

37/84

O N A P P E A L  
FROM THE COURT OF APPEAL OF THE STATE  
OF BRUNEI

(APPELLATE JURISDICTION)

B E T W E E N :-

10	HAJJAH TAMPOI BTE. HAJI MATUSIN A HAJI HUSSIN (Suing as the Administratrix of the Estate of Pengiran Norsalam Bte Pengiran Tengah and on her own behalf)	<u>First Appellant</u>
	HAJI IBRAHIM BIN HAJI HUSSIN	<u>Second Appellant</u>
	PENGIRAN HAJI ISMAIL BIN PENGIRAN PETRA (Suing as the Administrator of the Estate of Dayang Aji Bte Haji Hussin)	<u>Third Appellant</u>
	HAJI ABDUL RAHMAN BIN HAJI HUSSIN	<u>Fourth Appellant</u>
	- and -	
20	HAJI MATUSSIN BIN PENGARAH RAHMAN	<u>Respondent</u>

CASE FOR THE RESPONDENT

		<u>Record</u>
30	1. This is an Appeal from the Judgment of the Court of Appeal of the State of Brunei (Sir Geoffrey Briggs, P., Leonard and Kempster, JJ) dated the 21st May, 1983 (its Order being dated the 8th June, 1983) which allowed the Respondent's appeal from a Judgment of the High Court of the State of Brunei (Jones, J.) dated the 4th August, 1982, which dismissed the Respondent's Counterclaim for a declaration that the Appellants' claims to be entitled to 50/128 undivided shares in land known as Lot 218, District of Brunei were barred by Section 3 of the Limitation Enactment 1962 (Enactment No.7 of 1962) and that their rights and title to the said land were extinguished by Section 26 of the same Enactment and ordered that the Appellants be given possession of their said un-	pp. 39-47 pp. 48-49 pp. 26-31
40	divided shares.	p.41 11.26-35 p.41 11.36-45

Record

2. The main issues raised by this Appeal are as follows:-

- (1) Whether the Court of Appeal correctly applied the rule "Leges posteriores priores contrarias abrogant" (later laws abrogate prior contrary laws) in holding that the Limitation Enactment, 1962, was part of the law of the State of Brunei although some of its provisions were inconsistent with or repugnant to the Land Code, 1909, Cap. 40; 10
- (2) if so, whether the Court of Appeal correctly held that there was no issue between the parties on the pleadings that the Respondent had been in adverse possession of the said land since 1964, a period of some 15 years prior to the date of the Writ herein;
- (3) if so, whether the Court of Appeal correctly applied ss. 3 and 26 and Article 112 of the Limitation Enactment, 1962, (for the period since 1967 when it came into force) and s. 3 (g) of the Limitation of Suits Enactment Cap.14 (for the period up to 1967 when it was repealed by s. 26 of the Limitation Enactment, 1962) so as to bar the Appellants' claims and to extinguish their rights and title to the said land. 20

3. The essential facts of this case are set out in the Judgments of the Trial Judge and of the Court of Appeal and may be summarized as follows:- 30

pp.26-31  
pp.39-47

- (1) The 1st, 2nd and 4th Appellants are the children (and the 3rd Appellant the grandson) of Haji Hussin Bin Abdullah who was the registered owner of a one half share in Lot 218 on his death at some time between the years 1939 - 1948. His sons, and 2nd and 4th Appellants each held 14/128 in their own right. The 1st Appellant, a daughter, held 7/128 in her own right and 8/128 as administratrix of her mother's estate (she dying in 1949), letters of administration being obtained on the 4th November, 1978. The 3rd Appellant held 7/128 as administrator of his mother's estate (a sister of the other Appellants she dying in 1948) letters of administration being obtained on the 26th August, 1978. /The balance of 14/128 (which was not the subject-matter 40 50

of the action) to make up the half share was held by the 1st Appellant for another brother's estate Sabli bin Haji Hussin, he dying in 1963<sup>7</sup>.

