

**DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANGKUASA RAYUAN)  
RAYUAN SIVIL NO: J-02-28-2004**

ANTARA

**HUE NGEE ON**

**... PERAYU**

DAN

**CHAI WOO SIEN sebagai Pegawai Awam  
Persatuan Hakka Kulai, Johor  
(The Hakka Association Kulai, Johor)**

**... RESPONDEN**

**(Dalam Perkara Mengenai Saman Pemula No. 24-1633-2003 (2)  
Di Mahkamah Tinggi Malaya di Johor Bahru :**

Dalam perkara hartanah dikenali sebagai PTB 822, yang dipegang di bawah HS(D) 23377, Bandar Kulai, Daerah Johor Bahru, bersama dengan sebuah rumah kedai 3-tingkat yang didirikan di atasnya dan dikenali sebagai No. 144, Jalan Raya, 81000 Kulai, Johor.

DAN

Dalam perkara Aturan 7 Kaedah 2(1), Kaedah-Kaedah Mahkamah Tinggi 1980.

DAN

Dalam perkara Seksyen 417 dan Seksyen 420, Kanun Tanah Negara 1965.

Antara

CHAI WOO SIEN sebagai Pegawai Awam  
Persatuan Hakka Kulai, Johor  
(The Hakka Association Kulai, Johor)

... Plaintiff

Dan

HUE NGEE ON

... Defendan)

**CORAM:**

**LOW HOP BING, JCA  
HASAN BIN LAH, JCA  
HAJI ABDUL MALIK BIN HAJI ISHAK, JCA**

**LOW HOP BING, JCA  
(DELIVERING THE JUDGMENT OF THE COURT)**

**I. NOTICE OF MOTION**

**[1]** This is the respondent's application by way of notice of motion in encl. (27a) which seeks to admit encl. (27b) ie the supporting affidavit (including the exhibits) of one Lee Soon Loy, affirmed on 16 January 2009, as further evidence; and to strike out the appellant's appeal. No affidavit in reply was filed.

## **II. FACTUAL BACKGROUND**

**[2]** In 1967, the respondent ie the Hakka Association Kulai Johor (“the Association”) purchased the land held under PTB 822, HS(D) 23377 in the township of Kulai (“the land”) measuring 156.0771 sq. metres or 1,680 sq. ft. from the previous registered proprietor, one Hue Tiam, the father of the appellant, at a consideration of RM9,800.00. The Association paid the balance of the purchase price to the previous registered proprietor in 1974. The Association, as beneficial owner thereof, has been in possession of the land since 1974. The Association built the shophouse on the land at a cost of RM136,752.50. At all material times, the Association has been holding the issue document of title, paying all the quit rents and assessments for the land.

**[3]** On 9 August 2000, the appellant entered a private caveat against the land, but took no further action to enforce his rights, if any.

**[4]** On 2 December 2003, the Johor Bahru High Court judge made a vesting order (“the High Court order”) in favour of the Association. On 8 January 2004, transfer of the land to the Association was perfected.

### III. ADMISSIBILITY OF FURTHER EVIDENCE

[5] Appellant's learned counsel Ms HK Tan objected to the Association's application to admit the affidavit (including the exhibits) as further evidence. She argued that the appeal should be heard, instead of being struck out at this stage.

[6] In response, the Association's learned counsel Dr Wong Kim Fatt (assisted by Mr Wong Boon Lee) submitted that the affidavit (including the exhibits) should be admitted as further evidence in order to establish that the Association is the registered proprietor of the land, as a result of which the appellant's appeal should be struck out.

