

Land gone despite forgery

Three ordered to pay RM7.3m to couple

By V. Anbalagan

KUALA LUMPUR, Sat. — A couple lost their ancestral land despite the High Court's finding that their signatures on bank documents had been forged.

The court, however, ordered a land broker, a lawyer and his law firm to pay Ismail Mohamad and Sadiyah Abdullah RM7.3 million, the balance of the price of the transacted land.

Datuk Arifin Zakaria, who sat as High Court judge, said he had no choice but to rule that Bank Kerjasama Rakyat Malaysia Berhad had registered interest over three pieces of properties in Seberang Prai Selatan in Penang.

Saying the case before him was "very difficult", Arifin added that he was bound by a Federal Court ruling in 2000 in making his ruling.

Arifin suggested to counsel Gerald Gomez, who represented Ismail Mohamad and Sadiyah, that the case be taken to the Court of Appeal.

Arifin, who was elevated from the Court of Appeal to the Federal Court last week, said he accepted the evidence of handwriting expert Lim Yek Chay who found differences in the documents allegedly signed by Ismail Mohamad and Sadiyah.

On Dec 23, 1999, the couple alleged misrepresentation, negligence, fraud and breach of trust over a sale and purchase agreement for their properties.

They had named land broker Ismail Husin, lawyer Abdul Aziz Ahmad and his law firm Messrs Sajali & Aziz, the bank and Vest Hong Enterprises Sdn Bhd as defendants.

They claimed Ismail Husin had charged the three pieces of land, using the original title deeds, to secure a loan for Vest Hong in which he holds an equity.

The couple said Ismail Husin had earlier approached them to buy their properties for RM7.5 million.

They entered into an agreement on July 30, 1999 but only RM200,000 was paid to them although Ismail Husin assured the couple the full payment would be settled in two months.

The couple said the bank approved a RM16 million loan to Vest Hong for the purchase of machinery and as working capital.

They alleged that Ismail Husin and Abdul Aziz released the title deeds to the bank as security for the loan.

Arifin, in his judgment ruled that Ismail Husin, Abdul Aziz and the legal firm were liable for their actions. He said the bank too had



RELIEF: Family members (from left) Nurul Hayati, Kalthom, Rosli and Abu Bakar outside the court.

knowledge of the fraud.

The judge said Vest Hong was subsequently wound up and that its directors had absconded to China.

Arifin, however, allowed the couple's application to order Ismail, Abdul Aziz and his legal firm to pay them the balance purchase price of RM7.3 million, inclusive of eight per cent interest per year, for their property.

By consent order, the couple were absolved from paying RM23 million purport-

edly owed to the bank.

Arifin also ordered Ismail, Abdul Aziz and the legal firm to pay general and exemplary damages and costs.

Ismail Mohamad, 75, a former harbour pilot with the Penang Port Commission, died on Aug 18 last year and his son Abu Bakar substituted him as the first plaintiff.

Sadiyah, 67, was absent from court because she was not well. Abu Bakar, a marine su-

ervisor with an oil refinery in Port Dickson, said he was glad the court had ruled that his parents were not responsible for the (RM16 million) loan.

"The property has slipped from us but we are happy that those responsible had been ordered to pay the outstanding sales amount plus interest," he said.

However, he was sceptical whether the family would ever recover the money following the land sale.

"If we do not get the money, we want the land back. We will make a decision soon," he said.

Abu Bakar said a complaint had been lodged with the Bar Council against the lawyer and his firm.

Also present at the hearing today were Abu Bakar's brother Rosli and sisters, Kalthom and Nurul Hayati.

Gomez said the couple would only obtain a paper judgment if the defendants did not pay up.

GEMBIRA: Abu Bakar Ismail (kanan) menelefon ibunya, Sadiyah memberitahu mengenai kejayaan kes mereka yang mendapat tuntutan RM7.3 juta sambil diperhatikan adiknya (dari kiri), Rosli, Nurul Hayati dan Kalthom, semalam.

Defendan bayar ganti rugi RM7.3j

KUALA LUMPUR: "Saya berasa lega kerana ibu bapa saya tidak perlu menanggung hutang lagi, tetapi agak terkilan kerana tanah pusaka kami terlepas ke tangan orang lain" kata Abu Bakar Ismail, anak pasangan Sadiyah Abdullah dan Ismail Mohamad apabila Mahkamah Tinggi memutuskan mereka tidak perlu menanggung hutang bank selepas dokumen penjualan tanah mereka bernilai RM7.5 dipalsukan.



Sadiyah Abdullah

Bagaimanapun dalam penghakimannya semalam, Hakim Datuk Arifin Zakaria, menolak permohonan pasangan itu supaya dokumen asal hak milik tanah dikembalikan kepada mereka.

Arifin berkata, beliau berpuas hati yang dokumen itu dipalsukan tetapi beliau terikat dengan keputusan Mahkamah Persekutuan yang memutuskan seorang pembeli tanah membeli geran yang sah walaupun ia membabitkan pemalsuan dalam pindeh milik kerana dia membeli hartanah itu dengan niat baik.

