

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO.3929 OF 1998

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IN THE MATTER OF Nos.17 & 19 Yik Yam  
Street, Happy Valley, Hong Kong  
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BETWEEN

CHAN KWOK YUN	Plaintiff
and	
NG CHAN SHI	1 <sup>st</sup> Defendant
NG CHUEK LAU	2 <sup>nd</sup> Defendant
NG CHUEK JING	3 <sup>rd</sup> Defendant

Coram : Deputy Judge Muttrie in Court

Date of hearing : 16<sup>th</sup> July 1999

Date of Judgment : 16<sup>th</sup> July 1999

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J U D G M E N T  
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The Plaintiff claimed, by way of Originating Summons,  
declarations –

- (1) that the title of the Defendants or their successors-in-title or any persons deriving title from them to the premises known as Nos. 17 and 19 Yik Yam Street, Happy Valley, was prior to the commencement of these proceedings extinguished;
- (2) that the Plaintiff, having been in adverse possession of the property for a period in excess of 20 years next before the commencement of these proceedings, has acquired title to the property.

On 16<sup>th</sup> July 1999 I heard the summons in the absence of the Defendants. I made an order in terms of Counsel's draft Minute of Order giving the Plaintiff what he claimed. I now give my reasons.

The Plaintiff's claim is based on adverse possession. Counsel has referred me to the relevant statutory provisions and to the case of **Bligh v Martin**, [1968] 1 WLR 804 and I accept that the legal position is as follows. Under the *Limitation Ordinance* as it stood prior to the 1991 amendment, the limitation period is 20 years. The Plaintiff must show that the original owners, i.e. the Defendants, were dispossessed or discontinued or abandoned their possession of the property, and that he has been in adverse possession of it for 20 years prior to the issue of the proceedings herein.

The property concerned here is a pre-war building. It was acquired by one Ng Hop Yick in the 1930s. He died in 1941. In 1947 the 1<sup>st</sup> Defendant was registered as the owner of the property in her capacity as executrix of his will. On 4<sup>th</sup> December 1968 the 1<sup>st</sup> Defendant assigned one equal undivided share in the property to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as tenants-in-common in equal shares for a consideration of \$20,000.

It is the evidence of the Plaintiff that he started working as a chauffeur for a Mr Lee Chun Kong in the 1950s. In the middle of 1978, Mr Lee told the Plaintiff to collect rent from the tenants of Nos. 17 and 19, Yik Yam Street, and to keep the proceeds for his own use after discharging rates, property tax, and the costs of maintenance and repairs. Mr Lee gave the Plaintiff the names of all the tenants. He told the Plaintiff that the tenants had been told to pay rent to him and that he could exercise the right of a landlord in respect of all of them, including the right to issue rental receipts in his own name. He also told the Plaintiff that the 1<sup>st</sup> Defendant was indebted to him.

The Plaintiff has apparently lost touch with Mr Lee and his family. He says that he stopped working for them in the 1980s and believes that they emigrated to Canada.



In support of his evidence the Plaintiff has produced rental receipts in respect of all flats in the property, going back to at least July and in some cases May of 1978. He says that he has paid for repairs but is unable to produce the receipts.

There is nothing to contradict the Plaintiff's evidence. Nothing has been heard from any of the Defendants. Their address recording in the Land Registry in 1968 was "1/F and 2/F, 65 Bonham Strand West" but there is evidence that no building designated as 65 Bonham Strand West can now be found. Various inquiries were made following on the order of Master Bennett, in an attempt to trace them, but without success. The Plaintiff has effected substituted service as ordered by the Court. However, there is still no sign of the Defendants.

In the circumstances, I accept the evidence of the Plaintiff. I accept that the Plaintiff has been in adverse possession of the property since May 1978 by receipt of rent from the tenants and by assuming the obligations of the landlord and owner. I accept that the true owners of the property were either dispossessed of it by Mr Lee prior to May 1978, or abandoned possession of it. It follows that the Plaintiff has a good title based on adverse possession and is therefore entitled to the declarations claimed. [Stanley's note : possessory title only.]

(G. P. Muttrie)  
Deputy Judge of the Court of First Instance,  
High Court

Miss Lisa Wong, inst'd by M/s Oldham, Li & Nie, for the Plaintiff

1<sup>st</sup> to 3<sup>rd</sup> Defendants absent