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3, 1952

31289 15 of 1949.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF APPEAL OF THE STRAITS SETTLEMENTS, SETTLEMENT OF SINGAPORE.

UNIVERSITY OF LONDON

17 JUL 1953

INSTITUTE OF ADVANCED LEGAL STUDIES

BETWEEN

WEE BOO LAT (married woman) *Appellant*

AND

1. JOHN LAYCOCK
- 10 2. CHUA TIAN CHONG
3. OON KENG SAN (substituted by Order of Court dated 9th November, 1939) *Respondents.*

Case for the Respondents

RECORD.

1. This is an appeal from an Order of the High Court of Appeal of the Straits Settlements, Settlement of Singapore, dated the 5th December, 1940. By this Order the High Court of Appeal dismissed the Appellant's appeal from a judgment of the High Court of the Straits Settlements, Settlement of Singapore, dated the 2nd August, 1940, dismissing with costs an action brought by the Appellant as Plaintiff against the Respondents as Defendants. p. 45. p. 38.

2. By her Statement of Claim in this action the Appellant claimed to be the lawful daughter of one Wee Siang Tat by his first wife, one Ho Sok Choo Neo, and as such to be entitled to a share in the estate of Wee Siang Tat. pp. 3-5.

3. The Respondents are the executors and trustees of the will of Ho Sok Choo Neo to whom, in her lifetime, letters of administration had been granted of the estate of Wee Siang Tat. By their Defence the Respondents denied that the Appellant was the daughter of Wee Siang Tat. They further relied on certain orders of the High Court made in the administration of the estates of Wee Siang Tat and of Ho Sok Choo Neo. Finally, they contended that the Appellant's claim was in any event barred by the Limitation Ordinance and that the Appellant had been guilty of laches. p. 7, ll. 11-15. p. 8, l. 38, to p. 9, l. 9. p. 9, ll. 33-37.

4. The trial Judge, Mr. Justice Terrell, found as a fact that the Appellant was not the daughter of Wee Siang Tat, and he therefore

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25, RUSSELL SQUARE.

LONDON,

p. 38, ll. 16-25.
p. 45.

dismissed the Appellant's claim without considering the alternative grounds of defence put forward by the Respondents. The High Court of Appeal (Poyser CJ., Gordon Smith and Manning JJ.) decided the case against the Appellant upon the same ground. The question raised by this appeal is whether these concurrent findings of fact were right.

5. The Appellant's case in the Courts below can be summarised as follows :—

p. 11, ll. 34-35.

(A) She was born in or about the month of July, 1900. Wee Siang Tat was her father; Ho Sok Choo Neo, his wife, was her mother. Many members of the family and many relations were present at the birth. 10

p. 16, ll. 17-25.

p. 16, ll. 31, 32.

(B) One month after the birth a feast was held at Wee Siang Tat's house to celebrate the birth of the Appellant. Over one hundred persons attended this feast.

p. 91, ll. 12-13.

p. 13, l. 47.

(C) On the 14th March, 1901, Wee Siang Tat died. He died a very wealthy man.

p. 4, ll. 35-42, and
p. 95, ll. 6-12.

p. 96.

(D) Ho Sok Choo Neo, the widow of Wee Siang Tat, and the Appellant's mother, fraudulently concealed the fact that the Appellant was the child of her marriage with Wee Siang Tat and pretended that Wee Siang Tat had died childless. The effect of this was that the Appellant was deprived of any share in her father's estate and that this estate was divided in equal shares between Ho Sok Choo Neo on the one hand and certain members of Wee Siang Tat's family on the other. If the true facts had not been concealed the Appellant would have received two-thirds of the estate and Ho Sok Choo Neo one-third. 20

p. 11, l. 6.

p. 4, ll. 23-26, and
p. 21, ll. 24-30.

(E) After the death of Wee Siang Tat the Appellant lived with Ho Sok Choo Neo as her adopted daughter, though she was in fact her natural daughter.

p. 12, l. 2.

p. 11, ll. 38-41.

p. 12, ll. 19-22.

(F) In 1918 the Appellant was married to the second Respondent. Shortly before the marriage Ho Sok Choo Neo told the Appellant for the first time that her father was Wee Siang Tat. The Appellant did not then know that her father had died a wealthy man. 30

p. 64, ll. 37-38.

(G) On the 18th September, 1931, Ho Sok Choo Neo died.

p. 12, ll. 21-22.

p. 12, l. 26.

