

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 14 of 1989

BETWEEN:

The Legal Personal Representative
of the Estate of BEATRICE ISRAEL
otherwise known as BEATRICE BROWNE,
deceased

and

BERTRAM BROWNE

- Appellants

and

EDMUND ISRAEL

- Respondent

Before: The Honourable Mr. Justice Bishop - Chief Justice (Acting)
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron (Acting)

Appearances: O. Sylvester, Q.C., and M. Williams for the
Respondent
A. Saunders and Dr. R. Gonsalves for the
Appellants

1990: April 3,
July 16

JUDGMENT

MOE, J.A.

This appeal is against a judgment of Singh J. in which he made various orders in favour of the respondent with respect to a parcel of land situate at Cane Garden and bearing Registration No. GCG51G317.

The parcel of land was formerly owned by Beatrice Israel, now deceased, who was the wife of the respondent and mother of Bertram Browne, the appellant. On 7th January 1970, the deceased entered into a contract for the sale of one half share in the parcel of land to the respondent. This agreement was not registered. By Deed of Gift dated 21st March, 1973 and bearing registration No. 523 of 1973 the deceased gave the parcel of land to her son the appellant.

/In his.....

In his Statement of Claim the respondent pleaded that the Deed of Gift is a fraudulent conveyance which ought to be set aside and/or rectified to reflect his interest therein; alternatively that the appellants hold one half share of the land in trust for him. He claimed:-

- (a) A declaration that the appellant is a trustee for him of a one-half share in the land and is bound to assure the same to him.
- (b) Rectification of the Deed of Gift to reflect his one-half share in the property; and various consequential orders.

The appellant's plea was that he is a bona fide purchaser for value without notice by virtue of the Deed No. 423 of 1973 and the respondent pleaded notice of a valid contract of sale binding the property.

The learned trial Judge held that upon the contract of 1970 being formed the deceased became a trustee for the legal estate of the respondent in the property and the deceased as such trustee or otherwise had no authority to unilaterally effectively dispose of the respondent's interest in the property. He found that the appellant had no knowledge of the respondent's interest in the land. He however found that the conveyance to the appellant under Deed 523 of 1973 was not for valuable consideration, and that he was a volunteer in the transaction. He therefore held that the appellant became the recipient of a gift part of which did not belong to the giver and as such he would have to give it back to the respondent. He ordered:-

1. A declaration that the second-named defendant (appellant) in his representative and personal capacities is a trustee for the plaintiff (respondent) of a one half share of Property One (the property) and is bound to assure same to the plaintiff.
2. Rectification of Deed of Gift No. 523 of 1973 to reflect the plaintiff's one half share. The second defendant in his personal and representative capacity ordered to do so forthwith, failing which the Registrar of the Supreme Court ordered to have the rectification done.

/3. Vestina.....

3. Vesting in the plaintiff in fee simple of his one half interest in the property.
4. Severing of the joint tenancy created in the property and in the event of the parties not arriving at a just division, liberty given to both parties to approach the Court to effect a partitioning of their respective interests in the property.
5.
6. The Registrar to take an account of the monies received by the No. 2 defendant with respect to the house he sold from Property One and to enquire what amount if any was used towards the maintenance and upkeep of Property One and the second defendant to pay to the plaintiff a one half share of such purchase price after such deductions if any, as are found by the Registrar.

The complaint of the appellant is that the learned trial Judge having not found the Deed of Gift No. 523 of 1973 to be a fraudulent conveyance as pleaded or that there was notice of the respondent's interest in the property as pleaded that was an end of the respondent's case as pleaded. That the learned Judge was wrong to have found that the respondent was a volunteer and erred in entering judgment for the respondent.

Counsel for the respondent stated first that notice pleaded was constructive notice referring to paragraph 5B(ii) of the Reply which stated "At the time of the Deed of Gift the property consisted of the matrimonial home in which the plaintiff (respondent) and the deceased were living at all material time and the second defendant knew or ought to have known apart from any contract of sale of half (½) share therein and is alleged herein (and of which the second defendant (appellant) knew) that the plaintiff as the husband of the deceased was entitled to a share in the matrimonial home". He contended that when the learned Judge stated in his judgment the appellant had no knowledge of the respondent's interest in the property he meant actual notice but that in this case the appellant had constructive notice.

Counsel's submission also was that the person who receives

/thelegal.....

the legal estate in a property from a trustee becomes a trustee. He referred to Halsbury (3rd Edit.) Vol. 14 P.54, para. 1016 which states "where there is a trust of the legal estate a purchaser of a second or subsequent equitable interest who gets in the legal estate after notice of the trust, cannot avail himself of the legal estate as against the prior equitable interest, although he paid his money before receiving notice of the trust".

As to constructive notice Counsel for the appellant points to the absence of registration of the contract for the sale of one half interest in the property to the respondent which document he submits is a document required to be registered under section 5(1) of the Registration of Documents Act No. 3 of 1957.

On the appellant's own plea the learned Judge had to determine whether the conveyance to him by Deed 523 of 1973 was for value. On this issue the learned Judge considered the terms of the Deed and evidence of the appellant. The relevant part of the Deed is as follows:-

"AND WHEREAS THE GRANTOR for various good and sufficient consideration hath agreed with the GRANTEE her son to grant him the said hereditaments in the manner herein after appearing.....

NOW THIS INDENTURE WITNESSETH that in pursuance of the premises and in consideration of the various good and sufficient consideration aforesaid and also in consideration of the sum of \$5.00 by the GRANTEE paid to the GRANTOR on or before the execution of these presents (the receipt whereof the GRANTOR doth hereby acknowledge) She the GRANTOR doth hereby grant and convey unto the GRANTEE....."

Evidence of the appellant was that the Deed of Gift of the property to him was his mother's idea as she was getting old and wanted him to take possession of the property. He came to St. Vincent for that purpose and the Deed was drawn up.

The learned Judge held that the consideration referred to in the Deed is meritorious consideration and \$5.00 monetary consideration which was nominal. Taking the evidence as a whole he did not find the transaction in Deed No. 523 of 1973 was one of bargain and he accordingly held the conveyance was not for value and the appellant a volunteer in the transaction.

/The evidence.....

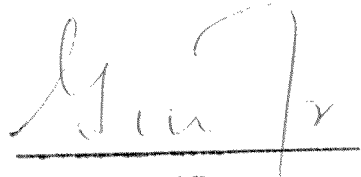
The evidence was there on which the learned Judge could have come to his conclusion and entailed in the determination of an issue pleaded was the finding of the appellant to be volunteer. There can be no justification for interfering.

Having found the appellant to be a volunteer, it was not necessary for him to decide whether he had notice or not of the respondent's interest.

It is well established that with respect to property disposed of by persons standing in a fiduciary position, such property or the proceeds of it can be followed if it can be identified and there is no distinction as regards this doctrine between an express trustee or an agent or bailee standing in a similar fiduciary position. See New Zealand and Australian Land Co. v. Watson (1881) 7 Q.B.D. 374 and Re Diplock's Estate (1948) 2 All E.R. 318.

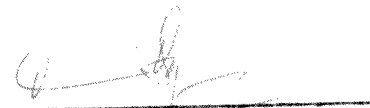
The conclusion of the learned Judge that the appellant must return the one half share in the parcel of land to the respondent is therefore sustained. The orders made were all as a consequence of finding that the appellant must return the one half share in the parcel of land to the respondent.

I would dismiss the appeal with costs to the respondent.



G.C.R. MOE,
Justice of Appeal

E.H.A. BISHOP,
Chief Justice (Acting)



C.M.D. BYRON,
Justice of Appeal (Acting)