

Lian Kok Hong v Lee Choi Kheong and Others
[2009] SGHC 18

Case Number : Suit 674/2007
Decision Date : 14 January 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Prabhakaran N. Nair (Ong Tan & Nair) for the plaintiff; L. Devadason (instructed) and Tan Kwee Sain Pauline (P.Tan & Company) for the defendants
Parties : Lian Kok Hong — Lee Choi Kheong; Lee Song Leng alias Lee Sok Huah; Lee Shermin; Lee Sherwin

Land

Civil Procedure

14 January 2009

Choo Han Teck J:

1 The plaintiff owns the property on which house No 72 Belmont Road is sited. The defendants, a family of four (being the parents and two children) own the property on which house No 70 Belmont Road is sited. No. 70 and 72 Belmont Road were part and parcel of the same property until their owner subdivided them in 1949. Since then, the subdivided properties have changed ownership many times. The plaintiff purchased his lot in 1994 from Madam Koh Ah Kim who had purchased it in 1971. The defendants purchased their property in December 2007 from Gan Boon Hwee. Gan Boon Hwee purchased it in 1986. After 70 and 72 Belmont Road were created in 1949, 70 Belmont Road would have been landlocked had there not been the access road that runs alongside 72 Belmont Road. This access road was part of the property of 70 Belmont Road after the sub-division. The present entrance to 72 Belmont Road also opens into this access road by virtue of a right of easement that was created at the time of sub-division. Hence, presently, to enter 70 and 72 Belmont Road, one has to turn into the access road from Belmont Road. This action was commenced by the plaintiff when the defendants decided to construct a gate at the access road where it meets Belmont Road. Presently, the plaintiff and the defendants have gates to their own houses respectively off the access road. The new gate would be an additional gate common to the plaintiff as well as the defendants. The latter did not dispute the right of the plaintiff to enter and leave through that gate but the plaintiff claimed that the construction of the common gate was in violation of the plaintiff's right of easement. He thus claimed an injunction against the defendants to enjoin them from building the gate. The defendants claimed that the construction of the gate was not in breach of the plaintiff's right of way, and claimed, in turn, their right of easement over part of the plaintiff's land, and the restoration of the boundary which the plaintiff's boundary wall had encroached (at the maximum 0.09m).

2 The evidence showed that when 70 and 72 Belmont Road were created in 1949 under Indenture 1056 N0 101 (by sub-dividing 70 Belmont Road from the parent lot), the then owner also created mutual easements over both properties. The owner of 72 Belmont Road was entitled to an easement through the access road which was part of the property of 70 Belmont Road and the owners of 70 Belmont Road had a right of easement over a part of the property belonging to 72 Belmont Road. This part of the mutual easement had been walled off since it was part of the plaintiff's land. It was not known to the parties that the defendants' easement had been blocked in this way because what was

shown on the sketch plans was not obvious on site. The easements were created to be mutually co-existing and one could not be abandoned without the abandonment of the other. The mere encroachment by walling off the easement by the previous owner was not by itself sufficient proof of abandonment. I find that there was no abandonment of the easement as alleged by the plaintiff.

3 In the circumstances, it seemed that there were two solutions to the problems in this case. The first was to leave matters as they stand, including leave to the defendants to construct the common gate. This would not be a full and legal solution but it would have been a friendly and neighbourly solution. It would not be a legal solution because the plaintiff would still be keeping the defendants from access to their right of easement over his land under the mutual easements created in 1949. The most sensible solution, in my view, was for both owners to apply to cancel the mutual easements so that they can keep their properties and wall them up the way they want. This could not be the solution at present because neither side applied for the cancellation of the easements which seemed totally redundant in view of the fact that the present and past owners had not even been aware of them. Consequently, the only legal solution available on the pleadings and evidence was to dismiss the plaintiff's claim for an injunction - I do not think that the creation of the common gate substantially interfered with the plaintiff's right of easement through the access road. However, I would observe that since I had to allow the defendants' counterclaim for access to the easement through the plaintiff's land, the construction of the common gate might serve no purpose if the plaintiff decides to open up his part of the land and not put a gate there. The common gate will be rendered a banal symbolism. Insofar as the claim the plaintiff's boundary wall encroached into the defendants' land, I find that there was indeed encroachment but it was not significant in itself. In such cases, the owner normally could just put on record his right without insisting on redress until the wall required repair. And I so order. It may have to come to pass in any event since I also hold that the defendants were entitled to access to the easement over the plaintiff's land.

4 Cases like this come to court because people do not know the meaning of good neighbourliness, but I do not know whether both parties were being obtuse, or only one, and if so, which one. Hence, I make no finding as to who had not been the good neighbour. They were given an opportunity to resolve the quarrel amicably, even after the trial but before judgement, but they were unable to do so. I will hear parties on the question of costs at a later date.