
LEE KIM GUAN v. MALAYAN PRODUCE CO SDN BHD
HIGH COURT, PULAU PINANG
ABDUL HAMID MOHAMED J
ORIGINATING MOTION NO 25-14 OF 1992
5 APRIL 1993
[1993] 1 LNS 237

Case(s) referred to:

1 Eu Finance Bhd. v. Siland Sdn. Bhd. (M & J Frozen Food Sdn. Bhd, Intervener) [1989] 1 MLJ 195

2 Hiap Yiak Trading Sdn. Bhd. & Ors. v. Hong Soon Seng Sdn. Bhd. [1990] 2 MLJ 155

3 Asia Commercial Finance (M) Bhd. & Anor v. Development & Realtor Sdn. Bhd [1992] 2 CLJ 1175

4 Caveating One's own Land; Cold Comfort for the Registered Proprietor by Teo Keang Sood [1991] 1 MLJ xxxiv

Counsel:

Khaw Cheow Poh (J B Lim Suhaimi & Khaw) for the plaintiff.

Mohideen Abd Kader (Mohideen & Partners) for the defendant.

PENGHAKIMAN

(Lampiran 3)

This is an application by the Plaintiff, inter alia, to remove the private caveat dated 21st November 1989 entered against the land known as Lot No. 39, Seksyen 4, Bandar George Town (the said land).

The said land was during all the material time registered in the name of the Defendant. The land was charged to Malaysia Borneo Finance Corp. (M) Bhd. The chargee obtained an Order for the sale of the said land. It was sold at a public auction held at the High Court in Penang on 13th November 1989. The Plaintiff was the successful bidder. About one week after the auction sale, i.e. on 21st November 1989, the Defendant entered a private caveat against the said land.

The Plaintiff, having paid the full purchase price, the Senior Assistant Registrar, on 23rd February 1991 executed a Certificate of Sale in Form 16F of the National Land Code (NLC) in favour of the Plaintiff. However, due to [2] the existence of the private caveat, the said land could not be transferred to the Plaintiff. Hence this application.

The following facts should also be noted. The Order for Sale was made inter parte. There was no appeal by the Defendant. However, on 18th March 1991, the Defendant took out a Writ of Summons in the High Court, Malaya at Kuala Lumpur, praying for numerous orders, including, as I understand it, a declaration that the Order for Sale and the auction sale were null and void.

Before me both learned Counsel agreed to argue and that the Court decides on one point of law first. The point is whether the Defendant, being the registered proprietor, could caveat the said land.

My attention was drawn to two conflicting decisions of the High Court in this country, namely *Eu Finance Bhd. v. Siland Sdn. Bhd. (M & J Frozen Food Sdn. Bhd, Intervener)*¹ and *Hiap Yiak Trading Sdn. Bhd. & Ors. v. Hong Soon Seng Sdn. Bhd.*². *Eu Finance*¹ was followed by Edgar Joseph J. (as he then was) in *Asia Commercial Finance (M) Bhd. & Anor v. Development & Realtor Sdn. Bhd.*³. I was also shown an article instituted *Caveating one's own Land: Cold Comfort for the Registered Proprietor*⁴ by Teo Keang Sood and also Singapore, New Zealand and Australian cases. [3]

The whole issue, to my mind, boils down to this, that is, whether a registered proprietor may caveat land of which he is the registered proprietor after the land has been sold at a public auction pursuant to an Order for Sale.

This involves interpretation of section 323 NLC which, for convenience is now reproduced:

"(1) The persons and bodies at whose instance a private caveat may be entered are:

(a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest,"

As I understand it, the thrust of the argument by the learned Counsel for the Plaintiff is that once the sale is concluded the chargor (Defendant) ceases to have any claim to the land. Learned Counsel for the Defendant concedes that that is so in "normal cases". But, he argues that the position is different where the chargee challenges the Order for Sale and/or the sale itself. In the latter case, he says, the registered proprietor has not lost his rights and therefore should be able to caveat the land.

I think the problem can be more easily solved if we approach it step by step.

First, by virtue of section 323(1)(a) NLC a private caveat may be entered by any person claiming title to, or any registrable interest in, any alienated land or any right to such title or interest. In *Eu Finance*¹, L.C. Vohrah [4] J. was of the view that a "registered owner must necessarily be a person *already* possessing title or interest in the land and not merely a person claiming title to or any interest in that land and must as a matter of logic have been excluded

by the language of s.323(1)." I agree with this view.

Now, what is the position of a chargor who on record remained the registered proprietor after the sale is concluded? First, let me say here that the sale is concluded the moment the hammer is struck, not when the balance of the purchase price is paid. I agree with the view that once the sale is concluded, the registered proprietor ceases to have any more claim to title or interest in the land or any right to such title or interest. It follows therefore, that once the sale is concluded he is not entitled to caveat the land.

What if he says he is challenging the Order for Sale and the sale?

As regards the Order for Sale, once the Order is made inter parte and there is no appeal against the Order, he has lost the right to challenge it.

As regards the sale itself, there is no order for stay of execution of the Order for Sale, there is no injunction prohibiting the sale from being conducted. Indeed, it was conducted and concluded. It was only some 16 months later that the Defendant filed an action, inter alia, to have it declared null and void. This is clearly an abuse of the [5] process of the court. Furthermore, by merely filing an action to challenge the sale, does not give the Defendant the title or interest to the land nor the right to such title or interest that would entitle him to caveat the land under section 323(1)(a) NLC.

I am therefore of the view that the Defendant in this case does not have any claim under section 323(1)(a) NLC and therefore is not entitled to caveat the said land. The application as contained in prayers 1 to 4 is allowed.