



**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
[GUAMAN NO.: BA-22NCVC-625-11/2017]**

ANTARA

LETCHUMY A/P RAMACHANDRAN ... PLAINTIF

DAN

- 1. SOO CHEE MING
[No. K/P: 730107-08-6161]**
- 2. JOHN HENRY LOUIS
[Yang beramal sebagai seorang peguam
di atas nama dan gaya Tetuan John & Associates]**
- 3. SANJAYDRAN A/L SIVANESAN
[No. K/P: 910729-10-5521]**
- 4. PEJABAT TANAH HULU LANGAT ... DEFENDAN-
DEFENDAN**

Abstract: A party who denies executing a sale and purchase agreement and all other instruments of transfer has the onus to prove that he was elsewhere at the time when the said documents were executed and to tender supporting evidence to show that the signatures on the said documents were forged. Where there is a serious allegation in pleadings concerning the involvement of a particular person who had allegedly played a bigger role in the transfer of property by fraudulent means, such party ought to be made a party in the proceedings.

LAND LAW: Recovery of land - Fraudulent transfer of land - Plaintiff denied selling land to 1st defendant and appointing 2nd



defendant as solicitors to handle sale of property - Plaintiff alleged she lost property as a result of giving original title of property to her friend - Plaintiff failed to name her friend as a party in proceedings despite claiming to have been cheated by friend - Solicitor was adamant that plaintiff signed sale and purchase agreement and other necessary instruments - Whether plaintiff was able to prove that she was elsewhere at time sale and purchase agreement was signed - Whether plaintiff was able to dispute signatures on instrument of transfer - Whether plaintiff received payments for sale of property - Whether plaintiff had discharged onus of proof

LAND LAW: *Transfer - Fraud - Transfer of property to subsequent purchaser - Arrangement to sell property to subsequent purchaser entered two years after 1st defendant purchased property from plaintiff - Plaintiff disputed transfer of property to 1st defendant - Full payments were made on same day when arrangement to sell property took place - Whether any element of fraud could be attached to sale of property with subsequent purchaser*

EVIDENCE: *Burden of proof - Fraud - Fraudulent transfer of land - Forgery - Plaintiff denied selling land to 1st defendant and appointing 2nd defendant as solicitors to handle sale of property - Plaintiff denied signing sale and purchase agreement and all necessary instruments to effect a transfer - Whether plaintiff had discharged onus to prove that 1st defendant committed fraud and forgery - Whether plaintiff was able to prove that she was elsewhere at time when sale and purchase agreement and all necessary instrument were executed - Whether plaintiff was able to tender supporting evidence to challenge signatures on instrument of transfer*

[Plaintiff's claim dismissed with costs.]

Case(s) referred to:

Janagi v. Ong Boon Kiat [1971] 1 LNS 42 HC (refd)



[2020] 1 LNS 37

Legal Network Series

Johara Bi Abdul Kadir Marican v. Lawrence Lam Kwok Fou & Anor
[1980] 1 LNS 199 FC (*refd*)

Wong Swee Chin v. PP [1980] 1 LNS 138 FC (*refd*)

Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi
(Deceased)) & Anor v. Secure Plantation Sdn Bhd [2017] 5 CLJ 418
FC (*refd*)

Tajjul Ariffin Mustafa v. Heng Cheng Chong [1993] 3 CLJ 117 SC
(*refd*)

Yew Wan Leong v. Lai Kok Chye [1990] 1 CLJ Rep 330 SC (*refd*)

Legislation referred to:

Evidence Act 1950, s. 73

National Land Code 1965, s. 327

JUDGMENT

[1] The plaintiff previously owned two properties namely H.S. (D) 35147 P.T. 18430 Mukim Rawang, Daerah Gombak which address is No. 37, Jalan Velox 11, Taman Velox, 48000 Rawang (“1st property”) and a flat PM3887/M2/2/170 Daerah Hulu Langat, Bandar Ampang which address is Blok AA1-8, Jalan Pandan Indah 3/6, 55100 Kuala Lumpur (“2nd property”).

