

1976, 30

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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 IN SINGAPORE

Between

GOH LENG KANG

Appellant
(Defendant)

And

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

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS
(Volume I)

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St. Michael's Rectory,
Cornhill,
London EC3V 9DU.

Jaques & Co.,
2 South Square,
Gray's Inn,
London WC1R 5HR.

Solicitors for the Appellants Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 2 of 1975

ON APPEAL
FROM THE COURT OF APPEAL IN SINGAPORE

Between:

GOH LENG KANG .. Appellant
(Defendant)

And

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

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ON APPEAL
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 (m.w.)
- (4) CHEW GUAT TEE (m.w.)

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

In the High
Court of
Singapore

Writ of
Summons

25th June
1971

The Plaintiffs' claim is for:-

10

- 1. A Declaration that the Plaintiffs are entitled to possession of the land delineated in red on the Plan attached hereto.
- 2. Delivery up of possession of the land referred to in paragraph 1 above.
- 3. A Declaration that the Defendant is not entitled to enter or cross the Plaintiffs' land at Narayanan Chetty Road known as Lots 249 and 250 of Town Subdivision XXI.
- 4. An injunction to restrain the Defendant whether by himself or by his servants or agents or otherwise howsoever from entering or crossing the Plaintiffs' said land.
- 5. Damages for trespass.
- 6. Further or other relief.

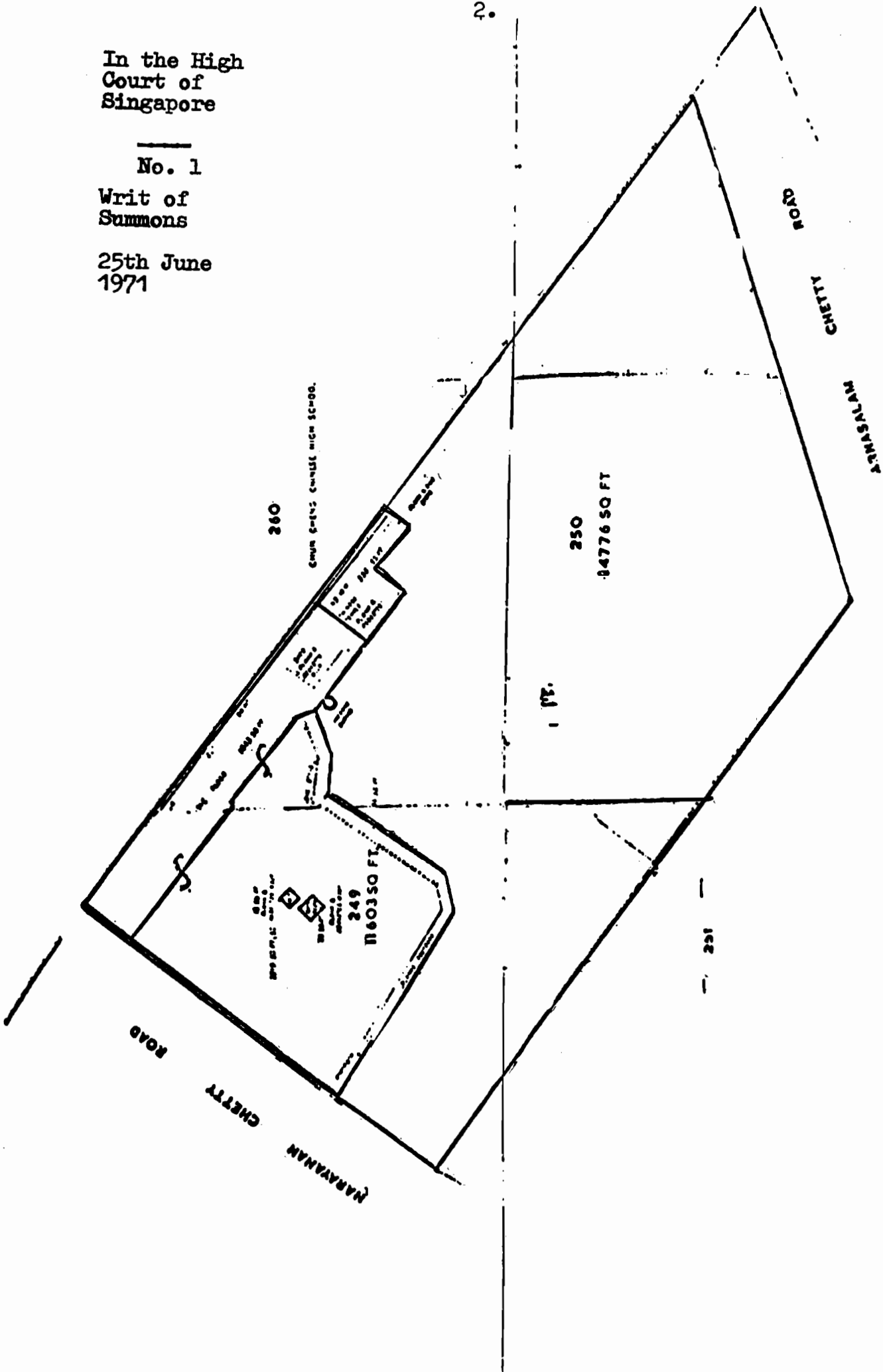
In the High
Court of
Singapore

No. 1

Writ of
Summons

25th June
1971

2.



No. 2

STATEMENT OF CLAIMIn the High
Court of
Singapore

No. 2

Statement
of Claim25th June
1971

1. The Plaintiffs are the owners of Lots 249 and 250 of Town Subdivision XXI and became the owners thereof by purchase for valuable consideration by virtue of:-

- 10 1) A Conveyance dated the 8th August, 1967 and made between Ahna Ahna Roona Annamalai Chettiar s/o Arunasalam Chettiar, Ahna Sona Shanmugam Chettiar alias Muthupalaniappa Chettiar alias Moona Pana Ahna Sohna Muthupalaniappa Chettiar alias M.P.A.S. Muthupalaniappa Chettiar alias Ahna Roona Sohna Muthupalaniappa Chettiar alias A.R.S. Muthupalaniappa Chettiar s/o Sockalingam Chettiar and Ahna Sona Karuppan Chettiar alias Moona Pana Ahna Sona (M.P.A.S.) Karuppiah Chettiar s/o Sockalingam Chettiar and Moona Pana Ahna Sona (Sohna) Annamalai Chettiar alias MPAS Annamalai Chettiar s/o Sockalingam Chettiar of the one part and the Plaintiffs of the other part registered in Volume 1659 No.119 and
- 20 2) An Indenture of Conveyance dated the 29th day of December 1970 and made between United National Finance (Singapore) Limited of the one part and the Plaintiffs of the other part.

30 The said two pieces of land are shown on the Plan annexed hereto and thereon coloured blue. Since 1969 or thereabouts the Defendant by himself and his servants or agents have on divers dates wrongfully entered and crossed the Plaintiffs' said land by way of a path shown in the said Plan and thereon coloured red. The Defendant has also erected or caused to be erected on the Plaintiffs' said land a plank and asbestos premises known as No.16-18 Narayanan Chetty Road shown on the said Plan.

40 2. On or about 28th day of August 1970 the Defendant swore a statutory declaration to the effect that he had occupied that part of the two pieces of land edged in red on the said Plan since 1953 and he caused the said statutory declaration to be registered in the Registry of Deeds. By virtue of the said statutory declaration the Defendant claims that the title in

In the High
Court of
Singapore

No. 2

Statement
of Claim

25th June
1971

(continued)

respect of the said pieces of land occupied by him was vested in him.

3. The Defendant threatens and intends unless restrained by this Honourable Court to repeat the acts complained of.

4. On the 19th day of February 1971 the Plaintiffs through their Solicitors, Messrs. Chung & Co. informed Messrs. Ng & Ng Solicitors for the Defendant that the Plaintiffs required the Defendant to vacate the premises known as No.16-M Narayanan Chetty Road within 3 weeks from the date thereof. The Defendant has failed to vacate the premises and the land occupied by him and is still in possession of the land referred to above.

sic
10

5. In the premises the Defendant is in wrongful possession of the property and the Plaintiffs claim:-

- 1) That they are entitled to possession of the said land delineated in red on the Plan annexed hereto.
- 2) Delivery up of possession of the land referred to in paragraph 1 above.
- 3) A Declaration that the Defendant is not entitled to enter or cross the Plaintiffs' said land by the said path or at all.
- 4) An injunction to restrain the Defendant whether by himself or by his servants or agents or otherwise howsoever for entering or crossing the Plaintiffs' said land.
- 5) Damages for trespass.
- 6) Further or other relief.

20

30

Dated this 25th day of June, 1971.

(Sd.) Chung & Co.

Solicitors for the Plaintiffs

To: The Abovenamed Defendant Goh Leng Kang,
16-M, Narayanan Chetty Road,
Singapore.

sic

No. 3

DEFENCE AND COUNTERCLAIMDEFENCEIn the High
Court of
Singapore

No. 3

Defence

24th July
1971

1. The Defendant has no knowledge of the Conveyances dated the 8th August 1967 and the 29th December 1970 set out in paragraph 1 of the Statement of Claim and denies that by virtue of the said Conveyances the Plaintiffs are the owners of Lots 249 and 250 of Town Subdivision XXI hereinafter referred to as "the land".

2. The Defendant states that in or about the middle of 1953 he entered into and occupied part of the land amounting to 6279 sq. ft. as is outlined in red in the plan annexed to the Statement of Claim and thereon erected a dwelling house made of plank and asbestos part of which was used as a place of worship, a storehouse made of plank and zinc, a bathroom, a lavatory and a shed made of plank and asbestos and a wooden and concrete footpath (hereinafter referred to as "the land and premises"). The land and premises is known as 16-M Narayanan Chetty Road, Singapore.

3. The Defendant contends that the Plaintiffs' predecessors in title discontinued possession of the land and premises or alternatively were dispossessed thereof by the Defendant since the middle of 1953 and the Defendant has been continuously and still is in exclusive possession of the land and premises.

4. By reason of the foregoing the Plaintiffs' claim herein is barred and the Plaintiffs' title (if any, which is denied) was prior to the beginning of this action, extinguished by virtue of the provisions of the Limitation Act (Cap.10, 1970 Ed.).

5. Alternatively the Defendant will submit that the Plaintiffs are estopped from bringing this action claiming the land and premises in that they purchased the property with actual or constructive notice of and subject to the rights of the Defendant.

PARTICULARS

At all material times and at the time of the purchase of the property by the Plaintiffs as is

In the High
Court of
Singapore

No. 3

Defence

24th July
1971

(continued)

shown in the said Conveyances dated the 8th August 1967 and the 29th December 1970 which said Conveyances are referred to in the Statement of Claim the Plaintiffs were fully aware or should have been aware of the occupation of the land and premises and the buildings erected thereon by the Defendant.

6. The Defendant admits that he carried out the acts or deeds set out in paragraphs 1, 2 and 4 of the Statement of Claim but denies that any of the same were wrongful for the reasons hereinbefore set out. 10

7. Save as hereinbefore expressly admitted the Defendant denies each and every allegation or claim contained in the Statement of Claim as if the same had been set out herein seriatim and specifically denied.

Counter-
claim

24th July
1971

COUNTERCLAIM

8. The Defendant repeats paragraphs 1 to 6 of the Defence.

9. On divers and numerous days in the months of May, June and July 1970 the Plaintiffs by themselves and their servants or agents wrongfully entered into the land and premises of the Defendant and excavated and removed earth beneath and supporting the said dwelling house and storehouse erected on the land and premises. 20

10. The Plaintiffs have also wrongfully removed a portion of the earth adjacent to the said dwelling house and storehouse and thereby deprived the land and premises from its right to lateral support. 30

11. In consequence of the said excavations and removal of the said earth the Defendant's said dwelling house and storehouse are without partial support, and the floors and main supports therein in disrepair and in danger of collapse.

12. Notwithstanding written notice dated the 21st of July 1970 regarding the said excavations and removal of the earth served on the then Solicitors for the Plaintiffs no remedial measures have been taken to replace the earth removed or otherwise. 40

13. In consequence thereof the Defendant has suffered damage and loss.

In the High Court of Singapore

PARTICULARS OF DAMAGE

No. 3

The cost of replacing the earth excavated, erection of an embankment or retaining wall shoring the said dwelling house and storehouse and repairing the same is estimated to be \$12,500.00.

Counter-claim

24th July 1971

The Defendant counterclaim for:-

(continued)

(i) Damages;

10 (ii) a Declaration that all the right and title of the Plaintiffs to the land and premises or its recovery has been extinguished;

(iii) Costs;

(iv) such other or proper relief as the Court may deem fit.

Dated and Delivered this 24th day of July, 1971.

Sgd. BRADDELL BROS.

.....
SOLICITORS FOR THE DEFENDANT

20 To: The Plaintiffs abovenamed and their Solicitors, CHUNG & CO.

No. 4

No. 4

REPLY AND DEFENCE TO COUNTERCLAIM

Reply and Defence to Counter-claim

1. The Plaintiffs join issue with the Defendant on his Defence and Counterclaim save in so far as it consists of admission.

13th August 1971

30 2. As to paragraph 2 of the Defence the Plaintiffs deny that the Defendant in or about 1953 entered into and occupied the part of the land amounting to 6,279 square feet as outlined in red in the Plan annexed to the Statement of Claim or any part thereof. The Defendant erected or caused to be erected on the Plaintiffs' land a plank and

In the High
Court of
Singapore

No. 4

Reply and
Defence to
Counterclaim

13th August
1971

(continued)

asbestos hut known as No.16-M Narayanan Chetty Road, in or about 1968 and has since been in wrongful occupation thereof.

3. As to paragraph 3 the Plaintiffs do not admit that their predecessors in title discontinued possession of the said land and premises or any part thereof or were dispossessed thereof by the Defendant since the middle of 1953 or that the Defendant had been continuously in possession since the middle of 1953.

10

4. As to paragraph 5, the Plaintiffs do not admit that they are estopped as alleged or at all since the Defendant never was entitled and is still not entitled to the rights claimed by him in his Defence.

DEFENCE TO COUNTERCLAIM

5. As to paragraph 9, the Plaintiffs state that in or about the months of May or June 1970, the Plaintiffs by their servants and agents commenced construction of a large warehouse on lot 250 of Town Subdivision XXI and for the purpose of such construction carried out excavation and earth removal on the said lot 250. Save and except what is expressly admitted in this paragraph, the Plaintiffs deny paragraph 9 of the Defence and Counterclaim.

20

6. As to paragraph 10, the Plaintiffs do not admit that they have wrongfully removed a portion of earth adjacent to the said dwellinghouse and storehouse as alleged or at all and if (which is denied) they had caused such removal, the Plaintiffs state that the Defendant is not entitled to the right of lateral support as alleged or at all.

30

7. As to paragraph 11, the Plaintiffs make no admission that the alleged excavations and removals have left the said dwelling house and storehouse without partial support or that the floors and main supports were in disrepair and where in danger of collapse and put the Defendant to proof of the said allegation.

40

8. As to paragraph 12, the Plaintiffs claim that they were at all material times entitled to cause the excavations and earth removals to be carried out and accordingly, they were and are

not liable for any remedial measures (if such be required) as claimed by the Defendant and accordingly, they are not liable for the damage or loss as alleged or at all.

In the High Court of Singapore

No. 4

9. Save as hereinbefore expressly admitted, the Plaintiffs deny each and every allegation contained in the Defence and Counterclaim as therein alleged or at all.

Reply and Defence to Counterclaim

13th August 1971

10

Dated and Delivered this 13th day of August, 1971.

(continued)

Sgd. CHUNG & CO.

.....
SOLICITORS FOR THE PLAINTIFFS.

To: Messrs. Braddell Brothers,
Solicitors for the Defendants,
Singapore.

No. 5

No. 5

AMENDED DEFENCE AND COUNTERCLAIM

Amended Defence and Counterclaim

DEFENCE

21st February 1973
Defence

20

1. The Defendant has no knowledge of the Conveyance dated the 8th August 1967 and the 29th December 1970 set out in paragraph 1 of the Statement of Claim and denies that by virtue of the said Conveyances the Plaintiffs are the owners of Lots 249 and 250 of Town Subdivision XXI hereinafter referred to as "the land".

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2. The Defendant states that in or about the middle of 1953 he entered into and occupied the part of the land amounting to 6279 sq. ft. as is outlined in red in the plan annexed to the Statement of Claim and thereon erected a dwelling house made of plank and asbestos part of which was used as a place of worship, a storehouse made of plank and zinc, a bathroom, a lavatory and a shed made of plank and asbestos and a wooden and concrete footpath (hereinafter referred to as "the land and premises"). The land and premises is known as 16-M Narayanan Road, Singapore.

3. The Defendant contends that the Plaintiffs' predecessors in title discontinued possession of

In the High
Court of
Singapore

No. 5

Amended
Defence and
Counterclaim

21st
February
1973

Defence
(continued)

the land and premises or alternatively were dis-
possessed thereof by the Defendant since the
middle of 1953 and the Defendant has been
continuously and still is in exclusive possession
of the land and premises.

4. By reason of the foregoing the Plaintiffs'
claim herein is barred and the Plaintiffs' title
(if any, which is denied) was prior to the
beginning of this action, extinguished by virtue
of the provisions of the Limitation Act (Cap. 10,
1970 Ed.).

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5. Alternatively the Defendant will submit that
the Plaintiffs are estopped from bringing this
action claiming the land and premises in that
they purchased the property with actual or
constructive notice of and subject to the rights
of the Defendant.

PARTICULARS

At all material times and at the time of the
purchase of the property by the Plaintiffs as is
shown in the said Conveyance dated the 8th August
1967 and the 29th December 1970 which said
Conveyances are referred to in the Statement of
Claim the Plaintiffs were fully aware or should
have been aware of the occupation of the land and
premises and the buildings erected thereon by the
Defendant.

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6. The Defendant admits that he carried out the
acts or deeds set out in paragraphs 1, 2 and 4 of
the Statement of Claim but denies that any of the
same were wrongful for the reasons hereinbefore
set out.

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7. Save as hereinbefore expressly admitted that
Defendant denies each and every allegation or
claim contained in the Statement of Claim as if
the same had been set out herein seriatim and
specifically denied.

COUNTERCLAIM

8. The Defendant repeats paragraph 1 to 6 of the
Defence.

40

9. On divers and numerous days in the months of
May, June and July 1970 the Plaintiffs by

themselves and their servants or agents wrongfully entered into the land and premises of the Defendant and excavated and removed earth beneath and supporting the said dwelling house and storehouse erected on the land and premises.

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10. The Plaintiffs have also wrongfully removed a portion of the earth adjacent to the said dwelling house and storehouse and thereby deprived the land and/or premises from its natural right to lateral support.

Amended
Defence and
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21st
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1973

Defence

(continued)

11. In consequence of the said excavations and removal of the said earth the Defendant's said land and/or dwelling house and storehouse are without partial support, the floors and main supports therein in disrepair and the whole or part in danger of collapse.

11A. The matters complained of hereinbefore constitute the non-natural use of the Plaintiffs' land and/or alternatively the said matters complained of constitute a nuisance and/or alternatively were caused by the negligence of the Plaintiffs, their servants or agents.

PARTICULARS

(i) Carrying on the work hereinbefore mentioned knowing or ought to have known it would cause the said land and/or premises to lose its support

(ii) Failing to take any remedial measures to support the walls of the said excavation or to fill in the same with proper materials

(iii) The Defendants will reply on the damage to the land and/or premises as evidence of negligence or nuisance.

12. Notwithstanding written notice dated the 21st of July 1970 regarding the said excavations and removal of the earth served on the then Solicitors for the Plaintiffs no remedial measures have been taken to replace the earth removed or otherwise.

13. In consequence thereof the Defendant has suffered damage and loss.

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Amended Defence and Counterclaim

21st February 1973

Defence

(continued)

PARTICULARS OF DAMAGE

The cost of replacing the earth excavated, erection of an embankment of retaining wall shoring the said dwelling house and storehouse and repairing the same is estimated to be \$12,500.00.

The Defendant counterclaims for :-

- (i) Damages;
- (ii) a Declaration that all the right and title of the Plaintiffs to the land and premises or its recovery has been extinguished;
- (iii) Costs;
- (iv) Such other or proper relief as the Court may deem fit.

10

Redated and Redelivered this 21st day of February, 1973

Sd. Braddell Bros.

SOLICITORS FOR THE DEFENDANT

To:-

The Plaintiffs abovenamed and their Solicitors
Ms. Lee & Lee.

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Amended in red pursuant to Order of Court in the Course of Trial on 25th day of April 1972 under O.20 r5(i)RSC and further extended on the 14th day of February 1973

Dated this 18th day of February, 1973

Sd. Braddell Brothers

Solicitors for the Defendant.

30

No. 6

COURT NOTES OF EVIDENCEIn the High
Court of
Singapore

No. 6

Court Notes
of Evidence24th April
1972

Lai Kew Chai for the Plaintiffs.

Harry Wee (Wong Meng Meng with him) for the
Defendant.Monday, 24th April 1972Coram: D'Cotta JAgreed bundle of documents Marked A1-A37
Agreed bundle of Title Deeds Marked B1-8
Photographs Marked P1-P14.

10 Lai addresses:-

1. Govindamal v Ahmad Marican, Johore Law Reports Vol.1 page 57. Early 1968 Defendant trespassed and built on it.

Lai applies to amend page 7 of pleadings. Year 1969 should read 1968. Wee no objection. Application granted.

2. Peter Wong v Cunnan Raboo Nair, 1963 M.L.J. Vol. 29 page 163

20

3. Tan Beng Siew v Choo Eng Choon M.L.J. 31 1965 page 69

4. Wilkes v Greenway T.L.R. Vol.VI 1889-90 Demeanor of witnesses important.

5. Yap Lian v Kris Investment Co. 1969 Vol.1 M.L.J. page 96.

6. Onasis and Anor v Vergottis 1968 Vol.2 Lloyds Law Reports page 403.

7. Dalton v Angus & Co. A.C. Vol. VI 1881 page 740

30

8. Ohna Mohd Abubakar v Tho Yan Poh and Ors. Vol.13, S.S.L.R. 1915 page 39. Can an adverse possessor acquire an easement of support.

9. Midland Railway Co. v Wright, 1901 Vol. 1 Ch. page 738.

Plaintiffs'
Counsel's
Opening
Speech

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
(continued)

25th April
1972

Note: At 2.30 p.m. Court accompanied by both
Counsel visited the scene. Court adjourns
till 10.30 a.m. on 25th April 1972.

By me: D.C. D'Cotta

Tuesday, 25th April 1972 (2nd day)

Wee applies to amend counter-claim to include
portions underlined in red ink on pp.3 and 4 of
the counter-claim.

Lai replies:-

Right to lateral support infringed by
excavation. Non-natural use infers an
escape of some kind from the land. No
objection to amendments if defendant will
pay costs and cost of amended defence of
counter-claim. Further particulars.

10

Application granted.

Costs to be decided at conclusion.

By me: D.C. D'Cotta

Plaintiff's
Evidence
K.I.Tan
Examination

P.W.1 Tan K.I. a/s English

Senior Partner of Tan and Tan.

20

In January 1967 I was instructed to act for
Teng Swee Lin, Ong Tiap, Liew Choon Tee and
Chew Guat Tee to purchase Lot 250. My firm was then
Eber and Tan. I acted for the above and Donaldson
& Burkinshaw acted for the vendors. I made a
search for title. Sec.3(4) of the Conveyancing
and Law of Property Act Cap.268. I was satis-
fied that Vendors had a good title. Contract
entered into for the purchase of Lot 250.

Exhibit
B4, 5 & 6

Witness id Ex.B4, B5 and B6

30

B4, 5 and 6 was the original contract entered into
by Plaintiffs for purchase of Lot 250 TSD XXI
Clause 3 of B4 states sold to subsisting tenancies.
Vendors disclosed a list of tenants and sub-
tenants B3. No.14 of B3 Surni bin Ehieran was
paying a ground rent of \$5/-. No other existing
tenancies or occupiers were disclosed by the

sic

Vendors. Conveyance executed on 8.8.67 in favour of the Plaintiffs - B12 to B16. Purchasers paid \$82,297.50 for the property. On 31.8.70 my firm was instructed by the Plaintiffs to purchase Lot 249 of T.S.D. XXI in Narayanan Chitty Road. I made searches from year 1920; B9, 10 and 11 is the contract for sale. I was satisfied that title to Lot 249 was good. On B9, words "Vacant possession to be given on completion" struck off. This was so owing to special condition 'C' on B10. Original purchase price was reduced - B9. A Conveyance was prepared - B63 and B64. Property described in the conveyance became property of Purchasers - Lot 249 T.S.D.XXI to hold as tenants in common in equal shares. Document executed on 29.12.1970. A3 was written by me addressed to the occupier of portion of land behind Room 14 of House No.22A Arunasalam Chitty Road. I was instructed that there was an encroachment. I was instructed that Room 14 was occupied by Surni bin Emaran - Tenant 14 in B3.

By me: D.C. D'Cotta

Xm by Harry Wee

Q. Is it your usual practice to ask your client to view the site. A. Usually.

Q. Did you do so in this case.

A. They viewed it before they came to ask me to exercise the option.

Q. Did you ask them whether they wanted a survey.

A. I don't think so.

30 Q. The last transaction concerning this property according to the Schedule is 1941. A. Yes.

Q. From 1967 - 1941 is 26 years, isn't it your practice to have a survey.

A. If there is already a Government Resurvey of the area, we do not advise our clients to have a survey by a private surveyor.

Q. It takes 12 years to obtain an easement.

A. Yes.

40 Q. Someone might have got a title or right of way for example. A. Yes, it is possible.

Q. Did your clients raise the question of encroachment or anyone not shown on B3.

A. Not that I can recollect.

In the High Court of Singapore

No. 6

Court Notes of Evidence

25th April 1972

Plaintiff's Evidence

K.I. Tan Examination

(continued)

Exhibit A3

Cross-examination

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

25th April
1972

Plaintiff's
Evidence
K.I. Tan

Cross-
examination
(continued)

- Q. After requisitions of title were answered did you ask your clients to go again and inspect the land. A. I can't remember.
- Q. Did you show B3 to your clients at the time you received it.
A. Probably soon after. It is quite possible my clerk might have given a copy to the clients.
- Q. Did your clients raise any points.
A. I don't think so, otherwise I would have raised it with the Vendors' solicitors. 10
- Q. Did you send letters of attornment to the tenants.
A. The usual practice is to do so. I cannot remember if I did so.
- Q. No survey was made. A. Not that I know of.
- Q. You collected ground rent from Surbi bin Emaran. A. According to B3, yes.
- Q. Who requested you to insert 'C' of the Special Conditions.
A. This was drawn up by the Vendor's solicitors. 20
- Q. You made a search. A. Yes.
- Q. Was the statutory declaration shown in the search. A. No, my search was made on 11.9.70.
- Q. Did you make a subsequent search either when contract was signed or on completion.
A. There is no record of it in my file.
- Q. What steps did you take in respect of Clause C.
A. I advised my client with regard to claim for possession is disclosed on B10. I told my client with regard to this claim, there might be litigation. 30
- Q. Did you obtain any instructions.
A. They decided to proceed with the purchase.
- Q. You are familiar with the Limitation Act?
A. Yes.
- Q. One of the sections say that the title of the last owner is extinguished if a person has been in possession for more than 12 years.
A. That is so.

- Q. You saw the statutory declaration, it was a claim to part of the land. A. No answer.
- Q. If the title is extinguished is there anything to convey. A. That is only as to the portion.
- Q. Is there anything to convey in respect of that portion.
A. That is for the Court to decide if the claim for long possession is in order.
- Q. That is on the assumption. A. Yes.
- 10 Q. If there is no litigation the claim stands.
A. Yes.
- Q. At the time the conveyance is made, to all intents and purposes in view of the Statutory Declaration claiming a right to a portion of the land, the Vendor has no title to the portion.
A. The matter is to be disputed, it does not belong to the claimant by long possession.
- 20 Q. At that point of time the purchaser knew of the claim which had not at the point been discharged or the squatter be evicted, would you agree that under the Limitation Act which extinguishes the title, no title was conveyed of the portion claimed by the squatter.
A. I cannot agree to that, I must look up the law.

In the High Court of Singapore

No. 6

Court Notes of Evidence

25th April 1972

Plaintiff's Evidence

K.I. Tan

Cross-examination

(continued)

Note: Wee applies at this stage to recall the witness, if necessary.

Lai no objection. Application granted.

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By me: D.C.D'Cotta.

The user of Lot 250 is that of a warehouse. The Plaintiffs wanted to build a warehouse in which case he must have vacant possession. I am aware that the occupiers of Lot 250 were cleared out from the list of ground tenants disclosed. I did not raise any objections with the Vendor's solicitors as to the list of occupiers disclosed or any other additional occupiers or ground tenants or licensees. I cannot recollect if Plaintiffs complained of the existence of a temple. It is open to my client to challenge the statutory declaration. I warned them of the consequence of litigation.

40

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

25th April
1972

Plaintiff's
Evidence

Wan Hashim
bin Mohamed
Salleh

Examination

P.W.2

Wan Hashim bin Mohamed Salleh a/s English

5-T Jalan Kenaman, Johore Bahru. In the middle of 1965 I became a building inspector. I was in charge of the western part of the island and part of the City area including the River Valley Road area covering Lot 249 and 250 of T.S.D.XXI. Early in 1966 or 1967 I had a few inspections in the Mohd Sultan Road area. I visited the Martin Road area. There is an existing enclosure at the side of Narayanan Chitty Road fronting T.S.D.XXI Lot 249. Enclosure of zinc sheet painted black. The enclosure was there. I did not see any openings. It was closed. The enclosure ran from South to the Northern part of the boundary facing Narayanan Chitty Road. The fence covered the boundary facing Narayanan Chitty Road. It was closed. An application was received on 5.9.68 to my department by one Ooh Leng Kang to carry out general repairs and replacement of roof to 16-M Narayanan Chitty Road. There was a letter written by him dated 5.9.68.

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I produce. File admitted and marked P15.

Letter marked P15-1.

I was directed to inspect the site. I inspected the site on 10;9.68. A Mr. Tan brought me there. I gained access to this place by way of Kim Yam Road through a Chinese School compound. At the time I inspected a new block was being put up and there was no fence between the School and this site. The way by Narayanan Chitty Road was closed by the fence. Access to this building was by the Chinese School compound. I made a report.

30

Exhibit
P15-2

Admitted and marked P15-2.

At the time of my inspection there was no lavatory or bath-room inside or attached to the building. Building had 2 parts, one part was an open shed and next to it an enclosed building.

The plank walls of the enclosed building was old. The floor was of concrete and old. I cannot recollect if it was clean or dirty. There were tables and chairs but I did not see any beds. There were windows and doors. In front of the open shed was a cement apron. It stretched for 7 feet. I did not see any concrete steps leading

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from this shed to the ground below. I could see part of the enclosure of the ground below. I never asked Ooh Leng Kang about the ownership of the building and he didn't tell me. I ascertained the measurements as submitted by the sketch plan. The application was approved - A37. On 5.12.69 I inspected the premises again. On this 2nd visit I could not get through the Chinese School compound as a fence had been put up. I went through an opening in Narayanan Chitty Road. I went up a flight of concrete steps to the Temple. These steps were not there on my last visit. I didn't see it. Ex.P10 shows the concrete steps. The building was completed and painted as in Exhibits P7, P8 and P9.

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By me: D.C. D'Cotta.

In the High Court of Singapore

No. 6

Court Notes of Evidence
25th April 1972

Plaintiff's Evidence

Wan Hashim bin Mohamed Salleh

Examination (continued)

Exhibit P10

Exhibits P7 P8 & P9

PW2 Wan Hashim bin Mohd Salleh.
Xxx by Harry Wee

Cross-examination

20

Q. Have you seen the temple from the top before.
A. No.

Q. How do you identify it.
A. You can see it from Ex.P8.

Exhibit P8

Q. You have not seen it before. A. No.

Q. You are guessing. A. No I can identify it.

Q. You are looking at the surroundings. A. Yes.

Q. You made visits to this area in 1966 and 1967.
A. Yes.

30

Q. Did you notice what lots 249 and 250 were then.
A. I noticed the fencing abutting Narayanan Chitty Road. It was a painted black enclosure.

Q. What material was it made of.
A. Most probably corrugated iron sheets.

Q. Do you know or don't you know. A. I don't.

Q. What made you look at the fence.
A. It is just beside the road.

In the High
Court of
Singapore

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Court Notes
of Evidence
25th April
1972

Plaintiff's
Evidence

Wan Hashim
bin Mohamed
Salleh

Cross-
examination
(continued)

Q. Was fence on ground floor or did it change with the height.

A. It had a slight gradient.

Q. You went to the end of the road.

A. Yes, it is a cul-de-sac.

Q. The end of the road is a school.

A. No, it is the foot of a hill, but according to the site plan, yes.

Q. This road rises up to meet Nan Chow School.

A. According to the site plan, yes. 10

Q. You never went up to the end of the road.

A. No.

Q. Was there an opening in the fence made of the same material - a gate. A. Yes.

Q. It was completely closed on your 1st visit.

A. Yes.

Q. The gate was of the same material. A. Yes.

Q. You didn't pay any particular attention.

A. Yes.

Q. The gate was in fact there on your 1st visit. 20

A. I didn't observe.

Q. Had you formed the impression that there was no opening in Narayanan Chitty Road. A. Yes.

Q. That is why you went through the School.

A. Yes.

Q. You looked over the whole building. A. Yes.

Q. You had the plans with you. A. Yes.

Exhibit A38

Q. In A38 can you see the siting of the temple and shed. A. Yes.

Q. There was a store there. A. I didn't see. 30

Q. You didn't go to the back. A. No.

Q. Did you walk along the "Concrete Floor 1543".

A. No.

- | | | | |
|----|---|---|---|
| | Q. You were outside the hut. | A. Yes. | In the High
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Court Notes
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25th April
1972
Plaintiff's
Evidence
Wan Hashim
bin Mohamed
Salleh
Cross-
examination
(continued) |
| | Q. Were there some steps hewn from the earth leading down. | A. I didn't look. | |
| | Q. Who did you meet at the site. | A. One Mr. Tan. | |
| | Q. Did you ask anyone how they got into the place. | A. No. | |
| | Q. I am instructed there was a fence between lot 249 and 250 at the time of your 1st visit. | A. I can't recollect. | |
| 10 | Q. Do you see any remains of some barbed wire. | A. I can't recollect. | |
| | Q. If there is no exit by the school, how do you get out of the area. | A. I would not know, I was brought through the school by one Mr. Tan. | |
| | Q. Do you recollect a lavatory shed half-way down the hill. | A. I didn't see the shed. I was not really looking for anything else. | |
| 20 | Q. You were having a panoramic view. | A. Yes. | |
| | Q. Do you come through the gate on your 2nd visit. | A. Yes. | |
| | Q. It was open. | A. Yes. | |
| | Q. You were alone. | A. No, with my assistant. | |
| | Q. What was the purpose of this visit. | A. To find out if the work had been completed. | |
| | Q. Had you been to the site between the 1st and 2nd visit. | A. No. | |
| | Q. Or to Narayanan Chitty Road. | A. No. | |
| | Q. Or to the School. | A. No. | |
| | Q. Did you go to Lot 250. | A. Yes. | |
| | Q. What for. | A. Some other matters. | |
| | Q. How did you know there was an entrance in Narayanan Chitty Road on your 2nd visit. | A. I drove through and found an opening. | |

In the High
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Singapore

No. 6

Court Notes
of Evidence

25th April
1972

Plaintiff's
Evidence

Wan Hashim
Hin Mohamed
Salleh

Cross-
examination
(continued)

Exhibit P15-3
Exhibit P15-15

Exhibit P15-16

- Q. On your 1st visit you never noticed the opening. A. No.
- Q. There might have been one. A. Most probably.
- Q. In P15-3 there is a certificate from the Inland Revenue to the effect that the premises were numbered 16-M Narayanan Chitty Road.
- A. Yes.
- Q. In P15-10 there is an enquiry from Tan & Tan regarding building plans submitted. A. Yes.
- Q. In P15-12 why did your department say there were no building plans. 10
- A. There are none, what is in the file is sketch plans.
- Q. In P15-15 the Plaintiffs wrote enquiring whether the temple and store-house were in danger of collapse and enquiring whether you would take action to knock it down. A. Yes.
- Q. In P15-16 you said no action would be taken.
- A. That is right.
- Q. Subsequent letters show that you requested the Plaintiffs to make some sort of support because of excavation. A. Yes. 20
- Q. And this has not been done.
- A. Not completely. There is a shoring.
- Q. Yes, this is not a support, it is to prevent erosion. Under the current building by-laws anyone can sign the application.
- A. The owner of the building.
- Q. What is the date of this regulation. A. 1966.
- Q. Is there a later set. A. No.
- Q. Should not the owner of the land sign the application. 30
- A. Not in the case of a temporary building.
- Q. Is P8 a temporary building. A. Yes.
- Q. Since 1965 how many notices to demolish unlawful structures have been issued in your report. A. 300-400.

Q. Some of your notices were in respect of the area in A27. A. A few.

Note: Wee applies for permission to recall witness if necessary. Granted.

By me: D.C.D'Cotta.

Re-xn:

On my first visit if the steps shown in P10 were there I would have seen it.

In the High Court of Singapore

No. 6

Court Notes of Evidence

25th April 1972

Plaintiff's Evidence

Wan Hashim bin Mohamed Salleh

Cross-examination (continued)

Exhibit A27

Exhibit P10

P.W.3 Joseph Ng sworn

667-D Circuit Road, Block 46.
Property Tax Department, Singapore.

10

I have the file relating to 16-M Narayanan Chitty Road. On 5.2.68 number 16M Narayanan Chitty Road was approved as a building in this road. It is a track off Narayanan Chitty Road. This was as a result of an application by Mr. Goh Leng Kang. He came to our office to apply. On 12.11.68 my Department conducted a site inspection.

I produce report and photograph. Admitted and marked P16. On 10.1.70 Goh Leng Kang wrote to the Property Tax Department.

20

I produce. Admitted and Marked P17.

By me: D.C. D'Cotta.

Xn by Harry Wee:

Q. You have a valuation list. A. Yes.

Q. Is Lot 249 on it.

A. I would not know. I must see the file.

Joseph Ng
Cross-examination

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

25th April
1972

Plaintiff's
Evidence

Joseph Ng

Cross-
examination
(continued)

Q. A number can be given to a house when it has an entrance. A. Yes.

Q. Entrance to this house is from Narayanan Chitty Road. A. Yes.

Q. You give a number even when there is no access.
A. That is so.

Q. Do you consult the owner. A. No.

Q. Normally you give no information on your files without a proper requisition.

A. That is right.

10

By me: D.C. D'Cotta.

Re-xn:

This case is a public stand pipe case where numbers are given to houses even when there is no access. Access or no access is no concern of the Property Tax Department.

By me: D.C. D'Cotta.

David Ong
Examination

P.W.4 David Ong a/s English

53 Jalan Setia, S'pore. 13.

Attached to the office of the Commissioner for National Registration. His last known address according to our records is 16M Narayanan Chitty Road. This address was changed on 9.1.70 as being the place of residence. Prior to this he was staying at 17 Muthu Rama Chitty Road. This was given on the 4.10.1966. Before this his address was given as 15 Muthu Rama Chitty Road from 1963. On 10.11.1948 his address was at 15 Muthu Rama Road.

20

By me: D.C. D'Cotta.

