
O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

GOH LENG KANG Appellant
(Defendant)

- and -

10 (1) TENG SWEE LIN
 (2) ONG TIAP (m.w.)
 (3) LIEW CHOON TEE Respondents
(Plaintiffs)
 (4) CHEW GUAT TEE

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal pursuant to leave granted by the Court of Appeal in Singapore from the judgment of the said Court of Appeal in Singapore, (Wee Chong Jin, C.J., Chua and Tan Ah Tah JJ) delivered on 28th May 1974, dismissing an appeal by the Defendant from the judgment of the High Court of Singapore (D'Cotta J.) delivered on 21st March 1973 whereby judgment was given for the Plaintiffs, there being judgment that the Plaintiffs were entitled to possession of the land delineated in red on the plan annexed to the Statement of Claim, (hereinafter called "the Disputed Land") an order that the Defendant forthwith deliver up possession of the Disputed Land, a declaration that the Defendant was not entitled to re-enter or cross the Plaintiffs' land by a path or at all and an order that

pp.193-203

pp.168-188

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RECORD

the Defendant whether by himself or by his servants or agents be restrained from entering or crossing the Plaintiffs' land and whereby the Defendants' counterclaim was dismissed.

QUESTIONS

2. The substantial questions raised by this appeal are :-

(a) whether, there having been concurrent findings of fact in the courts below, the Judicial Committee of the Privy Council ought in this case to entertain an appeal on questions of fact which were the subject of findings in the courts below; and, if so,

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(b) whether there was evidence to support the findings of fact made by the Trial Judge that:

(i) the Defendant did not occupy the Disputed Land until 1968;

(ii) the Defendant had not been in continued undisturbed possession of the Disputed Land for the period 1953 to 1965;

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(iii) in 1968 the Defendant removed his shed or temple which was then on lot 260 to a position in front of the chicken pen on lot 250 which he then renovated or converted into a temple.

FACTS

II p.18

3. By a conveyance dated 8th August 1967 the Plaintiffs became owners of an area of land in Singapore known as Lot 250 and by a conveyance dated 29th December 1970 the Plaintiffs became owners of the adjoining Lot 249. Adjacent to both Lots 249 and 250 was Lot 260 which

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II p.97

belonged to the Nan Chiau Girls School. These three Lots are marked on the Site Plan, Exhibit A.38. The fall of the land is such that there is a slope down from the boundary of Lot 260 through Lots 249 and 250. Along the boundary of Lots 249 and 250 with Lot 260 is a flat ledge which includes that area marked in blue on Exhibit A.38 where the Defendants' temple

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now stands. Lot 260 is at a much higher level than this ledge. The land slopes downhill from the ledge through Lots 249 and 250.

RECORD

10 4. On 28th August 1970 the Defendant swore a statutory declaration in which he stated that he had since 1953 occupied that area of land extending across Lots 249 and 250 marked in red and blue respectively on the Site Plan Exhibit A38, the Disputed Land, that he has constructed all that was shown on the plan on that area of land, that he had not paid ground rent to the owners since his occupation of that land and that he had "been in full free and undisturbed possession and enjoyment thereof since 1953 up to date". The Defendant had his Statutory Declaration registered in the Registry of Deeds.

II p.100

II p.97

20 5. The Defendant thereupon claimed that he had acquired a good title to the Disputed Land. The relevant legislation is the Limitation Act 1970 by which it is provided :

"S.9(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person.

30 S.10(1) Where the person bringing an action to recover land or some person through whom he claims has been in possession thereof and has, whilst entitled thereto, been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

40 S.17 For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

S.18 Subject to the provisions of

RECORD

section 12 of this Act at the determination of the period limited by this Act to any person for bringing an action to recover land the right and title of such person to the land for the recovery whereof such action might have been brought within such period shall be extinguished.

