

37/84

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 :

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

HAJI IBRAHIM BIN HAJI HUSSIN

Second Appellant

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

Third Appellant

HAJI ABDUL RAHMAN BIN HAJI
HUSSIN

Fourth Appellant

v.

HAJI MATUSSIN BIN PENGARAH
RAHMAN

Respondent

RECORD OF PROCEEDINGS

BOSWELL BIGMORE,
25 New Street Square,
London, EC4A 3LN

Solicitors for the
Appellants

O N A P P E A LFROM THE COURT OF APPEAL OF THE STATE
OF BRUNEI
(APPELLATE JURISDICTION)

B E T W E E N :

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

HAJI IBRAHIM BIN HAJI HUSSIN Second Appellant

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

HAJI ABDUL RAHMAN BIN HAJI
HUSSIN Fourth Appellant

v.

HAJI MATUSSIN BIN PENGARAH
RAHMAN Respondent

RECORD OF PROCEEDINGS

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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

HAJI IBRAHIM BIN HAJI HUSSIN Second Appellant

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

HAJI ABDUL RAHMAN BIN HAJI
HUSSIN Fourth Appellant

v.

20 HAJI MATUSSIN BIN PENGARAH
RAHMAN Respondent

RECORD OF PROCEEDINGS

In the
High Court

No.1

WRIT OF SUMMONS

No.1
Writ of
Summons
19th June
1979

(Order 2, Rule 3)

IN THE HIGH COURT OF THE STATE OF BRUNEI
AT BANDAR SERI BEGAWAN

Suit 1979 No.167

BETWEEN

HAJJAH TAMPOI BINTE HAJI MATUSIN HAJI HUSSAIN (Suing as the Administratrix of the Estate of Pengiran Norsalam binte Pengiran Tengah and on her own behalf)	<u>1st Plaintiff</u>	10
HAJI IBRAHIM BIN HAJI HUSSIN	<u>2nd Plaintiff</u>	
PENGIRAN HAJI ISMAIL BIN PENGIRAN PETRA (Suing as Administrator of the Estate of Dayang Aji binte Haji Hussin)	<u>3rd Plaintiff</u>	
HAJI ABDUL RAHMAN BIN HAJI HUSSIN	<u>4th Plaintiff</u>	20

AND

HAMJI MATUSSIN BIN PENGARAH RAHMAN	<u>Defendant</u>
---------------------------------------	------------------

BY THE GRACE OF GOD, WE SIR MUDA HASSANAL
BOLKIAH MU'IZZADDIN WADDAULAH IBNI DULI YANG
TERAMAT MULIA PADUKA SERI BEGAWAN SULTAN SIR
MUDA OMAR ALI SAIFUDDIN, SOVEREIGN AND CHIEF
OF THE MOST ESTEEMED FAMILY ORDER, SOVEREIGN
AND CHIEF OF THE MOST EMINENT ORDER OF ISLAM OF
BRUNEI, SOVEREIGN AND CHIEF OF THE MOST
ILLUSTRIOUS ORDER OF LAILA JASA KEBERANIAN
GEMILAND, SOVEREIGN AND CHIEF OF THE MOST EXALTED
ORDER OF KEBERANIAN LAILA TERBILANG, SOVEREIGN
AND CHIEF OF THE MOST DISTINGUISHED ORDER OF
PADUKA SERI LAILA JASA, SOVEREIGN AND CHIEF OF
THE MOST FAITHFUL ORDER OF PERWIRA AGONG NEGARA
BRUNEI, HONORARY KNIGHT GRAND CROSS OF THE MOST
DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT
GEORGE, MOST ESTEEMED FAMILY ORDER (FIRST CLASS)
KELANTAN, MOST ESTEEMED FAMILY ORDER (FIRST
CLASS) JOHORE, Sultan of the State and
Territory of Brunei and all its Dependencies

TO: HAJI MATUSSIN BIN PENGARAH RAHMAN
Kempong Sungai Kianggeh,
Bandar Seri Begawan
Brunei

In the
High Court

No.1
Writ of
Summons
19th June
1979

10 WE COMMAND you, that within 14 days
after the service of this Writ on you,
inclusive of the day of such service, you
do cause an appearance to be entered for you
in our Supreme Court of Brunei, in a cause
at the suit of HAJJAH TAMPOI BTE HJ MATUSSIN
HJ HUSSIN, HJ IBRAHIM BIN HJ HUSSIN, PG HJ
BIN PG PETRA, HJ ABDUL RAHMAN BIN HJ HUSSIN

(continued)

AND TAKE NOTICE that in default of you
so doing the plaintiff(s) may proceed
therein to judgment and execution.

Witness the Honourable SIR DENYS ROBERTS
Chief Justice of the State of Brunei the
20th [sic] day of June, 1979.

20 (sgd) Ho & Siong (LS)
Plaintiffs Advocates Chief Deputy
Registrar
High Court Brunei

N.B. This Writ is to be served within twelve
months from the date thereof, or, if
renewed, within six months from the
date of such renewal, including the day
of such date, and not afterwards.

30 The defendant (or defendants) may appear hereto
by entering an appearance (or appearances)
either personally or by Advocate at the Registry
of the Supreme Court.

A defendant appearing personally may, if he
desires, enter his appearance by post, and
the appropriate forms may be obtained by
sending a Postal Order for \$5.50 with an addressed
envelope to the Chief Registrar of the Supreme
Court.

The Plaintiffs claim is

(SEE AS PER LIST ATTACHED)

40
Advocates for the Plaintiff(s)

This Writ was issued by Messrs. Ho & Siong,
Advocates of No.63 (first floor) Jalan McArthur,
Bandar Seri Begawan Brunei advocates to the said
Plaintiff(s) whose address for service is

In the
High Court

No.49, Jalan Sultan, Bandar Seri Begawan,
Brunei.

No.1
Writ of
Summons
19th June
1979

Indorsement to be made on the writ after
service thereof.

This Writ was served by
on
(the defendant or one
of the defendants) on the
day of 197

(continued)

SIGNED.....

10

Indorsed the day of 197

This Writ was served by.....
On.....
..... (the defendant or one
of the defendants) on the
day of 19

SIGNED.....

Indorsed the day of 197

SIGNED.....

ADDRESS.....

20

No.2
Statement
of Claim
19th June
1979

No.2

STATEMENT OF CLAIM

1. The First Plaintiff is suing in this
action on her own behalf as part owner of
the land hereinafter described as Lot 218,
District of Brunei and as the Administra-
trix of the Estate of Pengiran Norsalam
binte Pengiran Tengah who died in 1949
and who is the registered owner of 7/128
undivided share in the said land.

30

2. The First Plaintiff is the administratrix
of the Estate of Pengiran Norsalam binte
Pengiran Tengah by virtue of a Grant of
Letters of Administration No.133 of 1978
and as administratrix she is the registered
owner holding 8/128 undivided share in the
said Lot No.217, District of Brunei.

3. By her own right, the First Plaintiff is the

registered owner holding 7/128 undivided share in the said Lot No. 218, District of Brunei.

In the
High Court

No.2
Statement
of Claim
19th June
1979

4. The Second Plaintiff is the registered owner of 14/128 undivided share in the said Lot No.218, District of Brunei.
5. The Third Plaintiff is the administrator of the Estate of Dayang Aji binte Haji Hussin by virtue of a Grant of Letters of Administration No.106 of 1978 dated 26th August, 1978 and he holds as administrator of the said estate 7/128 undivided share in the said Lot No.218, District of Brunei. The said Dayang Aji binte Haji Hussin died in 1948.
6. The Fourth Plaintiff is the registered owner of 14/128 undivided share in the said Lot No.218, District of Brunei.
7. The names of all the Plaintiffs appear as registered owners in the Land Grant Lot No.218 District of Brunei.
8. The Plaintiffs are the beneficiaries entitled to the Estate of Haji Hussin bin Abdullah who was the registered holder of one-half ($\frac{1}{2}$) undivided share in the said Lot No.218, District of Brunei and Pengarah Rahman bin Kahar is the registered owner of the other one-half ($\frac{1}{2}$) undivided share in the said Lot 218, District of Brunei.
9. The Defendant is the son of Pengarah Rahman bin Kahar (deceased) who was the registered owner of one-half ($\frac{1}{2}$) undivided share in the land described as Lot No.218 District of Brunei. To the knowledge of the Plaintiffs no Letters of Administration have been applied for or granted to the Defendant to administer the estate of the said Pengarah Rahman bin Kahar (deceased). The name of the said deceased, Pengarah Rahman bin Kahar, still appear as the registered owner of one-half ($\frac{1}{2}$) undivided share in the said Lot No.218, District of Brunei.
10. In the year 1964 the Defendant had erected, without the consent and knowledge of the Plaintiffs inter-connected one-storey buildings on the said Lot No.218. These buildings were divided into rooms and the Defendant rented these rooms out to various

In the
High Court

No.2
Statement
of Claim
19th June
1979

(continued)

- tenants. Particulars of the inter-connected buildings rooms and names of the tenants and occupier can only be given after discovery.
11. The Defendant has been receiving rents from the various tenants and occupiers of the rooms in the buildings. The Plaintiffs do not know how much rents have been received until after discovery. 10
 12. To the knowledge of the Plaintiffs the buildings have been erected without the approval from the proper authorities.
 13. The Plaintiffs had requested the Defendant on various occasions to meet them and to settle the dispute over this Lot 218, District of Brunei but to date the Defendant had refused to meet or negotiate with the Plaintiffs.
 14. 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. 20
 15. The Defendant had unlawfully enriched himself at the expense of the Plaintiffs and registered-owners of the land.
 16. The Plaintiffs in the premises outlined above have been deprived of the use of the said Lot 218, and have suffered loss and damage. 30
 17. AND the Plaintiffs claim :-
 - (a) An account to be taken of all the moneys collected by way of rentals and use of the land by the Defendant;
 - (b) An order for payment;
 - (c) Demolition of all the buildings and structures on the said Lot 218, District of Brunei put up by the Defendant without the knowledge and consent of the Plaintiffs; 40
 - (d) Damages;
 - (e) Any further and other relief as the Court may deem fit and proper;
 - (f) Costs.

