

Hj Roney bin Hj Roslee @ Roni bin Hj Rosli ... Appellant

AND

Kheng Ah Beng ... Respondent

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 9 of 2009)

Before: Mortimer, P.; Davies and Rogers, JJ.A.
20th May, 2010.

Land purchased in the name of son, the appellant, with a receipt executed by the appellant showing half interest in the land was held on behalf of the respondent. The appellant was thus bound by the trust. Application to admit further evidence refused because it could have been obtained before and was only confirmatory of matter already in evidence. Appeal on a question of fact not allowed. Trust to hold land on behalf of a non-citizen is not illegal.

Mr. Christopher Sawan of Messrs. Sheikh Noordin & Associates for the Appellant.
Mr. Daljit Singh Sandhu & Mr. Vincent Joseph of Messrs. Sandhu & Co. for the Respondent.

Cases cited in the Judgment:

Central Development Ltd v. Koh Hoe Peng [1965-86] 1 BLR 250
Chong Kon Fah v. Yong Siau [1965-86] 1 BLR 193
Hongkong and Shanghai Banking Corporation Ltd. v. Hajah Aminah bte Aman [1993] BLR 269
Koh Hoe Peng v. Central Development Ltd [1965-86] 2 BLR 23

Rogers, J.A.:

1. This was an appeal from a judgment of Mr Commissioner Findlay given on 3 September 2009. The matter before the judge was a claim by the respondent to this appeal for a declaration that the appellant had been holding a half interest in a parcel of land, namely EDR No. 550, Lot 676, Jalan Maulana, Kampong Pandan, in Kuala Belait (“the land”) on behalf of the respondent. The judge made that declaration and, because the land had already been sold for \$1.6 million, made a further declaration and order for payment of the sum of \$800,000. There were further orders in respect of interest and accounts to be taken. At the conclusion of the hearing of this appeal judgment was reserved which we now give.

Background

2. The plaintiff came to Brunei in 1948. He worked as a fishmonger. Very early in his time in Brunei, he came to know the appellant's father, Mr Roslee Teo (“the father”). The father was a senior government official and, at least it would seem

at the material times, was in charge of the Customs Department in Kuala Belait. The father had given the respondent considerable assistance when the respondent came to Brunei and assisted the respondent so that he was able to bring his wife and family to Brunei.

3. In about 1969 or 1970 the plaintiff came to know that it would be possible to purchase the land. He was attracted to the idea of purchasing the land because, apart from the fact that he considered that the price was cheap, he contemplated building a house for himself and his family on part of it. The Respondent's difficulty was that because he was not a citizen of Brunei the land could not be registered in his name, at least not without the consent of His Majesty in Council or otherwise in accordance with section 23 of the Land Code, Cap 40. It is the respondent's case that because he trusted the father he approached him, as the father was in a position to have the land registered in his name.
4. The price paid for the land was \$25,000. It is the respondent's case that sometime in the same month, namely February 1970, he met the father who gave him a receipt ("the receipt"). That receipt reads:

"I, RONNY BIN ROSLEE, Identity Card No. 029039 of House No. 2322, Jalan Laksamana, Kuala Belait, State of Brunei do hereby acknowledge receipt of the sum of dollars twelve thousand and five hundred only (12,500/-) from Mr. Kheng Ah Beng, Identity Card No. 088335 being payment of a piece of land EDR No. 550, Lot 676, situated at Jalan Seria/ Kuala Belait (1A. 2R. 11P) which we jointly bought from Awang Bahar Mohamed bin Nani Khan on the 2nd February, 1970 for \$25,000/-) (dollars twenty –five thousand only)

Witness

.....

.....