30

Cross-
examination

Xxn by Harry Wee:

Q. What section are you in.

A. At present the registration section.

Q. To your knowledge many people are slack in notifying change of address. A. Yes.

- Q. It is compulsory to carry I.C. A. Yes.
- Q. Most people don't. A. I am not sure.
- Q. A lot of people don't. A. I think so.
- Q. Only in certain exceptional cases is there a prosecution for failing to notify change of address. A. Yes.
- Q. Supposing someone applies and his house has no number.
- A. We would say unnumbered hut or house.

10

By me: D.C. D'Cotta.

Re-xn:

When we say unnumbered but we also insert "off a particular road". We check our existing records to see if number is right.

By me: D.C. D'Cotta.

Court adjs.

Wednesday, 26th April 1972 (3rd day)

P.W.5 Ng Chong Heng a/s English
38A Starlite Road, Singapore 8.

20

Attached to Singapore Citizens Registry. I have records relating to Goh Leng Kang. He was registered as a Singapore citizen and issued with a Singapore Citizenship Certificate No.022090 on 9.11.1957. He applied for citizenship. In his application form he gave his address as 15 Muthu Maman Chitty Road. Application dated 9.11.57.

I produce a certified true copy of the application. Admitted & Marked P18.

By me: D.C. D'Cotta.

30

Xm by Harry Wee:

- Q. Does your department check the address of the applicant. A. No.
- Q. When applicant has no formal address it is convenient to give an address of someone in the vicinity or kampong. A. Yes.

In the High Court of Singapore

No. 6

Court Notes of Evidence
25th April 1972

Plaintiff's Evidence

David Ong
Cross-examination
(continued)

26th April 1972

Plaintiff's Evidence

Ng Chong Heng

Examination

Exhibit P18

In the High
Court of
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No. 6

Court Notes
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26th April
1972

Plaintiff's
evidence

Ng Chong Heng
Cross-
examination
(continued)

Hui Kew Yong
Examination

Exhibit P19

Exhibit P20

Exhibit P21

Q. Supposing address is given "an unnumbered hut" will you accept it.

A. We will ask him to give another address for communication purposes.

Q. Do you know of people who have no proper address and give address say of parents.

A. We accept the address given on the I.C.

Re-exn:

Nothing in P18 to say address given by Goh Leng Kang was for convenience or communication purposes. If applicant's address is given as "an unnumbered hut" we will ask for a postal address.

10

P.W.6 Hui Kew Yong s/s English

34-J Lorong 3, Tee Payoh, Singapore.

Attached to Magistrates' Court, Acting H.E.O. There was some correspondence between Chung & Co. and the Courts regarding Mr. Goh Leng Kang.

I produce certified copy of Ex.P1 in 4th Magistrates' Court No.297/56.

20

Admitted and marked P19

We received a copy of a letter from K.S. Chung & Co. dated 31.12.70. I produce.

Admitted and marked P20.

On 7.1.71 H.E.O. Courts replied to P20

I produce. Admitted and marked P21.

Wee reserves the right to cross-examine witness until he can obtain further information from the Magistrates' Court. Application granted.

By me: D.C. D'Cotta.

P.W.7: Eu Wan Cheong a/s Hokkien

723-A Jalan Mukit Ho Swee, Singapore.

Broker in buying and selling land.

In 1967 I recommended the sale of Lots 250 and 252 in T.S.D.XXI to the Plaintiffs. Before I recommended the sale I brought the representatives of the Plaintiffs to visit the site. They were Teng Boon Lohn and Lim Boon Chia.

Witness id Teng Boon Loh and Lim Boon Chia.

10 Witness is shown A38 and is Lot 250 and
 Lot 252 in A2

With regard to Lot 250 there were 13 attap houses on it. The majority of the occupants were Malays. There was a brick house on the property. There were tenants occupying the brick house. There was a structure used for poultry in one corner and it belonged to the people in another house in the opposite corner. This structure used for poultry is marked blue in A38 and it encroaches the adjoining lot in A38. The structure used for poultry belonged to one Malay known as Emaran who stayed in the opposite corner. Emaran was living in a house bordering Arnasalan Chitty Road and on 7.1.68 he vacated this house on receiving a compensation of \$600/-. Teng Boon Loh and I paid him the compensation. He gave a receipt for this payment. After he signed the receipt he gave it to Teng Boon Loh.

20
30 Witness is shown the document. I saw Emaran sign the document at the moment the money was handed to him. I have never seen Emaran again.

 Lai applies to tender the document.
 Wee objects.

 Document marked for id P22

40 After I brought the Plaintiffs representatives to see the site they said they would consider about the price. To my knowledge they purchased the property i.e. Lots 250 and 252. They asked me to collect house rent and to look after the house on the property and they also asked me to proceed to negotiate with the tenants of the houses and ask

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Court Notes
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Plaintiff's
evidence

Eu Wan Cheong
Examination

Exhibit A38
Exhibit A 2

Exhibit A38

Exhibit P22

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Singapore

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Court Notes
of Evidence

26th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Examination
(continued)

them to vacate. I started collecting rent in September 1967, after the purchase in August 1967. I ceased collecting rent in December 1969 from tenants of houses on Lot 250 owing to a dispute arising from the structure used for poultry. I was scolded by Teng Boon Loh and my services were terminated. Formerly this structure was a chicken pen belonging to Emaran. This structure was renovated into a temple by someone.

Witness is Goh Leng Kang as that someone. When I first saw the chicken pen it had a ridge roof with asbestos sheets as roof and it had old plank walls around it. The front of the chicken pen belonged to other people it had nothing to do with the Plaintiffs. From September 1967 I used to visit the site once or twice a month. In early 1968 there was a shed for worshipping purposes in front of the chicken pen. I did not pay particular attention to it as it was on other people's land. When I first visited Lot 250 in 1967 the shed was on the right hand side of the chicken pen in Lot 260 which is now the school compound. In 1968 when I went to the site to collect rents I discovered a wooden staircase was erected on Lot 250 and I had it demolished. In 1968 the same person Goh Leng Kang moved the shed which was in Lot 260 to the front of the chicken pen. Goh Leng Kang complained to me when I demolished the wooden staircase 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. At the initial stage I did not inform Teng Boon Loh and Lim Boon Chin of the renovation to the chicken pen. I only told them about it after they discovered it on the 26.12.69. On the 26.12.69 I went with the two of them to a solicitors firm to issue a notice. The solicitor was K.I. Tan. To my knowledge a notice was issued by K.I. Tan. Teng Boon Loh and Lim Boon Chia forced me to take the notice to the Defendant. I did so. I managed to serve the notice on him but he refused to acknowledge it. He wasn't very satisfied or happy.

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30

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Exhibit P10

Witness is shown P10

P10 shows a staircase on an adjacent lot of land leading up to the temple. I saw this when I went to serve the notice on the Defendant. I don't know when these steps were constructed.

By me: D.C. D'Cotta.

Xm by Harry Wee:

Q. The staircase in P10 is a convenient way of going up to the temple. A. Yes.

Q. Land on either side is overgrown. A. Yes.

10 Q. Could you climb up on either side.
A. There is only one access to the temple, by these steps.

Q. When did you first see the steps.
A. In 1969 when I served the notice on the defendant.

Q. When you first went to the temple, did you go up that way.
A. No when I first went to the temple, I went by the school compound.

20 Q. Each time you went to the temple after this you went by way of the school.
A. I have only been to the temple once that is when I went to serve the notice.

Q. You have never been therebefore 1969.
A. Before 1969 I was in charge of Lot 250; I did not cross over the other lot.

Q. The temple is on a piece of land next to the school. A. In that year.

Q. From the beginning.
A. In 1967 when I first went to inspect the land the temple was to the right of where it now stands. In 1968 I went there with Teng Boon Loh to pay compensation.

Q. In 1967 what did you go there for.
A. I took Teng Boon Loh and Lim Boon Chia to view the site.

Q. You went up to the chicken pen. A. Yes.

In the High Court of Singapore

No. 6

Court Notes of Evidence
26th April 1972

Plaintiff's evidence

Eu Wan Cheong
Examination
(continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
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1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. At the spot marked blue in A38. A. Yes.
- Q. You went to the chicken pen.
A. Outside the pen, we didn't get in.
- Q. The chicken pen is on the same level as the temple in 1967.
A. No, the temple was on a higher level.
- Q. Do you go on to Lot 249.
A. No, it was not our land.
- Q. Was there a building next to the chicken pen. 10
A. In 1967 the chicken pen encroached slightly on Lot 249.
- Q. Was there any building in front of the chicken pen on Lot 249. A. No.
- Q. Which side was the chicken pen facing.
A. There were 2 doors in the chicken pen, one facing Lot 249 and one facing Lot 250.
- Q. There was no building facing the door of Lot 249. A. No.
- Q. Was there a flat piece of land facing that door looking on to Lot 249. 20
A. No, it was a sort of slope.
- Q. From the chicken pen can you see the temple next door.. A. Yes it was on a higher level.
- Q. In front of the temple on the next lot was a flat piece of land parallel to the pen.
A. Yes.
- Q. Was there a fence between the school and the temple.
A. There was an embankment beyond the temple.
- Q. In 1967 wasn't there some barbed wire on the top of the emabnkment. A. Yes on higher ground. 30
- Q. When you first went to the temple, you went through the school.
A. I looked at it from the chicken pen.
- Q. You went once to the temple; what year was that. A. 1969.

- Q. You paid 3 visits.
 A. 1st to view the site, 2nd to collect house rent and enter into discussion with the tenant; and 3rd to make the payment of \$600 and to see that he vacate the place. This was on 7.1.68.
- Q. In what year did you go to this place through the school.
 A. On the above three occasions.
- 10 Q. You did this because it was difficult to climb up to the spot on Lot 250. A. Yes.
- Q. From the height of the chicken pen to the bottom would be about 40 feet.
 A. Between 20-30 feet.
- Q. The temple would be at least between 30-40 feet.
 A. I can't say, I have been to the temple only three times.
- 20 Q. Was the bottom of the temple at roof level of the chicken pen. A. No, I would not know.
- Q. How high was the chicken pen.
 A. Over 6 feet high.
- Q. Was the chicken coop on the same level with your head. A. Slightly higher.
- Q. If you faced the temple from the chicken pen was it higher than your head.
 A. I don't have to look up to it.
- Q. The side of the temple was next to the roof of the chicken pen.
 30 A. No, I don't agree, it was some distance away say 3-5 feet away.
- Q. Was there any access between the temple and the chicken pen. A. Yes.
- Q. How long was the chicken pen.
 A. I didn't take measurements.
- Q. What do you estimate. A. About 32 feet.
- Q. How wide was it.

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 Singapore

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Court Notes
 of Evidence
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Plaintiff's
 evidence

Eu Wan Cheong
 Cross-
 examination
 (continued)

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Court Notes
of Evidence

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1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- A. I can't say. I noticed the length of the pen because part of it encroached on other people's land. I was not paying attention to the breadth.
- Q. You noticed the door.
A. Yes, I opened it to see if the pen was empty.
- Q. Did you notice how big the door was.
A. About 3 feet.
- Q. Was there a wall on either side of the door. 10
A. Yes.
- Q. You can't say how much wall there was on the left side of the door. A. No.
- Q. On the other side is a drop. A. Yes.
- Q. A steep drop.
A. Not really, it was only a slight slope, there were some houses there.
- Q. When you went with Teng Boon Loh and Lim Boon Chia did they also inspect the chicken pen. A. I showed it to them. 20
- Q. Did they go in.
A. None of us entered the chicken pen.
- Q. Was there anybody in the chicken pen when you went with the 2 gentlemen.
A. I pointed the pen out to them.
- Q. You did go to the pen.
A. Yes and showed them the boundaries.
- Q. Was there any poultry there.
A. On the 1st occasion I didn't open the door.
- Q. Was there a boundary stone there.
A. Yes, there was a boundary stone, the lower part was fenced up with zinc sheets painted black.
- Q. After showing the site to Mr. Lim and Mr. Teng where did you go. A. Home.
- Q. Did you all leave by the same way you came.
A. Yes.

- Q. Before you showed the 2 gentlemen Lot 250 did you find out where the stone was. A. No.
- Q. How did you know it was there.
A. The vendor told me that if I followed the line of the fence, I would find the stone at the end.
- Q. When were you told this. A. In January 1967.
- Q. How long before you brought the 2 gentlemen there.
A. A few days before. I am a broker, if there is business to do I will go there at full speed.
- Q. Was that the 1st time you were told of the sale of this property. A. Yes.
- Q. And you went to see the owner. A. Yes.
- Q. Where did you meet him. A. 67 Market Street.
- Q. Did you get the site plan from him. A. Yes.
- Q. Have you got it with you. A. No.
- Q. Were the outlines of any building marked on the site plan.
A. Only an outline of 2 houses were shown.
- Q. The bigger one is a brick building. A. Yes.
- Q. A row of terraced houses.
A. It was a big house partitioned in the centre and on each side lived 5 families.
- Q. Each house has a separate entrance. A. Yes.
- Q. Like of row of shop houses or cubicles.
A. More like cubicles.
- Q. There is a bigger outline around the bigger lot.
A. That is an air well next to it is the kitchen.
- Q. Where is the front of this building.
A. Two fronts.
- Q. There is another little one on the side.
A. That was a zinc house.

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Court of
Singapore

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Court Notes
of Evidence

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Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

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Court of
Singapore

No. 6

Court Notes
of Evidence

26th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

27th April
1972

- Q. Zinc roof. A. Yes and zinc walls.
- Q. Were there any other houses apart from the 2 shown.
- A. Yes, there were others scattered about.
- Q. Apart from these 2 houses how many houses were scattered in that lot. A. 8 others.

By me: D.C. D'Cotta.

Court adjs to 10.30 a.m. 27.4.72.

Thursday, 27th April 1972

Coram: D'Cotta

10

P.W.7 on his former affirmation:-

Xxn by Harry Wee (continued)

- Q. I put it to you, you are not telling the truth about Emaran. A. I am.
- Q. He was not in Lot 250.
- A. I was collecting rent from him.
- Q. In B3 Emaran is shown as a ground tenant of Lot 252. A. No.
- Q. You are not telling the truth.
- A. I am. Item 13 and 14 on B3 were added on after I pointed it out to the valuer. 20
- Q. In B3 tenants of Lot 250 are separated from 252.
- A. This list only consists of 2 ground tenants. Items 13 and 14 on B3 are the only 2 ground tenants of Lot 250.
- Q. Do you know tenant Ang Riang Chow. A. Yes.
- Q. Wasn't he a tenant of Lot 250. A. Yes.
- Q. Was he in a separate hut by himself. A. Yes.
- Q. What was the structure of his house. 30
- A. Zinc and plank.

- Q. Where was the hut of tenant Nather Vava.
A. He was a tenant of 2 houses on Lot 250. He was one of the tenants of the main house and he was also the tenant of another house facing the main house.
- Q. What was the number of his cubicle in the main house. A. No. 5.
- Q. There was a Mr. Tan Hai Song.
A. His house is next to Nather Vava. Part of it is on the main road.
- Q. Do you know Anada Gopal. A. No.
- Q. All the people living outside the main block are ground tenants. A. Yes.
- Q. According to B3 there are 9 of these.
A. Eleven including No. 13 and 14.
- Q. The information given to the Purchaser's solicitors is wrong.
A. Yes that is why the last 2 items were added to B3.
- Q. Do you know the numbering of the various parts of the main block. A. Yes.
- Q. There are 10 rooms. A. Yes.
- Q. There are no other numbers in the main block.
A. That is so.
- Q. Apart from the mosque are there any other numbers given to the ground tenants.
A. Apart from the mosque the rest of the cubicles outside the main house had no numbers.
- Q. You didn't give them any numbers.
A. We give numbers to cubicles outside the main house to facilitate rent collecting. I can remember some of the numbers, not all e.g. I remember No. 13 and 14.
- Witness indicates houses on the plan.
- Plan admitted and marked D1
- Q. In December 1969 you were forced by Teng Boon Loh to serve a lawyer's notice on the defendant. A. Yes.

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Court Notes
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27th April
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Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

Exhibit D1

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

Q. Did you inform the Plaintiffs representatives about the 2 extra tenants No. 13 and 14.

A. I did not.

Q. When did you discover there were 2 extra tenants.

A. After the sale when the documents were being prepared, after the conveyance had been completed and when we compared the list of names that we discovered 2 names were omitted.

Q. Who gave you this list.

A. The Vendor submitted the list of names to the solicitors and the solicitors brought out the list for me to check.

10

Q. Did you get a list after you were appointed rent collector.

A. I was given a list similar to B3 after my appointment.

Q. The first time you checked the list before it was corrected did you ascertain who was the occupant of the chicken pen.

A. The vendor told me the chicken pen belonged to Emaran.

20

Q. When you went to check the list was the vendor with you. A. Yes he was.

Q. Were the Plaintiffs' representatives also present. A. No.

Q. When you first arranged with the vendor to sell the property to the Plaintiffs did you get a list of the tenants.

A. Not at that stage.

30

Q. Did you ask the vendor how many tenants there were on Lot 250.

A. At the initial stage he told me there were over 40 families on Lots 250 and 252.

Q. Before you brought the Plaintiffs' representatives to the site did you inspect the site first.

A. Yes the Vendor took me to view the site.

Q. How many times. A. Once.

Q. Did you go up to that corner of the site where the chicken pen was. A. No.

40

- | | | |
|----|---|---|
| | Q. How long was that before you brought the Plaintiff's representatives to see the place. | In the High Court of Singapore |
| | A. One or two days before. | |
| | Q. When you went to the site the first time did you see anyone in or near the chicken pen. | No. 6 |
| | A. No I didn't. I didn't go up. | Court Notes of Evidence |
| | Q. Is the chicken pen visible from the ground level. A. Yes. | 27th April 1972 |
| | Q. Did you look up. A. Yes. | Plaintiff's evidence |
| 10 | Q. Was there anyone there. A. No. | Eu Wan Cheong Cross-examination (continued) |
| | Q. When you brought the Plaintiffs' representatives did you view the site from the ground floor. | |
| | A. Yes after which I brought them up once more. | |
| | Q. On the same day. | |
| | A. Yes through Kim Yem Read | |
| | Q. How did the owner of the chicken pen get up to it. | |
| | A. I was not present when he went up. | |
| 20 | Q. What was the way up to the pen. | |
| | A. On the border the land was sloping slightly. | |
| | Q. You can't get up from below the pen. | |
| | A. No, there was no road leading from the mosque to the chicken pen, there was a retaining wall in the way. | |
| | Q. If you go along the boundary would the path be on the other lot or on Lot 250. | |
| | A. The path was on Lot 250. | |
| 30 | Q. You were employed to negotiate with the tenants and ground tenants to vacate the premises. A. Yes. | |
| | Q. What was the largest amount of compensation. | |
| | A. \$2,000/- in respect of the mosque. | |
| | Q. What was the largest amount paid in respect of the outhouses. A. \$700/-. | |
| | Q. When was the last payment of compensation made. | |
| | A. I can't remember. | |

In the High
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Court Notes
of Evidence
27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. When you paid, the tenants removed.
A. After they vacated they went to the solicitors to collect the money.
- Q. In all cases.
A. Except one and this was the first case.
- Q. Would you have finished say by Feb. 1968.
A. Only one house was vacated by 1st Jan. 1968.
- Q. And the others.
A. My services were terminated in December 1969 by then not all the houses had been vacated. 10
- Q. How many were left by December 1969.
A. About 6-8 families.
- Q. Until you left in December 1969 did you go regularly to collect rent. A. Once a moth.
- Q. Did you visit lot 250 more often than once a month.
A. At the beginning, when all the tenants were there I went twice a month to collect rent. When I left only 2 tenants were left - 18 and 19. When I said 6-8 families left I included those on Lot 252. 20
- Q. What do you do with the rent you collect.
A. I handed it to Teng Boon Loh.
- Q. Every month. A. Yes.
- Q. Between Sept. 1967 - Dec. 1969 you saw him every month. A. Yes to hand over the money.
- Q. As the tenants vacated, did you report it to him. A. Yes I telephoned him.
- Q. What happened to the premises vacated.
A. Sealed up. 30
- Q. In every case. A. Yes.
- Q. Who did the seal. A. I did. I nailed it up.
- Q. When was the staircase erected.
A. Between Aug. - Oct. 1968.
- Q. Who erected it. A. I don't know.
- Q. Did you ask anyone.
A. No, as soon as I saw it I had it demolished.

- Q. All by yourself. A. Yes.
- Q. Did you tell Teng Boon Loh about this. A. No.
- Q. Why not.
- A. Because of that someone had a quarrel with me and asked me not to interfere. He was the defendant.
- Q. How long was the staircase there.
- A. As soon as I saw it I had it demolished.
- Q. No one stopped you.
- 10 A. At the time no one saw it. When I had finished this person from the top scold me.
- Q. The whole level of the said land adjoining Lot 250 is higher than it. A. Yes.
- Q. When you saw the defendant there he threatened you. A. Yes as I was demolishing the staircase.
- Q. What did he say to you.
- 20 A. He accused me of being a bad person and if I continued to demolish the staircase I would find it difficult to make a living there.
- Q. This went on as you were demolishing the staircase. A. No after I had demolished.
- Q. How long after did you see him.
- A. I can't say in terms of time. As soon as I had finished demolishing.
- Q. Describe the steps.
- A. Steps were cut off from the posts, wooden poles were used and railings fixed to the poles.
- Q. What else did he say to you.
- 30 A. Nothing else. After this I left the place.
- Q. Did you not answer him.
- A. I removed the articles to the road and went off.
- Q. All by yourself. A. Yes.
- Q. The height of this must have been between 30-40 ft. A. 20-30 feet.

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Singapore

No. 6

Court Notes
of Evidence

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1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. That is a lot of steps.
A. There were between 10-20 steps.
- Q. Was there a barbed wire fence there. A. No.
- Q. The school was on the higher bit of land.
A. Yes.
- Q. At that time was anything happening at the school.
A. At the time it was an open space and some earth work was going on.
- Q. Did you yourself go to the top of the steps. 10
A. Yes, at the time I was demolishing it.
- Q. During that time did you see anything happening in Lot 260.
A. I didn't pay notice.
- Q. Was the school being built.
A. I did not go and have a look.
- Q. You told the Court yesterday that you met the defendant once and that was to give him a notice in December 1969.
A. Yes it is true. I met him once in 1969 when I went to serve the notice on him. He scolded me in August or Sept. 1968. 20
- Q. In 1968 when you saw him did you know who he was.
A. I knew he was a person from the open shed near the chicken pen.
- Q. That was before August 1968.
A. I knew this in Aug. 1968.
- Q. Not before. A. Yes I knew him before then.
- Q. When did you first know this. 30
A. I don't remember the date.
- Q. How did you come to know.
A. He was the temple medium, he wore a red cloth around his waist.
- Q. How long before.
A. I can't remember in what month, I saw him sometime before August 1968.

- | | | |
|----|---|---|
| | Q. You were there in 1967. | In the High Court of Singapore |
| | A. Yes. | |
| | Q. You saw the shed there. | No. 6 |
| | A. The shed was not there in 1967. The shed is in front of the chicken pen. In 1967 the shed was on a higher level beyond the boundary. | Court Notes of Evidence |
| | Q. Did you see him in 1967. A. No. | 27th April 1972 |
| | Q. When you went there in 1967, you went to the chicken pen. | Plaintiff's evidence |
| 10 | A. Yes when it was vacant. I opened the door and peeped in. | Eu Wan Cheong Cross-examination (continued) |
| | Q. Didn't you see the defendant there. | |
| | A. No I only took a glance. | |
| | Q. In 1967 that chicken pen was partly on Lot 250. A. Yes. | |
| | Q. It was empty. A. Yes. | |
| | Q. Did you ever see anybody occupy it. A. Never. | |
| | Q. You say the defendant put up a shed in front of it. | |
| 20 | A. In 1968 I saw a shed in front of the chicken pen. | |
| | Q. The shed would be on Lot 249. A. Yes. | |
| | Q. Where did you find the defendant when you went to serve the notice. | |
| | A. I served the notice on him in the shed. | |
| | Q. Was the chicken pen occupied then. | |
| | A. He had already encroached the chicken pen. The whole chicken pen was widely renovated. | |
| | Q. Was the height the same. | |
| | A. Slightly higher than the old chicken pen. | |
| 30 | Q. Approximately. | |
| | A. About 1 ft. or slightly more. | |
| | Q. Was the whole pen renovated or only a part of it. A. The whole pen was renovated. | |
| | Q. You must have been to the pen. | |
| | A. I could see from the bottom. | |

In the High
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Court Notes
of Evidence

27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. Was there a door at the back. A. Yes.
- Q. Was there a door at the other side. A. Yes.
- Q. This was in 1969.
- A. I didn't go to the chicken pen in 1969.
- Q. How far is the shed from the pen.
- A. It was joined to the chicken pen.
- Q. Did you go to the rear. A. No.
- Q. How do you know it was renovated.
- A. The whole building looked new.
- Q. You said you could see the building from one of the points on the boundary. A. Yes. 10
- Q. Did you see a rear door. A. I didn't see.
- Q. When did you first see this renovation.
- A. Some time in Nov. or Dec. 1968.
- Q. You saw this building 3 or 4 months after the defendant scolded you. A. Yes.
- Q. Do you know how long it took to renovate.
- A. I don't know.
- Q. Are you sure it is the chicken pen that was renovated. A. Yes. 20
- Q. You told us the pen was mostly on land belonging to your employer. A. Yes.
- Q. You told us compensation was paid for it by Teng Boon Loh.
- A. The money was paid to Emeran.
- Q. You didn't go up to the building to inspect.
- A. No.
- Q. Why not.
- A. I wouldn't dare. I got a scolding for demolishing the staircase. 30
- Q. Did you tell anybody about the renovation at the time you saw it. A. No.
- Q. Somebody was occupying your employer's land.
- A. Yes.

- Q. He had spent a lot of money buying the property.
 A. He paid \$2.50 per sq. ft.
- Q. He had spent a lot of money on compensation.
 A. Yes.
- Q. How much altogether.
 A. There is an account with Mr. K.I. Tan you can see him about it.
- 10 Q. Your employer had spent \$600 on the hut and the pen. A. That is correct.
- Q. You didn't tell him until when.
 A. In 1969 my employer came to see the land because all the houses had been vacated except houses Nos. 18 and 19.
- Q. Until then had your employer come to the site i.e. 1967-9.
 A. After he paid compensation for the pen and the hut he never came on the site again.
- 20 Q. If you dare not do anything about the building why didn't you tell your employer about it.
 A. I wouldn't dare. I was still making a living in this area. I was paid \$100 for each house vacated and considering there were over 30 houses I was able to make about \$3,000/-. I was reprimanded by my employers when they discovered the renovation on 26.12.69. They sent for me by telephone.
- 30 Q. There was nothing to stop your employers from saying that you did not tell them. Were you stupid.
 A. I was so frightened of the person who scolded me for demolishing the staircase.
- Q. Did he ever talk to you. A. No.
- Q. Did he ever interfere with you. A. No.
- Q. I put it to you that you are not telling the truth about the building.
 A. I am telling the truth, if you insist I tell lies what can I do.
- 40 Q. How many sales of property did you do for these present owners. A. Altogether 3 sales.

In the High
 Court of
 Singapore

No. 6

Court Notes
 of Evidence

27th April
 1972

Plaintiff's
 evidence

Eu Wan Cheong
 Cross-
 examination
 (continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. One in 1967 when was the other 2.
A. Some time in 1965 or 1966.
- Q. What properties.
A. Storehouse at 37 Martin Road sometime in 1965 and 1966.
- Q. The third.
A. 4 shophouses in River Valley Road.
- Q. How did you find this property in Martin Road.
A. Introduction by fellow brokers.
- Q. One side of 37 Martin Road borders Narayanan Chitty Road. A. Yes where Lot 249 is. 10
- Q. Did you go up Narayanan Chitty Road. A. No.
- Q. Your principals were anxious to get property in that area, didn't you get instructions to get more land in that area. A. No.
- Q. After the purchase of 37 Martin Road. A. No.
- Q. What made you see them in respect of Lots 250 and 252.
A. I looked them to buy as the price was only \$2.50 per sq. ft. 20
- Q. Did you approach anyone else. A. No.
- Q. How did you know they were interested.
A. I didn't know if they were interested. I approached them.
- Q. Are they your only clients.
A. I have many clients.
- Q. How did you know the vendors were selling.
A. The vendor brought the plan to me.
- Q. Why.
A. We brokers gather in a coffee shop in Malacca Street, the vendor brought the plan there. 30
- Q. You know the Martin Road area well. A. No.
- Q. You were offering property without vacant possession.
- Q. Yes at \$2.50 per sq. ft.

- Q. Did you tell your principals the number of tenants he would have to deal with. A. Yes.
- Q. Nevertheless your principals were interested.
A. They considered it cheap.
- Q. Was there hard bargaining for the payment of compensation. A. No.
- Q. You did it. A. Yes.
- Q. Your principals didn't mind what they had to pay. A. There must be an agreed price.
- 10 Q. Did you have any more dealings with your principals since December 1969. A. No.
- Q. 1970 or 1971. A. No.
- Q. Did you see them in 1970. A. No.
- Q. 1971.
A. We met in a coffee shop and had a conversation.
- Q. What part of 1971. A. May or June.
- Q. Did you see them after that.
A. Once in a while we met in a coffee shop.
- Q. Once a month.
20 A. Sometimes we didn't meet for months.
- Q. Who is the man you met. A. Both of them.
- Q. Are you sure it was general conversation when you met in May or June. A. Yes.
- Q. They didn't discuss Lot 250.
A. Absolutely none.
- Q. In 1971 did you talk to them of Lot 250.
A. I felt ashamed since I was dismissed the service. I didn't bring up the subject.
- Q. Did you meet them in Jan. 1972.
30 A. I can't remember.
- Q. Did you talk to anyone else about Lot 250 apart from your 2 employers. A. No.
- Q. Jan. Feb. March 1972. A. No.

In the High
Court of
Singapore

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No. 6

Court Notes
of Evidence

27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

27th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. Before you gave evidence did you talk to anyone about Lot 250. A. No.
- Q. Not a soul. A. No.
- Q. Yesterday was the 1st time you spoke about Lot 250. A. To whom.
- Q. To us in Court. A. Yes.
- Q. Are you sure.
A. The Plaintiffs asked me to give evidence.
- Q. Who did you speak to.
A. All of them in general. 10
- Q. You spoke to them for the first time on Monday or before that.
A. They asked their representatives to telephone me about 16.4.72.
- Q. They asked you to come to Court on 24.4.72.
A. They told me to come to the 5th Court, Supreme Court.
- Q. You didn't see the representatives in between those 8 days. A. No.

Court adjs to 10.30 on 28.4.72. 20

By me: D.C. D'Cotta

28th April
1972

Friday, 28th April 1972 (5th day) Coram: D'Cotta J

Wee: Plaintiffs were in Court yesterday when P.W.7 was being cross-examined.

Xm by Harry Wee contd.

- Q. How many buildings (outhouses) are there on D1.
A. Apart from the main house, 6 not taking into consideration the building with cubicles. This longist building consists of 7 rooms, 7 families live in these 7 rooms with separate roofs. sic 30
- Q. Was such roof supported by a wall.
A. The roofs were ever-lapping. sic

- | | | |
|----|---|---|
| | Q. Did each tenant of this building own a cubicle or was there one owner for the lot. | In the High Court of Singapore |
| | A. Each unit had one room. | |
| | Q. Did you pay each of them compensation. | A. Yes. No. 6 |
| | Q. What about the remainder. | Court Notes of Evidence |
| | A. 6 others apart from the main house. | 27th April 1972 |
| 10 | Q. When you went to the shed in front of the chicken pen in 1969 did it have walls. | Plaintiff's Evidence |
| | A. It had no walls. | |
| | Q. Was there any equipment in it e.g. an altar. | Eu Wan Cheong Cross-examination (continued) |
| | A. I didn't pay attention. I was concerned with serving defendant with a notice. | |
| | Q. If you saw a Chinese altar, you would recognize it. | A. Yes. |
| | Q. Besides the defendant was anyone else there when you served the notice. | |
| | A. I was a bit frightened at the time I served the notice. I didn't pay attention. | |
| 20 | Q. How big was this shed. | |
| | A. I didn't pay attention to the dimensions. | |
| | Q. You went alone to serve the notice. | |
| | A. Teng Boon Loh and Lim Boon Chia accompanied me. | |
| | Q. Which way did you take. | A. From the steps. |
| | Q. Is that the first time you went to the shed in 1969. | A. Yes. |
| | Q. When did the defendant move his shed to in front of the chicken pen. | A. 1968. |
| 30 | Q. Before or after you demolished the staircase. | |
| | A. The shed was built in front of the chicken pen before I demolished the staircase. | |
| | Q. Was the chicken pen renovated when the shed was moved. | |
| | A. The shed was moved before the chicken pen was renovated. | |
| | Q. When was it renovated. | |
| | A. Some time in Nov. or Dec. 1968. I discovered the chicken pen had been renovated. | |

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
28th April
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(continued)

- Q. Prior to the renovation was the chicken pen being used. A. It was empty.
- Q. After the shed was moved there did anyone made use of the chicken pen.
- A. No it was empty and locked up.
- Q. Have you been up to the shed after it was moved. A. No.
- Q. From Jan. 1968 till December 1969 you didn't go to the chicken pen. A. No.
- Q. You went there in 1968 to pay compensation. 10
- A. Yes.
- Q. With Teng Boon Loh and Lim Boon Chia.
- A. Only with Teng Boon Loh.
- Q. How did you get there.
- A. Through the compound of the school.
- Q. Was the Malay gentleman there. A. Yes.
- Q. Did he go up with you to the chicken pen.
- A. No.
- Q. How did you lock the pen.
- A. I only fastened it with wire. 20
- Q. Both doors. A. Yes.
- Q. Teng Boon Loh was with you.
- A. No he remained in the Malay gentleman's house.
- Q. How long did it take you from his house to the chicken pen and back.
- A. It was impossible to know; I walked to the chicken pen and I didn't look at the time.
- Q. Did you show the boundary stone to Teng Boon Loh and Lim Boon Chia.
- A. They saw the boundary stone, Lim was some distance away. 30
- Q. You went through the school's compound.
- A. Yes.
- Q. Did you point out to Teng Boon Loh that part of the chicken pen was on someone else land.
- A. I did.

Q. What did he say.
A. Hd didn't say anything; he only asked when the boundary ended.

In the High
Court of
Singapore

Q. Did he ask you who was the owner.
A. No he didn't.

No. 6

Q. On 26.12.69 Teng sent for you by phone when he discovered the renovation.

Court Notes
of Evidence

A. Yes he asked me to come to his shop in New Bridge Road.

28th April
1972

10 Q. What happened.

A. He reprimanded me for not telling him that the chicken pen had been renovated.

Plaintiff's
evidence

Q. What did you say.

A. I told him after the staircase incident I was frightened and did not dare mention it to him.

Eu Wan Cheong
Cross-
examination
(continued)

Q. Was that the 1st time you mentioned the defendant to Teng. A. Yes.

Q. Do you know if he went to inspect the renovation. A. He didn't go there.

20 Q. Did he tell you how he found out.

A. In December 1969 they wanted to put up a building on this land then they discovered the renovation.

Q. Did Teng tell you he saw the renovation.

A. He told me the chicken pen had been renovated quickly by somebody.

Q. Did he tell you he saw it. A. Yes.

Q. After reprimanding you he sacked you.

A. He took me to a solicitors firm, 3 of us Teng Boon Loh, Lim and I.

30

Q. Did you see the solicitor. A. Yes.

Q. What happened.

A. Teng instructed the solicitor to send a notice.

Q. Did you speak.

A. Yes, the solicitor asked me if I knew the name of the person and I said I didn't know.

Q. Is that all you said.

A. I can't remember if I spoke anything else.

In the High Court of Singapore

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Court Notes of Evidence

28th April 1972

Plaintiff's evidence

Eu Wan Cheong Cross-examination (continued)

Re-examination

Q. Did Lim say anything. A. I can't remember.

Q. Who gave the instructions. A. Teng did.

Q. Did you wait in the office till the notice was given to you for service.

A. Yes and all three of us left the place.

Q. And all 3 went to the site. A. Yes.

By me: D.C. D'Cotta.

Re-xn:

P9 shows the shed in which I served the notice.

Witness is shown P38, and indicates the portion underlined in blue and that rectangular portion in front of it as the present site of the temple. He also points out the square portion in front of the rectangular portion as being the present site of the open shed. The nearest side of the chicken pen is slightly away from the boundary stone common to Lots 249 and 260. When I said when the documents were being prepared" on P38 of the Notes of Evidence, I meant Ex.B3. I do not know at this stage if the purchase price had been paid, it was handled by my employers and solicitors. I don't know when the conveyance was completed.

10

sic

20

By me: D.C. D'Cotta

See Geok Tee Examination

P.W.8: See Geok Tee a/s English

58-C Jalan Tenteram, Singapore.

Sub-manager, United National Finance, S'pore.Ltd.

We owned Lot 249 of T.S.D.XXI. We purchased this property some time in 1965. We finalised the purchase some time in 1965. It was purchased with vacant possession. After the purchase we fenced up that piece of land. One of the executives of a related company arranged for this. He is Mr. Andrew Leong. He is now in Hong Kong. I doubt if I can get him. He is in business and runs around with no address. Some time in Oct. 1968, the supervisor of Nan Chia Girls School applied for keys to the gate leading to the vacant land Lot 249 for easy access to the school across our land to the school and vice versa. I have been to the site since my company bought the property to see the fence. I saw the gate. This was in 1968.

30

40

Witness id Lot 249 in A38. The gate faces a footpath. There was only one gate and the keys refer to this gate. I have the receipt from the supervisor acknowledging receipt of the keys dated 22.10.68.

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Court of
Singapore

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Court Notes
of Evidence
28th April
1972

Plaintiff's
evidence

See Geok Tee
Examination
(continued)

10 I produce. Admitted & Marked P23. The vacant ground behind the school is Lot 249. The gate was closed, we locked it up. On 26th Sept. 1970 we got back the keys from the school. I went to the school and got the keys. There was a letter from the school asking us to acknowledge receipt of the keys. We did so.

20 I produce both letters. Admitted & Marked P24 & P24A. After receiving the keys I went there to ascertain if the gate was closed. I discovered the steel hatchet of the gate was damaged. It was bent and not serviceable. Eventually we slammed the gate as we could not lock it. A few days later one temple man came to the office to lodge a long claim: He is Mr. Goh Leng Kang.

Witness: id Goh Leng Kang.

30 He came to see our manager, Mr. Yap. I was present. He came to my office to apply for permission for worshippers to use the path as we were trying to lock the gate. Eventually we had to agree for the sake of the worshippers. He told us that he had been staying in that locality for about 10 years. The path leads to a temple at the top of the hill. When the defendant came to our office our company was aware of the statutory declaration. Defendant was claiming by way of adverse possession. We were informed by the Commissioner of Lands of this. After this we sold Lot 249 to our next door neighbour. We entered into a contract of sale with Teng Boon Loh and Lim Boon Chia.