6. It is common ground that until 1966 there was a retaining wall on Lot 260 about 20 to 30 feet inside the boundary between Lot 260 and Lots 249 and 250. That wall was demolished in 1966 when the land in this area of Lot 260 was levelled in order to build a new Chinese school on the site of the former school. A barbed wire fence had run along the line of the wall. Before the levelling was carried out in 1966 the old school was on higher ground than that on which the temple then stood. Soh Chin Chue, the son of the contractor who demolished the school and levelled this land, who was called to give evidence for the Defendants, said in chief:

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p.125

"I started work in the beginning of 1965 and completed it in July 1966. Before I started work I went to the site. I walked along the perimeter of the fence. Along one perimeter I saw a temple outside the perimeter fence. The school was on a higher ground. I didn't see anyone in the temple at first. Later on I saw the Defendant. By later on I mean when we started levelling the school ground. There were trees by the side of the fence. These were cut down. I levelled the whole of the area to the boundary opposite the temple. At a later stage I went to this temple because we were working near the temple; we wanted to pray to God for our safety. Sometimes I kept my things in the temple. My levelling brought it to the same level as the land on which the temple stood. When I finished my job the temple was still there in the same place."

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7. It is also common ground that at least since the second half of 1968 the Defendants' temple has stood within the area marked blue on

the Site Plan, Exhibit A.38, as shown on photographs P. 7,8,9 and 10. There is a sharp drop of several feet between the level of the footpath on the school land shown in the photographs and the level on which the temple now stands.

II RECORD
II p.97
II pocket at
end

PLAINTIFFS' EVIDENCE

8. At the trial the Plaintiffs' evidence was as follows :

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(a) In the course of January 1967 Teng Boon Loh (the husband of the Third Plaintiff) and Lim Boon Chia (the husband of the Second Plaintiff), both of whom acted as the agents of all the Plaintiffs in the purchase of Lots 249 and 250, were taken by Eu Wan Cheong, a broker, to inspect Lot 250 and the adjoining Lot 252 which were for sale. They visited

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the area of the Disputed Land marked blue and red on the Site Plan Exhibit A.38 and found there in the area marked blue a chicken pen extending along the ledge for about 20 feet and a boundary stone marking the boundary between Lot 249 and 250 the chicken pen being about one foot from the boundary stone. Teng said that the pen was a dilapidated structure incorporating old rotting planks and an asbestos roof. Eu said that the chicken pen had a ridge roof made out of asbestos sheets and old plank walls. Teng said that at the time of this inspection there was a temple on higher ground in the position in Lot 260 marked by him with a circle on the Site Plan Exhibit A.38, and that this was at a distance of about 8 feet from the nearest point of the chicken pen. Eu said that the shed for worshipping was on the right hand side of the chicken pen in Lot 260 and at a higher level than the chicken pen.

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(b) The Plaintiffs decided to purchase Lots 250 and 252 and they instructed Eu to collect the rent from the 48 families who occupied rooms in an old building and various out-houses on that land. One of these tenants was called Surne bin Emaran who

II p.97
p. 62-63

p. 68

p. 28

p. 68

II p.97

p. 28

p. 30

p. 27

p. 27

RECORD

p. 27

lived in a house on Lot 250 and was also tenant of the chicken pen. The Plaintiffs also authorised Eu to negotiate with the tenants amounts to be paid to them in compensation for their vacating the land and in accordance with these instructions on 7th January 1968 Eu and Teng visited Lot 250 for the purpose of paying compensation to Emaran. They paid him \$600 - and he signed a receipt for that amount which states that it was "compensation money for vacating and giving up Room 14 in the above premises and chicken pen at Lot 250". Eu thereupon walked over to the chicken pen and fastened up both doors with wire.

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p. 48

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(c) Eu's evidence was that from September 1967 he would visit Lot 250 once or twice a month. In early 1968 the shed for worshipping purposes which had previously stood on Lot 260 was erected by the Defendants in front of the chicken pen but Eu paid no attention to it because it was on other people's land. This shed was on Lot 249. Also about August/October 1968 he discovered that a wooden staircase had been erected on Lot 250 in front of the chicken pen and he immediately demolished this. The Defendant then complained to Eu "and advised me not to interfere in the matter if I wanted to carry on making a living. He was aggressive and I had the impression he wanted to deal with me. By that I understood that if I did not heed his warning he would cause me trouble. Naturally I was afraid. At that time I was afraid to report the matter to my employers". Eu did not tell Teng about this until 26th December 1969. In the course of November/December 1968 the whole chicken pen was renovated so that the whole building looked new. Eu said that he did not tell his employers because he did not dare to: he did not want to lose his employment on the site.

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p. 47

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p. 41

p.28,38,39

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p. 42

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p. 63

(d) Teng said that after his visit in January 1968 his next visit to Lot 250 was on 26th December 1969. He went with Lim Boon Chia and observed that the chicken pen had been turned into a temple. He was "very unhappy about this". He went back to his office, telephoned Eu and asked him to come to the office.