- (2) The registered owner of the other half share in Lot 218 was the Respondent's deceased father. No grant of administration had been made in respect of his estate although he died some 50 years ago.
- 10 (3) The Respondent had lived on Lot 218 ever since his father became entitled to his share in 1915. He had built houses on the land and received rent from tenants. He paid annual gift rents to the Government.
- (4) Neither the Plaintiffs nor their parents ever lived on the land.
- (5) In their Writ and Statement of Claim dated the 19th June, 1979 in paragraphs 10-16 thereof the Appellants pleaded that since 1964 when the Respondent erected certain buildings on Lot 218 and received rents in respect thereof they had been deprived of the use of Lot 218 and had suffered loss and damages. The Appellants claimed inter alia an account of all moneys collected by way of rentals and demolition of the buildings.
- 20 pp. 2-4  
pp. 4-7  
p.5 1.46 -  
p.6 1.32  
p.6  
11.33 - end
- (6) By his Amended Defence and Counterclaim, dated the 4th February, 1982, the Respondent admitted that for upwards of 15 years prior to the issue of the Writ he had been in adverse possession and relying on ss.3 and 26 of the Limitation Act 1962, claimed a declaration that the Appellants' claims were barred and their rights and title to Lot 218 extinguished and that the Land Register be rectified accordingly in respect of the 50/128 undivided shares to which the Appellants' claims herein related.
- 30 pp.10-12  
p.11 1.38 -  
p.12 1.31
- 40
- (7) In their Reply and Defence to Counterclaim dated the 27th June, 1981, after joining issue with the Respondent on his Defence except insofar as it consisted of admissions, the Appellants then purported to deny that the Respondent's possession of Lot 218 was adverse. The Appellants further pleaded that their title had been or could be extinguished by the Limitation Enactment 1962, that the Respondent's claim or interest was invalid as not having
- 50 pp. 9-10  
p.9  
11.10-12  
p.9  
last line -  
p.10 1.3  
p.9 11.14-18  
p.9 11.30-35

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- p.9 11.35-40 been registered under s. 27 of the Land Code, 1909 and that S. 9 of the Land Code, 1909 conferred permanent occupancy of the land upon the Appellants. The Appellants contended further that the Respondent's possession was illegal under s. 13 of the Probate and Administration Enactment, 1955.
- p.13 4. The Action came on for hearing before Jones J. on the 21st July, 1982. The Appellants called one witness, one Othman B. Awang Damit and the 1st and 2nd Appellants gave evidence on behalf of the Appellants as did the Respondent on his own behalf. 10
- pp.15-22  
pp.15-16  
pp.16-17  
pp.18-20  
pp.20-22
- pp. 26-31 5. On the 4th August, 1982, Jones, J. delivered Judgment, dismissing the Respondent's Counterclaim and making an Order for possession in the Appellants' favour. Although no claim for possession was pleaded, the learned Judge said that the action was essentially one for possession. The learned Judge referred to the provisions of ss.3, 26 and Articles 110 and 112 of the Limitation Enactment 1962 and found as a fact that the land had never been occupied by the Appellants or their predecessors in title so that Article 110 did not apply and that it was thus necessary for the Respondent to prove adverse possession. After finding that the Respondent's possession was not illegal under s. 13 of the Probate and Administration Enactment, 1955, the learned Judge considered whether the Respondent had established adverse possession. The learned Judge then set out what he considered the ingredients of adverse possession to be. The learned Judge stated that he was not satisfied on the evidence that the Respondent had been in adverse possession, apparently for the following reasons, namely:- 20
- p.31 11.47-end  
p.32  
p.28 11.6-7  
p.28 11.18-38
- p.28 11.39-42
- p.28 11.42-43
- p.29 11.7-29
- p.29 1.30-  
p.31 1.24  
p.30 11.23-29
- p.31 11.22-24
- p.30 11.44-48 (a) because there was no evidence of any overt act by the Respondent prior to the issue of the Writ to support his claim to adverse possession of the land to the exclusion of the Appellants; 30
- p.30 11.48-end (b) because no notice or indication had ever been given to the Appellants before the action commenced that the Respondent regarded his occupation as exclusive and adverse to their title;
- (c) because the Respondent did not appear to have exclusive possession as he gave evidence that his two brothers would be entitled to a share. 50
- p.31 11.19-21
- p.31 11.27-31 The learned Judge took the view that it was not

