International Journal of Law, Government and Communication
IJLGC
EISSN : 0128-1763
Volume: 11 Issue: 45 (September 2026) PP. 61-78

INTERNATIONAL JOURNAL OF LAW, GOVERNMENT AND COMMUNICATION (IJLGC)
www.gaexcellence.com/ijlgc

GLOBAL ACADEMIC EXCELLENCE

CONDITIONAL INDEFEASIBILITY UNDER THE MALAYSIA TORRENS SYSTEM: A CRITICAL ANALYSIS OF ONG CHAT PANG & ANOR V VALIAPPA CHETTIAR [1971] 1 MLJ 224

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Article Info:

Article history:
Received date: 12.05.2026
Revised date: 07.06.2026
Accepted date: 12.08.2026
Published date: 10.09.2026

Abstract:

This article looks at the Federal Courts's decision in *Ong Chat Pang & Anor v Valliapa Chettiar* [1971] 1 MLJ 224 and how the doctrine of indefeasibility in the Malaysian Torrens system has developed over time. The case in question involved two parties who claimed ownership of the same piece of land. One party managed to have their transfer or ownership registered, but the Federal Court decided to deny the indefeasibility of their ownership claim based on the fact that they had failed to prove that they were a bona fide purchaser. This case therefore

International Journal of
Law, Government and Communication
IJLGC
EISSN : 0128-1763
Volume: 11 Issue: 45 (September 2026) PP. 61-78

To cite this document:

Lai, Z. J., David, D. L., Chang, H. Y., Yusman, N. M., Ramli, R. R., & Suaree, N. A. S. M. (2026). Conditional Indefeasibility Under the Malaysia Torrens System: A Critical Analysis Of Ong Chat Pang & Anor V Valiappa Chettiar [1971] 1 MLJ 224. *International Journal of Law, Government and Communication, 11*(45), 61-78.

illustrates the principle that in Malaysia, ownership of land cannot simply be guaranteed by having the title registered but instead, the ownership claim must be proven to be a good faith claim. While this decision may be older than some of the discussions in the current debates on immediate and deferred indefeasibility, the Federal Court's decision in this case has contributed to the development of Malaysian land law. By looking at this case within the larger scope of the development of Malaysian Torrens law, this article will demonstrate how important the decision was to this area of law. The decision in Ong Chat Pang is considered one of the first instances in Malaysian land law where the Federal Court introduced the idea of conditional indefeasibility, which would go on to become a principle that would be refined in the latter case of Tan Yin Hong v Tan Sian San. Through an analysis of Malaysian court cases, it can be demonstrated that while the courts have sought to provide certainty regarding land ownership through the indefeasibility doctrine, the courts have also sought to implement safeguards to prevent the abuse of the registration process.

DOI: 10.35631/IJLGC.1145005

Keyword:

Bona Fide Purchaser, Conditional Indefeasibility, Fraud, NLC, Section 340, Torrens system

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Introduction

The doctrine of indefeasibility of title constitutes the foundational principle of Malaysia's Torrens-based system of land registration, presently codified in Section 340 of National Land Code (NLC). Under this statutory framework, registration confers upon the registered proprietor an indefeasible title, subject only to recognised statutory exceptions. The Torrens system is designed to promote certainty and security in land transactions by allowing parties to rely on the register as conclusive evidence of ownership of that title (Wong, 1975). However, Section 340(2) expressly qualified such protection by recognising limited grounds upon which a registered title may be rendered defeasible, including fraud, misrepresentation, forgery and void or insufficient instruments. Indefeasibility under Malaysian law is therefore statutory in origin, but conditional in operation.

Fraud is one of the recognised exceptions to the concept of indefeasibility of title in Torrens jurisprudence. The Malaysian court, in line with the established legal principles of fraud in countries like Australia, have traditionally required that actual and personal fraud on the part of the registered proprietor must be proven in order for title to be indefeasible (Halid, 2020). Such an approach to the evidence required in proving fraud against a registered proprietor of land demonstrates the commitment of the courts to preserving the integrity of the Torrens

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EISSN : 0128-1763
Volume: 11 Issue: 45 (September 2026) PP. 61-78
system and preventing challenges to registered title that are based upon suspicions only, and not proven fraud (Wong, 1975).

The concept of indefeasibility of title in Malaysian land law cannot be fully explained by looking solely at the exception for fraud. While Section 340(2)(a) of the NLC refers to fraud as a vitiating factor of title, Section 340(3) makes it clear that any registered proprietor seeking protection from the statute will need to prove that they are a bona fide purchaser for value without notice. This concept acts as the practical pathway to achieving statutory immunity (Wong, 1975). Therefore, the absence of fraud does not necessarily mean the proprietor will be protected by statutes, as they must also be able to prove that their acquisition of title was conducted in good faith (O'Connor, 2003). In essence, Malaysian Torrens law focuses on protecting honest transactions, not simply those with registered title.

Ong Chat Pang & Anor v Valliappa Chettiar is a significant case within the analytical framework in which it exists. In this case, which occurred under Section 42 of the Federated Malay States Land Code (the precursor to Section 340 of the National Land Code), two individuals sold the same parcel of land to different purchasers. The Federal Court was thus required to decide whether the second buyers were protected under the statute. Despite not sustaining any charges of fraud against the purchasers for the land in question, the Federal Court nonetheless denied the the status of protected purchasers for the land. The case thus clarified that the statutory immunity provided by the NLC does not simply arise from mere registration of the property by the purchasers but also requires them to have acted in good faith and for valuable consideration for the property (O'Connor, 2003).

