

LAND

Malay reservation land – Charge – Malay – Whether Malay reservation land can be charged to non-Malay – Kedah Malay Reservations Enactment No. 63, section 6

Jamaludin bin Jaafar v Affin Bank Bhd and another appeal

[2016] 12 MLJ 88, Court of Appeal

Facts The appellant, an individual, had charged his land, a Malay reserve land to the respondent bank, Affin Bank. The respondent obtained judgment in default against the appellant and filed a bankruptcy notice followed by a creditor's petition. The appellant opposed the petition, but the application was dismissed. The appellant now appeals, on the ground that the third party charge registered in favour of the respondent as security for the loan granted to one Teh Two Kea (t/a Leong Hin Company) was null and void, as the respondent is not a 'Malay' within the meaning of section 2¹ of the Kedah Malay Reservations Enactment No.63 ("the Kedah Enactment").

Issue The main issue was whether section 6² of the Kedah Enactment allowed a Malay reserve land be charged to the respondent bank, a non-Malay.

Held In allowing the appeal, the Court of Appeal held that since the respondent is not listed in the Second Schedule and, is therefore a non-Malay, it is prohibited by section 6 of the Kedah Enactment from holding any right or interest, including as chargee, in the Malay reserve land that had been charged to it by the appellant. The fact that the bank is a non-natural person is irrelevant, since a non-natural person such as a commercial bank, a private limited company or even a society could qualify as a Malay under the Kedah Enactment.

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¹ Malay is defined as 'a person professing the Muslim religion and habitually speaking of the Malay language of whose parents one at least is a person of Malayan race of Arab descent.

² Section 6 states:-

- (1) Save as hereinafter provided in this Enactment, where any Reservation land is held under a document of title by a Malay, no right or interest therein shall vest, whether by transfer, sale in execution of a decree, sale at the instance of a chargee or otherwise, in any person who is not a Malay and where any Reservation land is held under a document of title by a Siamese no right or interest therein shall vest, whether by transfer, sale in execution of a decree, sale at the instance of a chargee or otherwise, in any person who is not a Malay or Siamese.
- (2) Any document or agreement purporting to vest in any person any right or interest contrary to the provisions of sub-section(1) shall be void.