- necessary to consider the effect of the inconsistency between the Land Code, 1909, and the Limitation Enactment, 1962. The learned Judge while making an order for possession in the Appellants' favour rejected their claims for an account for damages and for an order for demolition of the buildings erected by the Respondent. p.31 11.37-46
- 10 6. By a Notice of Appeal, dated the 23rd August 1982, the Respondent appealed to the Court of Appeal: the grounds of appeal are set out in a Memorandum of Appeal dated the 14th December, 1982. pp.33-34  
pp.35-38
7. By a Notice of Cross-Appeal, dated the 11th April 1983, the Appellants cross-appealed against the trial Judge's refusal to order an account, to make an award of damages or to make an order for demolition. pp.38-39
- 20 8. The Court of Appeal (Sir Geoffrey Briggs, P., Leonard and Kempster, JJ.) gave its judgment delivered by Kempster, J. on the 21st May 1983, allowing the Respondent's appeal with costs and making the declarations asked for by the Respondent in his Amended Defence and Counterclaim. pp.39-47
- 30 9. Kempster J. referred to and set out ss.3 and 26 and Articles 110-112 of the Limitation Enactment, 1962, stating that the Enactment did not come into effect until the 1st September, 1967. Kempster, J. referred to the Appellants' contention that those provisions of the Limitation Enactment, 1962, were void as being repugnant to ss.9 (1), 27 and 28(3) of the Land Code, 1909, which provisions he then set out. The learned Judge then applied the rule that 'later laws abrogated prior contrary laws' and concluded that the whole of the Limitation Enactment 1962 was part of the law of the State of Brunei though application pursuant to S.29 of the Land Code, 1909, was required in order to perfect a title acquired pursuant to s. 26 of the Limitation Enactment, 1962. pp.41-42  
p.42 1.22 -  
p.43 1.6  
p.43 11.10-34
- 40 10. Having found that there was evidence entitling the trial Judge to find that the Appellants had not occupied the land in question within any material period of 12 years, Kempster J. then considered the application of Article 112 which dealt with possession by the Respondent adverse to the Appellants or their predecessors in title. pp.43 11.26-34  
p.43 1.43 -  
p.44 1.9
- 50 Kempster, J. concluded that adverse possession had been established because:- p. 43 1.49 -  
p. 46 1.36

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- p.43 1.49 -  
p.44 1.9 (a) at least from the 1st September, 1967, when the Limitation Enactment came into force the period of limitation continued to run either against the Appellants themselves or the Probate Officer (as the predecessors in title of the 15/128 undivided shares which the 1st and 2nd Appellants held in a representative capacity from 1978);
- p.44 11.10-31 (b) because there was no issue between the parties on a proper analysis of the pleadings that the Respondent was in adverse possession since 1964; 10
- p.44 11.43-end (c) because (additional to (b) immediately above) the Respondent had said in evidence, which Kempster J. appeared to accept, that he considered that the whole of the land belonged to his father and that, since his father's death, he had occupied and possessed that land on a like footing; 20
- p.45 1.1 -  
p.46 1.36 (d) because, so far as the period 1964 to 1967 was concerned, s. 3 (g) of the Enactment repealed by s.27 of the Limitation Enactment, 1962, (namely, the Limitation of Suits Enactment Cap. 14) provided for the Limitation Ordinance of the Straits Settlement Cap.16 to apply with the effect that the Respondent's right in 1967 under the said s.3 (g) to seek the Court's discretion to have the Appellants' claim for possession dismissed survived the repeal of Cap.14. 30
- p.46 11.37-47 11. Accordingly, the Court of Appeal allowed the Respondent's appeal, dismissed the Appellant's cross-appeal and made declarations in the Respondent's favour under ss.3 and 26 of the Limitation Enactment, 1962 and under ss.26 and 29 of the Land Code, 1909, Cap.40.
- p.46 11.43-47
- p.52 12. On the 5th December, 1983 the Appellants were granted final leave to appeal to the Privy Council. 40
13. It is respectfully submitted that the Court of Appeal correctly held that the Limitation Enactment, 1962, is part of the law of Brunei although some of its provisions are or may be inconsistent with or repugnant to the Land Code, 1909, Cap.40. It is submitted that the Court of Appeal in so holding correctly applied the rule "Leges posteriores priores contrarias abrogant" (later laws abrogate prior contrary laws). 50

