 218 in the District of Brunei. An extract from the Land Title formed exhibit P.1. at the Trial of the action. The interest of the Appellants in the said parcel was inherited from Haji Hussin Bin Abdullah who had held a one half undivided interest in the said parcel. The Learned Trial Judge found that he had died between 1939 and 1948. It is convenient to set out immediately the position as to the devolution of his interest at the time of trial.

Pp.53-57

P. 26
L1.31-32

- (a) a 8/128 undivided share was held by the widow of Haji Hussin, one Pengiran Norsalam Bte Pengiran Tengah who died in 1949 and whose share was held by First Appellant as her Administratrix pursuant to letters of Administration granted on the 4th day of November, 1978.
- (b) a 14/128 undivided share held by the Second Appellant,
- (c) a 14/128 undivided share held by the Fourth Appellant, 10
- (d) a 14/128 undivided share held by a deceased son of Haji Hussin Bin Abdullah who died in 1963 which was held by the First Appellant as Administratrix pursuant to letters of Administration dated 5th January, 1982. The First Appellant did not sue in respect of this share,
- (e) a 7/128 undivided share held by the First Appellant (a daughter of Haji Hussin Bin Abdullah) in her own right, 20
- (f) a 7/128 undivided share held by Dayang Aji Binte Haji Hussin who died in 1948, (another daughter of Haji Hussin Bin Abdullah). Her interest was held by the Third Appellant as Administrator pursuant to letters of Administration dated 26th August, 1978.

The remaining half share of the said land has at all times been registered in the name of Pengarah Rahman Bin Kahr who was the father of the Respondent and his two brothers. 30

7. The following is a brief chronology of the facts and matters relevant to the instant Appeal. It appears from the extract to the Land Register that the said parcel of land was first registered on 17th March, 1913. By transfers in 1915 and 1916 the said land was registered in names of the Respondent's father and Haji Hussin Bin Abdullah. Sometime prior to 1932 the Respondent's father died and sometime between 1939 and 1948 Haji Hussin Bin Abdullah died. Dayang Aji Binte Haji Hussin died in 1948 and in 1949 Pengiran Norsalam binte Pengiran Tengah died. In 1960 the Third Appellant's title was registered and thereafter further transmissions of the several interests of the Appellants and their families were duly registered. In 1963 Sabli bin Haji Hussin died. On 15th February, 1967 the Chief Land Officer wrote to the Second Appellant advising him that sub-division of the land could not take 40 50

place until probate (presumably of the Respondent's father) had been finalised. In 1978 Letters of Administration were granted both to the estate of Pengiran Norsalam bte Pengiran Tengah and Aji bte Haji Hussin. On 19th June 1979 the Writ in this action was issued and thereafter judgment in default of appearance was obtained which was set aside by the Order of O'Connor C. dated 23rd May, 1981. That Order was upheld by the Court of Appeal on 18th November, 1981. Letters of Administration to the estate of Sabli bin Haji Hussin were issued on 5th January, 1982. The trial of the action took place on 21st July, 1982 and the Judgment of Jones, J. was delivered on 4th August, 1982. The Respondent herein gave Notice of Appeal on 23rd August, 1982 and the Memorandum of Appeal is dated 14th December, 1982. The Judgment of the Court of Appeal was delivered on 21st May, 1983 and final Leave to Appeal to Her Majesty in Council was granted on 5th December, 1983.

8. By their Statement of Claim which it appears was endorsed on the Writ of Summons herein the Appellants pleaded their several interests in the said land. Thereafter the Appellants pleaded that their names appeared as Registered owners in the relevant Land Grant. After pleading that the Appellants were the beneficiaries entitled to the estate of Haji Hussin bin Abdullah who was the registered owner of a one half undivided share in the said land they alleged that the Respondent was the son of Pengarah Rahman bin Kahar, whose name still appeared as the registered owner of the remaining one half undivided share therein. The Appellants thereafter pleaded that since 1964 the Respondent had erected buildings and rented out rooms therein on the said land. By paragraph 14 the Appellants averred:-

"The Plaintiffs have not been able to make use of the said lot 218, District of Brunei as a result of the unlawful occupations, possession and illegal use of the land by the Defendant."

Thereafter the Appellants claimed various relief.

