

ARAHAN PENGARAH TANAH DAN GALIAN, KELANTAN
BIL. 3/1984

URUSNIAGA TANAH-TANAH DALAM KAWASAN RIZAB MELAYU 1930
TANPA KEBENARAN PIHAK BERKUASA NEGERI DIBAWAH SEKSYEN 13A

Arahan ini dikeluarkan untuk memberitahu semua Pemungut Hasil Tanah tentang mustahaknya seseorang itu mendapat kelulusan Pihak Berkuasa Negeri di bawah Seksyen 13A Enakmen Tanah Rizab Melayu 1930 sebelumnya ia dapat membuat urusan tanah tersebut.

2. Di dalam tahun 1976 terdapat satu kes bagaimana Civil Suit No.197 of 1976 di mana seorang pembeli tanah lot No.1918 Mukim Padang Bongor, Daerah Panji, Jajahan Kota Bharu telah mendakwa tuan tanah supaya tanah tersebut didaftarkan dengan namanya dengan alasan bahawa tuan tanah telah pun menandatangani Borang 14A untuk menjual tanah tersebut kepadanya. Borang 14A tersebut bila dikemukakan kepada Pejabat Tanah, Kota Bharu telah ditolak oleh Pemungut Hasil Tanah dengan alasan bahawa pembeli itu Bukan Seorang Melayu dan ia tidak ada kebenaran di bawah Seksyen 13A.

3. Laporan kes tersebut adalah dikembar bersama-sama ini.

4. Untuk makluman tuan baru-baru ini juga terdapat satu kes di dalam Jajahan Kota Bharu di mana seorang tuan tanah telah menandatangani borang pindahmilik untuk memindahmilik tanah itu kepada sebuah syarikat tanpa kelulusan MMK. Syarikat itu kepunyaan tuan tanah. Permohonan untuk mendapat kebenaran MMK telah dibuat kemudian daripada tarikh menandatangani Borang 14A kerana tuan tanah telah meninggal dunia. MMK bila menimbang permohonan tersebut telah menolak memberi kebenaran di bawah Seksyen 13A kerana MMK telah berpandu kepada kes Civil Suit Bil. 197/76.

5. Pemungut Hasil Tanah adalah diminta mengambil perhatian khusus di dalam kes ini supaya perkara-perkara yang tersebut di dalamnya tidak berbangkit lagi.

t.t
(HJ.ISMAIL B.HASSAN)
PENGARAH TANAH DAN GALIAN
KELANTAN.

PEJABAT PENGARAH TANAH DAN GALIAN
KELANTAN, KOTA BHARU.

BERTARIKH: **3hb. Disember, 1984**

FAIL : **PTG.KN.11952**

KEPADA:-

Semua Pemungut Hasil Tanah, Kelantan..

SALINAN KEPADA :-

1. YB. Dato' Setiausaha Kerajaan Kelantan.
2. YB. Dato' Pegawai Kewangan Negeri, Kelantan.
3. YB. Tuan Penasihat Undang-Undang Negeri, Kelantan
4. YABrs. Juru Odit Negeri, Kelantan.
5. YABrs. Pengarah Ukur Negeri, Kelantan.
6. YABrs. Ketua Rancangan Penyelesaian Tanah Negeri, Kelantan.
7. YBrs. Pegawai Tadbir dan Pegawai Pasukan Petugas Pejabat P.T.G.

CIVIL SULIT NO. 197 OF 1976

BETWEEN

Zaharah bt. Pelwali .. Plaintiff

AND

1. Rugayah bt. Abdullah
2. Mek Wook bt. Botok .. Defendants

JUDGMENT OF MOHAMED ZAHIR, J.

The plaintiff sues the defendants for an order to set aside the transfer of a piece of land held in Lot No. 1918, Mukim Padang Bongor, Kota Bharu from the 1st defendant to the 2nd defendant and for an order that the land be registered in the name of the plaintiff as the purchaser, or alternatively for the return of \$25,000/- being the purchase price by the plaintiff to the 1st defendant.

The 1st defendant pleads that she was not the owner of the said land but was a mere trustee for the 2nd defendant in respect of the said land. 2nd defendant also denies any knowledge of the dealings between the plaintiff and the 1st defendant.