10 He asked Eu for an explanation. He gave evidence that Eu told him about his having demolished the staircase in 1968 and about his being threatened at that time by the Defendant. They then went to the Plaintiffs' then solicitors, Eber & Tan, and had them draft a notice to be served on the Defendants. This notice was then taken by Teng, Lim and Eu back to Lot 250. Teng and Lim instructed Eu to serve the notice on the Defendant and this he did.

RECORD

II p.71
p.28, 64
p.28, 75

(e) Eu's evidence was that when he went to serve the notice on the Defendant he saw for the first time the concrete staircase shown on photograph P.10. The shed in which he served the notice was that shown on photograph P.9. The Plaintiffs at this time dismissed Eu from their service.

p.29

II pocket at end
p.50 II pocket
at end p.28

20 (f) Teng's evidence was that in March 1970 the Defendant told him that he was prepared to return the land to the Plaintiffs when the buildings to be constructed had reached his land. Subsequently the Defendant refused to return this land. Later he asked for \$27,000. He informed Teng that Lot 249 belonged to United National Finance Ltd (hereinafter called "the Finance Company") and suggested that the Plaintiffs should buy that Lot, saying that he would leave the place after they had purchased from the Finance Company. The Plaintiffs thereupon purchased Lot 249, the Conveyance being dated 29th December 1970. The Defendant thereafter asked for \$40,000 to vacate the land and it is common ground that this figure was agreed upon. The Defendant's evidence was that having consulted the deity and having been advised not to move he did not complete under the agreement.

p.64-65 p.76

II p.18
p. 94

40 (g) Mr. See Geok Tee, sub-manager of the Finance Company gave evidence that the Finance Company purchased Lot 249 in 1965 with vacant possession. Some time in 1966 a fence was constructed with a gate to Narayanan Chetty Road. This gate was locked. In October 1968 the Supervisor of the

p.50, 51

<u>RECORD</u>	Nan Chia Girls School applied for keys to this gate to enable the pupils to gain access to the school across Lot 249. See went to the site for the first time. He noticed the temple and steps leading up to it and realised that there had been an intrusion on to the Finance Company's land. That was the first time that anyone from the Finance Company had visited the site since 1965. See gave a set of two keys to the school and obtained a receipt dated 22nd October 1968. See did not at that time realize that the temple stood on Lot 249. On 26th September 1970 the school returned the keys and the Finance Company acknowledged them by its receipt and by a letter dated 12th October 1970.	
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<u>II</u> p.63		10
<u>II</u> p.64		
<u>II</u> p.65		
p.51, 59	(h) Following receipt of the keys and after receiving notice of the Defendants' claim to title to the Disputed Land See went to Lot 249 to see that the gate was closed. The bolt was found to be broken and as he could not lock it he slammed it shut. A few days later the Defendant went to See's office "to apply for permission for worshippers to use the path as we were trying to lock the gate". The Defendant "told us that he had been staying in that locality for about 10 years". See denied in cross examination that the Finance Company had at any time before this meeting offered the keys to the Defendant. The first time it knew of the Defendant's claim to have title to the Disputed Land was when it was so informed by the Commissioner of Lands of the lodgement of the Defendant's Statutory Declaration dated 28th August 1970.	20
p.51, 60		
<u>II</u> p.100		30
p. 18	(i) The building inspector, Wan Hashim, gave evidence that when he visited Narayanan Chetty Road in 1966 or 1967 he saw the black fence surrounding Lot 249 but saw no openings in it. He gave evidence that following the Defendant's application dated 5th September 1968 to carry out general repairs and roof replacement on the temple he visited the site on 10th September 1968 but gained access to the site through the school grounds. He prepared a drawing. He found that there were two parts to the building then occupied by the Defendant - one an open shed and next to it an enclosed building, the plank walls of the latter being old. There	
<u>II</u> p. 24		40
<u>II</u> p. 28		

was an old concrete floor. He saw no concrete steps, bathroom or lavatory.

RECORD
p. 18

(j) On 5th December 1969 Wan Hashim again inspected the site and on this occasion he could not gain access to the Disputed Land through the school grounds because a fence had been put up. He therefore went in through an opening in the fence in Narayanan Chetty Road and up the concrete steps to the temple. He said that the building was then completed and painted as shown in Photographs P7, P8 and P9 and the steps were as in Photograph P.10.

p. 19

II p.