By me: D.C. D'Cotta

Xxn by Harry Wee:

Cross-
examination

Q. Before you gave the keys to the school did you offer it to Mr. Goh the defendant. A. No.

40 Q. Did you offer him the keys during that time.
A. We never offered to anybody except the school supervisor.

Q. You bought the land in 1965. A. Yes.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

28th April
1972

Plaintiff's
evidence

See Geok Tee
Cross-
examination
(continued)

- Q. In 1965 did you inspect the site. A. No.
- Q. Your associate company was in the same office. A. No same building.
- Q. They are all subsidiaries of the bank.
A. Yes.
- Q. Who negotiated the purchase.
A. Mr. Leong, he was an executive of one of our group companies.
- Q. On whose name was conveyance made.
A. United National Finance Ltd. 10
- Q. You knew of the purchase in 1965. A. Yes.
- Q. You were in charge of or had knowledge of the land till it was sold to the present owners.
A. Yes.
- Q. Who had it fenced.
A. Mr. Leong was responsible for it.
- Q. The fence had a gate. A. Yes.
- Q. What was the gate made of. A. Wood and zinc.
- Q. And the fence. A. Zinc.
- Q. What colour was it. A. Black. 20
- Q. Was there another fence dividing Lot 249 and 250. A. No.
- Q. Your company put up the fence.
A. Yes the fence divided 249 and 250 and 249 and 251.
- Q. Is there a note about the fence in your file.
A. No.
- Q. How many sides did the fence had. A. Three sic
- Q. How long after you purchased the property was the fence erected. A. Some time in 1966. 30
- Q. Did you inspect the fence. A. Not till 1968.
- Q. When you purchased the land did it have any fence at all.

- A. I wouldn't know; to the best of my knowledge there was no fence.
- Q. To your knowledge there was no fence erected on the remaining side.
- A. The 4th side was the hill with the temple on it next to the school.
- Q. To your knowledge the temple was there in 1965.
- A. I wouldn't know. I only realised the existence of a temple when we received a letter from the Commissioner of Lands.
- Q. Have you got the correspondence relating to your purchase of this property.
- A. -

In the High Court of Singapore

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Court Notes of Evidence

28th April 1972

Plaintiff's evidence

See Geok Tee Cross-examination (continued)

Court adjourns to a date to be fixed as early as possible after 31st July 1972.

By me: D.C. D'Cotta

Thursday, 10th August 1972

Coram: D'Cotta J

10th August 1972

P/Heard

Suit No.963 of 1971

Plaintiff's evidence

See Geok Tee Cross-examination (continued)

- 20 Lai Kew Chai for the Plaintiffs
- Harry Wee (Wong Meng Meng with him) for the Defendant.

P.W.8 on his former affirmation -

Xxn by Harry Wee (contd)

- Q. You are familiar with purchase of Lot 249.
- A. Yes.
- Q. What was your position in the firm.
- A. Running of the office; day to day work.
- Q. Did you open a file on Lot 249. A. Yes.
- 30 Q. Mr. Leong negotiated the purchase. A. Yes.
- Q. Did you get a site plan at that time.
- A. No, we did not ask for one.
- Q. Did you do a survey of the area.
- A. We left it to the lawyers.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

10th August
1972

Plaintiff's
Evidence

See Geok Tee
Cross-
examination
(continued)

- Q. Have you seen this purchase file of Lot 249 recently. A. Yes, last year.
- Q. Is there a survey plan. A. Yes after purchase.
- Q. When was the 1st time after the purchase that you went on the land. A. About 1968.
- Q. How long after the fence was erected did you go on the land.
- A. I went there when the school wanted easy access.
- Q. You didn't go there before that. A. No. 10
- Q. School applied in October for the key.
- A. Yes.
- Q. Was the gate locked before. A. Yes.
- Q. How do you know.
- A. When it was fenced it was locked.
- Q. Between 1965 and October 1968 no one asked for the keys. A. No.
- Q. Did you send anyone from your office to the site between 1966 and 1968. A. No one.
- Q. How do you know it was locked. 20
- A. Mr. Leong fenced it and gave me the key.
- Q. How do you know the gates were not opened.
- A. I would not know.
- Q. How did the school ask you for the keys.
- A. They wanted the children to have easy access through the path.
- Q. Did you know of this path.
- A. No, not till the school supervisor spoke to me.
- Q. Did you discuss this with anyone in the office. 30
- A. Yes, Mr. Yap Lee Poh gave permission.
- Q. You went to the site.
- A. When I gave the keys, I went to the school.
- Q. You went on the land.
- A. Yes, after I went to the school.

- | | | |
|----|--|--|
| | Q. How did you get into the land. | In the High Court of Singapore |
| | A. By way of Kim Yam Road. | <u> </u> |
| | Q. You were alone. A. Yes. | No. 6 |
| | Q. How was the gate opened. | Court Notes of Evidence |
| | A. After I handed the keys I went to the office to report to the manager and in the afternoon I visited the site for a re-inspection, the gate could have been opened by the supervisor. | 10th August 1972 |
| 10 | Q. So when you said you went by Kim Yam Road is not true. | Plaintiff's evidence |
| | A. I can draw the route I went by. | See Geok Tee Cross-examination (continued) |
| | Q. What do you mean by re-inspection. | |
| | A. I mean to look around. | |
| | Q. Do you know the meaning of re-inspect. | |
| | A. Yes. | |
| | Q. You never inspected it before. A. That is so. | |
| | Q. This is the first time you actually went into the site. A. Yes. | |
| 20 | Q. The first time you saw the fence and the gate. | |
| | A. Yes. | |
| | Q. You went into the site from Narayanan Chitty Road. A. Yes. | |
| | Q. How did you inspect the site. | |
| | A. I went through the gate and stood just below the hill. | |
| | Q. On the hill there were steps. A. Yes. | |
| | Q. They were made of concrete. A. Yes. | |
| | Q. Did you walk up the steps. A. No. | |
| 30 | Q. Did you notice the 2 huts - W.C. and Bathroom. | |
| | A. I didn't. | |
| | Q. Did it not occur odd to you that there were concrete steps on your land. | |
| | A. I figured it was unauthorised steps. | |
| | Q. Immediately at the top of the steps there is a hut. A. Yes an unauthorised hut. | |

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

10th August
1972

Plaintiff's
evidence

See Geok Tee
Cross-
examination
(continued)

Q. Do you mean illegal from your point of view.
A. Yes.

Q. Were there people there.
A. I noticed some worshippers there.

Witness is shown Exhibit P10

Witness says in 1968 there was no
railings, and the steps look as though
they have been improved.

Q. The steps are much improved. A. Yes.

Q. Was the hut on your land.
A. I presumed it was.

10

Q. You didn't go up the steps. A. No.

Q. Why not.
A. I didn't think it was necessary at that time,
there was no dispute.

Q. There was a temple there. A. Yes.

Q. The gate must have been unlocked.
A. Yes I realised someone intruded into my land.

Q. Did you do anything else.
A. I walked out and returned to the office.

20

Q. Did you do anything about it at the office.
A. I made a report to Mr. Yap.

Q. What happened as a result of your report.
A. We didn't take any action.

Q. The school children could use the same path.
A. Yes.

Q. Did it not strike you as odd that the super-
visor wanted the keys for quite obviously the
place was opened.

A. I don't know, I can't answer that.

30

Q. Before the school asked for the keys was
there any complaint about the gates being
locked. A. No.

Q. You tried to lock the gates and both the
defendant and the school did not agree.

- | | | |
|----|--|--|
| | A. No, I didn't know the defendant until he came to our office. | In the High Court of Singapore |
| | Q. In 1966 the fence was completed. A. Yes. | —
No. 6 |
| | Q. Who did the fencing. | Court Notes of Evidence |
| | A. Mr. Leong attended to it. | 10th August 1972 |
| | Q. Who paid for the fence. | Plaintiff's evidence |
| | A. I was trying to locate the payment, but I could not find it. | See Geok Tee Cross-examination (continued) |
| | Q. Was Mr. Yap there. A. Yes. | |
| 10 | Q. He would know. | |
| | A. Yes. He knew about the fencing. | |
| | Q. Did you ask him about the cost of the fence. | |
| | A. No. | |
| | Q. Are you sure your firm did the fencing. | |
| | A. Mr. Leong said it was fenced and handed me the key. | |
| | Q. You don't know if 2 or 3 fences were put up. | |
| | A. That is so. | |
| 20 | Q. The survey map shows a building in 1964. | |
| | A. I don't know. | |
| | Q. When you purchased were you not aware of this building. A. We were not told. | |
| | Q. I put it to you, in 1964 before you purchased, there was already a building. | |
| | A. Our lawyers told us it was vacant. | |
| | Q. Have you prayed in this temple. A. No. | |
| | Q. From 1968 your firm did nothing about this temple. A. No. | |
| 30 | Q. At the last hearing you said you only realised the existence of a temple when we received a letter from the Commissioner of Lands. A. Yes. | |
| | Q. In August 1970 your manager gave you an option to Teng Boon Loh at \$14.50 per sq.ft., there was an earlier option of 18.8.70 at \$14 per sq. ft. A. Yes. | |

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

10th August
1972

Plaintiff's
evidence

See Geok Tee
Cross-
examination
(continued)

Q. In both cases it was with vacant possession.

A. Yes.

Q. You knew there were people occupying the land.

A. Yes.

Q. But it was occupied.

A. The occupation was unauthorised.

Q. Not all unauthorised persons can be evicted.

A. Perhaps we could come to terms.

Q. Did you in fact have that in mind when the options were issued. A. No.

10

Q. Was it discussed between Mr. Yap and you.

A. No.

Q. Both of you know that there was a squatter.

A. Yes.

Q. If the occupier did not wish to talk terms and remained on the land you would be in trouble if you could not give vacant possession.

A. We didn't think so at the time.

Q. You then put the matter in the hands of the lawyers. A. Yes.

20

Q. Did you tell your lawyer it was vacant.

A. Yes, when we purchased our lawyer told us it was vacant.

Q. You didn't tell your lawyer anything.

A. No, because I take it that the lawyer since he was the purchasing lawyer he should know if it is vacant or not.

Q. In 1968 you saw a temple there. A. Yes.

Q. Isn't it unbusinesslike. A. In what way.

30

Q. There is someone on the land and yet the option says 'vacant possession'.

A. Yes, our lawyers acted for us.

Q. Do you expect the lawyer to go on the site.

A. I can't tell you that.

Q. A contract was drawn up and the price given as \$14.50 per sq.ft. A. Yes.

- Q. Did you sign the contract.
A. I think we did.
- Q. That was a legal contract. A. Yes.
- Q. Should you not tell your lawyer that there was someone on the land.
A. It is not necessary.
- Q. This is not very honest.
A. If you put it that way, I have nothing to say.
- 10 Q. Were you under the impression that the temple was in fact not on your land.
A. Yes we only knew it was on our land when we received the survey report.
- Q. Is that why you did nothing about it in 1968.
A. Yes.
- Q. This would not have happened if a survey was made at the time of purchase. A. Yes.
- Q. This building was on the land when you bought.
A. I don't know.
- 20 Q. If you had made a site plan at the time of purchase you would have seen the erection.
A. That is so.
- Q. Hence you were not aware till 1970 that the land you purchased included the erection on it. A. That is so.
- Q. Were you aware of A4. A. No.
- Q. You knew of the Defendant's S.D. when he came to your office.
A. When we received notice of the claim I went quickly to the site. I went to try and lock the gate. Lock was broken. I asked to see the caretaker. I met the Defendant. I asked him why he encroached on our land. He said he had been there for years. Defendant came to see Mr. Yap and we tried to talk terms.
- 30 Q. The gate had been opened most of the time.
A. I don't know.
- Q. Defendant asked you in 1968 not to lock the gate.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
10th August
1972

Plaintiff's
evidence
See Geok Tee
Cross-
examination
(continued)

In the High Court of Singapore

No. 6

Court Notes of Evidence

10th August 1972

Plaintiff's evidence

See Geok Tee Cross-examination (continued)

Re-examination

- A. There were so many people around, I don't know who is who.
- Q. It is possible he was one of those who wanted the gate opened for worshippers.
- A. It is possible.
- Q. Defendant tells me he saw you and the key was offered to him by you as you wanted to lock up the place to stop people from dumping rubbish.
- A. I don't think so. There were many people around and I thought the best thing was to give the key to the school supervisor.

10

P.W.8 See Geok Tee

Re-xn by Lai

When I handed the key to the school supervisor this was my first visit. I did not try to hand the key to anyone. The school telephoned us for the keys. I went straight to the school and met the supervisor in the compound. There were some workmen around. I handed the key to the supervisor. I never asked the defendant or anyone else to look after the keys. I can't remember if anyone else wanted the keys. If the defendant had applied to my company for the keys I would have heard about it. I never offered the keys to the defendant. With regard to P10 there were earth steps like mound, not concrete. When I first saw the hut it was not in the same state as shown in Ex.P11. I have never handled a case of adverse possession. To my knowledge my company has never been faced with this before.

20

30

By me: D.C. D Cotta

Ct adjs to 10.30 a.m. on 11/8/72

11th August 1972

Friday, 11th August 1972

Coram: D/Cotta J

Suit No.963/71 (contd)

Wee addresses:-

On 2 occasions objected to order of evidence being called. Court has a discretion as to

40

order of witnesses. Objects formally as Plaintiffs have not been called.

Sec.135 Cap.5; Phipson on Evidence 10th Ed. at page 130 para.129;

Sarkar on Evidence 10th Ed. p.1261

Mi Mydin v Emperor 1909 2 I.C. 349;

Jarat Kumari Dass v Bissessur Dutt I.L.R. Vol. XXXIX 1912 p.245; Alexander v Crowther 1946 Vol.36

10 Travencore Law Journal p.19;

Shwee Pru v The King A.I.R. 1941 Rangoon Vol. 28 p.209.

Asks Court to order that Plaintiffs and his witnesses be called immediately. No corroboration.

Lai replies:-

20 Objects strenuously to application. Fundamental right to call witnesses in order; have already indicated to Wee that Plaintiffs have no knowledge of the issue. Formal witnesses. Plaintiffs need not be called if they can't throw light. Will call Teng Boon Loh now.

By me: D.C. D'Cotta

Court: I do not propose to exercise my discretion to direct counsel for the Plaintiffs in the order in which he should call his witnesses.

By me: D.C. D'Cotta

P.W.9 Teng Boon Loh m/s Hokkien

30 141 New Bridge Road, Singapore.

Businessman. Partner in Hock Lam & Co. Teng Swee Lim the 1st plaintiff is the son of one of my partners. Madam Liew Choon Tee the 3rd plaintiff is my wife. The 2nd plaintiff is the wife of Mr. Lim Boon Chia. The 4 plaintiffs are the owners of Lot 250 and Lot 252. They are also the owners

In the High Court of Singapore

No. 6

Court Notes of Evidence

11th August 1972

(continued)

Plaintiff's evidence

Teng Boon Loh Examination

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

11th August
1972

Plaintiff's
evidence

Teng Boon Loh
Examination
(continued)

Exhibit A38

of Lot 249. Lots 250 and 252 were purchased in 1967. Lot 249 was purchased in 1970. I was given an option to purchase - Exhibit P9 is the agreement for sale. My signature appears on page 11. In respect of Lots 250 and 252 I entered into a contract to purchase - Ex.B4. My signature appears pm P6. I was the representative of the plaintiffs in these 2 purchases. In respect of Lots 250 and 252 I inspected the sites in 1967 before I signed the contract. Lots 250 and 252 were occupied by 48 families comprising Chinese, Indian and Malays.

10

Witness is shown A38.

When I visited Lot 250 I went to the place delineated blue in A38. The blue portion is on high ground. When I went to the place marked blue I saw a chicken pen. This chicken pen was oblong in shape and it had old plank walls and old asbestos roof. The roof was ridge shape triangular. The length of the pen was slightly over 20 feet in length. The breadth was 13-14 feet. The height was about 7-8 feet. The chicken pen had 2 doors, one door faced Lot 249 and the other Lot 250.

20

Witness is shown A38 and states that the pen was on the portion delineated blue but part encroached on Lot 249. The portion delineated and jutting out as in A38 was vacant land at the time I first saw it and there was a dilapidated structure. I do not know what it was used for. This structure comprised old planks, which were rotting. Apart from this structure there was a temple on higher ground in Lot 260. Witness marks the position of the temple.

30

It was about 8 feet from the nearest point of the chicken pen. The temple was more or less square in shape. It was facing Kim Yam Road. I didn't pay particular attention to the colour of the temple. If one wanted to go from the chicken pen to the temple there was no obstruction. The temple was on higher ground. I saw nothing in front of the door of the pen facing Lot 249. After my inspection of the property I decided to purchase it. I appointed one Eu Wang Cheong - P.W.7 - to collect the rents from the tenants occupying Lots 250 and 252. I also appointed him to negotiate with the tenants for vacating the premises by payment of compensation. The object of the purchase was to erect godowns. The first ground tenant to be paid

40

off was one Emaran. He occupied a house and a chicken pen. This is the pen I earlier referred to in the portion delineated blue in A38. He occupied a house on Lot 250 close to Lot 252.

Witness points to the south eastern corner of Lot 250.

Both his house and the chicken pen were on high ground. There was a path leading from Emaran's house to the chicken pen.

10 Witness indicates along the border of Lots 250 and 260.

The path was on the same level as Emaran's house and the chicken pen. Emaran was paid \$600/- for his house and the chicken pen. I personally paid the compensation to Emaran outside his house. He gave me a receipt. He put the receipt against the wall and signed it.

Witness is shown P.22 Witness identifies P22.

20 I have not seen Emaran since this occasion. I have not tried to locate him. I paid Emaran on a Sunday. When Emaran gave me the receipt no one else was present with me. P.W.7 was inspecting the chicken pen at the time. P.W.7 accompanied me on that day to pay off Emaran. P.W.7 fastened the 2 doors of the chicken pen with wire and sealed up his house by nailing a board to the main door. After this I left the site. P.W.7 reported to me the progress he was making as regards paying off the other occupiers. I paid off Emaran on 7.1.68. I next
30 visited the premises with Lim Boon Chia in December 1969. Except for 3 or 4 tenants in the slope in Lot 250 all the rest of the tenants had left. I looked around Lot 250. I looked up from the bottom of Lot 250 and found that the chicken pen had been renovated into a temple. I was very unhappy about this and as soon as I returned to my office I summoned P.W.7 by telephone to ask him why he did not inform us that the chicken pen had been renovated into a temple. P.W.7 came to my office.
40 I asked him why he did not inform us that the chicken pen had been renovated into a temple. I was very angry. He told me someone had erected a staircase in Lot 250 some time in 1968. He also said he had the staircase demolished. He told me the caretaker of the temple was very unhappy about

In the High Court of Singapore

No. 6

Court Notes of Evidence

11th August 1972

Plaintiff's evidence

Teng Boon Loh Examination (continued)

Exhibit P22

In the High Court of Singapore

No. 6

Court Notes of Evidence

11th August 1972

Plaintiff's evidence

Teng Boon Loh Examination (continued)

demolishing this staircase. He also told me he got a scolding from the caretaker. He told me the caretaker had said that he - P.W.7 - should not interfere with his affairs otherwise the caretaker would give him a lot of trouble and make it very difficult for him to make his living there. P.W.7 also said that because of this he was very frightened and that was why he did not inform us. I then decided to take P.W.7 to Messrs. Eber and Tan's office to issue a notice. Lim Boon Chia, P.W.7 and I went to Eber and Tan's Office. We interviewed Mr. K.I.Tan and instructed him to issue a notice.

10

Witness is shown A3.

Witness identified A3 was the notice.

The three of us then went to serve the notice on the caretaker of the temple.

Witness identified defendant as the caretaker.

Court adjs to 10.30 a.m. on 14th August.

By me: D.C. D'Cotta.

20

14th August 1972

Monday, 14th August 1972

Coram: D'Cotta J

Continuation of Suit 963 of 1971.

P.W.9 on his former affirmation

Xn-in-chief (contd.)

I contacted Defendant in March 1970 for the purpose of asking him to return the land to us for building purposes. He said he was prepared to return the land to us. At that time no conditions were mentioned. He said he would return it to us when the buildings we built had reached his land. When our building had reached the second storey he backed out of his promise and refused to return the land to us. Subsequently when we approached him again for the return of the land he asked for \$27,000/-. He told me that the land meaning Lot 249 belonged to the United National Finance Ltd. He suggested that we buy the land from the Finance Co. He said he would leave the

30

place after we had purchased from the Finance company. I went to the United National Finance Co. and eventually we bought Lot 249 in the name of my wife and 3 others. After we purchased the land, we asked the defendant to leave the place but he refused and then asked for \$40,000/-. On behalf of the Plaintiffs I agreed to pay \$40,000/-. The plaintiffs then solicitors M/s. Chung & Co. were instructed to draw up an agreement.

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Court Notes
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1972

10 Witness is shown Ex.A17.

Plaintiff's
evidence

Teng Boon Loh
Examination
(continued)

I do not know how A17 was worded. We deposited \$20,000/- with Messrs. Chung & Co. and this sum of money was later returned to us. At first the Defendant promised to vacate his premises on 15.5.71 upon receipt of the \$40,000/- from us. Later it was extended to 10.6.71 and finally extended to 10.7.71 when he was supposed to execute the document. On 10.7.71 defendant requested a further 2 months extension. We refused and were prepared to give 1 month's extension. All these request for extension of time was made verbally. Eventually the agreement fell through. We were aware he had encroached on our land after January 1968 and he had no right to do so. At the same time we urgently needed this piece of land for construction of our building. According to law we need not have to compensate him anything when he encroached on our land. I am a Buddhist and the defendant's temple is a Buddhist temple. Defendant said he would make use of the \$40,000/- to set up another temple elsewhere. On Lot 250 the plaintiffs have a 4 storey warehouse. We rent this for \$13,000/- per month. We had plans to extend this warehouse to Lot 249. Building plans were approved and we could have started building on 15.5.71 if Defendant vacated. When completed we intended to rent the extensions. If extensions were completed earlier we could have collected rent earlier.

20

30

By me: D.C. D'Cotta

40 Xm by Harry Wee:

Q. You own 1/4 of the whole property. A. Yes.

Q. Why do you operate in your wife's name.

A. It was agreed by the 4 partners of Hock Lam & Co. that the property would be in the name of our wives.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
14th August
1972

Plaintiff's
evidence

Teng Boon Loh
Cross-
examination
(continued)

- Q. All your other businesses are in your wives names.
- A. No, except for these 2 or 3 pieces of land.
- Q. Is there a deed of trust signed by your wife in your favour. A. Yes.
- Q. Your principal business is Hock Lam & Co.
- A. Yes.
- Q. You consider it wise to put it in your wife's name.
- A. Yes for the purchase of the properties she has no interest in our business. 10
- Q. Has the deed of trust been registered.
- A. It has been stamped. This deed is not a deed of trust, but a Power of Attorney in my favour.
- Q. This property is protected in the event of your financial troubles.
- A. That is not so. I don't foresee my business failing.
- Q. Then why not put it in your name. 20
- A. It is nice to put property in our wives name, everybody does that.
- Q. Under the Power of Attorney you can sell.
- A. Yes, but she gets the proceeds.
- Q. In 1967 you were approached by a broker in respect of Lots 250 and Lot 252. A. Yes.
- Q. After he gave you details of these properties did you visit the sites. A. Yes I did.
- Q. Do you go alone or accompanied.
- A. I went with Lim Boon Chia. 30
- Q. With or without the broker the first time.
- A. With the broker.
- Q. How did you view the site.
- A. The broker took Lim and I to Martin Road and then we entered Arnasalam Chitty Road to view the properties. There was a small path, no fence, and we entered by Lot 250 and inspected it first. The broker pointed out to us the houses on Lot 250. He also told us there were

houses on high ground and it would be impossible to get to these houses. We went round Lot 250 till we came to Kim Yam Road and the school compound.

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Singapore

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Q. How did you get into the school.

A. From Kim Yam Road.

Court Notes
of Evidence

Q. What did you do next.

A. We entered Lot 250 near the South Eastern corner and first inspected Emaran's house situate at the South Eastern corner.

14th August
1972

Plaintiff's
evidence

10

Q. What did you do then.

A. We proceeded to the chicken pen by a path alongside this boundary between Lot 250 and Lot 260.

Teng Boon Loh
Cross-
examination
(continued)

Q. Why did you go to the school compound.

A. You can only walk to the high ground from the school compound.

Q. You then proceeded to the building which you described as a chicken pen. A. Yes.

20

Q. Who brought you there. A. P.W.7.

Q. From there what could you see of Lot 250.

A. I saw a zinc fence between Lot 249 and Lot 250.

Q. Did the fence reach Lot 260.

A. It went up to the side of the chicken pen.

Q. The chicken pen is on high ground.

A. Yes about 30 feet from road level.

Q. The temple was at the circle you drew in Lot 250. A. Yes.

Q. How did you know the chicken pen was in Lot 250.

A. I saw a square boundary stone made of stone.

30

Q. Was it a new or old stone. A. Old.

Q. You knew there were 2 schools in Lot 260.

A. There were 2 schools I don't know the lot number.

Q. In 1967 the ground of the 2 schools was being levelled and the old building had been demolished.

In the High
Court of
Singapore

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Court Notes
of Evidence

14th August
1972

Plaintiff's
evidence

Teng Boon Loh
Cross-
examination
(continued)

- A. I didn't pay particular attention, the purpose of my visit was to inspect Lots 250 and 252 and ascertain if it was worth purchasing.
- Q. When you were looking at the chicken pen were you moving into Lot 260.
- A. No I was in Lot 250.
- Q. Didn't you go further up to Lot 249.
- A. Yes I went as far as the boundary stone.
- Q. Was there any fence between Lot 260 and Lots 249 and 250. A. No. 10
- Q. At the chicken pen did you see any work being done on the school ground.
- A. I didn't pay much attention.
- Q. Were there any large trees in the vicinity of the junction of Lot 249 and 250.
- A. I saw 2 small trees near the chicken pen in Lot 249 and 250.
- Q. Was the chicken pen right up to the boundary stone. 20
- A. About 1 ft. away from it there was enough room for a man to walk between the chicken pen and the boundary stone.
- Q. What was the contour of the land facing the door opposite Lot 249.
- A. On the same level.
- Q. To what distance.
- A. Quite some distance.
- Q. What was the contour of the land facing the door opposite Lot 250. 30
- A. Also level there was a small path.
- Q. To what extent.
- A. To Emaran's house, more or less.
- Q. What was the land on Lot 260 like.
- A. On a higher level.
- Q. And on the other side of the chicken pen facing Lot 250. A. There was a drop.
- Q. Were there any houses near the chicken pen.

- A. Yes, Witness says he misunderstood the question, there was a house near Emaran's house but none near the chicken pen.
- Q. Did the pen have any windows.
A. I didn't see any.
- Q. Did you go right round the pen. A. No.
- Q. Did you see any other boundary stone on Lot 250. A. No.
- 10 Q. The pen was partly on Lot 249.
A. About 4-5 ft of the pen was on Lot 249.
- Q. At the time did you know who owned Lot 249.
A. No.
- Q. Did you observe any steps either on Lot 249 or Lot 250 from the pen coming down the slope.
A. No.
- Q. Further along Lot 249 were there any steps.
A. No only a slope.
- 20 Q. Were there any steps from the temple to Lot 249 down.
A. I didn't pay much attention, I only knew there was a slope.
- Q. Were there any steps or a pathway from the pen into Lot 250. A. No.
- Q. That was your first visit.
A. Yes towards the end of January 1967.
- Q. When was your second visit. A. On 7.1.68.
- Q. Did you carry out a survey before purchasing Lot 250. A. No.
- 30 Q. When did you instruct architects to put up a godown in Lot 250.
A. About January or February 1969.
- Q. When did you first see the sketch or site plan of Lot 250. A. I can't remember.
- Q. I put it to you the architect must first survey the place before he can tender his building plans.
A. I would not know.

In the High
Court of
Singapore

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Court Notes
of Evidence
14th August
1972

Plaintiff's
evidence

Teng Boon Loh
Cross-
examination
(continued)

In the High
Court of
Singapore

—
No. 6

Court Notes
of Evidence
14th August
1972

Plaintiff's
evidence

Teng Boon Loh
Cross-
examination
(continued)

- Q. At the time you instructed your architects were you aware of the existence of the encroachment.
- A. I was not aware of the encroachment at that time.
- Q. Did your architect tell you of the encroachment.
- A. No, all he did was to draw plan and submit it for approval.
- Q. From January 1967-1968 did Mr. Lim Boon Chia or anyone from your firm visit Lot 250. 10
- A. No.
- Q. When you went in 1968 you went to see Emaran.
- A. Yes.
- Q. Was there any other reason for going to the site. A. No.
- Q. How did you get to Emaran's house.
- A. From Kim Yam Road.
- Q. Did you visit any other place beside Emaran's house. A. No. 20
- Q. After paying Emaran where did you go.
- A. To my shop.
- Q. You didn't see any building work on Lot 260.
- A. No.
- Q. You walked from Lot 260. A. Yes.
- Q. You could see on your right for quite a distance.
- A. I didn't pay attention.
- Q. Were there any buildings on your right.
- A. A sports ground.
- Q. Anything else.
- A. I didn't pay attention.
- Q. Is P22 the receipt you gave Emaran to sign.
- A. Yes.
- Q. Who did you get to write P22. A. P.W.7.
- Q. Room 14 is where Emaran stays. A. Yes.

- Q. You paid him \$600 for the room and the chicken pen. A. Yes.
- Q. Is P22 correct. A. Yes.
- Q. What is the number of your godown in Lot 250.
A. 11 Arnasalam Chitty Road.
- Q. When you bought it, it was 22A and B.
A. If the conveyance says so, it must be so.
- Q. 21 Arnasalam Chitty Road refers to Lot 252.
A. The conveyance says so I can't argue.
- 10 Q. Is there therefore an error on P22.
A. I can't say for certain.
- Q. Is P22 correct.
A. It is, but whether the number is correct I am not sure.
- Q. According to P22 Emaran was not on Lot 250.
A. His house is on Lot 250 next to Lot 252. At the time we purchased the solicitors gave us a list of the tenants on the premises. After we were given this list we discovered 2 names of the ground tenants were not in the list. We pointed out the omission to the solicitors; as there was no space in the column under Lot 250 and the two names were subsequently put below Lot 252.
- 20 Q. Who drew the lawyers attention to the omission.
A. P.W.7.
- Q. Did you go with him. A. No.
- Q. When did this correction take place.
A. After we purchased the two pieces of land when they submitted the list of names to us that the correction were made.
- 30 Q. You remember paying your deposit. A. Yes.
- Q. You remember making the final payment.
A. August 1967.
- Q. Was the correction done after August 1967.
A. After August 1967.
- Q. When did you first see the list.
A. After purchase.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

14th August
1972

Plaintiff's
evidence

Tang Boon Loh
Cross-
examination
(continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
14th August
1972

Plaintiff's
evidence

Tang Boon Loh
Cross-
examination
(continued)

- Q Where did you get the list from.
A Solicitors for the Vendors gave to our solicitors. Some time in August.
- Q. P.W.7 saw Mr. K.I.Tan to make the correction.
A. Yes.
- Q. The lawyers made the correction.
A. Our solicitors informed the solicitors for the Vendor.
- Q. Did P.W.7 tell you how he got it corrected.
A. He went to see our solicitor, he also saw the Vendor's broker and after Vendor confirmed 2 names were omitted, the list was sent to his solicitors and then returned to us. 10
- Q. The other tenant is Salleh bin Yusoff.
A. Yes. At room 13 on Lot 250; his room was next to Emaran.
- Q. 7 months later you got the wrong number on P22.
A. P.W.7 prepared it.
- Q. After 7.1.68 when did you next visit the site.
A. 26.12.1969. 20
- Q. How do you remember the date.
A. We issued a notice to the Defendant.
- Q. During this period, P.W.7 apart, did anyone of your agents visit the site. A. No.
- Q. Who gave instructions to Mr. K.I. Tan.
A. P.W.7 and myself.
- Witness is shown A3; Witness states instructions in A3 are correct.
- Q. Why did you tell your lawyer your encroachment is in connection with the back portion of our client's Room No. 14. 30
A. Because there was a room known as 14 and the encroachment was behind Room 14.
- Q. Are you suggesting Room 14 is not Emaran's room. A. That is so, it is a different room.
- Q. Where is this room.
A. It is the number of the mosque at the bottom of the chicken pen, but I am not very sure of the houses there.

Exhibit A3

- Q. When did you first come to learn of the existence of a temple on the chicken pen.
A. On 26.12.69.
- Q. When you went to the site on 26.12.69 where did you see the temple from.
A. From Lot 250.
- Q. Had you seen the mosque before.
A. At a glance.
- 10 Q. In 1967 what was the distance of the nearest house from the chicken pen in Lot 250.
A. A mosque.
- Q. How far was the mosque from where you were.
A. I can't estimate because of the downward slope; it was somewhere in the mid-portion of the slope.
- Q. Emaran had nothing to do with mosque.
A. That is so.
- 20 Q. No.14 is the mosque; what is the encroachment of the back portion of Room 14.
A. The mosque is in front of the pen although not on the same level.
- Q. There are two No.14s. A. Yes.
- Q. Are you suggesting the encroachment is in respect of the back of room 14 or the mosque.
A. No.
- Q. What do you understand by encroachment.
A. That was the word used by the solicitor, we told the solicitor he occupied our land.
- 30 Q. In fact he stole your chicken pen.
A. No he renovated it into a temple.
- A. After serving the notice on the defendant what did you do about this temple.
A. I dismissed P.W.7; I did nothing but waited for a reply to P3.
- Q. What happened next.
A. In March 1970 we contacted the defendant and asked him to return us the land.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

14th August
1972

Plaintiff's
evidence

Tang Boon Loh
Cross-
examination
(continued)

Court adjs to 10.30 a.m. on 15.8.72.

By me: D.C. D'Cotta

In the High
Court of
Singapore

Tuesday, 15th August 1972

Continuation of Suit 963 of 1971.

No. 6

P.W.9 Teng Boon Loh

Court Notes
of Evidence

Xm by Harry Wee (contd)

15th August
1972

Plaintiff's
evidence

Teng Boon Loh
Cross-
examination
(continued)

- Q. Sometime in 1969 you started bull dozing this area. A. In 1970.
- Q. When did you knock down the houses.
A. From January 1968 in Lot 250 we started.
- A. You didn't go to inspect. A. No.
- Q. You would knock down the houses when tenants had been cleared out. 10
A. P.W.7 was responsible for this. He negotiated with the contractor for the demolition.
- Q. Did you have a separate contract with the broker. A. No.
- Q. What arrangements were made for payment.
A. P.W.7 was responsible for payments.
- Q. In December 1969 most of the houses had been demolished. A. Yes except for 3 or 4.
- Q. The outhouses. A. That is so. 20
- Q. When did you level the land. A. In 1970.
- Q. Who did that was it a separate contract. sic
A. Yes,
- Q. In December 1969 you saw the temple.
A. Yes.
- Q. At the rear of the temple was a small building.
A. A very small one, just big enough to keep chicken or a cow.
- Q. Was there not a little hut at the bottom of the temple. A. No. 30
- Q. On the slope. A. No.
- Q. Where were the other huts that were not demolished. A. Near Arnasalam Chitty Road.

Q. From where you stood when you sent in December 1969 could you see the new school building. A. Yes.

In the High Court of Singapore

Q. In January 1968 did you see any part of the new school building.

No. 6

A. I didn't pay attention.

Court Notes of Evidence

Q. When did you start levelling in 1970.

15th August 1972

A. April or May.

Plaintiff's evidence

Witness is shown P1-P6

10

Q. Your bull-dozer did this.

A. I don't know. When P1-P6 taken I wouldn't know.

Teng Boon Loh Cross-examination (continued) Exhibit P1-P6

Q. Your contractors did this. A. Yes.

Q. They only stopped when they got a notice from the defendant's then solicitors.

A. I am not aware of this.

Mr. Lai interposes and states Plaintiffs are not disputing the bull-dozing and the C.B.S. requested Plaintiffs to take remedial action to ensure that there was no land slide.

20

Q. When you served the notice on the defendant on 26.12.69 did you say anything to him.

A. P.W.7 went up the temple alone.

Q. In 1964 this temple was already on Lots 249 and Lot 250.

A. I wouldn't know I didn't go to this place in 1964.

30

Q. Your predecessor in title have by their representative admitted in Court that they did not know that the land on which the temple was built belonged to them.

A. The chicken pen did encroach on Lot 249.

Q. In 1970 you purchased Lot 249. A. Yes.

Q. Subject to the claim.

A. The defendant suggested to me to buy the land from the United National Finance Co.

Q. If he didn't ask you, you would not have bought it.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

15th August
1972

Plaintiff's
evidence

Teng Boon Loh
Cross-
examination
(continued)

- A. He promised to return the land to me after I purchased it. I wanted to develop the land. I was interested in the land and his offer encouraged me to purchase it.
- Q. Because of the defendant's claim you obtained the land for \$2.50 per sq.ft. less. A. Yes.
- Q. Your solicitors negotiated for you to get a conveyance of this property from the defendant.
- A. My solicitors told me to buy defendant's temple for \$40,000/-. 10
- Q. You instructed Chung and Co. to start proceedings. A. Yes.
- Q. When you first instructed your lawyers, you gave the year as 1969. A. I didn't say that.
- Q. In 1971 did you tell your lawyers to write to me and say it was 1968.
- A. I didn't ask him to write what year.
- Q. From the time you dismissed P.W.7 in December 1969 did you see him about this case.
- A. I did not see him after his dismissal. 20
- Q. When did you see him about this case.
- A. On 16.4.72 I telephoned him and asked him to be my witness. sic
- Q. Did you meet him and talk to him.
- A. No I asked him to come on 24.4.72 the date of the hearing.
- Q. You didn't see him at all after telephoning him. A. I saw him outside the Court.
- Q. Did any of your people see him.
- A. No they do not meddle in this matter. 30
- Q. Have you seen a copy of a statement made by him. A. I don't read English.
- Q. Do you know if he went to see your solicitors.
- A. I do not know.
- Q. How did you know he would turn up.
- A. He promised to come.
- Q. You never sent him to see your solicitors.
- A. No.

- Q. You changed it to 1968 when you had information that the pen was renovated in 1968.
 A. That is not so.

In the High
 Court of
 Singapore

By me: D.C.D'Cotta

No. 6

Re-ex:

The number of the mosque was 14. He gave the number. The chicken pen was behind the mosque.

Court Notes
 of Evidence
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 1972

Plaintiff's
 evidence

Teng Boon Loh
 Cross-
 examination
 (continued)

P.W.10 Teng Swee Lin a/s Mandarin

Xn-in-chief³

Teng Swee Lin
 Examination

10

24-F Kim Yam Road, Singapore.

Trainee Remisier. I am the first named Plaintiff. I am one of the co-owners of Lots 249 and 250 of T.S.D. XXI. I purchased Lot 250 in 1967 or 1968. Later I bought Lot 249. I know P.W.7. He was a broker. I know P.W.9. He was authorised to look after Lots 249 and 250. I am claiming for recovery of that portion of Lot 249 and 250 occupied by the defendant. I want possession of the said property. My claim is set out in the Statement of Claim.

20

By me: D.C. D'Cotta

Xm by Harry Wee:

Cross-
 examination

Q. How old are you. A. 25 years of age.

Q. How is P.W.9 related to you.
 A. No blood relationship.

Q. Did you know you purchased this land in 1967.
 A. Yes.

Q. Did you go on to the land. A. No.

Q. What were you doing in 1967.
 A. I graduated from the Sr. Middle Stream and contemplating joining Nanyang University.

30

In the High
Court of
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Court Notes
of Evidence

15th August
1972

Plaintiff's
evidence

Teng Swee Lin
Cross-
examination
(continued)

Q. Did you ever go on the land since you became owner. A. No.

Q. Were you living in Kim Yam Road then.
A. I was then living at 543 Gaylang Road.

Q. When did you move to Kim Yam Road.
A. In 1968 or 1969.

Q. Have you seen the godown on the land.
A. Yes this year or last year.

Q. You have a 1/4 share. A. Yes.

Q. You are not interested in it.
A. I have instructed P.W.9 and Lim Boon Chia to look after my property.

10.

