

CHAPTER V

CASES OF CO-OWNERSHIP

Under normal circumstances, the situation of co-ownership arises when two or more owners hold a lot of land, registered under a single title, with the name of each of them recorded in the title, together with his specified share of the lot. This is de jure co-ownership.

In the S.S., however, this situation of de jure co-ownership is inconceivable. This is because there is an express condition that a lot alienated in the S.S. "shall not be subdivided".¹ Nevertheless, co-ownership exists here de facto. This is the case when a lot registered under a single title, although held de jure by one person, is owned in fact by more than one person, each with his own specified share.

As can be seen from Table 5.1, there are 12 lots in the Block which involve de facto co-ownership. This represents about 10.8% of the total number of lots in the Block. Each of these lots, though de jure held by one owner under whose name the title is registered, is actually owned by more than one owner. Each of these de facto owners has a specified and demarcated share in his respective lot.

The Table shows in Column 4, that eight of these lots have two co-owners each. The share of each of these co-owners as set out in Column 6, is all $\frac{1}{2}$ acres, except the case number 4, lot 2835, where the shares of the two co-owners are two acres and one acre.

The remaining four lots have three co-owners each. Their shares range from as small as half acre to $\frac{1}{2}$ acres.

In each of these 12 cases, the de facto claim of co-ownership of each co-owner was acquired solely through purchase. The fact that inheritance is not responsible for the creation of any situation of co-ownership in the Block is rather interesting. I shall deal with this question towards the end of this Chapter.

The process of purchase itself varies between lots. One such process is where one person owns de jure a lot. It is immaterial how he has acquired the lot. He then sells a specified portion or

¹See Appendix II, Schedule III, Approval for Application of Land (Land Rule 5), 6(1).

TABLE 5.1

CASES OF CO-OWNERSHIP

(1) Case No.	(2) Lot No.	(3) De Jure Owner	(4) No. of Co- Owners	(5) De Facto Co-Owners	(6) Share of Each De Facto Owner (Acres)
1	2806	Haji Ibrahim bin A. Rahin	2	Haji Ibrahim bin A. Rahin Badr bin Haji Ihsan	$\frac{1}{2}$ $\frac{1}{2}$
2	2826	Munzir bin Harkil	2	Munzir bin Harkil Hakim bin A. Mustafa	$\frac{1}{2}$ $\frac{1}{2}$
3	2827	Haji Ali bin Sastro Karno	2	Siti Matsuah Haji Jalaluddin	$\frac{1}{2}$ $\frac{1}{2}$
4	2835	Haji Moor bin Tahirid	2	Haji Moor bin Tahirid Mohd. Saam	1 2
5	2837	Jantan bin Tonadi	2	Jantan bin Tonadi Ramar bin Sabari	$\frac{1}{2}$ $\frac{1}{2}$
6	2844	Haji Ahmad Buri bin Sarkon	2	Serip bin Haji M. Tahir Haji Daryati bin Suro	$\frac{1}{2}$ $\frac{1}{2}$
7	2847	Talb bin Har Salim	2	Talb bin Har Salim Kordi bin A. Saad	$\frac{1}{2}$ $\frac{1}{2}$
8	2882	Haji Abdillah bin Mohd. Yusof	2	Haji Ali bin Sarkon Haji A. Hadi	$\frac{1}{2}$ $\frac{1}{2}$
9	2788	Shaharuddin bin Hj. Isahak	3	Mohd. Khalid bin Hj. Ihsan Anin bin Hj. Jannal Kamaruddin bin Bohir	1 $\frac{1}{2}$ $\frac{1}{2}$
10	2790	Bardin bin Isahak	3	Hassan bin Saqaf Dol bin Yahya Ajam	$\frac{1}{3}$ $\frac{1}{3}$ $\frac{1}{3}$
11	2791	Matsuah bt. Enchu	3	Matsuah bt. Enchu Ratna bin Bohir Darah bin Talb	$\frac{1}{3}$ $\frac{1}{3}$ 1
12	2887	Kandari bin Munzir	3	Haji Mahmud Haji A. Rahin bin Ihsan Haji Dajah bin Kandi	$\frac{1}{3}$ 1 $\frac{1}{3}$

portions of it to one or more persons, while he himself still retains a portion. All of them become thus de facto co-owners of the lot, though de jure the lot is registered under the name of the original owner only. This is what has actually happened to case number 1 in Table 5.1. Haji Ibrahim bin A. Rahim owns de jure lot 2806. He then sells a specified $\frac{1}{4}$ acres of it to Badri bin Haji Ihsan, who now becomes the co-owner of the lot with him. To this process belong cases number 2, 4, 5, 7, 11 and 12 in the Table.

