

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
NEGERI SELANGOR DARUL EHSAN  
MALAYSIA  
(BAHAGIAN SIVIL)  
GUAMAN SIVIL. No. 21-202-2010**

Between

EDWARD XAVIER SOOSAY .... PLAINTIFF

And

1. S. SASMASARI BIN ABD. SAMAD .... DEFENDANTS  
2. ENG CHIN TIAN  
3. LAI CHOON SEANG  
4. PEJABAT DAERAH /TANAH SELANGOR  
5. ZURINA BT. MOHD NOOR

And

1. S. SASMASARI BIN ABD. SAMAD .... THIRD PARTIES  
2. PENTADBIR TANAH DAERAH KUALA  
LANGAT, SELANGOR  
3. ZURINA BT MOHD NOOR  
4. MESSRS. VM MOHAN FAREED & CO  
5. PENGARAH TANAH DAN GALIAN NEGERI  
SELANGOR

**GROUND OF JUDGMENT**

**INTRODUCTION**

The Plaintiff, is one Rev. Father Edward Xavier Soosay, a Catholic priest since 1978 and all along has been the registered owner of a piece of land known as G.M.2519, Lot 2218, 9<sup>th</sup> Milestone, Mukim Telok Panglima Garang, District of Kuala Langat ("the said land").

Sometime in 2009 the Plaintiff received an offer to buy the land after an agent named Irene Teoh Lai Heok who said there is a buyer offering to buy it at RM 2.6 million (RM 15.00 per square feet).

On 28.8.2009 upon doing a search it was discovered that the said land no longer belonged to the Plaintiff, it has been bought over by one S. Sasmasari Bin Abd. Samad (Defendant No. 1) and then had been re-sold and registered to the Second and Third Defendants. Then began the nightmare for the Plaintiff. (Further research revealed that a year or so the First Defendant was made a bankrupt and become "a man of straw".) (Despite this throughout 2009 to 2011 and periodically the Plaintiff has been receiving correspondence from the Land Office in his capacity as registered owner of the land regarding the land such as Quit Rent Notices et cetera.)

Since the claim by the Plaintiff includes damages for conspiracy, he had to collect sufficient material to prove conspiracy. (From the material collected during the course of investigation by the Plaintiff and his solicitors, it was revealed

that the Plaintiff's signature has been **forged** by an imposter to facilitate the transfer. The signatures on the transfer form (Borang 14A) (marked **Exhibit P-1**) have been allegedly **witnessed by then lawyer who later was discovered to be a bankrupt** and that she had been disbarred and should no longer practising. The plaintiff was incensed and came to be aware of similar illegal transfers of lands belonging to innocent persons in Selangor through previous news paper reports.

The Plaintiff lodged a police report saying he never received any payment for the sale of the land from First Defendant or any other party. He also lodged a **caveat** over the land. Meanwhile the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have been trying to sell the land, which they allegedly bought from the First Defendant to another person named **Tan Chee Cheng, who owned the adjacent land to the Plaintiff's said land.**

The Plaintiff alleges that the Hulu Langat Land Office (**Fourth Defendant**) conspired with the perpetrators and dishonestly (knowingly and in bad faith) and carelessly accepted the fabricated documents and proceeded to register the two

transfers, first from Plaintiff to First Defendant, and then from First Defendant to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

**THE PLAINTIFF'S CLAIM**

Therefore the Plaintiff claims for the following declaratory relief's, damages, costs, interests and other relief's:

- (i) that the new Title Instrument on the said land obtained from First Defendant is not valid and be cancelled and the original Title Instrument in the custody of the Plaintiff is still valid;
- (ii) that the transfer from First Defendant by Fourth Defendant is not valid and be cancelled
- (iii) that First to Fifth Defendants individually or collectively were involved or abetted in the fraudulent transaction;
- (iv) that Second and Third Defendants are not bona fide purchasers for proper value;
- (v) that the transfer to Second and Third Defendants be cancelled;

- (vi) that aggravated and exemplary damages are given to the Plaintiff
- (vii) that damages for lost of use suffered by the Plaintiff be assessed by the Registrar;
- (viii) that the Plaintiff be restored in the Land Registration Book as the true owner of the said land in dispute, and the Fourth Defendant be ordered to do the necessary correction and entries in the Register of Land Titles;
- (ix) Costs;
- (x) Interest; and
- (xi) Other relief's.

## **THE DEFENCE**

### **The 1<sup>st</sup> Defendant (S. Sasmasari Bin Abd. Samad)**

The First Defendant S. Sasmasari Bin Abd. Samad, did not enter Appearance, did not file Defence, and did not attend Court or the trial.

## **The 2<sup>nd</sup> And 3<sup>rd</sup> Defendants' (Eng Chin Tian and Lai Choon Seang's) Defence**

Essentially 2<sup>nd</sup> and 3<sup>rd</sup> Defendants deny they are involved in any scheme engineered to defraud the plaintiff as alleged by the Plaintiff, they claim that they are also victims of 1st Defendant. They pleaded that even if forgery existed, they were not aware of it and that they were bona fide purchasers for value and had acquired indefeasible title to the land and do not have notice of the earlier fraudulent transfer from Plaintiff to the First Defendant.

They allege that the Plaintiff failed to plead the fact that a third person by the name of Yeo Lai Siah was involved, that the said Yeo Lai Siah acted as the agent for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, and that that the Plaintiff also did not adduce evidence to that effect.

They claim that the Plaintiff merely points to some irrelevant facts and makes assumptions, and accuses that 2<sup>nd</sup> and 3<sup>rd</sup> defendants are privy to the so called fraud.

They claimed that the Plaintiff makes mere allegations without proof. It is all in the imagination of the plaintiff when he says that they are privy to the initial purchase. The Plaintiff has no documentary proof that 2nd Defendant knew Yeo Lai Siah who is claimed to be a party to the said fraud.

They claim that the findings of the Court appointed Chemist / Document Examiner is not binding on them because the application to obtain the order, and the order were not served on them to reply.

They claim that Inspector Muhamad Nazar's evidence is mere hearsay and has no evidential value.

