

IN THE COURT OF APPEAL OF MALAYSIA

Coram: Hamid Sultan Abu Backer, JCA; Umi Kalthum Abdul Majid, JCA; Ahmadi Asnawi, JCA

Ng Poh Hong v Kek Yok Lan and Another

Citation: [2018] MYCA 298 **Suit Number:** Civil Appeal No. B-02(NCVC)(W)-1864-09/2017

Date of Judgment: 12 September 2018

Land – Title over land – Equitable or beneficial ownership – Whether the disputed land held on trust – Applicability of the limitation laws or the indefeasibility of title

JUDGMENT**Background Facts**

[1] The parties shall be referred to as they were before the High Court.

[2] The plaintiff, Madam Ng Poh Hong, is the administratrix and beneficiary for the estate of her late father, Mr. Ng Hai, while the defendants, Madam Kek Yok Lan and Madam Lee Sah Hong, are the joint administratrixes for the estate of their late father-in-law, Mr. So Lian Lee.

[3] The subject matter of their dispute is a paddy field measuring about 3 acres in size, located in the sub-district of Sekinchan, Selangor, and registered as GM857, Lot 9775, Mukim Pasir Panjang, Tempat Sekinchan Block S9, Sabak Bernam, previously known as AA 632/64 Lot 14662 Mukim Tanjung Karang and thereafter known as HSM 1246 Mukim Tanjung Karang (“the said land”).

[4] The said land is registered under the name of Mr. So Lian Lee who had died almost five decades ago on 16.11.1971. The land was originally a jungle land and had been cleared and turned into a paddy field by Mr. So Lian Lee and his friend, Mr. Ng Hai, who died quite recently on 23.6.2011, at the age of 86. Together, they cultivated half portion of the land each. Subsequent to Mr. So Lian Lee’s death in 1971, Mr. Ng Hai continued to cultivate his portion of the land and paying quit rents for his half portion of the land until his own demise in 2011. Thereafter, the plaintiff continued to occupy and cultivate the said portion of the land through her tenant and also continued to pay the quit rent for the said portion. Therefore, the plaintiff’s version is that her late father, Ng Hai, was the equitable or beneficial owner of the half portion of the said land. However, seeds of disputes started to grow and conflicts soon cropped up between the two families culminating in the plaintiff lodging a

police report and a caveat over the said land.

[5] The plaintiff now seeks for an order that Mr. So Lian Lee held the half portion of the said land as trustee for Mr. Ng Hai and for the said portion to be transferred to the plaintiff as the administratrix and beneficiary for the estate of Mr. Ng Hai. More specifically, the plaintiff through her suit dated 25.7.2014, claims for the following reliefs:

(i) an order that the defendants shall comply with and to honour the trust for half portion of the said land for the interest and benefit of the plaintiff;

(ii) an injunction order to restrain the defendants or their representatives from chasing or disturbing the plaintiff's representative in possession, planting and/or cultivation on the half portion of the said land;

(iii) the defendants to transfer ownership of the half portion of the said land to the plaintiff's name as the beneficiary of the deceased, Mr Ng Hai, and/or as the administratrix for the estate of Mr Ng Hai, within 14 days after the judgment is granted; and

(iv) costs and any other reliefs.

[6] In support of her claim, the Plaintiff, amongst others, also relied on an Agreement dated 9.3.1973 (exhibit P1, at p. 426, Jilid 2(2), Bahagian C, Rekod Rayuan ('RR')) between Mr. Ng Hai and the late Mr. So Lian Lee's four sons namely (i) Mr So Pang Tong, (ii) Mr So Thong Pen, (iii) Mr So Tiong Ho and (iv) Mr So Eng Kong. The first defendant is the wife of the late Mr So Thong Pen while the second defendant is the wife of the late Mr So Pang Thong. The validity of exhibit P1 is not an issue though the defendants pleaded that they had no knowledge about the contents of the Agreement.