DEFENDANT'S EVIDENCE

9. (a) The Defendant said that before the Second World War he lived with his family nearby at 15, Mutha Raman Chetty Road and before the Japanese occupation he had built a hut on the Disputed Land. He did not approach this hut during the war. One or two years after the war he returned to it, replaced the roof and started a small business selling fruit. He did not live there until 1952/53 when he moved out of 15, Mutha Raman Chetty Road and renovated the hut with plank walls and wooden pillars.

p.89, 90

(b) In 1953, the Defendant said, he renovated the bathroom and in 1954 he erected a lavatory. He planted herbs and stone guavers and cleared the grass and small trees. He gained access to the hut up the slope by a path caused by the down flow of water when it rained.

p. 90

(c) The Defendant admitted in cross-examination that in 1956 he was arrested and charged with smoking opium. He said that he smoked opium in a hut somewhere at the corner of Martin Road and Narayanan Chetty Road. He was convicted and sentenced to 12 months imprisonment.

p. 97

II p.60, 62

(d) In 1957 the Defendant renovated the hut with a gable V-shaped roof.

p. 91

RECORD

p.91,96,100

(e) In 1963 the Defendant gave up being a hawker. He was possessed by a deity. Worshippers began to come to his hut. In 1964-5 he had a temple shed erected with a cement floor to accommodate the increasing number of worshippers. He said that at this time there was a retaining wall and fence between the temple and the school. The fence was on higher ground than the temple. At this time worshippers approached across Lot 249.

p. 91

p. 106

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p. 90

(f) In 1967 concrete steps were built by a contractor to replace the earth steps previously leading up to the temple. This was done by a contractor called Tan as a gift to the temple.

p. 103

p.62

(g) In the course of 1967, the Defendant said, the Finance Company erected a fence along Narayanan Chetty Road. The Defendant said he protested to the workmen and to the clerk of a nearby bakery. He said that Mr. See from the Finance Company visited him and was persuaded by the Defendant not to lock the gate. Two weeks later See returned with 2 keys one of which he offered to the Defendant but the Defendant would not accept the key, saying that it was "rather troublesome". See then told the Defendant that he would give both keys to the school. In cross examination the Defendant denied visiting See for the purpose of obtaining a key. Later See visited the Defendant for the purpose of giving him his personal card.

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p. 104

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p. 91

(h) In 1968 the temple was further renovated by Tan, the contractor who built the concrete steps.

p. 104-5

(i) The Defendant denied complaining to Eu or threatening him in relation to the demolition of the staircase in the second half of 1968.

p.93 II p.71

(j) The Defendant said that the letter dated 26th December 1969 from Eber & Tan was not served on him but on one of the worshippers. Subsequently Eu visited the Defendant three times. On one occasion he told the Defendant that if he did not remove from the Disputed Land

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p. 93

the Government would demolish it as a fire hazard. On one of the occasions Eu brought with him Teng and Lim Boon Chiang.

RECORD

(k) The Defendant denied under cross-examination moving the temple to lower ground, that is to say to the Disputed Land, after January 1968. He denied that the position of the temple had been changed.

p. 107

10 (l) Lim Buck Seah, who was called on behalf of the Defendant, said that he had first met the Defendant during the Japanese war. Since 1965 he had taught at the Nan Chiao School. Shortly after the war - about 20 years before the trial - he remembered seeing the Defendant in a very old shack at the top of the hill. He said:

p. 121

20 "In 1965 when I joined Nan Chiao School there was a temple on this bit of land on top of the hill. I saw the Defendant there. His temple was on the verge of the slope. The other side would be the slope down. In the old days there was a wall there next to the school".

