ABDUL LATIF PUTEH & ORS

v.

PENTADBIR TANAH JAJAHAN PASIR MAS & ANOR

Federal Court, Putrajaya
Vernon Ong, Hasnah Mohammed Hashim, Mary Lim Thiam Suan FCJJ
[Civil Appeal No: 01(i)-21-05-2022(D)]
16 November 2022

Civil Procedure: *Striking out — Action — Appeal against striking out of action — Whether action "obviously unsustainable" — Whether appellants had reasonable cause of action — Whether matter ought to be remitted to High Court for full trial*

The 348 appellants were the plaintiffs whose claims against the respondents (seeking damages and compensation for loss of rubber trees cultivated by the appellants) were struck out by the High Court upon an interlocutory application of the respondents. The principal, if not sole, reason for allowing the interlocutory application was because the action was "obviously unsustainable" as the plaintiffs lacked *locus standi* to maintain the action. The decision of the High Court was affirmed by the Court of Appeal, which held that the appellants had no rights to or in the rubber trees under ss 5 and 341 of the National Land Code 1965 "just because they had planted them at their own costs on the state land albeit to the knowledge of the respondents and without any protest from them". Subsequently, the appellants were granted leave to appeal under s 96(a) of the Courts of Judicature Act 1964 on four questions of law.

Held (allowing the appeal with costs):

(1) There was no doubt that on the pleaded facts and circumstances, particularly under the restrictions and conditions of the Land (Group Settlement Areas) Act 1960, the appellants did have a reasonable cause of action which merited proper determination and not being summarily disposed of in the manner conducted by the Courts below. The law on striking out was settled; so long as there was a reasonable cause of action, the matter should proceed to full trial. On the facts, the four questions of law for which leave was granted by the Federal Court were indicative that there were real issues in law and in fact for determination at a full trial and were sufficient basis to find a cause of action. As such, the matter ought to be remitted to the High Court for a full trial. Accordingly, there was no necessity to answer the four leave questions as these were matters for the High Court to decide. (paras 32-34)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 1 MLRA 611 (refd)

Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 2 MLRA 263 (refd)

Tan Wei Hong & Ors v. Malaysia Airlines Berhad [2018] 6 MLRA 433 (refd)

Wiggins Teape (M) Sdn Bhd v. Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd & Ors As Objectors [1979] 1 MLRH 91 (refd)

Legislation referred to:

Courts of Judicature Act 1964, s 96(a)

Land Development Act 1956, s 3

Land (Group Settlement Areas) Act 1960, ss 3, 4, 5, 6, 12, 19, 34

National Land Code, ss 5, 341

National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966, s 6

Counsel:

For the appellants: Mohamad Nor Azam Rashid Zainol Rashid (Mohd Nasir Abdullah with him); M/s Mohd Nasir & Co

For the respondents: Adam Mohamed @ Mamat; State Legal Adviser

JUDGMENT

Mary Lim Thiam Suan FCJ:

[1] The 348 appellants before us were the plaintiffs whose claims against the respondents were struck out by the High Court upon the application of the respondents [encl 29]. The principal if not the sole reason for allowing the interlocutory application was because the action was "obviously unsustainable" as the plaintiffs lacked *locus standi* to maintain the action.

[2] The decision of the High Court was affirmed by the Court of Appeal.

[3] On 9 May 2022, this Court granted leave to appeal under s 96(a) of the Courts of Judicature Act 1964 [Act 91] on the following four questions of law:

i. Sama ada pemakaian Group Settlement Act (GSA) dan s 5 Kanun Tanah Negara terpakai untuk kawasan-kawasan tanah rancangan;

ii. Sama ada prinsip ekuiti terpakai untuk pokok-pokok yang ditanam di kawasan tanah rancangan selaras dengan Group Settlement Act (GSA);

iii. Sama ada peserta yang dijemput, yang mengusahakan, yang mengeluarkan modal berhak ke atas pokok-pokok getah yang diusahakan mereka di kawasan tanah KRBT tersebut;

iv. Sama ada pemilikan pokok-pokok getah terikat kepada pemilikan tanah sebagaimana s 5 Kanun Tanah Negara tanpa mengambil kira faktor kependudukan, pengusahaan dan penanaman pokok-pokok getah tersebut sejak 30 tahun serta kos-kos yang mencecah RM718,247.83 dan RM5,800,155.78 yang dibiayai oleh Pemohon-pemohon.