Dated this 19th day of June, 1979

In the
High Court

(Signed) HO & SIONG
Advocates for the
Plaintiffs

No.2
Statement
of Claim
19th June
1979

(continued)

No.3

DEFENCE AND COUNTERCLAIM

No.3
Defence and
Counterclaim
11th June
1981

D E F E N C E

- 10 1. Save that it is admitted the First Plaintiff is the registered owner of 7/128 undivided share of the land known as Lot 218, District of Brunei, (hereinafter called "the said land") the Defendant has no knowledge of the allegations contained in Paragraph 1 of the Statement of Claim and makes no admission thereto.
- 20 2. The Defendant has no knowledge of the allegations contained under Paragraph 2 of the Statement of Claim and makes no admission thereto.
3. The Defendant admits Paragraph 3 of the Statement of Claim.
4. The Defendant admits Paragraph 4 of the Statement of Claim.
- 30 5. Save that it is admitted that the Third Plaintiff is the registered holder of 7/128 undivided share as administrator the Defendant has no knowledge of the allegations contained in Paragraph 5 of the Statement of Claim and makes no admission thereto.
6. The Defendant admits Paragraph 6 of the Statement of Claim.
7. The Defendant admits Paragraph 7 of the Statement of Claim.

In the
High Court

No.3
Defence and
Counterclaim
11th June
1981

(continued)

8. Save that it is admitted that Pengarah Rahman bin Kahar was the registered owner of one-half ($\frac{1}{2}$) undivided share in the said land the Defendant has no knowledge of the allegations contained in Paragraph 8 of the Statement of Claim and makes no admission thereto.
9. Paragraph 9 of the Statement of Claim is admitted.
10. The Defendant admits that he has for upwards of 15 years prior to the issue of the Writ herein been in adverse possession of the said land and has without the consent of the Plaintiffs erected and caused to be erected buildings thereon. 10
11. The Defendant admits that rents derived from the said land have not been shared with the Plaintiffs for upwards of 15 years prior to the issue of the Writ herein. 20
12. In the premises, the Plaintiffs' claims are barred by Section 3 of the Limitation Enactment 1962 and their rights and title to the said land have been extinguished by virtue of Section 26 of the said Enactment.
13. Save and except as hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim contained as if the same were set forth herein seriatim and specifically traversed. 30

COUNTERCLAIM

14. The Defendant repeats Paragraphs 10 to 12 hereof.

AND the Defendant counter-claims :-

- (1) A declaration that the Plaintiffs' claims are barred by Section 3 of the Limitation Enactment 1962 and their rights and title to the said land have been extinguished by virtue of Section 26 of the said Enactment; 40
- (2) Any further and other relief as the Court may deem fit and proper.

Dated this 11th day of June, 1981

(Signed) CHOO CHAN & WONG
Advocates for the Defendant

This Defence and Counterclaim is filed by Messrs. Choo Chan & Wong, Advocates for the Defendant whose address for service is at Room 52 Britannia House, Bandar Seri Begawan, Brunei.

In the
High Court

No.3
Defence and
Counterclaim
11th June
1981

(continued)

No. 4

REPLY AND DEFENCE TO
COUNTERCLAIM

No.4
Reply and
Defence to
Counterclaim
27th June
1981

R E P L Y

- 10 1. The Plaintiffs join issue with the Defendant on his defence except in so far as it consist of admissions of the Statement of Claim.
- 20 2. The Plaintiffs deny that their title has been or could be extinguished by reason of the provision of the Limitation Enactment 1962 as alleged or at all and will contend that the Defendant's possession of the said land or any part thereof was illegal by reason of the provision of Section 13 of the Probate and Administration Enactment 1955 or if not illegal was attributable to the Defendant father's registered ownership pursuant to the said section and could never be adverse to the estate interest and occupancy of the Plaintiffs as registered owners nor to that of the previous registered owners and will further contend that the Defendant's claim or interest in the said land which are denied not having been registered in the Land Office are invalid by reason of the provisions of Section 27 of the Land Code and further that permanent occupancy of the said land was at all material times conferred on the Plaintiffs and their predecessors in title by reason of the provisions of Section 9 of the Land Code and that the Defendant's possession was illegal by reason of the provisions of the Probate and Administration Enactment 1955 and the
- 30
- 40

In the
High Court

No. 4

Reply to
Defence and
Counterclaim
27th June
1981

(continued)

Defendant having no valid claim or
interest therein adverse to the
Plaintiffs or at all.

DEFENCE TO COUNTER-CLAIM

3. The Plaintiffs repeat their Reply.
4. The Defendant is not entitled to the declaration claimed or any declaration and his claims should be dismissed with costs.

Dated this 27th day of June, 1981

10

(Signed) Ho & Siong

Advocates for the Plaintiffs

This Reply to Defence and Counterclaim is filed by Messrs. Ho & Siong, Advocates for the Plaintiffs, whose address for service is No. 63 (1st Floor), Jalan MacArthur, Banda Sin Begawan Brunei.

No. 5

Amended
Defence and
Counterclaim
4th February
1982

No. 5

AMENDED DEFENCE AND COUNTERCLAIM

- The Defendant admits Paragraphs 1 to 16
1. ~~Save that it is admitted the First of the Statement of Claim. Plaintiff is the registered owner of 7/128 undivided share of the land known as Lot 218, District of Brunei (herein after called "the said land") the Defendant has no knowledge of the allegations contained in Paragraph 1 of the Statement of Claim and makes no admission thereto.~~ 20
 2. ~~The Defendant has no knowledge of the allegations contained under Paragraph 2 of the Statement of Claim and makes no admission thereto.~~ 30
 3. ~~The Defendant admits Paragraph 3 of the Statement of Claim.~~
 4. ~~The Defendant admits Paragraph 4 of the Statement of Claim.~~
 5. ~~Save that it is admitted that the Third Plaintiff is the registered holder of 7/128 undivided share as administrator the Defendant has no knowledge of the allegations contained in Paragraph 5 of the Statement of Claim and makes no admission thereto.~~ 40

6.---~~The Defendant admits Paragraph 6 of the Statement of Claim.~~

In the
High Court

7.---~~The Defendant admits Paragraph 7 of the Statement of Claim.~~

No.5
Amended
Defence and
Counterclaim
4th February
1982

8.---~~Save that it is admitted that Pengarah Rahman bin Kahar was the registered owner of one half (1/2) undivided share in the said land the Defendant has no knowledge of the allegations contained in Paragraph 9 of the Statement of Claim and makes no admission thereto.~~

(continued)

10

9.---~~Paragraph 9 of the Statement of Claim is admitted.~~

2.

10. The Defendant admits that he has for upwards of 15 years prior to the issue of the Writ been in adverse possession of the said land and has without the consent of the Plaintiffs erected and caused to be erected buildings thereon.

20

3.

11. The Defendant admits that rents derived from the said land have not been shared with the Plaintiffs for upwards of 15 years prior to the issue of the Writ herein.

4.

12. In the premises, the Plaintiffs claims are barred by Section 3 of the Limitation Enactment 1962 and their rights and title to the said land have been extinguished by virtue of Section 26 of the said Enactment.

30

13.---~~Save and except as hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim contained as if the same were set forth herein seriatim and specifically traversed.~~

AMENDED COUNTER-CLAIM

5.

14. The Defendant repeats paragraphs 101 to 124 hereof.

40

AND the Defendant counterclaims :-

- (1) A declaration that the Plaintiffs' claims are barred by Section 3 of the Limitation Enactment 1962 and their rights and title to the said land have been

In the
High Court

No.5
Amended
Defence and
Counterclaim
4th February
1982

(continued)

extinguished by virtue of
Section 26 of the said Enactment;

- (2) A declaration under Section 26 and Section 29 of the Land Code that the Land Register be rectified to the extent that the name of the Defendant be entered and registered as the owner of 50/128 undivided share in the Title Deed of the said Lot 218 in place of :- 10
- (a) the First Plaintiff registered as holding 7/128 undivided share;
 - (b) the First Plaintiff registered as holding 8/128 undivided share as Administratrix of the Estate of Pengiran Norsalam binte Pengiran Tengah;
 - (c) the Second Plaintiff registered as holding 14/128 undivided share; 20
 - (d) the Third Plaintiff registered as holding 7/128 undivided share as Administrator of the Estate of Dayang Aji binte Haji Hussin; and
 - (e) the Fourth Plaintiff registered as holding 14/128 undivided share.
- (3)
(2) Any further and other relief as the Court may deem fit and proper. 30

Dated this 11th day of June, 1981
Redated this 4th day of February, 1982

(Signed)
CHOO CHAN & WONG
Advocates for the Defendant

AMENDED PURSUANT TO AN ORDER OF THE CHIEF
REGISTRAR DATED THIS 14TH DAY OF JANUARY, 1982

This Amended Defence and Counterclaim is filed
by Messrs. Choo Chan & Wong, Advocates for
the Defendant, whose address for service is
at Room 52, Britannia House, Bandar Seri
Begawan 40

NOTES OF PRELIMINARY
HEARING

No.6
Notes of
Preliminary
Hearing
19th July
1982

Coram: Jones, J.
Date: 19th July, 1982

Mr. Ball and Mr. Siong for the Plaintiff
Mr. F.S.Choo for Defendant.

Mr. Siong: Estimated time 2 days
Mr. Choo : Facts admitted no evidence to be
called.

10

Mr. Ball : Maybe some evidence.

Court : Adjourned for hearing to Wednesday
21st July, 1982 at 9.00 a.m.

(Sgd) B.L.Jones
19.7.82

NOTES OF OPENING SPEECHES
OF COUNSEL

No.7
Notes of
opening
speeches
of Counsel
21st July
1982

Mr. Ball : Land Officer and Plaintiffs not
here.

20

Mr. Choo : Defendant admit all facts on
Statement of Claim. We allege
one fact in counterclaim adverse
possession 15 years upward.
Plaintiffs decide not to agree.

Mr. Ball : Ouster. Defendant filing defence.
Not yet explored issue of
illegality. Not yet know if
Defendant allege ouster.

30

Mr. Choo : The Hardwick.

Mr. Ball : Statement of Claim.
1st Plaintiff sue on own behalf
Schedule of various dates submitted
and a table. 1st Plaintiff claim
on the title agreed. Copy title
in hands of 2nd Plaintiff.
Ex. Pl by agreement.

In the
High Court

No.7
Notes of
opening
speeches
of Counsel
21st July
1982

(continued)

Torrens: Land Code complete Code.
Not altered since it was introduced.
Para:1 Cap.40 Law of Brunei.

Para: 3

No suggestion that anyone can obtain
title by occupation.

Adverse Possession. First case on
adverse possession in Brunei.

Section 6(2) only refers to title.
Section 7, Section 8. 10

Section 9 rely on permanent trans-
mission. Occupancy here meaning
ascribed to it in Oxford English
Dictionary and effective as if
registered deemed by law to be an
occupant. At end of Code is a
former lease. Maybe difficult to
reconcile words of "lease".
Page 866, Form F.