Q. You know P.W.7. A. Yes.

Q. Did you give him any instructions.
A. Yes through my agents.

Q. Did he seek instructions from you. A. No.

Q. When you bought Lot 249, did you then know of Defendant's claim.
A. No, not at that time.

By me: D.C. D'Cotta

20

Re-examination

Re-xn

I instructed my lawyers to institute proceedings.

Ong Tiap
Examination

P.W.11 Ong Tiap a/s Hokkien

12-B Kim Yam Road, Singapore, Housewife.

I am the 2nd Plaintiff. I am one of the co-owners of Lots 249 and 250. I brought this action for the reliefs set out in my Statement of Claim.

By me: D.C. D'Cotta

30

Xxn by Harry Wee:

Q. You know nothing about this case.

A. That is so.

Q. Do you know the defendant. A. No.

Q. Do you know he is a medium. A. I now know.

Q. Have you been to see his temple. A. No.

Q. You are wanting the land on which defendant has a temple.

A. I don't know about this thing.

10 Q. If you knew, would you want him out of your land.

A. My husband handles this matter.

Q. You know you are a Plaintiff in this action.

A. I don't even know this; I am ignorant.

By me: D.C. D'Cotta

Re-xn

My husband is Lim Boon Chia. He bought this property and put it in my name. He told me he was taking action to recover the land from the defendant.

20

By me: D.C. D'Cotta

P.W.12 Liew Choon Tee a/s Hokkien

12-A Kim Yam Road, Singapore, Housewife.

P.W.9 is my husband. I am the 3rd Plaintiff. My husband bought this property and put it in my name. I do not know about the action. My husband handles the matter. The action is to recover our land. My husband told me that. I have never been to this temple. My claim is set out in the Statement of Claim.

30

By me: D.C. D'Cotta

Xxn by Harry Wee:

Q. You have a 1/4 share.

A. I don't know. My husband handles this.

In the High Court of Singapore

No. 6

Court Notes of Evidence
15th August 1972

Plaintiff's evidence

Ong Tiap Cross-examination

Re-examination

Liew Choon Tee
Examination

Cross-examination

In the High Court of Singapore

No. 6

Court Notes of Evidence

15th August 1972

Plaintiff's evidence

Liew Choon Tee
Cross-examination
(continued)

Chew Guat Tee
Examination

Q. Why don't you go and see the land.
A. My husband handles this.

Q. Do you want the defendant to move out.
A. If the land belongs to us he should move out.

By me: D.C. D'Cotta.

P.W.13 Chew Guat Tee a/s Hokkein

24 Lim Ah Pin Road, Singapore, Housewife.
I am the 4th named Plaintiff. I am one of the co-owners of Lots 249 and 250 of T.S.D.XXI. My claim is as set out in the Statement of Claim. I know I am claiming land on which there is a temple from the Defendant. My husband Yeow Keng Siew is a partner of Hock Lam & Co.

10

By me: D.C. D'Cotta.

Xxn: N.Q.

Note: Mr. Wee applies to recall 4 witnesses of the Plaintiff. Mr. Lai undertakes to produce them at 10.30 a.m. on 16.8.72.

Ct adjs to 10.30 a.m. on 16.8.72

20

By me: D.C. D'Cotta

Wednesday, 16th August 1972Coram: D'Cotta JIn the High
Court of
Singapore

Suit No. 963 of 1971 (contd)

No. 6

P.W.1 K.I. Tan (recalled) on his former oath.

Court Notes
of Evidence

Xxx by Harry Wee (contd):

16th August
1972Q. Properties Lots 249 and 250 sold subject to
tenants on them - Ex. B3. A. Yes.Plaintiff's
evidenceQ. This list is supplied with the requisitions.
A. Usually so.K. I. Tan
Cross-
examination
(recalled)

10

Q. Do you send it to your clients if they are
purchasers.
A. Yes or soon after completion.Q. What did you do in this instance.
A. I can't remember.Q. It is likely you gave the list before
completion in this case.
A. More likely than not.Q. Were you ever consulted about Ex. B3 again.
A. I can't say definitely.

20

Q. Can you remember if you were asked to do
anything more about it.
A. I can't remember.Q. Did you ever have to correct this list.
A. I can't remember.Q. If you were told that 2 items were missing
and you had to amend it after consulting
solicitors for the Vendor you would carry out
instructions. A. Yes I would.

30

Q. Items 13 and 14 at bottom of Ex.B3 can you
remember anything about it.
A. I can't remember anything particular about it.Q. They are shown as coming under Lot 252.
A. The list shows it, it could be for Lot 252 or
the other lot too i.e. 250.Q. It is a document from the other side.
A. Yes I think it was supplied by the Vendors
solicitors.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

16th August
1972

Plaintiff's
evidence

K.I. Tan
Cross-
examination
(recalled)
(continued)

Wan Hashim
bin Mohamed
Salleh
Cross-
examination
(recalled)

- Q. Looking at it as a whole would you not say that Items 13 and 14 were in respect of ground tenants of Lot 252.
A. It would appear to be so.

By me: D.C. D'Cotta

P.W.2 Wan Hashim bin Mohamed Salleh (recalled) on his former affirmation.

Xxn by Harry Wee (contd)

- Q. Your duty is to check the dimensions.
A. Yes. 10
- Q. You checked them. A. Yes.
- Q. They are the dimensions of the existing structures. A. Yes.
- Q. After it is completed you inspect to see if plans have been followed.
A. Yes there are some minor deviations, it was reported by another inspector.
- Q. The re-arrangement was varied. A. Yes.
- Q. The apron in front of the premises is level with it. A. I can't remember. 20
- Q. The door is in the same position as when you inspected. A. Yes.
- Q. The same door was repaired.
A. The side door on the left was walled up.
- Q. How do you know that now.
A. It is not indicated in the plan, there were some minor deviations.

- Q. How do you remember.
 A. I have seen it previously, the side door was omitted.
- Q. The original side door was never re-made.
 A. That is so.
- Q. There were only 2 main doors.
 A. Yes, apart from the deviations the plan has been followed; the plan is of the same building.
- 10 Q. The elevation is 8'6". A. Yes.
 Q. What would the height be. A. About 14'6".
 Q. On your second visit you said you could only go round by Narayanan Chitty Road as the Kim Yam Road entrance had been closed. A. Yes.
- Q. Were you involved in the construction of Nan Chiew School. A. Not at all.
- Q. You saw a wire fence dividing the temple from the school. A. Yes.
- Q. When was the 2nd inspection. A. 5.12.69.
- 20 Q. The first visit. A. 10.9.68.
 Q. In September 1968 the school was under construction. A. Yes.
 Q. You inspected the temple. A. Yes.
 Q. Behind the temple is a place of little ground and behind this there is a slope.
 A. I can't remember.
 Q. There was a building behind the temple.
 A. I can't remember; I can't recollect seeing it.
- 30 Q. How high was the school building on your 1st visit. A. About half-way.

In the High
 Court of
 Singapore

No. 6

Court Notes
 of Evidence
 16th August
 1972

Plaintiff's
 evidence

Wan Hashim
 bin Mohamed
 Salleh
 Cross-
 examination
 (recalled)
 (continued)

By me: D.C. D'Cotta

Xxn: I can't remember a mosque on the slope.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
16th August
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(recalled)

P.W.7 Eu Wan Cheong (recalled) on his former
affirmation.

Xrn by Harry Wee (contd):

Witness is shown Ex.B3.

Q. When did you first see B.3

A. After the agreement for sale was made.

Q. Who gave it to you.

A. The Vendors broker.

Q. What did you do with it.

A. I compared it with the tenants of Lots 249
and 250. 10

Q. And then.

A. After comparing 2 names were added to B3.

Q. By whom.

A. I pointed out to the Vendors broker that
2 names were omitted from B3. We took it
back to the Vendors after which 2 names were
added.

Q. It was given back to you.

A. After the Vendors confirmed about the 2 names
B3 was given to our solicitor who handed it
to me. 20

Q. What did you do with it.

A. I collected rents according to this list.

Q. Did you make any comment to anyone else
about B.3.

A. No, I told the purchasers 2 names were added
to the list.

Q. Who prepared P22.

A. I got a petition writer to type it, I paid
him \$1. 30

Q. The information was given by you. A. Yes.

Q. Who did you give P22 to. A. P.W.9.

Q. There is a mosque on the land.

A. Yes, the number is 45, we gave it the number
14.

- Ex.B3 Q. The Vendors prepared B3.
 A. Yes through their solicitors.
- Q. The numbers are given by them. A. Yes.
- Q. You didn't give the numbers.
 A. I used the numbers according to B3.
- Q. The mosque has its own number. A. Yes.
- Q. Witness is shown A3. A3 was written to the occupier of the place behind the mosque. Witness is shown B1.
- Ex.B1
- 10 Q. How far is the kitchen from the boundary stone.
 A. I can't say, the slope is steep.
- Q. After clearing away the tenants from Lot 250, what other instructions had you.
 A. In December 1969 the time of my dismissal there was still 2 houses occupied on Lot 250, and 5 or 6 on Lot 252 - all the others were demolished.
- 20 Q. Who demolished them.
 A. I got my men to do it, stage by stage after the houses were vacated.
- Q. Which was the first house to be knocked down.
 A. Emaran's and his house and another 4 in the South Eastern corner were demolished at the same time: 1 or 2 months after they left.
- Q. Did you demolish his chicken pen. A. No.
- Q. Why not.
 A. It was on very high ground, if it were demolished the debris would fall on the mosque and the people around there.
- 30 Q. Wasn't Emaran's house also No.14 on the same level as the chicken pen.
 A. There was a small path in the school compound behind Emaran's house and the debris could be taken through here.
- Q. Was the chicken pen there at the time.
 A. Yes, why not. At the time of the demolition of Emaran's house a shed had already been erected in front of the chicken pen on Lot 249.

In the High
 Court of
 Singapore

—
 No. 6

Court Notes
 of Evidence

16th August
 1972

Plaintiff's
 evidence

Eu Wan Cheong
 Cross-
 examination
 (recalled)
 (continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

16th August
1972

Plaintiff's
evidence

Eu Wan Cheong
Cross-
examination
(recalled)
(continued)

Q. Did that prevent you from demolishing the chicken pen.

A. Yes, I did not demolish the chicken pen owing to the debris that would fall on other houses around. I can't say for certain when the demolition of Emaran's house took place, it could have been some months after he vacated.

Q. When did you first see the shed in front of the chicken pen.

A. When I was demolishing the stair-case. 10

Q. From January 1968 you visited these premises every month and you did not see this shed till August.

A. Yes I noticed it when I was demolishing the stair-case.

Q. What happened to the old temple on lot 260.

A. I didn't pay attention when I demolish the staircase; I was threatened and scolded.

Q. When did you first know defendant was in the shed. 20

A. When I went to serve the notice on him.

Q. You didn't know that before. A. That is so.

Q. When you first went on the land in 1967 wasn't defendant in occupation of the hut at junction of lots 249, 250 and 260. A. No.

Q. I suggest to you you stood at the point below the defendant's hut at a Malay hut and mistook it to be the end of your boundary.

A. That is not so.

Q. I suggested you misinformed the Plaintiffs thoroughly in this matter. 30

A. That is not so.

Q. I put it to you that Malay hut fell by itself as it was in a rotting condition.

A. There is no such thing, if that is so it would have killed somebody.

By me: D.C. D'Cotta

Ct. adjs to 10.30 a.m. 17.8.72.

Thursday, 17th August 1972Coram: D'CottaIn the High
Court of
Singapore

Continuation of suit 963/71

No. 6

P.W.3 Joseph Ng on his former oath (recalled);

Court Notes
of Evidence

Xxn by Harry Wee (contd.)

17th August
1972

Q. When did defendant apply for a number.

Plaintiff's
evidence

A. On 26.1.68 defendant came personally to my office. He claimed neighbouring houses were allotted numbers.

Q. What did the investigator report.

Noseph Ng

10

Witness tenders report
Admitted and Marked P25A,B,C and D.Cross-
examination
(recalled)

A. Mr. Wee Yock Thong went to the site and made the report.

Re-xn:

P25B is a site plan to indicate position of house

Exhibit
P25A-D

Case for Plaintiff

20

Lai applies for P22 to be admitted under sec.67 Cap.4. Plaintiff has proved Emaran's signature.

Phipson on Evidence para.1633 p.641.
Sarkar on Evidence 12th Ed. p.641.

Wee Replies: Emaran should have been produced.

Sarker on Evidence 12th Ed. P.67 P.638

P22 is admitted as proof of fact on the evidence of P.W.7 and P.W.9 that Emaran signed it

Exhibit P22

By me: D.C. D'Cotta

Wee addresses:-

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Pleadings and Agreed Bundle not referred to or read. Manner in which Plaintiffs' case was presented is unsatisfactory.

No correspondence or pleadings that chicken pen was converted into a temple.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

17th August
1972
(continued)

Wee addresses (contd.):

Counsel agrees to delete A7 from Agreed
Bundle.

Counsel agrees to delete A33, 34, 35 and 36
from agree bundle.

Krishnaswami on Law of Adverse Possession
7th Ed. pp.117, 2, 8.

Franks limitation of Actions p.122.

Plaintiffs have no title to sue, failed to
discharge onus on them; Plaintiffs in 2
conveyances were conveyed nothing in so far
as defendant's land is concerned.

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By me: D.C. D'Cotta

2nd October
1972

Defendant
Counsel's
Opening
Speech

Continuation of Suit 963/71

Monday 2nd October 1972 (P/Heard) Coram D'Cotta J

Wee addresses:

Plaintiffs failed to show 2 things:-

1. they have no title to convey - s.18
Limitation Act.
2. No evidence of possession.

20

No evidence of ever being in possession.
Plaintiffs bought lot 249 with actual
knowledge of defendants possessions -
s.18 C.10 Halsbury Vol.24 p.257.

Preston and Newson on Limitation 3rd Ed.p.78,
p.14, p.15 and p.100.

Eastwood v Ashton 1915 A.C. 900; 908; 913.

De Beauvoir v Owen 155 E.R. p.72; 77

Ranis v Buxton (1880) 14 Ch.D. p537 at p.539

Krishnaswami on Law of Adverse Possession
p.184; 187

30

Mirza Shamsker Bahadur v Munti King Behary
12 C.W.N. 273;

Mohina Chander v Mohesh Chander I.L.R. 473

Taje Bibi v Chulam Mohammed 1961 J & K p.82

Mitra 16th Ed. p271-2

Plaintiffs have not proved their case.

Clerk and Lindsell on Torts p.733 paras.1311,
1316, 1317; 1318; 1352; 1446 and 1448.

Ellis v Lofters Iron Co. 1874 L.R. 10 C.P.
p.10, 12

Humphries v Brogden (1850) 116 E.R. p.1048.

Dalton v Angus (1881) 6 A.C. p.740;

Bonomi v Backhouse 120 E.R. 643

Strayan v Knowles 158 E.R. 186

D.W.1 Goh Leng Kang a/s Teochew

16-M Narayanan Chettiar Road, Singapore. Temple
Medium.

Just before the war I lived at 15 Muthu Raman
Chitty Road with my parents and 2 brothers. I had
2 rooms on the 1st floor of the building. I was
living here when war broke out.

Witness is shown A38

Before the war I knew the site area bounded by red
and blue. Before the Japanese occupation I erected
a hut on this piece of land, 4 posts and a slanting
roof. I stored some boxes and timber in this hut
and sometimes I made use of this place trying to
brew some wine but without success. This was
about 3 months before the war. During the war I
dared not go to this place because there were
Japanese soldiers here. They were on the site and
in the shed itself. There were Japanese camps near
the shed I erected. 1 or 2 years after the war I
went to the site again. I still found the structure
but the condition was bad. I replaced the roof and
the rafters. I removed the old boxes and timber

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Singapore

No. 6

Court Notes
of Evidence
2nd October
1972

Defendant
Counsel's
Opening
Speech
(continued)

Defendant's
evidence

Goh Leng Kang
Examination

Exhibit A38

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

2nd October
1972

Defendant's
evidence

Goh Leng Kang
Examination
(continued)

from the shed and cleared the grass. I stored new boxes in the shed. I started a small business in this shed selling fruits and sometimes when I was tired I came to this shed to rest. Sometimes I stored baskets in this shed. About 21 years ago when my younger brother got married I moved out of the room occupied by all the brothers at 15 Muthu Raman Chitty Road. I renovated the shed and moved into the shed. The room at 15 Muthu Raman Chitty Road was too small for us especially with my brother's marriage. I renovated the hut as I wanted to stay there. The area I renovated was about 11-12 feet by 14-15 feet with plank walls and wooden pillars. I also renovated the bath room at the back and the renovation took place in 1953. I also renovated the lavatory in 1954. There was no lavatory in 1953 so in 1954 I erected one. I planted herbs, stone guavars; sugar cane and lime trees. I cleared the over-grown grass and small trees. All this I did from 1953. I went to the shed through Narayanan Chitty Road.

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Exhibit A38

Witness is shown A38 and states that the area in blue was the hut and in front of it the temple shed.

I moved my old furniture from 15 Muthu Raman Chitty Road to this shed. They comprised bed, stools and basin. The shed was on the very top of the hill. When it rained water would wash down the slope and on fine days I went up the shed by the track caused by the water.

30

Witness indicates on A38 where he planted herbs and root trees - towards the north of Lot 249.

I also planted herbs at the foot of the bath room shown in A38 - the middle of Lot 249. The steps were hewn from the earth supported by poles.

Exhibit P10

Witness id P10.

The cement steps in P10 were constructed by a contractor in 1967. The earth steps were where the cement steps now are. In 1953 the bathroom was behind the portion bordered in blue. The lavatory shown in A38 was constructed in 1954 and the bathroom next to it some time in 1964 or 1965. The bath room at the back of the shed I used as a store-room. In 1957 I renovated the shed with

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a gable roof V shaped. After the renovation the shed had a main door and 2 windows. There was a side door facing Nan Chiao School. Some time in 1964 or 1965 I extended the width of the shed when there were a lot of worshippers coming. I extended 4 feet in front and 6 feet at the rear. I extended the building 6 feet in length and 4 feet in width. At the same time a temple shed was erected in front of the original shed. In 1968 there was another renovation and it was done by the same contractor who constructed the concrete steps in 1967. Since 1968 there have been no further renovations. Next to the portion marked red in A38 is the Nan Chiao school. A fence separated us. It was on a higher level of land, about the height of 2 persons - slightly over 12 feet. There was a retaining wall preventing the earth from sliding down. The barbed wire fence was at the top of a slope. The slope was a steep slope. Some parts of the slope had a retaining wall some hadn't. The slope ran most of the way but of varying levels. Some time in 1964 or 1965 they started levelling the ground. This took slightly over a year. In 1967 the students started going to the new school, the old one was knocked down. By the end of 1968 the new school was completed. My hut was never on the other side of the school fence; my shed has all along been on this side. I have never changed the position of the hut. I have extended on this side not the school. I extended it sideways and lengthways. There was a brick house in Lot 250 and a mosque which was quite long. Apart from the brick house and mosque there was a hut 6-7 feet away from my shed on a lower level about 9 x 12 feet. The lower level was over a man's height. The roof of this hut was on the same level as my land. This hut was not there when I came on the land. It was erected in 1958. In 1957 the Government people came to take a census and asked me how many people lived in my shed and a year later this hut was put up by a Malay gentleman who I can still recognise. He was living with his children; 2 or 3 years later he moved out and some other people came and stayed here. They stayed here for 1 year and then vacated. The hut became dilapidated, the front door was left open. Later somebody put up a godown and when they started excavating earth the hut was blown down. I never occupied this hut. I had my own shed. Before 1953 I was a hawker. I was still doing a little hawking when I built the shed. In 1963 or 1964 I stopped hawking because I was

In the High Court of Singapore

No. 6

Court Notes of Evidence
2nd October 1972

Defendant's evidence

Goh Leng Kang
Examination
(continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

2nd October
1972

Defendant's
evidence

Goh Leng Kang
Examination
(continued)

possessed by some diety. I was feeling tired. I became a temple medium because I was possessed. I got into a trance when the diety or god entered me. I cured my elder brother and mother. When the news spread more and more people came. I have cured many others. Since then I have remained a medium. The premises are now used as a place of worship. In 1957 Government people came to take a census. I told them the premises were mine. I told them I was a hawker. I gave them my name. I told them there were 2 persons living in the premises. My elder brother was the other person. They nailed a card with particulars of the premises.

10

I produce the card. Admitted and Marked D2.

I instructed my lawyers to investigate in connection with the census. My lawyers told me by section 20, Cap.297 Vol.8 of the Census Act the A.C. refuses to disclose information. The temple was erected in 1965 and in 1968 when the contractor came to renovate my premises he also renovated the temple. I applied for permission for renovation of the whole thing - Exhibit P15, P7. No one has at any time challenged my occupation of the temple.

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In 1967 a zinc fence was put up along Narayanan Chitty Road. I objected to the putting up of the zinc fence. I spoke to the workers and they told me it was none of their business, they were working for their employers. After they completed erecting the fence they locked the gate. I followed them to the Bakery just in front. I complained to the clerk of the Bakery about the zinc fence. I told him my reasons for objecting to the erection of the zinc fence. I told him I had a lot of worshippers coming to my temple to worship and if they were to lock the gate the worshippers would not be able to get to the temple. They thought about it for quite some time then they instructed the workers to open the gate. The Nan Chiao School children were making use of this entrance to the school before the building was completed. The workers told me (sic) they were asked by the United National Finance Company to put up the fence. After the workers had put up the fence and locked it, 2 weeks later a Mr. See (P.W.8) came. Mr. See said he could not leave the gate open because this would lead to the residents nearby dumping dead chicken and rubbish on the land. After saying this he went back after listening to my explanation which was that

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worshippers were coming to the temple and school children were making use of the path. I also told him that from time to time I burnt the rubbish on this land. He thought for a while and he left. The gate was left open; it was not locked. 2 weeks later Mr. See came again with 2 keys. He wanted to give one key to me and the other to the Nan Chiao School. I refused to accept the key saying it is rather troublesome. He said since I refuse to accept the keys he would bring both keys to Nan Chiao School but I do not know when he did this.

By me: D.C. D'Cotta

Tuesday, 3rd Oct. 1972

Coram: D'Cotta J

D.W.1 Goh Leng Kang

Examination-in-chief (contd)

In August 1970 I made a Statutory Declaration.

I produce - Admitted & Marked D3.

The plan attached to D3 is the same as A38. I saw Mr. See again at my premises. He came to see me. He gave me a name card. Since I am illiterate and can't read I showed it to Mr. Chiam who said he knew the address and would take me to see Mr. See. I went and Mr. See took me to see his manager. Mr. See was not present at my interview with Mr. Yap. He asked me to enter Mr. Yap's room. Following this the gate was not locked. It was not locked before this. In December 1969 I received a letter dated 26.12.69 from Messrs. Tan and Tan - A3. One of my worshippers accepted service of it. I didn't do anything about it because it did not bear my name. After this I saw P.W.7. He came to see me. He told me my premises had encroached on other people's land and that the land had been sold and he was the broker in the transaction. He also told me if I did not remove from that place the Government would demolish it as it was a fire hazard. Altogether P.W.7 came on 3 occasions. On one occasion he came with a great number of people. I was a bit confused about the number of people who came. Mr. Lim Boon Chiang and P.W.9 Teng Boon Loh were among those who came. After the 3rd occasion,

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
2nd October
1972

Defendant's
evidence

Goh Leng Kang
Examination
(continued)

3rd October
1972

Exhibit A3

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

3rd October
1972

Defendant's
evidence

Goh Leng Kang
Examination
(continued)

the abovenamed 2 gentleman and one Tan Kway Teow came quite frequently. Tan Kway Teow was one of the partners of the Sea Palace. Subsequently there was some correspondence between my solicitors and the then solicitors of the Plaintiffs. At some time an agreement was reached to settle the matter for \$40,000/-. The Plaintiffs offered this but I said I had to consider and put it to the worshippers and my deity. I wanted time to consider the matter. I consulted my deity and I was advised not to move away. The worshippers agreed not to move away. It is not a matter of money at all. I told the clerk of my lawyer that I had to consult my deity and my worshippers. This took place after D3 was made. In October 1969 the Plaintiffs started bull-doing Lot 250 and by the middle of 1970 it reached the perimeter of my premises. By August 1970 cracks began to appear in my premises and the temple shed. There were land slides pretty close to the premises. As a result of the land slide the pillars which were embedded in the land began to show P1 to P6 show the effect of the bull-doing. Later on the plaintiffs put a covering to prevent erosion. In July 1971 I claimed the sum of \$12,000/- as being the approximate expenses. Since July 1971 the price has almost doubled. In 1948 I stayed at 15 Muthu Raman Chitty Road. In Oct. 1966 it was shown as 17 Muthu Raman Chitty Road. In January 1970 it is 16N Narayan Chitty Road. In 1953 I went to occupy these premises. The shed had no house number. In 1964 my mother died and my father went to live at another address. In 1966 laminated I.C.s were introduced and I took the opportunity to change my address to 17 Muthu Raman Chitty Road. After the death of my mother my father and brother moved from 15 Muthu Raman Chitty Road. I used 17 Muthu Raman Chitty Road as my address because I know the people there. They have lived there for a long time and I know them. In 1968 I got a house number from the Government. My premises were rather secluded and I intended to change my address when people knew I had a number to my premises. In 1970 my solicitors advised me that it was wrong not to give the address where I resided. Before this I didn't know it was wrong. In 1957 I applied for citizenship. I showed my I.C. to the person in charge of registration of citizens. I was told to swear allegiance to the Singapore Government after P18 was typed out. P18 was not read to me line by line. I was not asked any questions. P17 was prepared by one of

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10 the worshippers and the purpose of P17 was to try
 and get exemption from property tax. P17 was
 written in 1970. The person who prepared P17 might
 have misunderstood me I told him I had my deity
 installed as soon as I had the premises. The deity
 is installed inside my premises. I have an altar,
 jossticks, burners and paraphernalia. Outside my
 premises are josstick burners for worshipping to
 the god of heaven. In 1964-65 I extended the
 length of the house because there was a large
 number of worshippers. I had another altar placed
 in a temple shed in front of the premises. The
 temple shed has 2 pillars, a gable roof and is
 really an extension of the premises in 1965. When
 I say in P17 that the premises are not used as a
 residence I mean I have no wife or family. I am
 the medium and caretaker of the premises. As care-
 taker I stay and sleep here. At one time I had an
 elder brother staying there. He is now dead. We
 20 were only there to look after the temple.

By me: D.C. D'Cotta.

Xxn by Lai (Witness is shown P15-1)

Q. Is your thumb print on P15-1. A. Yes.

Q. You affixed it after the contents were read
 to you. A. I can't read English.

Q. Did you tell the writer of P15-1 that you
 occupied the premises before the war.

30 A. There was some misunderstanding. I told the
 writer that before the war I erected the
 premises to store things.

Q. Did you sleep in these premises before the war.

A. I did not live there before the war. I used
 to take a rest there.

Q. Did you tell the writer you had a temple
 there. A. No.

Q. Did he ask you. A. Now it is a temple.

Q. When P15-1 was written it was a temple.

A. Yes.

Q. Where was this letter written.

40 A. The writer had it done in his own house.

In the High
 Court of
 Singapore

No. 6

Court Notes
 of Evidence
 3rd October
 1972

Defendant's
 evidence

Goh Leng Kang
 Examination
 (continued)

Exhibit P15-1

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

3rd October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

- Q. Where did you affix your thumb print to this letter.
A. As far as I can remember the letter was brought to the temple and I applied my left thumb print.
- Q. When was the temple actually started.
A. About 8 or 9 years people began to come to my place to consult the deity.
- Q. You had the altar, josstick burner and other holy paraphernalia. A. In 1953.
- Q. Before 8 or 9 years ago did people come to consult your deity. 10
A. Yes a few people did come to worship.
- Q. Between 1953-1963 what was your occupation.
A. I was a hawker up to 1963.
- Q. Was hawking your exclusive business. A. Yes.
- Q. You didn't act as medium in other temples.
A. On festive days I used to go to other temples in other kampongs to assist during my hawking days.
- Q. Were you paid for this assistance. A. No. 20
- Q. Before 1968 you had at least 3 major renovations to these premises. A. Yes.
- Q. One of two years after World War II you changed the roof and rafters. A. Yes.
- Q. In 1957 you replaced the roof and made it V shaped. A. Yes.
- Q. In 1964-65 you extended the premises. A. Yes.
- Q. When did you erect the extension to the front of the premises. A. 1964 or 1965.
- Q. The extensions of 1964-65 were very major in comparison to your 1968 repairs. A. Yes. 30
- Q. Why didn't you apply for permission to carry out your 1964-65 extensions.
A. Because it had no number.
- Q. Why didn't you apply for a number.
A. I was ignorant, I didn't know how to apply.

During this period the stand pipers were removed and large numbers of people went to apply for house numbers and I followed them.

In the High Court of Singapore

No. 6

Court Notes of Evidence
3rd October 1972

Defendant's evidence

Goh Leng Kang
Cross-examination
(continued)

- Q. A large number of people from where.
A. From Narayanan Chetty Road.
- Q. From 1953 these premises have been a place of worship. A. Yes.
- Q. Nothing illegal or immoral took place here.
A. That is so.
- 10 Q. On 1.3.56 you were arrested for smoking opium.
A. Yes.
- Q. You were charged in Court and pleaded guilty.
A. That is so.
- Q. Where were the premises in which you were found committing this offence.
A. In Martin Road.
- Q. In an unnumbered hut. A. That is so.
- Q. Did you build this hut. A. Yes.
- Q. When. A. A few months before my arrest.
- 20 Q. How big was this hut. A. It was a small hut.
- Q. Give us the dimensions. A. 12 x 9 feet.
- Q. Did you use it for storage apart from opium smoking.
A. No to store things sometimes I went there for a rest.
- Q. Did you sleep there. A. Never.
- Q. Did you have bed there for smoking opium.
A. Yes.
- 30 Q. What happened to this hut.
A. After my discharge from the prison some persons knocked it down. I don't know who.
- Q. Is this hut shown in A38. A. No.
- Q. What part of Martin Road was this hut situate in.
A. Somewhere in the corner of Martin Road/Narayanan Chitty Road, near the bakery.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

3rd October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

- Q. So it is not in Martin Road.
A. That is so but the police say so.
- Q. In 1945-6 did you yourself replæe the roof and rafters or did you employ contractors.
A. I did it myself.
- Q. You purchased the materials. A. Yes.
- Q. Have you any bills.
A. It is such a long time ago, they have been misplaced.
- Q. In 1957 you replaced the roof and make it an inverted V shape, did you do it yourself or employ a contractor. 10
A. I got one man named Tan Gur Long to do it.
- Q. Are you calling him. A. Yes.
- Q. What materials were used. A. Old materials.
- Q. You didn't purchase materials.
A. I did buy some planks and rafters.
- Q. Did you buy it or did Mr. Tan buy it.
A. I purchased the materials myself.
- Q. Mr. Tan only did the renovations. A. Yes. 20
- Q. How much did you pay him for his labour.
A. I gave him \$8 per day.
- Q. How many days did he take to do the renovations. A. About 1 week.
- Q. When was the next time you saw Mr. Tan after he did these renovations.
A. He lived in the same kampong; I used to see him around.
- Q. After the renovations did you see him again in your temple. 30
A. On 1 or 2 occasions he came to find out if there was any more leaks.
- Q. This would be shortly after he completed the renovations. A. That is so.
- Q. After this did he come to your temple again.
A. He came once in a long long while.

- Q. When was this long long while he came to your temple.
 A. It took place a long time ago, sometimes I may not remember these events.
- Q. Has he been to your temple in the last 10 years. A. Yes he has been.
- Q. How many times.
 A. Once or twice after a long long while.
- 10 Q. When was this long long while.
 A. I can't remember the dates. I have seen him going to the temple on one festive occasion.
- Q. Was this a long while ago from to-day.
 A. He seldom comes to my place; I made the renovations in 1968; I remember he came on that occasion.
- Q. Before the 1968 renovations when was the last time he came.
 A. After the renovations of 1968 he came once or twice and after a long long while he has not been to my place.
- 20 Q. After the inspection visit in 1965 he didn't go to your place till 1968. A. Yes.
- Q. This festive occasion was to celebrate the renovations to your temple. A. Yes.
- Q. In 1957-8 didn't Mr. Tan gain access to your place through the school.
 A. By the same route as I did.
- Q. In 1957-8 when Mr. Tan went to your place did you have a cement apron in front of your shed.
 A. Yes there was a small cement apron in front of the temple shed.
- 30 Q. What was the condition of Lot 249 at the North Eastern corner of A38.
 A. It was a slope, a continuation from the other side and gradually levelled the ground in front of the temple shed.
- Q. I am talking about the North Eastern corner.
 A. There were small trees there in 1957-8.
- Q. The slope plunges into Narayanan Chitty Road.
 A. There was a sharp slope.
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In the High
 Court of
 Singapore

No. 6

Court Notes
 of Evidence
 3rd October
 1972

Defendant's
 evidence

Goh Leng Kang
 Cross-
 examination
 (continued)

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

3rd October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

- Q. Nobody passed there.
A. It was impossible.
- Q. Did you go to this North Eastern corner.
A. Yes.
- Q. You had extensions to the width and length of the premises in 1964-5. A. That is so.
- Q. What else did you do in 1964.
A. I had the temple shed erected.
- Q. How much did all this cost you.
A. It was donated by the worshippers. 10
- Q. Who were these worshippers.
A. From the conversation I learnt they were Hokkein people and came from a distance away.
- Q. Can you name any of them.
A. Yes one of them is known as Fatty or Fatso. I don't know where he lives.
- Q. Do you know the name of any other worshippers.
A. The wooden altar was donated by a lady known as Se-Ee.
- Q. Se-Ee is the 4th Aunt. A. Yes. 20
- Q. Didn't you keep a list of the charitable contributors.
A. I have the donors names inscribed in the altar which is made of stone. The altar in the shed is made of stone in 1965.
- Q. Is this the one now in the shed.
A. Yes the same altar donated in 1966.
- A. Are these names in that altar. A. Yes.
- Q. Who did the extensions and renovations in 1964-65. 30
A. I did the extensions lengthways and breadthways myself with the assistance of a few others.
- Q. Can you name any of the others.
A. Yes one Ah Heng, my elder brother, one of my nephews and a few friends and myself.
- Q. Can you name them.
A. My nephew is Chia Chiam Poo, one Tay Kee Hwang a friend, this is enough.

- Q. Can you name all of them.
 A. I am not qualified, don't be angry with me. Four of us - Ah Heng, Tay Kee Hwang; Chia Chiam Poo and myself.
- Q. Your elder brother had nothing to do with it.
 A. He only removed a few planks; he didn't nail anything; after smoking opium he became a bit dozed.
- 10 Q. He stayed with you in these premises since 1953. A. Yes.
- Q. This is the brother who smoked opium.
 A. All my brothers smoke opium.
- Q. What is the name of your brother who stayed with you in this shed since 1953.
 A. Goh Leng Hong, my 2nd elder brother.
- Q. Apart from Goh Leng Hong no other brother stayed with you.
 A. After the death of my mother my eldest brother Goh Leng Haw came to stay with me.
- Q. Which of these two brothers passed away.
 A. Goh Lang Haw.
- Q. When did he die. A. 1968.
- Q. Goh Leng Hong and yourself stayed in the premises in Sept. 1968.
 A. All along since 1953.
- Q. Do you both sleep in beds in the temple.
 A. Initially we have a bunk now we have canvas beds.

In the High
 Court of
 Singapore

No. 6

Court Notes
 of Evidence
 3rd October
 1972

Defendant's
 evidence

Goh Leng Kang
 Cross-
 examination
 (continued)

By me: D.C.D'Cotta

Court adjs to 10.30 a.m. 4.10.72.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
4th October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

Wednesday, 4th October 1972

D.W.1 Goh Leng Kang on his former affirmation.

Xxn by Lai (contd.)

Q. When P.W.2 visited your premises in Sept.68 did you have any beds in the premises.

A. We had first a bunk then canvas beds.

Q. In September 1968.

A. I can't remember if we had bunks or canvas beds.

Q. In Sept. 1968 how would you describe the plank walls of your premises.

A. Rotten and old.

Q. Did you not carry out major repairs in 1964-5.

A. At that time the plank walls were rotten I used zinc sheets to cover up the plank.

Q. In 1964-5 you used old planks and put zinc sheets to cover them. A. Yes.

Q. Were all the plank walls covered with zinc sheets. A. Only one side.

Q. Which side. A. The side facing Martin Road.

Q. Did you buy any materials for your 1964-5 major renovations. A. No I used old materials.

Q. Except for nails you did not purchase any materials for the extension. A. That is so.

Q. When did you get the roofing materials for the extensions.

A. I did not touch the old roof, I only used 3 zinc sheets to cover up.

Q. Did you use any more zinc sheets apart from these three.

A. Altogether I used over 20 zinc sheets, some larger than the others.

Q. Any timber posts and wooden plank materials.

A. Yes I used old pillars and old planks for the wall.

Q. Was the floor of the temple shed made of cement. A. Yes.

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|----|---|--------------------------------|
| | Q. Did you make this cement floor in 1964-5. | In the High Court of Singapore |
| | A. Yes. | |
| | Q. Where did you get the cement. | |
| | A. I bought it. | No. 6 |
| | Q. Apart from nails and cement did you buy any other materials for the whole work. | Court Notes of Evidence |
| | A. It is difficult to remember all the details. | 4th October 1972 |
| | Q. Do you have any receipts or bills for your purchases. | Defendant's evidence |
| 10 | A. No I bought the cement from a labourer working. | Goh Leng Kang |
| | Q. Nails. | Cross-examination |
| | A. I bought 10 cents worth if not enough I would buy 20 cents more. | (continued) |
| | Q. They were major extensions and renovations. | |
| | A. Not very major, 4 feet in breadth and 6 feet in length. | |
| | Q. What is the name of the contractor who erected the cement staircase. | A. A Mr. Tan. |
| 20 | Q. Who was responsible for the erection of the cement staircase. | |
| | A. The contractor himself was responsible for the expenses. He is a good-hearted Mr. Tan. | |
| | Q. Did he himself do it or did he employ workers. | |
| | A. He employed workers. | |
| | Q. You don't know how much it cost. | A. I don't know. |
| | Q. This is the same man who carried out your renovations in 1968 after approval from the C.B.S. | |
| | A. Yes. | |
| | Q. Was he a worshipper in the temple. | A. Yes. |
| 30 | Q. For a long time. | A. Yes. |
| | Q. For how long has he been a worshipper in your temple. | |
| | A. Difficult to estimate. | |
| | Q. How many years roughly has he been a worshipper in the temple. | A. Approximately 6-7 years. |
| | Q. A worshipper in the temple which you allege you have been occupying since 1953. | A. Yes. |

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

4th October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

Q. Mr. Tan has spent a lot of money in building the staircase and the renovations of 1968.
A. He didn't spend much.

Q. How much would you estimate.
A. Approximately a few thousand dollars I estimate \$3,000/- to \$4,000/-.

Q. Are you calling him as a witness.
A. I don't know where he lives.

Q. As a caretaker of the temple would you agree Mr. Tan is the biggest donor. 10

A. He only donated on these 2 occasions.

Q. You know Mr. See - P.U.B.
A. I came to know him when he came to my place after this matter had arisen i.e. the gate and the keys to it.