The reasoning in Ong Chat Pang & Anor v Valliappa Chettiar effectively rejects the notion that simply registering a title automatically grants indefeasibility (Wong, 1975). The court instead required proof of bona fide acquisition, emphasizing that title is not presumed but rather earned through honest conduct. Furthermore, the court adopted a narrow definition of fraud, requiring proof of actual dishonestly rather than constructive or implied fraud (O'Connor, 2003). This adherences to the Torrens principle of personal and consciously committed fraud protects the register and ensures the stability and reliability of land titles in Malaysia. The case, therefore, balances the need for transactional certainty with the requirement for moral legitimacy within Malaysian land law.

This article takes a close look at Section 340 of NLC by examining the Federal Court's reasoning in the Ong Chat Pang & Anor v Valliappa Chettiar case. It looks at the relationship between fraud and buying property in good faith within Malaysia's Torrens land system. It also examines whether the idea that purchasers need to qualify has altered the way indefeasibility functions. By examining the case in relation to other cases that came after it, this article demonstrates that Malaysian courts have worked to maintain the register's integrity. They have done this while also requiring that buyers act in good faith.

Methodology

Using a doctrinal legal research approach, the study analyses judicial reasoning, statutory provisions under the National Land Code 1965 and the Civil Law Act 1956, and subsequent Malaysian case law developments relating to tenancy coupled with equity. The research further examines the application of proprietary estoppel within the Torrens system through an analysis of relevant judicial authorities and academic literature. The collected legal materials are critically evaluated to assess the extent to which tenancy coupled with equity is protected under Malaysian land law.

Discussion And Analysis

Legal Framework: Indefeasibility of Title under the Torrens System

Malaysian land law follows the Torrens system, where the land register is paramount (Malaysian Bar, 2010). Indefeasibility is the key principle of this system, where a party is granted an indefeasible title upon the registration as the proprietor of the land. It entrenches the title of a registered proprietor, making it immune to attack against the whole world, subject to a few exceptions under NLC, such as fraud (O'Brien, 1980). In other words, a subsequent purchaser or third party who purchased the land in good faith is innocent and may not be aware of the deception is also protected under NLC. This reasoning illustrates the doctrine of deferred indefeasibility under section 340(3) of the NLC where the statutory protection of the land register is postponed until the land passes into the hands of a purchaser who fulfils the conditions prescribed by the Code (Mohd et al., 2024).

This modern statutory structure is inherited directly from the former Federated Malay States Land Code (FMSLC) (Hassan Zaki et al., 2010). Section 42 acts as a precursor to today's Section 340 NLC. In Section 42(i), once a person is registered as the proprietor, their title is generally immune from claims by others. In Section 42(ii), indefeasibility of title is defeated if the registered proprietor is personally involved in fraud. In Section 42(iii), titles obtained by forged or legally void documents, the registration shall be invalid. Under Section 42(iv), even where the previous proprietor obtained title fraudulently, an innocent purchaser acting in good faith is protected. A subsequent proprietor obtains indefeasible title only if the land was acquired bona fide for valuable consideration. These principles, originating from the FMSLC, were carried forward into the NLC, particularly Section 340, which preserves the limited exceptions to indefeasibility (Gomez, 2008).

According to Section 340(1) NLC, it establishes certainty of title by way of registration adopted from the Torrens system. It states that the title or interest of any person or body registered as the proprietor of a land, or in whose name any lease, charge, or easement is registered, is generally indefeasible, subject to the provisions mentioned in this section (Hee, 2023). Section 340(2) NLC sets out the circumstances in which a registered title to or interest in land can be rendered defeasible and set aside, such as through fraud, deception, forgery or a void instrument (Malaysian Bar, 2010). Meanwhile, Section 340(3) of the NLC provides that a subsequent registered title to or interest in land that is acquired from a preceding owner of registered title or holder of registered interest who gets onto the register by means of one or more of vitiating methods as specified in Section 340(2) of the NLC shall be protected if the subsequent registered title to or interest in land is acquired 'in good faith for valuable consideration' (Shaari & Bakar, n.d.). In Malaysia, land legislation is a coded law thus whatever decision must be made with appropriate consideration of the statute with reasonable consideration of the needs of the people and local circumstances.

Key Legal Issues of the Case: Ong Chat Pang & Anor v Valliappa Chettiar

The main issue in this case concerns whether there was any actual fraud on the part of the third and fourth defendants sufficient to defeat indefeasibility of title under the Torrens system and

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whether the Malaysian Torrens system gives indefeasibility of title only if a registered proprietor is a bona fide purchaser for value (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971).

The court examined whether the plaintiff's contractual rights under the sale agreement with the first and second defendants constituted an equitable or caveatable interest capable of protection, notwithstanding the Registrar's rejection of the plaintiff's caveat. Besides, whether the subsequent registration of the memorandum of transfer in favor of the third and fourth defendants conferred upon them an indefeasible title under Section 42 of the FMS Land Code, especially when they are aware of the plaintiff's prior agreement (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971).

