

Wong Yack Yoon and Another v Wong Ah Chen (alias Woong Kun Chin) and Another
[2005] SGCA 20

Case Number : CA 56/2004
Decision Date : 06 April 2005
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Leong Sue Lynn and James Leslie Ponniah (Wong and Lim) for the appellants; George Pereira (Pereira and Tan) and Lim Lay See (Choo and Lim LLC) for the respondents
Parties : Wong Yack Yoon; Ho Choon Mun — Wong Ah Chen (alias Woong Kun Chin); Goh Yew Pong (alias Wu Yu Peng)

Land – Easements – Rights of way – Whether easement of access allowing respondents to pass over vacant land in front of appellants' flat entitled them to park their car on vacant land

Land – Interest in land – Appellants' demised premises included vacant land in front of appellants' flat – Easement granted in favour of respondents over vacant land – Whether appellants having exclusive possession of vacant land

Land – Interest in land – Whether parties each had equal reversionary interest in vacant land – Whether vacant land common property to which respondents had present right of possession

6 April 2005

Judith Prakash J (delivering the judgment of the court):

Introduction

1 This appeal arose from the following orders made by the High Court in June 2004 (see [2004] SGHC 235):

(a) that Wong Ah Chen alias Woong Kun Chin and Goh Yew Pong alias Wu Yu Peng (who were the respondents in this appeal) be declared the owners of one-half, equal, undivided share of Lot 1031N, Mukim 24; and

(b) that Wong Yack Yoon and Ho Choon Mun (who were the appellants in this appeal) at their cost and expense do remove the white wall and the extension thereto (built on the said lot and as more specifically described in the affidavit of the first respondent) by Monday, 12 July 2004.

2 On 23 February 2005, we allowed the appeal of the appellants against the above orders. The reasons for our decision follow.

The facts

3 In 1958, a company known as Melodies Limited (“the developer”), constructed a block of two-storey shop-houses on land along Jalan Ayer (then known as Lorong 1, Geylang Road). Each shop-house comprised two self-contained flats. This case concerned the two flats which are now known as 4 Jalan Ayer, a ground floor flat, and 4A Jalan Ayer, the first floor flat directly above 4 Jalan Ayer. When it was built, the shop-house containing the two flats was known as 16/16A Lorong 1, Geylang Road, Singapore. At the present time, the appellants are the owners of the ground floor flat and the respondents are the owners of the first floor flat.

4 The shop-house was constructed on Lots 419-11 and 419-18, Mukim 24, which were subsequently amalgamated into Lot 1031N. The shop-house did not occupy the whole of the area of 2,100 sq ft of Lot 1031N. As such, there was vacant land to the front and to the rear of the shop-house. The developer owned the freehold estate of the lot.

5 The developer sold both flats on the same day but to different persons. As at that time there was no legislation providing for separate titles for apartments within a building, a slightly complicated method had to be adopted to convey the developer's interest in Lot 1031N and the two separate flats it contained to the respective purchasers of the same. On 22 June 1959, the developer granted a lease of the ground floor flat for a term of 9,999 years from 1 January 1958 to one Phoon Ah Looi ("Phoon"). Contemporaneously with this lease, the developer, by an indenture, conveyed to Phoon a one-half, undivided share in the freehold estate of Lot 1031N. On the same day, the developer granted a lease of the first floor flat to one Yim Lei Shong ("Yim") for an identical term of 9,999 years. As in the other case, the developer also executed an indenture in favour of Yim, conveying to the latter a one-half, undivided share in the freehold estate of Lot 1031N.

6 In 1961, Phoon assigned her lease of the ground floor flat and conveyed her one-half, undivided share in the freehold estate of Lot 1031N to Wong Yack Yoon, the first appellant, and one Kwan Ah Mei ("Kwan"). In 1978, Kwan assigned her interest in the lease and conveyed her interest in the freehold estate to Ho Choon Mun, the second appellant.