14. It is respectfully submitted that the Court of Appeal correctly held that on a proper analysis of the pleadings there was no issue between the parties that the Respondent had been in adverse possession of the said land since 1964, a period of some 15 years prior to the date of the Writ herein and that it was not open to the Appellants to deny adverse possession in paragraph 2 of their Reply and Defence to Counterclaim having regard to the pleadings as they stood.

15. It is respectfully submitted that the Court of Appeal correctly applied ss.3 and 26 of the Limitation Enactment, 1962, together with s.3 (g) of the Limitation of Suits Enactment so as to bar the Appellants' claims and to extinguish their rights and title to the said land. Accordingly, it is submitted the declarations under ss.3 and 26 of the Limitation Enactment 1962 and under ss.26 and 29 of the Land Code, 1909, Cap.40, were correctly made.

16. If and insofar as it may be necessary to do so, the Respondent will contend that the Court of Appeal correctly held that, apart from the pleadings, the Respondent had on the evidence established adverse possession. In the alternative, the Respondent will rely on Grounds I - III of his Memorandum of Appeal (Record p.35 ll.3 - 43) in support of his contention that Schedule 110 of the Limitation Enactment, 1962, applied and the Trial Judge erred in holding that it did not.

17. The Respondent respectfully submits that this Appeal should be dismissed with costs for the following (among other):

REASONS

1. BECAUSE the Limitation Enactment, 1962, is part of the law of the State of Brunei;

2. BECAUSE there was no issue between the parties on the pleadings that the Respondent had been in adverse possession of the said land at least since 1964;

3. BECAUSE ss.3 and 26 of the Limitation Act 1962 and s. 3(g) of the Limitation of Suits Enactment Cap.14 applied and were correctly applied by the Court of Appeal to bar the Appellants' claims and to extinguish their rights and title to the said land.

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4. BECAUSE the Court of Appeal was correct in making the declarations it did under ss.3 and 26 of the Limitation Enactment and under ss.26 and 29 of the Land Code, 1909 (Cap.40);

5. BECAUSE, alternatively to paragraph 2 above, adverse possession was established on the evidence;

6. BECAUSE, alternatively to paragraphs 2 and 5 above, the Trial Judge and the Court of Appeal should have found on the evidence that Article 110 of the Limitation Enactment, 1962, applied;

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7. BECAUSE, without prejudice to paragraph 6 above, the decision of the Court of Appeal is right and ought to be upheld.

STUART N. MCKINNON

CHOO FAH SEN



IN THE PRIVY COUNCIL

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ON APPEAL FROM THE COURT OF APPEAL  
OF THE STATE OF BRUNEI  
(APPELLATE JURISDICTION)

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B E T W E E N :-

HAJJAH TAMPOI BTE. HAJI MUTUSIN A  
HAJI HUSSIN (Suing as the  
Administratrix of the Estate of  
Pengiran Norsalam Bte Pengiran  
Tengah and on her own behalf)  
First Appellant

- and -

HAJI IBRAHIM BIN HAJI HUSSIN  
Second Appellant

- and -

PENGIRAN HAJI ISMAIL BIN PENGIRAN  
PETRA (Suing as the Administrator  
of the Estate of Dayang Aji Bte  
Haji Hussin) Third Appellant

- and -

HAJI ABDUL RAHMAN BIN HAJI HUSSIN  
Fourth Appellant

- and -

HAJI MATUSSIN BIN PENGARAH  
RAHMAN Respondent

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CASE FOR THE RESPONDENT

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PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
London SW1E 6HB

Solicitors for the Respondent

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