Another process is where two or more persons buy among them the whole lot from a de jure owner. Each buys a specified share of the lot. They may buy simultaneously, or at different times. The typical example of this process is case number 9, lot 2789. The original de jure owner of the lot, Shaharuddin bin Haji Iqbal, went lunatic and was sent to Fanjong Rambutan. His brother, Hwaluddin, sold the lot about four years ago to Mohd. Khalil bin Haji Ihsan, one acre; Amin bin Haji Jamal, $\frac{1}{4}$ acres; and Kamaruddin bin Bohir, $\frac{1}{4}$ acres. In this process, only the buyers are thus the new co-owners of the lot. To this category belong the remaining cases of number 3, 6, 8, 9 and 10 in the Table.

Procedurally, the de jure ownership of the lot in this last process should be transferred to any one of the new co-owners. A very notable feature here is that this is not done so. The titles of all of these lots are still in the names of the original de jure owners.

Few reasons may be suggested as to why these co-owners have acquired their shares of the lot, which are sometimes too small a sub-lot. Of course, the underlying reason in all these cases is the desire to invest in padi-land. But besides these, there may be other considerations. Some of these co-owners may not have enough means to acquire the whole lot. Only by becoming a co-owner can they possess a stretch of padi-land. There may be land scarcity. As far as this Block is concerned, this seems to be so. The Block is considerably advanced in settlement and farming, and fertile compared with others. Every lot is duly owned and fully cultivated. Some co-owners, such as Haji Mahaud in case number 12 in the Table, have coconut-land outside of S.S. but hold no padi-land other than these small sub-lots which they co-own with others. It may be that they acquired these sub-lots for the sole reason of obtaining padi only for the purpose of staple food. The fact that all the co-owners operate the sub-lots themselves, and do not rent them out, reinforces this view. Others, such as Kamaruddin bin Bohir who already holds lot 2799, acquires to augment their holdings of padi-land. Finally, it is interesting to note that each of the three lots 2789, 2790 and 2791 is co-owned by three owners. Map IV shows that five of these co-owners have their permanent dwellings on their shares of the lot. It also shows that these lots are adjoining the main red-earth track. It is thus conceivable that co-ownership shares here are acquired with the view of finding a suitable place for permanent dwellings besides the cultivation of padi.

The existence of this de facto co-ownership gives rise to a number of implications, both social and economic. Firstly, as has been clear, there is no legal claim as to the shares of the co-owners. The only one who has the claim to the whole lot is the co-owner under whose name the lot is registered, if any. In the course of the study, I have on many occasions been confronted with unregistered co-owners who expressed their anxieties as to what will ultimately happen to their shares.

Secondly, as has been pointed out, in all cases where a co-owned lot is bought outright by a number of co-owners, the titles are still not yet transferred. This is only one aspect of the whole difficulty that the co-owners have to face with regard to the legal management of the lot. Most probably, they cannot strike an agreement as to whose name should the title be transferred. Similarly, agreements are difficult to arrive in matters such as the settlement of land tax, which is imposed on the whole lot. It is found that out of these 12 cases, only in two cases could the receipts of tax payment be obtained. In the remaining cases, various excuses have been given. Usually, this is an indication of non-availability of receipts, and hence long overdue of tax settlement.

We can perceive that other agreements regarding the whole lot, such as those in relation to measures to improve the lot as a whole, are difficult to come by.

The problems set out above are actually the direct result of the express condition of Schedule III mentioned earlier in the Chapter. Doubtless, the condition was set in the good faith of endeavouring to maintain a certain standard of unit of ownership and operation. However, this study shows here that what is stipulated de jure does not necessarily exist de facto. Legal approach alone, though very primary and important, does not solve the problems of land settlement. Other measures, such as the provision of reasonable credit, the provision of alternative employment, and the provision of new land, are also necessary.