9. By his Amended Defence and Counterclaim the Respondent admitted all matters pleaded in the Statement of Claim. Thereafter the Respondent averred (although in his pleading "admits") that he had for upwards of fifteen years prior to the issue of the Writ been in adverse possession of the land. The Respondent further alleged that without the consent of the Appellants he had caused buildings to be erected thereon and that he had not shared the rent from the same with the

Appellants. In those premises the Respondent asserted that the Appellants' claims were barred under Section 3 of the Limitation Enactment, 1962 and the Appellants' rights and title to the land had been extinguished by Section 26 thereof. In his Counterclaim the Respondent repeated his defence and sought declarations and rectification of the Register to have his name entered in lieu of the Appellants.

10. In their Reply the Appellants relied on Section 13 of the Probate and Administration Enactment, 1955 to say that the Respondent's possession was illegal or alternatively attributable to the Respondent's father's registered ownership and as such was not adverse to the Respondent's estate interest and occupancy. The Appellants further relied on the Respondent's failure to register his claim under Section 27 of the Land Code and contended that they were in occupation by reason of Section 9 thereof.

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11. The trial of the action before Jones J. on the 19th day of July, 1982. Three witnesses gave evidence on behalf of the Appellants. Othman V. Awang Damit stated that he had seen the original of Exhibit P.1., the extract of Land Title. He produced a copy of a letter written by the Chief Land Officer to the Second Appellant dated 15th February, 1967 stating that the land could not be sub-divided until the rights of a deceased owner (presumably the Respondent's father) had been settled by his beneficiaries. Thereafter the First Appellant gave evidence and stated that she was claiming the land. The Second Appellant thereafter gave evidence and said that the title to the land had come from the government in 1960 and his own name had been entered in 1963. The witness said that he and his father built a house made of wood on the land which was occupied by a relative. In cross-examination it was stated that the house had subsequently collapsed and that the crops had been shared.

Pp.15-16

P.59
Pp.16-17

Pp.18-20

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12. The only witness called on behalf of the Respondent was the Respondent himself. He stated that he had lived on the land since he was twelve and that the land used to belong to his father. He admitted in cross-examination that his name had not been entered in the title because his two brothers who were still alive would have to apply for Letters of Administration. He further stated that he wanted the names of himself and his brothers on the title.

Pp.20-22

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13. The Learned Trial Judge delivered his Judgment on 4th August, 1982. After identifying the land

Pp.26-31

relevant to the action the Learned Judge explained the relationship between the Appellants. Thereafter the Learned Trial Judge pointed out that the Registered owner of the remaining half share was the Respondent's deceased father. Because no grant of administration had been made the Learned Judge stated that the estate was vested in the Probate Officer pursuant to Section 18 of the Probate and Administration Enactment, 1955. It is respectfully submitted that whereas the title was vested in the Probate Officer the entitlement of the Respondent to claim his interest under Muslim Law subsisted. The finding of the Learned Trial Judge as to the use of the land was as follows:-

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"The Defendant who is now aged 87 has lived on the land since his father became entitled to his share in 1915. He has built houses on the land and receives rent from the tenants. The Defendant pays annual quit rents to the Government. He said that none of the Plaintiffs or their predecessors in title ever lived on the land whilst he has never shared the crops.

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The 2nd Plaintiff testified that he and his father at one time built a house on the land which was occupied by another relative. Sometime after it became vacant the house collapsed. He also claimed that the crops that were cultivated on the land were shared. This evidence was understandably vague. Nevertheless, it appears that neither the Plaintiffs nor their parents ever lived on the land."

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After recalling the claim for relief as pleaded by the Appellants the Learned Judge stated that it was essentially a claim for possession. After summarising the Amended Defence the Learned Judge referred to items 110 and 112 of the Limitation Enactment, 1962. The learned Judge then stated

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"Upon the evidence I find as a fact that the land has never been occupied by the Plaintiffs or their predecessors in title so that Item 110 does not apply."

P.27
Ll.25-42
P.28
Ll.29-42

The Appellants would respectfully submit that in so far as this is a finding of fact the same is inconsistent with the evidence of the Second Appellant which, earlier in his Judgment in the passage quoted above, he appeared to accept. Furthermore by reason of Section 9(1) of the Land Code the Appellants are deemed to have had occupancy of the said land.

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P.27
Ll.35-43

14. The Learned Trial Judge thereafter continued his Judgment by holding that it was incumbent upon the Respondent to prove adverse possession and rely on the said Item 112. The Learned Judge held that by reason of the proviso to Section 13 of the Probate and Administration Enactment, 1955 (which permits a relative or friend of a deceased person to take possession of any asset for the purpose of safe keeping pending the issue of Probate or Letters of Administration) the Respondent's occupation of the land was not illegal. It is respectfully submitted that if the Respondent's occupation of the land was saved by this proviso then the same was not beneficial to himself but in the nature of a trustee or an executor de son tort.

