

Eastern Caribbean Supreme Court Reports/ 1995 /
Anguilla / James Ronald Webster and another v
Beryl St.Clair Fleming [as personal representative of the Estate of Samuel Henry Hodge, deceased] - [1995]
ECSCJ No. 32

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**James Ronald Webster and another v Beryl St.Clair Fleming [as personal
representative of the Estate of Samuel Henry Hodge, deceased]**

CIVIL APPEAL NO.6 OF 1993

EASTERN CARIBBEAN SUPREME COURT; COURT OF APPEAL; ANGUILLA

Byron, J.A., Singh, J.A., Joseph, J.A. [Ag.]

11 May 1994, 12 May 1994

8 May 1995

Mr. Joseph Archibald, Q.C. and Ms. Bernie Stephenson for the appellants

Miss Kentish for the Respondent

JUDGMENT

1 BYRON J.A. This is an appeal against the decision of Matthew J. delivered on 12th October 1993, in which he ordered the cancellation of the registration of the appellants as registered proprietors of the portion of land registered in the registration section West Central Block 28111B Parcel 9 and ordered that the said land be registered in the name of the respondent. This order followed his finding that the Recording Officer had acted contrary to law in adjudicating Parcel 9 to the first-named appellant after the certificate of finalisation of the West Central Section had already been published.

2 The appellant's notice of appeal contained 6 grounds which in summary challenged the decision on the basis that more than 16 years having elapsed from the first registration, the combined effect of the Land Adjudication Ordinance 1974 and the Registered Land Ordinance 1974 made the appellant's title indefeasible except for fraud or mistake, and made these proceedings an unlawful attempt to appeal outside of the time limited by statute.

3 The respondent cross-appealed against the failure of the learned trial Judge to declare that having regard to the doctrine *nemo dat quid non habet* the appellants acquired no lawful title to or interest in the land contained in Parcel 9 under the contract of sale between Hubbell Hodge and the first-named appellant.

The Invalid Sale

4 The findings of the learned trial Judge were that in 1966 one Hubbell Hodge [now deceased] entered into an agreement for the sale of a parcel of land to the first-named appellant and gave him a signed receipt in the sum of \$15,000.00, and on 29th January 1975 executed a deed of conveyance, in respect of the said sale, in which the consideration was stated to be \$3,000.00. The learned trial Judge went on to find that Hubbell Hodge did not have the right to sell the land because it belonged to the estate of his late grandfather Samuel Hodge, who had died intestate in 1926. The estate had remained unadministerable until the respondent was appointed administratrix in 1981. She did not assent to the vesting of title in either Hubbell Hodge or the first-named appellant. The sale was therefore of no effect and the deed of conveyance did not pass title of the land to the first-named appellant.

5 I think that despite these findings the learned trial Judge was right to consider that the change in the system of land registration, effected by the Registered Land Ordinance 1974, establishing title to land by entry on the land register made it a futile exercise for him to make the declaration sought by the respondent. I would therefore dismiss the cross-appeal. I would make no order as to costs because this conclusion follows from the determination of the appeal, and it would seem reasonable for costs to follow that event.

The Title by Prescription

6 The learned trial Judge found as a fact that the appellants had not been in possession adverse to the respondent so as to acquire any prescriptive title. He found that the evidence of possession was insubstantial and had not demonstrated that they openly treated the land as their own to the exclusion of all other persons.

7 There was no appeal against this finding.

The Registration as Proprietor

8 In 1974 Hubbell Hodge made a claim in the Land Adjudication process on behalf of the estate of Samuel Hodge deceased. The undisputed evidence was that no claim was made by the first appellant, or anyone else on his behalf, in respect of that land. The omission was not necessarily fatal because the Land Adjudication Ordinance Section 9[1] gives the relevant officers power to proceed as if a claim had been made if satisfied that a person who has not made a claim has a claim to an interest in land within the adjudication section.

9 On 8th February 1975 a parcel of land, with boundaries demarcated after survey, containing 27 acres was adjudicated with absolute title to the Heirs of Samuel Hodge on the basis of title deeds recorded in 1897 by virtue of an Adjudication Record signed by John R. Vincent the Recording Officer. It was recorded in Registration Section: West Central, Block 28111 B Parcel 1.