Q. Mr. See went to see Lot 249 for the first time in the afternoon of the 22.10.68.
A. He came to my place in 1967.

Q. To offer you one of the keys to the lock of the gate. A. Yes. 20

Q. Has Mr. See prayed in your temple. A. Never.

Q. I put it to you, you went to see Mr. See and not the other way round.
A. He came to look for me.

Q. You went to Mr. See's office to apply for permission on behalf of your worshippers.
A. He came to see me and offered me his name card.

Q. If the gate of the fence was open all the time do you know why the school should apply for the key. 30
A. The gate was not shut, I used the path every day.

Q. You heard P.W.7's evidence of your unauthorised construction of a staircase in 1968 on Lot 250.
A. No.

Q. You did not scold P.W.7 for demolishing this staircase.
A. No. I never complained to him about the demolishing of the staircase.

- Q. You did not at any time advise P.W.7 not to interfere in the matter if he wanted to make a living there. A. No.
- Q. In P17 it is stated that you had the temple for nearly 20 years.
- A. I did not tell the writer this, perhaps he had misunderstood me.
- Q. Is 20 years a figment of imagination of the writer.
- 10 A. I think he misunderstood me he asked me how long I had the deity and I told him I had it for about 20 years.
- Q. You must have told him 20 years.
- A. At the time I told him I had the deity from between 10-20 years.
- Q. You made no mention of residence of you and members of your family in P17. A. That is so.
- Q. In P15-1 there is no mention of a temple.
- 20 A. I am illiterate I told the person responsible for P15-1 about the temple, if he did not put it down it is not my fault.
- Q. I put it to you, in P17 you tried to deceive the Property Tax office by excluding the fact that you and members of your family resided there.
- A. It is a temple, my family does not reside there; it is a misunderstanding on the part of the writer.
- Q. When did you first enter upon the land.
- 30 A. A few months before the outbreak of the war.
- Q. One or two years after the war you went back to the hut and stored things there. A. Yes.
- Q. Why didn't you state this in D3.
- A. In D3, I mentioned the year I actually resided there.
- Q. You entered the premises in 1941. A. Yes.
- Q. So it would be wrong to say you entered the premises in 1953.
- A. I actually lived in the house in 1953.

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

4th October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

Exhibit P17

Exhibit D3

In the High
Court of
Singapore

—
No. 6

Court Notes
of Evidence
4th October
1972

Defendant's
evidence

Goh Leng Kang
Cross-
examination
(continued)

- Q. Contents of D3 is correct. A. Yes.
- Q. There has been no misunderstanding.
A. That is so.
- Q. Is P18 correct. A. Yes.
- Q. Item 11 states you are living at 15 Muthu Raman Chitty Road.
A. There was queue, I was asked to take my oath of allegiance and I produced my I.C. to the officers in charge.
- Q. Was P18 completed by you or somebody on your behalf. 10
A. Somebody filled it up on my behalf.
- Q. He filled up the form on information you gave him.
A. He filled up the particulars from my I.C.
- Q. You were not asked any questions by the Citizenship officer.
A. No there was a large crowd, I was only asked to raise my hand.
- Q. Didn't they ask you how long you resided in Singapore. A. No.
- Q. Is it true you were living at 15 Muthu Raman Chitty Road on that day. 20
A. No I was already living in the temple.
- Q. You received A3 from one of your worshippers.
A. Yes.
- Q. You did nothing about A3. A. That is so.
- Q. Why did you do nothing.
A. This letter - A3 - does not bear my name and my house number.
- Q. What did you do with A3 - did you ignore it. 30
A. I ignored it.
- Q. You didn't see any solicitor about it.
A. I consulted a solicitor a few months later.
- Q. In the beginning how did worshippers gain access to your temple.
A. The route I am using now i.e. through Lot 249.

- | | | |
|----|---|---|
| | Q. None of them to your knowledge came through the school compound. | In the High Court of Singapore |
| | A. A few of them did in 1966. | |
| | Q. Between 1953 and 1965 didn't anyone come by the school. | No. 6 |
| | A. Not at that time it was impossible. | Court Notes of Evidence |
| | Q. By a narrow strip leading to Kim Yam road. | 4th October 1972 |
| | A. No. | Defendant's evidence |
| 10 | Q. The school completed their levelling of the ground by the end of 1967. | Goh Lang Kang Cross-examination (continued) |
| | A. Construction of the building had just begun by this time. | |
| | Q. Environment around the premises must have changed considerably. | |
| | A. Yes but there was no change in my temple. | |
| | Q. I put it to you that you removed the temple which was on a higher ground in Lot 260 and erected an open shed in front of the chicken pen. | |
| 20 | A. That is not true, my temple has been on the present site all along. | |
| | Q. You converted part of the chicken pen into a temple. | |
| | A. That is not true. | |
| | Q. I put it to you you did all this shortly after January, 1968. | |
| | A. That is not true. | |
| | Q. Having consummated your trespass, you promptly applied for a number to the premises. | |
| | A. There was nothing of that sort. | |
| 30 | Q. Ex.D2 must have been from the hut that you were found smoking opium, if it was your hut. | |
| | A.3 I deny that. | |
| | Q. I put it to you, you were never in the premises before 7.1.68. | |
| | A. I was there. | |
| | Q. I put it to you the Plaintiffs having purchased Lots 250 and 252 were anxious to ascertain who were the tenants and or occupiers on Lot 250. | |
| | A. I would not know how many tenants there were. | |
| 40 | Q. I put it to you, that the Plaintiffs would have seen a substantial part of the premises encroaching on Lot 250 if at all you were there when they purchased in 1967. | |

In the High Court of Singapore

No. 6

Court Notes of Evidence

4th October 1972

Defendant's evidence

Goh Leng Kang Cross-examination (continued)

A. I have been living there a long time whether or not they made discoveries I would not know.

Q. This is particularly so as Plaintiffs purchased Lot 250 for the purpose of erecting a warehouse.

A. I don't know if they purchased the land I have been living there a long time.

Q. I suggest to you, you knew the Plaintiffs had bought Lot 250 because it was you who suggested to them to purchase Lot 249. 10

A. That is not true.

Q. I put it to you being fully aware of your recent trespass, you then promised the Plaintiffs representative that you would vacate if they purchased Lot 249.

A. That is not true.

Re-exmn:

No question.

Wee addresses and states his next witness is in his office and is unwell. He has had a tooth extracted and now runs a temperature. 20

Applies for adjournment till 10.30 a.m.tomorrow.

Lai has no objection. Application granted.

By me: D.C. D'Cotta.

5th October 1972

Defendant's evidence

Tan Gu Long Examination

Thursday, 5th October 1972 Coram: D'Cotta J

D.W.2 Tan Gu Long a/s Teochew

38 Pukat Road, odd job labourer.

Now retired. I have never been to a Court before. I have lived in the Kim Yam Road area for 50 years, during the last over 30 years of which I lived at Pukat Road. I have known D.W.1 for 30 years. 30

About 20 years ago my daughter adopted a child.

I put up a house for D.W.1 about 20 years ago.

The house was at the foot of the Nan Chiao Hill.

It is now a temple. The medium of this temple is D.W.1. It was a building with a lean roof. It had wooden pillars, plank and asbestos walls. House was 16 feet in length and 12 feet in width. I was paid \$8 per day. It took me 1 week to build.

After I completed the building there was nothing 40

10 else. About 5 years later I went and renovated the house. I put up a gable roof and cemented the floor. I replaced the old planks and asbestos sheets. After that I did nothing else. After that shortly after I went back to find out if the roof was leaking. It is my practice to inspect after I do the work. I didn't do this on the 1st occasion because it was a structure with old materials. On the second occasion the house had better materials. I have never been back to inspect the house. After this a contractor did the work for D.W.1. I am living in the kampong that is why I know there is a temple there. On one occasion when there was some celebration in connection with the erection of the temple I went there. I followed the crowd. Today D.W.1 asked me to come to Court. Nobody has asked me before this to come to Court.

By me: D.C. D'Cotta

Xm by Lai:

- 20 Q. You put up a new structure some 20 years ago.
 A. It was more or less a sort of a shed with 4 pillars and some planks.
- Q. You put this up.
 A. The 4 pillars were already there when I went to put up the shed some 20 years ago.
- Q. Only 4 pillars were there.
 A. A zinc roof and some old plank enclosure.
- Q. This structure was at the foot of the Nan Chiao hill. A. Yes.
- 30 Q. When was your visit to the temple to celebrate the erection.
 A. I can't remember when it was.
- Q. Was the Nan Chiao hill still there when you went on this visit.
 A. Some levelling work was going on at the time.
- Q. Was the new Nan Chiao School already up when you went on this festivity visit.
 A. It had not been put up yet at that time.
- 40 Q. The temple looked nice and impressive.
 A. Yes.

In the High Court of Singapore

No. 6

Court Notes of Evidence

5th October 1972

Defendant's evidence

Tan Gu Long Examination (continued)

Cross-examination

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

5th October
1972

Defendant's
evidence

Tan Gu Long
Cross-
examination
(continued)

Q. It was entirely different from the structure you renovated and erected.

A. That is so, that building was demolished and re-renovated by the contractor.

Q. 4 or 5 years after you put up a structure you renovated it, was it used for storing things by D.W.1.

A. On the 2nd occasion when I went and did the renovation there was a deity installed and there was a sitting room.

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Q. This structure was different from the temple you saw on your festivity visit.

A. That is so.

Q. Did you know of the temple on Nan Chiao Hill.

A. I never entered the school.

Q. You could see from the outside.

A. I do not pay attention to other people's affairs.

Q. Having a temple on Nan Chiao hill is other people's affairs.

A. I know nothing about it.

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Q. You did not take the exact position of the building you put up, after your 2nd renovation you are not in a position to say it was on the same site as the temple you saw in 1968.

A. The temple was on the same site.

Q. You saw a stretch of ground being levelled.

A. The hill was levelled.

Q. The environment entirely changed.

A. There was some buildings going up that side, I didn't take particular notice of people's business.

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Q. You are an old man can you be very sure of the structure you put up and the site some 20 years ago.

A. At the time the Nan Chiao School had a barbed wire fence they would not allow you to put up a shed there.

Q. Where were you after 5.30 p.m. last night.

A. At home.

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Q. Alone. A. With my grandson aged 4 years.

- Q. At 3 p.m. A. At home sitting.
- Q. You were never in a lawyer's office yesterday.
A. No.
- Q. Who informed you to come to Court this morning.
A. D.W.l.
- Q. Yesterday he asked you.
A. This morning he came to my place and asked me to come together with him.
- 10 Q. You have never given a statement to anyone.
A. No.
- Q. D.W.l never brought you to a lawyer's office yo give a statement. A. No.
- Q. D.W.l and you never spoke about this case.
A. No.
- Q. He has never seen you about this case.
A. No, he asked me to come because the shed was originally put up by me and I carried out the renovations.
- 20 Q. You went to the temple to celebrate the erection of a new temple. A. Yes.
- Q. Brand new. A. Yes.
- Q. You saw the building being pulled down and a new temple erected.
A. Yes, the temple was at the foot of the hill on my festivity visit on the same site.

In the High Court of Singapore
No. 6
Court Notes of Evidence
5th October 1972
Defendant's evidence
Tan Gu Long Cross-examination (continued)

By me: D.C. D'Cotta

Re-xn:

30 If you are taking the temple now the school is on the right. On the other side was vacant land, nobody was living there. The shed was erected at the foot of the Nan Chiao Hill initially. The vacant land was on a lower level. D.W.l is in charge of the temple. I can't remember when he first became the temple keeper. I have been an odd job labourer all my life doing wood and cement work.

Re-examination

In the High
Court of
Singapore

D.W.3 Yeo Yeow Tong a/s Teochew
12-A Muthu Raman Chitty Road.

No. 6
Court Notes
of Evidence
5th October
1972
Defendant's
evidence
Yeo Yeow Tong
Examination

Hawker. Now at Orchard Road car park. I know D.W.1. I have known him for over 20 years. I first lived at 15 Muthu Raman Chitty Road in 1948. I left the place more than 10 years ago to my present address. When I lived at 15 Muthu Raman Chitty Road there were 4 rooms on the first floor and D.W.1 occupied 2 rooms with his parents and brothers. Some time in 1953 one of D.W.1's brother got married. D.W.1 said after the marriage that he wanted to stay outside as he gave up his room to his younger brother. Shortly after he had told me so he moved out. This was about 20 years ago. He moved to where the present temple is. I went up to his place one or two years after he moved out. On my first visit to his place the building he was living in was rather low so I didn't see much. One of my children was not feeling well I went to look for D.W.1's father who was more experienced as my son was suffering from fits. D.W.1's father knew something about medicated powder. It happened that his father went to D.W.1's place when my child fell ill so I went there to look for him. When I came home D.W.1's father was not in and his wife told me he had gone to D.W.1's house. I gained access to his place by the present staircase. The staircase there was made out of wood and stones and earth. The wood was used as a sort of a buttress to prevent the stones from falling off. The stones and earth were mixed together. On my first visit to D.W.1's place I didn't see much. After calling his father to come out I went back with him; I merely saw a house there. I went back subsequently very frequently. The structure was a lean to roof. He had a bunk and some tables and chairs and there was also a deity installed. He had a sort of a shrine hanging in the centre of the premises. The shrine was made out of a milkcase and the deity was inside this case. I saw an incense burner. After he moved out of 15 Muthu Raman Chitty Road I never saw him come back to sleep but he used to return for his meals cooked by his mother. Around 1956-7 I was a seaman. Before and after this I was a hawker. After I came back from sea I visited D.W.1. His house was different when I came back in 1957. Formerly he had a house with a lean-to roof. This time

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10 he had a gable roof and the floor was cemented. I used to visit him regularly when I came back from sea. D.W.1 was selling fruits. At one stage he did not do business. I was not sure who was smoking opium but D.W.1 was arrested. After he was released from prison, he continued his old occupation. He is now the temple medium. In 1963-4 he became the temple medium. Shortly after he became a temple medium the premises were renovated. There was a substantial change in the building. He had extended the side facing Martin Road quite substantially. There was also some extensions in front of the premises about 1-2 feet. There was a partition separating the front from the rear of the building and the deity was in the front portion of the premises as it is now. He had a shed put up in front of the building. I continued to visit D.W.1 frequently. Since 1962-3 I have been a donation collector collecting donations in respect of funerals or wayangs. When death took place in the kampong I went to collect donations from the defendant. I also collected donations for wayans. I collected for the kampong. After 1963-4 there was another renovation to the temple. This was in the year 1968. The 1968 renovation to the temple was carried out by a contractor. The steps were constructed in 1967, in 1968 renovation to the temple took place. In front of the temple there is a long stretch of ground along the fence. This stretch of land is cemented. In or about 1965 the cementing in front of the temple took place, it was not done all at one time. If I am facing the temple now on the left is Nan Chiao school. On my right is vacant land and the staircase is also on my right. When I first went there in 1953-4 Nan Chiao School was there. Formerly there was a retaining wall belonging to the Nan Chiao School. The Nan Chiao School was on a higher level of ground and the retaining wall was for the school.

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40 The retaining wall was about 7-8 feet away from the defendant's house.

By me: D.C. D'Cotta

Xm by Lai:

Q. D.W.1 and his father were opium smokers.
A. Yes.

Q. They were smoking in a hut facing Martin Road.
A. I don't know where they smoked.

In the High Court of Singapore

No. 6

Court Notes of Evidence
5th October 1972

Defendant's evidence

Yeo Yeow Tong
Examination
(continued)

Cross-examination

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
Defendant's
evidence

Yeo Yeow Tong
Cross-
examination
5th October
1972
(continued)

- Q. Do you know if D.W.1 smoked opium with his father.
A. I didn't see, so I don't know.
- Q. You know D.W.1 served prison sentence for opium smoking. A. He told me so.
- Q. How is it his father was not arrested.
A. I do not know.
- Q. When you and D.W.1's family were staying at Muthu Raman Chitty Road you knew they were a family of opium smokers. 10
A. I only knew D.W.1 prepared opium for his father to smoke.
- Q. If you knew D.W.1's father smoke opium you would have reported to the police.
A. I do not know when he smoked opium.
- Q. He smoked opium in a secluded place.
A. I don't know where he smoked it and it was none of my business.
- Q. Have you ever seen D.W.1 behave strangely in the area. A. No, I don't know. 20
- Q. How do you remember D.W.1 becoming a temple medium in 1963-4. How do you remember the year.
A. I have been to the temple and seen him.
- Q. How do you remember the year 1963-4.
A. Because many worshippers went to the temple to worship in that year.
- Q. Have you any other reason for remembering 1963-4. 30
A. Previous to 1963-4 although he had the deity there, very few people came to worship.
- Q. Who in the kampong went to the temple.
A. How do I know the names of the people.
- Q. Were they from the same area.
A. They consisted of kampong people and outsiders; I see them on the 1st and 15th of the month. I don't go every month, I go only when I am free.
- Q. Do you see few worshippers going to worship between 1953-1957. 40

- | | | |
|----|--|--------------------------------|
| | A. I did not see any people going to worship during this period, because I did my business in the day. | In the High Court of Singapore |
| | Q. From 1957-1962 did you see people going to the temple in the day or night. | No. 6 |
| | A. I had no occasion to go there during this period. I leave home at 6 a.m. and return at 4 or 5 p.m. | Court Notes of Evidence |
| 10 | Q. You were too busy attending to your hawking business. A. Yes. | 5th October 1972 |
| | Q. From Monday to Sunday. A. Yes. | Defendant's evidence |
| | Q. Except when you were ill. A. Yes. | Yeo Yeow Tong |
| | Q. On your return from work you would rather spend your time with your family. A. Yes. | Cross-examination (continued) |
| | Q. First and foremost you would attend to your own business. A. Yes. | |
| | Q. You have very little time to mind other people's business. A. That is so. | |
| 20 | Q. I put it to you you can't remember very much of D.W.l's temple. A. I know a bit of it. | |
| | Q. But not the details of it. A. That is so. | |
| | Q. You wouldn't know the measurements of the temple. | |
| | A. That is so. | |
| | Q. You wouldn't know if it had a lean to roof or a gable roof. | |
| | A. I had occasion to go there so I noticed it. | |
| | Q. When was the gable roof put up. | |
| | A. 1957 or 1958. | |
| | Q. What did you notice about the floor. | |
| | A. In 1957 or 1958 he had a cemented floor when he had a gable roof. | |
| 30 | Q. Throughout the time you were a hawker you were too busy to go to the temple. | |
| | A. I am free in the evenings when I am free to go. | |
| | Q. Did you attend a festivity at the temple. | |
| | A. Yes. | |
| | Q. Temple was made completely new. | |
| | A. On the 23rd day of the 2nd moon of each year which is the birthday of this deity, I go there to assist him. | |

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence

5th October,
1972

Defendant's
evidence

Yeo Yeow Tong
Cross-
examination
(continued)

Q. When was this temple made completely new.
A. 1967 or 1968.

Q. The old building was pulled down and a new building erected.
A. No the old building was renovated to a new one.

Q. Can you give a detailed account of the difference.
A. The building has been on this site since 1953.

Q. Some dimensions. 10
A. In 1953 the building was smaller, 4 or 5 years the building was renovated.

Q. Give the difference between the new temple and the old one before the renovation.
A. In 1968 the plank walls of the building were replaced by asbestos sheeting; the roof was replaced with a new one including the beams and rafters; there was a temple shed in front and a cement yard in front was re-cemented.

Q. The temple shed was erected in 1968. 20
A. It was there by 1964-65; what I meant was the temple shed was renovated.

Q. On 10.9.68 a C.B.S. inspector was there.
A. I don't know.

Q. After the visit the renovations took place.
A. I don't know.

Q. Do you know when the renovations began.
A. I guess it was sometimes in that period.

Q. What period. A. Around 1968.

Q. End of 1968. 30
A. It was just a guess on my part.

Q. When was the brickstaircase erected.
A. I guess the staircase was completed before the renovations to the temple.

Q. How long before.
A. Approximatately 1 year before.

Q. Do you know the reason for the 1 year gap.
A. I have no ulterior motive. I live in the kampong and I look after the business of the kampong.

- | | | |
|----|--|--------------------------------|
| | Q. Do you know why the 1 year gap between the erection of the steps and the renovations. | In the High Court of Singapore |
| | A. I don't know. | |
| | Q. Are you a worshipper. | No. 6 |
| | A. I am a worshipper of every temple. | Court Notes of Evidence |
| | A. Including the temple near the slope of Nan Chiao School. | 5th October 1972 |
| | A. I have never been there. | Defendant's evidence |
| 10 | Q. Where is D.W.1's temple situated. | Yeo Yeow Tong |
| | A. By the side of Nan Chiao School's fence. | Cross-examination (continued) |
| | Q. In 1953 you said Nan Chiao School was on a higher level.. | |
| | A. Yes. | |
| | Q. Was there not a slight slope. | |
| | A. Yes. | |
| | Q. People could walk up and down. | |
| | A. There was a wall between the temple and the school. | |
| | Q. Do you know very much about land. | |
| | A. I don't know. | |
| 20 | Q. In 1953 was the building on the Nan Chiao side of the Martin Road side. | |
| | A. The temple was by the side of the fence. | |
| | Q. Do you know the fence was removed. | |
| | A. That is so. | |
| | Q. After removal of fence there is no land mark to determine position of D.W.1's temple. | |
| | A. Yes. | |
| | Q. The structure in 1953 and the structure today is entirely different. | |
| 30 | A. The previous temple was small now it is very much bigger. | |
| | Q. Without your being conscious of it the position could have changed slightly. | |
| | A. That staircase is fixed. | |
| | Q. Was the staircase with stones there in 1953. | |
| | A. It was not a real staircase; D.W.1 used stones to make a sort of staircase. | |
| | Q. The way up was haphazard. | |
| | A. The surface was uneven. | |

In the High Court of Singapore

Court Notes of Evidence

5th October 1972

Defendant's evidence

Yeo Yeow Tong
Cross-examination
(continued)

Wong Toon Quee
Examination

Q. Straight up. A. Zig-zagging.

Q. I put it to you, you are mistaken as to the position of the temple.

A. I have lived there for over 20 years, the temple has been there it has not been moved.

Q. Is there a committee. A. I don't know.

By me: D.C. D'Cotta

Re-xn: N.Q.

D.W.4 Wong Toon Quee a/s English

48 Watton Drive, Singapore.

10

Senior Statistician, Department of Statistics,
Acting Principal.

Witness is shown Exhibit D2

D2 looks like a census card. It looks like the census card we used in the 1957 Census of Population. We used this card to put it at the entrance of every house. The period was around April 1957. The letters C.A. means the electoral division of Cairnhill. A conversion of the census division in 1957 and the 1970 was made and it was found that the boundaries of CA1 Cairnhill 1 are more or less equivalent to the boundaries of River Valley 1 in 1970. For census purpose we sub-divide the census district into a number of smaller units which is known as the reticulated units. 08 on D2 means one of the reticulated units under the census district CA 1. One reticulated unit comprises a certain number of persons to be designated to a census officer. Figure 91 in D2 means within each reticulated unit we number houses systematically from 01 onwards; 91 means the 91st house in that reticulated unit 08. Under section 20 of the Census Act no entry made by a census officer under this Act is admissible as evidence in any civil or criminal proceedings.

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Xxn: N.Q.

D.W.5 Teo Seng Pong a/s Mandarin

90-B Alexandra Road, Vice-Principal Nan Chiao Girls School. I have been in Nan Chiao Girls School for nearly 20 years. I joined the school as a teacher and became Vice-Principal in 1965. My school is situated off Kim Yam Road. The old school was knocked down and a new school has been built. This took place between 1965-6. The reconstruction of the school was the business of the management committee. We removed to Guillemard Road. At times not often I visited my school. In front of the building of the old school was a field. Along the school boundary Lot 260, Lot 249 and 250 there was a retaining wall. After the wall was a drop. It was a very steep drop. I can't say in terms of degree. The reconstruction of the school was because of the collapse of the wall by the side of the school field. The Government advised us to reconstruct the wall because of the danger to the houses below. We got an architect to estimate the cost of reconstruction of the wall and his estimate said it would cost over \$200,000/-. Therefore the school decided to level the ground. After the wall collapsed we did not put anything in its place. The collapse occurred 1 year before the reconstruction. The length of the wall was 180 meters. I am not sure that this wall was on the boundary separating Lot 260, Lot 249, Lot 250 and so on, but there was a wall on the other side of the school building facing Michelin Tyre Factory in Lot 261 and that wall was well within our boundary.

By me: D.C. D'Cotta

Friday, 6th October 1972

Coram: D'Cotta J

Continuation of Suit 963/71

D.W.5 Teo Seng Pong on his former affirmation

Xn-in-chief (contd)

The Michelin Tyre Factory is between Lot 260 and Lot 261. There was a wall at the boundary of Lot 260 and Lot 261. Below the wall was the Michelin Tyre Factory. Looking from the school to the wall I cannot say if it is a retaining wall. There was a drop between the school land and the land next to it - Lot 249. I can't remember clearly if there was a fence here. Although this thing happened more than 10 years ago there was a

In the High Court of Singapore

No. 6

Court Notes of Evidence

5th October 1972

Defendant's evidence

Teo Seng Pong Examination

6th October 1972

Defendant's evidence

Teo Seng Pong Examination (continued)

In the High
Court of
Singapore

Court Notes
of Evidence
6th October
1972

Defendant's
evidence

Teo Seng Pong
Examination
(continued)

fence but I can't say for certain. Right up to the fence is the field. Near the fence were some trees. There was no building on the school fields right up to the fence because every year we held our sports meet and it is not possible to have any structure on this field. There was a slope between Lot 260 and Lot 249. I imagine the slope was more than 20 feet. I did not actually take measurements of it. I didn't pay attention if there was a building on the other side of the fence. I don't know the boundary of the school. We had a wall at the boundary separating Lot 260 and Lot 261. I am familiar with the school ground within the walls. There was no temple in the ground I am familiar with. I came to know the defendant in 1969 after we moved back to the school from Geylang. I can't remember seeing him before that.

10

By me: D.C. D'Cotta

Cross-
examination

Xxn by Lai:

Q. The wall between the school field and Lot 249 was built at the end of the school field.

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A. I can't remember.

Q. Standing at the school field and looking at the wall how high is this wall.

A. I do not know where Lot 249 is: the wall is quite high but I can't say how high.

Q. The level of the school field to this wall is all level. A. Yes.

Q. Do you know the geography around this area.

A. I am not clear about it.

30

Lim Buck Seah
Examination

D.W.6 Lim Buck Seah a/s English

Block 94, 756-A Commonwealth Drive, School Teacher. I have been a teacher for about 19 years. Born in Pukat Road. I lived here till 1963. I got married and moved to my present address. I know the Defendant. His name is Goh Leng Kang. I now teach at Nan Chiao Girls School. I first met the Defendant during the Japanese war. We were colleagues working together in a Japanese firm. As a boy I know the vicinity of my house. We used to play there. One side of the field faces Martin Road side. There is a slope after the wall. We

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can get access to this area from Narayanan Chitty Road. There is a little piece of land next to my school and then there is a slope. Defendant and I are acquaintances. Since 1965 I have been teaching in Nan Chiao School. I am 41 years of age. After the Japanese occupation I played around this area. There used to be a Malay barber in Muthu Raman Chitty Road. I used to go there with my friends to have a hair cut. On one or two occasions when we went there was a crowd and we had to wait our turn. So I went up the hill top to get shade from the trees and wait our turn. On this bit of land at the hill top I saw the defendant in a shack. It was a very old house. This is about 20 years ago. 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. I do not visit the temple. I am not a worshipper there. I began teaching in 1965. When I joined the school it was in Guillamard Road. From time to time I visited the old school. I never went to see this piece of land. There is a foot path from Narayanan Chitty Road leading up to the Defendant's temple. Now the temple has steps; as far as I know it is in the same place.

By me: D.C. D'Cotta

Xm by Lai:

Q. In 1952-3 was there a school wall at the end of the field. A. Yes.

Q. It was at the boundary of the school.

A. As far as I know it is on the boundary, I can't be certain.

Q. The present fence is 1-2 feet from Defendant's temple. A. Yes.

Q. The wall of the school field was there.

A. Slightly in, say 1 or 2 feet at the most.

Q. The side of the defendant's temple would be about 4 feet to the wall.

A. I can't be certain.

Q. The old wall of the school is about 10 ft. high.

A. Yes.

In the High Court of Singapore

No. 6

Court Notes of Evidence

6th October 1972

Defendant's evidence

Lim Buck Seah Examination (continued)

Cross-examination

In the High
Court of
Singapore

No. 6

Court Notes
of Evidence
6th October
1972

Defendant's
evidence

Lim Buck Seah
Cross-
examination
(continued)

- Q. This wall was more or less on the boundary separating the school from the building where the defendant was. A. Yes.
- Q. Immediately next to the wall was defendant's shed about 4 feet away. A. Yes.
- Q. The position of this wall is the present fence of the school. A. Roughly.
- Q. On that basis the present temple today is about 4 feet from the fence. A. Yes.
- Q. You saw defendant's temple in 1965. A. Yes. 10
- Q. The geography of this area has changed completely. A. Yes.
- Q. If there is a slight shifting in the position of the building you wouldn't have noticed it. A. I would have. In 1965 there was no wall it had been demolished; there were some rocks.
- Q. In 1953 the school was about 4 feet from the wall. A. Yes more or less roughly.
- Q. When you went in 1965 you saw the temple on the same spot as the shack. A. Yes. 20
- Q. You assume the wall was on the boundary of the school land. A. Yes, I don't know for sure.
- Q. Looking at the temple today it is on the same spot. A. Yes.

By me: D.C. D'Cotta

George Ho
Examination

D.W.7 George Ho sworn

30 Lengkok Angsa, Singapore, 9.

Architect with James Ferris and Partners since 1953. I know Nan Chiao Girls School. My firm were architects for the school. The contractors were So Ek Kiong. The building contractors were Cheong Fatt. The original job was undertaken by Ng Keng Siang. He wound up his business and we took over his practice. As a result of the retaining wall collapsing, we levelled the land. We first levelled the portion between the school and the temple. 30

Ex.
P15-3

Witness is shown Ex.P15-4, and points to the temple which is shaded red in P15-4.

In the High Court of Singapore

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Court Notes of Evidence
6th October 1972

10

I produce a letter I wrote to one Soh Teck Kiong who was in charge of the levelling.

Defendant's evidence

Ex.D4

Admitted and Marked D4

George Ho Examination (continued)

At the time we had not taken out the insurance yet that is why we told Mr. Soh not to do levelling on the temple side.

Witness produces a letter from Soh Teck Kiong.

Admitted and Marked D5

Exhibit D5

After the insurance was taken out the work was proceeded with.

Witness produces a letter from Soh Teck Kiong.

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Admitted and Marked D6

Exhibit D6

I visited the site daily until completion. The temple was still there because most of the people who go there cross from the school side. When the school was completed I put up the present fence. The temple is at the same place.

Lai applies to reserve the right to cross-examine until he has perused the witness' files. Application granted.

By me: D.C. D'Cotta

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D.W.8 Cheong Chee Teck sworn
17 East Coast Terrace, S'pore, 15.

Cheong Chee Teck Examination

Structural Engineer, M.E. (Struct.) P.W.D.Sabah 8 years; In Singapore for 5 years. With Palmer and Turner and Swan and Maclaren.

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Defendant's
evidence

Cheong Chee
Teck

Examination
(continued)

In April 1972 I was instructed to go to Narayanan Chitty Road. On 21.4.72 I went again with the survey plan. I was instructed to have a look whether there was a possibility of an immediate collapse of the embankment on which the temple was built. I had a look.

Witness is shown P1-6, P12 and P13.

The embankment was very sheared at places, pockets of earth are falling off when the water content has dried off. Some of the earth below the premises had fallen out and this is all on one side. The building had been repaired on the floor from the front of the building parallel to the side there was a crack of 5 feet running on the floor. The temple looks about 25-30 feet high. The lower level is 6 or 7 feet high. Near the lavatory shed the earth has collapsed somewhat and the corner of the shed has shagged down. The remedial measure is to put a retaining wall surrounding the embankment to contain the earth from sliding. In designing this sort of retaining wall, we require a footing which will protrude into the adjoining property; alternatively we could put in a steel sheet pile wall. This is more expensive than the former method. Sheet pile is to drive piles made of mild steel into the ground. This will serve the same purpose as a R.C. retaining wall. My estimate of the sheet pile made in April this year would be \$30,000/- - \$35,000/-. A R.C. retaining wall would cost around \$25,000/-. I have measured and worked this out.

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By me: D.C. D'Cotta

Cross-
examination

Xm by Lai:

Q. When you went to the site in April 1972 had the damage been adversely affected by the weather.

A. There were signs of erosion.

Soh Chin Chye
Examination

D.W.9 Soh Chin Chye a/s Hokkien

Jalan Chai Chee, Block 3.

Contractor on a small scale. I was working for my father Soh Teck Kiong also a contractor in 1965. He had a contract to level a piece of land on

40

which the old Nan Chiao School was. I was on the site myself. 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.

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10 Witness points to the defendant.

Defendant's evidence

Soh Chin Chye
Examination
(continued)

20 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 the 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. When I first went on the land I didn't pay attention to any building on the school land. Only the school was there. There were no other buildings beside the school.

Witness id D5 and D6 as coming from his father's firm.

By me: D.C. D'Cotta

Xm by Lai:

Cross-examination

Q. The bull-dozing started work in 1965.

A. At first to cut down the trees.

Q. When did you first start bull dozing.

A. We first knocked down the school, then the trees then levelling took place.

Q. In what month of 1965 did you commence levelling the ground.

A. I can't remember the month.

Q. The first or second half of 1965.

A. The second first, some time in June or July.

Q. Before you started bull-dozing you were concerned about the perimeter. A. Yes.

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evidence

Soh Chin Chye
Cross-
examination
(continued)

- Q. You are definitely sure you started bulldozing earth works in 1965. A. Yes.
- Q. Not 1966. A. No definitely not.
- D4, D5 and D6 is read to the witness. Ex.D4
5 & 6
- We started work in 1965 - D4, 5 and 6 are in respect of extra earth work.
- Q. Which part of the school compound did you start levelling first.
- A. Near the entrance to the school. We knocked down the school, cut the trees; the temple was near the school wall. 10
- Q. Can you speak English.
- A. One or two sentences.
- Q. The trees were next to the school buildings.
- A. Near the school fence.
- Q. When you first went did you see the school wall. A. Yes.
- Q. Was this school wall facing in the direction of Martin Road.
- A. It was next to the temple. 20
- Q. How far was the temple from the school wall.
- A. 2 - 3 feet.
- Q. This school wall was at the edge of the school field.
- A. Edge of the school land.
- Q. How high was the school wall when you first saw it. A. Over 10 feet high.
- Q. How long did it run when you first saw it.
- A. From one end of the school ground to the other end. 30
- Q. This wall faces Martin Road.
- A. I don't know what road it was, but the temple was next to the school wall.
- Q. Was the temple very close to the school wall.
- A. Yes.
- Q. Standing on the school field you can only see the top half of the temple. A. Only the roof.

- | | | | |
|----|--|---|------------------|
| | Q. Was this wall a retaining wall. A. Yes. | In the High Court of Singapore
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Soh Chin Chye
Cross-examination
(continued) | |
| | Q. Was the level of the school field level till it reached the wall. A. Yes. | | |
| | Q. What did wall retain. A. I don't know. | | |
| | Q. Was any part of this wall broken. A. No. | | |
| | Q. Was the temple in the middle of this long wall.
A. It was nearer to one end. | | |
| | Q. Behind this long wall from the school was there a slope. A. A slight slope. | | |
| 10 | Q. Was there another retaining wall after the slope. A. I didn't see; I don't know. | | |
| | Q. You are quite sure the temple you saw was 2-3 feet from this wall. A. Yes. | | |
| | Witness is shown P8 and P11 | | Exhibit P8 & P11 |
| | Q. Did the temple look anything like P8 or P11 in 1965.
A. At the time I was working I didn't see this type of houses. | | |
| 20 | Q. Was the structure as big as in P8.
A. No and not so beautiful. | | |
| | Q. Was the roof as in P11.
A. This photograph has a new type of roof; it was an old type of roof, an inverted V shape. | | |
| | Q. Was the long wall knocked down by you.
A. Yes. | | |
| | Q. It was a straight wall.
A. I didn't pay attention - some parts of the wall was of brick and some of concrete. | | |
| | Q. Were there any gaps in the wall. A. No. | | |
| 30 | Q. Where was the fence. A. Touching the wall. | | |
| | Q. Looking at the wall from the school what came first, the fence or the wall.
A. The trees and the fence were together. The wall was below the level of the school land and the fence and trees were above the land. | | |

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Defendant's
evidence

Soh Chin Chye
Cross-
examination
(continued)

Re-
examination

- Q. How high was this wall.
A. Over 10 feet; the top of the wall is about 1 foot above the level of the school land.
- Q. When was your work on the site completed.
A. May or June 1966; I can't remember.
- Q. After doing the extras.
A. Yes.

Re-xn:

P15-4 is not one of the places I worked on.

By me: D.C. D'Cotta

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Court adjourns to a date to be fixed.

By me: D.C. D'Cotta

12th February
1973

Defendant's
evidence

George No
Cross-
examination

Monday, 12th February, 1973.

Coram: D'Cotta J

NOTES OF EVIDENCE

D.W.7 George Ho on his former oath:-

Xxn by Lai:

- Q. When did you first visit the school compound.
A. About 1964.
- Q. Did you see the retaining wall facing Narayanan Chitty Road. A. Yes.
- Q. Was it the boundary of the school.
A. Not exactly on the boundary.
- Q. Did you see a temple on your first visit.
A. Yes.
- Q. Standing in the school field looking in the direction of the retaining wall you saw the temple. A. Yes.
- Q. What was the distance of the temple from the retaining wall. A. I can't say.

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- Q. Was the services of a surveyor engaged.
 A. In this case we had a survey plan from the Ministry of Lands, the building contractor and the earth contractor check the boundary line.
- Q. Did you as architects engage the services of a surveyor to determine the exact position of the temple. A. No.
- 10 Q. Can you give an intelligent guess as to the distance of the temple from the retaining wall.
 A. It would be difficult to say.
- Q. Was it very close. A. Difficult to say.
- Q. Did you notice the surroundings of the retaining wall.
 A. I noticed a temple.
- Q. How far was the retaining wall from the boundary stone i.e. the junction between Lots 249, 250 and 260 looking at P15(4).
 A. 20 to 30 feet.
- 20 Q. Standing on the school field you saw the temple beyond the retaining wall. A. Yes.
- Q. There was only one stretch of retaining wall.
 A. 2 stretches.
- Q. At the boundary junction there was one stretch.
 A. Yes.
- Q. The stretch in 1964 according to P15(4) was 20-30 feet away. A. Yes.
- Q. What was the width of the retaining wall.
 A. Difficult to say.
- Q. Was the temple you saw the same as in Exhibit P7, P8 and P9. A. It was different.
- Q. What was the roof like.
 A. Different to Exhibit P7, P8 and P9.
- Q. What was the difference.
 A. Before it was a tile roof. I did not pay attention to details.
- Q. Was the temple on the same site as before.
 A. I think it was.

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 1973

Defendant's
 evidence

George No
 Cross-
 examination
 (continued)

Exhibit P15-4

Exhibit P7,
 P8 and P9

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1973

Defendant's
evidence

George Ho
Cross-
examination
(continued)

Q. Was there any other differences apart from the roof as far as you can recollect what did the structure look like.

A. Difficult to say.

Q. If the distance between the temple and the retaining wall is 2-3 feet, is it possible the temple was in the school ground.