[7] A perusal of exhibit P1, a document titled "Surat Perjanjian" and signed by Mr. So Lian Lee's aforesaid four sons as "Pihak Pertama" (the First Party) and Mr. Ng Hai as "Pihak Yang Kedua" (the Second Party), makes it clear that the parties had agreed as follows (in its original text):

"Surat Perjanjian ini dibuat dan ditulis pada 9 hari bulan Mac, 1973, di antara: (1) So Pang Tong, K/P No: 7933912, (2) So Thong Pen, K/P No: 2686706, (3) So Tiong Ho, K/P No: 7933913, dan (4) So Eng Kong, K/P No: 7933916 kesemuanya tinggal di No. 279 Site C, Sekinchan, Kuala Selangor (di sini dipanggil Pihak Pertama) dan Ng Hai, K/P No: 3958494 tinggal di Sekinchan, Kuala Selangor (di sini dipanggil Pihak Yang Kedua), bahawa kedua-dua pihak hari ini telah mengaku dan bersetuju mengikut perjanjian seperti di bawah:

1. Bahawa Pihak Yang Pertama mengaku mereka adalah waris-waris yang berhak di atas tanah pusaka A/A. 632/64 Lot 14622 (bendang) di Sekinchan Mukim Tanjong Karang.
2. Bahawa Pihak Yang Pertama mengaku tanah yang tersebut telah diusahakan oleh simati (So Lian Lee) bapa sebenar kepada mereka dan Pihak Yang Kedua seorang separoh bahagian sejak tanah tersebut hutan lagi.

3. Bahawa sekarang Pihak Yang Pertama dengan ikhlas telah serahkan separoh bahagian sahaja daripada tanah pusaka (bendang) yang tersebut kepada Pihak Yang Kedua untuk menjadi dan milik Pihak Yang Kedua selama-lamanya tanpa apa-apa halangan.
4. Pihak Yang Pertama mengaku bahawa di atas kuat kuasa surat perjanjian ini Pihak Yang Kedua adalah bebas menduduki, mengerjakan tanah yang separoh bahagian itu sahaja dan mengambil hasil-hasil yang diperolehi di atas tanah itu dengan tidak boleh diganggu lagi oleh Pihak Yang Pertama dan waris-waris Pihak Yang Pertama.
5. Bahawa sepanjang perjanjian ini cukai bagi tanah bendang (pusaka) yang tersebut tertanggung kepada kedua-dua pihak sama rata.
6. Bahawa Pihak Yang Pertama mengaku apabila telah selesai bicara kuasa bagi tanah tersebut dan sekiranya dibenarkan oleh Kerajaan untuk menukar nama bagi tanah tersebut separuh bahagian itu kepada Pihak Yang Kedua akan membuat penukaran, dan sekiranya ini tidak dapat diselenggarakan, maka Pihak Yang Pertama mengaku atas kuat kuasa perjanjian ini Pihak Yang Kedua adalah berhak dan berkuasa penuh atas separuh bahagian tanah bendang (pusaka) yang tersebut di atas.
7. Bahawa Pihak Yang Pertama mengaku tidak akan rombakan perjanjian dan perjanjian ini adalah diikat mati (unrevocable), bagi waris-waris Pihak Yang Pertama tidak boleh membuat apa-apa tuntutan daripada Pihak Yang Kedua.
8. Perjanjian ini mengikat kedua-dua pihak serta kuasa-kuasa dan waris-waris kedua-dua pihak”.

[8] The plaintiff also relied on Guaman Pembahagian No. SBDS 124/85/517-1 Tahun 2008, whereby a Distribution Order dated 12.8.2008 was issued under section 13 of the **Small Estates (Distribution) Act, 1955**. The said Distribution Order also conferred the grant of Letters of Administration appointing both the defendants as the joint administratrixes for the estate of Mr. So Lian Lee (at pp. 350, 351, Jilid 2(2), Bahagian B, RR). The said Distribution Order also contains the following endorsement: “2. *Ng Hai ada kepentingan untuk ½ bhg. tanah GM 857 sahaja melalui Surat Perjanjian pada 09/03/1973*”.

[9] The plaintiff also produced the receipts for the quit rent payments bearing her late father’s name and address to show that her late father had been the one dutifully paying the quit rent for the land before seeking reimbursement for the other half portion from Mr. So Lian Lee and from his next of kin after Mr. So Lian Lee’s death.