Next, whether High Court judge Shepherd J's order directing the caveat to be registered as of the date of its presentation was valid and binding upon the subsequent transferees, who were not served in the original petition. The court was also required to determine the priority between the equities of the plaintiff and those of the third and fourth defendants and whether the plaintiff was entitled to specific performance under Section 26(b) of the Specific Relief (Malay States) Ordinance 1950, in circumstances where the subsequent transferees denied having notice and claimed to be bona fide purchasers for value and specifically, the court had to decide whether the burden of proof lay upon these transferees to affirmatively prove they had no notice of the prior agreement (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971).

Judicial Reasoning and Interpretation of Fraud: Its Impact on Indefeasibility and Reliance on English and Australian Authorities

The plaintiff first filed a petition to the High Court against the rejection of his caveat and Shepherd J. ordered the Registrar of Titles to register the plaintiff's caveat backdated to the date of its presentation. After that, the plaintiff filed a lawsuit against four defendants within four weeks given, for specific performance of the agreement against first and second defendants and an order to cancel the memorial of third and fourth defendants. Plaintiff also alleges that third and fourth defendants acted fraudulently, but third and fourth defendants deny it and say that Shepherd J's order is not binding on them as they were not the parties in that petition. During the opening of the trial, the plaintiff's counsel established a high hurdle for the defense. He argued that the Plaintiff did not strictly need to prove fraud to win, and the legal responsibility was on the third and fourth Defendants to justify that there are bona fide purchasers, but they never appear to justify it. The learned judge gave a judgment that ruled in favor of the plaintiff.

Abdul Hamid J. found that while the third and fourth defendants were aware of the plaintiff's caveat and sale agreement by 24 January, there was no evidence to prove they knew of the previous sale agreement when their own memorandum of transfer was executed on 17 January. Thus, the court could not strictly infer actual fraud on their part. However, the High Court's decision to grant specific performance turned on the burden of proof regarding bona fide status. The trial judge considered that the third and fourth defendants did not apply to the court to set aside that petition while in the lawsuit, they took no steps to defend the action. The third and fourth defendants chose not to adduce any evidence during the trial to establish that they had paid the purchase price or acted in good faith without notice. Consequently, the High Court ordered specific performance for the plaintiff, and the third and fourth defendants made an appeal.

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The Federal Court unanimously dismissed third and fourth defendants' appeal. However, the two judges, Suffian and Gill F.J., give different reasons while making this decision, while another judge, Azmi L.P. merely expressed his concurrence. Based on the legal reasoning of Suffian F.J., the plaintiff's decision on making an order directing the Registrar of Titles to register his caveat is correct, but the caveat did not automatically nullify third and fourth defendants' registration since it was "subject to litigation." The judge described the situation as a race to the register, which race was won by third and fourth defendants, making his title prima facie indefeasible (Wong, 1971). The learned judge also affirmed that no fraud could be inferred against the third and fourth defendants, as ruled under High Court. However, under Section 42(iv) of the Federated Malay States Land Code and Section 26 of the Specific Relief (Malay States) Ordinance, the onus was on them as a later transferee to prove he was a bona fide purchaser for value. In *Bhup Narain Singh v Gokhul Chand Mahton and Others,* it was observed that if the purchaser under a contract claims for specific performance against a person claiming title from the vendor under a deed of sale formalized after the contract, the onus is on the defendant to prove that he is a bona fide purchaser for value without notice of the earlier contract so that he may fall within the exception of the above section. However, in the present case, third and fourth defendants failed to provide evidence of their bona fides or payment of the full purchase price. His silence and failure to call evidence led the court to infer that he was less than honest; thus, the High Court gave judgment for specific performance in favor of plaintiff, and third and fourth defendants' appeal was consequently dismissed. Although the defendants won the "race to the register", their title was defeasible because they failed to discharge the burden of proving they were bona fide purchasers against the plaintiff's prior equity.

Gill F.J. 's approach did not centre on the doctrine of bona fide purchaser for value without notice. Instead, His Lordship grounded his reasoning on Section 42(vi) of the former FMSLC (Section 340(4)(b) of the NLC) which provides that a registered title may be defeated "by operation of law" to dismiss the appeal. The learned judge emphasized that although registration is the sole means of acquiring legal title, the law does not ignore prior contractual and equitable rights. A purchaser under a valid sale agreement may acquire a contractual equitable interest capable of enforcement through specific performance and protection by caveat, allow court to intervene against indefeasibility notwithstanding absence of fraud. Citing cases of *Crowly v Bergtheil*, a contract for the sale of land does not itself create any proprietary interest, and a purchaser under such a contract has no rights in rem but only personal rights against the vendor until registration occurs (*Crowly v Bergtheil,* 1899).

A purchaser does not get a title in equity until the vendor has done all that is necessary to perfect the purchaser's title and become trustee for the purchaser (Sihombing, 1977). In *Haji Osman bin Abu Bakar v Saiyed Noor bin Saiyed Mohamed*, an equitable interest arises upon full payment and delivery of transfer documents, even before registration *(Haji Osman bin Abu Bakar v Saiyed Noor bin Saiyed Mohamed,* 1952*)*. Thus, unregistered interests in land can be recognized too in equity to protect bona fide purchasers for valuable consideration or decide priorities if there are competing claims. A purchaser may have a caveatable interest, allowing them to prevent subsequent registrations until the caveat is removed. Courts can enforce these equitable rights through specific performance, requiring the vendor to execute a valid and registrable transfer (Masum & Ahmad, 2025). The learned judge then stated that the Registrar of Titles was mistaken in law in rejecting the caveat in the present case.