[4] Upon due consideration of the submissions of all parties, grounds of decisions, and the records of appeal, we unanimously allowed the appeal. We set aside the decisions of the Court of Appeal and the High Court and remitted the case to the High Court for a full trial. We were of the unanimous opinion that contrary to the findings of the Courts below, there was a reasonable cause of action upon which the plaintiffs' claims ought and must proceed to full trial. In this connection, the four questions of law for which leave was earlier granted by this Court are indicative that there are real issues in law and on the facts for the proper determination of the Court. These are our reasons in full.

Background Facts

[5] Bearing in mind that the appeal emanates from an interlocutory application and that we are not concerned with the merits of the claims [see *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 1 MLRA 611, these are the underlying facts surrounding the parties before us as well as some who are not, mentioned for reasons that would soon become apparent.

[6] The appellants comprise largely the original participants selected by FELCRA Berhad to open or clear and develop 2656 acres of Lot 1404 Mukim Rantau Panjang, Daerah Rantau Panjang, Jajahan Pasir Mas, Kelantan. This area came to be known as Kawasan Rancangan FELCRA Bukit Tandak [KRBT], developed under the Land (Group Settlement Areas) Act 1960 [Act 530] since early 1980. The participants of such group settlement areas are colloquially known as "settlers" by virtue of the name of the Act. But, under Act 530 and subject to the terms prescribed under Act 530, the participants are known as "holders". Some of the other appellants are the beneficiaries and/or descendants of these original settlers or holders. The distinction between the appellants is not, in our view, material at this point in time of the proceedings between the parties. In fact, it is a matter to be carefully explored. Again, this is mentioned for obvious reasons given that the matter before the Court was an interlocutory application to strike out the appellants' claims where the legal principles are trite.

[7] KRBT was never gazetted as a group settlement area under s 4 of Act 530. Be that as it may, the appellants claimed that they were initially allocated 6 acres of land each in KRBT as agreed in an agreement with FELCRA which however was not formalised. Still, the appellants occupied the lands allotted and they cultivated amongst others, oil palm and rubber trees, spending what they say, substantial sums over the past 30 over years. At the same time, the

appellants were also alienated from separate parcels of land within KRBT for them to erect their dwelling or residential houses - see para 365 of the Statement of Claim.

[8] According to para 363 of the Statement of Claim, the respondents are said to be aware of the appellants' presence and occupation of the lands in KRBT for the last 30 years even though no agreement was ever signed with FELCRA or the respondents. Throughout this period, the appellants engaged with FELCRA and attended all meetings called by FELCRA in relation to the development of KRBT.

[9] In 2014, the acreage allotted was allegedly reduced to 3 acres per participant. The appellants were not happy and so they sued the 1st and 2nd respondents over this reduction in acreage vide Civil Suit No: DA-21 NCVC-1-04-2015 [Suit 1]. Suit 1 was dismissed by the High Court and the decision was affirmed by the Court of Appeal. Leave to appeal was refused by the Federal Court.

[10] When Suit 1 was before the Federal Court, the 1st respondent called for tenders for the felling of rubber trees which the appellants claimed they had planted on the lands in question. And so, the appellants filed a second suit [Civil Suit No: DA-21NCvC-14-09-2018 - Suit 14]. The defendants there were the respondents in this appeal and also the Director of Lands and Mines, Kelantan. The latter was successful in striking out the claim but before the respondents' application for the same was heard, the appellants discontinued Suit 14.

[11] Then came the present suit [Suit 3]. There are 5 defendants in this suit. The respondents in this appeal were the 1st and 2nd defendants, namely Pentadbir Tanah Jajahan Pasir Mas and the State Government of Kelantan while the 3rd - 5th defendants are the parties who were successful in the tender exercise and who were awarded the contract to fell the rubber trees. This appeal only concerns the first two defendants. The plaintiffs did not file an application for leave to appeal to the Federal Court against the 3rd - 5th defendants.

[12] In Suit 3, the appellants claimed that despite being fully aware of their cultivation of the rubber trees for over 30 years, the respondents *inter alia* conspired, acted with *mala fides* and/or negligence in felling the rubber trees without their prior knowledge or consent and that such acts were a violation of their legitimate rights over the rubber trees. The appellants claimed damages and compensation for loss of the rubber trees. Other reliefs sought included declaratory orders of entitlement to the rubber trees planted by them.

[13] These contentions are not in serious dispute by the respondents in this appeal - see paras 17 to 19 of their Defence; where the respondents principally pleaded that the appellants' participation in the group settlement area programme for KRBT did not alter the fact that the respondents remain legal

owners of the lands involved. However, the respondents contended that the appellants were not registered administratively with FELCRA - see para 27 of the Defence.

