DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
<u>RAYUAN SIVIL NO. K – 02 – 674 – 2006</u>

ANTARA

1. AHMAD BIN MD DAUD
2. OTHMAN BIN LEBAI DAUD … PERAYU-PERAYU

DAN

CHE YAH BINTI MAN … RESPONDEN

(Dalam Mahkamah Tinggi Malaya Di Alor Star
(Dalam Negeri Kedah Darulaman)
Rayuan Sivil No: 22-09-2002

Antara

Che Yah binti Man … Plaintif

Dan

1. Ahmad bin Md Daud
2. Othman bin Lebai Daud … Defendan-Defendan)

Coram: Gopal Sri Ram, F.C.J.
Sulong Matjeraie, J.C.A.
Ahmad bin Haji Maarop, J.C.A.

JUDGMENT OF GOPAL SRI RAM, F.C.J.

1. The facts that lie at the nub of the dispute in this case are not in dispute. The subject matter is a piece of land. It originally belonged to 4 persons – Awang bin Bahari, Ali bin Bahari, Morad bin Bahari and Yahya bin Bahari – each of whom held a ¼ undivided share in it. I will refer to them as the original owners. On 12 April 1948 they entered into an agreement with the appellants' mother (now deceased) under the terms of which they put her in possession of the

land for the purpose of cultivating it for a period of three years. The consideration was a sum of 250 rial (Straits Dollars) paid by the mother to the original owners. Possession was to revert to the original owners on re-payment of the 250 rial and the expenses incurred by the mother in cultivating the land. In the event of the original owners' default, they were to sell the land to the appellants' mother at a price to be determined by the parties, credit being given to sum already paid and the monies expended by her. As it transpired, the original owners did not adhere to the terms of the 1948 agreement. Instead, they sold the land to a third party. The land then passed through several hands until the respondent purchased it in November 1997 and had it registered in his name. In May 2000, the appellants enlisted the assistance of one Azmi Ahmad to have the subject land vested in their names. In doing so, they obviously acted on the strength of the 1948 agreement. Later, by means of a forged order of the High Court dated 23 May 2000, the appellants were registered as the proprietors of the subject land. It is not disputed that it was Azmi who produced the forged order and that the appellants were entirely ignorant of the fact that the order was a forgery. When the respondent found herself displaced from the register, she brought proceedings to have herself reinstated as the registered proprietor. The judge before whom the action was tried acted on the agreed facts and the undisputed documents. He quite rightly proceeded under Ord. 14A to try the question of law, whether the appellants had acquired an indefeasible title despite having got themselves on the register by means of a forgery. After hearing arguments, he found for the respondent.

2. Before us, the appellants rely on the fact that they acted *bona fide* as they were ignorant of the forgery. Their counsel argued that by reason of the decision of the Federal Court in **Adorna Properties Sdn Bhd v Boonsom Boonyanit [2001]1 MLJ 241** they acquired an indefeasible title. The facts of that case are fairly well known. Boonsom Boonyanit was the owner of a valuable piece of land. The issue document of title to it was in her possession. A rogue pretending to be Boonsom applied for and obtained a duplicate title to the land and sold it to Adorna Properties. The transfer was a forgery and hence utterly useless. Yet, the Federal Court held that Adorna obtained an indefeasible title. It did so on the ground that the proviso to section 340(3) of the National Land Code 1965 ("the Code") applied to section 340(2)(b) as well. Since Adorna Properties was a *bona fide* purchaser of the land, it came within the proviso.

3. Now, this is what the proviso says:

> "Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body, claiming through or under such a purchaser."

Notice that the proviso applies only to a "purchaser". That expression is defined by section 5 of the Code as "a person or body who in good faith and for valuable consideration acquires title to, or any interest in land". Hence, to be a purchaser, one has to acquire title, act in good faith and also provide valuable consideration.

4. In **Midland Bank Trust Co Ltd v Green [1981] AC 513**, the House of Lords had occasion to consider the meaning of the expression "valuable consideration" appearing in section 20(8) of the Land Charges Act 1925 which defined "purchaser" as "any person... who, for valuable consideration, takes any interest in land." Lord Wilberforce with whom the other members of the House agreed said this:

> "'Valuable consideration' requires no definition: it is an expression denoting an advantage conferred or detriment suffered."

5. I think that it is quite safe to adopt that definition to the present instance. And in so doing, the first question that arises in the present case is whether the appellants' mother gave valuable consideration. In my judgment, the answer must be in the affirmative. She paid the original owners 250 rial, a princely sum at the time. That sum was certainly a detriment suffered by her and simultaneously an advantage conferred on the appellants' mother. The second question is this: did she acquire the title to the property? She may have done if she had entered into an agreement to purchase the land in question. I say "may" advisedly because such an agreement would have been specifically enforceable and therefore make the original owners constructive trustees of the land for the mother. But that is not the nature of the transaction entered into. The mother in no sense therefore acquired the title to the land. The appellants resting their case on the footing that they are their mother's successors in title cannot be in a better position than the mother.

6. In my judgment, the proviso to section 340(3) only applies in this way. A by means of a forged instrument obtains title to land. His title is defeasible and may be defeated by the true owner. A transfers the land to B who pays A and takes the transfer of title without notice of the forgery. B gets good title to the land against the whole world including the true owner. As may be seen, that did not happen here. The learned judge was therefore correct in adopting the procedure he did and in finding for the respondent.

7. Before I conclude I must add that I have not gone into a full discussion of section 340 and of the relevant authorities that have considered that provision. This is to avoid unnecessary repetition of the discussion that may be found in the decisions of this Court in **Abu Bakar Ismail v Ismail Husin [2007] 3 CLJ 97** and **Au Meng Nam v Ung Yak Chew [2007] 4 CLJ 526**.

8. For the reasons already given, the appeal is dismissed with costs. The orders of the High Court are affirmed. The deposit in court shall be paid out to the respondent to account of his taxed costs.

9. My learned brothers Sulong Matjeraie and Ahmad bin Haji Maarop, J.J.C.A. have seen this judgment in draft and have expressed their agreement with it.

Dated this 8th day of June 2009.

Gopal Sri Ram
Judge, Federal Court
Malaysia

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