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Besides, the judge makes legal reasoning related to the priority as between the equity. As stated in Gill F.J. judgement: "The maxim of equity which applies is 'qui prior est tempore potior est jure' (he has the better title who was first in point of time), unless upon well-settled principles there is some reason why the later equity should be regarded as having priority over that which was earlier in point of time." (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971, p. 232). The court found that plaintiff's equitable rights prevail over those of the third and fourth defendants as plaintiff's contract of sale was prior in time compared to the transfer of third and fourth defendants. This maxim operates only in favour of a purchaser who acquires the legal title bona fide and without notice. The third and fourth defendants did not obtain a bona fide supervening legal title through their registered transfer. The High Court's order of 5 May 1958 restored the status quo as of 24 January 1958, notwithstanding the fact that the transfer had been registered. There was no evidence that the defendants had acquired the land for value, in good faith, and without notice of the plaintiff's earlier contract. Accordingly, the plaintiff's contract, earlier in point of time, gave him prima facie priority over the defendants. Therefore, the appeal is dismissed, with Azmi LP concurring.

Bona Fide Purchaser Doctrine as the Gateway to Indefeasibility

The doctrine of the bona fide purchaser for value without notice is the primary gateway to indefeasibility under the Malaysian Torrens system. Fraud is not the starting point of the analysis (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971; Wong, 1967). Although registration is an important part of the Torrens system, Malaysian courts have generally not accepted that registration alone automatically protects a proprietor from adverse claims (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). The registered owner must prove that he took the land in good faith and for valuable consideration. This reflects the importance placed on honest transactions rather than simply relying on the register (Wong, 1967). It is also consistent with the traditional Malaysian view of the Torrens system as a "single estate" system. Under this approach, proprietary interests arise through compliance with statutory requirements rather than equitable intervention (Wong, 1967). Therefore, bona fide purchase is important because it ensures that the register protects purchasers who have acted honestly. It is not meant to provide automatic protection to every registered proprietor (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). Good faith is thus more than a defensive consideration. It is an important part of the statutory protection under the Torrens system (Edwards & O'Reilly, 1999).

The importance of the bona fide purchaser doctrine can be seen in *Ong Chat Pang & Anor v Valliappa Chettiar*. In that case, the Federal Court considered whether the defendants had fulfilled the statutory requirements for protection, separately from the allegation of fraud. The High Court found that there was no fraud proven and this finding was not appealed. However, the Federal Court still refused to recognise indefeasibility because the defendants could not establish that they were bona fide purchasers (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). This shows that the absence of proven fraud does not automatically give a registered proprietor statutory protection under Malaysian land law (Edwards & O'Reilly, 1999). The registered proprietor must prove good faith and payment of valuable consideration. If these requirements are not satisfied, the title remains defeasible (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). The Court therefore treated bona fide purchase as an important requirement for indefeasibility. It is not simply something considered when fraud is alleged. Rather, it is a prerequisite for statutory protection under the Malaysian Torrens system (Wong, 1967). This shows that indefeasibility depends on an honest acquisition and is not simply presumed from registration (O'Connor, 2003).

Fraud can directly make a registered title defeasible under the Malaysian Torrens system. However, the subsequent purchaser may be protected if he or she is a bona fide purchaser for value without notice (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971; Edwards & O'Reilly, 1999). Malaysian courts have adopted a narrow approach to fraud where they require actual dishonesty or moral turpitude to be proved. Constructive or equitable fraud is not sufficient (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). Bona fide purchaser status therefore remains important for statutory protection. At the same time, fraud cannot be treated as irrelevant or merely secondary because its presence can directly affect the title. This strict approach to fraud also reflects the need to maintain certainty and stability in land transactions. It avoids broad judicial intervention that could affect the reliability of the register (Wong, 1967). The relationship between bona fide purchase and fraud therefore shows that bona fide purchase is the main basis for protection, while fraud operates as a corrective mechanism within the system (Edwards & O'Reilly, 1999).

The Malaysian emphasis on bona fide purchaser status also shows a general reluctance to incorporate equitable interests into the Torrens system. This becomes clearer when Malaysian law is compared with developments in Australia (Wong, 1967). Australian courts have increasingly allowed equitable doctrines to operate within the Torrens system. However, However, Malaysian land law has continued to focus on statutory requirements and administrative certainty as the basis of title security (Wong, 1967). This difference goes some way to explain the approach taken in *Ong Chat Pang & Anor v Valliappa Chettiar*. The Court did not concentrate on equitable considerations but considered whether the statutory requirements had been satisfied (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). This reinforces the principle that interests in land should be based on compliance with the registration system rather than informal or unregistered arrangements (Shahrul Natasha Halid Jady, 2020). The requirement of bona fide purchase therefore helps to prevent the conclusiveness of the register from being weakened (Edwards & O'Reilly, 1999). It also prevents a person from relying on registration alone to defeat legitimate claims (O'Connor, 2003).