RONNY BIN ROSLEE

Dated this 2nd day of February, 1970"

5. The respondent's evidence was that when the father gave him the receipt, as he was unable to read he asked his daughter, who was with him at the time, to read it and translate it to him. When she had done that the respondent asked the father why the acknowledgement was from his son when the respondent considered that he was purchasing the land together with the father. The father explained that although he could have the land registered in his own name, because of his position in the Customs Department he did not want to give any cause for suspicion. It was for that reason that the land was registered in the appellant's name and, since the land was registered in the appellant's name, it was only proper that the acknowledgement should come from the appellant.

6. The respondent said that he noticed that there were two stamps on the document but that the document had not been witnessed. He asked the father to witness the document but the father declined to do so because he did not want to witness his son's signature and also because he was working for the government. The respondent said that the father must have noticed that he was not pleased with that explanation and so asked him to follow him to the office of a Mr Pehin Hong, who was, apparently, a leader of the Chinese community. Pehin Hong was not in his office but his son witnessed the document. Although the respondent has approached Pehin Hong's son, he now no longer has any recollection of witnessing the particular document because over the course of years he has witnessed many documents.
7. The respondent also says that later the father gave him the original land title to keep. The original document was produced in court.
8. The respondent says that after his eldest daughter had married a Brunei citizen he had approached the father to have his share of the land transferred to the daughter. It may be noted that Mr Sandhu, who appeared on behalf of the respondent, wished to have one part of the notes of proceedings corrected by changing a reference to "money" to "land". It is quite clear from the context that Mr Sandhu must be correct and it was unnecessary for this court to see counsel's note of the passage in the evidence. The respondent says that there was always some reason given as to why that should not be done; one of them, at any rate to begin with, was that the appellant was studying overseas. As time went on the respondent's desire to build a house on the land ceased after he was able to buy the house which he was then living. The respondent said in his statement that after the father had died he attempted to approach the family to discuss the matter of the land but did not want to press the matter because the father had just died.
9. In August 1993 the respondent's son, Kheng Kim Fatt, informed him that he had seen that the land had been cleared and another son, Kheng Kim Soon, approached the appellant and enquired when he was going to transfer the appellant's half of the land to him. It was Kheng Kim Soon's evidence that he invited the appellant to come and inspect the original receipt and the original land title. Nothing transpired from that, the appellant ignored that invitation, but the clearing of the land stopped. In January 2009 the respondent was told by Kheng Kim Fatt that he had heard that the land had been sold. Enquiries were made and it was discovered that the land had indeed been sold for \$1.6 million.

The judgment below

10. It was the appellant's case that, although it was admitted that the respondent had paid \$12,500 that was a loan from the respondent to the father to be used for other purposes. In support of that one of the father's widows produced a letter that purported to have been written by the father in 1992. It was addressed to the respondent. It purported to enclose a cheque in settlement of capital and interest from 1970 to 1992 in respect of what was said to have been a loan of \$12,500. That letter was only produced very shortly before the trial and, quite simply, the judge did not accept that it was a genuine document. The judge was not only

- highly suspicious of the format of the letter which recited the history of the purported, loan but, factually, the judge found it improbable that a senior government official would have borrowed \$12,500 from a humble, illiterate fishmonger. Moreover, there was no evidence in relation to the cheque, still less that any such cheque had been cashed.
11. The appellant, for his part, challenged the authenticity of the receipt. It was said that he was not in Brunei at the time that the receipt was said to have been made. It is also said that his name was misspelt and that he would never have signed a receipt where the name had been misspelt.
 12. The judge said that he was clearly satisfied about the respondent's case. He said it hung together well and had a solid ring of truth about it. He said the evidence of the giving of the receipt and the land title by the father was convincing and he accepted it. Although the judge referred to the appellant's case that he had not signed the receipt as being "difficult to believe" it is clear from the context that the judge did, indeed, accept the receipt as a genuine document that had been signed by the appellant, as Mr Sawan said during the course of submission. The judge also referred to other matters such as the conduct of the respondent and his family at various times. In particular, he noted that the respondent's daughter had taken photographs of the land at a time when it was being cleared. The judge commented that it would have been unnecessary to do so if the respondent had merely lent the father the \$12,500.
 13. On the other hand he did not accept the appellant's evidence. In particular he did not accept the appellant's assertion that he had at one time been in possession of the original document title to the land. The judge was very critical of the appellant's attitude after he had been approached by Kheng Kim Soon. The judge refused to give any credence to the copy letter which had been produced by the appellant's mother. Whilst observing that the letter was not, of course, any evidence of the truth of its contents, the judge went on to say that he was most suspicious of the provenance of the letter which smacked of being self-serving and prepared for the purposes of the case.