[2] The 1st defendant is the current owner of the 2nd property while the 2nd defendant is a solicitor who prepared the Sale and Purchase Agreement and handled the transaction for both the plaintiff and the 1st defendant. The 3rd defendant acted as an agent in the sale of the 2nd property and he did not defend this suit from the very beginning while the 4th defendant is the government agency which deals with the registration of title.

[3] In this action, the plaintiff *inter alia* seeks for declarations in relation to the 2nd property that its sale to the 1st defendant and the registration of which in the name of the 1st defendant null and void and that it should be reverted to her. She also seeks for any sale and purchase agreement entered between the 1st defendant and the third party to be declared as null and void and general damages.

[4] The 1st property had nothing to do with this claim but it somehow rather became part of this proceeding as it was the starting point which this suit is premised upon.

Plaintiff’s case

[5] The plaintiff called one witness, the plaintiff herself. According to her evidence, following the demise of the her husband on 30.10.2005 she suffered financial difficulties and could not meet the monthly instalment for the loan taken for the purchase of the 1st property from CIMB Bank Bhd. As a result CIMB Bank Bhd intended



to initiate an Order for Sale. The plaintiff was told that she had to make immediate payment of about RM45,000.00 to avoid the intended auction. She approached a friend of hers by the name of Suresh to help her selling off the 1st property. Meanwhile she herself managed to get a buyer by the name of Vasaki and introduced her to Suresh and the 3rd defendant to obtain the loan for Vasaki to purchase the 1st property.

[6] Suresh and his son the 3rd defendant informed the plaintiff that they would get a legal firm run by the 2nd defendant to handle the sale transaction and subsequently came with a sale and purchase agreement where both the plaintiff and Vasaki signed. In the month of October 2013 the plaintiff paid Suresh and the 3rd defendant a sum of RM6400.00 allegedly to remove the plaintiff from being blacklisted, bank charges and for the sale and purchase agreement's fees. An additional RM5,800.00 was deposited into the 3rd defendant's account in the following month.

[7] At the same time Suresh and the 3rd defendant persuaded the plaintiff to dispose the 2nd property and the plaintiff agreed. Suresh and the 3rd defendant asked for the title and the original copy of sale and purchase agreement to enable them to find out the market value. This took place somewhere in November 2013.

[8] Thereafter on 22.11.2013 she and Suresh went to the Maybank Mah Sing branch in Sungai Besi where Suresh gave her a cheque to be cashed out. The cheque in the sum of RM44,000.00 was issued out in her name. Suresh told her that it was a loan obtained to pay the outstanding amount for her 1st property. She cashed the same and handed to money to Suresh as Suresh told her that he had to rush to CIMB Bank Bhd to settle the outstanding amount to stop the auction.

[9] On 30.11.2013 Suresh called and wanted to see her. When they met Suresh told her that his cellphone's battery had depleted and



wanted to borrow her cellphone. After she lent Suresh her cellphone she went back to her office as they promised to meet again after work in about half an hour's time. When she came back for her cellphone, Suresh had gone and that was the last time she saw him. She believed that Suresh was aware that she snapped a picture of him when they met at the Maybank on 22.11.2013 and that was the why Suresh took her cellphone.

[10] As the title of the 2nd property was given to Suresh and the 3rd defendant and Suresh had gone missing, she lodged a police report on 4.12.2013. She then lodged a caveat on 9.12.2013 and another police report on 24.1.2014. Sometime in June 2015 the plaintiff wanted to sell the 2nd property but since the title was not in her possession she approached a legal firm of S. Nalina S. Amutha & Partners. The solicitor then did a search at land office and discovered that there was an attempt to transfer her 2nd property to the 1st defendant by a legal firm of the 2nd defendant.

