

ST.LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL No.2 of 1992

BETWEEN:

1. LOOPSOME PORTLAND
2. FRANCIS FLETCHER
3. MARCEL FEVRIER
4. BRENDER PORTLAND

Appellants

and

SIDONIA JOSEPH

Respondent

Before: The Honourable Mr. Justice Dennis Byron - President
The Honourable Dr. Nicholas Liverpool J.A.
The Honourable Mr. Justice Satrohan Singh J.A.

Appearances: Mr. Loopsome Portland in person
Mr. V. Cooper for the Respondent

1992: October 29;
1993: January 25.

JUDGMENT

BYRON, J.A.

At the conclusion of a written decision on 11th February
1992 d'Auvergne J. ordered as follows: -

"I, accordingly, give judgment for the plaintiff and order
as follows: -

1. The cancellation of the alteration to the
Adjudication Record No.928/87 made on 4th May
1987.
2. The cancellation of the alteration to the
respondent's certificate of the absolute title of
20th November 1986 relating to Block 1248B Parcel
No. 48.
3. A declaration that the respondent is the absolute
owner of Block 1248B Parcel No.48 as was
registered on 20th November 1986."

The Effect of the Judgment

With regard to the first order Instrument Number 928/87 made
on 4th May 1987 was the document supporting an entry made on the
Land Register for Block 1248B parcel 210 to effect a change of
the registered proprietor from Loopsome Portland to his minor

daughter Brender Portland. The effect of the first order therefore was to cancel the registration of Brender Portland as the proprietor of parcel 210, thereby making Loopsome Portland its proprietor. That was not a result which any party to the proceedings sought, nor, I daresay, that the judge intended.

With regard to the second order the only entry on the Land Register relating to Block 1248B parcel No.48 was that making the respondent the registered proprietor of that parcel. There was no alteration to any certificate of absolute title relating to that parcel. Therefore this order has no effect.

With regard to the third order it merely made a declaration that was undisputed throughout the trial.

The Appeal

The appellant, who was unrepresented by counsel, appealed against this judgment in a notice of appeal and a supplementary notice of extreme verbosity, containing over 40 paragraphs.

At the hearing the Court of its own motion raised issues not specified in the grounds of appeal, because it appeared that there were errors of law which sprung from wrong conclusions of fact drawn from the documentary evidence. The documents involved were;

1. A Deed of Deposit of receipt evidencing the payment in 1972 by Loopsome Portland for \$750.00 for a parcel of land.
2. "Application to alter the Adjudication Record" made by Loopsome Portland and the order made thereon.
3. Extracts from the Land Register in relation to Block 1248B parcels 48 and 210.

Learned counsel for the respondent did not object and conceded that the interests of justice required the examination of these issues.

The Court of Appeal has statutory powers to draw inferences of fact and to deal with issues that have not been raised in the notice of appeal.

The power of the Court in this regard is prescribed in section 28 of the West Indies Associated States Supreme Court (St. Lucia) Act 1969: -

- 28(1) "On the hearing of an appeal from any Order of the High Court in any civil cause or matter, the Court of Appeal shall have power to: -
- (b) draw inferences of fact;
- (2) The powers of the Court of Appeal under this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the High Court by any particular party to the proceedings in court or that any ground for allowing the appeal or for affirming or varying the decision of the High Court is not specified in such notice; and the Court of Appeal may make an order in such terms as the Court of Appeal thinks just to ensure the determination on the merits of the real question in controversy between the parties."

In **BENMAX v AUSTIN MOTOR CO. LTD** (1955) 1 ALL E.R. at p.329, the principle was stated by Lord Reid who said: -

".....in cases where there is no question of the credibility or reliability of any witness, and in cases where the point in dispute is the proper inference to be drawn from proved facts, an appeal court is generally in as good a position to evaluate the evidence as the trial judge, and ought not to shrink from that task, though it ought, of course, to give weight to his opinion."

In **MUSTAPHA ALLEY v BOOKERS STORES, LTD** [1969] 14 W.I.R. 263 after considering the English authorities *Persaud J.A.* concluded that: -

"It is clear, therefore, that if a trial judge failed to appreciate the true issues before him, or if he dealt with the evidence inappropriately, or drew wrong inferences, a court of appeal may make its own assessment of the evidence and come to its own conclusions."

Although the point in issue was never adequately addressed at the trial below it was within the pleadings and the evidence. Our willingness to deal with it accords with the principle stated by **LORD GUEST** in **WAREHOUSING CO v JAFFUALI** [1963] 3 ALL E.R. 571 at 575, citing with approval the well known dictum of Lord Watson;

"When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy,

it is not only competent but expedient, in the interests of justice to entertain the plea."