A. I cannot say how far the temple was from the retaining wall.

Q. Did you check the boundary stone.

A. Yes I based my conclusions on the survey done by the Government in August 1964. 10

Q. Was it a building survey.

A. A boundary line survey can indicate buildings.

Q. If they do not indicate buildings they would do that also. A. Yes.

Q. When there are buildings near boundary stones they are indicated. A. Yes.

Q. They do not indicate all the buildings structures within the lot. A. No. 20

Q. Because it was not within their terms of reference. A. I don't know.

Q. This survey plan did not indicate all structures standing within your school boundary. A. That is right.

Q. You relied on this plan to see if there were any structures within the school lot.

A. Yes.

Q. To come to the conclusion that the temple was outside the school lot. A. Yes. 30

Q. Do you say the little square near the boundary junction - Lot 249 and 250 was the position of the temple. A. Yes.

Q. It could have been a chicken pen.

A. No because when we got this plan we saw it was outside our boundary and there was a temple.

Q. The temple could have been in the school compound. A. No.

- Q. On the assumption the square shown on P15(4) was in truth and in fact the position where the temple stood. A. Yes.
- Q. You made the assumption. A. Yes from the beginning.
- Q. Is your view that the temple was in the same spot in 1964 as it is now based on P15(4). A. Yes.
- 10 Q. When you approached the retaining wall what did you see. A. I saw trees and below the retaining wall a temple.
- Q. Are you clear about the distance. A. No.
- Q. That is between the retaining wall and the temple. A. No I was interested to ascertain if it was worth while rebuilding the retaining wall.
- Q. You were not so interested in other matters. A. No.

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 Defendant's evidence
 George Ho Cross-examination (continued)

20 By me: D.C. D'Cotta

Re-ex: The temple was in a lower level at least about 30 feet. On the school side there was no building near to the temple.

George Ho
 Re-examination

D.W.10 S.T. Moorthy a/s English
 110 Jalan Lebon, Singapore.

S.T. Moorthy
 Examination

30 Surveyor attached to Chief Surveyors Department. I have been here since June 1957. In 1964 I was asked to carry out a survey of Lot 260 T.S.XXI. P15(4) is drawn according to personal survey. This survey was carried out for the purpose of the school building. It is a site survey. I have ascertained the boundary site. There was no building encroaching ~~into~~ on the boundary line of Lot 260. There was no buildings encroaching into lot 260. There was only a hut; as far as I can recollect a plank and asbestos structure. This structure was down the slope south west of Lot 260. It is coloured red in P15(4) and is at the

Exhibit P15(4)

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evidence

S.T. Moorthy
Examination
(continued)

Cross-
examination

junction of Lots 249, 250 and 260. We have been instructed that any buildings within 10 feet of the boundary line, on both sides, we will have to pick them up for our records. This building is the only building. I picked up. Difficult to recollect the size and the dimensions from the records are 14 feet by 12½ feet. Building plan is No.14049. There was no building or structure of any kind between this building and the retaining wall in P15(4). Standing at the top of the retaining wall there were trees and a playground. The school was quite a distance away. There was no building on the playground near the retaining wall. On the other side of the structure is a slope. There were a few steps leading you down. It was cut from earth. I can't remember what the building was used for. It was occupied. I can't say by whom.

10

Xm by Lai:

Q. How long did the survey take.
A. About a week, 12 days or so from the records.

20

Q. What had you to pick up.
A. Buildings, structures, retaining walls, fences.

Q. Any structure within 10 feet must be picked up. A. Yes.

Q. If it is beyond 10 feet.
A. No it will involve a lot of work.

Q. In practice you don't pick up any structure beyond 10 feet.
A. It depends on the survey. In this case it was a boundary site survey.

30

Q. There was no other building between the retaining wall and the wall.
A. No there was a drop.

Q. Any small structure can you be sure.
A. I don't pick up.

Q. Was it your instructions to pick up buildings within Lot 260 beyond the 10 feet.
A. No because the building was to be demolished.

40

- Q. Can you recollect what this structure was.
A. I can't recollect.
- Q. There was no building between the boundary and the retaining wall.
A. No, I am very sure if it was there I would have picked it up.
- Q. You would have picked up any structure within this distance even beyond 10 feet. A. Yes.
- 10 Q. Was structure occupied.
A. I saw a person but I cannot recollect who he was.
- Q. Was there a cement apron in front of this structure. A. I don't know.
- Q. Could building have been a chicken pen.
A. For building purposes we don't describe what the building is used for.
- Q. Were there people staying there.
A. There was a person who was staying there.
- Q. It was a site survey. A. Yes.
- 20 Q. You were not instructed to pick up any building on lot 260, except those within 10 feet.
A. Yes.
- Q. How many retaining walls did you pick up.
A. Four.
- Q. Facing Lot 249 and 250. A. Three.
- Q. In and around these three, could you say if there were any buildings beyond the 10 feet line.
A. I would not be interested.
- 30 Q. When you say there was no building between the retaining wall and the boundary you are talking about the retaining wall along the junction of Lots 249, 250 and 260. A. Yes.
- Q. Would you be interested in any building along the retaining wall in the North West corner of Lot 249 beyond the 10 feet line. A. No.

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Defendant's
evidence
S.T. Moorthy
Cross-
examination
(continued)

(Witness is shown Exhibit A38 and the circle inscribed by P.W.9)

Exhibit A38

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Defendant's
evidence

S.T. Moorthy
Cross-
examination
(continued)

- Q. If there was a building at the circle would you have picked it up.
A. Yes for sure because I picked up the fence.
- Q. How many persons assisted you in this survey.
A. I alone do the recordings; I go with labourers.
- Q. How long did the survey last.
A. Commenced on 2.10.64 to 17.10.64.
- Q. After 17.10.64 you can't say anything about the site. A. That is so.

10

By me: D.C. D'Cotta

Re-xn:

I produce records pertaining -
Admitted and Marked D7A, B and C.

Wee Soon
Kiang
Examination

D.W.11 Wee Soon Kiang a/s English
123-B Sembawang Hills Drive, Singapore.
Photogrammetric Engineer

(Witness is shown P15(4))

I know this area.

Witness produces 2 photographs.

20

These photographs were taken by the R.A.F. on 14.11.1958 and is from the Mapping Unit of the Ministry of Defence. These 2 photographs are certified copies of the original.

(Lai no objection to their admission)

Admitted and Marked D8A and 8B

I plotted this area from the photographs.

Photogrammetric Plot Admitted and
Marked D9

I visited the site last year with the solicitor for the Defendant. Some part of D9 tallies with what is there now e.g. school is no longer there; there is only one hut there instead of two. The

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Ex.D9 wall is still there. Roads are still there. The big block south of the wall is still there. The hut is used as a temple. It still remains but not the one at an angle of 45° to it as in D9. The temple is most probably in the same position it was in D9. D9 does not show any other buildings around the school compound unless they are hidden by the trees. In D8A the hut is 18' x 12', the other hut at an angle of 45° to it is about 12' x 12'.

10

By me: D.C. D'Cotta

No Xxn.

CASE

Continuation of Suit 963/71Tuesday, 13th February 1973.Coram: D'Cotta J

Wee addresses:-

20

1. Was temple in Lot 260.
2. Did the defendant take over chicken pen straddled across Lots 249 and 250.
3. Was defendant in possession from 1953 to 1965 if so did he become a statutory owner of the land.

The Plaintiffs were conveyed nothing. Counter-claim for nuisance, trespass and damage.

What is adverse possession; acts necessary for adverse possession.

Lack of vigilance on part of the previous owners.

30

Plaintiffs have not called evidence regarding what happened before they came on the land. The title to the dispute land was complete 12 years before action was brought by the Plaintiffs and consequently the Plaintiffs right and title to it was extinguished. If court does not accept this defendant has to prove that he was in possession 12 years before action was brought.

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Defendant's evidence

Wee Soon Kiang
Examination
(continued)

13th February 1973

Defendant Counsel's Closing Speech

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Defendant
Counsel's
Closing
Speech
(continued)

14th February
1973

Wong Meng Meng addresses:-

Temple clearly designated on P15-4 in 1964.

By me: D.C. D'Cotta.

Continuation of S.963/71

Wednesday, 14th February 1973

Coram: D'Cotta J

Submission by Wee (contd)

Wee reads evidence of D.W.1

Evidence of D.W.1 has been corroborated.
Witnesses have not been broken down. Claim
stands or falls on D.W.1's evidence. D.W.1
stood up well in cross-examination and so
did his witnesses.

10

P.W.7 by comparison was a poor witness.
Much more intelligent than he pretended to
be. Asks for renewed of order made on
25.4.72 and extending the time for filing
the amended defence by 14 days.

Lai replies:-

No objection provided that the additional
paragraphs are understood to have been
denied.

20

Application granted.

By me: D.C. D'Cotta

Suit No. 963/71

Teng Swee Lin & 3 others v Goh Leng KangSubmissions on Law

I.

It is submitted

(i) that the Plaintiffs have failed to prove their right and title to the land the subject matter of this action as they were never in possession and their title to it was extinguished before action.

(ii) that they are estopped in any event from alleging that they are entitled to claim the said land from the Defendant as they purchased it subject to his rights

(iii) that the Plaintiffs deprived the Defendant of the natural support to his land and committed a nuisance and also trespassed therein and

(iv) is liable to both special and general damages.

The Limitation Act (Cap.10, 1970) provides the following sections in relation to the claims on adverse possession in this action.

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.

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.

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.

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Defendant
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Written
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(continued)

s.18 Subject to the provisions of 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 brought within such period shall be extinguished.

There is no necessity to elaborate extensively on what is adverse possession but the following definitions suggested in Krishnaswamy at P.117 may be of some general guidance:

10

"What is adverse possession? - There is no statutory definition of adverse possession. It has been variously described, e.g. -

(a) it is the temporary and abnormal separation of the enjoyment of property from the title to it, - when a man holds property innocently against all the world but wrongfully against the true owner;

20

(b) it is possession inconsistent with the title of the true owner;

(c) it is possession, -

(i) which, if continued for the statutory period limited for making an entry or bringing an action, extinguishes the right or title of the true owner, which cannot afterwards be revived, either by re-entry or by subsequent acknowledgment;

30

(ii) which extinguishes the right and title of the dispossessed owner; and

(iii) which leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the owner to eject the dispossessor;

40

the true principle is that when the title

of the former owner has been extinguished by prescription, his

title is not restored and he is treated as a trespasser if he comes into possession again."

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Defendant Counsel's
Written Submissions
(continued)

10 It is submitted on the evidence that at the commencement of this action the Plaintiffs had lost their title to the land occupied by the Defendant. Briefly it is that the Plaintiffs were not in possession until 1967 and 1970 and called no evidence of possession within the 12 years preceding the commencement of this action or before their purchase of the property to which the Defendant has claimed possession.

It follows therefore that upon the Defendant having completed his title the Plaintiffs have nothing to convey

20 "True owner's position - Once the true owner's title has been barred, he has nothing to convey to a purchaser. If he purports to convey land to which another person has acquired a title and does so as beneficial owner, his omission to prevent that other person acquiring a title is a breach of the covenant for the right to convey which is included by implication in a conveyance by a beneficial owner *Eastwood v Ashton* (1915) A.C.900)"

In the latter case a strip of land 150 feet by 36 feet had been acquired by adjoining owners. There *Earl Loreburn* held at p.908:

30 "The strip of land had been occupied by a railway company so long that they could not be disturbed, by virtue of the Statute of Limitations, and the vendor had taken no steps to protect himself against the growth of such a title - in fact, he suffered a sleeper fence to be erected on his land by the railway company. I think it is clear that he "omitted" to defend his own right and lost it by reason of that omission."

40 It has been stated that the "owner" must show he has been in possession within 12 years before suit. *Krishnaswamy* at pp.184-185 states:

"It is true that the onus of establishing the title to the property by reason of possession

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(continued)

for a certain requisite period lies upon the person asserting such possession. But where the Plaintiff seeks to eject the Defendant and recover actual possession of the property, he cannot refrain from showing that he was in possession within 12 years before the suit and call upon the Defendant to show that he has perfected his title to the property by adverse possession over the statutory period. The plaintiff cannot legitimately cast the entire burden on the contesting defendant..."

10

"Where the plaintiff seeks to disturb the possession of the defendant, he must satisfactorily prove that the cause of action accrued to him on a dispossession within 12 years next before the commencement of the suit, and, therefore, that he, or some other person through whom he claims, was in possession during that period. No proof of anterior title can relieve him from his burden, or shift it upon his adversaries by compelling them to prove the time and manner of dispossession.

20

Under a claim of title, it lies upon the plaintiff to prove his own subsisting title. He can recover by the strength of his own title and the onus is thrown upon him to prove his possession prior to the time when he was admittedly dispossessed, and at some time within 12 years before the commencement of the suit, and it does not lie upon the defendant to show that in fact the plaintiff was so dispossessed."

30

It was held in *Mirza Shamsur Bahadur v Munshi Kunj sharry Lal* 12 C.W.N. 273 at p. 278 that

"There can be no question that the rule laid down by their Lordships of the Judicial Committee is of general applicability and in our opinion there is good reason for it. The Plaintiff who brings an action for ejectment has to establish, not merely that he had title at some remote period antecedent to the suit. In order to entitle him to succeed, he must establish that he had a valid subsisting title at the date of the institution of the suit, in other words he has to prove not only that he has title but also that he has been in possession within 12 years before the suit".

40

It is not propped to outline the principles of estoppel as these are concisely set out in s.115 of the Evidence Act (Cap.5, 1970).

On the third submission the Defendant says that the Plaintiffs have trespassed into the land occupied by him. Clerk and Lindsell at para.1311 p. 733 has set out what is a trespass:

10 "Trespass to land consists in any unjustifiable intrusion by one person upon land in the possession of another.

20 "Every unwarrantable entry on another's soil the law entitles a trespass by breaking his close; the words of the writ of trespass commanding the defendant to show cause quare clausum querentis fregit. For every man's land is in the eye of the law enclosed and set apart from his neighbour's; and that either by a visible and material fence, as one field is divided from another by a hedge; or by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field." The slightest crossing of the boundary is sufficient.

30 "If the defendant places a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it". It is a trespass to remove any part of the soil of land in possession of another or any part of a building or other erection which is attached to the soil so as to form part of the realty."

And it is submitted that even though the Plaintiffs may have a good cause of action they are nevertheless liable for damages for trespass.

40 "Trespass is actionable at the suit of the person in possession of land. A tenant in occupation can sue, but not a landlord except in cases of injury to the reversion. Similarly a person in possession can sue although he neither is the owner nor derives title from the owner. Possession means the occupation or physical control of land".

(Clerk and Lindsell para.1318 pp.737-8)

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Trespass is actionable per se and the Defendant is entitled to damages without proof of actual loss. It is submitted that in the present counterclaim in addition to special damages the Defendant is entitled to general damages as well.

It is clear as in the instant case that the excavations have caused a subsidence and the Defendant has lost the natural support to his land. Clerk and Lindsell at para. 1446 p. 815 sets out the law

10

"The owner of land has a right to the support of his land in its natural state from the adjacent and subjacent land of the neighbouring owners.

This right is not an easement but a natural incident of his ownership. There is no natural right of support for buildings, but such a right may be acquired as an easement by grant, express or implied, or by prescription at common law or under the Prescription Act 1832. An acquired right is similar in character to a natural right. If the adjacent or subjacent support is withdrawn so as to cause land to subside, and the subsidence has not been caused by the additional weight of the buildings or other erection upon the land, the land-owner is entitled to recover, in addition to damages for the subsidence of his land, damages for the injury to his buildings or other erections although he has not acquired right of support in respect of them."

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30

As was held by Lord Campbell C.J. in *Humphries v Brogden* 116 ER 1048 at pp.1049-1050:

"... in the case of adjoining closes which belong respectively to different persons from the surface to the centre of the earth, the law of England has long settled the degree of lateral support which each may claim from the other; and the principle upon which this rests may guide us to a safe solution of the question now before us.

40

In 2 Rolle's Abridgement, 564, tit. Trespass (I), pl.1, it is said: "If A., seised in fee of copyhold land next adjoining land of B, erect a new house on

his copyhold land" (I may remark that the circumstances of A.'s land being copyhold is wholly immaterial), "and part of the house is erected on the confines of his land next adjoining the land of B., if B afterwards digs his land near to the foundation of the house of A., but not touching the land of A., whereby the foundation of the house and the house itself fall into the pit, still no action lies at the suit of A against B. because this was the fault of A. himself that he built his house so near to the land of B., for he could not by his act hinder B. from making the most profitable use of B's own land; Easter term, 15 Car. B.R. Wilde v Minsterley. But, seemle that a man who has land next adjoining to my land cannot dig his land so near to my land that thereby my land shall fall into his pit; and for this, if an action were brought, it would lie." This doctrine is recognised by Lord C.B. Comyns, Com. Dig. Action upon the Case for a Nuisance (A): by Lord Tenter (744) den. in Wyatt v Harrison (3B. & Ad.) 871, 876); and by other eminent Judges. It stands on natural justice, and is essential to the protection and enjoyment of property in the soil. Although it places a restraint on what a man may do with his own property, it is in accordance with the precept, sic utere tuo ut alienum non laedas. As is well observed by a modern writer: "If the neighbouring owners might excavate their soil on every side up to the boundary line to an indefinite depth, land thus deprived of support on all sides could not stand by its own coherence alone: Gale on Easements, p. 216."

Provided the weight of the building does not cause the subsidence, and there is no evidence that that happened in this action the Plaintiffs are liable even though they are not negligent (Brown v Robins 157 ER 809)

On the question of damages as in the instant case there is evidence of direct damage it would be academic to repeat the well-known rule that the Plaintiffs are fully liable for the direct damage and loss incurred by the Defendant.

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In any event the Defendant has shown if there is any doubt that the onus is not on the Plaintiffs, from the evidence given that he is in possession and been so for 12 years and upwards before the date of the present action.

Nec vi, nec clam and nec precario is the classical requirement in adverse possession. 10

It is submitted that the Defendant's occupation of the land claimed has completely satisfied this requirement of continuity, publicity and extent.

Before dealing with the evidence it will be useful to briefly state the law on what amounts to adverse possession

"Generally speaking, possession will be adverse if it is inconsistent with and in denial of the title of the true owner". (Franks p. 119) 20

"The result appears to be that possession is adverse for the purpose of limitation, when an actual possession is found to exist under circumstances which evince its incompatibility with a freehold of the claimant". (Judgement at p.585 of Des Barres v Shey (1873) 29 L.T. 592)

It is next necessary to consider what manner of adverse possession will be sufficient. 30

"Possession is constituted by acts of ownership in relation to the land and this will vary according to the nature of the property and the use which the owner chooses to make of it". (Franks p.120).

In Nesbit v Mablethorpe U.D.C. (1918) 2 K.B.1, Rickford L.J. held at pp. 13-14

"..... no one else ever exercised any ownership or received any rent in respect

of this part of the sandhills. The acts of ownership are from the nature of the ground slight, but I think that the evidence shows that both on this and other parts of the sandhills adjoining these islands Nesbitt and the plaintiffs exercised rights of ownership whenever occasion arose, that no objection was ever made to them, and no acts claiming such rights were ever exercised or any such rights claimed by other persons".

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In Leigh v Jack (1879) 5 Exch. D. 264 a piece of land was dedicated by its owners for public use as a road. Bramwell L.J. held at p.273 that the

"acts must be done which are inconsistent with his (Plaintiff's) use of the soil for the purposes for which he intended to use it; that is not the case here when the intention was to devote it to public purposes".

20

On the other hand occasional user by the owner as going into the land which was a strip with a ditch running along it for the purpose of trimming the hedge was held in Marshall v Taylor (1895) 1 Ch. 641 as insufficient although the land had no use to the owner

The acts of possession, which are sufficient, are questions of fact, vary. As Newsome at page 102 suggests

30

"Acts relied on as acts of possession must be considered relatively to the nature of the land whereon they are performed, whether they are tendered to establish a prima facie title, or to prove displacement of that title, or to prove retaking of possession".

In Jones v Williams 150 ER 781 Lord Abinger C.B. suggested at p. 783 that such acts need be done only on parts of the land claimed - At page 783 he held that

40

"Ownership may be proved by proof of possession, and that can be shown only by acts of enjoyment of the land itself; but it is impossible, in the nature of things, to confine the evidence to the very precise spot on which the alleged trespass may have been committed: evidence may

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be given of acts done on other parts, provided there is such a common character of locality between those parts and the spot in question as would raise a reasonable inference in the minds of the jury, that the place in dispute belonged to the Plaintiff if the other parts did. In ordinary cases, to prove his title to a close, the claimant may give in evidence acts of ownership in any part of the same inclosure; for the ownership of one part causes a reasonable inference that the other belongs to the same person;"

10

See also Doe d. Barrat v Kemp 132 ER 40.

Again sometimes slight acts appear to be sufficient depending on its nature. In Atchaya v Jalial Uddin, AIR (1938) M. 454 at p. 455 col. 2:

"The kind of possession which will be sufficient in one may not be sufficient in another. In the case of vacant land such as the suit plot, the same kind of possession cannot be expected as in the case of an occupied land or building. Even apart from some slight acts of possession to which the plaintiff speaks, the principle of law that possession follows title would apply to a case of this sort. The owner would be considered as being in possession so long as there was no effective intrusion".

20

"It is not necessary that the trespasser should prove affirmatively that he has been in physical possession of every square inch of the land" (Krishnaswamy p.143)

30

In Hafiz v Swarup Cjand AIR (1942) Cal. 1 where the claimant having collected rent at one part was held to be indominion over the whole area claimed

"The proper test to be applied is whether the adverse possessor for a period of 12 years or more exercised such dominion as to justify an inference of fact that he was in possession of the whole. It is not necessary that he should prove affirmatively that he has actually been in physical possession of every square inch of land, but it should be considered whether the acts of possession which

40

had been proved would legitimately show that he had enjoyed dominion over the property in the manner in which such dominion is normally exercised". (at p.23)

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And further it is not necessary that the adverse possession must be proved to be for every moment of the requisite period.

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The main Indian authority is Secretary of State v Debendra Lal AIR (1934) P.C.23. There an adverse possession claim for tribery rights was made against the Crown. Lord MacMillan held (p.25)

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"The Limitation Act is indulgent to the Crown in one respect only, namely in requiring a much longer period of adverse possession than in the case of a subject: otherwise there is no discrimination in the statute between the Crown and the subject as regards the requisites of adverse possession. It may be added that it is not necessary in order to establish adverse possession that the proof of acts of possession should cover every moment of the requisite period. Though the possession,

'be not proven' to have continued every quarter, month or year, yet ordinary possession will be sufficient *victeeiam causre*, albeit it be proponed in the terms of a continual possession, *quia probatis extremis prae-sumuntur media*, if the distance be not great. Stair's Institutions of the Law of Scotland, 4, 40.20'.

'The fact of possession may be continuous though the several acts of possession are at considerable intervals. How many acts will infer the fact is a question of proof and presumption independent of prescription: Millar on Prescription.'

It is next submitted that the ignorance of the Plaintiffs or their predecessors of the Defendant's occupation is not an excuse.

"Knowledge on the part of the person, whose rights are invaded, is not an essential ingredient of adverse possession. While possession, to be adverse, must be shown to be adequate in continuity, in publicity, and in

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extent, it is not necessary that it should be shown to have been brought to the knowledge of the true owner. It is sufficient that the possession has been overt and without any attempt at concealment, so that the person against whom time is running, ought, if he exercised due diligence, to be aware of what is happening."

(Krishnaswamy p. 136).

In *Rains v Buxton* (1880) C.D. 537 where the owner was unaware that his cellar had been occupied for 60 years, Fry, J. at page 540 held:

10

"The Defendants say that is not so, that although the statute is express with regard to fraud, and is silent with regard to default or negligence on the part of the person who was originally in possession, yet that no possession operates under the statute to give a title unless that possession by the person claiming title has been in consequence of the negligence or default of the other, and, as I understand them to argue, that that negligence or that default must be proved affirmatively by the person who seeks to avail himself of the statute. But to come to such a conclusion as that would be to import a new and very onerous condition into the statute."

20

In short the owner must exercise due vigilance over his land. Again quoting the Judgment of Lord MacMillan in *Secretary of State v Debendra Lal* (supra)

30

"The classical requirement is that the possession should be nec ve nec clam nec precario. Mr. Dunne for the Crown appeared to desiderate that the adverse possession should be shown to have been brought to the knowledge of the Crown, but in their Lordships' opinion there is no authority for this requirement. It is sufficient that the possession be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. If the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice."

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The Plaintiffs' claim from the Defendant's possession of a portion of land situate on two adjacent pieces of land of which the Plaintiffs are the registered owners.

10 The two pieces of land of the Plaintiffs are Lots 249 and 250 of Town Subdivision XXI. Lot 249 has a frontage to Narayanan Chetty Road and Lot 250 to Arnasalam Chetty Road. Both Lots are contiguous to Lot 260 which is considerably higher than the two pieces of land.

20 The land claimed is partly a ledge about 20 feet wide on Lot 249 at its boundary with Lot 260. The ledge runs the length of Lot 249 at the boundary to Lot 260 and continues into Lot 250 for a short distance. On both sides along the length of the ledge are two slopes, a short one going upwards to the higher Lot 260 and on the other side a slope with a fairly sharp drop.

The rest of the land claimed by the Plaintiffs from the Defendant continues along the slope in Lot 249, the boundary of which is a path and a staircase leading from Narayanan Chetty Road to the ledge. These indicate the lower boundary of the land claimed.

30 The land occupied by the Defendant (hereinafter referred to as "the disputed land") is shown in the plan marked as A.38 and there outlined in red.

40 The Plaintiff purchased Lot 250 in 1967 and Lot 249 in 1970. At the time Lot 250 was purchased the land was occupied by numerous occupants in an old brick and tiled building which was let out in rooms and in various out-houses on the land. When Lot 250 was purchased the adjacent Lot 252 on the other side of Arnasalam Chetty Road was also at the same time purchased by the Plaintiffs. Lot 249 was vacant land except for the Defendant's land.

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Lot 250 was purchased by Teng Boon Loh, PW.9 the husband of the third Plaintiff and Lim Boon Chia the husband of the second Plaintiff. All four Plaintiffs are nominees of their husbands except for the first Plaintiff who is the son of a partner of PW.9. The Plaintiffs do not appear to know very much about this matter except that they are the registered owners of the properties in question.

The Plaintiffs say that after Lot 250 was purchased the Defendant moved into and occupied a small hut situate partly on Lot 250 and partly on Lot 249 and that the Defendant is therefore a trespasser.

10

The Defendant denies this totally and claims that he has been living continuously on the disputed land for 12 years from 1953 and by virtue of the Limitation Act any title of the Plaintiffs or their predecessors in title to it has been extinguished.

20

The Defendant also counterclaims for a declaration to that effect and for damages for trespass against the Plaintiffs who have wrongfully excavated and removed earth supporting his land and premises.

The issues in this action are as follows:-

- (i) Have the Plaintiffs made out a case that they are entitled to claim as owners for possession of the Defendant's land.
- (ii) If they have has the Defendant proved that he has been in occupation for a period of 12 years before the present proceedings were brought.
- (iii) If the Defendant has are the Plaintiffs liable for damages and if so the extent or quantum thereof.

30

Before the last war the Defendant lived with his parents and brothers at 15 Muthu Raman Chetty Road. Some time just before, he used to visit a high ledge on the disputed land on which he had erected a hut with 4 posts and a slanting roof. He did not go there during the war because of the

40

Japanese soldiers on the land and revisited it one or two years after the war ended.

He then replaced the roof and rafters of what was left of the structure and used it for a small fruit business, storing boxes and as a place of rest.

10 In or about 1953 because of lack of living space at his family's house he renovated the hut with plank walls and wooden pillars and began living in it. From that year he planted fruit trees and herbs and cleared the over-grown grass on the disputed land. He moved some old furniture into it. A bathroom was erected and the year after a lavatory was erected.

A track running down the slope caused by rain-water was his access to the shed. This track was remade with concrete steps in 1967.

20 In 1957 the roof was reconstructed into a V-shaped gable with a main door and two windows. In 1964 or 1965 the length of the hut was extended by four feet in front and by four feet at the sides. A temple shed was also erected in front of the original shed. In 1968 the last renovations took place and presently the temple has a room at the rear partitioned off from the rest of the body of the temple. There is an extension in front of the temple and the bathroom at the back has been turned into a store, whatever is now left of it. A lavatory and bathroom is on the slope of the disputed land and the steps have been remade with concrete.

30

The period of 12 years required under the Act from the commencement of the occupation of the Defendant of the disputed land in 1953 was completed by 1965.

40 It is submitted that once this period is completed the title and right of the Defendant cannot be defeated and the "owner" has nothing to convey. It is also submitted that all events that took place after 1965 have no effect on or relevance to the Defendant's rights or claim.

Firstly the Plaintiffs were never in possession during the material period from 1953 to 1965 and no evidence of possession by their predecessors was called.

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The Plaintiffs only became owners in 1967 of Lot 250 and in 1970 of Lot 249 long after their title, if any, to the disputed title had been extinguished. They have very curiously not called any direct evidence to deny the Defendant's occupation although the previous conveyances relating to the properties would have shown the names and addresses of the previous owners. They have called the Vendors of Lot 249 who purchased Lot 249 in September 1965 (B 67-68). The sub-manager of the Vendors See Geok Tee (PW 8) who was called gave evidence in effect very much in favour of the Defendant.

10

He admitted in cross examination after, blandly first stating in his evidence in chief that he only learnt of the existence of a temple (NE 64 & 66) when he received a letter from the Commissioner of Lands informing the Company of the Defendant's Statutory Declaration (of long possession) which was made late in 1970, that in fact he had visited the site in 1968 and seen the temple there (NE 72 & 77). He also admitted that the Company did nothing about it and that the premises were sold to the Plaintiffs subject to the rights of the Defendant.

20

It is also strange even if they were not positive about this that they did nothing about a path and steps on Lot 249 leading to the temple.

The ignorance of an owner does not prevent the squatter from acquiring a title by long possession.

30

The evidence of PW 8 is unreliable in other aspects. He talks of a Mr. Leung putting up a fence after the company purchased the property but failed to produce any voucher of entry in any account book to this effect.

PW 8 says he first entered the land from Kim Yam Road after handing over the keys of a gate at Narayanan Chetty Road to the school. On further cross-examination he contradicted this by saying that in fact he went back to his office first and then returned to the site from Narayanan Chetty Road (NE 70-71).

40

In addition the Plaintiffs have in respect of Lot 249 purchased it "subject to existing occupier and/or squatter and any other claim for long

possession (if any) and in particular to a claim by one Goh Leng Kang under the Statutory Declaration dated 28th day of August 1970" (B.9 & 10).

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Ex. A17-20

In the Agreement between the Plaintiffs and the Defendant to sell the whole of the disputed land (A.17-20) the Plaintiffs have, although nothing came of this, in effect admitted the Defendant's title to the disputed land.

10

"The Vendor shall on or before the 31st day of May 1971 execute in favour of the Purchasers a Conveyance of all his right title and interest of and in the said lands and premises described in the Schedule hereto or such other document or documents as may be required by the Purchasers.

20

On the Vendor delivering up possession of that part of the land now occupied by him on or before the 31st day of May 1971 and upon the execution by the Vendor of a Conveyance in favour of the Purchasers of all his right title and interest of and in the said lands and premises

In consequence of the above the Plaintiffs are now estopped from denying the Defendant's title and possession to the disputed land.

Similarly in the case of Lot 249 the Defendant had completed 12 years in possession in 1965.

30

There again the Plaintiffs also only became owners from 1967 (and according to their evidence) and claimed that the disputed land in Lot 250 was situated outside its boundary namely in Lot 260 which is land belonging to Nan Chiau Girls School. It is proposed that this be dealt with separately later in this submission.

As was mentioned above the Defendant completed 12 years by 1965.

In support of this he gave evidence which was not in any way shaken despite a severe and lengthy cross-examination.

40

The Plaintiff called in support of his claim Tan Ger Long, DW 2, who assisted the Defendant in building the hut 20 years ago and subsequently 5 years later renovated it and put on a gable roof and cemented the floors.

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Another witness Yeo Yeow Tong (DW3) who had known the Defendant for over 20 years and who lived in the same houses as the Defendant did, prior to his removal to the disputed land, also confirmed the Defendant's occupation of the disputed land and the erection of the hut and it becoming a temple during the material period and up to the present time. This witness was both a collector of donations for funerals and wayangs for the kampong. He too was tested on his evidence on points during the 1950s and it is more than apparent that he was familiar with the area over the 20 years and is also a witness of truth. 10

It is respectfully submitted that the oral evidence very clearly establishes the Defendant's occupation of the site for the material period.

However the Plaintiffs' case is not so much a direct challenge of the Defendant's occupation of the land, (the Plaintiffs not having any evidence to contradict that) but that the present temple as sited was in fact sited at a point in the grounds of Nan Chiau Girls School in Lot 260 and that sometime in January 1968 the Defendant moved his temple into the chicken pen on Lots 249 and 250 reconstructed and extended it (NE 26 & 57). 20

The only evidence called by the Plaintiffs in support of this is that of Teng Boon Loh (PW 9) and the broker Eu Wan Cheong (PW 7) who brought about the sale of Lot 249.

According to them (and their evidence does not tally with each other in any event) there was a chicken pen on the disputed land near the boundary of Lot 260 and straddling Lots 250 and 249. 30

Both these witnesses at the time of inspection said that there was a temple on higher land in Lot 260. PW 9 says it was about 8 feet away from the chicken pen (NE 82) and PW 7 says it was 3.5 feet away (NE 26).

It is submitted that there is overwhelming evidence against this being so. 40

Firstly we have the Resurvey plan 14049 P.15 page 4 produced by Wan Hashim (PW 2) of the Chief Building Surveyor's Office from his file. At the junction of the boundaries of Lots 260, 249 and 250 is the outline of a building which is clearly on Lots 249 and 250 and not on Lot 260.

From the same file a sketch plan was drawn

by the Chief Building Surveyor's Department (p.15 page 8) which shows the same site relating to the application to repair the temple of the Defendant.

This is the site that is known as 16-M Narayanan Chetty Road and identified by PW 2 on 10th September, 1968 (NE 10).

10 Secondly it is significant that sometime in 1968 PW 7 had become aware of the shed in front of the chicken pen and between August and October of that year he demolished a staircase erected on Lot 250 (NE 26, 27, 43, 44). He also saw the chicken pen renovated in November or December 1968 (NE 48).

Nevertheless he claims, because he was afraid of some words of reproach by the Defendant, he told no one of either having demolished the staircase or the renovation of the chicken pen (NE 43, 49).

20 PW 7 was at that time employed to collect rents and to arrange for the vacating of the occupants of Lot 250. He also knew that a sum of \$600 had been paid to the owner of the chicken pen so as to clear him from the premises.

Notwithstanding all the above he never told PW 9 of the occupation by the Defendant of the chicken pen.

30 Taking this point further when PW 9 discovered the occupation and renovation of the chicken pen he together with PW 7 and Lim Boon Chia instructed Mr. K.I. Tan to write (A.3) on the 26th December 1969 about an encroachment into the property of the Plaintiffs.

This is totally different from the evidence given by PW 7 and PW 9 that the chicken pen which had been taken over and paid for by the Plaintiffs had been taken over, occupied and renovated by the Defendant (NE 27, 60-1, 85-6).

It is also curious that the first occupant to be paid to vacate was the owner of the chicken pen but this structure was not demolished although nearly all the rest had been. (NE 119-120).

40 Apart from the evidence of the Defendant that the temple was in the same spot throughout Tan Gu Long (DW 2) who erected the structure in 1953

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confirmed it was on the same site as he had built it (NE 164). On cross examination, Yeo Yeow Tong (DW 3) confirmed this too (NE 177).

The vice-principal of Nan Chiau Girls School Teo Seng Pong (DW 5) who had been there for 20 years stated that right up to the fence of the school separating it from Lot 249 there was no building on the school's grounds (NE 181, 182).

The next witness called by the Defendant was a teacher in the same school. He was born in Pukat Road (which is near the disputed land) and knew the area or vicinity well. He had seen the Defendant in a "shack" there 20 years ago and he states that as far as he knew the temple was in the same place (NE 183 - 6, 185). 10

George Ho (DW 7) the architect employed for the school when it was erected confirmed having gone on to the site in 1965 and that the temple was not on the school side of the boundary (NE 187-8). 20

The contractor employed to level the land of the school prior to its rebuilding was Soh Chin Chye (DW 9). He examined the site and saw outside the perimeter of the fence of the school the temple which he himself used for worship and for keeping his things. He also confirmed that there was no other building on the site except the school (NE 190-1).

Nothing could be clearer than the evidence of S.T. Moorthy (DW 10) of the Chief Surveyor's office. He personally carried out the survey leading to P.15-4. He has absolutely no doubt that in 1964 when he did the survey there was no house within 10 feet of either side of the boundary except the structure on the side of the boundary in Lots 249 and 250 and there was no other building between the structure (the temple) and the retaining wall and none between the top of the latter and the school some distance away. 30

Exhibit P15-4

There was a playing field between the last two and some trees. His own drawings from his record book bear out the whole of the above. 40

Wee Soon Kian (DW 11) the photogrammetric engineer produced aerial photographs made in 1958 which he identified as the area of Lots 249, 250

and 260. From that a plot was made (D.9) which again showed the structure which he identified on a visit in 1972 to the site as the temple on the side of the slope or embankment further away from the school.

He says that the present temple is the same structure as shown on the plot and circled thereon by him.

10 Also next to the temple was another building which on his recent visit was not there. The school (Lot 260) and the structures (Lot 250) as shown in the plot are no more there.

There can be no doubt that the temple was never since 1958 on the higher school ground and that this structure has been throughout at least this period in the same place.

20 All in all with both documentary and oral evidence supporting the Defendant's claim that the temple had never been moved what the Plaintiffs are contending is at the best a mistake on their part as to the location of the structure of the Defendant and at the least a convenient fiction on which to hang a theory that the Defendant had taken over a delapidated ruin which happened to be situated near the temple.

Be as it may it will be useful to examine the rest of the evidence given by the Plaintiffs concerning this structure, the chicken pen.

30 The Defendant says that there was a hut owned by a Malay situate below his structure, its roof at the same level as his land. The hut was owned by a Malay and was on Lot 250 about 6-7 feet away. The Malay left after 2 or 3 years and other people^m moved in for a year.

Subsequently it was left delapidated and during the excavations by the Plaintiffs the hut fell down.

40 The evidence of the Plaintiffs begins with PW9 inspecting it with PW 7 and Lim Boon Chia the husband of the second Plaintiff before the purchase of the property.

It is indeed curious but the dimensions were

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well known to PW 9. He gave it as 20 feet in length and 13-14 feet in breadth and a height of 7-8 feet, with a triangular ridged shape roof, and 2 doors at either end each facing Lots 249 and 250 respectively (NE 29-32). The portion jutting out into Lot 249 was vacant land (NE 82). The chicken pen was on both these lots and about one foot from the boundary stone; the one and only boundary stone he saw in the whole area. He did not see any windows in the chicken pen.

There were no steps leading from it down the slope on the side of the pen in Lots 249 or 250 (NE 92-5). 10

The broker's (PW 7) measurements of the chicken pen are somewhat different. He says that it was 32 feet long but could (or would) not say how wide it was but it was 6 feet high, slightly higher than his head. There were door doors facing Lots 249 and 250 respectively and in front of the door facing Lot 249 there was a sort of slope (NE 29-32 and 47-8). The side of the chicken pen was slightly away from the boundary slope (NE 61). 20

That there should be any discrepancy between these two witnesses is strange and it is idle to speculate what Lim Boon Chia would have said had he been called which he was not.