[11] The plaintiff and the solicitor thereafter went to the land office on 14.7.2015 and met DW3 who was an Assistant District Officer. After the meeting the plaintiff obtained the original title which she gave to Suresh and copies of Form 14A dated 12.5.2014 and Form 19G purportedly executed by her following a formal request made by her solicitor. The plaintiff thereafter lodged two more police reports on 21.7.2015 and 12.8.2015 pertaining to the forgery of her signature.

[12] Next thing she knew that the 1st defendant had successfully obtained a court order on 30.11.2016 to remove the caveat she lodged and the 2nd property was transferred to the 1st defendant on 12.1.2017 and on 24.4.2018 the plaintiff had vacated the 2nd property after the 1st defendant obtained a court order for vacant possession. She further discovered that the 1st defendant was about to dispose of the 2nd property to a third party.



[13] She denied going to the 2nd defendant's legal to firm where she was allegedly to have signed a Warrant to Act dated 19.11.2013 appointing the 2nd defendant; the Sale and Purchase Agreement and the payment voucher dated 22.11.2013 where she was allegedly to have received cash amounting to RM55,000.00, a Maybank cheque in the sum of RM44,000.00 and RM5000,00 for quit rent and assessment; Form 14A dated 12.5.2014; and Form 19G dated 21.6.2015.

[14] Therefore, she alleges fraud on the part of the 1st, 2nd and 3rd defendants and negligence and breach of statutory duty on the part of the 4th defendant.

[15] As regards her 1st property she managed to obtain assistance from the Credit Counseling and Debt Management Agency and eventually disposed of the said property.

1st defendant's case

[16] According to the 1st defendant (DW1) he was represented by the 2nd defendant when he purchased the 2nd property for RM104,000.00 from the plaintiff and signed the Sale and Purchase Agreement ("SPA") on 22.11.2013. He paid RM55,000.00 in cash, RM44,000.00 by a Maybank cheque and RM5000.00 in cash for the outstanding quit rent and assessment. He insisted that he met the plaintiff in the 2nd defendant's office and the plaintiff gave her NRIC to be photostatted. Form 14A was also signed on that day by both parties.

[17] He further told the Court that the transfer was not successful as the plaintiff had lodged a caveat on the said property. A police report was lodged and thereafter he filed an Originating Summons to remove the caveat. His application was allowed by the Shah Alam High Court and eventually the said property was registered in his name. He



testified further that the plaintiff's appeal against the said order to the Court of Appeal was dismissed.

[18] He did not deny that he intended to sell the 2nd property to a third party and had taken a deposit of RM20,000.00 on 15.11.2015. The selling price was RM130,000.00 but it was subsequently abandoned because the property had yet to be transferred to his name. According to him the plaintiff signed all the relevant documents pertaining to the transaction.

2nd defendant's case

[19] The 2nd defendant (DW2) testified that he first met the plaintiff who came with the 3rd defendant on 19.11.2013 in his legal firm where she signed the warrant to act. She appointed him to handle the sale of her 2nd property. According to him, on 22.11.2013 the plaintiff came and signed the SPA, a Power of Attorney, Form 14A, the payment voucher and Form 19G. She had also received the cash and the Maybank cheque. He further told the Court that the plaintiff even handed the sale and purchase agreement between her and the previous owner of the 2nd property. He disagreed that he or his agent had forged the documents relating to the transaction.

4th defendant's case

[20] DW3 informed the Court that although the transfer of the 2nd property to the 1st defendant was recorded 21.1.2015, the process of registration did not take place because of the existence of a caveat lodged by the plaintiff. The date 21.1.2015 was the second attempt by the 2nd defendant to register the transfer. DW3 himself recorded it under the presentation no. 58/2015. Apart from the caveat, DW3 also said that the migration of the system in the land office took place



during that time and it took quite sometime to process the registration. Since the registration could not be done and based on the plaintiff's complaint he kept all the documents/instruments for security reason. DW3 confirmed that he returned the original title of the said property to the plaintiff as requested as he found that the plaintiff at that time was still the registered owner.

