

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(CIVIL DIVISION)**

[ORIGINATING SUMMONS NO: 59-24-487-2007]

**Dalam perkara mengenai hartanah
yang di pegang di bawah hakmilik
HS (D) 12117, Lot 260., Seksyen 90,
Bandar Kuala Lumpur, Wilayah
Persekutuan**

Dan

**Dalam Perkara Aturan 89, Kaedah-
kaedah Mahkamah Tinggi 1980.**

BETWEEN

**AMANAH RAYA BERHAD
(SEBAGAI PENTADBIR HARTA PESAKA
WALTER SELVARASASINGAM
PACHYMUTHU @ WALTER SELVA
RASASINGAM, SIMATI)**

.... PLAINTIFF

AND

- 1. PANJAWARNAM A/P KRISHNAN**
- 2. TIAP-TIAP PIHAK YANG MENDUDUKI
(TANAH ATAU SEBAHAGIAN DARINYA
YANG DIPEGANG HAKMILIK HS(D) 12117,
LOT 260, SEK 90, BANDAR KUALA
LUMPUR, DAERAH KUALA
LUMPUR, WILAYAH PERSEKUTUAN) ... DEFENDANTS**

CIVIL PROCEDURE: Summary possession of land - Vacant possession - Application by administrator of deceased's estate - Whether deceased consented to defendants remaining on land - Defendants' claims contrary to deceased's will - Validity of deceased's will - Defendants incurring expenses for deceased's burial, whether relevant - Defendants took care of deceased in his lifetime and considered part of his family, whether a relevant consideration - Defendants expended money renovating property on land, whether consented to by deceased - Whether defendants mere trespassers or bare licensees - Rules of the High Court 1980, O. 89

[Administrator/plaintiff's claim allowed.]

Cases referred to:

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309

Khoo Yong Seng v. Ng Choo Peng & Anor [2003] 5 MLJ 498

Legislation referred to:

Distribution Act 195

Rules of the High Court 1980, O. 89

BRIEF GROUNDS

DECISION ENCLOSURE 1:

The plaintiff was appointed as administrator of the deceased estate on 20.7.1999 and had procured an order for sale of the property by the High Court on 1.7.2005.

The plaintiff in this O/S, claim for vacant possession of the said property on the ground that the plaintiff as an administrator of the property had entered into the SPA with a 3rd party but it could not be completed as the defendants are still occupying the property. The deceased in his Will bequeathed that the property to be sold and the

proceeds there of to pay for his debt and the balance to be divided between the beneficiaries. The deceased allowed the defendants to occupy on or about 1983 and the defendants refused to vacate the property even after the notice to vacate was issued and served on them.

The defendants alleged that they had taken care of the deceased during his lifetime and were requested by the deceased to keep on staying in the said property as they were considered apart of the deceased's family. The defendants also states that they had spent a lot in renovating and maintaining the said property.

The Courts Findings:

O. 89 of the RHC 1980 provides for one to make an application for vacant possession against persons who are not authorized to remain on one's property (not being a tenant or tenants holding over after the termination of the tenancy) without his express or implied consent.

The plaintiff is the administrator to the estate of the deceased. The plaintiff claimed that the defendants have not been authorized to remain on the property by the beneficiaries.

Prior to this application herein, the defendants have applied for the O/S to be struck out (Enclosure 8) on grounds, *inter alia*, that the action herein is an abuse of courts process and misconceived as far as O. 89 RHC is concerned. However the application has since been dismissed by the SAR on 9.9.2007 and upon to the Judge in Chambers, was also dismissed on 11.6.2008.

Now before me is the application for vacant possession by the plaintiff against the defendants.

The issues raised by the defendants are:

- (a) Whether the deceased had consented to the defendants remaining on the property;
- (b) Defendants have incurred expenses for the burial of the deceased's;
- (c) Defendants have been taking care of the deceased in his lifetime and the deceased had considered the defendants as part of his family;
- (d) Defendants have spent a considerable sum on the renovation of the property.