Malaysian law does not expressly reject immediate indefeasibility. However, its operation has effectively been moderated by requiring proof of bona fide purchaser status before protection is available (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). This approach is seen as a way of allocating risk rather than an absolute guarantee of title which is consistent with the broader understanding of indefeasibility under the Torrens system (O'Connor, 2003). Malaysian land law also considers the conduct of the purchaser. Therefore, the security of title depends both on the registe and on whether the person dealing with the land has acted honestly (Shahrul Natasha Halid Jady, 2020). *Ong Chat Pang & Anor v Valliappa Chettiar* shows that bona fide purchase comes before fraud when considering indefeasibility which helps to maintain certainty of title while ensuring that the protection under the Torrens system is given to honest purchasers (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971).

Comparative Torrens Principles and Conditional Indefeasibility

The indefeasibility conferred under the Torrens system is not an absolute guaranty of ownership. It provides statutory protection to promote certainty of title, but limits to that

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protection exist. Comparative Torrens cases and academic commentary show that indefeasibility is mainly concerned with protecting reliance on the land register. It does not mean that every registered title is protected regardless of how the title was acquired (Edwards & O'Reilly, 1999). This distinction is crucial when considering the Malaysian position. The ruling in *Ong Chat Pang & Anor v Valliappa Chettiar* could be viewed in the light of the existing principles of Torrens system rather than an exception to it (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971).

In this case, the Federal Court denied the claim that registration per se is enough to confer an indefeasible title. Although the defendants were the registered proprietors, they had to show that they were bona fide purchasers for value before they could receive statutory protection (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). At the same time, the Court did not simply assume that fraud had taken place. Clear evidence was required before fraud could be established. This helped to protect the reliability of the register. However, the Court also refused to give protection to purchasers who could not show that they had acquired the land honestly. The decision therefore shows that registration is important, but it is not the only consideration when determining whether a proprietor is protected by indefeasibility.

The position can also be seen in New Zealand Torrens cases. In *Frazer v Walker*, the Privy Council recognised immediate indefeasibility. Registration could therefore provide protection even where the underlying instrument was void. However, this protection remained subject to the fraud exception and the requirements relating to a bona fide purchaser for value (*Frazer v Walker*, 1965). As explained by Edwards and O'Reilly, immediate indefeasibility does not mean that a registered title can never be challenged. The conduct of the registered proprietor can still affect whether statutory protection is available (Edwards & O'Reilly, 1999). In this respect, the reasoning in *Ong Chat Pang & Anor v Valliappa Chettiar* is similar to the approach taken in other Torrens jurisdictions. Registration provides protection, but that protection is not without limits.

A similar point can be found in *Assets Co Ltd v Mere Roihi*. In that case, the Privy Council stressed that fraud must be strictly proved and should not be inferred simply from suspicious circumstances (*Assets Co Ltd v Mere Roihi*, 1905). Actual fraud involving personal dishonesty is required before a registered title can be impeached. The Torrens system continues to protect purchasers who have acted in good faith and for value. The case therefore shows the need to balance certainty of title with protection against dishonest conduct. Academic commentary also recognises this balance as an important feature of the Torrens system (Edwards & O'Reilly, 1999).

When viewed in comparison with these cases, *Ong Chat Pang & Anor v Valliappa Chettiar* is broadly consistent with the Torrens approach found in New Zealand. The Federal Court was careful not to find fraud without sufficient evidence, which helped to maintain confidence in the register. Simultaneously, the Court did not allow purchasers to rely on indefeasibility when they could not establish bona fide acquisition (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). The decision therefore reflects a balance between certainty of title and the need to prevent unfair use of the protection given by the Torrens system. The Malaysian position remains consistent with the wider Torrens principle that registration provides important protection, but that protection is subject to certain requirements and exceptions (Edwards & O'Reilly, 1999).

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Critical Evaluation: Conditional Indefeasibility and the Centrality of Bona Fide Purchaser

A main strength of *Ong Chat Pang & Anor v Valliappa Chettiar* is that the Federal Court did not treat indefeasibility as something that automatically follows from registration. The Court did not consider registration alone to be conclusive. Instead, indefeasibility was treated as a form of statutory protection which depends on the conduct of the registered proprietor (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). This approach is consistent with Section 340 of the NLC, which provides indefeasibility "subject to" certain recognised exceptions and qualifications. Therefore, the title is not considered to be absolutely protected. Academic commentary also supports this view by explaining indefeasibility as protection from challenge rather than an absolute and unquestionable proprietary right (Edwards & O'Reilly, 1999). Since the Court denied protection even though fraud was not proven, it showed that statutory protection must be supported by bona fide acquisition and cannot simply be assumed from registration.

Section 340(2)(a) makes it clear that fraud can only be proved where the registered proprietor has been dishonest or has been party to the fraud. There also has to be an intent to deceive on the part of the owner. There must be an intention to deceive. There must also be an intention to deceive. This requirement helps to protect the reliability of the land register because it prevents titles from being challenged based only on weak allegations. The decision is therefore consistent with the usual approach to fraud under the Torrens system, where fraud is treated as a narrow and exceptional ground rather than a general means of challenging a registered title (Edwards & O'Reilly, 1999). *Ong Chat Pang & Anor v Valliappa Chettiar* attempts to strike a balance between certainty and justice by demanding a high standard of proof for fraud, whilst at the same time ensuring that a registered proprietor does not enjoy the benefits of indefeasibility if the conditions for protection have not been met.