They further claim that the fraud, if at all occurred, occurred during the transaction between the Plaintiff and 1st defendant, now called the previous transaction, and they had no way of detecting the said fraud, because the title search disclosed that the 1st defendant was indeed then the registered

proprietor, and that they were entitled to rely and had legally relied on such land office records.

They "purchased" the Plaintiff's property from First Defendant on 7.11.2008 well below the market value.

They said there is nothing wrong to purchase property below market value, and that it is part of the bargaining process. The solicitors had kept the 14A because they did not know about the alleged fraud.

### **THIRD PARTY CLAIM**

Not only that, Eng Chin Tian (The Second Defendant) and Lai Choon Seang (The Third Defendant) then filed third party claim against S. Sasmasari Bin Abd Samad (the First Defendant) and Zurina Bt Mohd Noor (the Fifth Defendant), and Pentadbir Tanah Daerah Kuala Langat, Selangor and Messrs VM Mohan Fareed & Co, and Pengarah Tanah dan Galian Negeri Selangor.



The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants claim that they did not have notice of previous transaction, all the agreements were prepared by respective solicitors for a consideration of RM 1.05 million, that they are not involved in any conspiracy engineered to defraud the Plaintiff, that the 1<sup>st</sup> defendant breached the fundamental term of the agreement which requires that the 1<sup>st</sup> plaintiff must be beneficial owner of the land and that he is able to transfer the title to them, the state authority was negligent in issuing a new document of title to the First Defendant, and that it did not follow procedures, that the state authority and the other third parties negligently misrepresented to them that the 1<sup>st</sup> Defendant was the beneficial owner at that time by issuing new title to him which misled them to believe and misrepresented to them and that they incurred losses as a result of such misrepresentation.

They claim the return of RM 1.05 million, with interest at 8% until full realisation, alternatively the market value of the said land, general and special damages, costs and interest and other relief's.

**The Defence Of The Fourth Defendant (Second Third Party and Fifth Third Party) (namely Pejabat Daerah/Tanah Selangor, Pentadbir Tanah Daerah Kuala Langat, Selangor, Pengarah Tanah dan Galian, Negeri Selangor respectively)**

The Senior Federal Counsel acting for the State Authorities sued as 4<sup>th</sup> Defendant and as 2<sup>nd</sup> and 5<sup>th</sup> Third Parties here filed defence, pointing out that the Government can not be made vicariously liable because conditions required under section 5 and 6 of the Government Proceedings Act 1956 had not been satisfied before they can lawfully be made vicariously liable.

The government claimed that as the actual officers who physically received and processed the Form 14A and registered the transfers were not named as parties in the suit. They have to be named, their role must be tested, and their liability established before the liability of their employer, the government, can be reasoned. The Pengarah or the Pentadbir Tanah should be named as Parties and the Plaintiff failed to do so.

Even if they are to be named, alternatively in defence the Senior Federal Counsel stated that then the officers were merely

doing their duty as given to them and under no obligation beyond the call of their stipulated duties to check out matters such as the position of Fifth Defendant (a lawyer who attested while can not validly practise law), and that they are not involved in the fraud or any scheme allegedly perpetrated by whoever committed the forgery and fraud, including the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

### **The Fifth Defendant (Third Party) (Zurina Bt Mohd Noor)**

The Fifth Defendant (who is also the Third Party) did not enter appearance, did not file defence and did not attend the Court or this trial.

### **ISSUES TO BE TRIED**

- i. Whether the title of the 1<sup>st</sup> Defendant is defensible by reason of the registration obtained by forgery and fraud.
- ii. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were purchasers in good faith and for valuable consideration and therefore, their title is not defeasible; and

- iii. Whether the 4<sup>th</sup> Defendant was a party to fraud and/ or was negligent in
- a. Issuing the new Issue Document of Title without the Plaintiff's knowledge and without the surrendering of his old Issue Document of Title
  - b. Registering further transfers on the title from 1<sup>st</sup> Defendant to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants
  - c. Continuing to send Quit Rent notices to the Plaintiff and accepting the Plaintiff's payments.

## THE TRIAL

### THE PLAINTIFF'S CASE

The Plaintiff called 6 witnesses for the trial as follows:

<b>SP1</b>	Mr. Lim Yoke Chew	Private forensic Document Examiner (Chemist)
<b>SP2</b>	Mr. Edward Xavier Soosay	The Plaintiff, a priest
<b>SP3</b>	Ms. Irene Teoh Lai Heok	Real Estate Negotiator
<b>SP4</b>	En. Abdul Fareed Bin Gafour	A lawyer , who acted for 1 <sup>st</sup> Defendant, and partner in the law firm Messrs. VM Mohan

- SP5** Mr. Lim Chok Hiann      Fareed & Co (Fourth Third Party),  
A lawyer, who acted for 2<sup>nd</sup> and  
3d Defendants and partner in the  
law firm Messrs. Lim Chok Hiann  
& Puspita.
- SP6** Insp. Muhammad      Investigating Officer, Commercial  
Nazar      Crime Division Kuala Langat  
Police
- SP7** Mr. Jason Reginald      A lawyer having own law firm  
Gomez      Messrs. Jason Gomez &  
Associates.

**THE 2<sup>ND</sup> AND 3<sup>RD</sup> DEFENDANTS' CASE**

**The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants presented their case through:**

- SD 1** Eng Chin Tian      (2<sup>nd</sup> Defendant)
- SD 2** Lai Choon Seang      (3<sup>rd</sup> Defendant)
- SD 3** Tan Chee Cheng      Retiree, Developer. Owns land  
adjacent to the subject land.

**FOURTH DEFENDANT'S CASE (The State Authority)**

The Fourth Defendant, Pejabat Daerah / Tanah Selangor  
called three witnesses:

- SD 4** Cik Noor Diyana Binti      PTD Officer (Assistant District  
Remey      Officer) Kuala Langat Land

- SD 5** Cik Siti Ezriena Bt  
Mohammad Izam District Office.  
The land office clerk who examined the documents and passed them to SD 6.
- SD 6** Cik Noor Hafizah Bt  
Amat Janji Officer who received the Form 14A in the Land office and registered the transfer

### **ANALYSIS OF EVIDENCE**

Here, I would like to repeat salient parts of the evidence during the trial presented before this Court and analyze them to show how and why the decision was made when finally the decision was arrived at. I did apply my mind to the matters and advanced cogent reasons for accepting or rejecting the evidence herein to look at the tendered evidence together with the observations of the credibility of witnesses to determine whether the parties had proved their cases.