[10] The defendants on the other hand, denies that the plaintiff’s father had acquired any right and interest over the said land on the grounds that Mr. So Lian Lee was the original settler on the said land and that he merely permitted Mr. Ng Hai to cultivate part of the land and sell the produce. They deny any knowledge of exhibit P1 and submit that in any event the claim is time-barred. They put out a counterclaim against the plaintiff seeking possession of the said land occupied by persons claiming a

right as tenant of the plaintiff.

The decision of the learned trial judge

[11] The learned trial judge concluded that the issues before the court are as follows:

- (i) whether Mr. Ng Hai, the deceased, owned half the portion of the said land during his lifetime;
- (ii) whether at all material times, the deceased Mr. So Lian Lee, was holding the said half portion of the said land on trust for the benefit of the deceased, Mr. Ng Hai;
- (iii) whether the defendants' refusal and failure to transfer the said half portion of the said land to the plaintiff amounted to a breach of trust and terms contained in the Agreement dated 09.03.1973 ("exhibit P1"); and
- (iv) whether the suit herein is statute-barred under the **Limitation Act, 1953 (Act 254)**.

[12] Firstly, in respect of whether Mr. Ng Hai had acquired any beneficial interest over the said land, the learned trial judge ruled, as evinced at para. 23, p. 36, Jilid 1, RR:

"[23] Although the quit rent receipts bear Mr Ng Hai's residential address lending support to the Plaintiff's claim that her father was indeed the one who paid the quit rent for the said Land, I am not prepared to go further and say that that suffices to establish that the deceased Mr Ng Hai enjoyed a beneficial interest in half portion of the said Land. Going by the oral and documentary evidence before me, I find that the most that can be said in this case is that Mr Ng Hai was occupying and cultivating the said Land with the consent of Mr So Lian Lee as a licensee."

[13] Secondly, in respect of the Agreement, exhibit P1, Her Ladyship made the following finding, at pp. 37, 38, 39 of the same Jilid:

"[26] The evidence before me shows that when Mr So Lian Lee passed away in 1971, he was survived by nine (9) children. If reference is made to P1, one would note that it was signed by only four (4) out of the nine (9) surviving children of Mr So Lian Lee, omitting the other five (5) children who are also the beneficiaries to his estate. The issue which then falls to be determined is whether the aforementioned four children had the legal capacity to sign P1 and thus relinquish half share of the said Land.

[27] I am in agreement with the learned counsel for the Defendants that the law as propounded in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 applies. ...

[28] This principle was subsequently revisited and reaffirmed by the apex court in *Futuristic Builders Sdn Bhd v Harinder Singh & Ors* [2008] 3 CLJ 117...

[29] So too in the present case. When P1 was executed in 1973, letters of administration had not been taken out on Mr So Lian Lee's estate. Consequently, whatever arrangement entered into between the four beneficiaries of Mr So Lian Lee and Mr Ng Hai as seen in P1 does not bind the

estate of Mr So Lian Lee.”

[14] Thirdly, in respect of whether Mr. So Lian Lee was holding half portion of the said land as trustee for his friend Mr. Ng Hai, the learned trial judge deliberated the issue in the following terms at pp. 39, 40, 41, 42 of the same Jilid:

“[30] As was mentioned earlier, the deceased Mr So Lian Lee was the registered owner of said Land. **Section 89** of the National Land Code states:

...

[31] The doctrine of *stare decisis* binds me to follow the principle enunciated by the superior courts which is mirrored in section 89 that under the Torrens system, the register is everything. In ***Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212 ...**

[33] In the present case, only Mr So Lian Lee’s name appears on the title to the said Land. There is no mention of Mr Ng Hai’s name. Given the conspicuous absence of Mr Ng Hai’s name on the title and the fact that there was no evidence of any attempt made by him or his beneficiaries to register the purported trust on the title during Mr So Lian Lee’s lifetime before his death in 1971 until the distribution proceedings before PW1 in 2008, the court rejects the notion that a trust was created on the said Land for the benefit of Mr Ng Hai and the Plaintiff’s submissions on this issue must fail.”

[15] Finally, on the issue of whether the Plaintiff’s suit is statute-barred under the Limitation Act 1953, Her Ladyship ruled as follows, evinced at pp. 42, 43 of the RR:

“[35] The Plaintiff in her submissions contends that since this is a case where breach of trust was pleaded, section 9 of the Limitation Act which stipulates that actions to recover land must be instituted within 12 years from the date the cause of action accrues, does not apply by virtue of section 22 of the same.

