IN THE COURT OF APPEAL

VIRGIN ISLANDS

Civil Appeal No.2 of 1972

Between: NAOMI IONA GRIGG
and
MARGARET LOUISA MARON
(Applicants/Appellants)

AND

LEOPOLE SMITH
(Caveator/Respondent)

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy (Ag.)

L. Lockhart and Mc. Welling Todman for applicants/appellants
C.E. Hewlett with Lionel W. Barker for caveator/respondent

1973, March 5.6,7

JUDGMENT

LOUISY, J.A. (Ag.)

On 19th April, 1971, the appellants presented a request for a Certificate of Title to lands at Pockwood Pond Estate containing 131.4 acres.

On 18th May, 1971, the respondent presented a caveat to the Registrar of Titles forbidding the issue of any Certificate of Title to the appellants in respect of the land applied for in the request as he is the legal owner of part of that land.

The application came on for hearing on the 23rd and 25th of March, 1972 and on the 5th August, 1972 the trial judge gave judgment for the respondent sustaining the caveat.

The appellants, being aggrieved by the trial judge's decision has asked this Court to review the decision on the following grounds -

(1) That the judgment is against the weight of the evidence

(2) That the learned Judge was wrong in law in arriving at the decision to the effect that the caveator by proving possession of the land claimed dating back to 1954 had thereby proved that he was the legal owner thereof.

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The appellants' father, David Fonseca along with Albert Pickering acquired Pockwood Pond Estate under a Deed of Conveyance No. 9 of 1928. The estate was subsequently partitioned between David Fonseca and Albert Pickering and the eastern half of the said estate comprising 238 acres was allotted to the appellants' father.

The appellants' father, by his will devised the 238 acres to the appellants and to Isaac Glanville Fonseca, and Mabel Eileen Winter, the brother and sister of the appellants respectively in equal shares.

The executors of the will of David Fonseca made dispositions of part of the 238 acres to several persons, thereby reducing the acreage to 113 acres. Isaac Glanville Fonseca and Mabel Eileen Winter subsequently relinquished their rights and interests in the 113 acres to the appellants. Although the appellants' document of title show that the area of land to which they are entitled is 113 acres, they have applied for a Certificate of Title in respect of 131.4 acres.

It is to be noted that the original Pockwood Pond Estate comprised 476 acres and was bounded as described in Deed No. 9 of 1928, Havers Estate being the eastern boundary. The half share which fell to David Fonseca was still called Pockwood Pond Estate and after the dispositions referred to above, the 113 acres belonging to the appellants continued to be called the Pockwood Pond Estate, Havers Estate being the eastern boundary. The Deed conveying 113 acres shows Havers Estate as the eastern boundary, the same boundary as the original Pockwood Pond Estate.

The area in dispute was agreed between the parties and is shown on plan 792 which was submitted by the appellants with their request. The area begins from point 109 at the south-eastern corner of the land and thence northwards to point 40A, then southwards to point 41, then westwards to a broken line marked "western limit of claim by L. Smith as on plan 184B" and thence southwards along this broken line to a

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point No. 25 near a main road and in line with the lower red rock in the sea.

The evidence discloses that the respondent's document of title to Havers Estate shows no boundaries, but the Deeds of Pockwood Pond Estate along with other evidence disclose that Pockwood Pond Estate bounds on the east with Havers Estate. The dispute is not whether the estates bound but at what points they bound.

The appellants contend that the eastern boundary of the said estate starts from the upper red rock at point 109 in plan 792, which accompanied the appellants' request, thence northwards to a lime and stone pillar on the top of Sage Mountain. The respondent, on the other hand, contends that his boundary starts from the lower red rock in the sea as shown in plan 792, thence northwards to a lime and stone pillar at the top of Sage Mountain. The red rock referred to by the respondent is to the south of point No. 25 as indicated on plan 792. The stone pillar referred to by both appellants and the respondent is not shown on plan 792 or on the respondent's plan, 289.

Before the trial judge the respondent and the appellants called evidence to support their respective contentions. Before this Court, leading counsel for the appellants examined all the evidence and submitted that on the evidence before the trial judge he should have found that the boundary line contended for by the appellants was the correct boundary of Pockwood Pond Estate. Further that that boundary was the one described in Deed No. 9 of 1928 and No. 31 of 1930, the source of the appellants documentary title to the said estate.

He further contended that as the appellants had a documentary title to the land they were presumed to be in possession of the disputed area and that further, the evidence discloses that the appellants and their predecessors in title have been in possession of the land from 1928 to this day.

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He further contended that the acts of possession of the respondent which were accepted by the trial judge as evidence of possession were insufficient to enable him to hold that the respondent was in exclusive possession from 1954. In support of his contention he referred to the cases of West Bank Estates, Ltd. v. S.C. Arthur and others (1966) 11 W.I.R. p.220 and Wuta - Ofei Danquah (1961) 3 A.E.R. p. 596.

Junior counsel for the appellants submitted that the judge could only sustain the caveat if the respondent proved that he is the legal owner of the land or part of the land in dispute. The judge, he stated, had found the respondent to be in possession and not that he is the legal owner of the land.

