

1976, 30

Reported 1974 2 MLJ.5

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 2 of 1975

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

B E T W E E N :-

GOH LENG KANG

Appellant
(Defendant)

A N D BETWEEN :-

TENG SWEE LIN

- AND -

10 ONG TIAP (Married Woman)

- AND -

LIEW CHOON TEE (Married Woman)

- AND -

CHEW GUAT TEE (Married Woman)

Respondents
(Plaintiffs)

CASE FOR THE APPELLANT

Record

20 1. This is an appeal from a Judgement dated 28th May 1974 of the Court of Appeal of the Republic of Singapore (Wee Chong Jin, C.J., F.A. Chua and Tan ah Tah J.J.) dismissing an appeal from a judgment dated 21st March 1973 of the High Court of the Republic of Singapore (D'Cotta J.) declaring that the Respondents were entitled to certain land situate on Lots 249 and 250 of the Singapore Town Sub-division XXI and ordering the Appellant to deliver up possession of the said land to the Respondents, declaring that the Appellant should not be entitled to enter or cross the said land and that he should be

(Vol I, unless otherwise marked) pp.193-203 p.188

Record

restrained from doing so in the future, that the Appellant's counterclaim be dismissed and that he should pay the cost of the action and of the counterclaim.

- pp.89 ff 2. The Appellant in the capacity of guardian and medium occupies a Chinese Temple at 16-M Narayanan Chetty Road, Singapore, situated on part of Lots 249 and 250 of Singapore Town Sub-division XXI both of which lots have purportedly been conveyed to the Respondents. Lot 250 was so conveyed on 8th August 1967 and Lot 249 on 29th December 1970. There were at the time buildings on Lot 250 and during 1968 and 1969 the Respondents negotiated with the tenants of such buildings for vacant possession in order to construct a warehouse on the Lot. In March 1970 there were negotiations between the parties hereto directed to the surrender by the Appellant of his premises. During these negotiations workmen employed by the Respondents excavated land below the Appellant's premises removing part of its support and causing the floors and supports to crack. By June 1971 these negotiations had come to nothing. 10 20
- pp.1-4 3. On the 25th June 1971 the Respondents commenced these proceedings claiming a declaration that they were entitled to the Appellant's premises, delivery up of the same, a declaration that the Appellant was not entitled to enter or cross Lots 249 and 250, an injunction restraining him from so doing and damages for trespass. The Appellant by his Defence denied that the Respondents were entitled to relief by reason of his adverse possession or alternatively on the grounds of estoppel. The Appellant also counter-claimed damages from the Respondents for depriving him of support for his premises, for nuisance and for negligence and for a declaration that the Respondents' title to his premises and land had been extinguished. The Respondents replied that they only removed earth for the purposes of building a warehouse on Lot 250 and furthermore that the Appellant was not entitled to any right of lateral support. 30 40
- pp.13-168 4. The case was heard by D'Cotta J on 24th April 1972 and on eighteen subsequent days. Evidence was given for the Respondents that at the time of their purchase of Lot 250 there was a chicken-pen at the place where the Appellant's temple now stands and that the same was then on Lot 260, which belongs to Nan Chiau Girls School, immediately adjacent to Lots 249 and 250. The Respondents invited the Court to infer that the Appellant moved the temple on to the site of the chicken-pen on Lots 249 and 250 in about January 1968. 50
- pp.27-28 and p.62
- p.29 and 62

5. The Appellant's evidence was that he had been visiting the site since before the Japanese occupation. He returned after the war and in 1953 left his home and moved into a shed on the site. By 1957 when he renovated the shed he had become "possessed of a deity" and turned his shed into a temple. In 1964/5 he extended it and added a bathroom. In 1967 concrete steps were constructed from Narayanan Chitty Road up to the temple and in 1968 the temple was further modernised. At no time did he change the position of the shed.

Record
pp.89-90

p.90

p.90

p.91

In 1957 he and his elder brother were counted in a government census as living at the site in question. He said that a zinc fence was erected along the boundary with Narayanan Chitty Road in 1967 and that this caused difficulties for worshippers until the gate was left permanently unlocked. In 1970 the Appellant made a statutory declaration that he had been present on Lots 249 and 250 without paying rent since 1953.