In analyzing so, this court reminds itself that the findings can not be grounded entirely on speculations, surmises or conjectures. When an inference made as a trial court it should be from its factual findings and can not be plainly wrong, absurd or illogical; where there is none or insufficient judicial

appreciation of evidence or when the findings of this trial court run contrary to the admission of the parties to the case, or this court fails to notice certain relevant facts which if properly considered, will justify a different conclusion. It can not make findings of fact which are premised on the absence of evidence, or are contradicted by the evidence on record. [advice from **Court of Appeal in Civil Appeal No: C-02-626-03/2012**].

### **Court appointed Chemist ( Handwriting Examiner )**

During case management stage, the Court gave an order to appoint a Chemist (**SP1**) and the Order states that all parties shall abide by the findings of the Court appointed chemist. The Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submits that the Order and application were not served on them, therefore the findings of the Chemist do not bind them.

At the submission stage the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submitted that the Plaintiffs did not serve any application on 2nd and 3rd Defendant's solicitors in respect of his appointment of

Chemist (**SP1**) so the Order dated 9.8.2011 and chemist report is not binding. I disagree.

Actually the Order to appoint the Chemist was made during case management stage, and I agree with the Plaintiff's counsel's submission that any objections should have been made at that juncture. Further, during the trial no counter expert chemist findings were tendered to displace the evidence of **SP1**.

**Plaintiff's forged signature on Form 14A**

The first witness, Mr. Lim Yoke Chow, a former Chief Document Examiner for Jabatan Kimia Malaysia, and former Director of Chemistry Department Pahang, (**SP1**) a Court appointed Chemist / document examiner testified that the signature in Form 14A dated 19.08.2008 the form which was used to transfer the Plaintiff's property to 1<sup>st</sup> Defendant. when compared with the true signature specimens from the Plaintiff is forged. He said it was a simple forgery whereby the genuine signature of Edward Soosay had not been used as a model to make a copy of the genuine signature. There had been no



attempt to simulate or copy the genuine signature of the Plaintiff. The person who wrote that signature may not have knowledge of the actual signature of the Edward Soosay. He or she wrote that signature based on the word Edward, and totally different from the usual signature of Edward Soosay. 24 specimen signatures of the Plaintiff given to **SP1** to analyze and form an opinion.

In the disputed signature not only the form was different and also found difference in pen pressure which was heavier than the specimens.

This was supported by the oral testimony of the handwriting expert during cross examination. The National Land code 1965 ('the NLC') tries to ensure that the person who signs is the person stated in the form and to be attested. **SP4** was the lawyer, namely En. Abdul Fareed Bin Gafour, who attested the transfer from supposedly signed by the Plaintiff, however, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not cross examine him on this, and I am of the view that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants should bring witnesses to prove otherwise, or the said Defendants thought it would be better to be silent on this fact. The 5<sup>th</sup> Defendant

Zurina Bt. Mohd Noor, who attested the document, can not be traced.

Section 68 of the Evidence Act 1950 provides that for the purpose of proving the execution of a document required by law to be attested, which was the charge document in the present case, the attesting witness has to be called but was not done by the Plaintiff:

### **Evidence Act 1950**

#### **68. Proof of execution of document required by law to be attested**

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there is an attesting witness alive and subject to the process of the court and capable of giving evidence.

This effectively puts the onus on the defendant to prove that the charge was executed by the plaintiff himself.

### **The Plaintiff's evidence**

The Plaintiff gave evidence stating that he owned the land and paid all dues and taxes for it from 1978 until now and that he never signed the transfer Form 14A let alone in front of 5<sup>th</sup> Defendant. He also had custody of the original Title Deed for the land all along with him and never parted with it. He lodged a police report on 11.03.2010 upon learning that someone had signed under his name in transfer form for transferring his land to the First Defendant for a price of RM 450,000.00. He attached copies of the original title, paid assessment notices, paid quit rent notices with his report.

The Plaintiff never received any such money for the sale of the said land. Also, according to evidence that previously the Plaintiff also had lodged a couple of reports where people tried to "steal" his other lands elsewhere.

## **Commercial Crime investigation**

**SP6** Inspector Muhammad Nazar of the Commercial Crime Division of Kuala Langat Police is investigated the report.

The case was being investigated for cheating (420 Penal Code) and impersonation (416 Penal Code).

Insp. Muhammad Nazar **SP6** during his testimony for most of the questions, which were basic in nature, he was not much of a help because he either answered "I don't know", or "I am not sure", or "I can't remember" or "can not confirm" etc.

He said that he visited the 5<sup>th</sup> Defendant's premises but found a shop selling flowers, and concluded that 5<sup>th</sup> Defendant did not exist. That is not how to find out whether a lawyer exists (wujud). His investigation found that one Devendran a/l Ramadass, Syed Faida Syed Haiza and Mohamad Ali Yusof were involved in the fraud.

None of these three people are implicated by the parties in the present case.

**SP6** arrested Syed Haida and caused him to be charged in Klang Sessions Court. He admitted that he was attached to the commercial Crime division for a short while only, and is not familiar with land transactions, so can not be an expert on fraud cases to give an expert opinion as to whether there was fraud or conspiracy involving the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in this scam.

But he did say that the Plaintiff's land was valued at RM1.8 million by the valuation department at the time, and if it is bought for a low RM 450,000 only and soon after sold for very high RM 2 million, both situations will raise doubts and suspicion of fraud. He also confirmed that the investigations have not been closed, did take statements from Land office staff.

While recording statement, it was revealed to Inspector Muhamad Nazar that a debt was owed between 2nd defendant and Yeo Lai Siah relating to some previous matter amounting to RM 450,000.00.

### **Proximity of time of events**

The Plaintiff's title document for his land has been registered in the names of 2 different parties consecutively within 3 months in 2008 - 2009. The Plaintiff claims this is unusual.