"In case the rent shall be in arrear 20
for one month or there shall be a
breach of any of the covenants and
conditions on the part of the lessee
then I shall be entitled to re-enter
upon the said land and this Lease
shall be at an end."

If re-entered therefore not always
intend to be an occupant.

Oxford English Dictionary 1971.

Section 26 (? comma after Land). 30
act of law (?) include Limitation
Act Section 27

Defendant may have jumped gun by not
registering under Limitation Act.

Section 29.

Until they have registered claim it
is not valid.

Section 28(3)

Section 29.

Limitation Enactment 1962 passed 40
3.9.62.

Section 26 - not in force 1.9.67.

In force subsidiary 203 Schedule.
12 years. 112.

Pleading:

1st, 2nd and 4th Plaintiffs on
register since 1963.

As administrator since 11.4.79.

Became administrator since 4.11.78

- administratrix of her mother. 50

128 shares.

Plaintiffs hold 64.

Others hold 64 registered in name of
person believed to be father of the
defendant.

1st Plaintiff: not such in representing capacity regarding shares held by Sabli as obtained.
Letters of Administration after Writ issued.

In the
High Court

No.7
Notes of
opening
speeches
of Counsel
21st July
1982

10

2nd Plaintiff: 14 in own right as from 1963
3rd Plaintiff: 7 as administratrix of his mother registered on 11.4.79
As administratrix granted Letters of Administration on 26.8.78.
4th Plaintiff: 14 shares from 1963 in own right.

(continued)

20

1st Plaintiff holds for mother Norsalam her mother who died in 1969 - 8 shares,
1st Plaintiff for Sabli her brother who died in 1963.
14 shares.
3rd Plaintiff holds for Dayang Aji mother who died in 1948 - 7 shares.

30

Section 17(2) Limitation Enactment will apply.
No right accrued against these people until Letters of Administration has been taken out.
3 grants Letters of Administration.
Ex. P2, P3 and P4.

1st Plaintiff 4.11.78 - 8
1st Plaintiff Sabli 5.1.82 - 14
3rd Plaintiff 26.8.78

No. 8

EVIDENCE OF OTHMAN B.
AWANG DAMIT

Plaintiffs'
Evidence
No.8
O.B.A.
Damit
Examination

P.W.1 OTHMAN B. AWANG DAMIT affirms in English.

40

I am Senior Land Officer
I saw original of Ex.Pl. extract issued by Land Office.
Land case referred to No.20/1948
Searches have been made but there is no record in the register of case No.20/1948
Probate and Administration Enactment, 1952,
Land Office procedure in existence prior to 1952.

In the
High Court

Plaintiffs'
Evidence
No.8
O.B.A.Damit
Examination
21st July
1982

(continued)

I don't know position before 1952.
I don't have original but have a
second copy of letter from the Land
Office to Haji Ibrahim bin Hj. Hussain.
2nd Plaintiff dated 15.2.67. I produce
copy of letter with certified trans-
lation; Ex.P5 and P5a. No personal
knowledge.
No other documents in file.
Defendant made no claim to Land Office
Lot No.234.
Extract from District Register 218.
No one previously made any claim to
adverse possession.

10

Cross-
Examination

CROSS-EXAMINED

Cross-Examination

- Q. First line of letter not signed by you?
- A. No first in Land Office in 1973.
- Q. Refer at top PTB LOB 236/63 does it mean application made?
- A. Yes.
- Q. Do you know where land is?
- A. Kianggeh
Down town area.
Sungei = River.
- Q. Nature of land?
- A. It is Kampong Kianggeh (village).
9/10 acres.
- Q. Prime land now?
- A. Yes.
- Q. Any procedure Land Office for adverse possession.
- A. Section 26 and Section 25 in the Land Code.
I have experience of injunction.

20

30

No Re-examination.

No.9
H.T.B.Hussin
Examination
21st July
1982

No. 9

EVIDENCE OF H.T.B. HUSSIN

P.W.2 HAJJAH TAMPOI BINTE HAJI MATUSSIN
a HAJI HUSSIN affirms in Malay.

I am married with 12 children. About 65. 40
I live at Kampong Berakas, Perpindahan.
I am first Plaintiff. I know Defendant.
I am claiming land.

CROSS-EXAMINED

In the
High Court

Cross-Examination

Plaintiff's
Evidence
No.9
H.T.B. Hussin
Cross-
Examination
21st July
1982

- Q. Do you ever live on the land?
- A. No.
- Q. What about your parents?
- A. No.
- Q. Any member of family build house or receive rents re land?
- A. No.
- 10 Q. Ever pay any quit rents to Government (Annual rent)?
- A. Yes.
- Q. Any proof?
- A. I can remember.
- Q. Did you know yearly sum paid to Government?
- A. I don't know.
- Q. Did you or any of the family exercise any control over the land?
- 20 A. I did not control land.
- Q. Did family exercise control over land?
- A. I don't know.

RE-EXAMINED

Re-
Examination

Re-Examination

- Q. Father never lived on land you know that or you don't know he lived on land?
- A. I don't know.

EVIDENCE OF HAJI IBRAHIM
BIN HAJI HUSSIN

Plaintiffs'
Evidence
No.10

H.I.H.Hussin
Examination
21st July
1982

P.W.3 HAJI IBRAHIM BIN HAJI HUSSIN affirms
in Malay

Live at Kampong Kianggeh. I am about 70.
I am 2nd Plaintiff. I am married, 3
children here other child passed away.
I am a butcher.

I have been holding the title Ex.P1. 10
Title came from the Government in 1960.
My name entered 1963, came from father.
1st Plaintiff is my sister.
4th Plaintiff is my younger brother.
3rd Plaintiff is son of my sister Dayang
Aji.

I know Defendant stay in same kampong.
He lives across the river. One river
across.

When father passed away a search was 20
made and land was then discovered in 1960
when father died.

Father died after Japanese occupation.
I myself and father built a house of
land made of wood.

House was occupied by a relative. He
has now passed away. He occupied house
before father passed away and left before
father died.

Mangoes and coconuts on land shared 30
amongst ourselves together with the
Defendant.

I don't know how many houses built on
land.

Defendant's brother and children built
houses on the land. After houses were
built negotiations between them before.

I took part. I can't remember date.
That is after my name was registered in
Land Office. 40

Mr.
also attended this negotiation.
Mr. not present but he knew about it.
We talked about land title.
4th Plaintiff was present during
negotiation.
I received Ex.P5.

Cross-
Examination

CROSS-EXAMINED

Cross-Examination

Q. Father died after Japanese Occupation. 50
Was it a few years after?

	A. I can't remember.	In the <u>High Court</u>
	Q. You and father built house on land and let relative live in house before father died and he stayed 3 years. What happened to the house?	Plaintiffs' Evidence No.10 H.I.H.Hussin Cross- Examination 21st July 1982
	A. Collapsed.	
	Q. When did relative stay there?	
	A. During Japanese occupation.	
10	Q. Nobody looked after house after he left?	(continued)
	A. Ismail stayed there after, our relation. Ismail is a relative of mine.	
	Q. How long there?	
	A. Almost 1 year.	
	Q. After that?	
	A. He left and went to Miri and the house collapsed.	
	Q. Never set up another house there?	
	A. Yes.	
20	Q. You never built house there?	
	A. I had my own land.	
	Q. Your father ever lived on land?	
	A. No.	
	Q. Land at time when you and father built house was it mainly jungle?	
	A. No.	
	Q. Swampy?	
	A. Yes, mangrove inibalu (family of coconut trees).	
	Q. Mangrove not deliberately cultivated?	
30	A. Owner cultivates.	
	Q. Who share crops with?	
	A. Amongst ourselves.	
	Q. Any crops now?	

In the
High Court

Plaintiffs'
Evidence
No.10
H.I.H.Hussin
Cross-
Examination
21st July
1982

(continued)

- A. Coconuts, and mangoes still.
Q. When last time share crops?
A. I can't remember.
Q. Land when father had it worth much?
A. No.
No re-examination.
Case for Plaintiff.

Defendant's
Evidence
No.11
H.M.P.Rahman
Examination
21st July
1982

No.11

EVIDENCE OF HAJI MATUSSIN
B.PENGARAH RAHMAN

10

Defendant HAJI MATUSSIN B. PENGARAH RAHMAN
affirms in Malay, born in 1895.

I live at Kampong Sungai Kianggeh.
I am a businessman selling meat. Land
I live on is land in dispute. I have
been there ever since I was 12.
Land used to belong to my father.
After father bought, I stayed on it since
12 on land.

I know the Plaintiffs. None of them
lived on the land. 20

Father of the Plaintiffs Haji Hussin
never lived on the land.
Plaintiffs never shared any fruits, why
should I.

I lived on land and I built houses on
land to rent out for many years.
I collect rent as I built there.
I pay quit rent, annual rent to Government
my father's property. It is for the 30
whole property. I consider whole property
is my father's. I make use of it as my
own.

Cross-
Examination

CROSS-EXAMINED

Cross-Examination:

- Q. Your name not entered on title?
A. No.
Q. Why not entered on title?
A. It is not easy as I have to apply for
Letter of Administration to my late father 40
and we are 3 brothers.

Q. Why difficult?

In the
High Court

A. All 3 of us always say do it later.

Q. Have you applied to the Kathi (Religious Department of Brunei) for a certificate of distribution to your father's estate?

Defendant's
Evidence
No.11
H.M.P.Rahman
Cross-
Examination
21st July
1982

A. Never.

Q. About what date father die?

(continued)

10

A. Father passed away in Mecca at age of 65 when I was about .

Q. Before German war?

A. German war first, Japanese second.

Q. Did father die before German war or after?

A. Before German war.

Q. 2 brothers still alive?

A. Yes.

Q. Do they have a share in land?

A. Yes, our custom is even to share a little.

20

Q. You ask for your name to be substituted for Plaintiffs?

A. I want three of us on title.

Q. Do you know person called Probate Officer?

A. I did not apply.

Q. You know there is a Probate Officer?

A. Yes.

Q. Do you know when person dies property goes to Probate Officer?

A. Yes.

30

Q. When first know existence of title deed?

A. My father's land, how can I know?

Q. Did father hold this title?

A. I know.

Q. Before German war?

A. Yes.

Q. Did father hold it in his hand?

A. Yes.

Q. Why not in your possession now?

40

A. This land after father died it was in mother's hand and when mother died, I search for title. I don't know where it was.