pp.91-92

p.92

p.93

Vol II

P.100

6. Tan Gu Long (DW2) stated that the Appellant's temple was on the same site as the house he had erected for the Appellant 20 years previously and which he had subsequently renovated. Yeo Teow Ton (DW3) said that the present temple was in the same position as the house to which the Appellant had moved about 20 years before. He noticed the renovations of 1957, 1964 and 1968 and also the addition of the steps in 1967. Lim Buck Seah (DW6) said that in 1965 the temple was on the same site as a hut he had seen in about 1952. George Ho (DW7), an architect who was involved in the construction of a new school on Lot 260, said that the temple was not on that Lot but in the position shown in exhibit P15-4. Soh Cin Chye (DW9) a contractor also involved in the school building said that during the work the temple was outside the school perimeter and that there were no other buildings on Lot 260. S.T. Moorthy (DW10), a government surveyor who surveyed Lot 260 in connection with the new school and from whose survey P15-4 was drawn, stated that there were no buildings encroaching on Lot 260. There was a hut on a slope below the boundary of Lot 260 with nothing in between such hut and the retaining wall. There was a person in the hut. Wee Song Krang (DW11), a photogrammetric engineer, produced 2 aerial photographs of the area taken by the R.A.F. in 1958 and a plot he had made. This shows a building in the same position as the Appellant's temple.

p.110

p.112 and pp.116,
118

pp,112-113

p.123 and Vol II
p.27

p.125

pp.131-132

Vol II p.107

Record

pp.168-188

pp.168-176

Vol. II p.4

p.177

p.178

p.109

p.179

p.180

p.181

p.182

pp.182 ff

p.183

p.184

p.184

Vol. II

p.27

p.185

p.186

p.186

7. D'Cotta J. gave judgement on 21st March 1973. He began by setting out the nature of the claims and then set out the facts. He next found that since the Appellant's name was not in the list of existing tenancies of Lots 250 and 252 (exhibit B3) and because the Respondents' predecessors in title had bought Lot 249 with vacant possession the Appellant's claim that the disputed land was extinguished due to 12 years adverse possession must fail. Turning to an examination of the Appellant's evidence, the learned judge noted that the Appellant had adduced "no documentary evidence whatsoever". He said that Tan Gu Long's (DW2) evidence did not tally with the Appellant's and that Tan Gu Long's estimate of 20 years must be incorrect. Tan Gu Long in fact carried out the 1957 renovations. The Learned judge rejected Tan Gu Long's evidence. He continued by saying that the Building Inspector (PW2) disagreed with the Appellant over the existence of a bathroom, lavatory and the concrete steps in 1967. Furthermore the Appellant in cross-examination had failed to name any of the worshippers he had mentioned other than "Fatty" and "Si-Ee". The learned judge rejected the Appellant's account of access through the zinc fence and mentioned the lack of any evidence from the staff of an adjacent bakery. The Appellant's evidence and that of See Geok Tee (PW8) about keys to the gate of the fence were completely different. The learned Judge preferred See's evidence and found that the Appellant was lying about the keys.

8. D'Cotta J., then considered the evidence of the Appellant's witnesses with regard to the position of the temple. He could derive no assistance from the evidence of Teo Seng Pong (DW5) or Cheong Chee Teek (DW8) or Wee Soo Kiang (DW11). George Ho (DW7) had pointed out that the retaining wall on Lot 260 was not its boundary. That was 20-30 feet further down the slope. S.T. Moorthy (DW10) had observed a building on P15-4 and this was on Lot 250. According to Yeo Yeow Ton (DW3), Soh Chin Chye (DW9) and Lim Buck Seah (DW6), who all stated that the temple was up to 8 feet from the wall, the temple must have been within Lot 260. The learned judge decided that by combining the evidence of Eu Wan Cheong (PW7), Ten Boon Loh (PW9) and S.T. Moorthy (DW10) it must be presumed that the temple appeared on Lot 260 after 1964. The evidence of the Appellant's witnesses was, he concluded, most unsatisfactory. On the other hand he found that although not impeccable the evidence of PW7 and PW9 was truthful and to be believed. Conversely the Appellant had acted mendaciously throughout and a