[36] Evidently, this argument is misconceived as I have held above that there is no trust over the Land in favour of the Plaintiff. At any rate, I am mindful that the Plaintiff has taken an inordinately long time to commence this action. As was rightly pointed out by counsel for the Defendants, P1 was entered into in 1973 while the present suit was only filed in 2014. There is a lapse of about four decades that was never properly accounted for by the Plaintiff. As the law stands, it is trite that inordinate delay has the effect of extinguishing the reliefs sought by a litigant if it cannot adequately explain the reasons for its indolence: ***Tan Poh Yee v Tan Boon Thien* [2017] 3 CLJ 569 (CA).**”

[16] In light of the above findings, the plaintiff’s claim was therefore dismissed.

[17] The learned trial judge also allowed the defendants’ counterclaim for vacant possession of the half portion of the land occupied by the plaintiff through her tenant and further allowed the application by the learned counsel for the defendants for a consequential order under section 417 of

the **National Land Code (“NLC”)** to order the Registrar or any Land Administrator of the relevant land office to remove the plaintiff’s caveat. In doing so, the learned trial judge relied on the Federal Court’s case of **Malaysia Building Society Bhd v KCSB Konsortium Sdn Bhd** [2017] 4 CLJ 24.

[18] The learned trial judge also made a consequential order allowing the plaintiff to harvest the paddy and to take any produce from the said land and that she will do so and vacate the said land before a stipulated date.

The Issues Before Us And Our Decision

[19] In our considered view the only issue before us is whether in all the facts and circumstances of the case alluded above, the late Mr. Ng Hai was at all material times the equitable or beneficial owner of the half portion of the said land occupied and cultivated by him and his beneficiaries thereafter and correspondingly, whether the late Mr. So Lian Lee was at all material times holding the said half portion of the land on trust for the benefit of the late Mr. Ng Hai. If it is ruled as a trust land, then there is no issue in regard to the applicability of the limitation laws or the indefeasibility of title of the late Mr. So Lian Lee’s title over the said land.

[20] We have scrutinized the entirety of the evidence by considering the probabilities of the plaintiff’s evidence as against the probabilities offered by the defendant’s version of the events and having regard to the entirety of the evidence led by both the parties, we found that the following undisputable events appear to have supported and strengthened the plaintiff’s case that the late Mr. Ng Hai, was at all material times the equitable or beneficial owner of the said half portion of the land:

- (i) the land was originally a jungle land;
- (ii) it was both the late Mr. Ng Hai and the said Mr. So Lian Lee who had jointly opened up the land for paddy cultivation by clearing the jungle growth and felling the trees on the land;
- (iii) then each of them by mutual consensus allotted to themselves ownership of half portion of the said land by dividing the land into 2 equal plots;
- (iv) thereafter the late Mr. Ng Hai and the late Mr. So Lian Lee had been cultivating on their respective plots (since the 1960’s);
- (v) the late Mr. Ng Hai had been managing the half portion of the said land that was chosen by him as well as paying quit rents for the said land ever since. The practice was continued by his beneficiaries after his demise;
- (vi) Mr Ng Hai was allowed to have peaceful and quiet enjoyment of the half portion of the said land during his entire lifetime. The same courtesy was extended to Mr. Ng Hai’s beneficiaries after his demise.

[21] It is pertinent to pause at this stage to note that the learned trial judge had found, at paragraph 23, p. 36, Jilid 1, RR, that at most that could be said upon the late Mr. Ng Hai paying the quit rents all

these years is that the late Mr. Ng Hai was occupying and cultivating the said land with the consent of the late Mr. So Lian Lee as a licensee.

[22] However, in our view, this finding is fundamentally flawed on account that there was no evidence adduced by DW-1 (So Geok Kan) and the 2nd defendant, DW-2 (Lee Sah Hong), both testifying for the defendants, that the late Mr. Ng Hai was in fact occupying the half portion of the said land merely as a licensee. Furthermore, DW-1 and DW-2 confirmed that they had no knowledge of what transpired between the late Mr. Ng Hai and the late Mr. So Lian Lee. They had also no knowledge of what happened between the late Mr. Ng Hai and the 4 sons of the deceased Mr. So Lian Lee after the latter's demise. In addition, the 1st defendant (Kek Yok Lan) did not testify at all. Hence, the evidence verily did not support the learned trial judge's finding that the late Mr. Ng Hai was occupying and cultivating the said land as a licensee.