In the
High Court

Defendant's
Evidence

No.11

H.M.P. Rahman

Cross-
Examination

21st July

1982

(continued)

Q. Do you know half of land was sold by
father of the Plaintiffs?

A. No. Never sold if sold I never put
my signature.

Q. Did you make any claim to Land Office?

A. I did claim from Land Office. I ask
them: the Plaintiffs how they can get
the land?

Q. Which Plaintiff?

A. I don't know them if I know them it
is different.

10

No re-examination

Case for the Defendant

No.12
Notes of
closing
speeches
of Counsel
21st July
1982

No. 12

NOTES OF CLOSING SPEECHES
OF COUNSEL

Mr. Choo:

Doctrine adverse possession acquired
after statutory period elapsed.
Megarry 4th Edition Page 1003 on Real
Property Chapter 16.
Section 3 Limitation Enactment 1962.
Item 87 Page 15 1962.

20

3 years prior to issue of writ is
limitation of Plaintiffs' entitlement
on assumption they succeed but I submit
all this have been extinguished under
Section 26. Page 8.

Item 112 Page 18.

Section 17(2) to 6. Mr. Ball submits
time not start to run until Letters of
Administration obtained. This is not
relevant and incorrect.

30

17(2) says only if right accrued after
that. Right to institute possession
was long ago vested in Plaintiffs'
father and that is when time begins
to run.

Defendant contends Plaintiff must fail
and therefore counterclaim must succeed.
Pleadings make case clear.
Statement of Claim Para.10-16.

40

- Amended Defence

None of Plaintiffs have possession of land
and Defendant had possession since small

	boy used it exclusively.	In the
	He has paid annual rent to Government.	<u>High Court</u>
	Demand made by Plaintiffs. Para.13.	
	(Land Office sending notice to occupant	No.12
	of land for annual rent).	Notes of
	EDR 234 Lot No.	closing
	Reply Para. 2.	speeches
	Section 9 Land Code Cap.40.	of Counsel
10	Ex.Pl. in perpetuity. Therefore can	21st July
	be no reversion under Section 3. It is	1982
	private land.	
	Section 9 does not assist Plaintiff	(continued)
	as Plaintiff did not have permanent	
	physical occupancy.	
	O'Connor J. at Page 2.	
	Section 9 will lead to complication.	
	Clause must be read as a whole.	
	Section 27 conceded Defendant no title.	
20	2 aspects to Defendant's claim.	
	First Section 3 Limitation Enactment.	
	Shoe of defence.	
	Second right of Plaintiff extinguished	
	Section 26 spear of counterclaim.	
	Right of Plaintiff if extinguished	
	therefore fall to Defendant. Section 27	
	is irrelevant and does not help Plaintiffs.	
	Defendant has prescriptive title to land	
	that has to be perfected by registration	
	under Section 26.	
30	Section 29 - Land Code.	
	Section 26 - Land Code.	
	Section 29.	
	Plaintiff re Torrens.	
	Civil Appeal 1/08.	
	1908 Innes Report Page 112.	
	Registration of Titles Regulation 1891 of	
	the Federated Malay States Section 7.	
40	We don't have similar provision in our law	
	but have Section 3 and Section 26 of	
	Limitation Enactment 1962.	
	Unless express provision in the Land Code	
	is excluded Section 3 of Limitation Enactment,	
	doctrine of adverse possession must be part	
	of the Law of Brunei.	
	National Land Code of Malaysia.	
50	Tenure and Land Dealings in the Malay States	
	by David Wong, Advocate & Solicitor of	
	Supreme Court of Singapore Page 379.	
	Application incompatibility between Land	
	Code and Limitation Enactment but I submit	
	is not.	
	Provision of earlier statutory Land Code must	
	give in to later statutory Limitation Enactment.	
	187 Maxwell 12th Edition.	

In the
High Court

No.12
Notes of
closing
speeches
of Counsel
21st July
1982

(continued)

193 Maxwell.
Corea v. Appuhamy 1912.
Appeal Case 230.
Page 236.
Page 235: Defendant had title common
to all Unity of title.

Defendant is not a co-owner with the
Plaintiffs.
Section 13(1) Probate & Administration
Enactment I don't think Section 13
assists the Plaintiffs.

10

Mr. Ball:

Defendant's father's date of death
uncertain.
No period of limitation prior to 1.9.62.
Not concerned. 2 defects in counterclaim.
1. No period of limitation had expired
at date of writ although he had
physical possession, he did not
have exclusive possession as half
land belonged to father is vested
with Probate Officer and never any
Letters of Administration of Hussin
and Letters of Administration of
3 persons representing protected
then until 1978.

20

Mode of acquisition of title in reply
only mode of acquisition in Brunei under
Section 3 Land Code or under Section 26
as a person showing he is entitled to be
registered. Claimant must show he has
benefit of Section 26 of Limitation Act
that he is lawfully entitled to be
registered and title not lapsed into
the state. My friend said long dormant
case, but 1948-1967.

30

Sub-division 1967 Ex.P5.
Item 87 re Limitation 3 years collection
of rents, I agree
My friend said Section 17(2) Limitation
Enactment no relevance as right to
institute arose long ago.
Neither in pleading, or in his evidence
no date mentioned as to when right
accrued.
He said right accrued to father before
he died but only dealing with Enactment
1962.
References to father do not arise.

40

Section 3 Land Code my friend said once
alienated in perpetuity, I refer to
consequences.
Refer to Section 9.
Section 9(4), 9(5).

50

	Section 9 - occupancy. I rely on Oxford English Dictionary. Disagree with O'Connor J's judgment. Literal meaning.	In the High Court
	Right going to someone else who is in better position than the Defendant. This is not correct. Prescriptive title to land. This has not been proved.	No.12 Notes of closing speeches of Counsel 21st July 1982
10	Neither Section 26 or Section 29 Land Code does not support this As he is not claiming $\frac{1}{2}$ title and is concerned with undivided share there is a lacuna to exclusive possession. Otherwise e.g. his brother or Probate Officer is. Defendant has not shown an exclusive possession as against another claimant.	(continued)
20	Selangor application unless specific permission given for limitation, it may be reasonably be expected to be excluded.	
	Incompatibility Section 26 Limitation Enactment 112. Adverse possession therefore no conflict. In present state of Land Code no conflict with Limitation Enactment. No amendment of words.	
30	Limitation - one may not come with application because of present state of Land Law. Limitation provisions do not apply. Defendant on pleading claim agrees whole world would but not case today. Corea v. Appuhamy - only refers to fact that he was claiming against whole world.	
40	Mr. Choo: Ramalakshamma v Ramanna Page 734. When time commences to run M.L.J.MELAH equivalent to our Section 17(1). Date runs from adverse possession. 110 may apply instead of 112.	
	Mr. Ball: Time does not go back beyond 1967.	
	Mr. Choo: I concede Limitation Enactment does not apply retrospectively.	
	Mr. Choo: Limitation Enactment 1967 successor to 1918 Enactment until repealed. Time runs. Section 13 Limitation Enactment preserves time therefore operates retrospectively.	
50	Court: Judgment reserved.	

(Sgd) B.L.Jones
21.7.82

NOTES OF SUBMISSIONS
OF COUNSEL

No.13
Notes of
Submissions
of Counsel
4th August
1982

4th August, 1982

Mr. Siong: I ask for an order for
possession.

Mr. Choo: I submit order for possession
cannot be applied for as it
constitutes a different form
of action. 10
Plaintiffs not entitled to an
order for possession.

Mr. Siong: I apply for costs.

Mr. Choo: I submit due to delay there
should be no order as to costs.

(Sgd) B.L.Jones
4.8.82

No.14
Judgment
of High
Court
4th August
1982

No. 14

JUDGMENT OF HIGH COURT

Coram: Jones, J. 20
Date: 4th August, 1982

JUDGMENT

This action involves a dispute with
regard to the title of Lot No.234 recorded in
the Land Office District Register as E.D.R.
No.218 in the District of Brunei.

The Plaintiffs who are related to each
other are the registered owners of one half
of the undivided shares of the land. They
have inherited their shares from the one half 30
share held by Haji Hussin bin Abdullah who
died sometime between 1939 and 1948. His
sons, the 2nd and 4th Plaintiffs each hold
14/128 undivided shares in their own right.
The 1st Plaintiff, a daughter holds in her
own right 7/128 undivided share, and 8/128
undivided share as administratrix of the estate
of her mother Peng.Noorsalam bte Peng.Tengah
who died in 1949. Letters of Administration
to her mother's estate were obtained by the 40

1st Plaintiff on the 4th of November, 1978. The 1st Plaintiff also holds 14/128 undivided share as administratrix of the estate of her brother Sabli bin Haji Hussin who died in 1963. Letters of Administration to the estate of her brother were obtained by the 1st Plaintiff on the 5th of January, 1982. The share of Sabli is not the subject matter of the present action.

In the
High Court

No.14
Judgment
of High
Court
4th August
1982

10 The 3rd Plaintiff is the grandson of Haji Hussin bin Abdullah and holds 7/128 undivided share as administratrix of his mother Dayang Aji binte Haji Hussin, who died in 1948. The 3rd Plaintiff obtained a grant of Letters of Administration to her estate on the 26th of August, 1978.

(continued)

20 The registered owner of the other half share is the Defendant's deceased father. No grant of administration has been made in respect of his estate although it is believed that he died over fifty years ago. As a result the estate is vested in the Probate Officer pursuant to Section 18 of the Probate and Administration Enactment 1955.

30 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.

40 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.

The Plaintiffs in their Writ claim :-

- 50 (a) An account to be taken of all the moneys collected by way of rentals and use of the land by the Defendant;
- (b) An order for payment;
- (c) Demolition of all the buildings and structures on the said Lot 218, District of Brunei put up by the

In the
High Court

Defendant without the knowledge
and consent of the Plaintiffs;

No.14
Judgment
of High
Court
4th August
1982

- (d) Damages, and
(e) Any further and other relief as
the Court may deem fit and proper.

(continued)

However, the action is essentially one
for possession which was specifically applied
for by Mr. Ball at the conclusion of his
final submission for the Plaintiffs.

By his amended defence the Defendant
admits that he has for upwards of 15 years
prior to the issue of the Writ on the 19th of
June, 1979 been in adverse possession of the
land and has without the consent of the
Plaintiffs erected buildings thereon. He
admits that he has not shared the rentals
received from the land.

10

The Defendant claims that the Plaintiffs'
action is barred under Section 3 of the
Limitation Enactment 1962 and that their rights
and title to the land have been extinguished
under Section 26. Section 26 in conjunction
with either item 110 or item 112 of the
Schedule will extinguish the right and title
of a Plaintiff to immovable property at the
end of a period of twelve years from the date
when the possession of the Defendant becomes
adverse to that of the Plaintiff.

20

"Item 110 refers to possession of
immovable property, when the plaintiff,
while in possession of the property has
been dis-possessed or has discontinued
the possession."