7 In December 1994, Wong Ah Chen alias Woong Kun Chin and Goh Yew Pong alias Wu Yu Peng, the respondents herein, purchased the first floor flat. By an indenture of assignment and conveyance dated 21 December 1994, Yim assigned to the respondents the residue of the term of 9,999 years granted in respect of the first floor flat and also conveyed her interest in the freehold estate to them. Shortly thereafter, the respondents moved into the first floor flat and occupied it.

8 The difficulties which eventually led to the initiation of proceedings started sometime in 1995 when the appellants built a white wall on the vacant land at the front of the shop-house (which vacant land we will hereafter refer to as "the frontage") just in front of the entrance leading to the first floor flat. The appellants did not occupy the ground floor flat themselves but had rented it out, and the tenants would use the frontage as a parking area. As the area of the frontage is small, when the respondents acquired a car, they found it difficult to park their car at the frontage as well. The presence of the wall was also a hindrance to parking. From the respondents' point of view, the situation became worse when the appellants rented out the ground floor flat to a driving school and the school used the whole of the frontage for parking its cars. Then, in August 2003, the appellants extended the wall, thus making it impossible for the respondents to park their car at all on any part of the frontage. The respondents asked the appellants to remove the wall but the latter refused.

9 In early 2004, the respondents filed an Originating Summons against the appellants asking for, *inter alia*, a declaration that the respondents were the owners of a one-half, undivided share of Lot 1031N and that the appellants be ordered to remove the wall and the extension to it. As stated, the respondents were successful. The learned judge found that the appellants and the respondents were, equally, the owners of a one-half, undivided share of Lot 1031N and that both parties were therefore entitled to have equal and immediate enjoyment of the frontage including the right to park their cars on the same. As such, the appellants were not entitled to build a wall on the vacant land that would interfere with the respondents' use of the frontage. In respect of an easement given to the lessees of the first floor flat over the frontage, the judge held that this was not limited to foot traffic to gain access to and egress from the first floor flat but extended to allowing the respondents to park their car there.

The issues

10 The issues that arose in this appeal were legal in nature, the facts being undisputed. They were:

- (a) whether the appellants had the immediate exclusive right of possession of the whole of the frontage subject to an easement of access in favour of the lessees of the first floor flat or whether the frontage was common property over which the respondents had a present right of possession by reason of their ownership of a one-half, undivided share of Lot 1031N; and
- (b) whether, on a proper construction of the same, the easement of access granted in favour of the respondents entitled them to park their car on the frontage.

The conveyancing documents

11 A determination of the respective legal positions of the appellants and the respondents could only be derived from an analysis of the conveyancing documents executed in 1959, as it was from those documents that each of the parties derived their respective titles. It is therefore necessary to set out portions of those documents.

12 First, set out below are the recitals and the relevant clauses of the lease of the first floor flat:

Whereas:-

(i) The Lessors are seised for an estate in fee simple in possession free from encumbrances of the building (hereinafter referred to as "the Building") known as No. 16/16A Lorong 1 Geylang Road, Singapore, which is being constructed as two self contained flats whereof the first floor flat described in the Schedule hereto (hereinafter referred to as "the demised premises") is intended to be hereinafter demised to the Lessee.

(ii) ...

Now This Indenture Witnesseth as follows:-

1. IN pursuance of the said Agreement and in consideration of the sum of fourteen thousand dollars (\$14,000.00) now paid by the Lessee to the Lessors (the receipt whereof the Lessors acknowledge) and of the covenants on the part of the Lessee hereinafter reserved and contained the Lessors HEREBY DEMISE unto the Lessee ALL THOSE the demised premises TOGETHER WITH the full free right and liberty to pass and repass on and over the stairways and passages leading thereto and over the vacant land in front of the building for the purpose of access to and egress from the demised premises ... TO HOLD the same unto the Lessee for the term of 9999 years from the 1st day of January 1958.