Counsel for the respondent submitted that the correct boundary is that given in evidence by the respondent. He pointed out that there are two red rocks indicated on plan 792, a lower red rock in the sea, and the other, an upper one, is on land. That the 1928 Deed No. 9 of 1928 refers to a stone in the sea as being the eastern boundary of Pockwood Pond Estate and the 1930 Deed No. 31 of 1930 refers to the largest red stone of a group in the sea as the southern point of the eastern boundary. He stated that it is the lower red rock in the sea which the respondent claims is the point on the eastern boundary, which divides Pockwood Pond Estate from Havers Estate.

He pointed out that the appellants' documents of title were confused as to boundaries and measurements and that the trial judge could not place any reliance on them to arrive at proper boundaries.

He stated further that he was in some doubt as to what junior counsel meant when he said that if the judge found that the respondent was in possession as owner he should not sustain the caveat.

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He submitted, that this case is one in which a boundary line is in dispute. That the judge accepted that the respondent was rightly in possession as owner of the disputed area, that the judge did not find the respondent was owner because he had proved possession but had found that he was owner in possession, as he he had a documentary title to the disputed area. The judge, he stated, accepted the lower red rock in the sea mentioned in plan 792 as the point at which the respondent's western boundary starts.

Counsel further submitted that the judge did not say that the respondent was in adverse possession. If he had said so, it would have meant that the appellants had title to the land in dispute or that they had discontinued their possession at some point of time. The judge decided what the western boundary is by his judgment. By this judgment he came to the conclusion that the respondent's western boundary started at the lower red rock and continued northwards as stated by the respondent. He found that the respondent was in possession of the disputed area as far back as 1954.

Counsel examined the evidence relating to the possession of the respondent by referring to the case for the respondent and for the appellant, he stated that the evidence of possession by the respondent was very strong and that the judge was right in finding that the respondent occupied the land as owner.

He dealt with the cases referred to by leading counsel for the appellants and submitted that these cases did not help in the instant case.

The contention of leading counsel for the appellants that the eastern boundary of Pockwood Pond Estate was indicated clearly in the appellants' documents of title cannot be supported by the evidence. The evidence discloses that there are two red rocks - one called a lower red rock which is in the sea, and the other, an upper red rock which is

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on the seashore. The upper red rock claimed by the appellants as a boundary mark is not in the sea, but on the seashore. The trial judge found a flatish red stone on the shore east of the stone claimed by the respondent. It was that stone that the appellants claimed to be the starting point on the eastern boundary. The lower red rock referred to as a stone in Deed No. 9 of 1928 which the respondent claims is the point from which his western boundary runs in a northerly direction is located in the sea according to the appellants Deed and plan 792. Deed No 31 of 1930 refers to "the largest red stone of a group in the sea". The trial judge visited the locus in quo and stated "that the court observed the large stone in the sea - the one claimed by the caveator (respondent), but that stone was not red nor did it appear to be of a group in the sea". Deed No. 9 of 1928 does not mention a red stone of a group in the sea or a red stone at all.

The issue which the trial judge had to decide between the appellants and respondent was an issue as to the correct boundary line between Pockwood Pond Estate and Havers Estate. The evidence discloses that the respondent has a documentary title to Havers Estate and was in possession of the disputed area since 1945 except for a small portion occupied by Crestalia Anthony up to 1953, but since 1954 this small portion has been occupied by the respondent.

Counsel for the appellants admitted that there is no evidence that the appellants were ever in possession of the disputed area. It is to be noted that there is no plan or diagram which shows that any part of the area in dispute was included in any of the appellants' documents of title. It is only since 1970 that plan No. 792 dated October, 1970 came into being. On that plan, the appellants indicate that the respondent is claiming the area in dispute.

In my view counsel's contention that the principles laid down in the case of West Bank Estates Ltd. v. R.C. Arthur and another should be applied in the instant case, cannot be

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supported on the facts.

Counsel's further contention that the appellants and their predecessors in title have been in possession of the area in dispute from 1928 to date is untenable. There is no evidence to show that the appellants ever exercised any acts of ownership in the area of land in dispute to support that contention. In fact, the evidence of the appellants and their witnesses is that the appellants did not exercise acts of ownership in the disputed area. This was admitted by counsel for the appellants. On the other hand the evidence discloses that the respondent occupied the disputed area and exercised acts of ownership thereon for at least eighteen years.

The appellants have not, in my view, shown a documentary title to the disputed area while the respondent has shown a documentary title to Havers Estate which includes the disputed area and has proved that he has been in possession of the area in dispute for the period already stated. The judge's finding therefore that the respondent had been in actual possession as owner of the land he claims as far back as 1954 is not, in my view an unreasonable finding on the evidence.

Having come to the conclusion that the respondent has shown a documentary title to the disputed area and that he has been in possession of it, it becomes unnecessary for me to deal with the submission made by junior counsel for the appellants.

In my view, the trial judge, on the evidence before him arrived at the right decision and he was also right in sustaining the caveat.

I would dismiss the appeal with costs to the respondent.

Allan Louisy
JUSTICE OF APPEAL (Ag.)
/CECIL LEWIS, C.J. (Ag.)

CECIL LEWIS, C.J. (Ag.)

I agree.

P. Cecil Lewis
ACTING CHIEF JUSTICE

ST. BERNARD, J.A.

I agree.

E.L. St. Bernard
JUSTICE OF APPEAL