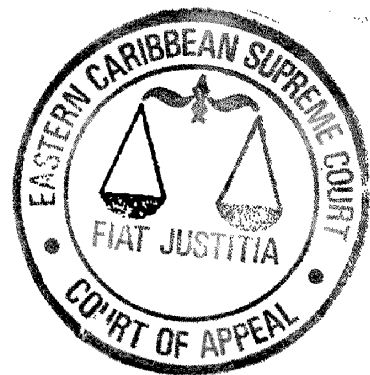


IN THE COURT OF APPEAL

VIRGIN ISLANDS



CIVIL APPEAL NO. 2 of 1973

BETWEEN:

LEVI LETTSOME

Appellant

AND:

EDNA LETTSOME
ADINA FAHIE

respondents

CIVIL APPEAL NO. 3 of 1973

BETWEEN:

LEVI LETTSOME

Appellant

AND:

&

ROY LETTSOME
LYRA FRETT
EDNA LETTSOME
MARTHA POTTER
ADINA FAHIE
MATHILDA LETTSOME

respondents

CIVIL APPEAL NO. 4 of 1973

BETWEEN:

LEVI LETTSOME

Appellant

AND:

MATHILDA LETTSOME

Respondent

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

M. Riegels for Appellant
McWelling Todman for Respondents

1975, April 15, 18

JUDGMENT

DAVIS, C.J.

These three appeals arising out of the decisions of the adjudication officer under the Land Adjudication Ordinance, 1970, as amended by the Land Adjudication (amendment) Ordinance, 1971, No. 13, are taken together by consent.

The facts and circumstances are not seriously in dispute and the record in all three cases shows that one Josephus Lettsome who died on the 23rd

September 1967 intestate originally owned all the land the title to which is not in dispute. It appears that in the year 1965 he called a meeting of his wife and children and, purported to make distributions of portions of land to his family. The appellant was not present at this meeting. A grand-daughter, Lydia Lettsome, made a record in a copy book of what was alleged to be Josephus' wishes in connection with his property. In this record reference was made to lands at "Herrington's Spring Gut", and "Brandywine Bay" but no reference was made to the land at Paraquita Bay.

At the hearing of these disputes, the Adjudication Officer rejected the evidence of the appellant and accepted that of the other members of the family. He then went on to accept what was recorded in the copy book as evidence of title to the portions of land in dispute.

It was conceded that Letters of Administration in the estate of Josephus Lettsome was granted to Mathilda, Hugh Roy, and Edna Lettsome on the 17th January, 1968.

The grounds of appeal in all three matters are identical. They are as follows:-

- i.) the Adjudication Officer erred in his decision in that he did not take into account the provisions of the Conveyancing and Law of Property Act of the Virgin Islands relating to grants in land
- ii.) the Adjudication Officer erred in his decision in that he did not take into account the provisions of the Intestates Estates Act of the Virgin Islands.

It was submitted on behalf of the appellant that the Land Adjudication Ordinance did not purport to create any new methods for acquiring interests in land with the one exception that adverse possession for 20 years now became a good root of title, and that before a finding could be recorded in favour of a claimant there must be a good documentary title or title by adverse possession for twenty years or more. Counsel further submitted that the respondents' title was stated in their claim to be based on documentary title but there was no evidence of any nature in support of this on which the Adjudication Officer could have made an award in their favour. In support of his submission, Counsel referred the court to section

10 of the Conveyancing and Law of Property Ordinance, Cap. 199 and section 5 of the Intestates Estates Act, Cap. 35.

section 10(1) of cap. 199 reads as follows:

"10(1) All conveyances of land or of any interests therein are void for the purpose of conveying or creating a legal estate unless made by deed."

Counsel for the respondent while agreeing with most of what was submitted by counsel for the appellant argued, however, that the evidence showed that Josephus intended to distribute his land and was there and then making gifts of land, albeit incomplete gifts. He referred the court to Halsbury Laws of England vol. 18 pp. 396 - 399, paras. 755 - 758, and submitted that if the facts in these appeals warranted it that the personal representatives of the intestate would be in a position to complete the gifts. He drew the court's attention to the evidence of Edna Lettsome in Appeal No. 2 in which she stated at page 11 of the record as follows:

"My sister and I have not divided up the land and we are proprietors in common with equal shares until such time as we divide up the land on the ground. When I first received the land I grazed cattle on it. It was fenced. The dry weather broke it up and so I started afresh with cultivation. I worked the land myself. I planted yams, bananas, cassava and sweet potatoes. I continued to do this every year right up to today."

He conceded, however, that she had not erected any buildings on this land. Counsel cited these facts in support of the law to which he had referred but I am of the view that the respondent in this case was not affected adversely but rather benefitted from the user of the land. Indeed, on consideration of all the evidence in these matters I can find nothing on which a court would act to complete an incomplete gift. The legal position is stated as follows in volume 18 of Halsbury Laws of England, 3rd edition at page 396, paragraph 755 -

"If a gift is to be valid the donor must have done everything, which, according to the nature of the property comprising the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do."

In the instant matters it would have been necessary for Josephus Lettsome, deceased, to execute a deed of transfer in favour of the persons to whom he wished to give various portions of his land. That it was in his power to do so is evidenced by the fact that he had done precisely this in regard to other portions of his land, for example, as in the case of Arthur Potter, his son-in-law mentioned in the copy book.

For the reasons stated I am of the opinion that these appeals should be allowed. Accordingly I would set aside the decisions of the Adjudication Officer, order that the lands in question forming part of the estate of the late Josephus Lettsome be administered in accordance with the provisions of the Intestates Estates Act, and that the costs of these appeals be borne out of the estate of the deceased.

M.H. DAVIS
Chief Justice

I AGREE.

E.L. ST. BERNARD
Justice of Appeal

I ALSO AGREE.

N.A. PETERKIN
Justice of Appeal (Ag.)