[14] In addition, the respondents relied on s 5 of the National Land Code 1965, that any rubber trees planted by the appellants were the property of the respondents as the 2nd respondent owned the lands in question. Consequently, the respondents were not obliged whether to inform or obtain the consent of the appellants before felling or entering into tenders for the felling of the rubber trees.

[15] The respondents also counterclaimed. Relying on the dismissal of Suit 1 and the subsequent dismissal of the application for leave to appeal by the Federal Court, the respondents sought a declaratory order to the effect that the rubber trees on the lands in question were lawfully owned by the 2nd respondent. The respondents' counterclaim currently is fixed for case management at the High Court.

[16] The respondents filed encl 29 to strike out the claim on the basis of *res judicata* in that the appellants' claim had been adjudicated in Suit 1 where it was held that the appellants did not have any rights in law or equity against the respondents.

Decision Of The High Court

[17] In allowing the respondents' application, the High Court gave two reasons for its decision. First, under s 5 of the National Land Code 1965 [NLC 1965], the plaintiffs had no rights over the rubber trees that they had planted on lands belonging to the 2nd respondent. Second, the plaintiffs' right to the lands had already been dismissed in an earlier suit. That decision had been upheld on appeal and leave to appeal was disallowed by the Federal Court. Since the plaintiffs had no rights over the lands, they therefore had no rights over the rubber trees that they had planted on the same lands.

[18] Relying on the decision in *Wiggins Teape (M) Sdn Bhd V. Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd & Ors As Objectors* [1979] 1 MLRH 91 on the interpretation of s 5 of the NLC 1965, the learned Judge held that "land" comprised "fixtures" which "includes all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface". Consequently, it was immaterial who planted the rubber trees, even if it was the plaintiffs since the plaintiffs did not own the lands in the first place. The learned Judge went on to hold that the 2nd respondent in fact owned the rubber trees.

Decision Of The Court Of Appeal

[19] The Court of Appeal agreed with the High Court, that the appellants had no rights to or in the rubber trees under ss 5 and 341 of the NLC 1965 "just because they had planted them at their own costs on the state land *albeit* to the

knowledge of the respondents and without any protest from them". The Court of Appeal further found that the rubber trees were planted on unalienated state land; that there was no plea or assertion that there was any contract or representation relating to the use or occupation of the lands in question or the planting of the rubber trees so as to give rise to a claim of some species of equitable right or estoppel, compounded by the fact that the lands were never gazetted and/or brought into the ambit of Act 530. According to the Court of Appeal, "without any legitimate legal basis disclosed in the pleadings to the appellants' claim to ownership or rights in the rubber trees planted, neither in law nor in equity, the appellants' claims against the respondents are obviously unsustainable".

Our Decision

[20] Broadly and for a proper appreciation of the context of the plaintiffs and their claims against the respondents, we need to have some rudimentary understanding of the applicable law even for the purposes of determining an application to strike out a claim. In this context, it is Act 530, its purpose and its operation. This understanding is necessary in order to address the question of whether the appellants' claim is "obviously unsustainable".

[21] Act 530 is an "Act for the purpose of ensuring uniformity of law and policy in respect of the establishment of group settlement areas and the conditions of alienation and occupation of land in such areas and for other matters incidental thereto". This Act envisages the opening up and development of State lands through group settlement programmes or projects according to the terms, conditions, restrictions, obligations and arrangements as set out in Parts II to V of the Act.

[22] Tracts of State land are first declared as designated areas for the purposes of Act 530 - s 3. In turn, these areas may be declared as group settlement areas - s 4. These group settlement areas may then be declared as rural or urban holdings [ss 5 and 6] and persons eligible under the Act to occupy the holdings occupy the same in expectation of title [ss 12 and 19].

[23] Participants who are invited to participate in the programme clear the lands allocated and cultivate crops as specified in s 5 of the Act on such lands. These participants or settlers live in these group settlement areas and form pioneer generations of families.

[24] These group settlement areas are developed, managed and administered by a Development Authority, namely the Federal Auhority Land Development [better known as FELDA], established under the Land Development Act 1956 [Act 474] - see s 34 of Act 530 and s 3 of Act 474. By virtue of the National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 [Act 398], FELCRA, the Federal Land Consolidation and Rehabilitation Authority, was established. Under s 6 of Act 398, FELCRA was *inter alia* conferred all the powers and duties previously undertaken by FELDA. Pursuant

to the National Land Rehabilitation and Consolidation Authority (Succession and Dissolution) Act 1997 [Act 570], FELCRA's property, rights and liabilities were vested in a company, FELCRA Berhad, the entity identified in the earlier paragraph.