30

whilst

"Item 112 refers to possession of
immovable property or any interest
therein not hereby otherwise specially
provided for."

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

40

Accordingly in order for item 112 to
apply the Defendant must prove adverse possession.

The Defendant seeks by way of counter-
claim a declaration that the Plaintiffs' claims
are barred and their rights and title have
been extinguished and a declaration under

Sections 26 and 29 of the Land Code for rectification of the Land Register that his name be entered and registered as the owner of 50/128 undivided shares being the Plaintiffs' respective shares that are the subject matter of this action.

In the
High Court

No.14
Judgment
of High
Court
4th August
1982

10 In their reply the Plaintiffs contend that the Defendant's possession of the land is illegal by virtue of Section 13 of the Probate and Administration Enactment 1955.

(continued)

Section 13 provides :

"(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.....

20 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..... "

Having regard to the proviso, I do not consider that the Defendant's occupation of the land is illegal.

30 The Plaintiffs in the alternative aver that as the Defendant derived occupation as a result of his father's ownership, his possession could never be adverse to that of the Plaintiffs as registered owners or to the previous registered owners.

Mr. Ball submits that in any event the Defendant's claim must fail because it has not been registered under Section 27 of the Land Code which states :

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

Apart from this Section, Mr. Ball argues that the Plaintiffs' claim is indefeasible by virtue of Section 9(1) of the Land Code which provides :

"Every title by entry in the Register shall vest in the person named therein and such

In the
High Court

No.14
Judgment
of High
Court
4th August
1982

(continued)

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."

Melah binte Indot v. Tambysah bin Hj. Kassim & Ors. (1941) M.L.J. page 70 was cited by Mr. Choo as authority that one of two tenants in common can acquire a right against the other tenant in common by adverse possession. However, whether there has been adverse possession is a question of fact.

10

For the Defendant to succeed he must prove that he has been in adverse possession of the land for the statutory period of twelve years. Mr. Choo during his submission for the Defendant did not suggest a date from which time should be held to run, but it appears to be his case that mere possession of upwards of 15 years prior to the issue of the writ will suffice.

20

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 the death of Hajo Hussin bin Abdullah, action was taken on behalf of the Plaintiffs in 1948 to register their title with the Land Office. Although the Land Office has no record of this claim, evidence was produced to show the land case number and the land claim number. Ultimately the Plaintiffs' title was registered in 1963.

30

Again in 1967, a letter was received by the 2nd Plaintiff from the Land Office with regard to an application for sub-division of the land. As one of the co-owners had died the application could not proceed until a grant had been made to the estate.

40

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.

50

Although the Plaintiffs have never claimed a share of the profits or of the rentals, it would appear in 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.

In the
High Court

No.14
Judgment
of High
Court
4th August
1982

10 The Plaintiffs naturally it seems,
devoted themselves to their own land and
affairs leaving the Defendant to retain
possession of 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
20 exclusive possession for he testified that
his two brothers will be entitled to a share.

(continued)

30 Having regard to the evidence, I am not
satisfied that the Defendant has been in
adverse possession. The claim of the Plain-
tiffs 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 of May, 1981 when he
set aside the judgment obtained against the
Defendant in default of appearance.

40 Having regard to the considerable delay
that has occurred in this matter, I do not
consider that it is a proper case for an account
to be taken or for an award of damages.

By their conduct the Plaintiffs impliedly
allowed the Defendant to deal with the land in
such manner as he thought fit. I am sure that
they were fully aware that the buildings had been
erected by the Defendant. As a result, I am not
prepared to make an order for their demolition.

50 There will be an order for possession in
favour of the Plaintiffs with a stay of execution
until further order of the Court. No order as
to costs.

(Sgd) Jones, J.
Commissioner of the Supreme
Court Brunei

In the
High Court

No. 15

ORDER OF HIGH COURT

No.15
Order of
High Court
4th August
1982

O R D E R

Upon this action coming up for hearing this day AND UPON HEARING MR. HUMPHREY BALL and MR. LUCAS SIONG both Counsel for the Plaintiffs and MR. CHOO FAH SEN and MR. CHAN TUAN CHAI, both Counsel for the Defendant. IT IS ORDERED as follows :-

- a. that there be no order for damages or for an account or for demolition of the buildings on the said land; 10
- b. that there be an order for possession in favour of the Plaintiffs with a stay of execution until further order of the Court;
- c. that the Defendant's counter-claim be and is hereby dismissed;
- d. there shall be no order as to costs.

Dated this 4th day of August 1982. 20

(Sgd) M.Ali Salleh

JUDGE/CHIEF REGISTRAR
High Court,
Brunei

ENTERED No.166 of 1982

NOTICE OF APPEAL

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

No.16
Notice of
Appeal
23rd August
1982

CIVIL APPEAL NO.4 OF 1982

B E T W E E N

HAJI MATUSSIN BIN PENGARAH
RAHMAN Appellant

A N D

- 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
Respondent
- HAJI IBRAHIM BIN HAJI HUSSIN Second
Respondent
- 20 PENGIRAN HAJI ISMAIL BIN
PENGIRAN PETRA
(Suing as the Administrator
of the Estate of Dayang Aji
bte Haji Hussin) Third
Respondent
- HAJI ABDUL RAHMAN BIN HAJI
HUSSIN Fourth
Respondent

IN THE MATTER OF CIVIL SUIT NO.167 OF 1979

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN

B E T W E E N

- 30 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
Plaintiff
- HAJI IBRAHIM BIN HAJI HUSSIN Second
Plaintiff
- PENGIRAN HAJI ISMAIL BIN
PENGIRAN PETRA
(Suing as the Administrator of
the Estate of Dayang Aji bte
Haji Hussin) Third
Plaintiff

In the Court
of Appeal

HAJI ABDUL RAHMAN BIN
HAJI HUSSIN

Fourth
Plaintiff

No.16
Notice of
Appeal
23rd August
1982

AND

HAJI MATUSSIN BIN
PENGARAH RAHMAN

Defendant

(continued)

NOTICE OF APPEAL

(Order 55 Rule 3)

TAKE NOTICE that the above-named Appellant
being dissatisfied with the judgment of
the Honourable Mr. Justice Jones given at
Bandar Seri Begawan, Brunei on the 4th day
of August, 1982 appeal to the Court of
Appeal against the whole of the said
Judgment

10

Dated this 23rd day of August, 1982

(Signed) CHOO CHAN & WONG
Advocates for the Appellant/
Defendant

TO: 1) The Registrar,
The High Court,
Bandar Seri Begawan

20

2) The above-named Respondents
and their Advocates,
Messrs. Ho & Siong
No.63 (First Floor)
Jalan McArthur,
Bandar Seri Begawan
Brunei

This Notice of Appeal is filed by Messrs.
Choo Chan & Wong Advocates for the Appellant/
Defendant, whose address for service is at
Room 52 Britannia House, Bandar Seri Begawan,
Brunei.

30

MEMORANDUM OF APPEAL

No.17
Memorandum
of Appeal
14th December
1982

1. The learned trial judge erred in law in holding that since neither the Plaintiffs nor their predecessors in title occupied the land Item 110 of the Schedule to the Limitation Enactment, 1962 does not apply. The Learned trial judge failed to consider that the essence of Item 110 is possession and that there is ample evidence to show that the Plaintiffs or their predecessors in title were previously in possession of the land or had at least exercised rights over the land consistent with possession:-
- 10
- (i) at pages 9 and 10 of the Notes of Evidence, Haji Ibrahim bin Haji Hussin (P.W.3) said that he and his father built a house on the land;
- 20
- (ii) at pages 9 and 10 of the Notes of Evidence P.W.3 said he and his father allowed their relatives to occupy the house until its collapse during the Japanese Occupation; and
- (iii) at pages 9 and 11 of the Notes of Evidence, the Plaintiffs together with the Defendant shared the crops from the land.
- 30
- II. The learned trial judge failed to consider that there is ample evidence to show that the Plaintiffs and their predecessors or at least the Second Plaintiff (P.W.3) and his father discontinued possession of the land after the collapse of the house they built.
- 40
- III. The learned trial judge in holding that the land has never been occupied by the Plaintiffs or their predecessors in title erred in fact when the evidence of P.W.3. was clearly to the contrary.
- IV. The learned trial judge, in holding that "there was no evidence of any overt act by the Defendant to support his claim to adverse possession" and that the Defendant had no exclusive possession failed to give sufficient weight or consider the evidence

In the Court
of Appeal

No.17
Memorandum
of Appeal
14th December
1982

(continued)

adduced to the contrary :-

- (i) that the Defendant has lived on the land since he was 12 years old;
 - (ii) that the Defendant has built houses on the land for letting out for many years;
 - (iii) that the Defendant has collected and kept for himself the rents derived from such letting out to the exclusion of all the Plaintiffs; 10
 - (iv) that the Defendant has paid the Government of Brunei quit rent for the whole piece of land even though his father was only a registered co-owner of one-half share of the land;
 - (v) that the Defendant's possession of the land did not derive from any lawful title or from a title common with that of the Plaintiffs and he was therefore a stranger in law to the Plaintiffs; 20
 - (vi) that the Plaintiffs never lived on the land.
- V. The learned trial judge in holding that "there was no evidence of any overt act by the Defendant to support his claim to adverse possession" and that the Defendant had no exclusive possession failed to consider the pleadings of both parties to the contrary :-
- (i) that it was alleged by the Plaintiffs in their Statement of Claim and admitted by the Defendant in his Defence that he had in the year 1964 erected, without the consent and knowledge of the Plaintiffs inter-connected one-storey buildings on the land, and that these buildings were divided into rooms and let out to various tenants; 40
 - (ii) that it was alleged by the Plaintiffs in their Statement of Claim and admitted by the Defendant in his Defence that he has been

receiving rents from the various tenants and occupiers of the rooms in the building to the exclusion of all the Plaintiffs; and

In the Court
of Appeal
No.17
Memorandum
of Appeal
14th December
1982

10 (iii) that it was alleged by the Plaintiffs in their Statement of Claim and admitted by the Defendant in his Defence that the Plaintiffs have not been able to make use of the land as a result of "the unlawful occupations, possession and illegal use of the land by the Defendant." (continued)

20 VI. The learned trial judge erred in law in holding that "for the Defendant to succeed he must prove that he has been in adverse possession of the land for the statutory period of twelve years" when the onus was on the Plaintiffs to prove that the possession of the land by the Defendant was permissive and not adverse.

30 VII. The learned trial judge erred in law in holding that in order for the Defendant to establish a claim for adverse possession, he must give notice or indicate to the Plaintiffs before this action commenced that he, the Defendant regarded his occupation as exclusive and adverse to the Plaintiffs' title.