Besides these, the situation of co-ownership also gives rise to economic problems. As has been observed, the unit of ownership is certainly smaller than the original lot, and may be as small as half acre. As all the co-owners operate their sub-lots individually, it follows that the unit of operation is also small. This give rise to situation of inefficient operation as we have already discussed in Chapter II.

Further, co-ownership is also acquired by co-owners who already hold lots in the Block. This phenomenon may lead to fragmentation of holdings. Thus, Kamaruddin bin Bohir, for example, besides holding $1\frac{1}{2}$ acres of lot 2789 holds also the whole of lot 2799, both of which make up Holding 3 in Map III. Similarly, Holding 44 of Haji Ali bin Sarkam comprises of lot 2838 and a co-owned $1\frac{1}{2}$ - acre sub-lot of 2866. In addition, if these holders operate the whole of their holdings, as most of them actually do, fragmented farms emerge.

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TABLE 5.2

PROBABLE CASES OF CO-OWNERSHIP ORIGINATED FROM INHERITENCE

Case No.	Lot No.	Names of Deceased De Jure Owner	Names of De Facto Owner	Names of 'Co-owners'	Share (Acres)	Relationship of Co-owners to De Jure Owner
1	2820	Robiah bt. Saad	A. Saad bin Saidin	A. Saad bin Saidin Abu Nashih bin Hin	$\frac{1}{2}$ $\frac{1}{2}$	Belatives Half-brother
2	2853	Haji Karzuki bin Chudro	Lahuri bin Haji Karzuki	Lahuri bin Haji Karzuki Kerluau	$\frac{1}{2}$ $\frac{1}{2}$	Son Son-in-law
3	2855	Haji Nor Salleh	A. Rashid bin H. J. Nor Salleh	A. Rashid b. H. J. N. Salleh Kamsiah bt. H. J. N. Salleh	$\frac{1}{2}$ $\frac{1}{2}$	Son Daughter

Fragmentation of holding and farm may likewise result from the acquisition of co-owned sub-lots in the Block by those who own land outside the Block. The typical example is the case of Haji Mahmud who, besides holding and farming a co-owned $1\frac{1}{2}$ -acre sub-lot of 2887 in the Block, holds and farms also a sub-lot in Block V, and $2\frac{1}{2}$ acres of cocenut-land at Batu 7.

Hidden Cases of Co-ownership

Mention has earlier been made in this Chapter, that it is interesting to note that more of these cases of co-ownership is due to inheritance. The objective here is to probe further into this question.

From the information given by the interviewees, it appears that inheritance does not give rise to the situation of co-ownership. In Table 5.2, however, I have singled out three cases whereby a lot has been acquired by its de facto owner through inheritance. In each case, only one name was given to be the de facto owner of the lot. This is, rightly, what I have followed in the analysis of these lots elsewhere.

In connection with the question of co-ownership, nevertheless, certain peculiarities with regard to these lots should not escape our attention. Besides the fact that these lots have been acquired by their present de facto owners through inheritance, each lot is also found to be operated by more than one operator, including its de facto owner, with the share of each operator clearly demarcated. Further, those operators who are not de facto owners of their respective lots, do not pay rent. The reason being that they are closely related to the de facto owners.

On closer examination, it can be seen that most of them are really very closely related. They are sons, daughters and in-laws. These relatives, under normal circumstances, are actually those who form the heirs to the estate of a deceased, be it the ordinary Malay custom or the Moslem Principles of Inheritance that is followed.

On the basis of these facts, I strongly suspect that these six cases actually involve the situation of co-ownership, brought about by inheritance as the means of the acquisition of ownership claim. The reason why the relevant interviewees do not reveal this fact is not difficult to see.

From the Table, it appears that in these three cases the title of the lots has not been transferred to the present de facto owner's name. The heirs of these lots appear to be aware of the stipulation in Schedule III which provides that a lot "share not be transferred or leased unless such a transfer or lease is to a single individual person". In my opinion, this awareness of the stipulation is the underlying reason for their reluctance to reveal the situation of co-ownership in respect of their lots. This situation of co-ownership, if revealed and legally claimed, will bar the lot from being transferred even to one of them.