...

4. The Lessors HEREBY COVENANT with the Lessee as follows:-

...

(2) Immediately after the completion of this Lease and of a similar Lease of the ground

floor flat in the building the Lessors will convey to the Lessee for no further consideration a one half equal undivided share of and in the freehold estate in the land on which the building containing the demised premises is constructed.

13 The schedule to the lease of the first floor describing the demised premises is as follows, with the deletions as made in the original document:

ALL THAT the flat on the first floor of the building known as No. 16/16A, Lorong 1 Geylang Road, Singapore, ~~and the vacant land in the front and at the rear thereof,~~ erected on land situate in the District of Kallang in the Island of Singapore being part of the land marked on the Government Resurvey Map as Lot 419-11 & 419-18 of Mukim XXIV and part of the larger piece of land comprised in Grant No. 24 and more particularly delineated and edged red on the plan annexed hereto ~~(subject to the rights in favour of the owner of the first floor flat herein before contained)~~ which said flat is known as No. 16A Lorong 1 Geylang Road, aforesaid.

14 Next, the indenture of conveyance between the developer and Yim in respect of the first floor flat states:

Whereas the Vendors are seised of the land and premises described in the First Schedule hereto (hereinafter referred to as "the said land and premises") for an estate in fee simple and have agreed to convey a one-half undivided share thereof to the Purchaser in consideration of the covenants hereinafter appearing and of the Purchaser having already taken a Lease for 9999 years of the first floor premises in the building erected on the said land.

Now This Indenture Witnesseth as follows:-

1. In pursuance of the said agreement and in consideration of the premises the Vendors as owners hereby convey unto the Purchaser ALL THAT one-half undivided share of and in the said land and premises TO HOLD the same unto the Purchaser in fee simple subject to the existing leases for 9999 years of the ground floor and the first floor flats in the said building AND IT IS HEREBY DECLARED that the said Leases shall not merge in the freehold estate hereby conveyed.

15 The relevant parts of lease of the ground floor flat are as follows, *together with the deletions as made in the original document*:

Whereas:-

(i) The Lessors are seised for an estate in fee simple in possession free from encumbrances of the building (hereinafter referred to as "the Building") known as No. 16/16A Lorong 1 Geylang Road, Singapore, which is being constructed as two self contained flats whereof the ground floor flat described in the Schedule hereto (hereinafter referred to as "the demised premises") is intended to be hereinafter demised to the Lessee.

...

Now This Indenture Witnesseth as follows:-

1. IN pursuance of the said Agreement and in consideration of the sum of fourteen thousand dollars (\$14,000.00) now paid by the Lessee to the Lessors (the receipt whereof the Lessors acknowledge) and of the covenants on the part of the Lessee hereinafter reserved and contained the Lessors HEREBY DEMISE unto the Lessee ALL THOSE the demised premises

~~TOGETHER WITH the full free right and liberty to pass and repass on and over the stairways and passages leading thereto and over the vacant land in front of the building for the purpose of access to and egress from the demised premises ...~~ TO HOLD the same unto the Lessee for the term of 9999 years from the 1st day of January, 1958.

16 The schedule to the lease of the ground floor flat describes the demised premises as being:

ALL THAT the flat on the ground floor of the building known as No. 16/16A Lorong 1 Geylang Road, Singapore, and the vacant land in the front and at the rear thereof, erected on land situate in the District of Kallang in the Island of Singapore being part of the land marked on the Government Resurvey Map as Lot 419-11 [and 419-18] of Mukim XXIV and part of the larger piece of land comprised in Grant No. 24 and more particularly delineated and edged red on the plan annexed hereto (subject to the rights in favour of the owner of the first floor flat herein before contained) which said flat is known as No. 16 Lorong 1 Geylang Road, aforesaid.