### **Undervalued price**

The actual value of the said land is RM 2.6 million as per evidence of Miss Irene Teoh Lai Heok (**SP2**). The purchase price between the Plaintiff and the 1<sup>st</sup> Defendant was only RM 450,000.00. Between the 1<sup>st</sup> Defendant and 2<sup>nd</sup> and 3<sup>rd</sup> Defendants the deposit was RM 450,000.00 and balance purchase price to be paid RM 150,000.00. These do not seem to be normal commercial transactions. But more to that of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in cahoots and conspiring together with the assistance of agents or servants of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

## **Back-to-back agreements**

Two sets of back to back agreements Exhibit P 24 and P25 were prepared simultaneously, for selling the land from the Plaintiff to the 1<sup>st</sup> Defendant, and from the 1<sup>st</sup> Defendant to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.. The scheme shows they wanted this man to become registered owner for a brief moment thereafter immediately transfer to themselves, so as to enable the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to enjoy the protection under the proviso of Section 340(3) NLC. The intention of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in order to secure the said land at a much lower price, and retain the title under 340(3) NLC.

### **Masha Singh a/Bhagat Singh v Goh Chuan Hin & Ors**

**[1998] 2 MLJ 736** (*followed*) Court of Appeal said about back to back agreements similar as in the present case:

"When the performance of one agreement is very much dependent on the other:

Circumstances surrounding the executions of the June and July agreements and their dependence on each other might will have given rise to the inference that the first, second, third and fourth respondents could have represented anything to the appellant in their efforts to make a quick gain.

Back to agreements and the facts of this case wholly supported the contention of the Plaintiff's as to the existence of a neatly knit scheme to defraud the Plaintiff of his land.

**Strangely, monies were not paid to solicitors acting for the parties which is the usual practice**

**Yeo Lai Siah**

In these two transactions namely, from Plaintiff to First Defendant, and then First Defendant to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, purchase or balance of purchase monies were not paid to the solicitors acting for the parties in a land deal, as is the norm, but to a third party (Yeo Lai Siah). That too many a times without producing any supporting documents.

Yeo Lai Siah is said to own the company called Wajah Jaya Industry Sdn Bhd. The purchase prices were not paid through the respective solicitors, namely Tet. Lim Chok Hiann & Puspita, Shah Alam or Tet. VM Mohan Fareed & Co, Penang.



Yeo Lai Siah is not a party to any of the sale and purchase agreements. He was also not sued as any party either. He was also not called to testify, to clarify and/or substantiate and corroborate several transactions and contentions by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

There are no proper covering letters or receipts issued for the payments. No one testified that money was paid to the Plaintiff, Father Edward Xavier Soosay. Also, it was not shown to Court that the monies were paid to the First Defendant S. Sasmasari. Several times monies were only paid to Yeo Lai Siah.

The evidence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants is that they paid to Yeo Lai Siah whom this Court finds is the one who organized all these for them. From their demeanor in the witness box and the way they answered questions I form the opinion that they both were aware from the beginning that this was a scheme and they were knowingly participating and believed that they can get away with it.

The 2nd and 3rd Defendants were in contact with Yeo Lai Siah even before appointing their own solicitor. It is in evidence during cross examination by the Plaintiff's solicitor Datuk Gerald Gomez, the 2<sup>nd</sup> Defendant Eng Chin Tian (**SD 1**) said that the 3<sup>rd</sup> Defendant Lai Choon Siang discussed with Mr. Yeo Lai Siah prior to appointing the lawyer, the 3<sup>rd</sup> Defendant (**SD 2**) testified that the idea to purchase the subject land was recommended by Mr. Yeo Lai Siah who was his friend. They discussed the price of the land.

They took three months to discuss the personal terms of purchase. They discussed normally through telephone conversation with Yeo Lai Siah. 3rd Defendant Lai Choon Siang had prior dealings with Yeo Lai Siah. He Lai Choon Siang already knew Yeo Lai Siang about 20 years ago when he (Lai) ran a restaurant business and Yeo used to be Lai's customer. Mr. Yeo lived in Penang and he was a famous businessman owning a iron, steel metal factory in Bukit Minyak. In the year 2008 Mr. Yeo told Lai about the subject land.

**SD 2** Lai also told the court that he dealt with Mr. Yeo Lai Siang whereas **SD 1** Eng dealt with his (Lai's ) solicitor. The solicitor will get instructions or inform Mr. Eng who would inform Eng who in turn would inform and discuss with Mr. Yeoh. And a Sale and Purchase Agreement Mr. Lai's lawyer had forwarded to (Fourth Third Party) Tet. VM Mohan, Fareed & Co) pursuant to instructions given by Mr. Eng. He would only follow on the instruction of Yeo Lai Siang on how the transaction is being done. Mr. Lai claimed that the first transaction (between Plaintiff and First Defendant) was fraudulent.

3<sup>rd</sup> Defendant claimed that 2<sup>nd</sup> and 3<sup>rd</sup> defendants made all payments directly to Yeo Lai Siah. All in all Mr. Lai had given Mr. Yeo Lai Siah RM 1.05 million.

**Yeo Lai Siah is an agent of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants**

Special mention ought to be made regarding this person who played a major role in this case, but was not called to give evidence or sued as defendant or third party.

From the role played by Yeo Lai Siah, and actions of Yeo Lai Siah on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, I make a finding that he is an agent of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. 2<sup>nd</sup> and 3<sup>rd</sup> Defendants paid all the purchase monies to him.

Why was Yeo Lai Siah not made a defendant or 3rd party?

All the various facts combined point to the possibility that Yeo Lai Siah was the mastermind of the whole scheme. For conspiracy can only be proven by combination of several connected factors which can add up or tally up to show the existence of a conspiracy.