[23] Now, after the death of Mr. So Lian Lee on 16.11.1971, his 4 sons (So Pang Tong, So Thong Pen, So Tiong Ho and So Eng Kong) as the '*Pihak Pertama*' entered into an agreement with Mr. Ng Hai as the '*Pihak Kedua*' on 9.3.1973. The agreement is described as '*Surat Perjanjian*' and marked as exhibit P1, evinced at p. 426, Jilid 2(2), RR. It was dated 9.3.1973 and was stamped on 10.3.1973.

[24] None of the defendants disputed the contents of the '*Surat Perjanjian*' nor were there any allegation of its impropriety or that it was falsified or that it was a product of a forgery. There was also no issue in respect of the identities of the signatories thereto. At the risk of being repetitive it provides, *inter alia*:

"1. ...

2. *Bahawa Pihak Yang Pertama mengaku tanah yang tersebut telah diusahakan oleh simati (So Lian Lee) bapa sebenar kepada mereka dan Pihak Yang Kedua seorang separoh bahagian sejak tanah tersebut hutan lagi.*

3. *Bahawa sekarang Pihak Yang Pertama dengan ikhlas telah serahkan separoh bahagian sahaja daripada tanah pusaka (bendang) yang tersebut kepada Pihak Yang Kedua untuk menjadi milik Pihak Yang Kedua selama-lamanya tanpa apa-apa halangan.*

4. *Pihak Yang Pertama mengaku bahawa di atas kuat kuasa surat perjanjian ini Pihak Yang Kedua adalah bebas menduduki, mengerjakan tanah yang separoh bahagian itu sahaja dan mengambil hasil-hasil yang diperolehi di atas tanah itu dengan tidak boleh diganggu lagi oleh Pihak Yang Pertama dan waris-waris Pihak Yang Pertama.*

5. ..."

[25] The learned trial judge raised the issue of whether the 4 sons of the late Mr. So Lian Lee had the legal capacity to sign exhibit P1 and relinquish half share of the said land when the latter was survived by 9 children altogether, of which it is apparent that the 5 other children did not sign the same. Further when exhibit P1 was executed, the Letters of Administration has yet to be taken out on Mr. So Lian Lee's estate. Hence, exhibit P1 does not bind the estate of Mr. So Lian Lee.

[26] We have no quarrel with the legal position of exhibit P1 as advocated by the learned trial judge.

[27] However, in our opinion, the significance of exhibit P1 is not so much on the legal capacity of the said 4 sons to enter into such an agreement with the late Mr. Ng Hai or the validity of the said agreement or its binding effect on the estate of So Lian Lee. Rather, it reflected the consistency of the plaintiff's narrative of the events that had actually transpired between Mr. Ng Hai and Mr. So Lian Lee when they had first ventured to clear the land and later dividing the said land into 2 equal parts to be allotted to each of them for paddy cultivation.

[28] The *Surat Perjanjian* exhibit P1 dated 9.3.1973 contains admissions by the 4 sons of the deceased Mr. So Lian Lee (all had passed on at the time of the hearing before the High Court) that Mr. Ng Hai was beneficially entitled to half of the said land. More importantly, the *Surat Perjanjian* acknowledged and recognized that “...*tanah yang tersebuttelah diusahakan oleh simati (So Lian Lee) bapa sebenar kepada mereka dan Pihak Yang Kedua seorang separoh bahagian sejak tanah tersebut hutan lagi...*”.

[29] The said *Surat Perjanjian* also contains statement of relevant facts by persons who are dead or cannot be found, and the statement is against the pecuniary or proprietary interest of the persons making it, that is, the said 4 sons.

[30] The Distribution Order (at pp. 350, 351, Jilid 2(2), RR) must be the final nail in the coffin. It offered the strongest irrefutable evidence operating in favour of the plaintiff's case.

[31] PW-1 (Nazli bin Zainal, Penolong Pengarah Unit Pembahagian Pusaka Kecil, Pejabat Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan), Unit Pembahagian Pusaka, Selangor Barat Laut) is the Land Administrator who presided over the distribution proceedings for the estate of Mr. So Lian Lee and the signatory of the said Distribution Order.