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15. The Learned Judge thereafter considered the submission on behalf of the Appellants that the Respondent's de facto occupation of the land could not be adverse to the Appellants. The Learned Judge stated, it is submitted correctly,

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L1.23-29

"In order to establish adverse possession there must be clear evidence of denial of the Plaintiffs' title. There must have been some positive action by the Defendant to show that he intended to acquire the ownership of the Plaintiffs' shares. Mere passive occupation will not suffice."

After reviewing the evidence the Learned Judge held, it is submitted correctly,

P.30
L.44 to
P.31
L.37

"Prior to the issue of the Writ, there was no evidence of any overt act by the Defendant to support his claim to adverse possession of the land to the exclusion of the Plaintiffs. No notice or indication has ever been given to the Plaintiffs before this action commenced that the Defendant regarded his occupation as exclusive and adverse to their title, whilst no claim has been made at any time by the Defendant to register his claim with the Land Office.

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Although the Plaintiffs have never claimed a share of the profits or of the rentals, it would appear in the earlier years when fruit was grown on the land that such profits would in any event be small and of little consequence. In my opinion, their failure to do so did not amount to an abandonment of their claim to title.

The Plaintiffs naturally it seems, devoted themselves to their own land and affairs leaving the Defendant to retain possession of

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the land in Suit to look after as he pleased. Whilst the Plaintiffs may be criticised on the ground of laches, they may be equally applied to the Defendant in not taking steps to obtain a grant of administration to his father's estate and to register his own claim with the Land Office. Further he does not appear to have exclusive possession for he testified that his two brothers will be entitled to a share.

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Having regard to the evidence, I am not satisfied that the Defendant has been in adverse possession. The claim of the Plaintiffs is not therefore barred under Section 3 of the Limitation Enactment, 1962 nor has their title been extinguished under Section 26. In view of my decision on adverse possession it becomes unnecessary for me to consider for the purpose of this Judgment the other matters raised by Mr. Ball. However, I am inclined to agree with the opinion of O'Connor, J. expressed in his Judgment that he delivered in this action on the 23rd May, 1981 when he set aside the Judgment obtained against the Defendant in default of appearance."

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16. Thereafter the Learned Judge held (it is submitted wrongly) that it was not a proper case for an account to be taken or for an award of damages or any order for demolition. P.31

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17. The Respondent herein gave Notice of Appeal against the whole of the Judgment of Jones J. by Notice dated 23rd day of August, 1982. In his Memorandum of Appeal dated 14th December, 1982 he raised various questions of fact and submitted that the Learned Trial Judge had made the following errors of law: P.33-34 Pp.35-38

(a) in holding that the Respondent should prove adverse possession P.37

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(b) in holding that the Respondent had to show he regarded his occupation as exclusive and adverse to the Appellants' title

(c) in holding that the Respondent had to register his claim with the Land Office

(d) in holding that the Respondent's brothers' share prevented the Respondent's possession being exclusive

and

P.38 (e) in allowing a claim for possession to be made.

Pp.38-38 18. That the Appellants sought to cross-appeal against the Judgment of the Learned Trial Judge against the part of the Judgment that decided (a) it was not a proper case for an account to be taken or an award of damages (on the grounds that an order for accounts had already been made) and that there should be no order for demolition (on the grounds that the buildings had been illegally erected).

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Pp.39-46 19. The Respondent's Appeal to the Court of Appeal of the State of Brunei came on for hearing before Briggs, P. Leonard and Kempster C.C. The Judgment of the Court was delivered by Kempster, C. on 21st May, 1983. The Learned Commissioner commenced his Judgment by explaining the subject matter of the action and the history of the proceedings. Thereafter the Commissioner set out certain provisions of the Limitation Enactment, 1962 and the Land Code. The Learned Commissioner then recalled that no allegation of fraud or misrepresentation was made in the instant case.