		<u>Record</u>
	comparison of exhibit P15-1 (an application to the Chief Building Survey for permission to carry out repairs), and exhibit P17 (a letter to the Property Tax Department) demonstrated this. The learned judge again pointed out that the Appellant's name was absent from exhibit B3 and he also commented on his silence in the face of the Respondents' moves from 1965 onwards. There was no reaction from the Appellant until 1970. The Court had to infer that the Appellant's various applications were acts calculated to further his claim. The learned judge rejected his evidence because of his inconsistency, untruths and his evasiveness in the witness box. He found as a fact that the Appellant was trespassing on Lots 249 and 250 and that he had moved the temple from Lot 260 on to Lots 249 and 250 in 1968. He therefore found that the Appellant had not had undisturbed possession of the temple from 1953 until 1965.	vol II p.24 Vol II p.56 p.187 Vol II p.4 p.187
10		p.188
20	9. By a Notice of Appeal dated 16th April 1973 the Appellant appealed to the Court of Appeal of the Republic of Singapore. The appeal came on before Wee Chong Jin C.J., F.A. Chua and Tan Ah Tan J.J., on 29th January 1974.	pp.190-193
30	10. The judgment of the Court of Appeal was delivered by Wee Chong Jin C.J., on 28th May 1974. The learned Chief Justice first summarised the course of proceedings and referred to D'Cotta J.'s judgment. He then stated that the appeal required them to reverse D'Cotta J.'s judgment on questions of fact and set out the principles on which an appellate court must act in such a situation. He then turned to the evidence setting out the Plaintiff's (Respondents') case, the Defendant's (Appellant's), and the evidence of various witnesses. Having recalled D'Cotta J.'s findings, he applied the principles set out earlier in their judgment. He stated that the Appellant had to convince the Court of Appeal that D'Cotta J., had been wrong as to his findings about the position of the temple. The Appellant's "cogent, independent and credible supporting evidence" is that given by the witnesses called at the trial. The Court of Appeal felt unable to say that the trial judge's findings were wrong. On the evidence they agreed that the Appellant had put up a temple on Lot 260 after Mr. Moorthy's survey in 1964 and that subsequently it had been moved to the site of the chicken-pen. As to the Appellant's submission that the trial judge had	pp.193- 203 pp.193-194 pp.194-196 p.197 pp.197-198 pp.198-199 p.200 p.201 p.201 p.202
40		

Record

pp.202-203
p.203

been wrong to say that he, the Appellant, had no documentary evidence, they agreed that there were no documents between 1953 and 1965 which supported the Appellant's case. They held that the post-1968 documents did not support the Appellant's case, in fact they thought that they might support the Respondents' contention that the Appellant's occupation only began in 1968. Although DW11's evidence based on aerial photographs ought to have been considered they did not think that this alone was a sufficient reason for setting aside the judgment. They held that the Appellant had not satisfied them that D'Cotta J., was wrong and dismissed the appeal with costs. 10

p.185
Vol II
pp.101-103

11. The Appellant contends that the learned trial judge misdirected himself as to the burden of proof. He failed to direct himself that the onus was upon the Respondents to prove that, as well as having title to the disputed land, they or their respective predecessors in title were also in actual possession within a period of twelve years before the commencement of the action. D'Cotta J., also made findings of fact that were not consistent with the weight of evidence before him. 20
In particular the learned judge held that the Appellant's temple appeared on Lot 260 in late 1964, in spite of the evidence of earth-moving on that Lot, and remained there until 1968 when it was moved on to Lot 250 at a time when the buildings on that lot were being cleared. This despite the evidence of at least five witnesses for the Appellant (Tan Gu Long, Teo Yeow Tong, Lim Buck Seah and S.T. Moorthy) as well as of the Appellant himself. 30

p.177
Vol II p.4
p.177

12. The Appellant further contends that by finding that the absence of the Appellant's name from a list of tenants of Lots 250 and 252 meant that he was present on Lot 250 as a trespasser was an error in law. He did not consider that but for the absence of the Appellant's name from that list his claim to have extinguished the Respondents' title to part of Lot 250 by adverse possession would be unsustainable. D'Cotta J., also misdirected himself by finding that because the Respondent's predecessors in title had purchased Lot 249 with vacant possession in 1965, the Appellant was not there. 40

p.178
p.202

13. The Appellant also contends that the learned trial judge and the learned judges of the Court of Appeal misdirected themselves as to the existence of documentary evidence in favour of the Appellants case apart from the Statutory Declaration. The Appellant

Record

refers to the exhibits in the Record herewith and in particular to P15-4, P15-1 D7 and D8.

Vol II pp.
27,104-107

14. The Appellant contends that the learned trial Judge rejected the evidence of the Appellant, of Tan Gu Long and of Yeo Yeow Tong in their entirety without reasonable grounds. The evidence of Tan Gu Long was rejected because the witness confused the building of a house in 1952 with its renovation in 1957. The evidence of Yeo Keow Tong was said by the learned Judge to have been rejected by him earlier but there is no mention of this. The learned Trial Judge criticised the evidence of the Appellant as disagreeing with that of the Building Inspector when in fact it did not do so. The learned Judge understood the Appellant to have said that a bathroom and a lavatory were attached to or inside the disputed premises when in fact the Appellant had said that they were elsewhere on Lot 249. The learned Judge further criticised the Appellant for failing to produce witnesses from among the worshippers at the Temple or from among the staff at the bakery. At no time during the giving of evidence was it contested that worshippers did use the Temple. At no time during the trial of this case did D'Cotta J., make due or any allowance for the Appellant's lack of education, his ignorance and humble station in life. The learned trial Judge failed to take advantage of being able to see and hear the witnesses in front of him, ignored cogent evidence brought on behalf of the Appellant and failed to give due weight or to consider the discrepancies between the oral evidence given by Eu Wan Cheong (PW7) and that given by Teng Boon Loh (PW9) and between the exhibits B3 and P22 or the failure of the Respondents to call one Emaran. The Appellant contends that the learned Trial Judge failed to address his mind to the probabilities of the case.

p.179
p.185

p.185
p.179

p.90

p.180

pp.56,109,
114, Vol II
p.38

pp.168-188

pp.27-50
pp.61-67
Vol II pp.
4,1.