[32] PW-1 testified that both the defendants and another beneficiary of Mr. So Lian Lee's estate, one So Phei, had, during the distribution proceedings on 12.8.2008, agreed to give the said half portion of the land to Mr. Ng Hai.

[33] PW-1 further testified that during the continuation of the distribution hearing on 20.11.2008, Mr. Ng Hai was present and produced a copy of exhibit P1. Mr. So Lian Lee's beneficiaries did not raise any issue of fraud or forgery in so far as exhibit P1 is concerned during the said distribution proceedings.

[34] PW-1 also testified that the late Mr. Ng Hai had testified that the land was originally a jungle and it was both he himself (Mr. Ng Hai) and the late Mr. So Lian Lee who had jointly opened up the land for paddy cultivation by clearing all jungle growth and felling trees and thereupon each of them by way of mutual consensus took ownership of half of the said land by dividing into 2 equal plots.

[35] Finally, PW-1 testified that he had made the following ruling:

"...Apatah lagi memandangkan Kek Yok Lan, Lee Sah Hong dan So Phei telah pun mengakui untuk memberikan ½ bahagian tanah sawah tersebut kepada Ng Hai semasa prosiding pada 12.08.2008. Oleh itu yang demikian, saya menerima keterangan-keterangan yang dibentangkan oleh Ng Hai serta pihak-pihak lain sebagai bukti keterangan yang mengesahkan bahawa Ng Hai mempunyai kepentingan benifisari ke atas ½ bahagian tanah tersebut. Maka, setelah mendengar keterangan kesemua pihak dan persetujuan waris-waris So Lian Lee, saya membuat satu perintah pemberian Surat Kuasa Mentadbir di bawah seksyen 13 Akta Harta Pusaka Kecil (Pembahagian), 1955 melantik Kek Yok Lan dan Lee Sah Hong sebagai pentadbir bersama yang baru menggantikan So Pang Tong berhubung dengan harta pusaka So Lian Lee, iaitu, dengan melantik Lee Sah Hong sebagai pentadbir bagi rumah tersebut itu dan melantik Kek Yok Lan sebagai pentadbir bagi tanah sawah tersebut dengan membuat catatan di antara lainnya bahawa Ng Hai ada kepentingan benifisari untuk ½ bahagian tanah sawah tersebut itu yang mana dipegang di bawah GM 857 Lot 9775 Mukim Pasir Panjang melalui Surat Perjanjian pada 09/03/1973".

[36] This ruling was crystalized in the form of the said Distribution Order dated 12.8.2008, evinced at pp. 350, 351, Jilid 2(2), RR.

[37] There was no appeal against the said Distribution Order. There was also no application for judicial review to challenge the said Distribution Order nor an appeal of the said order to the High Court pursuant to section 29(1) of the **Small Estates (Distribution) Act, 1955**, read together with Rule 10(1)(c) of the **Small Estates (Distribution) Regulations, 1955**, which provide for the statutory time limit of 14 days to file an appeal to the High Court against any order, decision or act made or done by the Land Administrator under the said Act.

[38] The evidence showed that in 2012, the 1st defendant had acted on the said Distribution Order by applying for a transmission and by getting her name registered on the title as the administratrix of the said land vide Presentation No. 508/2012 (at p. 342, Jilid 2(2), RR).

[39] However, the 1st defendant had blatantly acted in contravention of the said Distribution Order in failing to register or endorse the beneficial interest of the deceased Mr. Ng Hai's estate on the title.

[40] In our view, the said Distribution Order is valid and still in force. It has not been set aside. By virtue of section 19 of the **Small Estates (Distribution) Act, 1955**, the said Order shall have the same force and effect as if it was made by a court of law and there shall be no appeal against the said decision except as provided under section 29 of the Act which the defendants had failed to do. In such event the said Distribution Order became and remains final and binding on all the parties including both the defendants. There is no reason not to enforce and implement the said Distribution Order.