(H) In 1934 one Wee Eng Wan claimed (unsuccessfully) to be the son of Wee Siang Tat. It was at this time that the Appellant learnt of Wee Siang Tat's wealth.

p. 2, l. 13.

(I) In 1939 the Appellant commenced this action.

p. 7, ll. 11-15.

6. The Respondent's Case was that the Appellant had been adopted after the death of Wee Siang Tat, and that she was not his daughter or the natural daughter of Ho Sok Choo Neo. 40

p. 11, ll. 38-41.

p. 14, ll. 12-17.

7. The Appellant gave evidence in support of her claim. She said that in 1918 she had been told by Ho Sok Choo Neo that she was the daughter of Wee Siang Tat. She explained to the Court that the case

was being conducted by her lawyers on a speculative basis. Three witnesses were called by the Appellant, Low Hay Lian, Tan Cheng Kim, and Reynold Lionel Eber.

8. Low Hay Lian had been married to a younger brother of Ho Sok Choo Neo. Her husband had died in 1915. She said that she remembered the birth of the Appellant. The witness was then about sixteen years of age. The Appellant's mother was Ho Sok Choo Neo, and the child was born at the house of its maternal grandfather, Ho Yang Moh, at River Valley Road. The witness and many relations were at
 10 Ho Yang Moh's house when the Appellant was born. On the 30th day after the birth there was a feast at Wee Siang Tat's house at Havelock Road. Two months after the birth Ho Sok Choo Neo gave the Appellant to her sister to bring her up, as the sister was fond of children. After two years the Appellant returned to live with Ho Sok Choo Neo at her home in Killmey Road. She said that everyone in Singapore knew that Wee Siang Tat was a very rich man.

9. Tan Cheng Kim said that she had been present at the birth of the Appellant. At first she said that the child was born at the house of the witness's father-in-law, one Ong Peng Wee. Later she said that the
 20 child was born at the house of Ho Sok Choo Neo's father. The witness said that she nursed the child for two months after the birth, for which she was paid \$6/-. The witness frequently visited Ho Sok Choo Neo's house after Wee Siang Tat's death. People used to say that the Appellant was an adopted child, but the witness used to deny it. The witness admitted that it was strange that the Appellant did not learn who her father was until the time of her marriage.

10. Reynold Lionel Eber proved the last will of Ho Sok Choo Neo. In this will Ho Sok Choo Neo referred to the Appellant as her daughter.

11. Tan Neck Neo, widow of the late Lee Choon Guan, was the first
 30 witness called by the Respondents. She had been subpoenaed by the Appellant. She stated that she had no interest in the case and would have preferred not to be involved in it. Ho Sok Choo Neo's father, Ho Yang Moh, had married the sister of the witness's father. The witness had known Ho Sok Choo Neo intimately since childhood. The Appellant was not the child of Wee Siang Tat. The Appellant was adopted by Wee Siang Tat's mother and some years after the adoption was given by the mother to Ho Sok Choo Neo. All this was done after Wee Siang Tat's death. Wee Eng Wan (otherwise known as William) was also adopted after Wee Siang Tat's death. The witness had never seen the Appellant
 40 until after Wee Siang Tat's death.

12. Another witness called by the Respondents was the third Respondent Oon King San (Dr. K. S. Oon). His sister had been the first wife of Tan Moeng Tho. After the sister's death Tan Moeng Tho had married Ho Sok Choo Neo. From 1916 onwards the witness, when he was in Singapore, had always stayed at Ho Sok Choo Neo's house. She had frequently discussed family matters with him and had made him a Trustee of her will. She had frequently described the Appellant as her adopted child.

p. 28, ll. 12-17.

13. The second Respondent, Chua Tian Chong, the Appellant's husband, also gave evidence. He said that when he married her he understood that she was an adopted daughter. He had tried to dissuade her from bringing this action.

p. 27, ll. 16-18.

p. 27, ll. 22-26.

p. 27, l. 35.

14. Another witness was John Laycock, a solicitor practising in Singapore. Ho Sok Choo Neo had been a client of his firm for over ten years before her death. He had drawn a large number of wills for her. He had had many conversations with her about her family. She had always told him that the Appellant was her adopted daughter. Until this case started there had never been any suggestion that the Appellant was other than an adopted child. 10

p. 32, l. 3.

p. 32, ll. 10-11.

p. 32, ll. 6-11.

p. 32, ll. 16-17.

p. 32, ll. 29-30.

p. 33, l. 17.