[25] In the present appeal, what is clear and undisputed from the pleadings and the affidavits filed is that there is a group settlement area known as KRBT. Whether or not this area has been gazetted and its ramifications on the appellants' claim, if at all, is a question for determination at a full trial.

[26] We appreciate that Suit 1 was dismissed. Suit 1 concerned the issue of acreage allegedly promised to the appellants. But, in Suit 3, we are not concerned with the issue of acreage of the lands allotted to the appellants. The issue is whether the appellants have any legitimate interest in the rubber trees that they had cultivated over the 30-year period as described earlier.

[27] Regardless of the acreage of the lands comprised in KRBT, the presence and thereby the appellants' occupation and participation in the KRBT is in fact not denied by the respondents. We have already pointed this out. The respondents were fully aware of the occupation of the appellants and that such occupation as a group settlement area was as envisaged under Act 530. The respondents too, are not suggesting for a moment that the appellants are illegal occupants, squatters or some similar characterisation; and this was confirmed by learned counsel for the respondents in this appeal.

[28] What is also not in dispute is that the appellants had occupied these lands in the KRBT for over 30 years. As mentioned, subject to the conditions under Act 530, occupation in these group settlement areas involves an occupation in expectation of title. During this long-extended period of occupation, the appellants had been allowed to cultivate and did in fact cultivate oil palm trees and rubber trees. Both of these crops are crops designated as appropriate crops to be planted - see s 5 of Act 530; again, as confirmed by learned counsel for the respondents when queried by this Court.

[29] The matter of the felling of the rubber trees arose during the pendency of Suit 1. Hence, the issue of *res judicata* does not arise. It also does not arise in that these were not rubber trees randomly planted by the appellants but were rubber trees planted or cultivated in the circumstances that we have painstakingly described earlier.

[30] What is further not in dispute is that under Act 530, any area of State land, whether or not included in a designated area may be declared to be a group settlement area for the purposes of Act 530 - see s 4.

[31] What was and is in controversy is the manner of selection of the appellants as participants to occupy and cultivate the designated crops under Act 530, that it was by FELCRA Berhad where no agreement was finally drawn up; that the appellants' names were not registered, and that the lands in question

were not gazetted. Whether in these principal circumstances, the appellants have any interests or rights to the rubber trees that they had cultivated for such a long undisturbed period thereby entitling them to any relief including compensation, is a real and substantive matter or issue of law clearly requiring full and proper examination at trial.

[32] We are in no doubt that on the pleaded facts and circumstances particularly under the restrictions and conditions of Act 530, the appellants do have a reasonable cause of action which merit proper determination and not summarily disposed of in the manner conducted by the Courts below. The law on striking out is settled; so long as there is a reasonable cause of action, the matter should proceed to full trial. See *Tan Wei Hong & Ors v. Malaysia Airlines Berhad* [2018] 6 MLRA 433; *Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 2 MLRA 263; *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd (supra)*.

[33] As we said at the outset, the 4 questions of law for which leave was granted by the Federal Court are indicative that there are real issues in law and in fact for determination at a full trial and which in our opinion is sufficient basis to found a cause of action. As such we are of the unanimous opinion that the appeal is allowed with costs and the matter be remitted to the High Court for a full trial. The orders of the High Court and the Court of Appeal are therefore set aside.

[34] Accordingly, we do not see the necessity of answering the 4 leave questions as these are matters for the High Court to decide.