40 VIII. The learned trial judge erred in law in holding that it was necessary for the Defendant in order to establish his claim on the ground of adverse possession to register his claim with the Land Office when the proper and correct procedure was for the Defendant to seek a declaration from the learned trial judge in the terms of Counter-claim.

IX. The learned trial judge in holding that the Plaintiffs had never claimed a share of the profits or of the rentals, erred in fact when the evidence of P.W.3 was clearly to the contrary.

50 X. The learned trial judge erred in law in holding that the Defendant has no exclusive possession because "his two brothers will be entitled to a share". The learned trial judge failed to consider that the Defendant's claim is only against

In the Court
of Appeal

No.17
Memorandum
of Appeal
14th December
1982

(continued)

the Plaintiffs' share of the land,
and not against his brothers'
hereditary or other rights over their
father's share of the land.

- XI. The learned trial judge erred in fact
in holding that the Defendant has no
exclusive possession merely because
of his statement that "his two brothers
will be entitled to a share".
- XII. The learned trial judge erred in law
in allowing the Plaintiff's application
to claim for possession of the land at
the conclusion of Plaintiffs' counsel's
final submission when the same was not
pleaded. 10

Dated this 14th day of December, 1982.

(Sgd) Choo Chan & Wong

CHOO CHAN & WONG
Advocates for the Appellant

TO: The Chief Registrar 20
The High Court,
Bandar Seri Begawan, Brunei

AND TO: The abovenamed Respondents and
their Advocates,

Messrs. Ho & Siong
No.63 (First Floor)
Jalan McArthur
Bandar Seri Begawan, Brunei

No.18
Notice of
Cross-
Appeal
11th April
1983

No.18

NOTICE OF CROSS-APPEAL

30

TAKE NOTICE that Hajjah Tampoi bte Haji
Matusin a Haji Hussin, Haji Ibrahim bin Haji
Hussin, Pengiran Haji Ismail bin Pengiran
Petra and Haji Abdul Rahman bin Haji Hussin,
the abovenamed Respondents/Plaintiffs will
cross-appeal to the Court of Appeal against
such part of the judgment of the Learned
Judge entered in this action and dated the
4th day of August, 1982 as decided

1. That this is not a proper case for an 40
account to be taken or for an award of
damages which is objected to in point
of law on the ground that an order for

accounts was made on the 29th day of September, 1980, and was never appealed against and in point of fact on the ground that the Respondents/Plaintiffs are entitled to a share of the rents.

In the Court
of Appeal

No.18
Notice of
Cross-Appeal
11th April
1983

- 10 2. That there should be no order for demolition which is objected to in point of law on the ground that the buildings are illegally erected and jeopardise the title of the registered proprietors.

(continued)

Dated this 11th day of April, 1983

(Signed) HO & SIONG
Advocates for the
Respondents/Plaintiffs

20 To: The Registrar
High Court,
Bandar Seri Begawan
Brunei

The abovenamed Appellant and his
Advocates, M/S Choo, Chan & Wong,
Room 52, Britannia House,
Bandar Seri Begawan,
Brunei

30 This Notice of Cross Appeal is filed by
Messrs. Ho & Siong Advocates for the
Respondents/Plaintiffs whose address for
service is at No.63 (1st Floor) Jalan
McArthur, Bandar Seri Begawan, Brunei

No.19

JUDGMENT OF COURT
OF APPEAL

No.19
Judgment of
Court of
Appeal
21st May
1983

In the Matter of Civil Suit
No. 167 of 1979

Coram: Briggs, P. (President)
Leonard, C. (Commissioner)
Kempster, C. (Commissioner)

J U D G M E N T

40 Kempster, C.

In these proceedings both plaintiffs
and defendant appealed from a judgment of

In the Court
of Appeal

No.19
Judgment of
Court of
Appeal
21st May
1983

Mr. Commissioner Jones given on the 4th of August 1982 whereby he made an order for possession of land known as Lot 218 in the district of Brunei in the plaintiffs' favour. In the course of the hearing of the action and of this appeal a number of questions relating to the Land Law of the State have, we are told, been argued for the first time.

(continued)

The Writ was issued on June 19th 1979 by the registered owners of nearly half of the undivided shares in the land in question naming as defendant the 87 year old son of the long deceased gentleman registered as the owner of the moiety of shares. Registration had, in all instances, been affected pursuant to the provisions of the Land Code which had come into force on the 6th of September, 1909. 10

The prayer of the Statement of Claim sought an account of rents and profits received by the defendant by reason of his occupation and enjoyment of the land, payment, demolition of buildings erected on the land by the defendant without the knowledge or consent of the plaintiffs, damages and further or other relief. 20

On July 25th 1979 the plaintiffs signed interlocutory judgment for damages to be assessed and for a final mandatory order for demolition of buildings; all these in default of Defence. But the plaintiffs appear to have taken no steps thereunder because on September 20th 1980 they obtained a separate and inconsistent order, for an account of monies belonging to them which had come into the hands of the defendant, pursuant to Order 15 of the Brunei High Court (Civil Procedure) Rules, which reads :- 30 40

"Where a writ of summons has been indorsed for an account, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear or does not after appearance by affidavit or otherwise satisfy the Court or a Judge that there is some preliminary question to be tried, an order for proper accounts, with all necessary inquiries and directions now usual in similar cases, shall be forthwith made." 50

The plaintiffs did not seek to implement this still extant order either but in the fullness of time the defendant made an application to set the default judgment given in July 1979 aside. Mr. Commissioner O'Connor made an order to this effect on the 23rd of May 1981; an order which was upheld by the Court of Appeal on the 18th of November of the same year.

In the Court
of Appeal

No.19
Judgment of
Court of
Appeal
21st May
1983

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(continued)

On June 11th 1981 a Defence was filed and on the 27th of that month a Reply. On the 4th of February, 1982 pursuant to an order of the Chief Registrar, an Amended Defence was filed. Upon these pleadings issue was joined and the trial before Mr. Commissioner Jones commenced on the 19th of July of last year.

20

The defendant claimed title deriving from the provisions of Sections 3 and 25 and Articles 110 and 112 of the Limitation Enactment 1962 which, despite its title, had not come into effect until the 1st of September, 1967; pursuant to Notification No.S203 of that year.

Section 3 of the Limitation Enactment reads :-

30

"Subject to sections 4 and 24 inclusive (of no significance in the case under consideration) every suit instituted after the period of limitation prescribed therefor by the Schedule of limitation has been set up as a defence (as was the case here) shall be dismissed."

And Section 26:-

40

"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."

Turning to Articles 110 and 112 :-

50

No.	Description of Suit	Period of Limitation	Time from which period begins to run
110.	For possession of immovable property,	Twelve years	The date of the dispossession

In the Court
of Appeal

No.19
Judgment of
Court of
Appeal
21st May
1983

(continued)

No.	Description of Suit	Period of Limitation	Time from which period begins to run	
	when the plaintiff, while in possession of the property, has been dis- possessed or has dis- continued the possession		or discontin- uance	10
112	For possession of immovable property or any interest therein not hereby other- wise specially provided for.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff	20 "

The plaintiffs contended and contend that the provisions which I have just read are void as being repugnant to Sections 9(1), 27 and 28(3) of the Land Code Cap.40 which read :-

"Section 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. 30

Section 27 :-

No claim to or interest in any land shall be valid unless it has been registered in the Land Office. 40

Section 28(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 50

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."

In the Court
of Appeal

No.19
Judgment of
Court of
Appeal
21st May
1983

No allegation of fraud or misrepresentation is made in the present proceedings.

(continued)

10 Though prima facie the provisions
of the Limitation Enactment 1962 and of
the Land Code are indeed mutually repugnant
the strives to reconcile apparently
conflicting provisions and, if this be
impossible, will hold that the earlier
provisions stand repealed by the latter.
The facts here falling for consideration
are not such as to invoke either the
20 principle "generalialia specialibus non
derogant" or any legal fiction to the
effect that the registered proprietor
enjoys a perpetual and constructive poss-
ession. On the contrary, to quote Livy,
"Ubi duae contrariae leges sunt semper
antiquam abrogat nova".

30 The whole of the Limitation Enactment
is surely part of the Law of Brunei though
application pursuant to Section 29 of the
Land Code is required in order to perfect
a title acquired pursuant to Section 26 of
the Limitation Enactment as appears to be
recognised by the prayer of the "Counter-
claim". I shall approach the submissions
made on behalf of the parties accordingly.

40 Article 110 of the Limitation Enactment
postulates the cessation of possession by
the plaintiffs. In this regard it is, in
my view, sufficient to say that there was
evidence which entitled the learned
Commissioner to find that the plaintiffs
did not occupy the land in question within
any material period of 12 years.

 Article 112 of the Limitation Enactment
postulates possession by the defendant
adverse to the plaintiffs. The word "plaintiff"
is defined in Section 2 of the Enactment to
include "any person from or through whom a
plaintiff derives his right to sue".

50 In their representative capacities the
first and third plaintiffs could not have
sued earlier than 1978 but the Probate Officer,
in whom shares in the land were at various
periods vested pursuant to Section 18 of the

In the Court
of Appeal

No.19
Judgment of
Court of
Appeal
21st May
1983

Probate and Administration Enactment 1955, could have done so. Therefore the period of limitation continued to run at least from the 1st of September 1967 when the Limitation Enactment came into force as against those 15/128 undivided shares as it did in relation to the balance of 35/128 undivided shares owned beneficially by the four plaintiffs.

(continued)

Paragraphs 10 to 14 inclusive of the Statement of Claim positively alleged adverse possession by the defendant since 1964, a period of some 15 years prior to the date of the Writ. Those allegations were admitted in Paragraph 1 of the Amended Defence. There was, therefore, no issue arising at trial between the parties on that score. 10

In so far as the plaintiffs sought, by way of Reply, to rely on other matters one only has to look at the first paragraph which, in conventional form, reads : 20

"The plaintiffs joined issue with the defendant on his defence except in so far as it consists of admissions of the Statement of Claim."