[21] However subsequently the 2nd defendant produced the order dated 30.11.2016 and the caveat was then removed. Thereafter he requested the plaintiff to return the original title to the land office. The land office proceeded to register the transfer to the 1st defendant although the plaintiff refused to abide by the request.

Submissions and analysis

[22] The learned counsel for the plaintiff submitted that the plaintiff never at any time sold the 2nd property to the 1st defendant. He pointed out that the plaintiff:

- (a) had never been to the 2nd defendant's legal firm;
- (b) did not sign the Sale and Purchase Agreement dated 22.11.2013, Form 14A, Form 19G; warrant to act and the payment voucher; and
- (c) did not collect any cash or cheque from the 1st or 2nd defendant.

[23] The plaintiff attempted to establish fraud on the part of the 1st defendant by alleging that the 1st defendant:

- (a) made full payment for the purchase on the same day as the Sale and Purchase Agreement was signed despite the



existence of the condition that the consent of the State Authority was required;

- (b) made arrangement to dispose of the said property to a third party on 15.11.2015 despite the transfer had not been effected;
- (c) told her when they met in January 2015 that she was not the person he met in the 2nd defendant's legal firm on 22.11.2013.

[24] I shall begin with whether the plaintiff met the 1st defendant in January 2015. The plaintiff in her witness statement said:

“22. When did you see the 1st defendant?

Somewhere in early January 2015 the 1st Defendant called me on my phone and said he wanted to see me. I asked him to come to a coffee shop near my office. He came Coffee shop my office at No. 20-2A, Jalan Pandan 2/1, 55100 Kuala Lumpur and later my employer Mr Ratnasamy, me and the 1st Defendant met at a nearby restaurant. I showed him all my police report to him. It then told me that I was not the person who came to his lawyer office on the 22/11/2013.”.

[25] This piece of evidence is very crucial and would support the plaintiff's allegation against the 1st and the 2nd defendant if it was true. While the plaintiff was under cross-examination by the learned counsel for the 1st defendant, she was not challenged on this evidence notwithstanding the 1st defendant in his evidence said he met the plaintiff in the 2nd defendant's legal firm. The result is the 1st defendant is deemed to have admitted this evidence as Raja Azlan Shah CJ (as HH then was) in *Wong Swee Chin v. PP* [1981] 1 MLJ 212 at p.213 said:

“On this point we need only say there is a general rule that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness’s testimony.”.

[26] However, upon careful reading of the plaintiff’s statement of claim I could not find such matter being pleaded. In *Yew Wan Leong v. Lai Kok Chye* [1990] 2 MLJ 152 the Supreme Court quoted with approval the statement made by Sharma J in *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42 where his Lordship said:

“The Court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the Court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact it is not proper for the Court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance.”.

[27] Therefore, nothing turns on this and I would not be able to conclude that this meeting did take place.

[28] The onus is on the plaintiff to prove that the 1st defendant has committed fraud or/and forgery. The standard of proof is on the balance of probabilities as pronounced by the Federal Court in *Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418.

[29] Suresh is a very prominent in the statement of claim. He is the 3rd defendant’s father. He and the 3rd defendant were alleged to have:

- (a) introduced the 2nd defendant’s legal firm to the plaintiff,



- (b) offered to help the plaintiff to prevent the 1st property from being auctioned,
- (c) took RM12,200.00 from the plaintiff;
- (d) brought the sale and purchase agreement to the plaintiff for the sale of the 1st property to one Vasaki; and
- (e) ran away with her cellphone and the 2nd property's original title and the sale and purchase agreement between the plaintiff and the previous owner of the 2nd property.