In cross-examination he said that the side of the temple was about 4 feet from the wall which was about 10 ft high.

p. 121

30 (m) George Ho, an architect with James Ferris and Partners, who were architects for the school, stated that the retaining wall was about 20-30 feet from the boundary stone of Lots 249/250 as shown in the survey plan.

p. 129

II p. 27

40 (n) Soh Chin Chye, the contractor who carried out the levelling work on Lot 260 and part of whose evidence in chief is quoted at paragraph 6 above, also stated under cross-examination that the temple was 2 to 3 feet from the school retaining wall. The wall was 10 feet high, but only about one foot above the level of the school land on the school side. Standing on the school field one could see the temple roof over the wall.

p. 126

p. 128

p. 126

RECORD
p. 131

II p. 27

p. 133

II p. 97

(o) S.T.Moorthy, a surveyor from the Chief Building Surveyor's Department, carried out a survey of the area in 1964. He drew up a site plan. He said that there was a plank and asbestos hut marked red on that site plan. He had been instructed to include in the plan all buildings within 10 feet of the boundary of Lot 260. He said he would have picked up any building situated between the boundary and the retaining wall - including a building in the position marked by Teng on the Site Plan Exhibit A.38 as being the position of the temple in 1967.

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PLAINTIFFS' CONTENTIONS

p. 166

10. At the trial it was contended on behalf of the Plaintiffs that

(1) the Defendant was not a witness of truth;

p. 166

(2) there was a complete lack of documentary evidence produced by the Defendant in support of his claim that he had occupied the Disputed Land since 1953; in particular there was an absence of repair bills;

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p. 167

(3) the evidence of Eu should be accepted;

p. 167-8

(4) witnesses called by the Defendant assumed that the retaining wall and fence marked the boundary of Lot 260, but this was wrong as appeared from the site plan drawn up by Moorthy and those witnesses were ignorant of the position of the boundary stone;

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II p. 27

p. 168

(5) the Defendant trespassed on to the Disputed Land in 1968 after Emaran had vacated the chicken pen.

DEFENDANT'S CONTENTIONS

p. 149-166

11. At the trial it was contended on behalf of the Defendant that :-

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- (1) the Defendant's evidence that he had occupied the Disputed Land since 1953 was uncontradicted and should be accepted;
- (2) the evidence given by Teng and Eu that in 1967 the temple was on Lot 260 should be rejected as being inconsistent with other evidence of the Defendant and other witnesses that the position of the hut or temple had not been moved throughout the period at least from 1958;
- (3) the evidence of Soh, the contractor, showed that in 1965 the Temple was outside the perimeter fence of the school;
- (4) the evidence of Moorthy, the surveyor showed that in 1964 there was no other building between the structure in Lots 249 and 250 shown on his survey plan and the retaining wall;
- (5) the evidence as to the payment of compensation to Emaran for his vacating the chicken pen was a deliberate fabrication and that he had not been the occupier of the Disputed Land.

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II p. 27

REASONS FOR THE JUDGMENT OF D'COTTA J.

12. The trial judge found as facts that p. 188
 - (1) the Defendant trespassed into the Disputed Land some time in 1968;
 - (2) in 1968 the Defendant moved his shed or temple which had previously stood on Lot 260 to the front of the chicken pen on Lot 250.
 - (3) some time towards the end of 1968 he renovated or converted the chicken pen into a temple;
 - (4) that accordingly the Defendant had

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RECORD

not been in continued undisturbed possession of the Disputed Land from 1953 to 1965.

The trial judge therefore held that the Plaintiffs' claim succeeded, the Defendant having failed to establish his title to the Disputed Land.

13. In arriving at the finding of fact set out in paragraph 12 above the trial judge:

- p. 179 (1) found that the Defendants' evidence that he renovated a bathroom in 1953 and erected a lavatory in 1954 was inconsistent with the report of the Building Inspector, Wan Hashim, that he saw no bathroom or lavatory in the course of his inspection on 10th September 1968; 10
- p. 179 (2) found that the concrete steps to the temple were constructed not, as the Defendant and one of the Defence witnesses Yeo Teow Tong, claimed in their evidence, in 1967 but between September 1968 and December 1969; 20
- p. 182 (3) rejected the Defendant's evidence in relation to the keys to the gate to Lot 249 in Narayanan Chetty Road and in relation to his being visited by Mr. See of the Finance Company and offered one of the keys, accepted Mr. See's evidence that it was only after the return of the keys by the school on 26th September 1970 and Mr. See's slamming shut the gate that for the first time the Defendant went to see the Finance Company to ask for its permission for the temple worshippers to use the gate and the footpath across Lot 249 and found that the Defendant was lying for the purposes of the action: 30
- p. 182
- p. 182 "The lie perpetrated by the Defendant in this simple incident about the keys among others raised considerable 40

doubt in my mind as to his veracity.
I accepted Mr. See's evidence
without hesitation."