Whether the deceased had consented to the defendants remaining on the property.

The defendants have not produced any evidence to support their contention that the deceased had intended that the defendant is to remain on the property even after his death.

The fact shows that the Will was executed on 25.6.1992 long after the deceased had invited the defendants to stay on the property sometime in 1983. If it was true that the intention of the deceased to have the defendants remain on the property after his death, (as alleged by the defendants) the Will would have stated so. Instead the Will states that the property is to be sold and the proceeds are to be distributed amongst his beneficiaries.

Hence there is no evidence to show that the defendants have the consent of the deceased to remain on the property after his death. The defendant is therefore, bluntly put, a trespasser on the property.

Defendants have incurred expenses for the burial of the deceased's

This is not relevant to the issue herein. In any event even if it is proven that the costs of the burial was incurred by the defendants, the plaintiff, as the administrator of the deceased's estate will be in a

position to reimburse such costs as the deceased had stated in his Will that the costs of his burial will be expended from the proceeds of the sale of the said property.

Defendants have been taking care of the deceased in his lifetime and the deceased had considered the defendants as part of his family

This alleged “closeness” of relationship between the deceased and the defendants is not relevant in this application and legally, it would not have any effect on the defendant’s right or entitlement to the property of the deceased as stated in the Distribution Act 195.

The evidence shown by the defendants that they have in their custody the savings account book, pensioner’s card of the deceased would not alter the state of the situation either.

Defendants have spent a considerable sum on the renovation of the property

As the defendants are not registered owners to the property, they should have not done any renovation on the said property. There was no evidence of consent being given by the deceased for the renovation to be done on the property. Hence any renovation if done is done to the perils of the defendants. That would not have given the defendant the right to the property.

From the facts of the case, at best the defendants are gratuitous or bare licensees. There is no evidence before this court to compel the doctrine of equitable *estoppel* to be applied in favour of the defendants. Neither is there any evidence of any requests or encouragement from the deceased / beneficiaries or some expectation held out by the same to the defendants that had induced the defendants to spend on renovation of the said property. Refer to the case of *Khoo Yong Seng v. Ng Choo Peng & Anor* [2003] 5 MLJ 498)

The validity of the Will

The Will was executed by the deceased long after the defendants have been staying on the property. If deceased had wanted the defendants to stay on the property the deceased would have stated so in the Will.

The grant of probate was granted by the Court after court had considered all the relevant circumstances. To date the Will of the deceased had not been challenged at all, least of all by the defendants.

As to the allegation that the signature of the deceased on the said Will is different from his usual signature, this allegation is

unsubstantiated. When the application for the Grant of probate was heard, the Public Trustee had tendered an affidavit by the deponent who had witnessed the deceased signing the Will. This direct evidence negated the bare allegation made by the defendants on this very issue. A case on point is the case of *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309 where the court held that:

“In the circumstances of this case, it was also difficult to disagree with the holding of the Court of Appeal that the High Court had erred in determining the issue of forgery solely, if not substantially, on the basis of the evidence of two handwriting experts, PW4 and PW6, to the exclusion of relevant and direct evidence from DW2 and DW3, who had actually witnessed the execution of the will by the deceased at the material time.”

Therefore the contention of the defendants as to the issue on the signature of the deceased is devoid of merits.

Even if the argument of the defendants is to be taken at its best, ie, that the validity of the will is doubted, that by itself does not entitle the defendants to have any right to the property in question as provided under the Distribution Act 1958.

There is no legal relationship between the defendants and the deceased and unfortunately the demise of the deceased ended the right of the defendants to remain on the property.

Enclosure 1 is allowed with costs

DATIN ZABARIAH MOHD YUSOF

Date 30 OCTOBER 2009.

For the plaintiff - Afifi Ahmad (with Md Azuan); M/s Azrul Afifi & Azuan

For the defendant - Annon Xavier; M/s Lee Swee Seng & Co