The alternative plea in Paragraph 2 that the defendant's occupation could not be adverse constituted a departure in pleading within the meaning of Order 20 Rule 15 of the Rules of the Brunei High Court and should have been struck out at an earlier stage. In any event there was no evidence before the learned Commissioner entitling him to find that the defendant had entered upon the land pursuant to the proviso in Section 13(1) of the Probate and Administration Enactment 1955. He certainly did not report his possession to the Probate Officer pursuant to sub-section 2 and a question may well arise as to whether or not the term "asset" in that proviso includes real property. 30 40

The defendant said in evidence that he considered that the whole of the land belonged to his father and that, since his father's death, he had occupied and possessed that land on a like footing. This apparently suited him better than procuring the agreement of his two brothers to making a joint application for letters of administration in respect of a half share which would have yielded him a one-sixth share in the land following registration instead of a whole interest de facto. 50

The period between the 1st of September 1967 when the Limitation Enactment took effect, and the date of issue of Writ is less than 12 years and does not satisfy Article 112 of the Limitation Enactment. It is therefore necessary for the court to consider the position under the Limitation of Suits Enactment repealed by Section 27 of the Limitation Enactment.

In the Court
of Appeal

No.19
Judgment of
Court of
Appeal
21st May
1983

10 Section 3(g) of the repealed Enactment
read :-

(continued)

20 "Subject to the provisions contained
in Sections 4 to 9 inclusive
(irrelevant to the present issues) the
High Court shall have discretion to
dismiss any suit of any other descrip-
tion whatsoever unless instituted
within the period of limitation provided
therefor under the Limitation Ordinance
of the Straits Settlement."

This sub-section necessarily applied to a
suit for possession of land.

The material section of the Limitation
Ordinance of the Straits Settlements was
Section 3 which read :-

30 "Subject to sections 4 to 24, (which
have no bearing on the matters in issue)
every suit instituted after the period
of limitation prescribed therefor by
the Schedule shall be dismissed, provided
that limitation has been set up as a
defence."

Article 112 in the Schedule to the
Limitation Ordinance of the Straits Settlements
was in exactly the same terms as those of
Article 112 of the Limitation Enactment 1962.

40 The question is therefore posed: "Did the
right of the defendant to seek the exercise of
the court's discretion in his favour so as to
dismiss a claim by the plaintiffs for possession,
having regard to his alleged and admitted
adverse possession since 1964, survive the
repeal of the Limitation of Suits Enactment?"
It is here helpful to turn to the provisions of
Section 13 which read :-

"10. The repeal of any written law shall
not -

50 (c) affect any right, power, obligation,
restriction or liability acquired,
accrued, imposed or incurred under

(continued)

any written law so repealed;

- (e) affect any investigation, legal proceeding or remedy in respect of any such right, power, obligation, restriction, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such restriction liability, penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been passed." 10

I am further persuaded in the views which I have expressed by a passage from the opinion of Lord Brightman in Yew Bon Tew v Kenderaan Bas Mara (1) which read :-

"An accrued right to plead a time bar, which is acquired after the lapse of the statutory period, is in every sense a right, even though it arises under an Act which is procedural. It is a right which is not to be taken away by conferring on the statute a retrospective operation, unless such a construction is unavoidable." 20

By parity of reasoning such a right is not to be taken away by refusing a retrospective operation to the repealing statute unless such a construction is unavoidable. 30

I would, if it were necessary, exercise a discretion in the defendant's favour having regard to the facts and pleadings to which I have already alluded.

In the premises the plaintiffs' titles were extinguished pursuant to Section 26 of the Limitation Enactment and the defendant (the appellant) succeeds as against the plaintiffs (the respondents) both on the claim and the counterclaim. The appeal is therefore allowed. The relief under Paragraph 2 of the prayer of the counterclaim should, in my view, read: "a declaration and order under Sections 26 and 29 of the Land Code". 40

Having regard to the terms of Order 55, Rule 15 of the Brunei High Court Rules, I would also discharge the exant order made some years ago pursuant to Order 15. 50

(1) (1982) 3 All E.R. 833 p.839

(Signed) M.E.Kempster
Commissioner of the
Supreme Court BRUNEI

In the Court
of Appeal

Briggs, P. : I agree
Leonard, C.: I agree

Counsel: F.S.Choo for Appellant
Ian Bond for Respondents

Solicitors: Choo Chan & Wong
David Clidero & Co.

No.19
Judgment of
Court of
Appeal
21st May
1983

(continued)

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No. 20

ORDER OF COURT OF
APPEAL

No.20
Order of
Court of
Appeal
8th June
1983

BEFORE SIR GEOFFREY BRIGGS, PRESIDENT
MR. JUSTICE LEONARD AND
MR. JUSTICE KEMPSTER IN OPEN COURT
THIS 21ST DAY OF MAY
1983

O R D E R

20

UPON THIS APPEAL AND CROSS APPEAL coming up on the 17th, 18th 19th and 21st day of May 1983 for hearing AND UPON HEARING MR CHOO FAH SEN of Counsel for the Appellant and MR IAN BOND of Counsel for the Respondents AND UPON allowing the said Appeal and dismissing the Cross Appeal IT IS DECLARED :-

30

1. That the Respondents' claims are barred by Section 3 of the Limitation Enactment 1962 and their rights and title to the land known as EDR No.218 Lot No.234 situate at Kampong Sungai Kianggeh, Brunei Land District, have been extinguished by virtue of Section 26 of the said Enactment.

AND IT IS FURTHER DECLARED AND ORDERED UNDER SECTION 26 AND SECTION 29 OF THE LAND CODE, CAP.40 :-

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2. That the Land Register be rectified to the extent that the name of the above-named Appellant HAJI MATUSSIN BIN PENGARAH RAHMAN be entered and registered as the

NOTICE OF MOTION FOR
LEAVE TO APPEAL

No.21
Notice of
Motion for
leave to
Appeal
30th May
1983

10 TAKE NOTICE that the Court will be moved on Saturday the 4th day of June, 1983 at 9.00 o'clock in the forenoon, or so soon thereafter as Advocate can be heard, by Mr. I.C.Bond/Mr.D.T.Clidero Advocates for the above-named Respondents/Plaintiffs for the following orders :-

20 (1) that leave be given under Section 4 of the Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council, 1951 to appeal to the Judicial Committee of Her Majesty's Privy Council against the judgment of the Court of Appeal delivered herein at Bandar Seri Begawan, Brunei on the 21st day of May, 1983.

(2) that the Respondents/Plaintiffs may be given a period of six months from the date of this Order to take the necessary steps to procure the preparation of the record of appeal and the despatch thereof to England.

Dated this 30th day of May, 1983

(Signed) David Clidero & Co.

30 Advocates for the
Respondents/Plaintiffs.

Entered No.13 of 1983

This Notice of Motion is taken out by Messrs. David Clidero & Co., Advocates for the Respondents/Plaintiffs, whose address for service is at Suites 409/410, Teck Guan Plaza, 56-60 Jalan Sultan, Bandar Seri Begawan, Brunei.

40 To the abovenamed Appellant/Defendant and his Advocates,
Messrs. Choo Chan & Wong,
No.52 Britannia House,
Bandar Seri Begawan,
Brunei.

No.22
Affidavit of
F.C.Medlicott
F.R.I.C.S.
30th May
1983

AFFIDAVIT OF F.C.MEDLICOTT
F.R.I.C.S.

I, FRANCIS CHARLES MEDLICOTT, F.R.I.C.S.,
of Lands Dept., Bandar Seri Begawan HEREBY
MAKE OATH AND SAY as follows :-

1. I am employed as a Valuation Officer
by the Government of Brunei and have
been so employed since 1975.
2. As part of my duties as such Land Valuation Officer I value pieces and parcels of land in the District of Brunei. 10
3. I have examined the Certificate of Title relating to EDR No.218 Lot No.234 in the District of Brunei (being the subject matter of this Appeal) and am fully acquainted with the whereabouts of this Lot.
4. I estimate the value of the land comprising Lot 235 as somewhere between \$400,000.00 and \$500,000.00 and I say that the value is definitely in excess of \$500. 20
5. I refer to the Notice of Motion applying for leave to appeal to the Privy Council filed herein on the 30th day of May, 1983 and make this Affidavit for the purposes of the same.

SWORN by the said 30
FRANCIS CHARLES MEDLICOTT (Sgd) Francis C.
At Bandar Seri Begawan Medlicott

Before me
(Sgd) Lo Ket Vui
Registrar, Supreme Court
Duly authorised to Administer Oaths
State of Brunei

Dated this 30th day of May, 1983

No. 23

In the Court
of Appeal

ORDER ALLOWING CONDITIONAL
LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

No.23
Order allowing
conditional
leave to
Appeal to Her
Majesty in
Council
2nd July 1983

BEFORE MR JUSTICE KEMPSTER

IN OPEN COURT
THIS 4TH DAY OF JUNE, 1983

10 UPON this motion by the Appellants/
Plaintiffs coming up for hearing before this
court on the 4th day of June, 1983 AND UPON
HEARING MR IAN CALLAND BOND of Counsel for
the Appellants/Plaintiffs and MR CHOO FAH SEN
of Counsel for the Respondent/Defendant AND
UPON READING the Affidavit of FRANCIS CHARLES
MEDLICOTT FRICS filed herein on the 30th day
of May 1983 IT IS ORDERED that the Appellants/
Plaintiffs be given leave to appeal upon the
condition that within a period of not exceeding
20 three months the Plaintiffs enter into good
and sufficient security to the satisfaction of
the Chief Registrar in the sum of \$5,000.00.

AND IT IS FURTHER ORDERED that the said
leave be given to appeal to the Judicial
Committee of Her Majesty's Privy Council
against the judgment of the Court of Appeal
delivered herein pursuant to the Brunei (Appeal
to the Privy Council) Orders in Council 1951
and 1963 and that the Plaintiffs be given a
30 period of six months from the date of this Order
to take the necessary steps to procure the
preparation of the record of appeal and the
despatch thereof to England.

Dated this day of 02 Jul 1983 1983

(L.S.) M. Ali bin Salleh
 Chief Registrar
 Supreme Court
 Brunei

Entered No.77 of 1983

P.1
Extract of
Land Title
17th March
1913 et seq
(Contd.)

KIANJICH RIVER

BRUNEL

P. COMPASS SURVEYER

RIVER NO. 8

PLOT NO. 2

BRUNEL

S.I.

Kianjich River

S.I.

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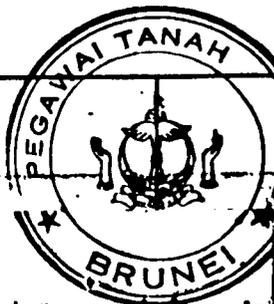
(Contd.)