17 The indenture of conveyance that the developer executed in favour of Phoon on 22 June 1959 is in identical terms to the indenture of conveyance executed in favour of Yim, except that in the recital of the same, reference is made to a lease of the "ground floor premises in the building" rather than to the "first floor premises in the building".

18 Lot 1031N was subsequently brought under the land titles regime set up by the Land Titles Act (Cap 157, 1994 Rev Ed). On 12 October 2001, Certificate of Title ("CT") Vol 588 Folio 148 was issued in respect of Lot 1031N and Subsidiary Certificate of Title ("SCT") Vol 48 Folio 158 was issued in respect of the 9,999-year lease of the first floor flat. SCT Vol 48 Folio 158 states that it was issued pursuant to the leasehold of 9,999 years registered in the Registry of Deeds in Vol 1359 No 8. This was the lease granted by the developer to Yim. At the same time, SCT Vol 48 Folio 157 was issued in respect of the 9,999-year lease of the ground floor flat.

19 CT Vol 588 Folio 148 contains the following relevant "Memorial":

The registered proprietor of each strata lot owns a share in MK24-1031N.

In addition, the "Interest/Encumbrance" registered on the CT is described as including:

1 LEASE Volume 1359 Number 11 registered in the Register of Deeds on 26/10/1959.

PART of MK24-1031N now known as WHOLE of MK24-U34843N

...

LESSEE

TENANTS IN COMMON IN EQUAL SHARES

1 (Shares : 1/2)

WONG YACK YOON

2 (Shares : 1/2)

HO CHOON MUN

Lease duration : 9999 years

Commencement date : 01/01/1958

Subsidiary Certificate of Title Volume 48 Folio 157
issued on 12/10/2001

2 LEASE Volume 1359 Number 8 registered in the
Register of Deeds on 26/10/1959

PART of MK24-1031N now known as WHOLE of
MK24-U34844X

...

LESSEE

JOINT TENANTS

GOH YEW PONG

WONG AH CHEN

Lease duration : 9999 years

Commencement date : 01/01/1958

Subsidiary Certificate of Title Volume 48 Folio 158
issued on 12/10/2001

The legal position

20 The first issue was whether the appellants, as they contended, had the right to exclusive possession of the frontage subject only to the easement granted in favour of the respondents, or whether the frontage was common property to which both appellants and respondents had an immediate right of possession as found by the judge in the court below. The answer to this issue could only be found by understanding the true nature and purport of the four documents executed on 22 June 1959.

21 The documents were two leases and two conveyances of the freehold interest in the land. The conveyances were made subject to the leases and therefore the leases had to be looked at first. Each lease also expressly provided that immediately after the completion of that lease and another lease of the other flat in the building, the lessor would convey to the lessee a one-half, equal, undivided share of and in the freehold estate in the land on which the building was constructed. It was therefore expressly contemplated that the leases would precede both of the indentures.

22 What was effected by the leases? First, as can be seen from the lease of the ground floor flat in favour of Phoon, the description of the demised premises referred to "ALL THAT the flat on the ground floor of the building ... *and the vacant land in the front and at the rear thereof*" [emphasis added]. This showed that what was being leased to Phoon for 9,999 years was not only the flat itself

but also the ground in front of the flat and behind it. When it came to the lease in favour of Yim, the description of the demised premises was only "ALL THAT the flat on the first floor of the building", and the descriptive phrase "and the vacant land in the front and at the rear thereof", though appearing on the document, was struck out so that it did not form part of the description of the demised premises. A comparison of the two descriptions made it plain that in respect of the first floor flat, all that was leased to the lessee, Yim, was the built-up premises comprising the flat itself. No leasehold interest in the vacant land at the rear or in the front was conveyed to Yim. The frontage was not leased to both sets of lessees as "common property" to be equally enjoyed by each of them on an immediate basis.

