

ANGUILLA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 of 1986

BETWEEN:

MARIE BARZEY - Appellant
and
MAISIE VIEIRA - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron

Appearances: W.A. Archibald for the Appellant
I.D. Mitchell and P.J. Webster for the Respondent

1991; May 13,
1992; May 11.

JUDGMENT

MOE, J.A.

This appeal is from a judgment in which the learned Judge found that the appellant, a child of Maria Richardson now deceased, trespassed on a parcel of land, numbered Lot 13 in Road Section Block 08512B - which formed part of the Estate of the said Maria Richardson and at the material time held by and in the possession of the respondent, who was not a child of the said deceased Maria Richardson. The learned Judge also found that the appellant prevented the respondent's building contractor from working on the lot and awarded the respondent \$21,675.00 special damages and costs.

Maria Richardson died intestate in November 1972. Her husband Henry Richardson obtained letters of Administration to her estate. On 16th September, 1979, Henry Richardson as personal representative of the deceased Maria Richardson transferred the lot to the respondent. On 19th March, 1980 the respondent was registered in the Land Register as proprietor of the Lot with absolute title and issued with a Certificate of Title on 23rd May, 1980.

In August 1981 the respondent entered into an oral contract with a construction Company to build a house for her on the lot for U.S. \$48,000.00. She paid a deposit of \$10,000.00; the Company did excavations, placed stakes and laid out lines. The appellant
/pulled.....

pulled up the stakes and lines and placed broken bottles on the lot. The broken bottles were removed at a cost of \$75.00 and the Company stopped work. In March 1982 the respondent entered into a written contract with the same construction Company to build the house for the price of U.S. \$57,000.00.

To the respondent's claim that she was owner in possession of the lot and that the appellant had trespassed thereon and prevented the building work from being carried out. the appellant entered a denial, claimed that the respondent had no rights, title or interest in the lot, that she by error and/or fraud acquired registration of the lot in that she was never in possession of it by prescription, nor consideration, or through or under any other duly registered title and that in any event she has no claim to it which de jure emanates from the succession of the estate of Agatha Richardson. The appellant counterclaimed for rectification and cancellation of the registration of the lot.

The respondent admitted that she is not an heir of Agatha Richardson and that she holds the lot subject to any unregistered rights to which her father Henry Richardson held the lot.

In the judgment the learned Judge expressed the view that Henry Richardson ought not have transferred the lot to the respondent as she is not one of the persons entitled to share in the property of Maria Richardson but the Judge found that the respondent was the registered proprietor of the lot and in actual possession of it. The Judge also did not consider the appellant to be the proper person to maintain an action in respect of the Lot and dismissed the appellant's counterclaim for rectification and cancellation of the registration of the Lot.

The grounds of appeal were:-

- (a) The learned Judge erred in that she found that the respondent was in possession of Lot 43 and that the defendant/appellant had trespassed on that parcel,
- (b) There was no evidence that the halting of the construction work was due to an unlawful act of the defendant/appellant or at all,
- (c) The judgment is against the weight of the evidence.
- (d) The Judge was wrong to award special damages as there was no finding of unlawful interference with the building contract.

/The burden.....

The burden of the appellant's submission is that the respondent is not holding the lot as a person entitled to do as she pleases with it but holds it subject to all the incidents to which Henry Richardson, the Administrator held it. Reference was made to sections 23 and 27 of the REgistered Land Ordinance 1974 No. 4 of 1974. Those sections provide as follows:-

"23. Subject to the provisions of section 27 of this Ordinance the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever but subject -

- (a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 20 of this Ordinance not to require noting on the register:

Provided that -

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee;
- (ii) the registration of any person under this Ordinance shall not confer on him any right to any minerals or to any mineral oils unless the same are expressly referred to in the register.

"27. Every proprietor who has acquired land, a lease or a change by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferer held it, and subject also to the provisions of any law relating to bankruptcy and to the winding up provisions of the Companies Law, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration."

That the respondent held the lot as provided for in those provisions was admitted and was not an issue for determination.

In effect therefore the appellant was not questioning that the respondent had title to the land nor that she was in actual possession of it but contended that it was not unlawful for the appellant, being one of the persons entitled to share in the Lot, to act in the way she did i.e., to prevent building on the lot to which she is entitled to a share. In this sense, the submission is, the appellant was not a trespasser.

/This submission.....

This submission is unacceptable. The appellant has conceded that the respondent was in actual possession and it is trite law that actual possession is good against all except those who can show a better right to possession in themselves. (See Halsbury 4th Ed. Vol. 38, para 1213). The appellant could not show that at the material time she had a better right to possession to the lot than the respondent who had absolute title to it by virtue of the provisions of section 23 of the Registered Land Ordinance 1974 (supra). The finding that the appellant trespassed on the lot must be upheld.

The submission on behalf of the appellant did not challenge the findings that the acts of the appellant had the effect of halting the construction work which the respondent contracted to have done. The thrust of the submission was against the amount awarded. There was evidence that there was a break in the performance of the building contract entered into in August 1981. There was also the evidence that in March 1982 the construction Company agreed to continue building the house on condition that the contract price be varied to U.S.\$57,000.00. The Company gave the respondent a comparison of cost of materials between 1981 and 1982 and there was an increase in labour. A careful study of the record reveals that the evidence as to the need for a variation of the contract price upwards by U.S. \$8,000.00 is very thin and vague and I am not entirely satisfied that the respondent specifically and precisely proved as required her loss in this regard. I however accept that she is entitled to an award and I think that a reasonable amount in all the circumstances would be \$1,000.00.

The appellant contended that the evidence discloses that before the Court is a situation in which a remedy ought to be given and in the circumstances the Court should invoke its equitable jurisdiction and order rectification or cancellation of the registration of the lot. An order such as sought would affect the estate of the deceased Maria Richardson. There is no one responsible for the administration of the estate before the Court and in the circumstances I do not see how such an order could be made. See Noel v Noel (1959) 1 W.I.R. 300. The dismissal of the appellant's claim for rectification or cancellation of the registration of the lot is also upheld.

In the result I would vary the amount of special damages awarded to the respondent to \$1,000.00 and dismiss the appeal with costs to the respondent.

/G.C.R.....

G.C.R. MOE,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

C.M.D. BYRON,
Justice of Appeal