Yeo Lai Siah whom the evidence shows 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had dealings with. It was suggested that he is the mastermind behind this whole scam. And that he was involved from the beginning. He was left out from the Third parties who were sued by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. He was also not called to give evidence although he seemed to have played a prominent role in this scheme. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants should have called Yeo Lai Siah to convince the court of their genuineness in their dealings. **Ismail bin Mohamad & Anor v Ismail bin Husin & Ors [2005] 7 MLJ 103** (followed). **Abu Bakar bin Ismail & Anor v Ismail bin Husin & Ors and other appeals [2007] 4 MLJ 489** (followed)

I agree with the submission of the Plaintiff's solicitor that **Exhibit P42** dated 24.10.2008 and **Exhibit P43** dated 13.01.2009 were artificially manufactured to support the fraudulent scheme of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants because it is strange that **acknowledgement is found to be dated before the true amount is accounted for.**

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not witness Yeo Lai Siah paying out the monies to anybody else. It is more probable, given the circumstances, the monies were for Yeo Lai Siah, the master mind of this scheme. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not produce any copy of cheque, receipt or acknowledgement from Yeo Lai Siah relating to this land transaction. There were no proper payment of monies or receipts between solicitors with initial correspondence identifying the vendor as the Plaintiff but only as "purchaser to be confirmed". Thus they failed to show that they had given valuable consideration for this land.

The inclination of overall evidence together show that they claiming deferred indefeasibility and claiming for protection as bona fide purchaser for good value, had inserted the initial purchaser S. Sasmasari Bin Abd Samad.

Studying these facts it is glaring that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were not bona fide purchasers for good value without notice of fraudulent earlier transfer.

**S. Sasmasari Bin Abd. Samad**

Alleged Initial purchaser, who is now a bankrupt. He did not appoint a lawyer, he did not file appearance, did not file defence and he did not attend the trial.

A document was tendered in Court to show that the First Defendant was a bankrupt. This may lend credit to the argument by the Plaintiff's counsel that the First Defendant was "planted" in the scheme to enable the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to become the "innocent purchasers" mentioned in Section 340 (3) of National Land Code. He was also not called to testify.

Sasmasari brought acknowledgement to be attested by a solicitor to lawyer Fareed (**SP4**). He admitted that he can not attest the truth of the contents of the acknowledgements because he never saw the monies allegedly received by the 1<sup>st</sup> Defendant. Again in **Exhibit D-56** the same S. Sasmasari denied receiving RM 450,000.00

## **Conspiracy allegation**

The Plaintiff alleges conspiracy between the first three Defendants.

Conspiracy is an offence, by which someone conspires or agrees with someone else to do something which, if actually carried out, would amount to another offence. It is an agreement or a kind of partnership for criminal purposes in which each member becomes the agent or partner of every other member. It is not necessary to prove that the criminal plan actually was accomplished or that the conspirator was involved in all stages of the planning or knew all of the details involved. The main elements that need to be proven are a voluntary agreement to participate and some overt act by one of the conspirators in furtherance of the criminal plan. If a person has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he had not participated before and even though he played only a minor part. A conspiracy may exist when the parties use legal means to accomplish an illegal result, or to use illegal means to achieve something that in itself is lawful.



The plaintiff alleged that the defendants in wrongful conspiracy with each other conspired to defraud the plaintiff thereby causing loss and damage to the plaintiff.

### **Tell tale signs of fraudsters at work**

Usually solicitors will collect payments from clients, and giving undertakings not to release the money until the documents are registered. They will be stakeholders to ensure clients' interest are protected. Large sums of money is involved, during cross examination on payments no clear and believable answers or proof of payment. Payments were not made by cheque, there is no acknowledgement of receipt from person who received the money.

Yeo Lai Siah was not called to testify that he received the monies. No one witnessed this. It is ridiculous to expect anyone to believe that bona fide purchasers would part with money in this manner. They had solicitors on record. Only receipt produced was by man of straw who allegedly forged the signature on Form 14A and was the purchaser in between. His denial of receipts is

on a document marked as **Exhibit D 56** and there are contradictions as to the timing.

### **The effect of contemporaneous documents as exhibits**

As held by the Court of Appeal in **Guan Teik Sdn. Bhd. v Hj. Mohd. Noor Hj. Yacob & Ors [2000] 4 CLJ 324** :

"the duty of the court is to look at all the surrounding factors and to weigh and evaluate the contemporaneous documents that may tend to establish the truth or otherwise of a given fact".

Also, in **Mohd Latiff bin Shah Mohd & Ors vs Tengku Abdullah ibni Sultan Abu Bakar & Ors and other actions [1995] 2 MLJ 1.**

"the evidence must be tested against contemporaneous documents which tend to reflect more accurately the actual event".

During Examination in Chief by the Plaintiff's solicitor Datuk Gerald Gomez, **SP4** Mr. Fareed the solicitor who acted for the said Mr. Yeo told him that there was "a purchase and a lawyer / vendor" will be sending some draft documents. For all intents

and purposes **SP4** Mr. Fareed was acting on instructions of S. Sasmasari and he has not seen the vendor. He also said that prior dealings were entered into between S. Sasmasari, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and it was Yeo Lai Siah who organized all these.

And that 2<sup>nd</sup> and 3<sup>rd</sup> Defendants appointed **SP5** Lim Chok Hiann, as their lawyer.

The Plaintiff argues that because 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not bring Yeo Lai Siah and Lim Chok Hiann as 3<sup>rd</sup> parties, together with the 1<sup>st</sup> Defendant will suggest that all of them are part of the same scheme. I agree that the existence of agent-principal relationship is a matter of mixed law and facts to be adduced as evidence during trial. A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. Here, Mr. Lim Chok Hiann and Yeo Lai Siah were acting and doing things for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' purchase of the Plaintiff's land from 1<sup>st</sup> Defendant. **Ismail bin Mohamad & Anor v Ismail bin Husin & Ors [2005] 7 MLJ 103** (*followed*)

### **Copy of Plaintiff's identity card**

The Plaintiff in his evidence said that the Identity Card purportedly bearing his identity Edward Soosay (**Exhibit D-88**) was fake and was used in the fraud. The actual Identity Card was shown to the Court (**Exhibit P-22**). However, the Plaintiff did not call any official from the National Registration Department who would have been a material witness to confirm this fact about the Identity Card.