The facts of the case briefly are as follows. The plaintiff, a native of Kelantan but is a non-Malay under the Kelantan Malay Reservations Enactment, 1930, purchased the land from the 1st defendant who was then the registered owner of the said land. No written agreement of sale was executed for this purpose but the usual Land Office Form 14A was executed between the parties at the Land Office at Pasir Puteh before a Collector of Land Revenue, P.W.2. The land is, however, situated in the Kota Bharu District. The reason for executing the transfer at Pasir Puteh, according to the plaintiff, was that the 1st defendant said that her ex-husband was working in Pejabat Bandaran Kota Bharu which was near the Kota Bharu Land Office and she did not want him to know. The 1st defendant, however, stated that it was the plaintiff's idea for going to Pasir Puteh in order to hide the dealing from the 1st defendant's mother. Anyway, the execution took place there and the plaintiff took back the form to Kota Bharu and presented it together with title to Land Officer to be registered. The Land Officer (P.W.5) rejected the registration of the stamped transfer under section 13A of the Malay Reservations Enactment on the ground that the plaintiff was not a Malay under the

said Enactment. This rejection was dated 11th. May, 1976 and on the following day she made an application to the Ruler-in-Council under Section 13A of the Enactment for approval to have the land registered in her name. Section 13A(i)(b) provides that the Ruler-in-Council may approve the transfer of any reservation land. The application was processed by the Land Officer and the State Executive Council on 18th August, 1976 approved the application.

In the intervening period, the mother of the 1st defendant, that is 2nd defendant, came to know about the sale by her daughter. She was angry and unhappy over the whole thing. She is still occupying the house erected on the land. It was originally her land and she gave it to her daughter as she is her only issue. In the event of her death, the daughter may not have to pay the estate duty or share the land with any distant male relative or the Baitul Mal. She therefore did not wish her daughter to part with the land at least during her lifetime. She approached the plaintiff and asked back for the land.

The 2nd defendant denied about going to see the plaintiff about it but states she knew about it when she saw the plaintiff, the plaintiff's husband and the 1st defendant at Kota Bharu Land Office. Suspecting something she went to the Land Office and made investigation and found that the 1st defendant had executed the transfer of the land to the plaintiff. She, therefore, had actual notice of the sale. The 1st defendant then on 10th August, 1976, presumably at the insistence of 2nd defendant, executed the transfer of the land to the 2nd defendant for no consideration.

As the title was then with the plaintiff, 2nd defendant on 10th August, 1976 presented for registration Form 14A duly stamped without the issue title and the registration was suspended on 11th August 1976 for 14 days by P.w.5. But strangely enough, P.W.5 in spite of the suspension according to his own evidence, dispensed with the production of the title and registered the transfer from 1st defendant to 2nd defendant on the same date of suspension, 11th August 1976, without there being an enquiry required under Section 229 of the National Land Code.P.W.5 in his evidence admitted that he made a mistake here and admitted at the same time of submission of transfer by 1st defendant to the 2nd defendant he knew that the title was worth to Plaintiff's Solicitors.

On 15th August, 1976, the plaintiff through her Solicitors filed a private caveat against the land. On 17th August, 1976, P.W.5 wrote to the Solicitors for the Plaintiff asking for the title for the purpose of endorsement and the heading of the letter was “C/Persendirian Tanah Lot No. 1918, Mukim Pdg. Bongor” and the letter referred to the caveat which could not have been other than the caveat lodged by the Plaintiff’s Solicitors. The Solicitors sent the title to P.W.5 but instead of endorsing the caveat on it, which is not required to be done on the issue title anyway, P.W.5 made an other wrong move by endorsing the transfer of the land from 1st defendant to 2nd defendant on the title and there after when being asked for the return of the title by the plaintiff’s solicitors replied to say that the plaintiff was not the registered owner of the land and since the caveat had been registered the title was no longer useful to the plaintiff. P.W.5 did in fact register the caveat on 17th August, 1976 but after he had endorsed the transfer on the land from 1st defendant to 2nd defendant. He then handed over the title to 2nd defendant. I must say what P.W.5 did was wrong and most irregular. We defendants pleaded that the land was held in trust by the 1st defendant in favour of the 2nd defendant. There is no evidence adduced to prove this and no deed of trust or such memorial over registered. Indeed, even if it were a trust and a memorial for this purpose has been registered, the 1st defendant as such trustee is not prevented to effect such transfer in the absence of a caveat (see Section 344(3) of the National Land Code. This defence of trusteeship should therefore fail.