10 The learned trial Judge found that the Adjudication for the West Central Section became final on 6th May 1975.

11 This finding was challenged on appeal. The certificate of finalisation which the Adjudication Officer was required to issue, in accordance with the Land Adjudication Ordinance 1974 Section 23, was not exhibited. The date of finalisation was inferred from the date of the publication of the certificate of finalisation of the Road Section which succeeded that of the West Central Section. This conclusion was supported by other evidence, which indicated that the case was conducted on the basis that at the material time the adjudication process for the entire island had been completed. I would refer only to an extract of the evidence given by the first-named appellant during his cross-examination:

"I assume that the adjudication record for Parcel 1 was closed when I made a claim for Parcel 9. The Adjudication Officer told me when I applied to have my land registered that the whole process island wide was closed. I understood that I could no longer come with a claim at the time."

12 This evidence was extremely significant, especially as the first-named appellant was the Chief Minister of Anguilla at the time he held that conversation with the Adjudication Officer.

13 I would not disturb that finding by the learned trial Judge.

14 On 12th August 1975 the Adjudication Record for Parcel 1 was altered by the said John R. Vincent, the Recording Officer. The Adjudication Officer took no part in the process of the alteration. A line was drawn through the entry for 27 acres, and beside it was written "ND", [which was explained to mean that the acreage was undetermined] and a notation was inserted on the record in the following terms:

"No subdivision adjacent to the undemarcated eastern and western boundaries as shown until fixed to the satisfaction of the Registrar of Lands. JRV 12.8.75."

15 The official demarcation map for the land was also altered by a broken line, representing an undemarcated boundary for a new Parcel 9 estimated to contain about 3 1/4 acres, out of what had been Parcel 1.

16 On the same 12th August 1975 a parcel of land of undetermined acreage was adjudicated with provisional title to the first appellant by virtue of an Adjudication Record, signed by John R. Vincent, Recording Officer. It stated that the date on which possession by the provisional owner commenced was 1st January 1975. It was recorded as West Central Block 28111 B Parcel 9.

17 The learned trial Judge concluded that the record for Parcel 1 and indeed for the entire West Central Section having been final since the 6th May 1975, the Recording Officer acted in contravention of the Land Adjudication Ordinance, when he altered that record and created the adjudication record for Parcel 9, and that the Court should rectify the illegality.

18 It is against this finding that the appeal is concentrated.

The Appeal

19 In his written submission learned Counsel for the appellants submitted that the real issues are:

- [a] whether the High Court could lawfully adjudicate on the acts of the Recording Officer in the judicial process under the Land Adjudication Ordinance where such a power was statutorily reserved to the High Court by way of appeal within the specified time;
- [b] whether the High Court could lawfully interfere with the first registration of Parcel 9 in the name of the first-named appellant or the second registration thereof in the names of the appellants in the absence of an appeal to the High Court as aforesaid or on proof of mistake or fraud.

20 The legislative environment, as he explained, could be summarised. In 1974 the Land Adjudication Ordinance was enacted in Anguilla "to provide for the adjudication of rights and interests in land and for purposes connected therewith", with provision for appeal to the High Court. At the same time the Registered Land Ordinance was enacted "to make provision for the registration of land and for dealings in land so registered and for purposes connected herewith". All land in Anguilla became subject to these ordinances which together prevailed over all other laws relating to land adjudication and registration. The end product of this judicial adjudication process was the compulsory creation by the Registrar of Lands of a first registration of land with absolute or provisional title on the Land Register under the Registered Land Ordinance by virtue of the final adjudication record emanating from the judicial process under the Land Adjudication Ordinance. Such a first or subsequent registration can be defeated and rectified only on proof of mistake or fraud under the Registered Land Ordinance.