However, *Ong Chat Pang & Anor v Valliappa Chettiar* also shows a deeper issue in Malaysian land law. This is the practical importance of the bona fide purchaser doctrine compared with the fraud exception. Fraud remains an important ground under the law, but the high standard of proof means that registered titles may be more likely to be defeated because the purchaser cannot establish bona fide status rather than because fraud has been proven (O'Connor, 2003). In *Ong Chat Pang & Anor v Valliappa Chettiar*, the defendants did not lose protection because fraud had been established. They lost it because they failed to provide sufficient evidence that they had acquired the land in good faith. This shifts the focus from the wrongdoing of the parties to whether the purchaser qualifies for protection. Bona fide purchase therefore becomes the main gateway to indefeasibility.

Earlier academic criticism suggested that Section 340(3) of the NLC did not provide clear guidance on how bona fide purchaser status should be determined (Nor Asiah Mohamad, 2004). However, more recent Federal Court decisions have provided greater clarification. The Federal Court in *Setiakon Engineering Sdn Bhd v Mak Yan Tai & Anor* has explained when a purchaser can rely on Section 340(3). The purchaser must be a subsequent purchaser and not a volunteer. An immediate transferee whose title is affected by a vitiating factor would therefore not fall within this protection. The purchaser must also have acted bona fide. In other words, the purchaser should not have known about the fraud, forgery or void instrument, been involved in it, or deliberately turned a blind eye to it (in *Setiakon Engineering Sdn Bhd v Mak Yan Tai & Anor*, 2024). At the same time, the Court did not expect a purchaser to go beyond the register and carry out further investigations when there was nothing suspicious to raise concern. A

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EISSN : 0128-1763
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purchaser can therefore generally rely on what is shown in the register. This is consistent with the basic principle of the Torrens system.

Even so, this may raise some concern about certainty of title, which is one of the main purposes of the Torrens system. If a registered proprietor cannot rely on registration without also having to prove bona fide acquisition, the protection provided by the register may be weakened (Nor Asiah Mohamad, 2004). Too much focus on the conduct of purchasers may also reduce the conclusiveness of registration. Indefeasibility could then become dependent on the court's assessment of the purchaser's conduct rather than simply on registration. Thus, the requirement of good faith helps to ensure fairness but also creates some uncertainty in land transactions (Wong, 1967).

The Malaysian position in *Ong Chat Pang & Anor v Valliappa Chettiar* can also be compared with jurisdictions which strongly support immediate indefeasibility. In Australia, following Frazer v Walker, registration generally provides immediate protection even where the underlying instrument is void, subject to fraud (MacCallum, 1982; Edwards & O'Reilly, 1999). The Malaysian approach is different because bona fide purchase is effectively considered before protection is given. This creates a form of hybrid approach which combines statutory requirements with an assessment of the purchaser's conduct (*Ong Chat Pang & Anor v Valliappa Chettiar*, 1971). Although this approach gives greater importance to justice and honesty, it may affect transactional certainty. This may be particularly relevant to purchasers who are not familiar with the evidential requirements applied by the courts.

The case also shows that the practical weakness of a registered title in Malaysia may lie less in proving fraud and more in proving bona fide purchase. Fraud remains an important vitiating factor, but the strict standard of proof means that a challenge may be more successful where the purchaser fails to establish the requirements for protection rather than where actual wrongdoing can be proven (O'Connor, 2003). The focus is therefore shifted from misconduct to whether the purchaser is entitled to protection. This raises the question of whether the fraud exception has, in practice, been overshadowed by the bona fide purchaser doctrine (Nor Asiah Mohamad, 2004). This may, in turn, limit the protection of indefeasibility beyond what Section 340 provides.

Ong Chat Pang & Anor v Valliappa Chettiar is a valuable case on indefeasibility under Malaysian land law. The decision, together with the later decision in *Setiakon Engineering Sdn Bhd v Mak Yan Tai & Anor*, makes it clear that registration does not, by itself, give absolute protection to a registered proprietor. The protection under Section 340 of the NLC depends on whether the requirements for bona fide purchase have been satisfied. In this sense, bona fide purchase plays an important role in determining whether a purchaser can obtain statutory protection. At the same time, the law still seeks to maintain certainty in land transactions and protect purchasers who have acted honestly (O'Connor, 2003; MacCallum, 1982).

Implications On Malaysia's Land Law

Principle of Ong Chat Pang & Anor v Valliappa Chettiar' s Case in Subsequent Jurisprudence

The doctrine of indefeasibility under the Torrens system has been a matter of contention, particularly in relation to the competing theories of immediate and deferred indefeasibility

(Malaysian Bar, 2010). Immediate indefeasibility posits that a registered proprietor obtained an indefeasible title upon registration, notwithstanding defects in the instrument of transfer, provided that the proprietor acts in good faith and gives valuable consideration (Malaysian Bar, 2010). Deferred indefeasibility, in contrast, maintains that where registration falls within the meaning of Section 340(2) of NLC, the immediate transferee does not obtain infeasible title, as protection attaches only to a subsequent purchaser in good faith and valuable consideration under Section 340(3) (Hong & Quek, 2022). Case of *Ong Chat Pang & Anor v Valliappa Chettiar* took and approach consistent with deferred indefeasibility by holding that where registration is not obtained through bona fide or is affected by vitiating factors, the registered title is not protected by Section 42 and may be set aside, subject to the specific exceptions stated within the section.