[30] The plaintiff admitted that Suresh was her friend and she did not make Suresh as a party in this suit. In *Tajjul Ariffin bin Mustafa v. Heng Cheng Chong* [1993] 2 MLJ 143 the plaintiff objected to the application by the defendant to compel the plaintiff to add another as a co-defendant. The case went up on appeal to the Supreme Court and it was held at p.154:

“To sum up, therefore, we would answer the question posed at the outset of this judgment by saying that a plaintiff cannot be forced, upon the application of the defendant, to have a second defendant added, against whom he does not wish to proceed for the reason that the negligence of the intended second defendant is not an issue involved in the claim he has made (*McCheane v Gyles; Horwell v London General Omnibus Co; Re London Tramways Co; Re London Tramways Co; White v Carrara Ceiling Co*) and so he should be allowed to proceed against the defendant of his choice – *Courtney v Woods*.”.

[31] No doubt there was no such application in this case. However, the plaintiff was severely cross-examined on this. And she could not offer any explanation for not pursuing against Suresh even though she knew that Suresh was working in the mortgage department in CIMB



Bangsar branch. Granted she can choose her defendant or defendants but Suresh played a much bigger role than his son the 3rd defendant.

[32] Obviously from the statement of claim which I have alluded to earlier I would say without him the plaintiff may not have lost her 2nd property. I will say more on this later in my judgment.

[33] I do not think that any element of fraud can be attached to the fact that the 1st defendant entered into an arrangement to sell the said property to the 3rd party. That arrangement was on 20.11.2015 about two years after he purchased the 2nd property. The fact that he made full payment on the same day too should not be taken against him as it was provided in clause 1 of the SPA and clause 8 makes provision for the return of whatever monies received by the vendor in the event the transfer could not be registered.

[34] As against the 2nd defendant, the learned counsel for the plaintiff pointed out that the 2nd defendant:

- (a) and/or his agent had forged the plaintiff's signatures;
- (b) despite claiming that the plaintiff signed the warrant to act, when he prepared and attested the SPA dated 22.11.2013, Appendix A item 10 shows that the plaintiff had no solicitor on record;
- (c) failed to produce any proof that search was done before the execution of the SPA dated 22.11.2013; and
- (d) failed to produce documentary proof that the Maybank cheque was given to the plaintiff;

[35] The plaintiff vehemently denied that she had been to the 2nd defendant's legal firm. The 2nd defendant produced the SPA dated 22.11.2013. He was adamant that the plaintiff signed the same as well



as the other necessary instruments. The onus is on the plaintiff to show otherwise.

[36] The plaintiff has not produced any supporting evidence to show that she could not have been to the 2nd defendant's legal firm on 22.11.2013. She has also not produced any evidence in support to show that the signatures on those instruments were not hers. I am aware that following the Federal Court in *Letchumanan (supra)*, she need not bring forensic evidence to prove that the signatures were not hers. However, there must be some supporting evidence to say those were not her signatures. Unfortunately, there is none for the Court to consider.

[37] Under section 73 of the Evidence Act 1950 the Court can take upon itself to do the comparison but only when the dissimilarities are too glaring. In this respect I refer to *Letchumanan (supra)* again where Jeffrey Tan FCJ at p.483 said:

“Comparison may be made, by a handwriting expert under s. 45 of the Evidence Act, by anyone familiar with the handwriting of the person concerned as provided by s. 47 of the Evidence Act, or by the court itself. “As a matter of extreme caution and judicial sobriety, the court should not normally, take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of the experts. But this does not mean that the court does not have any power to compare the disputed signature with the admitted signature. That power is clearly available under s. 73 of the Act” (*Woodroffe and Amir Ali supra* vol. 2 at p. 2236). But “if the feature of writing and signature on the documents are so glaring, that the court can form an opinion by itself either way, further exercise under s. 45 may virtually become unnecessary or futile”