### **Vicarious Liability Of State Authority**

If the Plaintiff alleged fraud and conspiracy or negligence by an officer or clerk of the Land Office, such officer or clerk was not named or brought in as a party. Then only vicarious liability of that office can be determined. (**Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663** (followed)). Failure to name the officer or clerk as parties to this suit is fatal.

I find that any discretion vested and exercised by the officers of the Land Office in was exercised as reasonable

standard of diligence when dealing provided for under the National Land Code, especially in Sections 301 to 303 and that the registration had been done according to Section 297 of the said Code.

Against the Plaintiff's claim, Pejabat Daerah/Tanah Selangor (the Fourth Defendant ) stated that the transfers of the land from Plaintiff to the First Defendant and then to the Second and Third Defendants were processed because the documents were complete and in order and were done according to law , rules and procedures. The fourth Defendant pleads that the Land Registrar's Officers are equally victims of this fraud as fraudulent papers have been submitted to them in the course of carrying out their routines. They said that they had complied with existing procedures and abided by the rules in processing the two transfers. They claimed the Land office staff were not negligent or careless. They or the Government Department were not parties to the fraud or conspiracy to defraud the Plaintiff directly or vicariously. The conspiracy, if there is one, happened before the documents were submitted to the Land Office for processing.

The Fourth Defendant also sought protection accorded under Section 22 of the National Land Code.

Also the liability of the Government in tort, in this case the tort of negligence, is limited:

**Government Proceedings Act 1956  
(Act 359 Laws of Malaysia)**

**5. Liability of the Government in tort**

Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall, be deemed to be the agent of and to be acting under the instructions of the Government.

**6. Limits of liability of the Government**

(1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

(2) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings

against the Government had been proceedings against such officer.

(3) No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

(4) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid.

(5) For the purposes of subsection (4) the expression "appropriate financial officer" means, in respect of the Federal Government, the Minister of Finance, and in respect of the Government of a State, the State Financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.

**Kerajaan Malaysia & Ors v Lay Kee Tee & Ors [2009] 1 CLJ**

**663** (followed).

**Hj Abdul Rahman v Government of Malaysia & Anor [1966]**

**1 LNS 60** (followed):

"On the proper construction, in any claim in tort against the Government, the officer of the Government who was responsible for the alleged tortuous act must be made a party and his liability be established before the Government can be made liable vicariously as principle. It would be insufficient to merely identify the officer without joining the officer as a party because liability by evidence needs to be

established. It is only upon a successful claim against the officer personally can a claim be laid against the Government.

The 2nd and 3rd Defendants submit that the Government Proceedings Act 1956 is not applicable because "Government of Malaysia" was neither being sued nor a party in this suit.

Aren't the state authorities such as Pejabat Daerah / Tanah Selangor or Pentadbir Tanah Daerah Kuala Langat, Selangor or Pengarah Tanah dan Galian Negeri Selangor function as part of the state government? In the event the Land Administrator were to be found liable in any suit, it will be the government, be it state or Federal who will be paying compensation depending on the employer of the negligent officer or staff who would be a Federal or a State officer. The very fact that the Senior Federal Counsel represents them and acts for them in this case shows the said state authorities are "government". It is common knowledge the state authorities do not have financial autonomy, meaning the Land Office does not have its own coffers, and it will be Federal or State government which will pay. "Government" and "government offices" and "state authority" are synonymous



in such civil cases and for the purposes of Government Proceedings Act 1956. So, the argument by the second and third Defendant's counsel that the said Act does not apply because no government is named in this suit is therefore not acceptable.

I am bound by the decision in **Kerajaan Malaysia v Lay Kee Tee [2009] 1 MLJ 1**, by the Federal Court mandatory that an agent be named as a party before the principal can be made liable:

**Government Proceedings Act 1956:**

6. (1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

The immediate tortfeasor must be named as a party to the suit in a tort-based claim against the government - it interpreted sections 5 and 6 of the Government Proceedings Act 1956 to mean that in a tortious claim against the government, the government officer responsible for the alleged careless or negligent act must also be made a party to the proceedings. Following from this, that state officer's liability must be

established first before the state authority can held vicariously liable. Technical non-compliance- breach of procedural technicality will leave no choice to this court but to dismiss the claims against the state authority.

I am satisfied that on an objective assessment of the facts and having regard to the totality of the evidence in this case, there is sufficient evidence of circumstances from which an inference of fraud committed against the land belonging to the Plaintiff may be drawn.

The Fourth Defendant, and Second and Fifth Third Parties have explained, that albeit the land has been transferred to the Second and Third Defendants, the Plaintiff has been receiving Quit Rent notices because the Land Revenue Section and the Title Registration Section in the Hulu Langat Land office operate separately and not connected by computer network system. Buyers and sellers have to manually update their data at the Revenue Section.

The Pejabat Daerah/Tanah Selangor (Fourth Defendant) and Pentadbir Tanah Daerah Kuala Langat, Selangor (Second Third Party) and Pengarah Tanah dan Galian Negeri Selangor (The Fifth Third Party) were not shown to be involved in the said conspiracy to cheat the Plaintiff. Mere suspicion or speculation by the Plaintiff or 2<sup>nd</sup> and 3<sup>rd</sup> Defendants without any material or evidence supporting that will not be sufficient. Even during the cross-examination several witnesses Fourth Defendant, Second and Fifth Third Parties are not involved in the negotiations and in the preparation of Sale and Purchase Agreements or the Form 14A.

Even if the said Defendants were negligent, I find that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' claim must fail because the fraud was perpetrated through false and fabricated documents created by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants themselves who participated in the fraudulent scheme with other persons.

The fraud was perpetrated through false and fabricated documents created by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who participated in the fraudulent scheme with other persons.

For the staff and officers of the Land Office, complying with the procedures set down would be sufficient. There is no statutory obligation on them to go beyond that and investigate further the presented Form 14A and the copy of alleged fake Identity Card of the Plaintiff. I agree with the submission by the learned Senior Federal Counsel on that point. Mala fide on the part of the Land office staff had not been proven. Therefore this court holds that they acted in good faith in registering the two transfers. They need not go beyond the call of their duties to verify whether the 5<sup>th</sup> Defendant has practicing certificate or not. Thus they are entitled to the protection granted under Section 22 of the National Land Code. Section 22 of the National Land Code reads:

**22. Protection of officers.**

No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on

## The current position of law as to a bonafide purchaser

The position of law in the matter of a bonafide purchaser of land who did not have notice of the previous transfer of the land is now clear.