Another discrepancy is that there was a rear door to the temple: this is incorrect because it was a side door. PW 2 inspected the repaired premises to see if the plans had been followed and he confirmed that the doors were the same except that the side door had been walled up. (NE 115). The plan for the repairs is P 15-5 and it shows the door as a side door and not a rear door. 30

Exhibit P15-5

The chicken pen is claimed to have been owned by Surne bin Emaram who occupied a house bordering Arnasalem Chetty Road. On 7th January 1968 "Teng Boon Loh and I paid him the compensation". This was \$600. "He gave a receipt for this payment" which after signing he gave to PW 7.

P22, the receipt is identified by PW 7, who goes on to say "I saw Emaram sign the document at the moment the money was handed to him". However PW 9 has a different version of this "When Emaram gave me the receipt no one else was present but me. PW 7 was inspecting the chicken pen at the time" (NE 84). 40

The details of this contradictory evidence are clear and sharp and there is no other inference than that a deliberate falsehood was being made up

to support this document. It is a double pity that Emaram was not called to clarify this and many other features of the evidence about the chicken pen which will now be dealt with. The Court is asked to draw the inference that any evidence he would have given would have been prejudicial to the Plaintiffs case.

ExP22 The receipt P22 prepared through PW 7 (NE 118) is headed 21A Arnasalam Chetty Road as being the house of Emaram. However on looking at A2 the house on Lot 250 is numbered 22 but that on Lot 252 is numbered 21. This is also confirmed in the Conveyance of Lots 250 and 252 (B 13).

PW 9 in evidence identified the house as being on Lot 250 (NE 83) PW 7 supports this (NE 36).

20 The whole of this receipt is even more strange when A3 the letter from Mr. K.I. Tan is read. Mr. K.I. Tan in his examination in chief (NE 4) confirmed A3 was written by him and that the encroachment referred to in A3 was room 14 of 22A Arnasalam Chetty Road and that it was occupied by Emaram the tenant of No.14 in B3 which has the list of tenants and ground tenants. The encroachment complained of is in connection with the back portion of "the clients room No.14". If it is Emaram's house then it could not be the chicken pen. However, the Plaintiff's evidence is that the encroachment is behind the mosque (NE 100-1).

30 Following on this, weird attempts are made to explain the number 14 which appeared on the receipt. For instance although in B3 number 14 is listed under Lot 252, which is 21 Arnasalam Chetty Road, evidence is given that it should be under Lot 250.

For instance evidence is given by PW 7 that the two items Nos.13 and 14 were added to B3 because information given by the Vendors on this was wrong (NE 36 to 38).

He also states that he did not inform the Plaintiff's representatives of these two additional tenants.

40 Later he corrects his earlier statement that the extra numbers 13 and 14 had been added after the Conveyance had taken place by saying on re-examination he did not know when the purchase price was paid (NE 62).

On PW 7's recall (NE 117) the whole story changes. He then says B3 was given to him after the agreement for sale. He also lastly states that he informed the purchasers.

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PW 9's version of number 14 on P22 is that the two names were added through PW 7 on to the list and that Emaran's house was on Lot 250.

The correction was made by PW 7 through their solicitor.

When it was then pointed out that the number 14 on P22 was wrong he blamed PW 7 who prepared the receipt.

When A3 was put to him he admitted he gave instructions to Mr. K.I. Tan. His explanation for the reference to number 14 was that this number was also given to the mosque and that there were 2 number 14s. (NE 98-101). 10

Mr. K.I. Tan did not recollect on being recalled to give evidence any correction of B3. He also agreed that items 13 and 14 were in respect of ground tenants of Lot 252 (NE 113-4).

It is strongly submitted that PWs 7 and 9 are deliberately trying to correct an error by saying that number 14 is the mosque so as to make A3 understandable and that therefore their evidence is far from an honest one. 20

It is also submitted that the Plaintiffs were so anxious to fix the alleged temple as an encroachment when they gave notice of it that they changed their oral evidence to suit the situation.

Finally it is strange that not one word about the temple on the school ground or the occupation of the chicken pen was ever raised in correspondence between the then solicitors for the Plaintiffs and the Defendant or in the pleadings. 30

Further why should any Plaintiff wish to pay to a trespasser who is alleged to have broken into and occupied his property a sum of \$40,000 (A 17-20) for vacant possession and a Conveyance of it.

Before turning to the next issue of damages it is necessary to comment on what the Plaintiffs will probably try to make much ado of.

It is not in dispute that the Defendant is illiterate and of most humble origin and background. He has only been able to survive with the assistance of those around him. His ignorance of law or practice or the English language and the prevailing fear bred therefrom is common knowledge in such classes of persons. Nevertheless he has given a reasonable explanation in respect of the 40

Exhibit A17-
20

addresses on the Identity Card (NE 135) viz. that his old address and a neighbour was well known but not his present one.

In respect of citizenship his explanation of the circumstances it was done has the ring of truth bearing in mind the date he retained it when citizenship was offered freely to all those residing in Singapore and many thousands took advantage of the facility (N 136).

10 Ex. P17 The application for exemption from property tax (P 17) was in English and prepared by a worshipper. It had a basis of truth in that the Defendant had an idol, a deity, in his premises but the writer no doubt enthusiastically pursuing a hope to avoid tax may have misunderstood the facts when he referred to it as a temple 20 years ago (NE 136). At the most it was an overstatement.

It is respectfully submitted that the above do not in anyway discredit the Defendant.

20 As for damages the Plaintiffs do not dispute the bulldozing and that the Chief Surveyor's request to take remedial action to prevent land slides (NE 105 and P15 to 20).

The photos P1 to 6 and 12 speak for themselves and the Court has been able to verify the extent of the damage to the land and the temple.

30 The evidence of Cheong Chee Teck DW 8 (NE 188-190) Structural Engineer sets out the extent of the excavation to the slopes around and the land beneath the temple and the resultant damage to it and the shed behind.

The cost would be around \$30,000 to \$35,000 and as this would be the only way to do it without going on to the Plaintiffs' land it is submitted that a sum to cover this should be awarded.

40 The Defendant also now asks for an amendment to the amount estimated for repairing the damage set out under paragraph 13 of the Counterclaim to \$35,000.

In addition the Defendant has suffered general damages namely the repairs to the shed at the rear of the temple and to the temple itself and for trespass.

Finally the Defendant asks for the declaration set out in the Counterclaim and for the costs of that and the claim.

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Suit No. 963/71

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The Defendant's Submission
on the Evidence

Supplement

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Summary of the Defendant's Submission on the more salient points of evidence.

In the period 1953 to 1967 Plaintiffs have no direct evidence. The direct evidence of the Defendant himself, DW 2, DW 3 and DW 6 therefore remain incontroverted, and following the failure of Plaintiff Counsel to break them in ~~XXN~~, their evidence should be accepted.

10

Note here that Plaintiffs did not call the evidence of their predecessors-in-title.

Further, Defendant's oral evidence can be supported by evidence of a more definite nature in specific periods:-

- (i) In 1958, DW 11 Wee Soon Kiang testifies that there was a structure there in 1958 and was 'probably' in the same place as the temple presently is (NE 207). Strangely enough DW 11 was not cross-examined. There is also no evidence to contradict this.
- (ii) In 1964, DW 10 S.T. Moorthy surveyed Lot 260: result in CP 14049, and picked up a structure straddling Lots 249 and 250, i.e. the exact spot on which the temple is now standing. DW 10 cannot remember if the structure is the temple, but is absolutely certain that there were no other structures within 10 feet on either side of the boundary or between the retaining wall and the boundary (NE 204).

20

30

Shortly after, DW 7 George Ho arrived on the scene. Ho pinpoints the location of the temple on CP 14049 and on the actual ground (NE 187, 188, 201 etc.). Whatever gap in the evidence of

40

DW 10 is filled. DW 7 visited site regularly until completion of school in 1969 (NE 188).

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Court Notes of Evidence

Defendant Counsel's Written Submissions on the Evidence (continued)

- (iii) In 1965-66, DW 9 Soh Chin Chai levelled the ground in Lot 260. Confirms that temple outside Lot 260 and in Lots 249/250, and in same spot as now (NE 190).

10 Pertinent at this stage to ask the following questions:-

- (a) Would a competent architect allow an unauthorised structure to remain on a land on which a new building is to be erected.
- (b) Could it have been physically possible to level the land in Lot 260 in 1965-66 if the temple or other structure were on it?

20 (c) Could the school have been built if the temple were really on Lot 260 in 1967 as alleged by PW 7 (NE 26) and PW 9 (NE 82). Consider especially the position of the school building. The block next to Lots 249/250 is barely 10 feet from the boundary. Refer to PW 9's evidence that the temple was about 8 feet in Lot 260. Compare evidence of PW 7 on same point.

30 (iv) PW 2 Wan Hashim from the CBS (note that this is PW) marks Defendant's temple using CBI4049 - it is the same structure straddling Lots 249/250 and already identified by DW 7 as being the Defendant's temple.

See P15-4 where the structure is encircled and shaded red and marked '16-M Narayanan Chetty Road'.

Exhibit P15-4

40 (v) DW 5 Teo Seng Pong of the Nan Chiau Girls' School on Lot 260 who has been teaching in the school since the early 1950s, confirms that there was no building on the school field between the old school building and the retaining wall (NE 181) Evidence is supplementary to that of DW11 (NE 207), DW10 (NE 203), DW 9 (NE 91) and DW 7 (NE 187). If there is any doubt as to whether there is any structure between

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the retaining wall and the boundary
DW 10 clears doubt with his firm evidence
(NE 204).

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Final conclusion is that Defendant's temple
must be outside Lot 260 and in Lots 249/250.

From 1964 onwards the position is positively
and overwhelmingly proved by documentary evidence
and by independent witnesses.

In period 1953-1964 evidence is oral, but
supported by evidence of DW 11. And since proved
to be so from 1964, presumption that temple must
also be there before 1964 in the light of evidence
by DWs and in the absence of direct evidence by
PW to rebut that.

10

Some comments on the Plaintiffs' case

The Plaintiffs' case is very straightforward.
In 1967 the Defendant was in Lot 260. When he
first went there no one knows. Some time in 1968
(after Emaram vacated on 7.1.68 but before the
address was given on 6.2.68) Defendant moved
into the chicken pen and took over it.

20

The Plaintiffs' case would have succeeded if
they had simply produced evidence that the
Defendant moved into the chicken run in 1968
without stating that he was formerly on Lot 260.
It would not have been possible to contradict
directly any claim that the Defendant moved in in
1968, except with oral evidence. The question
before the Court would simply be who to believe.

But by stating that the Defendant was in
Lot 260, the Plaintiffs have exposed themselves.
For the overwhelming evidence from both documentary
and independent sources is that the Defendant
could not possibly have been in Lot 260 in 1967.

30

The failure of PW 7 and PW 9 lie in their
ignorance of the physical conditions and activities
of Lot 260 in that crucial year of 1967, indeed in
the crucial period of 1964-9.

So PW 7 and PW 9 insist that the temple was
in Lot 260 in 1967 and even attempted to give the
distance of the temple from the boundary (CN 26
and 82). (See also NE 30, 45, 96, 97).

40

The lie is all the more easy to expose.

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Some comments on the receipt (P22)

No. 6

Ex. P22 The receipt P22 prepared through PW 7 (NE 110) is headed 'No. 21A Arnasalam Chetty Road', which we are given to understand is the house of Emaram.

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But there is no evidence at any time that No.21A Arnasalam Chetty Road is on Lot 250. We are only led to believe that it is on Lot 250.

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(continued)

10 But does No.21A truly exist? An examination of the relevant documents and conveyances relating to Lot 252 and Lot 250 (e.g. B13) in the B Bundle shows that the premises on Lot 250 are numbered 22A and 22B Arnasalam Chetty Road. The premises on Lot 252 are numbered 21. There is no No. 21A.

B-3, the requisition relating to the 1967 conveyance, also does not mention 21A. Nos. 22A and 22B are listed under Lot 250 and No. 21 under Lot 252. And Emaram's name appears under Lot 252.

20 Unaccountably, No.21 has become No.21A in the receipt.

PW 7 has of course tried to explain B3 (NE 117, 118, 38). But his explanations conflict with that of PW 1 (NE 113, 114) and with sound conveyancing practice. All that aside it also conflicts with plain common sense. If Emaram was indeed a tenant on Lot 250 and had been inadvertently left out, then his name should have followed the numbering of the tenants in Lot 250 and not the tenants in Lot 252.

30 Even the receipt, which must now be highly suspect (to put it mildly) supports the view that Emaram is really a tenant on Lot 252. A close reading of the receipt will reveal that there are two parts to the matter. The compensation is paid to Emaram for vacating

- (a) 'the above premises' (namely No.21 Arnasalam Chetty Road),
- (b) 'and the chicken-pen in Lot 250'.

They are quite obviously two different premises

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in two different Lots. But of course everything would have been more obvious if the address in the receipt had not acquired that all important alphabetical suffix and had remained as No. 21 Arnasalam Chetty Road.

Submission by Lai:-

Claim stands or fall on the evidence of D.W.1. Depends on his veracity; D.W.1 not a witness of truth; urges court to hold this as fact.

No documentary evidence produced by D.W.1 to corroborate his claim that he occupied the land since the year 1953. 10

Exhibit P15-1 and P17 written before the Statutory Declaration for adverse possession was made.

Gave me no idea as to the origin of the defendant's claim. No documentary evidence - repairs carried out, no vouchers, some sort of documentary evidence should be available. Probabilities of defendant's case will have to be tested against the probabilities of the case itself and the documentary evidence. 20

Exhibit P15-1

Census card: some sort of a card: no other value; 1956 defendant found guilty of opium smoking in a hut in this area and imprisoned. First said hut was in Martin Road finally defendant admitted it was in the corner of Martin Road/Narayanan Chetty Road near the bakery (N.E. page 140-142). This would put the hut in Lot 249 - P.15-1 dated 5.9.68. Not a word mentioned about it having been a temple.

N.E. p.143 - visits of Tan Gu Long to temple; demeanour of D.W.1 and D.W.2 - none of the worshippers called to give evidence N.E. p.146; could not even give the names of any of the worshippers. Mr. Tan was a worshipper of the temple for 6 or 7 years from 1972. 30

Donated \$3,000/- to \$4,000/- for renovation of the temple. Why was Mr. Tan not called as a witness - N.E. p.15, et seq.

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In 1964-65 defendant said he carried out substantial repairs - where are the repair bills and vouchers.

Goh Leng Mong, D.W.1's brother has stayed with him in these premises since 1953 - he was never called. Is still alive. P.17 dated 10.1.70. Origin of occupation dates back to 1950 or thereabouts. It has always been a temple and not a residence. Statutory Declaration dated 28.2.70. No facts set out in S.D. No mention of pre-war entry or entry in 1950 - P17 no mention of a temple. D.W.1's evidence contradicts that of P.W.8 as regards the key incident - N.E. pp.62, 153. If D.W.1 acquired title in 1965 it is surprising he should allow someone to interfere with his entry. Lengthy cross-examination of P.W.7 - he was witness of truth. P.W.7 saw the boundary stone at the junction of Lots 249, 250 and 260 - N.E. p.33. Defendant's witnesses do not appear to know where the boundary stone is.

D.W.5 N.E. p.181.

Anything beyond the retaining wall was considered as outside the school by defendants witnesses. Distances from retaining wall - boundary stone 20-30 ft.

D.W.6 - N.E. p.184; D.W.9 N.E. p.190, 193.

Witnesses like D.W.5 and D.W.6 and D.W.9 made a common and fallacious assumption, that assumption being that the retaining wall and the fence therein coincided with the boundary line dividing Lot 260, Lot 249 and Lot 250. Following upon this they came to the conclusion that what was outside the wall and the fence was outside the school land. No contradiction against evidence of P.W.7 and P.W.9. These fallacious assumptions would go to show that none of the defence witnesses knew the locus of the shed which P.W.7 and P.W.9 described as a temple on the school land.

D.W.7 N.E. p.187 and p.197.

D.W.7 not prepared to describe distance between the retaining wall and the temple. Unable to describe

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Plaintiff's Counsel's Reply (continued)

in any reliable fashion the structure which he saw. When shown photographs he said structure which he saw was not the same as that in the photographs. D.W.7 relied heavily on P15-4. This plan showed geography of the place in October 1964. Trespass took place in early 1968 after the chicken pen was surrendered. P.W.7 and P.W.9 both honest witnesses. No question of Law.

D.W.1 trespassed into the disputed land in January 1968. O.I.T. in respect of prayers 1-5 and costs. Counter-claim should be dismissed. 10

Wee:-

Plaintiffs case was that the temple on Lot 260 was on higher land. N.E. pp.29, 30, 46, 82 and 94.

By me: D.C. D'Cotta

Judgment reserved.

No. 7

Grounds of Judgment of D'Cotta J.

March 1973

Exhibit A38

Exhibit D3

Exhibit A38

No. 7

GROUND OF JUDGMENT OF D'COTTA J.

The Plaintiffs' claim is for possession of a portion of land situate on two adjacent pieces of land and known as Lot 249 and Lot 250 of Town Sub-division XXI. Lot 249 has a frontage to Narayanan Chetty Road and Martin Road and Lot 250 has a frontage to Arnassalam Chetty Road and Martin Road. The rear of Lot 249 and Lot 250 are bordered by the Nan Chiao Girls School (hereinafter referred to as "the school") which is situated on Lot 260. The said two pieces of land are shown in Exhibit A38 which is a copy of the Plan of the Locus in quo and the portions claimed being delineated blue and red. The Plaintiffs purchased Lot 250 and 252 on the 8th August 1967 and Lot 249 in December 1970. There is no dispute concerning Lot 252. 20 30

On the 28th August 1970 the Defendant swore a Statutory Declaration - Exhibit D3 - to the effect that he had occupied that portion of the two pieces of land delineated blue and red in Exhibit A38 from 1953 to 1965 and he caused the said Statutory Declaration to be registered in the Registry of Deeds.

By virtue of the said Statutory Declaration the Defendant claimed that the title in respect of the said two pieces of land delineated blue and red in Exhibit A38 occupied by him was vested in him.

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The Plaintiffs in this case are Teng Swee Lim, Ong Tisp (m.w.), Liew Choon Tee (m.w.) and Chew Guat Tee (m.w.). They do not appear to know very much about this matter except that they are the registered owners of the properties in question.

Grounds of
Judgment of
D'Cotta J.

March 1973
(continued)

10 The facts of the Plaintiffs' case are as follows:-

Some time towards the end of January, 1967, Teng Boon Loh (P.W.9 the husband of the 3rd Plaintiff) and Lim Boon Chia (the husband of the 2nd Plaintiff) the Agents of the Plaintiffs both of whom signed the Agreement to purchase Lot 250 and Lot 252 were taken by a broker Eu Wan Cheong (P.W.7 hereinafter referred to as "the broker") to inspect Lots 250 and 252 as they were for sale. In the course of their inspection they went to that portion of the land delineated blue and red in Exhibit A38. This portion is on high ground. On going to this place, Teng Boon Loh said in evidence that he discovered on close inspection a boundary stone and saw a chicken pen. This chicken pen was oblong in shape and it had old plank walls and an old asbestos roof. The length of the chicken pen was slightly over 20 feet, the breadth 13-14 feet and the height about 7 feet. The chicken pen had 2 doors, one facing Lot 249 and the other facing Lot 250. Part of this chicken pen encroached in Lot 249 and in front of it was vacant land and a dilapidated structure which comprised old rotten planks. Apart from this both the broker and Teng Boon Loh observed a temple on higher ground in Lot 260. This temple was about 8 feet from the nearest point of the chicken pen and was more or less square in shape and facing Kim Yam Road. Teng Boon Loh marked with a circle the position of the temple in Exhibit A38 and the broker had this to say in examination-in-chief and I quote "When I first visited Lot 250 in 1967 the shed was on the right hand side of the chicken pen in Lot 260 which is now the school compound. In 1968 the same person Goh Leng Kang moved the shed which was in Lot 260 to the front of the chicken "pen" and under cross-examination he said and I quote "In 1967 when I first went to inspect the land the temple was to the right of where it now stands".

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Grounds of
Judgment of
D'Cotta J.

March 1973
(continued)

After this inspection the Plaintiffs through their Agents purchased Lots 250 and 252. The purchase was effected on the 8th August 1967. Having done so they appointed the broker to collect the rents from the tenants occupying Lot 250 and Lot 252. They also authorised the broker to negotiate with the tenants on the land with a view to paying them compensation on their vacating the premises they occupied. At the time Lot 250 was purchased the land was occupied by 48 families comprising Chinese, Indians and Malays who occupied an old brick and tiled building which was let out in rooms in addition to various out-houses on the land. The broker started collecting rents in September 1967 and ceased collecting in December 1969. 10

On the 7th January 1968 Teng Boon Loh again visited Lot 250 accompanied by the broker and on this day they paid off the first of the ground tenants, one Surne bin Emaran. There is some dispute as to whether Emaran's house is in Lot 250 or Lot 252 but this is somewhat irrelevant as Emaran also occupied the chicken pen on that portion delineated blue in Exhibit A38 in Lot 250 and he was paid by Teng Boon Loh \$600 as compensation for vacating both the chicken pen and his house. Teng Boon Loh personally paid the \$600/- to Emaran outside Emaran's house and Emaran gave him a receipt for it - Exhibit P22 marked for identification. Unfortunately Emaran was not called as a witness. The broker continued to collect the rents and paid compensation to the occupiers of the land for vacating their premises until some time between August and October 1968 when he discovered that someone had erected a wooden staircase on Lot 250. The staircase was in a somewhat similar position as the one shown in Exhibit Photograph 10 except that it was a wooden one. The broker demolished the wooden staircase immediately. According to the broker, the Defendant reprimanded him for demolishing the wooden staircase and threatened him not to interfere in the matter if he was desirous of carrying on and making a living. According to the broker, the Defendant was most aggressive and he formed the impression that the Defendant wanted to deal with him. The broker therefore did not inform Teng Boon Loh about his demolishing the staircase and the removal by the Defendant of the shed or temple to the front of the chicken pen because under cross-examination he said he would not dare as he was afraid of the Defendant 40 50

and because he was being paid \$100/- for each house vacated and considering the fact that there were more than 30 houses he would be able to earn more than \$3,000/-. It is for this reason that he did not disclose to Teng Boon Loh about the chicken pen being transformed into a temple and the demolition of the wooden staircase.

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(continued)

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As a result of an application made by the Defendant on the 5th February 1968 a house number was affixed to the chicken pen and it was known as 16-M Narayanan Chetty Road. On the 5th September 1968 the Defendant made an application to the Chief Building Surveyor's Department for permission to carry out general repairs and replaclement to the roof of 16-M Narayanan Chetty Road - Exhibit P15-1. A building inspector Che Wan Hashim (P.W.2 hereinafter referred to as "the building inspector") inspected the site on the 10th September 1968.

Exhibit
P15-1

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He was brought to the site by a Mr. Tan and gained access to the site by way of Kim Yam Road through the school compound. The entrance by Narayanan Chetty Road, according to the building inspector, was closed by a fence. At the time of his inspection the building inspector found that the premises had no lavatory or bathroom inside or attached to it. It had two parts - one part had an open shed and next to it an enclosed building. The plank walls of the enclosed building was old. The floor was of concrete and old.

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On the 5th December 1969 the building inspector again visited the premises. This time he could not gain access through the school compound as a fence had been put up. However, he went through an opening in Narayanan Chetty Road. He went up a flight of concrete steps to the shed or temple. These steps were not there on his first visit in September 1968. He found the premises completed and painted as shown in Exhibits P7, P8 and P9 (photographs).

Exhibit P7,
P8 & P9

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On the 26th December 1969, Teng Boon Loh visited Lot 250 again as the Plaintiffs were desirous of erecting a godown on this site. On going to the site he discovered for the first time that what was once a chicken pen was now a temple. He returned to his office and immediately sent for the broker. The broker was severely reprimanded by him for not informing him and his other partner Lim Boon Chia that the chicken pen had been

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(continued)

converted into a temple and the broker's services were terminated forthwith. After this the broker, Teng Boon Loh and Lim Boon Chia proceeded to the office of Messrs. Eber and Tan where they consulted Mr. K.I. Tan an advocate and solicitor who wrote a letter to the Defendant - Exhibit P10 - and handed it to the broker who was forced to serve it on the Defendant by Teng Boon Loh. On the same day the broker saw for the first time the staircase shown in Exhibit P10 (photograph) when he went to serve this notice. The staircase incidentally was now a concrete staircase.

Ex.
P10

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Some time in March 1970 according to Teng Boon Loh, he contacted the Defendant for the purpose of asking him to return the land as the Plaintiffs were desirous of building a warehouse on the site and the Defendant said he was prepared to return the land when the building had reached his land. When the construction reached the second storey, the Defendant backed out and refused to return the land. Subsequently Teng Boon Loh again approached the Defendant and this time according to Teng Boon Loh, the Defendant asked for \$27,000/- and also suggested to Teng Boon Loh that they should buy the neighbouring land i.e. Lot 249 belonging to the United National Finance Company (hereinafter referred to as "the Finance Company") after which purchase he would leave the land. Teng Boon Loh accordingly went to the Finance Company and eventually bought Lot 249 in the name of the Plaintiffs. After this purchase Teng Boon Loh asked the Defendant to leave the place but he refused and this time he asked for \$40,000/-. On behalf of the Plaintiffs he agreed to pay \$40,000/- to the Defendant. Accordingly the Plaintiffs' then Solicitors, Messrs. Chung & Co. were instructed to draw up an agreement - Exhibit A17 - and a sum of \$20,000/- was then deposited with Messrs. Chung & Co. The Defendant after many postponements went back on his words and negotiations fell through.

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Exhibit A17

Lot 249 adjoining Lot 250 was purchased by the Plaintiffs in December 1970 from the Finance Company. According to Mr. See Geok Tee (P.W.8 - the sub-manager) Lot 249 was purchased by them in 1965 with vacant possession. After the purchase they fenced up Lot 249 in 1966. This fence was made of wood and zinc and painted black. It divided Lots 249 and 250. According to Mr. See,

in October 1968 the Supervisor of the school applied to the Finance Company for the keys to the gate of this fence leading to the vacant land (Lot 249) so as to enable the school children to have easy access across the land to the school and vice versa. The Finance Company gave the keys of the gate to the Supervisor who returned them to the Finance Company in September 1970. When Mr. See received the keys from the Supervisor of the school he went to the site to ascertain if the gate was closed. He discovered the steel hatch of the gate was damaged; it was bent and not serviceable. Eventually he slammed the gate because it could not be locked. A few days after this incident i.e. in September 1970 the Defendant according to Mr. See went to his office. There he interviewed the Manager of the Finance Company a Mr. Yap and applied for permission for worshippers to use the path that led to the top of the temple on the hill. The Defendant informed the Finance Company that he had been living in that locality for about 10 years. Permission was given to the Defendant by the Finance Company for the sake of the worshippers.

As a result of the failure of the Plaintiffs to reach a satisfactory agreement with the Defendant they instructed their solicitors to institute proceedings.

The Defendant in this case is one Goh Leng Kang (D.W.1). In evidence he stated that before the war he lived at 15 Muthu Raman Chetty Road with his parents and two brothers in two rooms on the first floor of the building. He was acquainted with the area delineated blue and red in Exhibit A38 and before the Japanese occupation he erected a hut on this piece of land comprising 4 posts and a slanting roof. He stored some boxes and timber in this hut and sometimes used it for trying to brew some wine but without success. This was about 3 months before the Japanese war. During the Japanese occupation he dared not approach this hut as the Japanese soldiers were there and they were occupying the hut that he built. One or two years after the war he returned to the site; he found the structure was still there but its condition was bad. He replaced the roof and removed the timber from the hut and cleared the grass. He stored new boxes in the hut and started a small business selling fruits and at times when he was tired he rested in this hut. Some time in 1952/53 the Defendant's younger brother got married and the Defendant removed from

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15 Muthu Raman Chetty Road and moved into this hut which he renovated. The area renovated by him was about 11-12 feet by 14-15 feet with plank walls and wooden pillars. In the year 1953 he renovated the bathroom and in 1954 he erected a lavatory. He also planted herbs, stone guavers and cleared the overgrown grass and small trees. He gained access to this hut through NarayananChetty Road. He removed his old furniture from 15 Muthu Raman Chetty Road to this hut. Whenever it rained the rain water would wash down the slope and on fine days he gained access to the hut by a path caused by the flow of water.

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In 1957 the Defendant renovated the hut with a gable V-shaped roof. After the renovation the hut had a main door and two windows. There was a door facing the said school. Some time in 1964/65 he extended according to him the width of the hut four feet in front and six feet at the rear owing to the increasing number of worshippers. At the same time he erected a temple shed in front of the original hut. In 1967 he said the cement steps shown in Exhibit P10 (photograph) was constructed by a contractor. In 1968 there was another renovation and it was done by the same contractor who constructed the concrete steps in 1967. According to the Defendant the school fence separated his hut from the school. The fence was slightly over 12 feet high; there was also a retaining wall preventing the earth from sliding down. The barbed wire fence was at the top of the slope which was a steep one. Some portions of the slope had a retaining wall, some had not. The school was demolished and in 1967 work on the building of a new school was started and completed at the end of 1968. The Defendant denied that his hut was on the school side and that the position of his hut had not changed.

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Exhibit P10

The Defendant then proceeded to give a history of himself. He said that he was a hawker in 1953 and some time in 1963/64 he stopped hawking because he was possessed by some diety. He used to go into a trance when the diety or God entered upon him as a result of which he cured his elder brother and mother and the news spread and more and more people came and he cured many others. Since that time he had remained a medium and the premises he now resides in is used as a place of worship.

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Ex. D2
Ex. P15
& P7

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In 1957 a census was conducted in Singapore as a result of which a census card was nailed to this hut. The Defendant produced the card which was admitted and marked Exhibit D2. He then applied for permission to renovate the whole premises - see Exhibits P15 and P7 (photograph). In the year 1967 a zinc fence was erected along Narayanan Chetty Road. According to the Defendant he objected to this fence. He spoke to the workers and they told him that it was none of their business as they were working on their employer's instructions. After completing the fence they locked the gate and the Defendant followed the workers to the bakery which was in front of the fence and he complained to the clerk of the bakery about the zinc fence. His main objection was that with the erection of the fence the worshippers coming to his temple were prevented from doing so especially if the gate was locked. As a result of his plea the workers according to him were instructed to open the gate. The school's students made use of this entrance to go to and from the school. The Defendant learned that the fence was erected by the Finance Company and according to him two weeks after the fence was erected a Mr. See of the Finance Company visited the site and informed him that he could not leave the gate open because this would lead to the residents nearby dumping dead chicken and rubbish on the land. The Defendant informed Mr. See that apart from the school children making use of the path the worshippers of his temple were also making use of the same path. He also informed Mr. See that from time to time he burnt the rubbish on the land. As a result of this interview the gate was left open and not locked. A fortnight later according to the Defendant Mr. See again came to see him with two keys. He wanted to give one key to the Defendant and the other to the school, but the Defendant refused to accept the key saying it would be rather troublesome. On hearing this refusal Mr. See told him that he would bring both keys to the school. Some time later Mr. See visited the Defendant and gave him his personal card. Not knowing the contents the Defendant asked a Mr. Cheam who brought him to see a Mr. Yap, Manager of the Finance Company and as a result of this interview, the Defendant said, the gate was not locked. The Defendant admitted receiving a letter on the 26th December 1969 from Messrs. Tan and Tan - Exhibit A3. He did nothing about this letter concerning his encroachment on the Plaintiff's

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Exhibit A3

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property. The broker according to the Defendant interviewed him and told him that his premises was encroaching on other people's land and that he was the broker who had sold that land. The broker also told the Defendant that if he did not remove from the place the Government would demolish it as it was a fire hazard. According to the Defendant the broker made three visits to him. On one visit the broker came with a great number of people among whom were Teng Boon Loh and Lim Boon Chin. The Defendant went on to say there was correspondence between him and the solicitors for the Plaintiffs as a result of which an agreement was reached that on payment of \$40,000/- the Defendant would vacate the premises. Although the Plaintiffs made this offer according to him the Defendant stated that he had to consult his worshippers and his diety. After consultation with his diety he was advised by the diety not to move away and the worshippers also agreed that he should not do so. In October 1969 the Plaintiffs started bull-dozing Lot 250 and by the middle of 1970 the bull-dozing of the area had reached the perimeter of the Defendant's premises. By August 1970 cracks began to appear in his premises and the temple shed. There were landslides pretty close to the premises and as a result of the landslides the pillars which was buried in the land began to show the effect of the bull-dozing - Exhibits P1-6 (photographs). According to the Defendant the Plaintiffs then erected a covering to prevent erosion and in July 1971 he claimed a sum of \$12,000/- for damages arising from the bull-dozing. The Defendant further explained why his address was shown as 17 Muthu Raman Chetty Road and attributed it to the fact that he knew the people who had lived there for a long time and that is why he had given his address as 17 Muthu Raman Chetty Road. In 1968 the premises in which he resided at the top of the hill was given a house number by the Government and in 1970 he wrote to the Property Tax Department (Exhibit P17) for the purpose of getting exemption from property tax. The letter was prepared by one of the worshippers. He explained that the error in Exhibit P17 might have been due to the fact that the person who wrote is misunderstood that the diety was installed as soon as he had the premises.

Exhibit P1-6

Exhibit P17

This protracted trial which commenced on the 24th April 1972 with intermittent breaks lasted 19 days and concluded on the 14th February 1973

during the course of which I had every opportunity of examining and evaluating the evidence as well as the demeanour of every witness in the box.

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10 The strength of the Plaintiffs' case is that they purchased Lots 250 and 252 in August 1967 from their predecessors in title subject to the existing tenancies and without notice of any claim. The tenants of Lots 250 and 252 are enumerated in Exhibit B3. The Defendant's name does not appear in B3 and if he was on either Lot 250 or Lot 252 he was there as a trespasser. If the Defendant as he alleges was in undisturbed continued possession from 1953 to 1965 it is indeed strange that he waited 5 years to stake his claim. Again the Plaintiffs purchased Lot 249 in December 1970 with notice of the Defendant's claim but the Plaintiff's predecessors in title i.e. the Finance Company purchased Lot 249 in 1965 with vacant possession which means the Defendant was not on Lot 249 at the material time - 1965. Such being the case I rejected the submission of counsel for the Defendant that the title to the disputed land was complete 12 years before action was brought by the Plaintiffs. The Plaintiffs' right and title to the land had never been extinguished: hence the onus is on the Defendant to prove that he was in continued undisturbed possession for the statutory period i.e. from 1953 to 1965.

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40 Both counsel for the Plaintiffs and the Defendant were agreed on the question of the law and at the close of the defence case, counsel for the Defendant submitted that the Defendant's claim that he had been in continued undisturbed possession of the land in Lots 249 and 250 and delineated blue and red in Exhibit A38 for 12 years from 1953 to 1965 stood or fell on the Defendant's evidence with which view counsel for the Plaintiffs concurred. Let us now examine the Defendant's evidence and that of his witnesses against that of the Plaintiffs'.

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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.

The Defendant stated that he erected the shed or hut on Lot 250 before the Japanese war but vacated it during the war owing to the presence of Japanese soldiers on the land. He returned to the site one or two years after the war and found the shed or hut in a bad condition. According to him, he replaced the roof and rafters and in 1953 he renovated the shed with plank walls and wooden pillars. The area renovated was about 11-12 feet in length and about 14-15 feet in breadth. He also renovated the bathroom at the back. In 1954 he erected a lavatory. In 1957 the shed was again renovated, this time a V-shape gable roof was erected. In 1964 or 1965 due to the fact that many worshippers were coming to the temple the shed was again renovated and extended 6 feet in length and 4 feet in breadth and a temple shed was erected in front of the original shed. In 1968 due to the generosity of a Mr. Tan, one of the worshippers of the temple, extensive renovations were carried out. This Mr. Tan was also responsible for the erection of the concrete staircase as shown in Exhibit P10 (photograph) in 1967.

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Exhibit P10

One of the witnesses called to testify on behalf of the Defendant was one Tan Gu Long (D.W.2 - an odd job labourer) who said that he erected a house for the Defendant at the foot of Nan Chiao Hill which is now a temple about 20 years ago. This would be around 1952. Now according to the Defendant this house or shed was erected by him before the war. After the war when he revisited the site and found the shed in bad condition he replaced the roof and rafters: he removed the old boxes and timber in the shed and cleared the grass all by himself. In 1953/54 he again renovated the premises this time he built a lavatory and renovated the bathroom. According to the evidence of the Defendant, Tan Gu Long carried out the 1957 renovations. Tan Gu Long under cross-examination said that when he went on the site he saw 4 pillars which were there, a zinc roof and some old plank enclosure. This, according to the Defendant, was erected by him and he himself replaced the roof and rafters and in 1953/54 he made further renovations to the bathroom and erected the lavatory.

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Therefore it is incorrect for Tan Gu Long to say that he originally built a house for the Defendant 20 years ago. What he did, in fact, was the renovations in 1957. I rejected the evidence of Tan Gu Long.

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Under cross-examination the Defendant admitted that the extensions made in 1964/65 were very major in comparison to the 1968 renovations to the shed, yet when the building inspector visited the site on the 10th September 1968 as a result of an application by the Defendant to the Chief Building Surveyor to renovate the premises this is what he had to say:-

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"At the time of my inspection there was no lavatory or bathroom inside or attached to the building. The building had two parts, one part was an open shed and next to it an enclosed building. The plank walls of the enclosed building was old. The floor was of concrete and old. I did not see any concrete steps leading from this shed to the ground below."

At the time of the building inspector's visit in September 1968 he reported that there was no bathroom or lavatory inside or attached to the premises, yet the Defendant in evidence stated that he renovated the bathroom in 1953 and erected a lavatory in 1954.

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On the 5th December 1969, the building inspector again visited the premises and this was what he reported:-

"I went up a flight of concrete steps to the temple. These steps were not there on my first visit. I didn't see it."

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On this point, the Defendant in evidence stated that these concrete steps were erected in 1967 and so did the witness Yeo Yeow Tong (D.W.3 - the hawker) but the building inspector, an independent witness, on his first visit in September 1968 did not see them. From this the obvious inference is that the concrete steps were erected some time between September 1968 and December 1969.

The Defendant further stated that one of the reasons for renovating the temple in 1964 was due

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to the fact that worshippers were increasing in number. Under cross-examination he was asked to disclose the identity of some of his worshippers and all he could say in reply was that one was called Fatty or Fatso and another called Si-Ee. Fatty could mean anyone and Si-Ee when translated into English means fourth aunt. It is indeed surprising that from among the number of worshippers in whom he had so much trust and with whom he even consulted as to whether or not he should vacate the temple, the Defendant was unable to produce anyone in particular to testify on his behalf, not even the generous Mr. Tan who donated \$3,000/- to \$4,000/-. Even the Defendant's brother who stayed with him throughout on the disputed land nor the clerk in the bakery to whom the Defendant complained about the locked gate was called to give evidence on his behalf.

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On the question of the zinc fence, the Defendant in evidence further stated that in 1967 this fence was erected along Narayanan Chetty Road and he objected to this. He spoke to the workers who told him it was none of their business and that they were working for their employers. After the fence was completed the gate was locked. According to the Defendant, the bakery people after his complaint thought for some time and then instructed the workers to open the gate. This aspect of the evidence is untenable as there is no evidence whatsoever from the bakery people, in particular the clerk and I rejected them.