The Land Adjudication Ordinance

21 In order to relate the judicial process under the Land Adjudication Ordinance 1974, to this case it is necessary to distinguish between the functions of the Adjudication Officer and the Recording Officer. The Adjudication Officer was in charge of the adjudication process. By Section 4[1], he was empowered to appoint Recording Officers to perform the duties and exercise the powers conferred upon them by the Ordinance. These duties and powers are described in Section 14 as being to investigate all claims to any interest in land, and to prepare adjudication records in accordance with Section 18 in respect of every parcel of land shown on the demarcation map.

22 The legislation does not confer on the Recording Officer any power to adjudicate where there were two or more claimants to any interest in land. That power is specifically reserved to the Adjudication Officer by the Land Adjudication Ordinance 1974 Section 15.

23 Section 15 provides as follows:

"[1] If in any case -

[b] there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them, the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer.

[2] The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection [1], having due regard to any law which may be applicable

Provided"

24 In a case such as this where the appellants and the respondent were, in effect, two claimants to the land contained in Parcel 9, the Recording Officer did not have the power to determine which of them should be adjudicated as Registered Proprietor. Section 15 prescribed that judicial function to be exercised solely by the Adjudication Officer and mandated the Recording Officer to refer the matter for his decision. No such reference was made and the Adjudication Officer never adjudicated between these rival claims. The Recording Officer's adjudication of Parcel 9 in favour of the appellant was, therefore, *ultra vires* Section 15.

25 Section 19 provides as follows:

"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 of the place or places at which the same can be inspected together with the demarcation map."

26 When the Adjudication Officer signed the certificate that the adjudication record had been completed, in accordance with Section 19 of the Ordinance there were no further statutory duties to be performed or powers to be exercised by the Recording Officer in respect of that adjudication section, and he became *functus officio*. The adjudication record for Parcel 9 was *ultra vires* for the additional reason that it was made when the Recording Officer had no authority.

27 The statutory method of challenging any act or omission of the Recording Officer in the preparation of the adjudication record was by petition to the Adjudication Officer within 90 days of the notice given under Section 19, as prescribed by Section 20 of the Ordinance.

28 The adjudication record for Parcel 1 which was finalised on 6th May 1975 not did grant the first appellant any interest in the land contained in Parcel 9. He did not petition the Adjudication Officer under Section 20. Instead, what happened was that the Recording Officer purported to alter the adjudication record for Parcel 1.

29 The process of alteration of an adjudication record is provided for in the Land Adjudication Ordinance

1974 Section 22:

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

- [a] may correct in the record any error or omission not materially affecting the interest of any person; and
- [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; provided"

30 The power of alteration under Section 22 vests in the Adjudication Officer and not in the Recording Officer. In other words the Recording Officer did not have any power to alter the adjudication record.

31 Counsel for the appellant submitted that the Court had no power to consider the process by which an adjudication record came to be altered and was bound by the altered record in the same way as by any final judicial order. He relied on the case of *Loopsome Portland et al v Sidonia Joseph* [1993] Civil Appeal No.2 of 1992, St.Lucia, unreported where the provision in the St.Lucia Land Adjudication Act 1984 is in identical terms.

32 In that case I expressed the opinion of the Court at p.7 that:

"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."

33 In my view the issue here is quite different. The important distinction to be made is that in *Portland's case* the alteration was made by the Adjudication Officer himself, the lawful authority. In this case the alteration was made by the Recording Officer. Consequently, no consideration of the process by which the Adjudication Officer came to exercise his power to alter is required. The relevant but different enquiry is whether the altered adjudication record reflects the decision of the Adjudication Officer, and in my opinion the Court has the power to determine its answer.

34 The only judicial process provided in relation to the statutory duties and powers of the Recording Officer are those prescribed by Sections 15, 20 and 22 of the Ordinance, to be exercised by the Adjudication Officer prior to the finalisation of the adjudication record.

35 The legislation intends that this adjudication process should be final except for a right to appeal to the High Court against the decisions and acts of the Adjudication Officer within a limited time, as expressed in Sections 23 and 24.

36 By Section 23, after certifying that 90 days had expired from the publication of the notice under Section 19 or the determination of all petitions under Section 20, whichever is later, the Adjudication Officer is required to deliver to the Registrar of Lands the adjudication record and demarcation map for compilation of the land register.