I do not think that there should be any difference of approach because the point is raised not by a party to the proceedings, but by the Court of Appeal itself.

Findings of the Judge

The learned trial judge identified the issue in this way

"the real issue before the court is whether the document purporting to be a receipt transferring the portion of land registered as lot 210 taken from the larger portion of land registration no.1248B 48 is a valid receipt capable of transferring the said portion of land."

She stated her conclusions as follows: -

"The evidence clearly shows that the provisions of the Land Registration Act were not complied with when Parcel 1248B 210 was created out of the larger parcel No.1248B 48.....

From what I have said before this receipt and deed of deposit purporting to convey the land known as parcel No.1248B 210 is consequently void and of no effect. It therefore follows that the transfer of the land to Brender Portland ...is also void."

The Pleadings

These findings were predicated on the statement of claim in which the plaintiff alleged that: -

- (i) on 20th November 1986 the respondent obtained absolute title to block 1248B No.48 and that
- (ii) the defendant applied to alter the adjudication record which had previously given the plaintiff absolute title
- (iii) the alteration was irregularly obtained
- (iv) the defendant purported to transfer parcel 210 which is in fact part of parcel 48 to his minor daughter Brender
- (v) the deposit of a receipt on which the defendant purported to base his claim was ineffective to pass title as the vendor had already sold the land to the plaintiff and others.

The Background Facts

The facts were that the appellant is the brother of the respondent, and they have been in dispute about a parcel of land on which the appellant had built a concrete home sometime prior to 1965. The land at that time belonged to their parents. The

appellant had been contending that his parents had sold him the house lot in 1972 for \$750.00 and that the transaction was evidenced by his receipt which was registered as a Deed of Deposit of receipt in 1979. The respondent's contention was that in 1965 their parents had sold her and others all of their land in that area, including the appellant's house lot, by way of a registered Deed of Sale. Consequently, she argued, their parents could not have passed title to the respondent in 1972 when the alleged sale to him took place.

It is unnecessary to go into the long history of the dispute. It culminated on 20th November 1986 when the Registrar of Lands acting under the provisions of the Registered Land Act 1984 made a first registration of the respondent as proprietor with absolute title of Block 1248B parcel 48 containing 1.0 hectares of land and on the same date made another first registration of Loopsome Portland as proprietor with provisional title of Block 1248B parcel 210 containing 0.04 hectares of land.

The 0.04 hectares of parcel 210 was the house lot on which Loopsome Portland had built and the 1.0 hectares was the remainder of the land which the parents of the parties had previously owned in that area.

The Law

The pleadings and evidence reveal that the land in dispute is registered under the Land Registration act 1984. Section 3(1) of that Act states: -

"3(1) Except as otherwise provided in this Act, no other law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act....."

What is a First Registration?

The Land Registration Act 1984 provides: -

"9(1) The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Act, and a register in respect of each lease required by this Act to be registered."

"10 Whenever an adjudication record has become final under section 23 of the Land Adjudication Act and the Adjudication Officer has delivered the adjudication record to the Registrar, the Registrar shall prepare a register for each parcel shown in the adjudication record and for any

lease required to be registered, and shall register therein any of the particulars in the adjudication record which requires registration."

"11(1) The first registration of any parcel shall be effected by the preparation of a register in accordance with the provision of section 9 and the signing by the Registrar of the particulars of the ownership and the particulars of encumbrances, if any, appearing thereon."

The effect of these provisions is that when the land became registered under the Act the root of title for the first registration was based on the adjudication record and not on the deeds of the parties. The registration is effected by the Registrar of Lands and he has a mandatory obligation to record the particulars appearing on the adjudication record, when it is delivered to him by the Adjudication Officer. Accordingly, the persons who are registered as proprietors have no role to play in the process of the first registration.

It is clear from her definition of the "real issue" that the learned trial judge misdirected herself in concentrating on the legal effect of the Deed of Deposit of receipt held by Loopsome Portland when it had no bearing whatsoever on the process of registration under the Land Registration Act 1984.

The document on which that first registration was based was the adjudication record. The process by which that record is produced is prescribed for in the Land Adjudication Act 1984.

Section 19 states: -

"When the adjudication record in respect of any adjudication section has been completed, the Adjudication Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof and of the place or places at which the same can be inspected together with the demarcation map.

Section 23 states: -

"After the expiry of ninety days from the date of publication of the notice of completion of the adjudication record or on the determination by the Adjudication Officer of all petitions presented in accordance with subsection (1) of section 20, whichever shall be later, the adjudication record shall, subject to the provisions of the Land

Registration Act, 1984, become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the adjudication record and demarcation map to the Registrar together with all documents received by him in the process of adjudication."