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20. It is convenient at this stage to recall that the wording of the Limitation Enactment, 1962 appears to follow the Statutory Provisions formerly in force in Singapore. At the material time the Singapore Lands Titles Ordinance represented a compromise position in the inherent problem under the Torrens System of how a squatter on land could crystallise his title. The Singapore Lands Titles Ordinance applies the Singapore Limitation Ordinance to registered land (in a way expressed in the words of Baalman on the Singapore Torrens System, page 96) "only in a diluted form which is still compatible, from the point of view of purchasers, with conclusiveness of the Land Register. An undiluted form would be incompatible with conclusiveness". The Singapore Land Titles Ordinance operated in the following way. Section 32 thereof preserved the Limitation Ordinance leaving to the squatter the same rights of adverse acquisition as he would otherwise have had and requiring him to be in possession for not less than twelve years since the land became registered land or since the entry of the most recent memorial or notification whichever was the later. Under the Singapore system it must be emphasised that the period of adverse possession sufficient to bar the title of the registered owner did not necessarily run from the commencement of the adverse possession but from the date of the issuing of the most recent certificate of title for such land or the entry of the most recent memorial or notification whichever

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was the later. Thus any evidence of activity on the Land Register (other than the notification of a statutory obligation) meant that the owner was not dormant and he was not one to whom the Limitation Ordinance was intended to apply. Section 33 of that Ordinance provided for the procedure to be adopted for an application for a possessory title. Amongst other things the applicant had to provide statutory declarations by himself and with two other persons corroborating the same with the following details:

(a) date of the commencement of the adverse possession relied on and that it had been continuous;

(b) the manner in which the land had been utilised and the boundaries thereof had been marked or defined;

(c) disputes, if any, over the adverse possession and outcome of such dispute;

(d) there had been no acknowledgement in writing of the title of the proprietor or of anyone claiming through him.

A further statutory declaration was required that the proprietor was alive and free from legal disability at the date on which the adverse possession relied on was commenced or that there was no person entitled to deferred possession such as a remainder man. The Registrar was then granted a discretion to advertise the claim and adjudicate thereon. By Sub-section 5 the Registrar was empowered to require an applicant for a possessory title to contribute to the assurance fund (which is a characteristic of most Torrens Systems) by way of indemnity as, in the Registrar's opinion was commensurate with the risk to which the fund might have been exposed by granting the application up to 2% of the value of the land. Sub-section 6 thereof made an adverse possessor on becoming registered as a proprietor to be deemed to be a "purchaser" thus enabling the doctrine of indefeasibility to operate on the newly acquired title. As a corollary to the provisions enabling a squatter to perfect his title Section 34 of the Singapore Land Titles Ordinance provided machinery for protection of the owner of land. Thereunder the owner could have lodged with the Registrar a reassertion of his ownership: when this was done then adverse possession could only run from the date of such notification. Section 35 of that Ordinance provided further protection to the owner in respect of any claim which might have been made without reasonable cause

as the claimant became liable to compensate any person who had sustained damage thereby.

P.43

21. The Learned Commissioner continued his Judgment by noticing that the provisions of the Limitation Enactment, 1962 and the Land Code were mutually repugnant. He held that the maxim "generalalia specialibus non derogant" was not applicable. In so holding it is respectfully submitted that he fell into error. The Appellants submit that the provisions of the Limitation Enactment, 1962 ought not to be interpreted as introducing for the first time the doctrine of adverse possession into the law of Brunei.

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Pp.43-44
P.44
Ll.10-17

22. In considering the Limitation Enactment, thereafter the Learned Commissioner stated:

"Paragraphs 10 - 14 inclusive of the Statement of Claim positively alleged adverse possession by the Defendant since 1964, a period of some fifteen years prior to the date of the Writ. Those allegations were admitted by paragraph 1 of the Amended Defence. There was, therefore, no issue arising at trial between the parties on that score."

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The Appellants submit that the Learned Commissioner erred in reaching such a conclusion. The facts and matters pleaded in paragraphs 10 - 14 do not amount to a plea of adverse possession. Although at Common Law adverse possession, it is conceded, can arise by disseisin (i.e. where a wrong doer evicted the person disseised), by abatement, (i.e. where a wrong doer entered on the death of the person dying seised instead of his heir or devisee), by intrusion, (i.e. where a wrong doer entered on the death of a tenant for life instead of the remainder man or a reversioner), by discontinuance, (i.e. where a tenant in tail in possession alienated by a tortious conveyance which did not bar the issue in tail,) by deforcement (which included the four manners already mentioned, and also any rightful with-holding of the freehold from the right owner), none of these are here applicable in point of fact and nor are these tests, it is respectfully submitted, applicable to land held under a Torrens System but only in one based on Feudal Tenure. As, in the State of Brunei, possession of land is allodial, the only way title can be defeated is by statute: thus it is submitted there must be some form of dis-possession recognised by statute before adverse possession can commence. It is to be observed that Section 26 of the Limitation Enactment, does not enable any other title to be set up in lieu of the title for which extinction is provided. Furthermore