RECORD

10 (4) inferred from the evidence of Yeo
Yeow Tong that the retaining wall
was 7-8 feet from the Defendant's
hut, of Soh Chin Chye that the
temple was 2-3 feet from the retain-
ing wall and that his levelling of
the land brought it to the same level
on which the temple stood, of Lim
Buck Seah that the shed or temple was
about 4 feet away from the retaining
wall, of George Ho and of the site
survey made by Moorthy in 1964 that
the retaining wall was some 20-30
feet inside Lot 260 from the boundary
stone and of Moorthy that there was
no structure between the retaining
wall and the structure marked in red
on his site survey that

p.184-185

II p. 27

20 (a) the temple was not on Lot 260
in 1964 when Moorthy prepared
his site survey;

(b) the temple came into being after
Moorthy's survey in 1964 and by
1965;

30 (c) the temple stood on Lot 260 as
stated in evidence by Teng and
Eu in relation to their visit
in 1967.

40 (5) concluded that, having observed
Teng and Eu in the witness box, he
was satisfied that they were
witnesses of truth, any discrepancies
in their evidence not being
sufficiently serious to cause him
to feel any apprehension as to
their veracity.

p. 186

(6) inferred that the Defendant's
application for a house number and
for leave to carry out repairs,
the registration of the temple as

p. 187

RECORD

being the address of his residence and a letter to the Property Tax Department dated 10th January 1970 in which he informed them that the premises were being used solely as a temple were all "acts calculated to add impression to his claim" the subject of this action.

p.187-188

(7) in rejecting the Defendant's evidence stated

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"The Defendant's evidence and conduct throughout the case were never consistent with one having a genuine bona fide claim. I watched him very carefully throughout the protracted trial when he was in the witness box. On many occasions I found him to be evasive under cross-examination. This and the other numerous untruths mentioned earlier led me to the irresistible conclusion that the Defendant was not a witness of truth."

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THE JUDGMENT OF THE COURT OF APPEAL

p.194-196

14. The Court of Appeal in a judgment delivered by Wee Chong Jin C.J. first reviewed what it is submitted, are the relevant principles relating to the circumstances in which an appellate tribunal will reverse the findings of a trial judge on questions of fact when his decision turns on his opinion of the credibility of conflicting witnesses. Wee Chong Jin C.J. referred to Khoo Sit Hoh v. Lim Thean Tong [1912] A.C. 323 and Powell and Wife v Streatham Manor Nursing Home [1935] A.C. 243.

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p.197-200

15. Having summarised the more relevant features of the evidence, the Court of Appeal rejected, it is submitted, rightly the Defendant's contention before it that the trial judge was wrong in finding that the temple was not on Lots 249 and 250 before 1968 but had been removed there from Lot 260. The Court went on to say (underlining having been added):

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p. 201

"We are quite unable to say that on all the evidence before him and having regard to his assessment of the witnesses and

evaluation of their evidence that the trial judge's crucial findings of fact are wrong. Indeed, it seems to us a fair inference from our own reading and evaluation of all the evidence and having regard to the surrounding events in the relevant area during the years 1964 and 1965, that the Defendant put up a building for worshipping purposes after he became possessed of a deity and that this temple was erected, after Mr. Moorthy's survey, on Lot 260 between the retaining wall and the boundary line with Lots 249 and 250. It also seems to us, on all the evidence, a fair inference that as more worshippers were attracted the Defendant removed and built this "temple" on its present site and renovated and merged into the "temple" the chicken pen which originally belonged to Emaran".

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16. The Court of Appeal further rejected, it is submitted rightly, the Defendant's submission that the trial judge had failed to take into consideration all the documents in evidence because he said that there was no documentary evidence to support the Defendant's claim to title to the Disputed Land. The Court of Appeal held, rightly, that in as much as the earliest document relied on by the Defendant directly supporting the Defendant's occupation of the Disputed Land - the letter from the Comptroller of Property Tax certifying that a house number had been allocated to the temple - was dated 6th February 1968 and there being no documents from the period of prescription relied upon, namely 1953-1965, the trial judge had been right as to the lack of documentary evidence. The Court of Appeal went on to say of the documents relied on, commencing with the letter of 6th February 1968, -

p. 202

p. 202

"In our judgment these documents clearly do not support the Defendant's oral evidence that he had been in possession

RECORD

from 1953 of the Disputed Land on which he had erected a structure. These documents in our opinion, may even support the Plaintiffs' case by their being some indication inferentially that the Defendant first occupied the disputed land only in 1968".