Marked jurisprudential departure occurred in *Adorna Properties Sdn Bhd v Boonsom Boonyanit*, where the Federal Court took the view of immediate indefeasibility. The Court held that a purchaser could obtain indefeasible title even through a forged instrument, provided the purchaser acted in good faith and provided consideration. Although the decision did not expressly refer to *Ong Chat Pang & Anor v Valliappa Chettiar*, its reasoning contrasted with the earlier case's commitment to a strict fraud exception grounded in personal wrongdoing. Under *Adorna Properties Sdn Bhd v Boonsom Boonyanit,* the protection of the register was extended even with the absence of a valid instrument, conferring indefeasibility in circumstances where the proprietor's registration was not tainted by personal fraud.

This tension was conclusively addressed in *Tan Ying Hong v Tan Sian San*, where the Federal Court unanimously overruled *Adorna Properties Sdn Bhd v Boonsom Boonyanit* and restored the principle of deferred indefeasibility. This approach aligns closely with *Ong Chat Pang & Anor v Valliappa Chettiar* by ensuring that registration based on a void or forged instrument does not confer indefeasible title. Under the doctrine of deferred indefeasibility, such a defective title remains defeasible at the immediate stage but may become indefeasible only in the hands of a subsequent bona fide purchaser (Ng & Tay, 2022). In reaffirming Section 340, the Court in *Tan Ying Hong v Tan Sian San* returned to the doctrinal position that indefeasibility is lost where the registration is vitiated by one of the detailed exceptions, particularly fraud attributable to the registered proprietor. The Court further stressed that the statutory framework in Malaysia differs from jurisdictions that follow immediate indefeasibility, making the explicit exceptions under Section 340 essential in maintaining the integrity of the Torrens system.
The doctrinal evolution from the case of *Ong Chat Pang & Anor v Valliappa Chettiar* to *Tan Ying Hong v Tan Sian San* case illustrates how Malaysian courts have consistently returned to the view that indefeasibility is conditional and that fraud remains an exception grounded in personal wrongdoing.

Doctrinal and Practical Significance

The case of *Ong Chat Pang & Anor v Valliappa Chettiar* highlighted the importance of the Torrens system in providing indefeasible title while recognising the personal exception for fraud under Section 340(2)(a) of NLC. Through distinguishing between mere awareness of an unregistered interest and deliberate fraudulent conduct (*Loke Yew v Port Swettenham Rubber Co Ltd*, 1913), the Federal Court clarified that the statutory protection of registered titles is not absolute, but conditional upon the proprietor's personal honesty.

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However, in practice, the decision carries significant ramifications for conveyancing and land registration practice. Legal practitioners and purchasers are reminded that, while the general conclusiveness of the register is preserved, due diligence through investigation of prior contracts and caveats and other possible encumbrances before completing a transaction are fundamentally necessary (MK, 2024). Failure may expose parties to claims under Section 340(2), particularly in cases involving fraudulent registration (Malaysian Bar, 2010). At the same time, the case protects bona fide purchasers for value who acquire property without knowledge of fraud and supports the rectification of the register where fraud is proven, reinforcing the integrity of the land registration system and providing confidence to the public and legal practitioners alike.

Scholarly Insights

This case of *Ong Chat Pang & Anor v Valliappa Chettiar* is widely regarded as a foundational authority in Malaysian Torrens system, particularly for clarifying fraud as a personal exception to indefeasibility. This decision represents a balance between certainty of title and equitable protection for aggrieved party. This principle was subsequently applied by the learned Judicial Commissioner in *Chan Kwai Foong v Dato' Capt Mohd Najib bin Abdullah*, where reliance on *Ong Chat Pang & Anor v Valliappa Chettiar* guided the assessment of alleged fraud and the status of a subsequent purchaser as bona fide for value. It was established in that case that the actionable fraud under Section 340(2)(a) of NLC requires active dishonesty by the registered proprietor, distinguishing such circumstances from knowledge of prior unregistered interests (Agam, et al., 2010). The ruling further reiterates that wrongdoers shall not benefit from fraudulent dealings by ensuring that the protection provided by the Torrens system does not operate against innocent claimants (R & Zahari, 1986).

The principles set out in *Ong Chat Pang & Anor v Valliappa Chettiar* therefore remain of great relevance in contemporary conveyancing and risk management. While fraudulent transactions continue to pose challenges for practitioners, the protection afforded to registered proprietors under NLC remains sound. This case establishes a doctrinal foundation for due diligence, whereby transactions ought not to be completed before prior contracts, caveats, and other credible documents are verified (Shaari & Bakar, 2025). Thus, through doctrinal aspect, it affirms fraud as a personal exception to indefeasibility, while practically, it guides professional conduct to ensure both market certainty and equitable justice.