This appeal

14. On this appeal Mr Sawan, who appeared on behalf of the appellant, sought first to have further evidence admitted. That evidence was, in effect, confirmation of what was contained in an endorsement on the land title. It was to the effect that Mohamed Bahar bin Naneh Khan had died in 1968 and that it was his administratrix, Jamin Anak Daging @ Jamilah binte Abdullah who had conveyed the land. It was said that the evidence was important because it showed that what was contained in the receipt was inaccurate to the extent that the receipt should be rejected as being a forgery. The application to admit the further evidence was refused with reasons to be given. Put shortly, the reasons for rejection are that not only was the evidence that was sought to be introduced available at the time of trial but that, also, it took the matter no further than what would have been available at the trial from a perusal of the land title. No point had been taken on what was contained in the endorsement on the land title at the

- trial, specifically nothing had been put to the respondent in respect of it in cross-examination. Any point that could be made in reliance upon the evidence sought to be introduced could still be made on this appeal on the basis of the endorsement on the land title.
15. The appellant's first and major argument on this appeal was that the judge should not have accepted that the receipt was a genuine document but he should have held that it was a forgery. The primary ground for so saying was that the receipt referred to the land having been purchased from Awang Bahar Mohamed bin Nani Khan on the 2 February 1970, whereas that gentleman had been deceased for a period of two years. Coupled with that, Mr Sawan argued that the respondent's evidence had been likewise flawed because it was suggested that that evidence also indicated that the land had been purchased from the same person.
 16. Looked at from a practical point of view and in the context in which it occurred, the reality of the situation is that the land was purchased from the administratrix of the deceased. The conveyance to the administratrix was clearly effected almost simultaneously with the transfer of the title to the appellant and was clearly made in order to enable the sale of the land and take place. There is no suggestion that the respondent had ever met Awang Bahar Mohamed bin Nani Khan; he simply knew that the land had been owned by an Indian.
 17. The judge came to the conclusion that the evidence of the appellant's father giving the receipt and the land title was convincing. He said that the respondent's evidence hung together well and had a solid ring of truth about it. He concluded by saying:

“I am completely convinced that the plaintiff and his witnesses have told me the truth. I am utterly unconvinced by the defendant's case and have the firm suspicion that I have been lied to.”
 18. Not only was the appellant's argument based on the fact that Awang Bahar Mohamed bin Nani Khan had died in 1968 wholly insufficient to be a basis upon which this court could interfere with those findings of fact by the judge, but the approach by the judge to the various aspects of the evidence is convincing. For example, the appellant's attitude to being told in 1993 that the respondent not only had land title but also the receipt which showed that he was entitled to a half interest in the land is consistent with somebody who was well aware of the existence of the receipt and is inconsistent with somebody who would have been taken by surprise by being informed that a piece of land in his name was owned in part by somebody else. Likewise, the fact that the respondent's daughter, Kheng Kim Soon, took photographs of the land when she heard the land was being cleared is consistent with a claim to an interest in the land but is inconsistent with a claim to someone who has merely lent money. As the judge observed, there would be no reason why the respondent and his family should take any interest in the land being cleared or take photographs at that time if all they were interested in was the return of a loan which had nothing to do with the land.

