

37/85

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N

- 1. SYED HUSSAIN BIN ABDUL RAHMAN BIN SHAIKH ALKAFF
ALSO KNOWN AS SYED HUSSAIN BIN ABDUL RAHMAN ALKAFF
- 2. SYED ALWEE BIN MOHAMMED BIN AHMAD ALKAFF ALSO
KNOWN AS ALWEE ALKAFF
- 10 3. BRITISH & MALAYAN TRUSTEES LIMITED (SUED AS
TRUSTEES OF THE 1898 SETTLEMENT)

Appellants
(Defendants)

and

A M ABDULLAH SAHIB & CO
(suing as a firm)

Respondents
(Plaintiffs)

CASE FOR THE RESPONDENTS

RECORD

- 20 1. This is an Appeal from the Judgment and
Order of the Court of Appeal in Singapore
(Sinnathuray, J, Lai Kew Chai, J., and Thean,
J.) dated 4th September 1984 which dismissed
an appeal by the Appellants (Defendants in
the original action) from the Judgment of the
High Court of Singapore dated 11th November
1983 (Chows, J.) allowing the Respondents'
claim for a declaration that a consent
Judgment given in previous proceedings was a
nullity and ordering the Appellants to pay
the Respondents \$50,000 agreed damages. p.25-31
- 30 2. The Appellants were at all material times
the owners of certain premises known as 123A
and 123B, Market Street, Singapore. The said
premises were let by the Appellants to the p.14

RECORD

Respondents under the terms of an agreement dated 26th April 1952. In 1978 the Appellants started proceedings in the District Court (No. 4416 of 1978) claiming that the Respondents were trespassers on the ground that the tenant under the 1952 agreement had not been the Respondents but a partner in the Respondents' firm who had died in 1959.

p.49-51 The Respondents in their defence dated 6th December 1978 denied that they were trespassers and invoked the protection of the Control of Rent Act. Judgment by consent was entered against the Respondents on 18th December 1979 upon certain terms including a stay of execution until the occurrence of certain events, one of which events was the compulsory acquisition of the said premises by the Government. The Government duly initiated the compulsory acquisition procedure and the Appellants accordingly requested the Respondents to deliver up vacant possession in accordance with the consent Judgment. The Respondents refused and launched the proceedings the subject matter of the instant appeal (suit No. 2881 of 1980) claiming, inter alia, a declaration that the previous consent Judgment was a nullity. Meanwhile, on 2nd March 1981, the Government completed the compulsory acquisition of the said premises.

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3. The main question to be determined in this Appeal is to what extent a consent Judgment is binding on the parties thereto in subsequent litigation between them when the Court had no jurisdiction to make the Judgment to which the parties had consented.

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4. It was common ground that the said premises were subject to the Control of Rent Act (Cap.266). Section 14 of the said Act provides:

"No order or Judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this part of this Act".

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In the first proceedings (D.C. Summons No.4416 of 1978) the Appellants had not

specified any of the cases set out in the Control of Rent Act nor were any of the cases specified in the consent Judgment. The Appellants were, as has been mentioned above, alleging that the Respondents were trespassers and contended that the said Act had no application.

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10 5. In the reasons of his Judgment in the instant case, the Learned Trial Judge, held (it is respectfully submitted, correctly) the Judgment in D.C. Summons No.4416/78 was a nullity and ordered the Appellants to pay the Respondents the agreed damages. In so deciding the Judge held that he was bound by a decision of the Singapore Court of Appeal - Nanyang Gum Benjamin Manufacturing (Pte) Ltd -v- Tan Tony Woo & Others (1978) 1 M.L.J. 233, a decision which, it is submitted is indistinguishable from the instant appeal.

20 6. The Appellants appealed to the Court of Appeal upon various grounds which are set out in the Appellants' summary of argument. The Appellants sought to argue that the Judge was wrong to hold that the aforesaid Court of Appeal decision was binding on him as D.C. Summons No.4416 of 1978 was brought in trespass and was not between Landlord and Tenant. The Appellants further argued that the Control of Rent Act had no application to trespassers and that the Respondents in "admitting the claim of" the Appellants in the consent Judgment had admitted that they were trespassers.

