

## DISPUTE RESOLUTION

## BENEFITTING THE BENEFICIARIES – HOW FAR WOULD A SIJIL FARAIID TAKE YOU IN CIVIL COURT? ...

In the case of *Sulaiman bin Ahmad & Ors v Jemain bin Mohamed & Ors* [2020] 11 MLJ 616, the High Court accepted a *sijil faraid* as sufficient evidence of the Plaintiffs as beneficiaries of an estate. As such the Plaintiffs had *locus standi* to commence an action in the civil courts against the Defendants in respect of a fraudulent transfer of land. In addition, the High Court also scrutinised the concept of **immediate purchaser** and **subsequent purchaser** under the purview of section 340 of the National Land Code (Revised – 2020) (“NLC”). Despite there being a long line of precedents on this issue, in practice, the distinction between the aforesaid is not always clear.

This article discusses the facts, issues and judgment of the case.

**BRIEF FACTS** The Plaintiffs were the beneficiaries of land belonging to their late grandfathers (“Land”) namely Jemain bin Mohamed and Kechot bin Mohamed who each held ½ undivided shares in the Land. The Land was subsequently transferred to a third party (the 3rd defendant) without the knowledge of the Plaintiffs. The Plaintiffs commenced a suit to challenge the validity of the transfer and sought the relief of a protection/preservation order and declaratory relief as to the status of the transfer of the Land (“First Suit”). However, the First Suit was struck out on the basis that the Plaintiffs lack the *locus standi* as the Plaintiffs had not first obtained a Letter of Administration (“LA”) or the *sijil faraid*<sup>1</sup> before commencing the First Suit.

Aggrieved by the said decision, the Plaintiffs made an appeal and the Court of Appeal by a unanimous decision together with the consent of the third defendant had allowed the Plaintiffs to file a fresh

suit upon obtaining the *sijil faraid* for both estate of the deceased (“COA Decision”).

The Plaintiffs after obtaining the *sijil faraid* commenced the suit herein against the defendants where the Plaintiffs sought *inter alia* for a declaration that the transfer of the Land to the 3rd Defendant be declared as null and void on account that the title of the Land was acquired through fraud or forgery and/or through a void instrument. Further, the Plaintiffs also sought consequential reliefs particularly for a protection/preservation order by way of a retransfer of the Land to the original registered owners.

## FINDINGS OF THE COURT

### *Sijil Faraid as Sufficient Evidence of Status of a ‘Beneficiary’ in a Civil Action.*

The issue of *locus standi* was once again raised in this suit. It was argued by the Defendants that the LA is required to clothe the Plaintiffs with the requisite *locus standi* to commence this action as the original landowners were deceased.

The Plaintiffs argued that as they are not claiming a share or any proprietary interest in the assets of the estate of their deceased grandfathers nor seeking to name themselves on the title at this stage **but merely seeking declaratory relief on the status of transfer on grounds of fraud/forgery/void instrument and more importantly for a protection/preservation order by way of a retransfer to their original owners i.e. to their grandfathers** and not to themselves, the LA was not necessary. In any event, it was further argued by the Plaintiffs that they had obtained the *sijil faraid* which indicated their entitlement in the Land under *Syari’ah* law.

Premised on the above, the Plaintiffs claimed they possess sufficient capacity to bring this action against the defendants. The Plaintiffs placed their reliance on the Federal Court case of *Al Rashidy bin Kassim & Ors v Rosman bin Roslan*<sup>2</sup>.

In agreement with the Plaintiffs, the High Court held that the *sijil faraid* is the best evidence and clothes the Plaintiffs as beneficiaries with the legal

<sup>1</sup> *Sijil faraid* is not defined in this case but reference can be made to the case of *Re Mohd Zaki bin Ngah* (the applicant; in

the matter of an application for *faraid* certificate to determine the beneficiaries and their entitlement) [2014] 2 SHLR 104. <sup>2</sup> [2007] 4 MLJ 297.

capacity to commence this action. Neither the Court nor the third defendant can question the legal effect of the said *sijil faraid* since it involves matters which were within the exclusive jurisdiction of the Syari'ah Court.

### ***The Trend of Indefeasibility of Title in Fraudulent Transfers of Land***

The indefeasibility of the title/interest acquired by the 3rd Defendant was also an issue before the High Court. The fraud was perpetrated by the 1st Defendant who had a similar name with one of the registered owners of the Land i.e. the late grandfather of one of the Plaintiffs named Jemain bin Mohamed. The fraud was admitted by the 1st Defendant throughout his pleadings and evidence in court.

The High Court further found that whilst the 3rd Defendant may have been a *bona fide* purchaser, the 3rd Defendant was an immediate purchaser and not a subsequent purchaser. As the protection under section 340(3) of the NLC only protects a **bona fide subsequent purchaser**, the title acquired by the 3rd Defendant is **defeasible**. In this regard, the High Court was guided by the case of *Tan Ying Hong v Tan Sian Sian & Ors* [2010] 2 MLJ 1 ("*Tan Ying Hong*").

**CONCLUSION** Whilst the High Court has followed the tried and tested approach in *Tan Ying Hong* on protection being afforded to ***bona fide subsequent purchasers only*** under the provisions of section 340(3) of the NLC, the decision is far-reaching as it seemingly and/or arguably allows parties in possession of a *sijil faraid* to:-

- (i) be recognised as beneficiaries in a civil court; and
- (ii) commence action on behalf of the estate of the deceased landowners.

Such a right would normally only be vested in an Administrator or an Executor of an estate upon obtaining either the LA or a Grant of Probate. In addition, "beneficiaries" have an ascribed meaning under the provisions of the Probate and Administration Act 1959 and the Distribution Act 1958 which is dissimilar to the *Syari'ah* inheritance principles.

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22 February 2021