37 By section 24[1]:

"Any person who is aggrieved by any act or decision of the Adjudication Officer and desires to question it or any part of it may within ninety days from the date of the certificate of the Adjudication Officer under Section 23 ... or within such extended time as the court, in the interests of justice may allow, appeal to that court for redress ..."

38 This court has already expressed itself on the principle that the period by which the time for an application would be extended must not be so long as to prejudice the interests of the party against whom such an application is made. See *Skelton v Skelton* [1986] 37 W.I.R. 177 and *Frett et al v Thomas et al* [1991] Civil Appeal No.2 of 1990, British Virgin Islands.

39 However, this is not an action brought by way of appeal under Section 24 of the Land Adjudication Ordinance. It is obvious that no such action could lie because, in addition to extreme lateness, no complaint is made against any act or decision of the Adjudication Officer.

40 In answer to the first question posed by the appellant I would say that the Land Adjudication Ordinance did not confer any power on the High Court to adjudicate on the acts of the Recording Officer. It conferred such jurisdiction on the Adjudication Officer. The appellate jurisdiction it conferred on the High Court was limited to appeals against the acts and decisions of the Adjudication Officer and within a limited time. I agree that the order challenged in this appeal was not, and could not have been, in exercise of the appellate jurisdiction conferred on the High Court by the Land Adjudication Ordinance 1974.

The Registered Land Ordinance

41 The Registered Land Ordinance 1974 compels the Registrar of Lands to enter the first registration of land with absolute or provisional title on the land register by virtue of the final adjudication record emanating from the judicial process under the Land Adjudication Ordinance.

42 The only method of defeating such a first or subsequent registration is by a court order for rectification on proof of mistake or fraud under Section 140 of the Registered Land Ordinance 1974 which provides:

"140

- [1] Subject to the provisions of subsection [2] of this section, the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- [2] The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in such omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."

43 Counsel for the appellant referred to the case of *Forbes v Forbes* [1977] Civil Appeal No.5 of 1976 British Virgin Islands where St.Bernard J.A. expressed the opinion that production of the absolute title in the land register would raise the issue of *res judicata*. That principle, however, does not affect the specific provisions of Section 140 which make it clear that the Court does have jurisdiction to order rectification on the ground of mistake or fraud.

44 In answer to the second question posed by Counsel for the appellant I would say that in accordance with the specific provisions of Section 140, aforesaid, the High Court could lawfully interfere with the first registration of Parcel 9 in the name of the first-named appellant or the second registration thereof in the names of the appellants in the absence of an appeal under the Land Adjudication Ordinance, but only on proof of mistake or fraud in the registration process.

45 But the case does not end there because the next pertinent question which arises is whether what was recorded on the land register was the final decision of the Adjudication Officer, and if not was the first and second registration obtained, made or omitted by fraud or mistake.

46 In this case there was no allegation of fraud in the pleadings. The case was based on mistake.

47 There has been no comprehensive definition of the word mistake. In the case of *Chowood Ld v Lyall* [1930] 2 Ch at p.156 Lawrence L.J. considered the application of the word in the context of the English Land Registration Act 1925 Section 82 which provided for rectification of the land register. He said at p. 157:

"The other point was that the case has not been brought within s.82, because the registration of the plaintiffs' title was not a mistake within the meaning of sub-s. 1[h] of that section. I disagree with that contention. I see no reason to limit the word 'mistake' in that section to any particular kind of mistake. The court must determine in every case whether there has been a mistake in the registration of the title, and if so, whether justice requires that the register should be rectified. Here I think there has been an obvious mistake by the erroneous inclusion in the plan filed in the register of this and of the two other strips of land which did not belong to their vendors. The evidence is clear that the predecessors in title of the plaintiffs had in fact no title and did not claim to have any title to the strip in question, and obviously therefore never intended to convey it to the plaintiffs. I have no reason to doubt that the plaintiffs thought that they were purchasing the land delineated on the plan, but in getting their title registered in the Land Registry they were acting on the mistakes which had been made in that plan, and the entry made in the Registry in derogation of the right of the true owner who was in possession was an entry made by mistake within the meaning of the section."