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as the Respondent, in holding over following the death of his father, ought to be presumed to have done so by reason of his father's title to establish adverse possession against a fellow holder of an undivided share evidence of ouster, or denial of title is required. In *Corea v. Appuhamy* 1912 A.C. 230 (a case cited before the Learned Trial Judge) the principle recognised in *Thomas v. Thomas* 2 K. & J. 79 "that possession is never considered adverse if it can be referred to a lawful title" was approved. The Board held in that Appeal from Ceylon that unless there was clear evidence to the contrary adverse possession would not presume an ouster against another tenant in common.

23. In these circumstances the subsequent finding by the Learned Commissioner that the reply was a departure from the Statement of Claim is, it is respectfully submitted, wrong. If, which is not admitted, the Learned Commissioner was right in holding that there was no evidence that the Respondent entered upon the land pursuant to the proviso in Section 13(1) of the Probate and Administration Enactment, 1955 then for the reasons already developed herein his occupation thereof was unlawful.

24. Thereafter the Learned Commissioner rightly held (if it was correct to consider any legislation relating to Limitation) that it was necessary to consider the position under the Limitation of Suits Enactment which had been repealed by Section 27 of the Limitation Enactment. The Learned Commissioner then held that he would exercise discretion in favour of the Respondent insofar as it might be necessary. The Appellants respectfully submit that such a discretion would wrongly be exercised if the same were to be exercised by the Board in favour of the Respondent. It is submitted that the matter is at large before the Board, if indeed such a discretion exists on the assumption that limitation affects land in Brunei. The Appellants would submit that discretion ought not to be exercised in favour of setting up a new method of claiming land which has clearly not been recognised hitherto before in Brunei. In addition the Respondent has never sought to formalise his position for the benefit of himself or his brothers despite being aware of how he might do so. P.45

25. Thereafter the Learned Commissioner held, in the Appellants submission wrongly, that their titles were extinguished and, although the Judgment makes no reference thereto the Order of the Court as drawn directs that the Land Register be rectified to substitute the name of the P.46 Pp.47-48

Respondent for the names of the Appellants. There is, in the Appellants submission, no power under the provisions as to Limitation and the Land Code to make such Orders. Insofar as Articles 110 and 112 of the Limitation Enactment have effect they relate purely to possessory rights to occupy land.

P.51 26. By Order dated the 2nd day of July, 1983 the Appellants were granted conditional Leave to Appeal to Her Majesty in Council and by Order 10
P.52 dated 5th December, 1983 they were granted final Leave and a stay of execution pending determination of the instant Appeal was granted.

27. The Appellants respectfully submit that their Appeal herein should be allowed with costs (to include the costs before the Court of Appeal) and that the Judgment and Order of the High Court of the State of Brunei should be restored save that their Cross-Appeal to the Court of Appeal should be allowed or that in the alternative they should be granted such declarations as to their title and interest in the said land together with such consequential orders as may be appropriate as to Her Majesty in Council may seem just for the following, amongst other 20

R E A S O N S

1. BECAUSE the Learned Trial Judge was right save in the respects mentioned hereinbefore.
2. BECAUSE the Judgment of the Court of Appeal was wrong. 30
3. BECAUSE the doctrine of obtaining title to land by adverse possession is not part of the Law of Brunei.
4. BECAUSE possession by the Respondent of the relevant land was not adverse.
5. BECAUSE no law of limitation applies to the subject matter of this Appeal, or alternatively the same is governed by the Limitation of Suits Enactment and, in the premises, any discretion ought to be exercised in favour of the Appellants. 40
6. BECAUSE under the provisions of the Land Code the Appellants are to be deemed at all times to have been in occupation of the relevant land.

NIGEL MURRAY

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE
STATE OF BRUNEI (APPELLATE
JURISDICTION)

B E T W E E N :

HAJIAH TAMPOI BTE. HAJI MATUSIN A
HAJI HUSSIN (Suing as the
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- and -

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HUSSIN

Fourth Appellant

v.

HAJI MATUSSIN BIN PENGARAH
RAHMAN

Respondent

CASE FOR THE APPELLANTS

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