Recommendation

The establishment of a compensation fund, which can be used to provide compensation to the aggrieved parties who have lost their land due to fraud or forgery, is also emphasized in the case of *Yap Ham Seow v Fatimawati binti Ismail & Ors And another appeal*, where the registered owner of a piece of land is entitled to compensation for the loss of ownership caused by fraud. Therefore, the government should consider taking the initiative to establish a compensation fund that can indirectly help and alleviate the burden borne by the aggrieved parties (Harun et al., 2015). This statutory indemnity fund can serve as a risk distribution tool where the innocent party will not bear the full loss arising from registration defects.

In addition, the government, together with the State Land and Mines Department, can collaborate in systematically improving land registration technology such as E-Tanah and the Computerized Land Registration System (SPTB), particularly in terms of enhancing security.

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Among the improvements that can be made are tightening security controls on new registration applications involving ownership protected by indefeasibility, improving identity verification protocols, and implementing an automatic notification system to alert registered owners of any changes to their ownership status to reduce incidents of covert fraud or backdoor crimes. The increasing vulnerability of digital systems to modern fraud schemes due to increasingly sophisticated technology is no longer an option but a necessity in preserving the integrity of land administration (Harun, 2012).

Finally, continuous public awareness campaigns and legal education can be implemented as one of the initiatives to combat fraud or defects in procedures or land registration, which not only benefits the public but also legal practitioners such as lawyers (M Suaree et al., 2024). Awareness campaigns, regular training, and continuous legal education can enhance transaction diligence and even encourage early detection of fraudulent activities (Phang et al., 2025). Initiatives like these can reduce reliance on post-registration litigation and encourage vigilance at the early stages of property transfer transactions. These proactive preventive measures can also strengthen public confidence and ensure the long-term and sustained stability and credibility of the Malaysian Torrens system.

Conclusion

In conclusion, the decision in the case of *Ong Chat Pang & Anor v Valliapa Chettiar* has become one of the important authorities in the protection of indefeasibility of title within the Malaysian Torrens system. Thru an in-depth interpretation of section 42 of the Federated Malay States Land Code, which is now encapsulated in section 340 of the NLC, the Federal Court explained that registration alone cannot provide absolute protection, as statutory protection will only operate subject to normative thresholds and evidence of good faith acquisition.

Although fraud was alleged, the Court declined to recognise the fraud exception, thereby maintaining the orthodox requirement of actual fraud while simultaneously denying protection on a distinct doctrinal ground, namely, the defendant's failure to establish bona fide purchaser status. This indirectly demonstrates that, although fraud remains an important ground for defeating statutory protection, bona fide purchaser status continues to function as a structural gateway to indefeasibility. As emphasised in this article, the decision represents one of the early judicial formulations of conditional indefeasibility in Malaysian land law. This principle was further reflected in subsequent jurisprudence concerning the restoration of deferred indefeasibility in Tan Ying Hong v Tan Sian San, which affirmed the continuing relevance of this decision in demonstrating that the Malaysian Torrens system protects the integrity of bona fide acquisitions rather than merely prioritising procedural considerations.

Ultimately, the case of *Ong Chat Pang & Anor v Valliapa Chettiar* is an important decision in illustrating that the strength of Malaysian land law does not solely depend on registration as infallible, but in embedding indefeasibility within a disciplined doctrinal structure. Additionally, this decision can also encourage a deeper understanding of the evolution of Malaysian Torrens jurisprudence thru the judiciary's continuous efforts to ensure transaction certainty with a priority on equity protection, particularly against fraud and improper conduct. Its significance can be seen thru the assertion that the protection of indefeasibility does not rely solely on registration but on the bona fide nature of acquisition, thereby maintaining transaction certainty and preventing indefeasibility from becoming an instrument for unfair or improper acquisition.

Acknowledgements:	The authors would like to express their sincere gratitude to Faculty of Law, Universiti Kebangsaan Malaysia, in relation to the publication of this article.
Funding Statement:	Fund by Faculty of Law, UKM.

Conflict of Interest Statement:	The authors declare that there is no conflict of interest regarding the publication of this paper. All authors have contributed to this work and approved the final version of the manuscript for submission to the International Journal of Law, Government and Communication (IJLGC).
Ethics Statement:	This study did not involve any human participants, animals, or sensitive data requiring ethical approval. The authors confirm that the research was conducted in accordance with accepted academic integrity and ethical publishing standards.
Author Contribution Statement:	All authors contributed significantly to the development of this manuscript. Dr. Nur Atheefa Sufeena M Suaree conceptualized and supervised the study, organised the research, and critically revised the manuscript. Lai Zhi Jun, Divya Lya David, Chang Ho Ying, Nurin Maisarah Yusman and Rabi'atul Rafhanah Ramli conducted the research, including data collection, analysis, and drafting of the manuscript. All authors read and approved the final version of the manuscript prior to submission.
Declaration of Generative AI and AI-Assisted Technology in the Writing Process	The authors declare that generative artificial intelligence (AI) and AI-assisted technologies were used during the preparation of this manuscript solely for language-related purposes, including grammar checking, proofreading, and improving the clarity and expression of the written text. AI-assisted technologies were not used to generate the substantive content, research analysis, legal arguments, findings, or conclusions presented in this manuscript. The authors have reviewed and verified all content in the manuscript and take full responsibility for the accuracy, originality, integrity, and final content of the work.

International Journal of Law, Government and Communication
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