The main point that I should consider is whether the plaintiff in purchasing the land in the manner she did contravened the Malay Reservations Enactment, 1930. Section 12(i) of the Enactment reads as follows:-

“All dealings or disposals whatsoever and all attempts to deal in or dispose of Reservation land contrary to the provisions of this Enactment shall be null and void”.

The question of illegality is not pleaded by the defendants but in view of the fact this is a question of an illegal transaction, the Court on its own must take cognisance of it (see *North-Western salt Company Ltd.v.electrolytic Alkali Co.Ltd.* (1913) 3 K.B. 422 and *Leong Poh Chin v. Chin Thin Sin* (1959) 25 MLJ 246).

Although the Statement of Claim pleads that the sale was subject to the permission of the Ruler-in Council, the evidence disclosed that it is not so. Plaintiff;s own evidence depended that she depended and herself before the Land Officer at Pasir Puteh. This form is the final transfer form under the law required for the registration of the transfer, It is not conditional there is no separate conditional agreement. According to the plaintiff, the purchase price was paid in full. No evidence adduced to say that if permission of the Rule0in Council not obtained, there was to be a refund of the purchase price. It appears at the time when plaintiff presented the transfer form for registration, she did that with a view of having it registered and not merely for the purpose of cancelling the stamps in order to avoid payment of penalty for late presentation.

In fact she permittd the transfer to be endorsed on the title (D1) and which was subsequently cancelled bt the Land Officer. The registration would not have been done if she had informed the Land Officer that she is not a Malay. Had it not been discovered that she was not a Malay, then the transfer would have taken place in the normal manner and she would have been the registered owner of the land and would have got away with the illegality. What she did, in my view, is an attempt to deal in the reservation land before, she had to obtain permission of the Rule-in-Council.

Although she did on the following day apply to the Ruler-in-Council through the Land Officer, she did this only after her unsuccessful attempt to have the land registered in her name. That the consent of the Ruler-in-Council was obtained in pursuance with wich application cannot be inter preted to have legalised the illegal transaction. Had there been no such illegal dealing before, perhaps a contract with necessary conditions that the transfer was subject to the consent of the Ruler-in-Council then the plaintiff would have succeeded.

My own opinion is that a person not being Malay under the Malay Reservations Enactment who is desirous of purchasing a reservation land should not use transfer form 14A, as was done here. This duly executed form is already prime facie although not conclusive evidence of sale. The parties should have entered into a contract of sale providing that the contract is conditional to approval of the Ruler-in-Council and that in the event that such approval shall be unobtainable then the deposit should be refunded, In Foo Say Lee v. Ooi Heng Wai (1969) 1 MLJ page 47, the Federal Court held that such an agreement does not contravene the provisions of the Reservations Enactment. The purchaser should also not

take possession of the land as again by doing this he would contravece Section 7(i) of the Enactment which stipulates that the interest in such land should not be transferred, transmitted or vested to a non-Malay (see Idris bin Haji Mohamed Amin V. Ng Ah Siew (1935) F.M.S, L.R. 70).

I dismiss the plaintiff's claim I am not in the position to order the refund of the purchase price by the 1st defendant to the plaintiff in view oc Section 12(ii)(a) where is states that no such money shall be recoverable. The little of the land should be returned to 2nd defendant in is paridelicto with the plaintiff, there will be no order as to costs between herself (1st defendant) and the plaintiff but I order that the plaintiff do pay costs if this Suit to the 2nd defendant.

t.t
(DATO' MOHAMED ZAHIR BIN HAJI ISMAIL)
JUDGE, HIGH COURT,
MALAYA.

Kota Bharu,
19 JAN 1981

Date of Hearing: 16th September, 1980

Counsel:

Encik Wan Hashim b. Hj. Ahmad
of M/S Hashim Ahmad & Co.

.. for the Plaintiff

Datuk Wan Mustapha of
M/S Datuk Wan Mustapha & Co.

.. for the Defendants