

**ZAINAB BINTI HJ AWG DAMIT@ALIZAH**

**...1<sup>st</sup> Appellant**

**AWG BOL HASSAN BIN HJ IBRAHIM**

**...2<sup>nd</sup> Appellant**

**AND**

**YAM PADUKA SERI BAGINDA PENGIRAN ANAK PUTERI  
HAJAH AMAL JEFRIAH BINTI ALMARHUM SULTAN  
HAJI OMAR ALI SAIFUDDIEN SA'ADUL KHAIRI WADDIEN**

**...1<sup>st</sup> Respondent**

**YAM PENGIRAN ANAK NURUL AMAL NI'MATULLAH ATHIRAH  
BINTI YAM PENGIRAN SURIA NEGARA PENGIRAN ANAK  
MUHAMMAD BEY MUNTASSIR**

**...2<sup>nd</sup> Respondent**

**YAM PENGIRAN ANAK NURUL AMAL MUNJIYYATUL ATHIRAH  
BINTI YAM PENGIRAN SURIA NEGARA PENGIRAN ANAK  
MUHAMMAD BEY MUNTASSIR**

**...3<sup>rd</sup> Respondent**

**YAM PENGIRAN ANAK MUHAMMAD ABDUL HAFFIZ  
BIN YAM PENGIRAN SURIA NEGARA PENGIRAN ANAK  
MUHAMMAD BEY MUNTASSIR**

**...4<sup>th</sup> Respondent**

**YAM PENGIRAN ANAK MUHAMMAD ABDUL QAYYUM  
BIN YAM PENGIRAN SURIA NEGARA PENGIRAN ANAK  
MUHAMMAD BEY MUNTASSIR**

**...5<sup>th</sup> Respondent**

**YAM PENGIRAN MUHAMMAD ABDUL RAZAAQ BIN  
YAM PENGIRAN SURIA NEGARA PENGIRAN ANAK  
MUHAMMAD BEY MUNTASSIR**

**...6<sup>th</sup> Respondent**

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**(Court of Appeal of Brunei Darussalam)  
(Civil Appeal No. 6 of 2016)**

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Before: Mortimer P, Leonard and Burrell JJ A.  
24<sup>th</sup> November 2016

*Headnote: Order 88(1). Respondents as registered owners of land entitled to order for vacant possession of land.  
Trespassers raise no triable issue. Oral sale of the land 22 years ago.*

Appellant in person  
Mr. Mohd Noorsuhaimy bin Haji Kasmany (Messrs. Pengiran Izad & Lee) for Respondent

Cases:

*Public Prosecutor v Ang Seng Thor [2011]4 SLR 217 at 232;*

**Mortimer P:**

On 23 June 2015 The Chief Registrar made an order under O. 88 (1) of the RSC requiring the appellants, the original vendors to give vacant possession of a plot of land (EDR no. MD01222 Lot no. 01359) to the respondents, the successors in title to the purchaser. The appellants appealed and on 4 April 2016 Hairol Arni Majid J dismissed the appeal.

The appellants now appeal against the judge's order. The 2<sup>nd</sup> appellant appears in person on behalf of himself and the 1<sup>st</sup> appellant, his wife.

***The Judge's Decision***

Order 88(1) of the RSC provides:

*“Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order”.*

There was no issue before the judge that the respondents were the registered owners of the land nor that the appellants were in occupation of the land. Unless therefore the appellants could show that there was a triable issue of law or fact as to whether they had any licence, consent or other right to occupy, the respondents were entitled to the order.

The judge referred to the indefeasibility of title under section 28 (3) of the Land Code which reads:

*“Every entry in the register shall be taken as conclusive evidence that the person named therein as owner of the land is the absolute and indefeasible owner thereof for the estate specified therein subject to the conditions upon which the original entry was made and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be a party.”*

The appellants contend that the order ought not to have been made as in effect the registration was obtained by the fraud or misrepresentation of the purchaser. The issues they raised were the same as had been pursued before this court. They allege that in spite of the fact that they signed documents agreeing to the transfer of ownership of the land and receiving payment for it they were never paid and that in any event the agreed price was greater than set out in the evidence of the respondents. We will refer to these issues in more detail.

The judge held that the appellants had raised no triable issues of law or fact and dismissed the appeal.

***The Issues***

The question for our consideration is whether the judge's decision was correct.