(*Woodroffe and Amir Ali supra* vol. 2 at p. 2248). That was practically said in *Siaw Kim Seong v. Siew Swee Yin & Anor* [2008] 5 CLJ 441; [2009] 1 MLJ 349, where the supposed signatures of the plaintiff did not match his admitted signatures upon a cursory visual examination, and where it was said by the Court of Appeal per Gopal Sri Ram JCA, as he then was, delivering the judgment of the court, that the trial judge ought to have acted under s. 73(1) of the Evidence Act 1950 and made the comparison himself and that “had the judge undertaken such an examination he would have concluded, even without the aid of an expert, that the signatures appearing on the assignment and the transfer were plain and undisguised forgeries”. It should be clear enough that a finding of forgery could be made without the opinion evidence of a handwriting expert, be it in civil (*AGS Harta Sdn Bhd v. Liew Yok Yin*) or in criminal proceedings (*Dato’ Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232 at 277).”.

[38] Having compared the signatures on the relevant instruments with the police reports, I do not think that I am capable of making a finding on the dissimilarities.

[39] The learned counsel for the plaintiff pointed out that Form 19G was not submitted by the 2nd defendant when he made the presentation to the land office on 16.6.2014. It must not be forgotten that Form 19G was allegedly to have been signed on 21.6.2015. Therefore, it was not in existence on 16.6.2014.

[40] As regards the caveat it was lodged by the plaintiff on 9.12.2013 and this was after the execution of the SPA on 22.11.2013. Therefore, any search done before the execution of the agreement would not reveal the presence of the caveat. In this respect the submission advanced by the learned counsel for the plaintiff that the 2nd

defendant did not make any search hence unable to produce the search document is a non- starter. It would have been different if there was already a caveat lodged prior to 22.11.2013 then he would be justified in saying that the 2nd defendant did not conduct any search.

[41] The 2nd defendant said that the plaintiff came with the 3rd defendant to his office on 19.11.2013. The plaintiff denied this. In this respect it was just a bare assertion that she had never been to the 2nd defendant's legal firm. In her statement of claim she said she gave Suresh and the 3rd defendant the original title of the 2nd property and the original copy of the sale and purchase agreement when she purchased the property from the previous owner. With regard to the copy of her IC she said she gave it to Suresh and the 3rd defendant for the purpose of selling the 1st property instead of the 2nd property.

[42] She lodged four police reports dated 4.12.2013, 24.1.2014, 21.7.2015 and 12.8.2015. Nothing being said about giving Suresh a copy of her NRIC particularly in the first two reports. Under cross-examination she could not explain why her copy of NRIC was needed just to find out the value of the 2nd property and not the 1st property.

[43] The payment voucher remains as ID since the original could not be produced. The plaintiff denied signing it. As it is an ID it is not admissible. However, whether she did receive the payment is a separate issue. According to the plaintiff she was deceived by Suresh that the Maybank cheque in the sum of RM44,000.00 was a loan obtained to pay the outstanding charges for her 1st property. It was given to her by Suresh at Maybank Mah Sing branch. But according to the 1st and 2nd defendants she received the cheque in the 2nd defendant's legal firm. The cheque was cashed out on 22.11.2013 by the plaintiff.

[44] The plaintiff did not make him a party because Suresh was her friend although the latter had cheated her. She did not call Suresh as a



witness because she said she did not his whereabouts despite admitting that she knew his place of work. She admitted that she did not attempt to locate Suresh.

[45] In her statement of claim she said Suresh brought a sale and purchase agreement for the 1st property where both she and Vasaki signed. But she contradicted herself while under cross-examination where she said she and Vasaki never signed any sale and purchase agreement. Similarly for the copy of her IC where she contradicted herself as to whether it was for the 1st or 2nd property.

[46] She admitted that she did not sign any loan document and yet she accepted what Suresh told her that the Maybank cheque was a loan for her to settle the arrears for her 1st property. Based on these reasons I do not find her as a credible witness. And it is my finding that she did receive the payment in the 2nd defendant's legal firm.