[7] We shall first consider the Association's prayer for the admissibility of further evidence. The governing principles enunciated in ***Ladd v Marshall (1954) 3 All E R 745*** have been accorded statutory recognition in Rule 7 (1) and (3A)(a) of the Rules of the Court of Appeal 1994. Pursuant to this rule, this Court is given full discretionary power to, inter alia, receive further evidence e.g by affidavit, so long as the Court is satisfied that:

- (a) at the hearing before the High Court, the new evidence was not available to the Association ie the party seeking to use it, or reasonable diligence would not have made it so available; and

- (b) the new evidence, if true, would have had or would have been likely to have had a determining influence upon the decision of the High Court.

[8] Vide the affidavit, the said Lee Soon Loy affirms, *inter alia*, that the land was on 8 January 2004 duly vested and registered in the name of the Association free from all encumbrances. The Association appears as the registered proprietor of the land in the issue document of title (“the title”). The title to the land is relevant and material evidence, showing that the registration of the transfer was not available at the hearing before the High Court on 2 December 2003 and that the registration or vesting of the title occurred after the High Court order. The title would have had or would have been likely to have a determining influence upon the decision of the Court of Appeal. We are of the view that the conditions of R.7(1) and (3A)(a) have been fulfilled and we admitted the affidavit (including the exhibits) as further evidence.

[9] Prior to the further evidence, the Association was not the registered proprietor. However, it was the beneficial owner of the land, and had the better equity than the appellant: see ***Ng Kheng Yeow v Chiah Ah Foo (1987) 2 MLJ 330 at 332 G to G, left***, per **Lee Hun Hoe CJ (Borneo)**(as he then was).

[10] After the admission of the further evidence under Rule 7(1) and (3A)(a), it is abundantly clear to us that the Association as registered

proprietor of the land has acquired indefeasibility of title with effect from 8 January 2004: ***Teh Bee v K. Maruthamuthu (1977) 2 MLJ 7 FC***, which was referred to in ***Au Meng Nam & Anor v Ung Yak Chew & Ors (2007) 4 CLJ 526, 538C CA***. Registration of the Association as proprietor of the land is conclusive evidence that the title is vested in the Association. This is in line with the doctrine of indefeasibility of title under s. 340 of the National Land Code 1965.

[11] Further, since 1974, the Association, on completion of the sale and purchase, had taken possession of the land for more than 34 years. The previous registered owner Hue Tiam or his son, the appellant, took no action whatsoever to recover possession of the land. Hence, s.9(1) of the Limitation Act 1953 which prescribes a limitation period of 12 years, commencing from the date on which the right of action accrued, to recover land, applies to the instant appeal so as to render the appellant's action in the High Court statute barred.

[12] Next, after the private caveat was entered by the appellant against the land on 9 August 2000 i.e some nine years ago, the appellant had not taken any timeous action in Court to enforce his rights, if any. S.328 of the National Land Code 1965 provides for the lapse of a private caveat at the expiry of six years from the time the caveat took effect. The private caveat had clearly lapsed: ***Paya Terubong Estates Sdn Bhd v Pusaka Warisan Sdn Bhd (1998) 2 MLJ 463 CA pp. 468I and 469A-B***. With the lapse of the private caveat, the appellant no longer has any interest or capacity vis-à-vis the land.

#### **IV. CONCLUSION**

[13] By reason of the foregoing grounds, we allowed the Association's application in encl. (27a). Consequentially, the appellant's appeal was struck out with costs.

**DATUK WIRA LOW HOP BING**

Judge  
Court of Appeal Malaysia  
PUTRAJAYA

Dated this 3<sup>rd</sup> day of March 2009

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**REFERENCE:**

***Ng Kheng Yeow v Chiah Ah Foo* (1987) 2 MLJ 330 at 332 G to G, left**

***Teh Bee v K. Maruthamuthu* (1977) 2 MLJ 7 FC**

***Au Meng Nam & Anor v Ung Yak Chew & Ors* (2007) 4 CLJ 526, 538C  
CA**

***Paya Terubong Estates Sdn Bhd v Pusaka Warisan Sdn Bhd* (1998) 2  
MLJ 463 CA pp. 468I and 469A-B**