

Record

Tong (hereinafter referred to as 'the Borrower') certain title-deeds and documents therein more particularly mentioned and the Borrower confirmed that the said title-deeds and documents were held by the Appellants as security for moneys owing by the Borrower.

4. On the 16th June 1966 the Respondents obtained judgment in Suit No. 2180/65 against the Borrower for ₦ 378,267.31.

pp.1-4

5. On the 22nd September 1966 the Appellants took out an Originating Summons No. 239/66 against the Borrower. An Order was made for substituted service of the said Summons on the Borrower. This Summons was heard on the 14th November 1966 and the Appellants obtained an Order in default of appearance of the Borrower:

pp.5-8

- (a) declaring them to be the legal mortgagees of the properties the documents of title to which had been deposited with the Appellants as aforesaid (hereinafter referred to as 'the said properties') 20
- (b) giving them liberty to sell the said properties out of Court, and
- (c) directing the net proceeds of sale to be paid to them in satisfaction or part satisfaction of the amount due and owing by the Borrower to them.

pp.41-43

6. The Respondents took out a writ of seizure and sale and on the 27th October 1966 obtained an Order attaching the interest of the Borrower in the said properties and on the 28th October 1966 the Order of attachment was registered against the said properties. 30

pp.41-43

pp.5-8

7. On the 23rd January 1967 the Appellants registered the said Order of the 14th November 1966 at the Registry of Deeds against the said properties.

pp.67-70

8. On the 18th March 1967 the Sheriff made an application in chambers for (inter alia)

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- liberty to proceed with the sale of the said properties pursuant to the writ of seizure and sale obtained by the Respondents on the 27th October 1966. In his affidavit in support of the application the Sheriff stated that there was a question of priority as between the Appellants and the Respondents and both were served with the summons. This application was heard on the 29th May 1967 but no order thereon was made. pp.71-72
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9. On the 25th October 1967 the Respondents took out a summons in chambers (No. 2393 of 1967) in the Originating Summons No. 239/66 seeking (inter alia) an Order:- pp.9-10
pp.1-4
- that the Order of Court dated the 14th November 1966 made in the Originating Summons be set aside and that the Registrar of Deeds do rectify the Register of Deeds and cancel the entry made on the 23rd January 1967 in the said Register of the Order of Court dated the 14th November 1966 made in the Originating Summons and for other consequential Orders. pp.5-8
pp.1-4
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10. This application was heard by Winslow J. and dismissed on the 20th March 1968 the learned Judge upholding a preliminary objection by the Appellants that the Respondents were not persons affected by the said Order of the 14th November 1966, in the sense that they were necessary parties to it, because they suffered no injury directly under it. pp.5-8
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11. On the 26th April 1968 the Respondents issued a Memorandum of Appeal against the whole of the said decision of Winslow J. pp.28-29
12. The said appeal was heard on the 22nd May 1968 before the Federal Court and on the 10th July 1968 the Federal Court delivered judgment allowing the appeal on the ground that the Order dated the 14th November 1966 was an ex parte order within the terms of Order 53 Rule 4(1) and secondly that the order of attachment made in favour of the Respondents on the 27th October 1966 and registered against the said properties on the pp.30-36
pp.5-8
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- pp.41-43

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pp.5-8	28th October 1966 was an assurance for valuable consideration for the purposes of the Registration of Deeds Ordinance with the result that it had priority over the said Order of the 14th November 1966 which was not registered until the 23rd January 1967. Accordingly the Respondents were persons affected by the said Order of the 14th November 1966 and were essential parties to the Originating Summons. The Originating Summons not having been served on the Respondents the Order made thereon was a nullity and must be set aside.	10
pp.5-8		
pp.1-4		
pp.5-8		
pp.37-38	13. By an Order of the Federal Court dated the 10th July 1968 it was ordered that the said Order of the 14th November 1966 be set aside and that the Registration of the same be cancelled and that the Sheriff do forthwith proceed to sell the said properties and that the proceeds of sale be paid into an account with the Respondents in the joint names of the parties' Solicitors to remain there until further order.	20
pp.5-8		
pp.39-40	14. On the 12th August 1968 the Appellants were given leave by the Federal Court on giving security to appeal to Her Majesty in Council against the whole of the judgment of the 10th July 1968.	
pp.30-36		
pp.30-36	15. The Appellants have given the required security and this appeal from the said judgment of the 10th July 1968 has now been preferred to Her Majesty in Council by the Appellants who humbly submit that the appeal should be allowed and that the judgment and order of the Federal Court should be set aside, that the said judgment of Winslow J. be affirmed and it be declared that the Appellants are entitled in priority to the Respondents to receive out of the proceeds of sale of the said properties the full amount including interest thereon of the debt to them from the borrower secured by the deposit of documents of title to the said properties, and that the Register be rectified accordingly and that the Respondents be ordered to pay the costs of this appeal, of the appeal to the Federal Court and of the proceedings before Winslow J. for the following among other	30
pp.30-39		
pp.20-25		

R E A S O N SRecord

1. BECAUSE the Federal Court was wrong in holding that the writ of attachment dated the 26th October 1966 affected the unincumbered fee simple or other interest of the Borrower in the said properties and was not limited to the equity of redemption therein subject to the Appellants' mortgage.

2. BECAUSE the Federal Court was wrong in holding that the said writ of attachment was for the purposes of the Registration of Deeds Ordinance an assurance for valuable consideration.

10 3. BECAUSE the Federal Court was wrong in holding that the registration of the said writ of attachment on the 28th October 1966 gave the Respondents priority over the Appellants' mortgage.

4. BECAUSE the Federal Court was wrong in holding that the Respondents had an interest in the said properties which entitled them to be made parties to the Appellants' Originating Summons dated the 22nd September 1966.

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J.G. LE QUESNE Q.C.

ANTHONY HILLS

No. 31 of 1968

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE (APPELLATE
JURISDICTION)

B E T W E E N :

CHUNG KHIAW BANK LIMITED Appellants
(Plaintiffs)

- and -

UNITED OVERSEAS BANK Respondents
LIMITED (Applicants)

(In the matter of an application by
Summons in Chambers Entered No. 2393
of 1967 in Originating Summons No. 239
of 1966 in the High Court in Singapore
at Singapore

Between:

Chung Khiaw Bank Limited Plaintiffs

- and -

Tay Soo Tong trading as
Tiong Bie Hang Defendant)

C A S E FOR THE APPELLANTS

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill,
London, E.C.3.