It is encouraging to note in **Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269**, the Federal Court disapproved previous Federal Court decision in **Adorna Properties Sdn Bhd v. Boonsom Boonyanit @ Sun Yok Eng [2001] 1 MLJ 241** and restored the original owner as the rightful proprietors. As such an immediate transferee of any title or interest in land such as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants cannot take advantage of the proviso to section 340(3) of the NLC to avoid its title or interest from being impeached.

On 16.1.2010, in that case of **Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269** a five-man Bench of the Federal Court unanimously ruled that its earlier judgment in 2000 on the **Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001]**

2 CLJ 133 case "was erroneous." YAA Justice Zaki ruled in his supporting written judgment:

"Over the last decade, that apex court judgment had created a loophole in the law, causing many legitimate landowners to lose their lands through unscrupulous means via forged documents, as it allowed the transfer of a good title to a purchaser who buys the property in good faith, notwithstanding the forgery.

Section 340(2) of the NLC reads that the title or interest of any person shall not be indefeasible (not liable to being annulled or undone), in any case of fraud or misrepresentation; or where the registration was obtained by forgery; or where a title or interest was unlawfully acquired by the person in the purported exercise of any power conferred by any written law.

"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,"

**Protection For Innocent Buyer And Indefeasibility Of Title**

The Plaintiff claims that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants engineered the whole scheme to avail themselves of the protection of "indefeasibility" accorded to innocent buyers under

sub-section (3)(b) proviso of Section 340 of the National Land Code, which reads:

**"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

(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-s.(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 there out 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 subsection 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."**

"Indefeasibility" is defined by the *Privy Council in Frazer v Walker [1967] AC 569* at pg 580 to mean:

"The expression not used in the Act itself, is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration. It does not involve that the registered proprietor is protected against any claim whatsoever; as will be seen later, there are provisions by which the entry on which he relies may be cancelled or corrected, or he may be exposed to claims *in personam*. These are matters not to be overlooked when a total description of his rights is required. But as registered proprietor, and while he remains such, no adverse claim (except as specifically admitted) may be brought against him."

Indefeasibility can be **immediate** or **deferred**. The distinction between the two is explained in para 404 of *The National Land Code, A Commentary (Vol 2)* by Judith Sihombing :

"There are two types of indefeasibility; immediate and deferred. The factor which distinguishes the two is the common law effect given to the instrument even after registration; in addition; in a regime of deferred



indefeasibility, the role of registered volunteer might be more relevant than under an immediate indefeasibility system. If, after registration has occurred, the system then ignores the substance, form and probity of the instrument used to support the registration, the system is likely that of immediate indefeasibility. Thus, registration has cured any defect in the instrument being registered. If the instrument, despite registration, still has the power to affect the registered interest or estate, the system will probably be that of deferred indefeasibility".

It was held in **Kamarulzaman Omar & Ors V. Yakub Husin & Ors [2014] 1 CLJ 987** that:

By the fact that the fifth and sixth respondents were bona fide purchasers could not give them a shield of indefeasibility. They could only acquire an indefeasible title if they were bona fide subsequent purchasers from an immediate purchaser. The first to fourth respondents, from whom the fifth and sixth respondents obtained the title, were not immediate purchasers. They were imposters of those entitled to the estate of the deceased and hence, had no title to pass to the fifth and sixth respondents. Thus, the fifth and sixth respondents were the immediate purchasers and they acquired a title that was not indefeasible and when the fraudulent title of the first to the fourth respondents was set aside by the default judgment, the defensible title of the fifth and sixth respondents was also defeated. (para 38)

The title is indefeasible until it is proven that fraud or forgery is involved. 1<sup>st</sup> Defendant is implicated as co

conspirators and privy to the fraud committed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

In the present case, I find that forgery of Form 14A has been proven by the Plaintiff against the 1<sup>st</sup> Defendant, and that 2<sup>nd</sup> and 3<sup>rd</sup> Defendants acquired their title from 1<sup>st</sup> Defendant and therefore liable to be defeated under s 340(2)(b) of the National Land Code 1965.

### **Fraud And Forgery In Civil Cases**

Fraud and forgery are different. So the standards of proof for fraud and forgery in civil cases are different. Therefore before deciding on the standard to be applied, it is important to find out whether fraud alone, or forgery alone or both elements in combination are involved.

Cases deciding on standard of proof of fraud in civil cases had been inconsistent. **Chuan Seng & Anor v Wan Abdul Hamid Wan Jaafar & Ors.** (followed)

## Standard Of Proof For Fraud In Civil Cases

The standard of proof is not in dispute in this case. Briefly wish to state the position of law through decided cases in this matter of standard of proof of fraud in civil cases varied before, in and after 1997.

YA Raus Sharif JCA (as he then was) in **Au Meng Nam & Anor v Ung Yak Chew & Ors [2007] 4 CLJ 526** in discussing on the proviso of s.340(3) NLC said:

"To me, by virtue of s.340(2)(b) of the Code, the title of Adorna Properties was not indefeasible as the registration was obtained by forgery. S.340(3) does not apply to s.340(2). The proviso states "Provided that in this sub-section" and this sub-section refers to s.340(3) and not s.340(2). S.340(3)(a) refers to "to whom it may subsequently be transferred" which means that the intended purchaser is the subsequent purchaser and not the immediate purchaser."

Did 2nd and 3rd Defendants knew who was the real owner of the said land? Yes, they knew. **Exhibit P29**. Lim Chok Hiann (**SP5**) wrote to Fareed (**SP4**) recognizing the Plaintiff as the vendor, and "purchasers to be confirmed"

## **Evidence of 2nd and 3rd Defendants**

**SP5** Hiann said, "it was dated 2nd July (Vol 3 pg 69, line 17-18. Only on 3.7.08 I realized that he told us to deal with plaintiff's lawyer Zainuddin". He further testified that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants thought they were buying property from the registered owner, but he stopped payment of RM 300,000 upon discovering the mistake.