19. Mr Sawan argued that the judge should have accepted as genuine the copy letter that was produced by the appellant's mother. Whether that letter was genuine was a question of fact for the judge to decide. Nothing that was said to this court would be sufficient for this court to be able to come to the conclusion that the judge was wrong to ignore the copy letter. Indeed, it is not unfair to observe that very little was or could have been said on behalf of the appellant in this respect.
20. Importantly, the fact remains that the land was purchased for \$25,000 and the respondent had paid \$12,500. It is quite clear that the judge must have been correct in holding that the respondent was given the document of title to the land. The appellant's evidence that he had the land title at one stage was clearly wrong. That could not have been the case in view of the respondent's continued possession of it culminating in its production in court. The judge also accepted the receipt as being a genuine document. Specifically, he accepted that that document had been given to the respondent by the father when the land was about to be purchased and that the respondent had not forged it and had, in particular, not forged the signature of the appellant. The appellant's denial of having signed the receipt was not made in a convincing manner. It would have been expected that if the document had not been signed by him he would have taken far more interest in order to disprove it than refusing to go to see it in 1993 and not looking at it until the trial. The argument that he would not have signed a document where his name was misspelt is rather undermined when the signature itself is examined which appears to show a correct spelling. The appellant's absence from Brunei at the relevant time was not established, the statement in relation to his absence by the appellant's brother was at best ambiguous. The conclusion must therefore be that the judge was correct in not accepting that the appellant had not signed the receipt.
21. In those circumstances, and on the basis that the appellant had signed the receipt, there is no question but that the appellant himself had acknowledged the trust of half the land in favour of the respondent at the relevant time subject to section 27 of the Land Code Cap. 40. There was clearly a trust created of the land. The three certainties necessary for the creation of a trust were clearly present.
22. Section 27 of the *Land Code* provides:
- "27. No claim to or interest in any land shall be valid unless it has been registered in the Land Office."*
- On its face, the section invalidates any unregistered interest in land. This is a statement of the paramountcy of registered title common in Torrens Title legislation. Courts in other Torrens Title systems have nevertheless construed such a provision as subject to an exception in the case of equities arising from an act of the registered proprietor.
23. Here the receipt is evidence of the creation of such an equity. Equities such as this have been held to be valid in Brunei notwithstanding section 27. See for example: *Hongkong and Shanghai Banking Corporation Ltd. v. Hajah Aminah bte Aman* [1993] BLR 269 and the cases cited therein.

24. Mr Sawan also sought to argue that, on the basis that there had been a trust, that trust was illegal and the respondent could not benefit under it because the respondent was not entitled to purchase land in Brunei. It was said that the object of the agreement between the respondent and the father, evidenced by the receipt, was to enable the respondent to own land despite the fact that he was a non-citizen and that that was contrary to government policy. However, as was pointed out in the course of argument, that proposition has been the subject of a number of decisions including in particular *Chong Kon Fah v. Yong Siau* [1965-86] 1 BLR 193, *Central Development Ltd v. Koh Hoe Peng* [1965-86] 1 BLR 250 and *Koh Hoe Peng v. Central Development Ltd* [1965-86] 2 BLR 23 in which it is clear that a trust or agreement such as the present one is not illegal or void and that the Sultan's prior approval was not necessary. Mr Sawan suggested that there might have been some special order in the last case which required the Sultan's approval but that does not emerge from the report. What does emerge was that there was an order that if the unsuccessful litigant in that case did not transfer of property within one month a memorandum would be executed by the Chief Registrar.
25. In view of the conclusion reached that the appellant himself constituted himself a trustee by reason of his execution of the receipt the question of limitation does not arise because of the provisions of section 27(1)(b) of the Limitation Act, Cap. 14.
26. The appeal should therefore be dismissed and there should be an order that unless application is made within 7 days of the handing down of this judgment there will be an order of costs of this appeal in favour of the respondent.

Mortimer, P.

Davies, J.A.

Rogers, J.A.