Abdul Latif Puteh & Ors
v. Pentadbir Tanah Jajahan Pasir Mas & Anor

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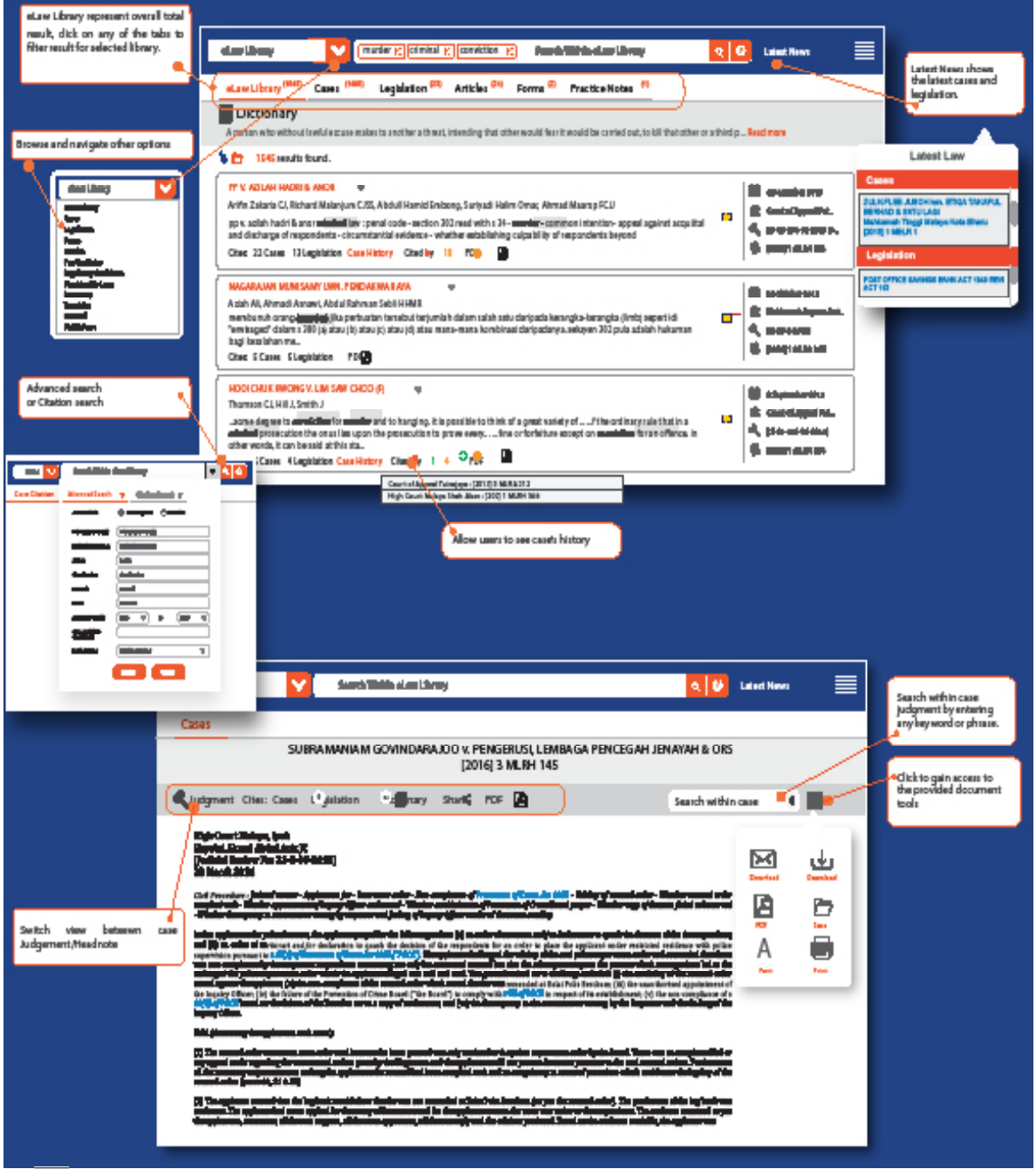

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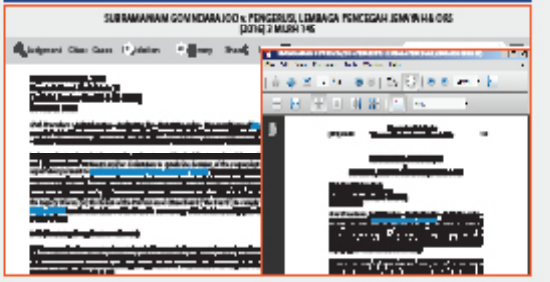

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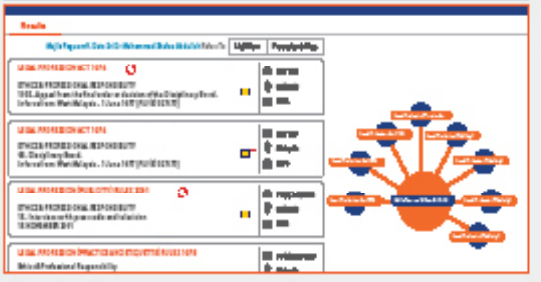

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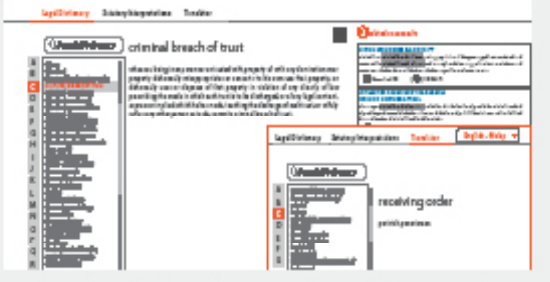

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