[47] As against the 4th defendant, the learned counsel pointed out that the 4th defendant proceeded to register the transfer on 21.1.2015 despite the existence of the caveat lodged by the plaintiff.

[48] DW3 explained why the transfer was effected on 21.1.2015. He admitted that it was entered in the title on 21.1.2015 based on the presentation no. 58/2015. But it was not registered due to the existence of the plaintiff's caveat. What he did then was to record it but there was no registration as yet. It was also during that material period the migration of the '*Sistem Pendaftaran Tanah Berkomputer*' to '*E-Strata*' took place and many applications were pending registration. He testified further that he did not remove the plaintiff's caveat after receiving a complaint from the plaintiff and her solicitor.

[49] However, after he was served with the High Court order dated 30.11.2016, he removed the caveat lodged by the plaintiff. The learned counsel for the plaintiff submitted that DW3's evidence was



not consistent with what was recorded in the title. In this regard DW3 explained that he used the same presentation number to give effect to the transfer which was recorded on 21.1.2015.

[50] I accept DW3's evidence and I see no statutory breach being committed or negligence on the part of the 4th defendant. When the plaintiff came on 14.7.2015, plaintiff was still the registered proprietor. That was why he decided to return the title to her in September 2015. Therefore, I accept that the registration did not take place on 21.1.2015. Further the 4th defendant had no other option when being served with the order dated 30.11.2016. Perhaps I may add that the learned counsel made an issue with regard to the application by the 1st defendant to remove the caveat and the order dated 30.11.2016 which does not specifically state that the caveat be removed. To me it is a non-issue as the intitulement clearly referred to section 327 of the National Land Code 1965.

[51] The Federal Court in *Johara Bi Binte Abdul Kadir Marican v. Lawrence Lam Kwok Fou & Anor* [1981] 1 MLJ 139 approved the approach by the learned trial judge with regard to the burden of proof that "until and unless the plaintiff had discharged the onus on her to prove her case on a balance of probabilities the burden did not shift to the defendant and no matter if the defendant's case was completely unbelievable, the claim against him must in this circumstance be dismissed."

[52] Based on the reasons aforesaid, I find that the plaintiff has failed to establish her claim on the balance of probabilities and therefore the claim is dismissed with costs.

(ABD MAJID HAJI HAMZAH)

Hakim

Mahkamah Tinggi Malaya, Shah Alam



Tarikh: 13 JANUARI 2020

COUNSEL:

For the appellant - Govin T Durai; M/s govin t. durai & co

Advocates & Solicitors

No. 12A-1, Lorong Batu Nilam 21B,
Bandar Bukit Tinggi 2, 41200 Klang,
Selangor.

Tel : 016 – 3428 117

For the 1st respondent - Vasanthi Sathasivam; M/s K SUGU & associates

Advocates & Solicitors

63-2, Petaling Utama Avenue,
Jalan PJS 1/50, Taman Petaling Utama,
46150 Petaling Jaya, Selangor.

Tel : 03 – 7772 4346

Faks : 03 – 7772 4345

For the 2nd respondent - Asmawi Ismail; M/s i asmawi & co

Advocates & Solicitors

No. 57, Tingkat 1, Jalan S2 F1,
Garden Homes, Seremban 2,
70300 Seremban, Negeri Sembilan

Tel : 06 – 630 7000/7444/

Faks : 06 – 603 6700

For the 4th respondent - Husna Abdul Halim kamar penasihat undang-undang

Negeri Selangor Darul Ehsan,

Tingkat 4, Podium Utara,

Bangunan Sultan Salahuddin Abdul Aziz Shah,



[2020] 1 LNS 37

Legal Network Series

40512 Shah Alam,

Selangor.

Tel : 03 – 5544 7183

Faks : 03 – 5510 1775