

DALAM MAHKAMAH PERSEKUTUAN MALAYSIA
(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO. 02(f)-19-2009(C)

ANTARA

TAN YING HONG

... PERAYU

DAN

1. TAN SIAN SANG
2. CINI TIMBER INDUSTRIES SDN. BHD.
3. UNITED MALAYAN BANKING
CORPORATION BHD

... RESPONDEN

CORAM: ZAKI TUN AZMI, CJ
ALAUDDIN MOHD SHERIFF, PCA
ARIFIN ZAKARIA, CJM
ZULKEFLI AHMAD MAKINUDIN, FCJ
JAMES FOONG CHENG YUEN, FCJ

JUDGMENT OF ZAKI TUN AZMI, CJ

1. I had the privilege of reading the draft of my learned Chief Judge of Malaya Arifin Zakaria's grounds of judgment. I must give him credit for having traced the history of decisions made on the interpretation of section 340¹ of the National Land Code 1965 (NLC). I agree with his conclusions.

¹ S.340- Registration to confer indefeasible title or interest, except in certain circumstances.

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible-

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

2. I wish to, however, express my own views in support of that judgment.
3. The facts of this case, which are not disputed, have been well narrated in his judgment and I do not wish to repeat them here.
4. I would like to look at section 340 of the NLC in a more simplified manner.
5. Let us refer to the first owner of a piece of land as “A” who then transfers the same piece of land to “B” and which subsequently is transferred to “C”.
6. As far as section 340 (1) of the NLC is concerned, A’s title to the land is totally indefeasible. In short if A’s name appears on the registration, no one can come and claim for that title. The law will not entertain it at all.
7. Now comes the next person, B, whose name appears in the register. If it can be shown that the title or interests obtained by B was obtained by fraud or misrepresentation by him or anyone else to which he was a

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2)-
(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent-
(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
(b) the determination of any title or interest by operation of law.

party or privy then his claim to the title or interest can be defeated. (See s.340 (2)(a) of the NLC). Otherwise B stands in the same position as A.

8. The situation where it is proved that the registration in B's name was obtained by forgery or by means of an insufficient or void instrument is the same (See section 340 (2) (b) of the NLC). His title or interest to the land is liable to be set aside by the previous owner who has a good title. In this latter instance, there is no need to show that B was a party or privy to that forgery or to obtaining the title or interest by a void instrument.
9. The third instance where B's title or interest could be defeated is where it was *unlawfully* acquired through the exercise of any power or authority conferred by any law. Section 340(2)(c) of the NLC deals with one who was for example acting in his capacity as an agent to a power of attorney. Even if C is in the same position as B, sub-section (3) also does not give protection to C unless he can show that he had acquired the title or interest *in good faith and for valuable consideration*. Any title or interest gained by any person thereafter is also liable to be set aside unless it could be shown that he had acquired it in good faith and for valuable consideration. This is what is called deferred indefeasibility of title. If his title or interest is challenged on similar grounds, the burden of proving there was valuable consideration and good faith lies on him.
10. As far as I am concerned, that is the simplest way of looking at section 340 of the NLC. I totally agree with the learned Chief Judge of Malaya's view that the error committed by the Federal Court in *Adorna*

*Properties Sdn. Bhd. v Boonsom Boonyanit @ Sun Yok Eng*² was to read the proviso to sub-section (3) as being a proviso to sub-section (2) as well. The error is very obvious because the proviso expressly refers to “**this sub-section**” which must in the context of that sub-section be read as proviso to sub-section (3) only.

11. I am legally obligated to restate the law since the error committed in *Adorna Properties* is so obvious and blatant. It is quite a well known fact that some unscrupulous people have been taking advantage of this error by falsely transferring titles to themselves. I hope that with this decision, the Land Authorities will be extra cautious when registering transfers.

12. In the circumstances and for the reason mentioned above, I would concur with the Chief Judge of Malaya Arifin Zakaria, allow this appeal and make the same orders made by him. I also agree that the costs of this appeal and the Courts below be awarded to the appellant.

Dated : 21st January 2010

ZAKI TUN AZMI
Chief Justice
Malaysia

² [2001] 1 MLJ 241

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