48 The application of a provision in the Land Registration Ordinance of the British Virgin Islands identical with Section 140 in the Anguilla Ordinance was considered in *Skelton v Skelton* [1986] 37 W.I.R. 177 where Robotham C.J. said at p.181:

"I would agree that, if the expression of the final decision of the adjudication officer was incorrectly recorded on the Land Register, section 140 could be resorted to. I cannot, however, accept that it can be applied in the original jurisdiction of the High Court to alter in a material particular his individual findings of fact, based upon his own inquiry, simply because the judge sitting in an original jurisdiction is of the opinion that his findings were erroneous. That is not the type of mistake contemplated by section 140."

49 I think that there is no difference in the opinions expressed as to the meaning of mistake in these two cases. In *Skelton* the phrase "type of mistake" was used to distinguish between the authors of the mistake, not the nature of the mistake itself. The distinction was between a mistake made by the Adjudication Officer, which was not a mistake contemplated by Section 140, and a mistake made by someone in the registration process which could be rectified under Section 140.

50 In my Judgment any mistake made in the registration process could be rectified. The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration process. A misunderstanding as to what was the real decision of the Adjudication Officer resulting in registering something that was not his decision as if it were, would be a mistake in the registration process.

51 There was no legal authority for the Recording Officer to alter the adjudication record for Parcel 1 which was completed on 6th May 1975. The alteration of the record by the Recording Officer on 12th August 1975 was a usurpation of the statutory power vested in the Adjudication Officer. It was an act entirely without legal authority.

52 The adjudication record for Parcel 9 was not a document which the Recording Officer was empowered to issue because it purported to make an adjudication between rival claimants and it was made after the adjudication record was finalised. It was *ultra vires*.

53 These unauthorised acts of the Recording Officer made it appear that the Adjudication Officer had altered the adjudication of 27 acres to the respondents in Parcel 1 and had adjudicated a parcel of land in favour of the first-named appellant in Parcel 9, none of which was accurate.

54 The documents on which the Registrar of Lands acted in the entries made in the register of lands were, therefore, invalid documents which were used as if they were the genuine orders of the Adjudication Officer. They must be regarded as being null, void and of no legal effect. The only authentic adjudication record was the record for Parcel 1 which was finalised by the order of the Adjudication Officer on 6th May 1975. There was an omission to act on it, however, because of the unauthorised alteration.

55 In my view, the Court is empowered by Section 140 to ensure that the first registration is based on the final decision of the Adjudication Officer and not on the *ultra vires* adjudication records issued by the Recording Officer.

56 The power of the court to apply this reasoning has been eloquently expressed in the well known case of *Anisminic, Ltd v The Foreign Compensation Commission and Another* [1969] 1 All E. R. 208 which explains that a "purported" or "forged" document is a nullity and could have no legal effect, and that the court would not protect a nullity without some specific statutory requirement to do so.

57 Lord Reid expressed the opinion at p.213, thus:

"Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination but which is in fact no determination at all. And there are no degrees of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity. I do not see how it could be said that such a provision protects some kinds of nullity but not others; if that were intended it would be easy to say so."

58 In my Judgment, therefore, the learned trial Judge was justified in finding that the registration of the appellants as proprietors of Parcel 9 and the omission to register the respondent as proprietor of the land contained therein was a registration by mistake which could be rectified under Section 140 of the Registered Land Ordinance 1974 by the order he made. Section 140[2] does not inhibit the power of the Court to make the order because the learned trial Judge found that the appellants were not in possession of the land. In any event it seemed open to the Court to find that the first appellant had knowledge of the mistake based on the extract from his evidence to which reference was earlier made.

59 I would therefore dismiss the appeal with costs to the respondent. The cross appeal is also dismissed with no order as to costs.

DENNIS BYRON

Justice of Appeal

I concur.

SATROHAN SINGH

Justice of Appeal

I concur.

MONICA JOSEPH

Justice of Appeal [Ag.]