



**IN THE HIGH COURT OF MALAYA AT SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA
[CIVIL SUIT NO.: BA-22NCVC-104-03/2018]**

BETWEEN

**PERUMAL A/L KARUPPAN
[NO. K/P: 461213-05-5067]**

... PLAINTIFF

AND

**1. PERIASAMY A/L PERUMAL KARUPPANNAN
[NO. K/P: 500303-05-5115]**

... DEFENDANTS

**2. RAJANDRAN A/L SUPPRAMANIAM
[NO. K/P: 760328-10-5407]**

3. PENTADBIR TANAH DAN DAERAH SELANGOR

JUDGMENT

The Trial

[1] This is the trial of an action by the plaintiff against the defendants', *inter-alia*, for a declaration that he is the beneficial owner of Lot 1842 in the Mukim of Labu, Sepang("the property"). The case arises as a result of a revocable trust deed executed by the first defendant in favour of the plaintiff in respect of the property.

Background Facts

[2] It is necessary to explain the events that led to these proceedings. Save where otherwise indicated, these facts were all agreed or not disputed.

[3] The property was alienated by the State to Karuppanan a/l Perumal on 23.4.1995. Karuppanan a/l Perumal is the father of the first defendant and the plaintiff.

[4] On 10.8.1972, Karuppanan a/l Perumal transferred the property to the first defendant *vide* presentation no.3529. Karuppanan a/l Perumal passed away on 17.9.1987.

[5] Some 20 years later, on 28.10.1992, the first defendant executed and registered a trust deed as testamentary will for the property to be registered in the name of the plaintiff subject to certain conditions *vide* presentation no. 266/92. The main terms of the deed were:

- (a) all parts of the property registered in my name, Periasamy a/l Karuppanan as trustee for the plaintiff's for property no.29, Kg, Chincang, Salak Selatan;
- (b) the plaintiff alone reserves the right to claim all parts of the property after the death of the first defendant;
- (c) during the lifetime of the first defendant, the first defendant can withdraw the said trust deed and re-register the said property in his name as the registered for some reasons.

[6] On 1 .11. 2010, the first defendant transferred the property to himself.

[7] On 12.11.2015, the first defendant transferred the property to the second defendant, who was his nephew, on love and affection *vide* presentation no. 4075/2015.

[8] The plaintiff instituted this action in March 2018 for breach of trust and sought an order for the property to be transferred to him.

[9] By their defence, the defendants maintained that the transfer of the property to the second defendant was not in breach of the trust. The trust

deed had been revoked by then. The second defendant counterclaimed for possession of the property and damages.

Case for the plaintiff

[10] It was the plaintiff's case that the transfer of the property by the first defendant to the second defendant is null and void as it was done in breach of the trust. He seeks the retransfer of the property and general and exemplary damages from the three defendants.

Case for the defendants'

[11] On the other hand, the defendants took the position the trust deed was revoked in November 2010 when the first defendant executed Form 14 A to transfer the property back to himself. As such the transfer of the property to the second defendant is valid.

[12] The second defendant counterclaimed for possession of the property and damages at the rate of RM1,000.00 per month for loss of use of the property.

Issues

[13] The agreed issues to be tried are:

- a. whether there was a revocation of the trust deed;
- b. whether plaintiff's claim was barred by limitation; and
- c. the second defendant's counterclaim

Witnesses

[14] The plaintiff gave evidence and called his son as his witnesses. The first and second defendants also gave evidence called 4 witnesses. The third defendant called 2 witnesses.



[15] There was a serious dispute on the facts as regards the events that took place after the creation of the trust deed. The plaintiff testified that he was never informed that the first defendant wished to revoke the trust or the transfer of the property to the second defendant. The first defendant, on the other hand, alleged otherwise. He maintained that the plaintiff was notified of the revocation. He explained that he had changed his mind about giving the property to the plaintiff as the latter had ill-treated his mum and siblings and forced them to leave the house.

Whether trust deed was revoked

[16] The question for determination here on the undisputed facts is whether, at the date of the transfer of the property to the second defendant, the trust deed had been revoked by the first defendant.

[17] It is the plaintiff's argument that the only way the trust deed could be revoked was by way of a formal document and notice to the beneficiary. Form 14A executed by the first defendant, it was argued, was an instrument of transfer and not a deed of revocation. In any event, it was ineffective as no notice was given to the plaintiff.

[18] In my judgment, as the trust deed is expressed to be revocable and to take effect only upon the death of the first defendant, the beneficial and legal title of the property remained vested in the former. Consequently, he retained unrestricted right of disposal of the property without the need to account to the plaintiff. The right of revocation, therefore, remained as part of the first defendant's right of ownership of the property until his death. It would follow that when he executed Form 14A, granting a disposition to himself, inconsistent with the terms of the trust, the trust was competently revoked and discharged. It amounted to a practical revocation. The first defendant was perfectly entitled to change his mind.

[19] For these reasons, I find that the execution of Form 14A must be regarded as an effectual revocation of the trust. The plaintiff's claim must therefore fail.

Limitation

[20] In view of my conclusion, the defense of limitation becomes otiose.

Counterclaim

[21] That brings me to the second defendant's counterclaim. Given my finding that he is the legal and beneficial owner of the property, he is entitled to seek possession of the property from the plaintiff.

[22] The second defendant also claims damages for loss of use of the property for the period the plaintiff and his family members have been occupying it. In my view, he is precluded from claiming this loss as he had never given notice to the plaintiff to vacate the property. He was content to allow the plaintiff's family to remain there.

Conclusion

[23] For the aforesaid reasons, I dismiss the plaintiff's claim against the defendants. The second defendant's counterclaim for possession of the property is allowed. The plaintiff to pay costs of RM30,000.00 to the first and second defendants and RM10,000.00 to the third defendant.

Dated: 22 NOVEMBER 2019

(S.M KOMATHY SUPPIAH)

Judge

High Court of Malaya

Shah Alam

Date of Decision: 22 October 2019



Counsel:

For the plaintiff - Sumathi Shanmugam; M/s Sharif & Khoo

For the first & second defendants - Chua Li Li & Hamsagayathri, M/s M. Manoharan & Co.

For the Third Defendant - Jamilah Jamil, Pejabat Penasihat Undang-Undang Selangor