[41] In such event, we had no hesitation to reverse the finding of the learned trial judge and found, as a matter of fact and law, that the late Mr. Ng Hai was the equitable or beneficial owner of the half portion of the said land and that the late Mr. So Lian Lee was at all material times holding the said land on trust for the benefit of the late Mr. Ng Hai. Indeed, the evidence led by the plaintiff proved that the half portion of the said land was held in trust by the late Mr. So Lian Lee for the benefit of

Mr. Ng Hai.

[42] Since the plaintiff had successfully established that her cause of action or claim was based on issues of trust in respect of the said property, the limitation period imposed under section 9 of the **Limitation Act, 1953**, apparently did not apply. Rather, section 22(1) of the same Act came into play to protect her claim or interest.

[43] Even if section 9 applies, we found that the plaintiff's action was still within the limitation period of 12 years as the relevant date should commence from 12.8.2008, being the date of the issuance of the Grant of Letters of Administration to both the defendants.

[44] In regard to the inordinate delay of 4 decades to commence the action as commented by the learned trial judge, the law is trite that the equitable doctrine of laches has no application when the appellant had full possession and use of the said land.

[45] Based on the foregoing analysis, we were of the view that there was no proper judicial appreciation of the evidence adduced by the plaintiff by the learned trial judge that a trust had been created when both the late Mr. Ng Hai and Mr. So Lian Lee had together opened and cleared the jungle land for paddy cultivation but in the end the title for the said land was issued only under the late Mr. So Lian Lee's name. The said trust was given legal recognition by the issuance of the Distribution Order by PW-1 on 12.8.2008. The failure by the learned trial judge to give legal effect and force upon the said Distribution Order had rendered her findings plainly wrong to warrant appellate intervention-see **China Airlines Ltd. v Maltron Air Corp. Sdn. Bhd. & Another Appeal** [1996] 3 CLJ (FC); **Lee Ing Chin @ Lee Teck Seng & Ors. v Gan Yook Chin & Anor** [2003] 2 MLJ 97 (A); **Gan Yook Chin & Anor v Lee Ing Chin @ Lee Teck Seng & Ors.** [2005] 2 MLJ 1 (FC).

[46] We further found that the learned trial judge had also misdirected herself on the law regarding the applicability of the limitation laws upon the plaintiff's claim and on the issues of inordinate delay and laches as discussed in the preceding paragraphs.

[47] For all the foregoing reasons, we allowed the plaintiff's appeal against the dismissal of her claim by the learned trial judge in terms of her prayers as embodied in paragraphs 19(a), (b), and (c) of her Statement of Claim.

[48] In addition, we also allowed the plaintiff's appeal against the defendants' counterclaim that was allowed by the learned trial judge. We found that the learned trial judge had acted in excess of jurisdiction when she failed to consider that the Distribution Order made by PW-1 is valid and still in force and shall have the same effect and force and shall be enforceable in the same manner as if it had been made by court pursuant to section 19 of the **Small Estates (Distribution) Act, 1955**.

[49] We also allowed costs to the plaintiff fixed at RM10,000.00, subject to the payment of the allocatur fee. We also ordered for the return of the deposit sum for the appeal to the plaintiff.

DATED: 12th September, 2018

AHMADI HAJI ASNAWI

Judge

Court of Appeal, Malaysia

COUNSEL

For the Appellant: GH Tee with N Rajentharen, Peguam Bela & Peguam Cara, No. 22A-3, Jalan PJU 8/3A, Perdana Business Centre, Bandar Damansara Perdana, 47820 Petaling Jaya

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LEGISLATION REFERRED TO:

Limitation Act 1953, Sections 9, 22(1)

National Land Code, Section 417

Small Estates (Distribution) Act 1955, Sections 13, 19, 29, 29(1)

Small Estates (Distribution) Regulations 1955, Rule 10(1)(c)

JUDGMENTS REFERRED TO:

China Airlines Ltd. v Maltron Air Corp. Sdn. Bhd. & Another Appeal [1996] 3 CLJ (FC)

Gan Yook Chin & Anor v Lee Ing Chin @ Lee Teck Seng & Ors. [2005] 2 MLJ 1 (FC)

Lee Ing Chin @ Lee Teck Seng & Ors. v Gan Yook Chin & Anor [2003] 2 MLJ 97 (A)

Malaysia Building Society Bhd v KCSB Konsortium Sdn Bhd [2017] 4 CLJ 24

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