15. Wee Guat Choo Neo (Mrs. Lim Peng Siang) was another witness called by the Respondents. She was the elder sister of Wee Siang Tat. She had married a few years before Wee Siang Tat. She and her husband, and Wee Siang Tat and his wife Ho Sok Choo Neo, had lived in the same house in Havelock Road together with Wee Siang Tat's parents. Wee Siang Tat had no children by Ho Sok Choo Neo. After Wee Siang Tat's death Ho Sok Choo Neo adopted two children, the Appellant and William. The Appellant was three or four years old when she was adopted.

p. 29, ll. 32-35.

p. 30, l. 10.

p. 29, l. 26.

p. 29, l. 32.

p. 29, ll. 40-41.

16. Chew Kow Neoh had lived in the family house at Havelock Road together with Wee Siang Tat and Ho Sok Choo Neo. She admitted to being a servant in the household although earlier she had styled herself as secondary wife of Wee Boon Teck. Ho Sok Choo Neo had no children. The witness knew the Appellant. The witness was living in the house when the Appellant was adopted. 20

p. 34, ll. 10-14.

p. 34, ll. 19-30.

17. Another witness was Sir David James Galloway. He had practised as a medical practitioner at Singapore. He knew Ho Sok Choo Neo after she became a widow and when she remarried Tan Moeng Tho. After her remarriage he attended her for a miscarriage and later for a completed pregnancy. This was about 1912 or 1913. He could tell that that was the first completed pregnancy she had ever had. His recollection of the case was very clear. It was an instrumental case and he remembered leaving a scar on the cheek of the child. 30

p. 36, l. 36, to
p. 37, l. 3.

18. Sir David Galloway's evidence was supported by that of Dr. Joseph Sandys English, Professor of Midwifery at the College of Medicine, Singapore. He had read Sir David Galloway's evidence. Medically the evidence was correct. An experienced doctor who delivered a full-term child would know whether or not it was the first pregnancy.

p. 38, ll. 22-29.

p. 38, l. 26.

p. 38, ll. 32-40.

p. 39, ll. 8-9.

19. In his judgment Mr. Justice Terrell observed that the onus was on the Appellant to prove her case and that she had entirely failed to do so. He said that on the contrary the evidence that she was an adopted child was overwhelming. He accepted the evidence of Tan Teck Neo, of Mr. Laycock, of Dr. Oon, of Mrs. Lim Peng Siang, and of Sir David Galloway. He said that the other evidence in the case pointed to the same conclusion, that the Appellant was not the natural daughter of Wee Siang Tat and 40

Ho Sok Choo Neo. He dealt with the argument founded on the description of the Appellant as the testatrix's daughter in the will of Ho Sok Choo Neo :—

10 “ The foundation of the plaintiff's claim seems to be that she is described in Ho Sok Choo Neo's wills (she made six altogether) as her daughter, whereas Wee Eng Wan is described as her ‘ adopted son.’ It is, however, quite in accordance with Chinese custom for Chinese to describe their adopted children as ‘ sons ’ and ‘ daughter,’ and there was a reason for describing Wee Eng Wan as her adopted son. She had been very fond of him and considered later that she had been very badly treated by him. In the first five wills he was given a derisory legacy of \$5/-. The reference to the fact that he was adopted was therefore by way of reproach. On the other hand Ho Sok Choo Neo was very fond of the plaintiff and reposed every confidence in her. No particular inference, therefore, can be drawn from this description.” p. 39, ll. 21-33.

Mr. Justice Terrell expressly rejected the evidence of the Appellant's witnesses, Low Hay Lian and Tan Cheng Kim. p. 39, ll. 34-36.

20 20. The Appellant appealed to the High Court of Appeal. On the 5th December, 1940, that Court, after hearing Counsel for the Appellant, dismissed the appeal with costs. The Respondents were not called upon to argue. The Judges gave their judgments orally. There does not appear to be any written record of the reasons for their judgments. p. 45.

21. The Respondents respectfully submit that this appeal should be dismissed for the following (among other) :—

REASONS

- (1) BECAUSE the burden of proof was on the Appellant and because the Appellant failed to discharge that burden.
- 30 (2) BECAUSE the evidence that the Appellant was not the natural daughter of Wee Siang Tat and Ho Sok Choo Neo was overwhelming.
- (3) BECAUSE the trial judge rightly accepted the Respondents' evidence and rejected the Appellant's.
- (4) BECAUSE the High Court of Appeal rightly rejected the Appellant's appeal.
- (5) BECAUSE there have been concurrent findings of fact in the Respondents' favour.

B. MACKENNA.

IAN BAILLIEU.

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Case for the Respondents

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