23 The subsequent execution of the indenture by the developer in favour of Yim, whereby a one-half, undivided share in the freehold interest in Lot 1031N to Yim was conveyed, did not eradicate Yim's (and subsequently, the respondents') leasehold interest in the vacant land for 9,999 years from 1958. This was because the indenture expressly stated that the one-half, undivided share conveyed to Yim was "subject to the existing Leases for 9999 years of the ground floor and first floor flats in the said building". The indenture also expressly declared that the said leases were not to merge in the freehold estate thereby conveyed. The conveyance executed in favour of Phoon that conveyed a one-half, undivided share in the freehold interest in the land to Phoon, contained the same provisions making it subject to the leases and providing for the non-merger of the leases in the freehold estate. These declarations in the conveyances were significant. They meant that notwithstanding the conveyance of the freehold interest to Yim and Phoon, the leases would remain in effect for the full period of 9,999 years from 1958. As such, Yim's one-half, undivided share and Phoon's one-half, undivided share in the freehold interest in Lot 1031N became reversionary interests that could not fall into possession until the leases ended. As the respective successors-in-title of Yim and Phoon, the respondents and the appellants therefore each have an equal reversionary interest in the freehold estate of Lot 1031N.

24 In this situation, the rights of the respondents to have possession of the frontage by virtue of being the owners of an equal, one-half, undivided share in the freehold interest in Lot 1031N have been postponed until the expiry of the appellants' 9,999-year lease. In the interim, the appellants have the exclusive right of possession of the frontage subject to the easement in favour of the respondents. This is because, as lessees, the appellants are entitled to the exclusive possession of the premises demised to them by the lease of the ground floor flat of which they are now the assignees: see *Rye v Rye* [1962] 1 All ER 146.

25 As the appellants submitted, the fact that CT Vol 588 Folio 148 names the respondents and the appellants as owners of one-half, undivided share each of the freehold estate of Lot 1031N does not prevent the simultaneous existence of the appellants' leasehold interest of 9,999 years over the frontage and the vacant land at the rear of the building. Under the system of land law that we have inherited from the English, there is nothing unusual in a situation where the respondents' reversionary interest in the frontage and the appellants' leasehold interest in the frontage exist simultaneously. In *Ingram v Inland Revenue Commissioners* [1999] 1 All ER 297, Lord Hoffmann, commenting on how under English land law various interests, each regarded as separate items of property, can subsist simultaneously in respect of the same land, said (at 300):

In particular, the beneficial ownership of land may be divided in terms of time as well as space, so that the right to enjoyment of the land for a limited period, such as for life or a term of years, and the right to enjoy the land after the expiry of that period, can exist simultaneously as property interests in possession and in remainder or reversion.

26 That the scheme created by the developer when it leased the two flats to Yim and Phoon

respectively was that Phoon should have exclusive possession of the frontage for the 9,999 years following 1 January 1958 was emphasised by the developer's deliberate creation of an easement in favour of the lessee of the first floor flat across the frontage. The express easement of access created in favour of the respondents as the present leaseholders of the dominant tenement was that such leaseholders should have:

full free right and liberty to pass and repass on and over the stairways and passages leading thereto and over the vacant land in front of the building for the purpose of access to and egress from [the first floor flat] ...

There was no such easement granted to the leaseholders of the lease of the ground floor flat. The latter did not need such an easement as they had exclusive possession of the frontage. They were therefore free to pass and repass over the frontage in order to enter and leave the ground floor flat without committing trespass every time they did so. The respondents, on the other hand, if they had not had the benefit of the easement, would have trespassed on the appellants' leasehold land each time they walked across the frontage to gain access to the stairway leading to the first floor flat.