A right of appeal to the land Tribunal is conferred by section 20(4) as amended;

"Any person may within two months of the date of the certificate referred to in section 23, appeal to the Land Adjudication Tribunal against any decision of the Adjudication Officer."

These provisions demonstrate that the adjudication process was a judicial process with a right to appeal. They also provide for the finality of the adjudication process, and make it clear that the document on which the Registrar of Land becomes bound to act is the final adjudication record. That is a very important point in the case because the Act provides for intermediate steps between the completion of the adjudication record and the time when it becomes final.

Section 22(b) of the Land Adjudication Act states: -

"22 At any time before the adjudication record becomes final, the Adjudication Officer-

(b)"after taking such steps as he thinks fit, to bring to the notice of every person whose interest is affected his intention to make any material alteration in the record which he considers necessary, and after giving such person an opportunity to be heard, may make such alteration."

The power to make alterations on the adjudication is thereby vested in the Adjudication Officer. The exercise of the power to make an alteration is but one step in the adjudication process and becomes merged in it. After the exercise of such power the Registrar of Lands is bound by the adjudication record as amended, and must base the first registration on it.

It is clear that there was a complete misunderstanding of these legislative provisions, throughout the entire proceedings. This led the learned trial judge to misdirect herself and consider the process by which the Adjudication Officer came to exercise his power to alter. The provisions of section 23 of the Land Adjudication Act 1984 make this consideration of no effect. Once the Adjudication Officer has signed the certificate that the

adjudication record is final, the remedy of any aggrieved person is to appeal against his decision. The adjudication record, is a valid and effective order. The well established principle is that a judicial order is effective and binding until it is set aside.

The evidence in this case revealed that no application had ever been made to set aside, vary or appeal against the adjudication record. In fact that record was never even considered in the Court below. The consideration, therefore, of the legal effect of the "application to alter the adjudication record" was futile.

The error seemed to go deeper than that because it appeared that it was thought that this document was improperly used by Loopsome Portland to effect an alteration of the Land Register. As I have pointed this was not the case. The Registrar of Lands acted on the adjudication record as was his statutory duty.

The only entry on the Land Register for Block 1248B parcel 48 was that naming the respondent as proprietor. No alteration was made at all. It would seem that the false inferences, which led to the second order, were drawn from the alteration to the adjudication record. The order for the cancellation of the alteration, being based on wrong assumptions of fact must be set aside.

With regard to parcel 210 there were entries made on the Land Register subsequent to the first registration. On 4th May 1987 by virtue of instrument 928/87 the registration of Loopsome Portland as proprietor was cancelled and Brender Portland (minor) was registered as proprietor with a restriction against any dealings with the land until she reaches the age of majority.

The power to, and method of transfer of land is prescribed in the Registered Land Act 1984 section 56(1)&(2): -

- 56(1) "A proprietor, by an instrument in notarial form may, transfer his land, lease or hypothec to any person with or without consideration.
- (2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or hypothec and by filing the instrument."

The effect of section 56 is that Loopsome Portland being the registered proprietor had the power to transfer his land. It was an error of law to consider that the validity of the transfer to Brender Portland depended upon the legal efficacy of the Deed of Deposit of receipt. This error was compounded by the false inference of fact that parcel 210 had been created out parcel 48. It was also erroneous to consider that instrument 928/87 was an adjudication record, and that it was altered. It was a document of transfer under section 56 of the Registered Land Act.

For these reasons the order cancelling the alteration to adjudication record 928/87, being based on wrong assumptions of fact and law must be set aside.

The appeal is allowed and we order that the orders for:-

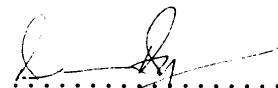
- "1. The cancellation of the alteration to the Adjudication Record No.928/87 made on 4th May 1987.
2. The cancellation of the alteration to the respondent's certificate of the absolute title of 20th November 1986 relating to Block 1248B Parcel No.48;"

be set aside and

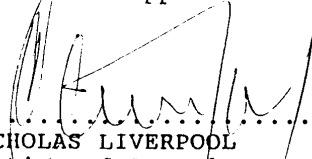
- "3. A declaration that the respondent is the absolute owner of Block 1248B Parcel No.48 as was registered on 10th November 1986;"

be confirmed.

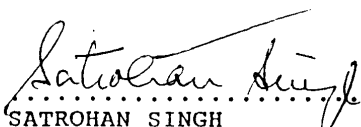
The appellant is to have his costs here and in the Court below.


.....
DENNIS BYRON
Justice of Appeal

I concur.


.....
NICHOLAS LIVERPOOL
Justice of Appeal

I concur.


.....
SATROHAN SINGH
Justice of Appeal