### **Low purchase price**

I do not agree that the low purchase price is not a relevant factor in deciding whether there is any involvement of fraud by 2nd and 3rd Defendants. The low price is definitely a likely factor, as it gives rise to suspicion.

Thus, the weight of authorities cited seems to be leaning towards the proposition that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are immediate purchasers and do not have the right to claim protection of the proviso.

### Third Party claim by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

The 2nd and 3rd Defendants brought their Third Party claim with tainted hands. Going through the evidence in totality I am convinced that they are party to the fraud and are involved in the major part of the scheme to defraud the plaintiff of his land from the beginning to make use of the "bonafide purchaser" proviso.

However they failed to prove that they are bona fide purchasers or that they have paid good consideration for this land. The burden to do so is on them. (**Au Meng Nam & Anor v Ung Yak Chew & Ors [2007] 5 MLJ 136** (*followed*)).

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also did not call the First Defendant to testify whether he received any monies. They did not tender contemporaneous documents to back their claim.

The newspaper reports of rampant land frauds, as acknowledged by YAA Tun Zaki in **Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269** may be due to the loophole created in Adorna Properties, the court ruled that transfers of

property by fraudulent or forged documents were no longer legally valid under Section 340(2) of the National Land Code 1965.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants failed to prove that they are *bona fide* purchasers for value under the proviso to s.340(3) of the NLC, a burden which the defendants failed to discharge.

I find that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants failed to prove their claim in the Third Party Claim.

When the party takes up such a plea of bonafide purchaser for value without notice of fraud in obtaining the said land, it will be such party that will have to prove its assertion by showing the bonafide nature of the transaction and producing the contemporaneous record for showing the genuineness thereof. Hearing the oral testimonies and observing their demeanor in Court I find that they had not been entirely honest.

Dishonesty should not be permitted to bear the fruit and benefit to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who perpetrated the fraud and

made misrepresentation to the Land Office and in such circumstances this Court should not perpetuate the said fraud.

Reverting to the facts of this case, it is not in dispute that the first transfer registered in favour of the 1<sup>st</sup> Defendant was based on forged instrument as the relevant Forms 14A were not executed by the Plaintiff. It follows, therefore, that first transfer from Plaintiff to the 1<sup>st</sup> Defendant in this case is liable to be set aside under s.340 (2)(b) since it is based on void instrument.

The 2<sup>nd</sup> and 3rd Defendants are immediate purchasers of the said land. That being the position, the 2<sup>nd</sup> and 3rd Defendant could not take advantage of the proviso to sub-s.(3) of s.340 because this proviso only applies to situation under sub-section (3).

We should not lose sight of the fact that fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two

elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage.

### **Sasikumar Kandasamy**

It was in evidence that a lawyer named **Sasikumar Kandasamy** attested the signatures in one of the transfer form in this case but parties did not pursue with this issue.

### **THE DECISION**

Having heard the witnesses and observed their demeanor in court and on the evidence adduced I have no doubt in my mind that the plaintiff has proved beyond reasonable doubt that actual fraud was committed by the first defendant in this case. In fact I am more than satisfied that the transaction was not in order as the prices are below the market value and that by itself it means strengthens the notion that there was actual fraud in this case



after taking into consideration of the evidence adduced by the plaintiff and the defendants and their witnesses.

The 1<sup>st</sup>, Defendant's title is defeasible by reason of fraud, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' titles is defeasible by reason of being agent, servant and privy to the fraud; the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have failed to establish that they are bona fide purchasers for good value without notice of earlier transfer.

S. Sasmasari Bin Abd. Samad, First Defendant (who is also the First Third Party) and Zurina Bt. Mohd Noor, the Fifth Defendant (who is also the Third Third Party) did not enter Appearance in this suit and I gave Judgment in default against them.

### **Plaintiff's claim against State Authority**

I find that the Plaintiff has technically failed against the State Authority while attempting to show its complicity or any role of conspiracy played.

I find that the Plaintiff has proven his signature was forged and his land was transferred illegally by 1<sup>st</sup> Defendant alone and/or in collusion with 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. I find that it is more probable than not the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants devised and carried out a scheme to defraud the Plaintiff of his land.

**2<sup>nd</sup> and 3<sup>rd</sup> Defendants' claim against 3<sup>rd</sup> parties.**

Judgment in default entered against 1<sup>st</sup> and 3<sup>rd</sup> Third parties, dismissed against the 4<sup>th</sup> Third party as no evidence was adduced before the court to show that the 4<sup>th</sup> Third Party was neither involved in the conspiracy nor negligent, and also dismissed against 2<sup>nd</sup> and 5<sup>th</sup> Third Parties because 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the culprits who were involved in the initial fraudulent transaction.

Therefore, based on the facts, law and reasons as above, I gave judgment to the Plaintiff for prayers (i), (ii), (iv) 1,2,3,5, (v) and (vi) as prayed by the Plaintiff in his submissions.

The Plaintiff's claim against the Fourth Defendant be dismissed with costs and Judgment in default granted against First and Fifth Defendants.

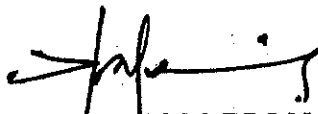
**The Second and Third Defendants' claim against the Third parties :**

- (i) Judgment in Default of Appearance against 1<sup>st</sup> and 3<sup>rd</sup> Third parties
- (ii) Dismissed against 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Third Parties with costs.

Damages, interest and costs are to be assessed and fixed by the Registrar.

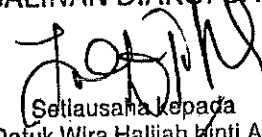
Dated

15/8/2014



**(DATUK WIRA HALIJAH BINTI ABBAS)**  
Hakim Mahkamah Tinggi  
Shah Alam

SALINAN DIAKUI SAH



Setiausaha kepada  
YA Datuk Wira Halijah Binti Abbas  
Hakim  
Mahkamah Tinggi Sivl (T-Track 3)  
Mahkamah Tinggi Shah Alam