



**IN THE HIGH COURT OF MALAYA IN SHAH ALAM
THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA
[SUMMON WRIT NO: 22NCVC-557-10/2015]**

BETWEEN

MOHAIDEEN MARIAM SITHIKA

... PLAINTIFF

AND

1) BALDEV SINGH SHAGINDER SINGH

2) MOHD FARUK ABDULLAH

**... DEFENDANT-
DEFENDANT**

**IN THE HIGH COURT OF MALAYA IN SHAH ALAM
THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA
[ORIGINATING SUMMONS NO: 24-1084-09/2015]**

BETWEEN

BALDEV SINGH SHAGINDER SINGH

... PLAINTIFF

AND

MOHAIDEEN MARIAM SITHIKA

... DEFENDANT



CORUM:

**Y.A. DATO' HAJI AKHTAR BIN TAHIR
JUDGE
HIGH COURT OF MALAYA
SHAH ALAM, SELANGOR DARUL EHSAN**

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GROUPS OF JUDGMENT

Background

1. The court delivered 2 separate decisions for 2 different matters. One matter was initiated by a writ bearing the number 22NCVC-557-10/2015 and the second matter begun as an Originating Summons 24-1084-09/2015. The Plaintiff in the writ action (“to be referred to as the appellant”) is the sole Defendant in the Originating Summons whereas the Plaintiff in the Originating Summons is the 1st Defendant in the writ action (“herein to be referred to as the 1st Defendant”). There is an additional Defendant in the writ action (“to be referred as the 2nd Defendant”).
2. Both the decision has been appealed against but as they stem from the same set of facts for purposes of convenience and expediency only one Ground of Judgment is written for both the appeals.
3. The appellants claim in the writ action is grounded on the fact that the land held under Grant 176313, Lot 31014 Seksyen 1 Bandar Cheras, Daerah Ulu Langat, Selangor bearing the address No. 20, Jalan Suadamai 6/2, Bandar Tun Hussein Onn, Cheras, Kuala Lumpur



(“the said land”) is a marital property bought during the existence of the marriage of the appellant with the 2nd Defendant.

4. It was the contention of the appellant that being a marital property the sale of the sale land by the 2nd Defendant to the 1st Defendant was invalid. The Plaintiff therefore asked for the name of the 1st Defendant be deregistered as the registered owner of the land. The appellant also asked for an order of injunction restraining the 1st Defendant from evicting the appellant from the said land. In the alternative the appellant claimed part of the proceeds for the sale of the said land.
5. The 1st Defendant meanwhile in the Originating Summons applied for summary possession of the said land in pursuance of Order 89 of the Rules of Court 2012 citing the appellant to be a trespasser on the said land.

The appellants case

6. The facts of the case are that the appellant and the 2nd Defendant were married on 17/4/1992 and have 3 children.
7. The appellant contended that the 2nd Defendant bought the said land as a marital property. The appellant further contended that she was a victim of physical abuse committed by the 2nd Defendant for which



she had lodged various police reports. The appellant also stated that she had lodged a private caveat on the said land to safeguard her interest on the land.

8. On the failure of the 2nd Defendant giving her maintenance the appellant lodged a complaint with the Islamic Department Ulu Langat and asked for maintenance as well as a share in the marital property. The 2nd Defendant failed to attend court to challenge the maintenance application.
9. The 2nd Defendant on 4/3/2015 made an ex parte application to remove the private caveat lodged by the appellant. The appellant contended that the Land Administrator allowed the application without hearing her out or take into account the pending case in the Syariah Court.
10. The appellant further alleged both the 1st and 2nd Defendant entered into a sham sale and purchase agreement on 4/10/2013 to disguise a friendly loan taken by the 2nd Defendant from the 1st Defendant. Both the 1st and 2nd Defendant had no intention to finalise the sale and purchase agreement. The 2nd Defendant had in fact contracted to sell the land for RM650,000 to a 3rd party.