15. The Appellant contends that, apart from considering the Appellant's contention that D. Cotta J., had misdirected himself over the question of documentary evidence, the learned Judges of the Court of Appeal failed to consider the Appellant's grounds of Appeal to their court. The learned Appeal Judges stated that:

pp.193-203
pp.202-203

"the (Appellant) now appeals against the judgment of the High Court on grounds that the trial judge was wrong in rejecting the

p.194

Record

evidence of the (appellant) and his witnesses and in accepting the evidence of the (Respondents) witnesses. This Court is now called upon to reverse the judgment of the Court below where the decision turns on questions of act depending on the trial Judge's opinion of the credibility of conflicting witnesses"

In setting out the Appellant's grounds of Appeal thus, the learned Judges ignored or failed to consider the Appellant's actual grounds of Appeal.

10

16. The Appellant also contends that the learned Judges of the Court of Appeal failed to consider the full effect on the case of the numerous and prolonged intervals between the nineteen trial days which were spread over eleven months.

pp.194-196

17. The Appellant contends that although the learned Appeal Judges set out the authorities governing appeals in cases similar to the instant case they failed to give effect to them. While Courts of Appeal should not normally allow appeals over questions of fact, on the ground that the trial Judge saw and heard the witnesses, there are situations where an appellant court can disturb an earlier judgment. They may do so where the decision is plainly unsound or where the grounds for the decision are unsatisfactory being based on material inconsistencies and inaccuracies. They may also disturb a lower court's finding if they consider that the trial Judge failed to take proper advantage of having seen and heard the witnesses or if he has failed to appreciate the weight and bearing of circumstances admitted or proved. The Appellant respectfully contends that the Judgement of D'Cotta J., fell sufficiently within the exceptions set out herein for the Court of Appeal to be required to set aside the judgment.

20

30

pp.194-196

18. The Appellant also respectfully contends that the learned Appeal Judges failed to consider those parts of the Appellant's appeal which turned on questions of law and not pure fact. The learned Judges relied on two authorities Khoo Sit Hoh v Lin Thean Tong (1912) AC 323 and Powell v Streatham Manor Nursing Home (1935) AC 243, concerned only with appeals on questions in fact.

40

p.205

19. On 28th May 1974 the Court of Appeal of Singapore made an order granting the Appellant leave to appeal to the Judicial Committee of the Privy Council.

20. The Appellant accordingly submits that the judgments of D'Cotta J., and of the Court of Appeal of Singapore ought to be reversed and that judgment should be entered for him on the claim and on the Counterclaim and that this appeal ought to be allowed with costs for the following (amongst other).

R E A S O N S

- 10 1. BECAUSE the learned trial judge misdirected himself as to the burden of proof
2. BECAUSE the learned trial judge's findings were against the weight of the evidence
3. BECAUSE the learned trial judge erred in law in conclusions that he reached from the contents of a list of tenants and of a conveyance of part of the disputed land.
4. BECAUSE the learned trial judge misdirected himself as to the existence of documentary evidence in the Appellant's favour.
- 20 5. BECAUSE the learned trial judge rejected the Appellant's and his witnesses evidence without reasonable grounds; failed to address his mind to the probabilities of the case; ignored cogent evidence adduced on the Appellant's behalf and failed properly to avail himself of the advantage of seeing and hearing the witnesses.
- 30 6. BECAUSE the Court of Appeal did not consider all the Appellant's grounds of appeal and failed to give effect to authorities governing appeals in the circumstances of this case and because they treated the Appellant's appeal solely as one on findings of fact.

MICHAEL KEMPSTER Q.C.

T.A. LEBUS

No.2 of 1975

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE
REPUBLIC OF SINGAPORE

B E T W E E N :-

GOH LENG KANG

Appellant
(Defendant)

- AND -

TENG SEE LIN

ONG TIAP (Married Woman)

LIEW CHOON TEE (Married Woman)

CHEW GUAT TEE (Married Woman)

Respondents
(Plaintiffs)

CASE FOR THE APPELLANT

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill,
London E.C.3.

Solicitors for Goh Leng Kang