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As a result of the locked gate, the question of the keys to the gate then arose and the Defendant gave his version as follows: He said after the workers had put up the fence and locked it, 2 weeks later a Mr. See went to see him and Mr. See told him that he could not leave the gate open because this would lead to the residents nearby dumping dead chicken and rubbish on the land. The Defendant further explained to Mr. See that worshippers and school children were making use of the path and he also told Mr. See that from time to time he himself burnt the rubbish on this land. Mr. See thought for a while and then left him. The gate was left open and two weeks later, the Defendant said, Mr. See again went to see him. Mr. See had 2 keys one of which he wanted to give to the Defendant and the other to the school. The Defendant refused to accept the keys saying that

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it was rather troublesome. According to him Mr. See replied that he would give both keys to the school but didn't know whether Mr. See did this or not. The Defendant said that Mr. See went to see him a third time and this time he gave him a visiting card. The Defendant showed this card to a Mr. Cheem who escorted the Defendant to Mr. See's office where he was taken by Mr. See to interview a Mr. Yap the Manager of the Finance Company. As a result of the interview the gate was not locked.

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Mr. See Geok Tee (P.W.8) the sub-manager of the Finance Company in evidence gave a completely different version of the incident of the keys to the gate of the fence around Lot 249. This is what he had to say:- The Finance Company purchased Lot 249 in 1965 with vacant possession. In 1966 the Finance Company fenced up the property. The fence was of zinc and painted black and the gate of wood and zinc. The gate was locked. Some time in October 1968 the Supervisor of the school applied to the Finance Company for the keys to the gate leading to the vacant land i.e. Lot 249 to enable the school children easy access to the school across Lot 249 and vice versa. There is only one gate to the fence and the keys refer to this gate. The Finance Company surrendered the keys to the school and obtained a receipt for it - Exhibit P23. On the 26th September 1970 the school returned the keys to the Finance Company - Exhibits P24 and P24A refer. After receiving the keys Mr. See went to inspect the site to ascertain if the gate was closed. He discovered that the steel hatch of the gate was damaged, it was bent and not serviceable. Eventually the gate was slammed as it could not be locked. A few days later the Defendant went to the office of the Finance Company and interviewed Mr. See's manager, a Mr. Yap. The Defendant saw Mr. Yap to seek permission for his worshippers to use the path. As a result of the interview the Finance Company agreed not to lock the gate for the sake of the worshippers to enable them to make use of the path in Lot 249 to gain easy access to the temple. The Defendant informed the Finance Company that he had been living in that locality for about 10 years. At the time the Defendant visited the office of the Finance Company the latter were aware of the Statutory Declaration of the Defendant claiming by way of adverse possession as they were informed by the Commissioner of Lands.

Exhibit P23

Exhibit P24
& 24A

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Under cross-examination Mr. See said that the Finance Company offered the keys of the gate to no one except the school. He was unaware of the existence of the temple until the Finance Company received a letter from the Commissioner of Lands. Mr. See further stated under cross-examination that the first time he went on Lot 249 was in October 1968 when he went to give the keys of the gate to the school. On this visit he observed some concrete steps on the Finance Company's land and came to the conclusion it was unauthorised. He also observed a temple at the top of the steps and some worshippers in the temple and only then he said he realised that some one had intruded on the Finance Company's land. 10

It must be borne in mind that Mr. See was an independent and impartial witness who had no interest in the case whatever as the Finance Company had sold Lot 249 to the Plaintiffs in December 1970. For the Defendant to say on oath that Mr. See went to see him altogether three times is not only difficult to believe but it showed the extent to which the Defendant would tell a lie to achieve his end. The Court would not believe that a man of Mr. See's standing would go and visit the Defendant on three occasions. Mr. See had no axe to grind nor did he want any favour from the Defendant. On the contrary the boot was on the other foot, the Defendant wanted a favour from him and that was to seek permission for the worshippers of the temple to use the path along Lot 249 to gain access to the temple. Incidentally Mr. See's evidence as to the fence being erected and the colour being black was corroborated by the building inspector who, when he visited the site on the 10th September 1968, said he could not gain entry by Narayanan Chetty Road as there was a black fence and the gate was locked. The lie perpetrated by the Defendant in this simple incident about the keys among others raised considerable doubt in my mind as to his veracity. I accepted Mr. See's evidence without hesitation. I rejected the Defendant's evidence in this respect. 20 30 40

We now come to examine the Defendant's witnesses' evidence in regard to the description of the actual location of the temple. This aspect of the evidence is very important as the Court will have to decide on the evidence where, in fact, was the temple actually situated - whether the Defendant's contention that the temple stood on Lot 250 from 1953 to 1965 i.e. the statutory period or whether

the Plaintiff's contention that it originally stood on the school land i.e. Lot 260 and subsequently some time in 1968 the Defendant transferred the position of the shed or temple down to the chicken pen on Lot 250.

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Yeo Yeow Tong (D.W.3 - the hawker) who had known the Defendant for more than 20 years said that the retaining wall of the said school was 7-8 feet from the Defendant's hut, meaning presumably the temple. Under cross-examination he said he knew a bit about the temple but not the details of it. When asked where the temple was situated he replied "By the side of Nan Chiao School fence". He further admitted that the school was on a higher level, that there was a slight slope and that there was a wall between the temple and the school. He also gave evidence that the concrete steps were constructed in 1967.

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Teo Seng Pong (D.W.5 - Vice-Principal of the school) stated in evidence that he did not know the boundary of the school. This being so the Court is not prepared to accept his evidence that there was no structure on the school land.

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Lim Buck Seah (D.W.6 - the school teacher) knew the Defendant during the Japanese war as they were colleagues working together in a Japanese firm. Since 1965 he had joined the school. After the Japanese war, he saw the Defendant in a shack on a hill top. When he joined the school in 1965 he said he saw a temple on this bit of land on top of the hill. He saw the Defendant there. He further stated that the temple was on the verge of a slope and that as far as he knew it was in the same place. Under cross-examination Lim Buck Seah said that the Defendant's shed or temple was about 4 feet away from the retaining wall.

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Cheong Chee Teok (D.W.8 - the structural engineer) and Wee Soo Kiang (D.W.11 - the Photogrammetric engineer) gave evidence but they were of no assistance to the Court.

Soh Chin Chye (D.W.9 - the contractor) had a contract to level a piece of land on which the old school stood. He started work in 1965 and saw a temple there. He completed the work in 1966. He visited the site before starting work. He saw the temple outside the perimeter fence. He saw the

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Exhibit P15-4

Exhibit P15-4

Defendant there. Under cross-examination Soh Chin Chye said that the temple was 2-3 feet from the school retaining wall and behind this was there was a slope.

Messrs. James Ferris and Partners were the architects in charge of the building of the new Nan Chiao Girls School and George Ho (D.W. 7 - the architect) was the man from this firm who was in charge of the new building. He first went on the site in 1965 and saw a temple there which he said was not on the school land. Under cross-examination George Ho said that the retaining wall was not exactly the school boundary, but he did say that the retaining wall was 20-30 feet from the boundary stone i.e. the junction between Lots 249, 250 and 260 as shown in Exhibit P15-4. He thought the temple was on the same site as before and based his conclusion on the survey done by the Government in 1964 which is Exhibit P15-4.

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S.T. Moorthy (D.W.10 - the surveyor) from the Chief Building Surveyors Department carried out a personal survey of Lot 260 in 1964 and drew up Exhibit P15-4. It was according to him a site survey and in carrying out this survey he was instructed to pick out buildings within 10 feet on either side of the boundary line, hence he picked up the building coloured red in P15-4 which he described as a hut and which incidentally is the chicken pen on Lot 250, the subject of dispute.

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Under cross-examination Moorthy said he saw a person in this hut but could not recollect who he was. It is abundantly clear from the evidence of S.T. Moorthy who prepared P15-4 that there was no structure between the retaining wall and the structure coloured red in P15-4 in 1964. The retaining wall was demolished in 1965 and the land levelled. George Ho the architect estimated the distance from the retaining wall to the boundary junction to be somewhere between 20-30 feet. Now, Yeo Yeow Tong (the hawker) said that the retaining wall was 7-8 feet from the Defendant's hut or temple by the side of the school. Soh Chin Chye (the contractor) stated that the temple was 2-3 feet from the school retaining wall and his levelling of the school land brought it to the same level on which the temple stood. Lim Buck Seah (the school teacher)

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said that the shed or temple was about 4 feet away from the retaining wall. Apparently none of the defence witnesses appeared to know the exact location of this temple. They all presumed very erroneously that the school retaining wall was the boundary of the school, whereas George Ho the architect said, and he should know, that the distance from the school retaining wall to the boundary junction of Lots 249, 250 and 260 was a distance of about 20-30 feet and this is clearly shown in Exhibit P15-4; and if the temple was a few feet away from the retaining wall as all the defence witnesses said then one fact is abundantly clear and that is that this temple stood on the school ground (Lot 260) and this was the contention of the broker and Teng Boon Loh who were adamant about the fact that when they first visited the site in January 1967 on a tour of inspection there was a chicken pen on Lot 250 in the portion delineated blue in A38 and that on the 7th January 1968 they paid the occupier of this chicken pen \$600 for vacating the pen and the house which was situated at the far end of Lot 250 opposite the pen. Both of them stated categorically that they saw a temple on the school ground which was on higher land than the chicken pen and about 8 feet away from it. From this evidence it can be inferred that the temple was not on Lot 260 at the time when Moorthy prepared his site survey in 1964 otherwise he would have picked it up. Hence it must be presumed that some time after Moorthy's visit in 1964, i.e. between 1964 and 1965 the shed or temple then only came into existence for Lim Buck Seah (D.W.6 - the school teacher), Soh Chin Chye (D.W.9 - the contractor) and George Ho (D.W.7 - the architect) all defence witnesses said in evidence that they saw a temple there in 1965.

Apart from the defendant who gave evidence of his occupation of the disputed land for the statutory period from 1953 to 1965, the only other evidence before the Court was that of the hawker Yeo Yeow Tong (D.W.3) and the odd job labourer Tan Gu Long (D.W.2) both of whose evidence I had earlier rejected. Not a single defence witness could tell the Court convincingly and categorically that the Defendant was living in a shed or temple on the disputed land from 1953 to 1965 with supporting evidence, oral or documentary. The gist of most of the defence witnesses' evidence centred on "we saw him there" in so far as the Defendant is concerned

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not knowing exactly where the boundary stone was in relation to the position of the temple, the actual location where the temple stood and in the circumstances their evidence to say the least was most unsatisfactory.

Both the broker and Teng Boon Loh were subjected to a very severe cross-examination by counsel for the Defendant and they both came through the ordeal unscathed. This is far from saying that they were impeccable witnesses. Whatever discrepancies there were, if any, in my view were not so serious as to cause me to feel any apprehension as to their veracity. During the period they were in the witness box I watched their general behaviour carefully and I had every opportunity of evaluating their evidence and demeanour at the conclusion of which I was satisfied that they were witnesses of truth and I believed them.

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Coming to the more specific account of the Defendant's conduct and one which the Court has taken a serious view of, is the fact that on the 5th September 1968 the Defendant wrote to the Chief Building Surveyor for permission to carry out general repairs and replacement of the roof due to bad leaks on raining days. He requested for early approval for fear that that part of the house may collapse and endanger members of his family - Exhibit P15-1. On the 10th January 1970 the Defendant wrote to the Property Tax Department - Exhibit P17 - and informed them that the said premises was being used solely as a temple (obviously to get exemption from property tax) for religious purposes and not as a residence. But one day before the 10th January i.e. on the 9th January 1970 the Defendant went and registered 16M Narayanan Chetty Road, the Defendant's premises, as his place of residence with the Commissioner for National Registration. Here again is another example of the mendacity of the Defendant. In one breath he writes to one Government Department and informs them that unless early approval for repairs is given the house may collapse and endanger the members of his family (not a word was mentioned about the temple) and in the next breath he writes to the Property Tax Department and states that the same premises were solely used as a temple for religious purposes and not as a residence in spite of the fact that on

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Exhibit P15-1

Exhibit P17

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9.1.70 just one day before his letter to the Property Tax Department he informed the Commissioner for National Registration that 16M Narayanan Chetty Road was his place of residence.

In the High
Court of
Singapore

No. 7

Grounds for
Judgment of
D'Cotta J.

March 1973
(continued)

Ex.B3 There was also evidence that the Plaintiff
10 purchased Lots 250 and 252 from their predecessors
in title in 1967 when they were given a list -
Exhibit B3 - of the occupiers of those lots from
whom rents were being collected. Oddly enough the
Defendant's name was not in that list and this is
indeed very strange for this disputed land is 30-40
feet above ground level and from it you have a
panoramic view of Lots 249 and 250. Such being the
case the Plaintiffs' predecessors in title of Lot
249 in 1965 i.e. the Finance Company and the
Plaintiffs themselves when they purchased Lot 250
in August 1967 would not have failed to observe
this structure if it had been there. Why was his
name omitted from B3, why was rent not collected
20 from him.

30 Again when the Plaintiffs' agent was demolish-
ing the houses, paying compensation and collecting
rents from the occupiers of the disputed land, why
didn't the Defendant make his position clear to
them and inform them that he was taking legal action
to support his claim. When the Finance Company
purchased Lot 249 as early as 1965 with vacant
possession and fenced it in 1966 why didn't he (if
he was there) tell them that he was being denied
entry and exit to his own premises and file his
claim for adverse possession at that time. Instead
he remained silent and about 4 years later in
September 1970 he went to the Finance Company to
ask for permission to have the gate kept open for
the sake of the worshippers.

40 Again it will be observed from the evidence and
the Court could not help but draw the only inference
that all those happenings i.e. the application for
repairs, the application for a house number, the
registration of his address as a residence with the
Commissioner for National Registration, the letter
to the Property Tax Department which took place one
after another upon the purchase of the disputed land
by the Plaintiffs were acts calculated to add
impression to his claim.

The Defendant's evidence and conduct throughout
the case were never consistent with one having a

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D'Cotta J.

March 1973
(continued)

Exhibit A38

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-examinations. This and the other numerous untruths mentioned earlier led me to the irresistible conclusion that the Defendant was not a witness of truth. I disbelieved him and rejected his evidence.

I therefore find as a fact from the evidence that the Defendant trespassed into that portion of Lots 249 and 250 delineated blue and red in Exhibit A38 some time in 1968 and in the same year he removed his shed or temple which was on Lot 260 i.e. the school ground to the front of the chicken pen on Lot 250 and some time towards the end of 1968 he renovated or converted the chicken pen into a temple, and I further find as a fact that the Defendant had not been in continued undisturbed possession of that said portion of land hereinbefore mentioned from 1953 to 1965.

10

20

There will be judgment for the Plaintiffs in terms of prayers 1, 2, 3 & 4 of the Statement of Claim and costs. The Defendant's counter-claim is dismissed with costs.

D.C. D'Cotta

J U D G E

No. 8

March, 1973

No. 8

Formal
Judgment

FORMAL JUDGMENT

21st March
1973

The 21st day of March 1973

30

THIS ACTION having been tried before the Honourable Mr. Justice D.C. D'Cotta on the 24th, 25th, 26th, 27th and 28th days of April, 1972, 10th, 11th, 14th, 15th, 16th and 17th days of August, 1972, 2nd, 3rd, 4th, 5th and 6th days of October, 1972 and 12th, 13th and 14th days of February, 1973 in the presence of Counsel for the Plaintiffs and for the Defendant.

THIS COURT DOTH ORDER that this action do stand for Judgment and the same coming up for Judgment this day IT IS ADJUDGED that the Plaintiffs are entitled to possession of the land delineated in red on the Plan annexed to the Statement of Claim herein.

AND IT IS FURTHER ADJUDGED that the Defendant do forthwith deliver up possession of the said land referred to above.

10 AND IT IS FURTHER ADJUDGED AND DECLARED that the Defendant is not entitled to re-enter or cross the Plaintiffs' said land by the said path or at all.

AND IT IS FURTHER ADJUDGED that the Defendant whether by himself or by his servants or agents or otherwise howsoever be restrained from entering or crossing the Plaintiffs' said land.

AND IT IS FURTHER ADJUDGED that the counter-claim of the Defendant against the Plaintiffs be dismissed with costs.

20 AND IT IS LASTLY ADJUDGED that the Defendant do pay the Plaintiffs their costs of this action including the costs of the counter-claim to be taxed.

Entered this 12th day of April, 1973 in
Volume CXXI page 215 at 2.50 p.m.

Sd. R.E, Martin

ASST. REGISTRAR.

30 If you, the within-named Goh Leng Kang disobey this Judgment, you will be liable to process of execution for the purpose of compelling you to obey the same.

In the High
Court of
Singapore

—
No. 8

Formal
Judgment

21st March
1973
(continued)

In the Court
of Appeal

No. 9

NOTICE OF APPEAL

No. 9
Notice of
Appeal
16th April
1973

Take Notice that the above-named Defendant being dissatisfied with the decision of the Honourable Mr. Justice D'Cotta given at Singapore on the 21st day of March, 1973 appeals to the Court of Appeal against the whole of the said decision.

Dated this 16th day of April 1973.

Sd. Braddell Brothers
.....

10

Solicitor for the Appellant

To: The Registrar,
Supreme Court,
Singapore.

To: Messrs Lee & Lee,
Solicitors for the Respondents.

The address for service of the Appellant is Messrs. Braddell Brothers, Meyer Chambers, Raffles Place, Singapore 1.

R.T.P. of Goh Leng Kang

20

No.10
Petition of
Appeal
1st June 1973

No. 10

PETITION OF APPEAL

To the Honourable Judges of the Court of Appeal.

The Petition of the abovenamed Appellant showeth as follows:-

1. The appeal arises from a claim by the Plaintiffs for:-

- (i) a declaration that they are entitled to possession of a portion of land situate on Lot 249 and Lot 250 of Town Sub-division XXI and delivery of possession thereof.

30

- (ii) a declaration that the Defendant is not entitled to enter or cross the said land and an injunction to restrain the Defendant from doing so.

In the Court
of Appeal
—
No.10

2. By judgment dated the 21st day of March, 1973 judgment was given for the Plaintiffs but the execution of the said judgment was stayed pending the hearing and decision of the Appeal herein.

Petition of
Appeal
1st June 1973
(continued)

10 3. Your Petitioner is dissatisfied with the said Judgment on the following grounds:-

(i) The decision of the learned Judge was against the weight of the evidence and of the probabilities.

(ii) The learned Judge erred in law and misdirected himself in finding that the absence of the Defendant's name from the List of Tenants (Exhibit B3) meant that he could only have been present on Lots 250 and 252 as a trespasser.

20 (iii) The learned Judge erred in law and misdirected himself in finding that because the Finance Company purchased Lot 249 in 1965 with vacant possession the Defendant was not in occupation of part thereof at that time.

(iv) The learned Judge misdirected himself in finding that the Defendant produced no documentary evidence in support of his claim apart from the Statutory Declaration.

30 (v) The learned Judge rejected the evidence of the Defendant and of DW2 in their entirety without reasonable grounds.

(vi) The learned Judge misdirected himself in relying upon the absence of certain witnesses on behalf of the Defendant.

40 (vii) The learned Judge entered into the realm of speculation and made unwarranted inferences of fact in finding that the Defendant erected a structure on Lot 260 in 1964/5 and removed the same to Lots 249 and 250 in 1968. He failed to take into account the earth moving operation which took place on Lot 260.

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Petition of
Appeal

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(continued)

- (viii) The learned Judge failed to take into consideration or give due weight to the evidence of the correspondence passing and concluded agreement made between the parties solicitors admitting or impliedly admitting that the Defendant had a title to the land.
- (ix) The learned Judge failed to give due weight to the evidence of DW2, DW3 and DW6. 10
- (x) The learned Judge failed to give due weight to or misinterpreted or drew wrong conclusions from the evidence of DW7, DW8, DW9, DW10 and DW11.
- (xi) That the learned Judge erred in accepting as reliable the evidence of the witness from the Finance Company (PW8).
- (xii) The learned Judge erred on his finding or interpretation of the facts given in evidence and formed misleading conclusions - 20
- (a) That a wooden staircase alleged to have been erected on Lot 250 was the staircase in a somewhat similar position as in Exhibit Photograph 10.
- (b) That there were no concrete steps (and or seemingly no steps) leading from the land the subject matter of the proceedings into Lot 249 of Town Subdivision XXI.
- (xiii) The learned Judge failed to give due weight to the discrepancies between the oral evidence given by PW7 and PW9 respectively and to a comparison between Exhibits B3 and P22. 30
- (xiv) The learned Judge failed to check his impression of the demeanour of witnesses by a critical examination of the whole of the evidence.
- (xv) The learned Judge failed to make due allowance for the Defendant's ignorance and humble station in life. 40

(xvi) The learned Judge failed to give due weight to the evidence of the Defendant in explanation of Exhibits P15-1, P16 and P17 which were never shaken in cross-examination.

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Petition of Appeal

1st June 1973
(continued)

(xvii) The learned Judge drew wrong conclusions or inferences and misdirected himself in respect of the failure of the Defendant to take any early legal action to establish his title to the land and further if the learned Judge was correct in so doing the acts of the Defendant in respect of the application for repairs, a house number and property exemptions showed that the Defendant did attempt to establish his rights.

10

Your petitioner prays that such judgment may be reversed in total.

Dated the 1st day of June, 1973

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Sd. Braddell Brothers
.....
Solicitor for the Appellant

No.11

JUDGMENT OF THE COURT OF APPEAL

Coram: WEE CHONG JIN, C.J.
F.A. CHUA, J.
TAN AH TAH, J.

No.11

Judgment of the Court of Appeal
28th May 1974

The plaintiffs who are the respondents in this appeal, are the owners of two adjacent pieces of land known as Lot 249 and Lot 250 of Town Sub-division XXI. They had purchased lot 250 first on 8th August 1967 and Lot 249 subsequently on 29th December 1970. Lot 249 has an area of 11,603 square feet and Lot 250 has an area of 14,776 square feet. Adjoining Lots 249 and 250 but on higher ground is Lot 260 on which stands a Chinese school.

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Wee Chong Jin C.J.

On 28th August 1970 the defendant who is the appellant, made a statutory declaration which he caused to be registered in the Registry of Deeds asserting what may conveniently be described as a

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Wee Chong
Jin C.J.
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squatter's title to a substantial portion of Lot 249 and a small portion of Lot 250. Annexed to the Statutory Declaration is a survey plan of Lots 249 and 250 in which is delineated the portions so claimed by the defendant. In his statutory declaration the defendant declares that he has been in full free and undisputed possession and has paid no ground rent to anyone since his occupation of the land he claims since the year 1953.

10

The plaintiffs purchase Lot 249 with notice of the defendant's claim and, after unsuccessful attempts to negotiate a settlement with the defendant, they commenced an action against the defendant claiming, inter alia, a declaration that they are entitled to possession of the portions of land of which the defendant asserts a squatter's title and for delivery of possession thereof. After a trial which stretched over many months and which occupied nineteen trial days, the trial judge gave judgment for the plaintiffs. The case turned entirely on questions of fact on which there was a direct conflict of oral testimony. The judge in a considered judgment said that he accepted the three principal witnesses for the plaintiffs as witnesses of truth and believed their evidence. The judge found as a fact that the defendant had trespassed in the year 1968 into the portions of Lots 249 and 250 which he claims and not in 1953. It being common ground that the nature and contours of Lots 249 and 250 and the adjoining Lot 260 were important for the appreciation of the evidence of the witnesses and in determining the issues of fact raised at the trial, the trial judge visited the site, at the invitation of counsel, on the first day of the trial.

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30

The defendant now appeals against the judgment of the High Court on grounds that the trial Judge was wrong in rejecting the evidence of the defendant and his witnesses and in accepting the evidence of the plaintiff's witnesses. This court is now called upon to reverse the judgment of the court below where the decision turns on questions of fact depending on the trial judge's opinion of the credibility of conflicting witnesses. In such circumstances the principles which govern an appellate tribunal are well established.

40

In *Khoo Sit Hoh v. Lim Thean Tong* (1912) A.C. 323 Lord Robson who delivered the judgment of the

Judicial Committee of the Privy Council said at page 325:-

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Jin C.J.
(continued)

" The case was tried before the Judge alone; it turned entirely on questions of fact, and there was plain perjury on one side or the other. Their Lordships' Board are therefore called upon, as were also the Court of Appeal, to express an opinion on the credibility of conflicting witnesses whom they have not seen, heard or questioned. In coming to a conclusion on such an issue their Lordships must of necessity be greatly influenced by the opinion of the learned trial judge, whose judgment is itself under review. He sees the demeanour of the witnesses, and can estimate their intelligence, position, and character in a way not open to the Courts who deal with later stages of the case. Moreover, in cases like the present, where those Courts have only his note of the evidence to work upon, there are many points which, owing to the brevity of the note, may appear to have been imperfectly or ambiguously dealt with in the evidence, and yet were elucidated to the judge's satisfaction at the trial, either by his own questions or by the explanations of counsel given in presence of the parties. Of course, it may be that in deciding between witnesses he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or has given credence to testimony, perhaps plausibly put forward, which turns out on more careful analysis to be substantially inconsistent with itself, or with indisputable fact, but except in rare cases of that character, cases which are susceptible of being dealt with wholly by argument, a Court of Appeal will hesitate long before it disturbs the findings of a trial judge based on verbal testimony."

In *Powell and Wife v. Streatham Manor Nursing Home* (1935) A.C. 243 Viscount Sankey L.C. at page 249 said:-

"It is perfectly true that an appeal is by way of rehearing, but it must not be forgotten that the Court of Appeal does not rehear the witnesses. It only reads the evidence and rehears the counsel. Neither is it a reseeing

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"Court The onus is upon the appellant to satisfy the Court that his appeal should be allowed On an appeal against a judgment after a trial before a judge sitting alone, the Court of Appeal will not set aside the judgment unless the appellant satisfies the Court that the judge was wrong and that his decision ought to have been the other way. Where there has been conflict of evidence the Court of Appeal will have special regard to the fact that the judge saw the witnesses: see Clarke v. Edinburgh Tramways Co. per Lord Shaw where he says: 'When a judge hears and sees witnesses and makes a conclusion or inference with regard to what is the weight on balance of their evidence, that judgement is entitled to great respect, and that quite irrespective of whether the Judge makes any observation with regard to credibility or not. I can of course quite understand a Court of Appeal that says it will not interfere in a case in which the Judge has announced as part of his judgment that he believes one set of witnesses, having seen and heard them, and does not believe another'".

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Lord Wright at page 265 said:-

" Two principles are beyond controversy. First it is clear that in an appeal of this character, that is from the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, the Court of Appeal 'must, in order to reverse, not merely entertain doubts whether the decision below is right, but be convinced that it is wrong': (The Julia), per Lord Kingsdown, cited with approval by Lord Sumner. And Secondly the Court of Appeal has no right to ignore what facts the judge has found on his impression of the credibility of the witnesses and proceed to try the case on paper on its own view of the probabilities as if there had been no oral hearing.

30

40

We now turn to the evidence in the present case. It was common ground that Lot 260 is situate on much higher ground than Lots 249 and 250. The land slopes steeply downwards from the boundary of Lot 260 on which stands a school into these two Lots, then levels off so as to form a widish ledge

running along practically the entire boundary of these two Lots, and thereafter continues to slope less steeply towards the middle of these two Lots. Up to the year 1965 there was on Lot 260 and some 20 to 30 feet from the boundary line separating Lot 260 from Lots 249 and 250 a retaining wall and this retaining wall was demolished in the process of levelling land on Lot 260 for the purpose of building a new Chinese school on the site of the former school.

10

The plaintiffs' case was that in January 1967, the then owners of Lot 250 and another adjacent Lot, being minded to sell, a land broker, Eu Wan Cheong, took Teng Boon Loh the husband of the 3rd plaintiff and the husband of the 2nd plaintiff to look at these two pieces of land. It was not in dispute that on Lot 250 there was a large old brick and tile building with several out-houses which were tenanted by several families. At that visit Teng Boon Loh said he saw on Lot 250 what he called "a chicken pen" on high ground, i.e. the ledge below Lot 260, and that part of this chicken pen stood on Lot 249. He described the chicken pen as oblong in shape with old plank walls and asbestos roof and gave its dimensions as slightly over 20 feet long, 13 to 14 feet broad and 7 to 8 feet high with two doors, one facing Lot 250 and the other facing Lot 249. He said that on higher ground on Lot 260 there was what he called "a temple" which was more or less square in shape and which faced away from Lots 249 and 250. Eu Wan Cheong, the broker, said that when he first visited the site in 1967 there was "a shed for worshipping purposes". He said this "shed was on the right hand side of the chicken pen in Lot 260 which is now the school compound". He said that in 1968 the defendant "moved the shed which was in Lot 260 to the front of the chicken pen". Teng Boon Loh and Eu Wan Cheong both said that the chicken pen belonged to and was occupied by one of the ground tenants, one Emaran, of the then owner of Lot 250 and not by the defendant. After the plaintiffs had purchased Lot 250 in August 1967 Emaran surrendered his ground tenancy on payment of compensation to him in January 1968.

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The defendant gave evidence that he erected a shed on Lot 250 before 1942, vacated it during the Japanese war and returned one or two years after the war and replaced the roof and rafters. Later in 1953 he said he renovated the shed with plank

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walls and wooden pillars. In 1957 he again renovated the shed by erecting a V-shape gable roof. His next renovation was in 1964 or 1965, due to the fact that many worshippers were coming to the shed, by extending the length of the structure by 6 feet and the breadth by 4 feet. Up to 1963 or 1964 he was a hawker and had lived in that shed since about the year 1951. In 1963/1964 he said he became a temple medium because he was possessed of a deity or god and since then he has been a temple medium and people came to the shed to worship the deity or god which had possessed him. He also said that "the temple was erected in 1965" and to a direct question asking him when the temple was actually started his reply was "about 8 or 9 years (ago) people came to my place to consult the deity". As this evidence was given in October 1972 it would seem that he was saying that his shed became a place of worship sometime around 1963 to 1964. The last renovation was carried out in 1968 and, because of the generosity of a Mr. Tan a worshipper, the renovations were extensive.

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A retired odd job labourer, Tan Gu Long, gave evidence for the defendant. He said he put up a house for the defendant in about 1952. The house he put up was 16 feet in length and 12 feet in width with wooden pillars, plank and asbestos walls and a lean-to roof. About five years later he renovated the house by putting up a gable roof, cementing the floor and replacing the old planks and asbestos sheets. He said the present temple was on the same site as the building he put up and renovated.

30

Another witness for the defence, Yeo Yeow Tong, a hawker and formerly a seaman, said he visited the defendant around 1954 or 1955 at a building where the present temple now is. He said in 1957 this building was different from what it was in 1954-1955 and that in 1968 there was another renovation which was carried out by a contractor. However, he also said that this building was 7-8 feet from the retaining wall on Lot 260.

40

Another witness, Lim Buck Seah, a school teacher and an acquaintance of the defendant, said that in 1965 when he joined Nan Chiau School the side of the defendant's temple would be about 4 feet from the retaining wall.

10 In 1964 a Mr. Moorthy, a surveyor attached to the Chief Surveyor's Department, was instructed to carry out a site survey of Lot 260. The survey was required because a new school was to be built on Lot 260 in place of the existing school known as Nan Chiau School. He was instructed to pick up for the Department's records any building within 10 feet of the boundary line on both sides. He said he saw only one building during his survey which so far as he could recollect was a plank and asbestos structure, 14 feet by 12½ feet, and this building was "at the junction of Lots 249 and 250 and 260". The site survey plan which was prepared from his survey of the site shows this building completely within Lots 249 and 250 and near to the boundary line with Lot 260. He described this building in the site survey plan (Exhibit D7C) as a "Plank and asbestos house". This exhibit which came from the records of the Chief Surveyor's Department was produced by Mr. Moorthy in re-examination who referred to this building in his evidence as a "hut". He gave evidence immediately after the evidence of a Mr. George Ho, an architect connected with the building of the new Nan Chiau School on Lot 260.

30 Mr. George Ho in this evidence referred to the same building as a "temple". He said he first went to the site about 1965. He did not say what the dimensions of the "temple" were nor did he describe it. What he did say was that he was interested to ascertain if it was worth while rebuilding a retaining wall which was originally standing on Lot 260 well within the boundary line with Lots 249 and 250 and which had been demolished in the process of levelling the land to build the new school.

40 Mr. George Ho said he first went to the site in 1965. He did not call for an independent survey and relied on the Government survey plan /Exhibit P15(4)7 which was drawn up from Mr. Moorthy's survey. Exhibit P15(4) It is to be observed that both Exhibit D7C and Exhibit P15(4) show a stretch of retaining wall within Lot 260 which, according to Mr. George Ho based on Exhibit P15(4), was 20 to 30 feet from the boundary separating Lot 260 from Lots 249 and 250. It is also to be observed that Mr. George Ho never had sight of Exhibit D7C in 1965 nor during his evidence at the trial. He relied on Exhibit P15(4) to see if there were any structures within Lot 260 and said he thus assumed that the "temple" which he saw was the building coloured red in Exhibit P15(4).

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Exhibit D7C

Exhibit D7C

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It was not in dispute that when Mr. Moorthy was making a site survey of Lot 260 in late 1964 the retaining wall was still standing and that it was subsequently demolished in 1965 by a contractor who had the contract to level Lot 260. Soh Chin Chye, the son of the contractor said he saw a "temple" which was 2 to 3 feet from the retaining wall. He said the temple which he saw was different from the building shown in Exhibits P8 and P11 which are photographs taken just before the trial of the action. He said the temple he saw was not as big or as beautiful and had a different roof.

10

In his written judgment the trial judge found, on Mr. Moorthy's evidence, that in 1964 there was no structure between the building coloured red in the site survey plan /Exhibit P15(4)7 and the retaining wall on Lot 260. The trial judge also found, in accepting Mr. George Ho's estimate of distance, that the retaining wall was 20 to 30 feet from the boundary line of Lot 260 and Lots 249 and 250. The trial judge also accepted the evidence of the defendant's witnesses Yeo Yeow Tong, Lim Buck Seah and Soh Chin Chye that in 1965 there was a shed or "temple" which was, according to Yeo Yeow Tong, 7 to 8 feet, according to Lim Buck Seah about 4 feet and according to Soh Chin Chye about 2 to 3 feet from the school retaining wall.

20

The trial judge also accepted the evidence of Teng Boon Loh and Eu Wan Cheong and found that in 1967 there was a shed or "temple" on Lot 260 which was on higher ground and above Emaran's chicken pen which was on Lots 249 and 250. On all these facts as found by him, the trial judge presumed that the defendant must have erected this shed or "temple" at sometime between late 1964 and 1965 and after Mr. Moorthy had visited the site in November 1964. The trial judge also made a further finding of fact, namely that sometime in 1968 the defendant removed this shed or "temple" from Lot 260 to the front of Emaran's chicken pen and subsequently in the same year renovated or converted the chicken pen to form part of the "temple".

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The trial judge in his written judgment said he was satisfied that the plaintiffs' witnesses Teng Boon Loh and Eu Wan Cheong were truthful witnesses and that he believed their evidence. On the other hand he found the defendant evasive in

cross-examination, an untruthful witness whose evidence he disbelieved and rejected.

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10 Applying the principles we have earlier referred to, for the defendant to succeed in this appeal, he has to convince me, as an appellate tribunal which has only the trial judge's note of the evidence to work upon and has not seen or heard the witnesses, that the trial judge was wrong in his crucial findings of fact that the "temple" or "shed for worshipping purposes" was not on Lots 249 and 250 before the year 1968 but had been removed there from Lot 260 on which it had been erected sometime between late 1964 and 1965.

20 It is submitted on behalf of the defendant that there was independent, credible and cogent evidence in support of the defendant's oral evidence that he had erected a structure or shed before the year 1942 on Lot 250; that this structure was renovated over the years; that it was extended on to Lot 249 and was eventually transformed into the present temple now standing on Lots 249 and 250 and that there never was a building or structure which was wholly on Lot 260. It is submitted that the plaintiffs' case, in contrast, rested entirely on the oral evidence of Teng Boon Loh and Eu Wan Cheong and that on the probabilities their evidence ought not to have been preferred to that of the defendant.

30 The cogent, independent and credible supporting evidence relied on in the submission is the evidence of the witnesses called to support the defendant's case. The trial judge clearly, as can be seen from his written judgment, considered their evidence and formed his opinion of their credibility or otherwise with regard to the various matters on which they gave their evidence. 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
40 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

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the evidence, a fair inference that as more worshippers were attracted, the defendant removed and rebuilt this "temple" on its present site and renovated and merged into the "temple" the chicken pen which originally belonged to Emaran.

Another submission on behalf of the defendant is based on a paragraph in the written judgment in which the trial judge said:

"It is pertinent to note at the outset that the Defendant produced no documentary evidence whatsoever in support of his claim (that he had been in continued undisputed possession of the land in Lots 249 and 250 and delineated blue and red in Exhibit A38 for 12 years from 1953 to 1965) except the Statutory Declaration and the Court had to rely solely on oral evidence".

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The submission is that the trial judge failed to take into consideration all the documents such as the survey plans, letters, etc. which were in evidence. In our judgment the trial judge was correct in his observation in that he was referring to the absence of documents, in existence between the years 1953 to 1965, to support the defendant's oral evidence that he had been in continued undisputed possession of the land claimed by him during those twelve years. There was before the court no document in existence before 1968 which directly linked the defendant with the building now on the disputed land. The first document is dated 6th February 1968 and is a letter from the Comptroller of Property Tax certifying that a house number, No.16M Narayanan Chitty Road had been allocated to the defendant as the occupier. Thereafter there are documents which linked the defendant directly as occupying the temple now on the disputed land. In our judgment these documents clearly do not support the defendant's oral evidence that he had been in possession 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.

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Another submission is that the trial judge failed to consider or appreciate the significance of the photogrammetric expert's evidence based on

10 two aerial photographs taken by the R.A.F. in November 1958. The expert's evidence based on those photographs and a photogrammetric plot of the area plotted by him from the photographs is that most probably the present temple is in the same position as a building shown by the aerial photographs and the photogrammetric plot to be on Lots 249 and 250 in November 1958. We do not consider that this is by itself a sufficient reason for setting aside the judgment.

In the final analysis, it was for the trial judge to balance the probabilities and to evaluate the weight of the evidence on either side and it is not for this Court to do so. The trial judge has found the two principal witnesses of the plaintiffs were truthful witnesses and believed their evidence and he has rejected the defendant's evidence having found the defendant was not a witness of truth.

20 In the circumstances and having regard to the issues before the trial court the defendant has failed to convince or satisfy us that the decision of the trial judge was wrong and in our judgment the appeal should be dismissed with costs.

Sd. Wee Chong Jin

CHIEF JUSTICE,
SINGAPORE.

Sd. F.A. Chua, Judge
Sd. TAN AH TAH, Judge

Singapore, 28th May 1974

In the Court
of Appeal

—
No.11

Judgement of
the Court of
Appeal

28th May 1974

Wee Chong
Jin C.J.
(continued)

No. 12

FORMAL ORDER COURT OF APPEAL

40 CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN,
CHIEF JUSTICE, SINGAPORE
THE HONOURABLE MR. F.A. CHUA, JUDGE, SUPREME
COURT, SINGAPORE
THE HONOURABLE MR. JUSTICE TAN AH TAH, JUDGE,
SUPREME COURT, SINGAPORE

No.12

Formal Order
of the Court
of Appeal

28th May 1974

IN OPEN COURT

This 28th day of May 1974

THIS APPEAL coming on for hearing on the 29th,
30th and 31st days of January, 1974 and on the 1st day

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

Between

GOH LENG KANG

Appellant
(Defendant)

And

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

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS
(Volume I)

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