17. The Court of Appeal therefore affirmed the judgment of the trial judge.

RESPONDENTS' SUBMISSIONS

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18. This appeal is essentially an appeal on questions of fact. The applicable principle is stated in Halsbury, Laws, 4th Edn, paragraph 821:

"In the absence of very definite and explicit grounds the Judicial Committee will not interfere with findings of fact in which the courts below concur from whatever court of the Commonwealth the appeal is made."

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The principles on which the Judicial Committee of the Privy Council acts on appeals on questions of fact where the courts below concur are explained by Lord Thankerton in Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy [1946] A.C. 508. at page 521. Amongst these principles the following are relevant to this appeal:

"(4) That, in order to obviate the practice there must be some miscarriage of justice or violation of some principle of law or procedure. That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be the neglect of some principle of law or procedure whose application will have the same effect.

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The question whether there is evidence on which the courts could arrive at their finding is such a question of law.

(5) That the question of admissibility of evidence is a proposition of law, but it must be such as to affect materially the finding. The question of the value of evidence is not a sufficient reason for departure from the practice.

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(8) That the practice relates to the findings of the courts below, which are generally stated in the order of the Court, but may be stated as findings on the issues before the court in the judgments, provided that they are directly related to the final decision of the court.

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19. These principles have been applied to appeals from Malaysia. In Wong Thin Yit v Mohamed Ali [1974] 1 MLR 1, an appeal from a judgment of the Federal Court of Malaysia dismissing an appeal from the High Court of Malaya, Lord Diplock stated :

"It is not the practice of this Court to review concurrent findings of fact from courts in Malaysia".

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This principle was re-iterated in Hitam Bin Abdullah and Another v Kok Foong Yee and Another [1974] 1 M.L.J. 193, another appeal from a judgment of the Federal Court of Malaysia dismissing an appeal from the High Court in Malaya. In that case the action was brought on behalf of the estate and dependants of Cheong Chok Heng who sustained fatal injuries when a motor car which he was driving collided with a lorry driven by the first defendant (and first appellant). The only issues at the trial were whether the collision had been caused by the first appellant's negligence and, if so, whether the deceased had been contributorily negligent. The evidence of the first appellant and his passenger was that the deceased was driving on the wrong side of the road at the time of the collision. The trial judge rejected

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RECORD

this evidence and found as a fact that the deceased was driving well on the proper side of the road and accordingly held that there was no contributory negligence. He based this finding on the evidence of a Police Inspector who came on the scene some time after the accident had occurred and on a sketch plan prepared by the Inspector showing the position of various tyre marks and of heaps of glass on the road and the grass verge. The appellate court affirmed the finding that at the time of the collision, the deceased was driving well inside the correct side of the road. At the hearing before the Privy Council it was argued on behalf of the appellants that there was no evidence to support the finding that the deceased's car was on the proper side of the road. Sir Harry Gibbs, delivering the decision of the Board, having stated that

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"It is very well established that as a general rule their Lordships' Board will decline to interfere with the concurrent findings of two courts on a pure question of fact"

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and having referred to the exceptions to the principle in Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy [1946] A.C. 508 stated:

"Their Lordships.....consider that the sketch plan and photographs and the facts which they revealed as to the path taken by the lorry, the position of the two vehicles and of the two heaps of glass after the collision and the nature of the damage suffered by the respective vehicles provided some evidence from which it could have been inferred that the marks C.1 - C.2 were made by the offside rather than by the nearside wheels of the car and that the car was accordingly on its correct side of the road. Having reached this conclusion their Lordships do not think it proper to review the evidence with a view to considering whether the concurrent findings were correct".

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20. In the present case there were clearly concurrent findings of fact, namely :

RECORD

- (1) that the defendant erected his temple after Moorthy's survey in 1964; p.185, 201
- (2) that the temple when first erected stood on Lot 260 between the retaining wall and the boundary line with Lots 249 and 250; p.185, 201
- 10 (3) that subsequently the Defendant removed and built his temple on its present site and merged the chicken pen on Lots 249 and 250 into the temple p.188, 202
- (4) that accordingly the Defendant was not in continued undisturbed possession of the Disputed Land from 1953 to 1965. p.188, 202

21. Accordingly, unless the Appellant can show that this case falls within any of the exceptions to the general principle that the Privy Council will not review concurrent findings of fact, it is respectfully submitted that this appeal should be dismissed.