27 The existence of the easement over the frontage in favour of the lessees of the first floor flat showed that they did not own the frontage while it was leased to the appellants. If you have a right of way over a parcel of land for a given period of time, then you cannot be the owner of the same parcel of land during the same period of time as an easement over his own land cannot be created in favour of an owner of land. This long-standing principle of English law was applied locally by Grimberg JC in *Seah Sye Kim v Chua Mui Ying* [1988] SLR 278 when he said (at 283, [33]):

I reject the argument in law because it 'is an essential characteristic of an easement that the owner of the dominant tenement and the owner of the servient tenement must be different persons. A man cannot have an easement over his own land, because all acts which he does upon his own land are acts done in respect of his rights as owner of the land, and the law does not allow the co-existence of an easement over land with the possession of the land itself: 14 *Halsbury's Laws of England* (4th Ed) para 16.

In 1998, this court repeated that one cannot have an easement over one's own land and endorsed Grimberg JC's statement of the law: see *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR 366.

28 The appellants therefore could not by virtue of their reversionary interest in the freehold estate claim a right to immediate possession of the frontage. More to the point, bearing in mind their express grievance, they could not rely on this interest as giving them the right to park their car on the frontage. This brought us to the next issue, which related to the nature and extent of the easement of access granted to the respondents by the lease.

29 The nature and extent of the easement was a matter of construction of the language of the grant as contained in the lease of the first floor flat. The holding below was that this easement did not restrict the respondents to simply walking across the frontage when entering or leaving the first floor flat. Instead, it permitted them to park their car on the frontage as well. The wording of the easement, however, did not refer to a right of remaining on the frontage for a prolonged period or to a right to have vehicular access to the frontage. The right given by the easement was to "pass and repass ... for the purpose of access to and egress from" the first floor flat. We agreed with the submission of the appellants that, on a proper construction of this easement, it was an easement of access, its operative purpose being to enhance the respondents' enjoyment of the leasehold of the first floor flat by passing and repassing on foot on and over the stairway and the passage and over

the frontage leading to that flat. That being the case and in view of the small area of the frontage, it could not be envisaged that the easement of access extended to vehicular traffic on and over the frontage, the passage and the stairway. The omission of any reference to "vehicles" in the language of the easement had to be given effect to. In 1959 when the easement was granted, cars and lorries were commonplace in Singapore and had it been intended that vehicular access should be permitted, the easement could have been worded to give the right "to pass and re-pass with or without vehicles over and along the land ..." which was the way in which the easement in the case of *Bulstrode v Lambert* [1953] 2 All ER 728 at 729 was worded. That easement was construed to permit the plaintiff in the case not only to use the servient tenement by driving his lorry over it, but also to permit him to keep his vehicle on the servient tenement for such time as was necessary to load and unload goods. That easement gave the plaintiff access to a commercial area used as an auction mart. In this case, the first floor flat was used as a residence, the frontage had a small area which really did not permit cars to pass and repass over it and the purpose of the easement was to give access to stairways and passages to the flat. All in all, the circumstances led us to conclude that the easement was restricted to foot traffic over the frontage to and from the stairway and passage for access to and egress from the first floor flat.

30 In any event, even if the easement in favour of the respondents had allowed them to drive their car onto the frontage in order to drop off passengers, it could not be interpreted to allow them to park their car on the frontage. This was because permitting the respondents to park their car there would have denied the appellants the exclusive possession of the premises demised to them by their lease. Additionally, the right to park a car is an easement of storage and not an easement of right of way and nothing in the language of the easement indicated that it was intended to give such a right of storage to the respondents. Clear words are required for any easement and the only right clearly granted by the easement in question was the right to "pass and repass".

31 In our judgment, the easement granted here was an easement of access. It was not an easement of storage. The respondents had no right to park their car on the frontage. The appellants as the lessees of the frontage with exclusive possession of the same had every right to erect a wall on the frontage as long as such wall did not interfere with the respondents' access on foot to the first floor flat. There was no complaint that the wall erected prevented such pedestrian access. Accordingly, there was no reason to order the appellants to demolish the wall.

Conclusion

32 For the reasons given above, we allowed the appeal of the appellants with costs and set aside the orders made below.