11. The subsequent transfer of the said land to the 1st Defendant was therefore initiated by fraud committed by both the 1st and 2nd Defendant through the execution of a sham agreement. The Plaintiff applied to cancel the registration of the 1st Defendant's name as the registered owner and also asked for an injunction against the 1st Defendant from evicting her from the said land.

The Defendants case

12. The 1st Defendant's case is that he is a *bon fide* purchase for value and therefore his title is indefeasible contending that he had entered into a valid sale and purchase agreement with the 2nd Defendant. The Defendants further contended that at the material time the 2nd Defendant was the only registered owner and therefore there is no requirement that the consent of the appellant is needed to affect the sale or the transfer of the land to the 1st Defendant.
13. The Defendants further contended that the Syariah Court has no jurisdiction over matters relating to land and whatever application made by the appellant to the Syariah Court is not relevant for determining the rights of the 1st Defendant as the registered owner of the land.



14. Finally the Defendants contend that the fact that the private caveat of the appellant was removed and the 1st defendant was registered as owner shows that the appellant possessed no interest over the said land.

The decision of the court

15. The main point to consider in this case is the fact that the 1st Defendant is the registered owner of the said land and the rights of a registered owner are as stated in section 340 of the National Land Code which stipulates as follows:

1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible:-

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or



(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2):-

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent:-

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or



(b) the determination of any title or interest by operation of law.

16. The only reason an indefeasibility of title of a registered owner can be defeated is by virtue of section 340(2)(a-c) as stated above. The appellants attempt to challenge the indefeasibility of the title is by virtue of the fact that the sale and purchase agreement between the 1st and 2nd Defendant is a sham agreement intending to conceal a money lending transaction. This is a bare allegation without any evidence to support the allegation. It must not be forgotten that the burden to prove a fact lies with the person alleging the existence of the fact. This is clear from the provisions of the Evidence Act 1950.
17. Further the burden to prove fraud is akin to a prove in a criminal case of proving the fraud beyond reasonable doubt. One of the facts the appellant relies upon to prove that the agreement is a sham agreement is the fact that the land was sold below market value. Yet the appellant has not produced any valuation report showing what the market value is. Even if there is such a valuation it does not stop a party from transacting at a price agreeable to both the parties.
18. This brings forth the point of whether the 2nd Defendant had the capacity to sell the land. This point again falls under section 340 of the National Land Code which gives a registered owner the right to



sell the land as is stated in section 340(4) of the National Land Code as stated above.

- 19.** The issue of marital property is not relevant to issues of land law as the law governing land law is the National Land Code. The matter of marital property for Muslims comes under the jurisdiction of the Syariah Court. Even if the land as a marital property further steps must be taken to register the appellant as a joint owner. The mere declaration by the Syariah court that the land is a marital property does not displace the provisions of the National Land Code. However the issue whether the said land is marital property is still academic as in this case the Syariah court has yet to adjudge the matter.
- 20.** In short it is the court's decision the sale between the 1st and 2nd Defendant was performed fully and under a valid agreement of sale and purchase giving the 1st Defendant a good and indefeasible title.
- 21.** I therefore allowed the Defendant's application to strike off the claim of the appellants claim under the writ action under Order 18 Rule 19 of the Rules of Court 2012. I further allowed the 1st Defendants application for summary possession against the appellant as claimed under the Originating Summons.



Dated: 07 APRIL 2016

(AKHTAR TAHIR)

Judge

High Court of Malaya

Shah Alam, Selangor Darul Ehsan

Counsel:

For the appellant/plaintiff - Lily Chua; M/s M Manoharan & Co

For the first responden/defendant - RK Sharma, Amrit Singh & Nashvinder Singh; M/s Amrit & Company

For the second responden/defendant - Harvinder Singh; M/s Harvinder Singh & Co

Legislation referred to:

Rules of Court 2012, O. 89

National Land Code 1965, s. 340

Evidence Act 1950