22. There is no basis for the contention that this case falls within any of the relevant exceptions stated in Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy /1946/ A.C. 308. at page 521, cited in paragraph 18 above. There was no miscarriage of justice in the sense referred to, namely "such a departure from rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all". The trial judge it is submitted, carefully considered the relative weight of the evidence given on behalf of the Plaintiffs and the Defendant and carefully considered whether the Defendant on the one hand and Teng and Eu on the other were witnesses of truth. In concluding that the Defendant was not and that Teng and Eu were witnesses of truth the trial judge relied both upon the extent to which this evidence was consistent with the evidence of other witnesses whom he found to be truthful and on their demeanour in the witness box. His judgment contains a careful

p.187-188
p. 186

RECORD

analysis of the evidence, much of which conflicted in material respects, and a careful consideration of the credibility of the witnesses.

- p. 191 23. Furthermore there was no violation of any principle of law or procedure such that if corrected the material findings of fact could not stand. As to the submission made to the Court of Appeal that, as set out in paragraph 3(iv) of the Petition of Appeal, "the Learned Judge erred in law and mis-directed himself in finding that the Defendant produced no documentary evidence in support of his claim apart from the Statutory Declaration", which was based upon that part of his judgment in which he said: 10
- p. 178 "It is pertinent to note at the outset that the Defendant produced no documentary evidence whatsoever in support of his claim except the Statutory Declaration and the Court had to rely solely on oral evidence", 20
- p. 202 the Respondents adopt as correct that part of the judgment of the Court of Appeal which rejected this submission. The trial judge was right in his comment in as much as there was no other document which directly linked the Defendant with the Disputed Land and which was dated before 1968. The trial judge carefully considered the weight of all the other documents which came into being in 1968 and after and concluded that those which emanated from the Defendant were "acts calculated to add impression to his claim". 30
- p. 187
- p. 202 24. As to the submission advanced to the Court of Appeal that the trial judge failed to consider or appreciate the significance of the photogrammetric expert's evidence based on the two aerial photographs taken in November 1958, it is submitted that the expert's evidence based on those photographs goes no further than that the temple was at the time of the trial in the same position as one of the buildings shown on the photographs. It does not establish or lead to the inference that the building shown in the photographs was the temple. It could have been the chicken pen which Teng and Eu said was on the Disputed Land in January 1967. 40
- p. 134
II pocket
at end
- p.62, p.27

25. It is further submitted that there is no basis for the contention that there was no evidence to support the findings of fact made by the trial judge and concurred in by the Court of Appeal. The evidence set out in paragraphs 6, 7, 8 and 9(1), (m), (n) and (o) hereof fully supported those findings of act.

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26. In criticising the process whereby the trial judge arrived at his findings of fact the Appellant is in truth questioning the judge's assessment of the value of various parts of the evidence. Having regard to the fact that there was ample evidence to support the judge's findings and to the principles stated in Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy /1946/ A.C. 308 at page 521 and applied in Hitam Bin Abdullah and Another v. Kok Foong Yee and Another /1974/ 1 M.L.J. 193 it is submitted that the judgment of the Court of Appeal ought to be affirmed and this appeal dismissed.

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R E A S O N S

27. The Respondents respectfully submit that the appeal should be dismissed with costs for the following, among other, reasons :-

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- (a) The Judgment appealed from is correct.
- (b) This is an appeal on a pure question or on pure questions of fact.
- (c) There has been no miscarriage of justice.
- (d) There has been no violation of any principle of law or procedure.
- (e) There was evidence to support the findings of fact of the trial judge.
- (f) This appeal is concerned with the trial judge's assessment of the relative weight of different parts of the evidence.
- (g) The Judgment appealed from correctly evaluated the evidence.

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ANTHONY COLMAN

No. 2 of 1975

IN 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 :

GOH LENG KANG

Appellant
(Defendant)

- and -

- (1) TENG SWEE LIN
- (2) ONG TIAP (m.w.)
- (3) LIEW CHOON TEE
- (4) CHEW GUAT TEE

Respondents
(Plaintiffs)

CASE FOR THE RESPONDENT

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