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40 7. The Respondents argument before the Court of Appeal, briefly summarised, was that the Learned Trial Judge was right to decide that he was bound by authority to hold as he did and that the words in the consent Judgment "admitting the claim of" the Appellant were the usual way of wording a consent Judgment and did not mean that every statement of fact had been admitted. The Respondents further argued that the evidence clearly showed that they were not and could not be trespassers and that the Court of Appeal would also be bound to follow its own previous decision under the rule in Young -v- Bristol Aeroplane (1944) KB 718. In any event, in a claim in trespass, the Appellants ought to have stated that the premises in question were rent controlled under the form described by the Subordinate Court Rules 1970, namely form 35P in Schedule A.

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8. In its Judgment, dated 4th September 1984, the Court of Appeal held, it is respectfully submitted correctly, that the question whether or not the Respondents were tenants or trespassers was an issue in the first proceedings notwithstanding the words relied on in the consent Judgment. The Court of Appeal held:

"Such words are quite often found in a consent Judgment in Singapore, and cannot be construed as an admission on the part of the Respondents that they were trespassers unlawfully in occupation of the said premises. At the most they amount to an admission of only the claim for possession by the Appellants and such an admission has no effect at all in a consent Judgment for possession of premises which are subject to the Control of Rent Act".

The Court of Appeal reviewed the evidence and concluded:

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"In the circumstances we could not see how the Respondents could have conceded they were mere trespassers".

The Court of Appeal further held that Section 14 of the Control of Rent Act (set out in paragraph 4 above) was mandatory and that no estoppel could arise which would have the effect of overriding the express provisions of a Statute, citing Keen -v- Holland (1984) 1 All E.R. p.75 at p.82, per Oliver L.J.

p.31,1.29

9. It is respectfully submitted that the Court of Appeal was right to dismiss the appeal for the reasons given by the Court of Appeal. In particular it is submitted that the consent Judgment was a nullity because:

(a) the Judge making such consent Judgment had no power to make an order for possession otherwise than under one of the specified cases set out in the Control of Rent Act. It is submitted that the consent must be directed to a particular case under the said Act. The facts are distinguishable from those in

Thorne -v- Smith (1947) 1 K.B.307
where the tenant gave his consent
because he recognised that the
Landlord could establish a proper claim
under the relevant legislation. It
is submitted that in this context the
use of the word "consent" may be
misleading for the reasons given by
Somervell, L.J. at page 315, *ibid.*

10 (b) Even if there was a manifest ground
for giving possession under the
relevant legislation an appellate
Court will still interfere if the Court
at first instance had failed to direct
its mind to that ground when giving
Judgment: Peachey Property Corporation
Ltd -v- Robinson (1967) 2 QB 543 at
554, per Salmon L.J. at F - G.

20 (c) It is submitted that the Respondents
were clearly the tenants of the
Appellants at all material times. The
1952 agreement was made on behalf of
the partnership by a partner. The
Appellants treated the Respondents as
their tenants for some nineteen years
after the death of the partner who
made the 1952 agreement. The premises
were held by the partners as joint
tenants.

30 10. The Appellants were given leave to
appeal to Her Majesty in Council on the
19th July 1984.

11. The Respondents respectfully submit
that the Appeal should be dismissed with
costs for the following among other

REASONS

1. BECAUSE the consent Judgment was a
nullity, the Court having no
jurisdiction to make it.
- 40 2. BECAUSE the Respondents, in consenting
to Judgment, were not admitting the
Appellants had a claim under the
Control of Rent Act.
3. BECAUSE the Respondents were not
trespassers in the said premises, and
the Appellants are estopped from alleging
the contrary.
4. BECAUSE the Courts below were bound by
authority to hold as they did.

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5. BECAUSE the Court of Appeal applied its knowledge of local practice and procedure in determining what was entailed in a Judgment by consent and its finding thereon should not be reversed.
6. BECAUSE the Respondents were not estopped by the consent Judgment.
7. BECAUSE the Judgments of the Courts below were right.

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GEORGE WARR

IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNSEL

ON APPEAL

FROM THE COURT OF APPEAL IN SINGAPORE

BETWEEN:

1. SYED HUSSAIN BIN ABDUL RAHMAN
BIN SHAIKH ALKAFF ALSO KNOWN
AS SYED HUSSAIN BIN ABDUL
RAHMAN ALKAFF
 2. SYED ALWEE BIN MOHAMED BIN
AHMAD ALKAFF ALSO KNOWN AS
ALWEE ALKAFF
 3. BRITISH & MALAYAN TRUSTEES
LIMITED (SUED AS TRUSTEES OF
THE 1898 ALKAFF SETTLEMENT)
-
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CASE FOR THE RESPONDENTS

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