EXTRACT FROM THE REGISTER

SERIAL NO. NUMBER TANAH ITU	SURVEY NO. IF DIFFERENT NUMBER SUKATAN	NO. AND NATURE OF FORMER TITLE NUMBER DAN BANGAS SURAT KE-BENARAN LAMA	NAME OF OWNER NAMA TUAN-NYA
218	234 sheet No.8	App. 41/11	Pengarah Rahman bin Kahar $\frac{1}{2}$ undivided share Haji Hussin bin Abdullah $\frac{1}{2}$ undivided share <i>(See slip No.2 attached)</i>

NUMBER TANAH ITU	NUMBER SUKATAN	NUMBER DAN BANGSA SURAT KEBERA BAK	
218	234 Sheet No. 8	App. 41/11	<p>Pengarah Rahman bin Kahar $\frac{1}{2}$ undivided share, Pengiran Noorsalam binte Pengiran Tengah $\frac{2}{128}$ undivided share, Haji Ibrahim bin Haji Husin $\frac{14}{128}$ undivided share, Haji Abd. Rahman bin Haji Husin $\frac{14}{128}$ undivided share, Sabli bin Haji Husin $\frac{14}{128}$ undivided share, Dayang Pampoi binte Haji Husin $\frac{7}{128}$ undivided share and Dayang Aji binte Haji Husin $\frac{7}{128}$ undivided share.</p>

(Slip No. 2)



NAMA TUAN-NYA

Slip No. 3

Pengerah Rahman bin Kahar 1/2 u.s.
Hajjah Tampoi binte Haji Matusin 8/128 u.s.
@ Hajjah Salmah binte Hj. Matusin
As Administratrix
Haji Ibrahim bin Haji Hussin 14/128 u.s.
Haji Abd. Rahman bin Haji Hussin 14/128 u.s.
Sabli bin Haji Hussin 14/128 u.s.
Dayang Tampoi binte Haji Hussin 7/128 u.s.
Dayang Aji binte Haji Hussin 7/128 u.s.

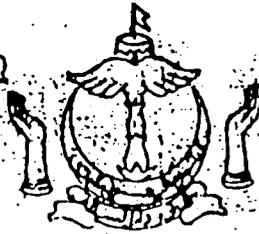
Pengerah Rahman bin Kahar 1/2 u.s.
Hajjah Tampoi binte Haji Matusin 8/128 u.s.
@ Hajjah Salmah binte Hj. Matusin
As Administratrix
Haji Ibrahim bin Haji Hussin 14/128 u.s.
Haji Abd. Rahman bin Haji Hussin 14/128 u.s.
Sabli bin Haji Hussin 14/128 u.s.
Dayang Tampoi binte Haji Hussin 7/128 u.s.
Pengiran Haji Ismail bin Pg. Petra 7/128 u.s.
As Administrator

Pengerah Rahman bin Kahar 1/2 u.s.
Hajjah Tampoi binte Haji Matusin @
Hajjah Salmah binte Hj. Matusin
as Administratrix 8/128 u.s.
Haji Ibrahim bin Haji Hussin 14/128 u.s.
Haji Abd. Rahman bin Haji Hussin
14/128 u.s.
Dayang Tampoi binte Haji Hussin 7/128 u.s.
Pengiran Haji Ismail bin Pg. Petra
as Administrator 7/128 u.s.
Hajjah Tampoi binte Haji Matusin @
Hajjah Salmah as Administratrix 14/128 u.s.

P.5
Letter Chief
Land Officer
to Hj Ibrahim
bin Hj Hussain
15th February
1967

YS

Telegraphic Address:
"LANDS BRUNEI" REGISTERED



Brunei Darussalam
Office of Lands and Mines

10
dim 109.236/63.

BRUNEI, 15th February 1967

Hj Ibrahim bin Hj. Hussain,
Kampung Sungai Klangah,
Brunei.

Tuan,

Berhubung dengan permohonan tuan hendak memertasi tanah KUP. 248 lot 27 telah lama di-dimpati di Pejabat ini. Adalah di-ketahui oleh orang-tuan tanah telah dimertasi. Oleh itu permohonan tidak-lah dapat di-ambil tindakan se-hingga hak orang yang meninggal itu selesai di-ambil oleh waris-hnya.

2. Untuk saya telah beberapa kali memanggil pihak bank-bank bagi membolehkan seperti di atas, tetapi tidak berkesan. Oleh sebab itu permohonan tidak-lah dapat di-ambil tindakan se-hingga hak orang waris itu selesai.

3. Dengan ini saya kembalikan geran KUP. 248 lot 27. Tuan boleh-lah memetik balik wang deposit seperti di atas. Dengan ini juga berpulang-lah kepada tuan untuk memertasi tanah bagi menyelesaikan perkara ini menurut undang-undang.

Sekian di-umumkan.

Dengan hormat,

Pegawai
Brunei

P.5A
Translation of letter into English
Chief Land Officer to Hj Ibrahim bin Hj
Hussain - 15th February 1967

P.5A
Translation
of letter into
English Chief
Land Officer
to Hj Ibrahim bin
Hj Hussain -
15th February 1967

T R A N S L A T I O N

D Office of the Senior Land
Officer

Ref: Brunei: 15th February 1967

Hj. Ibrahim bin Hj. Husain
Kamsong Sunsai Kiane eh
Brunei

Sir,

With reference to your application for sub-division of land held under EDR 218 lot 234 which has been kept in this office for sometime. I am given to understand that one of the co-owners of the land had passed away. In view of that no steps can be taken for the sub-division until the deceased owner's right and interest in the land has been settled by his beneficiaries.

2. I have requested the beneficiaries concerned many times to call at my office in order to advise them the position but without success. Under the circumstances the sub-division cannot proceed until the probate matter is finalised.

3. I return herewith the land title EDR 218 lot 234. You may ask for the refund of your deposit money. I also leave it to you to take further action to settle this matter according to law.

Yours faithfully,

(Signed)
Senior Land Officer
Brunei

Translated by:

Illegible

STATE OF BRUNEI

GRANT OF LETTERS OF ADMINISTRATION

IN THE COURT OF THE HIGH COURT,
BANDAR SERI BEGAWAN

LETTERS OF ADMINISTRATION

No. 106 of 1978 .

} BE IT KNOWN that at the date hereunder-written
Letters of Administration of all and singular the
movable and immovable property of

Dg.Aji bte Hj.Husin - deceased

late of Brunei

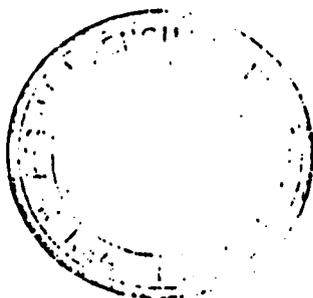
Sworn at deceased, who died on the - day of - , 1948
at Kampong Peramu, Brunei
Intestate, locally situate within the jurisdiction of the said Court were
granted to Pg.Hj.Ismail bin Pg.Petra - lawful son of deceased

of the said Intestate, he/she having been first sworn well and faithfully
to administer the same by paying deceased's just debts and distributing
the residue of such estate and effects according to law.

Dated at Brunei the 26th day of August , 1978 .

Date of issue

11/57



Deputy/Probate Officer,
State of Brunei.

SCHEDULE

E.D.R. 218 Lot.No. 234 at Kg.Sg.Kianggeh, Brunei	7/128 u.s.....	\$5.00
E.D.R.2939 Lot.No.3076 at Kg.Buang Tawar, Brunei	7/64 u.s.	\$5.00
		<u>\$10.00</u>

STATE OF BRUNEI

GRANT OF LETTERS OF ADMINISTRATION

IN THE COURT OF THE HIGH COURT,
BANDAR SERI BEGAWAN

LETTERS OF ADMINISTRATION
No. 133 of 19 78

} BE IT KNOWN that at the date hereunder-written
Letters of Administration of all and singular the
movable and immovable property of

Pg.Norsalam bte Pg.Tengah - deceased
late of Brunei

Sworn at deceased, who died on the - day of - , 19 49
at Kampong Peramu, Kampong Ayer, Brunei
Intestate, locally situate within the jurisdiction of the said Court were
granted to HAJJAH TAMPOI @ SALMAH BTE HJ.MATUSSIN - lawful
daughter of deceased

of the said Intestate, he/she having been first sworn well and faithfully
to administer the same by paying deceased's just debts and distributing
the residue of such estate and effects according to law.

Dated at Brunei the 4th day of November, 19 78.

Date of issue

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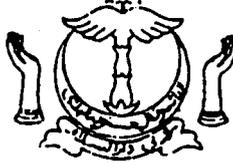


Deputy/Probate Officer,
State of Brunei.

SCHEDULE

E.D.R.NO. 2969 LOT.NO. 3076 at Kg.Buang Tawar, Brunei - 8/64 u.s...\$ 5.00
E.D.R.No. 218 LOT.NO. 234 at Kg.Sg.Kianggeh, Brunei - 8/128 u.s....\$ 5.00
\$10.00

P.3
Grant of
Letters of
Administration
5th January
1982



STATE OF BRUNEI

GRANT OF LETTERS OF ADMINISTRATION

PROBATE OFFICER
IN THE COURT OF THE HIGH COURT,
BANDAR SERI BEGAWAN

LETTERS OF ADMINISTRATION

No. 134 of 19 78

BE IT KNOWN that at the date hereunder-written Letters of Administration of all and singular the movable and immovable property of

SABLI BIN HAJI HUSSIN - deceased

late of Brunei.

Sworn at deceased, who died on the - day of - , 19 63
at 49, Jalan Chevalier, Brunei.

Intestate, locally situate within the jurisdiction of the said Court were granted to Hajjah Tampoi @ Salmah binte Haji Hussin - lawful sister of deceased

of the said Intestate, he/she having been first sworn well and faithfully to administer the same by paying deceased's just debts and distributing the residue of such estate and effects according to law.

Dated at B.S.B. the 5th day of January, 19 82.

Date of issue

05 JAN 1982

Deputy/Probate Officer,
State of Brunei.

SCHEDULE

EDR 63	LOT 47	at Kampong Batu Apoi, Temburong	\$ 1,150.00
EDR 218	LOT 234	at Kampong Kianggeh, Brunei	\$ 2,550.00
EDR 214	LOT 88	at Sg. Terusan, Batu Apoi, Temburong	\$ 100.00
EDR 114	LOT 85	" " " " " "	\$ 150.00
EDR 115	LOT 86	" " " " " "	\$ 2,750.00
EDR 2969	LOT 3076	at Buang Tawar, Brunei	\$ 75.00

\$ 6,775.00

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 :

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

HAJI IBRAHIM BIN HAJI HUSSIN

Second Appellant

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

Third Appellant

HAJI ABDUL RAHMAN BIN HAJI
HUSSIN

Fourth Appellant

v.

HAJI MATUSSIN BIN PENGARAH
RAHMAN

Respondent

RECORD OF PROCEEDINGS

BOSWELL BIGMORE,
25 New Street Square,
London, EC4A 3LN

Solicitors for the
Appellants