Sehubungan itu, Arifin memerintahkan pembeli tanah, Ismail Husin, peguam Ismail, Abdul Aziz Ahmad dan firma guamannya, Tetuan Sajali & Aziz dinamakan sebagai defendan membayar ganti rugi RM7.3 juta kepada kedua-dua plaintif.

Selain bayaran itu, mereka juga

perlu membayar faedah lapan peratus setahun bermula dari tarikh saman itu difailkan sehingga tarikh pembayaran ganti rugi.

Beliau juga memerintahkan ketiga-tiga defendan membayar ganti rugi teladan dan teruk kepada pasangan itu. Kedua-dua ganti rugi berkenaan akan ditentukan Penolong Kanan Pendaftar mahkamah kemudian.

Arifin juga memutuskan defendan keempat iaitu Bank Kerjasama Rakyat Malaysia adalah pihak yang tidak bersalah dalam kes berkenaan.

Oleh Ahmad Johari Mohd Ali

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Mr. Gomez represented the Plaintiff in the High Court and the Court of Appeal

Wanita, anak lelaki dapat semula hak milik tanah pusaka

PUTRAJAYA 23 Mac — Seorang wanita dan anak lelakinya mendapat semula hak milik tanah pusaka mereka setelah Mahkamah Rayuan hari ini mengisytiharkan gadaian ke atas tanah itu kepada sebuah bank adalah tidak sah dan terbatal kerana dilaksanakan secara penipuan.

Dalam keputusan majoriti 2-1, Hakim Datuk Gopal Sri Ram dan Hakim Md. Raus Shariff mengambil keputusan untuk membenarkan dengan kos rayuan yang dikemukakan oleh Abu Bakar Ismail, 38, dan ibunya, Sadiyah Abdullah, 70.

Bagaimanapun, Hakim Datuk Wira Low Hop Bing memilih untuk menolak rayuan itu.

Dalam rayuan mereka, Abu Bakar dan Sadiyah menamakan lima responden iaitu broker tanah, Ismail Husin; peguam Abdul Aziz Ahmad; firma guaman Tetuan Sajali & Aziz; pemegang gadaian Bank Kerjasama

Malaysia Berhad dan syarikat Vest Hong Enterprise Sdn. Bhd.

Dalam penghakimannya, Hakim Sri Ram berkata, kes itu merupakan satu lagi keadaan yang menuntut mahkamah memutuskan siapakah di antara dua pihak tidak bersalah yang perlu menerima akibat perbuatan jahat pihak ketiga yang melakukan penipuan.

Katanya, pembatalan gadaian kepada pihak bank adalah kerana perbuatan penipuan oleh agennya, dalam kes ini ialah responden kedua, Abdul Aziz Ahmad dan firma guamannya, Tetuan Sajali & Aziz yang merupakan ejen kepada Bank Rakyat.

"Perkara ini adalah nyata dalam peruntukan Seksyen 340(2)(a) Kanun Tanah Negara," tegas Hakim Sri Ram.

Abu Bakar dan ibunya mengemukakan rayuan terhadap keputusan Mahkamah Tinggi Kuala Lumpur yang memutuskan

bahawa Bank Rakyat mempunyai hak terhadap tiga bidang tanah pusaka mereka yang digadaiakan kepada bank itu.

Menjual

Pada 30 Julai 1999, Sadiyah dan suaminya, Ismail Mohamad (telah meninggal dunia) menjual tiga bidang tanah di Seberang Prai Selatan kepada Ismail Husin pada harga RM7.5 juta tetapi hanya dibayar RM200,000 sebagai wang pendahuluan.

Ismail Husin berjanji menyelesaikan baki harga jualan tanah dalam tempoh dua bulan.

Ketika menuntut baki harga jualan tanah itu yang gagal dibayar dalam tempoh yang dijanjikan, Sadiyah dan suaminya terkejut apabila mengetahui tanah itu telah

digadaiakan kepada Bank Rakyat bagi mendapatkan pinjaman RM16 juta untuk syarikat Vest Hong Enterprise.

Berikutan itu, mereka menyaman kelima-lima responden bagi mendapatkan semula tanah tersebut dengan alasan perjanjian jual beli tanah itu dilakukan secara penipuan, pecah amanah dan cuai.

Pada 26 Jun 2005, Hakim Datuk Zakaria Arifin (kini Hakim Mahkamah Persekutuan) telah menolak permohonan mereka dan memerintahkan Ismail Husin, Abdul Aziz dan firma guamannya membayar baki harga jualan RM7.3 juta kepada Sadiyah.

Hakim Arifin juga memutuskan Ismail Husin, Abdul Aziz dan firma guamannya perlu dipertanggungjawabkan (liable) terhadap perbuatan mereka menipu pasangan suami isteri itu dalam urusan jual beli dan gadaian tanah tersebut.