Expressing their case as best we can they say that in spite of the fact the appellant owner signed documents confirming payment and a memorandum of transfer of the land they never received payment beyond \$73,000 deposit and the non-payment must have been fraudulent so that the registration is also fraudulent.

### *Events Leading to These Proceedings*

This is a general account gleaned not only from the affidavits but also from the submissions and concessions made by the 2<sup>nd</sup> appellant in the course of his argument as well as the many documents which have been put before us. As will be seen only a limited part of this is relevant to our decision.

The 1<sup>st</sup> plaintiff is the administratrix of the estate of her deceased husband (the purchaser) who agreed to buy the land from the vendors as long ago as March 1994. The plaintiffs are now the registered owners of the land.

There was no written sale and purchase agreement but an oral agreement between the 2<sup>nd</sup> appellant and purchaser. The purchaser paid a deposit of \$73,000 by cheque to the 2<sup>nd</sup> appellant which was credited into the 2<sup>nd</sup> appellant's bank account on the 2<sup>nd</sup> March 1994. On 8 April 1994 a Memorandum of Transfer of the land was signed by both parties. The 2<sup>nd</sup> appellant acknowledged that in consideration of the sum of \$537,000 the receipt of which he acknowledged he transferred to the purchaser "all my right, title and interest in the said land". The purchaser signed that he accepted the transfer in the terms stated.

The appellants had built 2 houses on the land. In due course both were let and the rents were paid to the purchaser without objection even though the appellants continued to pay the water rates and taxes.

The appellants ceased to occupy the houses. They say that at the time the above documents were signed the purchaser promised to pay and in spite of continued requests for payment he never did.

The failure to pay is disputed and a letter from the solicitors to the Islamic bank of Brunei is put before us. This refers to the bank advancing money to the purchaser on mortgage of the land. As the 2<sup>nd</sup> appellant was indebted to the same bank the suggestion is that the bank advanced the money to the purchaser by crediting it to the 1<sup>st</sup> appellant's account. This the 1<sup>st</sup> appellant denies but there are no bank records before us.

Nothing more seems to have been done to obtain payment or redress until about 2010 when the appellants began to write letters of complaint to various government bodies. Also we were told by the 2<sup>nd</sup> appellant that at this time he and his wife reoccupied the land and have been in occupation ever since.

Significantly in June and July 2011 after the purchaser had died the appellants had meetings with the land commissioner at the land office and wrote letters asking for the cancellation of the transfer of the land. There had been difficulties in the purchaser becoming registered as owner because of the bankruptcy of the appellants. This information appears in a letter to the 1<sup>st</sup> appellant from the land commissioner of the 21 July 2011.

In the last paragraph this letter the land commissioner advises the 2<sup>nd</sup> appellant that he could not cancel the registration of the land but adds, *“If you, representing your wife’s interest, still consider the land and property above are the rights of (the 1<sup>st</sup> appellant), I advise for this matter to be made a claim through section 29 of the Land Code Cap.40, at the court. Land department will only carry out its cancellation upon receiving an Order of the High Court’.*

There the matter rested. The appellants took no action and they have never tried to have the issues they raise resolved or decided.

### *Conclusion*

It is now 22 years since the 1<sup>st</sup> appellant sold the land to the deceased purchaser. Even on the appellants account apart from asking for payment nothing was done by them to seek redress. It appears not even a letter was written.

The appellants were content that the purchaser received the rent of the houses. For many years by their action they were affirming the contract of sale. They never sought either to rescind the contract or enforce it.

They were advised 5 years ago by the Land Commissioner that if they wanted redress an application to the court was necessary. They still took no action.

Now, they seek to establish triable issues of fraud on the basis of events 22 years ago contrary to clear contemporary documentary evidence to the contrary.

The evidence advanced by the appellants is insufficient to raise a triable issue on fraud. At most it raises issues on the agreed price and whether the full price was paid. Failure to pay is far from establishing fraud.

The respondents are the registered owners of the land. They are under section 28 (3) of the Land Code absolute and indefeasible owners of it and are entitled to possession. The appellants have no licence, permission or other right to occupy the land. No relevant triable issue to the contrary has been established. The respondents are entitled to a section 88 (1) RSC order for possession, the judge’s decision was correct and we dismiss the appeal.

Mortimer, P.

Leonard, J.A.

Burrell, J.A