

SAINT CHRISTOPHER/NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1985

BETWEEN:

MAJORIE RAMSARAN (also known
as Marjorie Matadial) - Defendant/Appellant
and

THE ATTORNEY GENERAL for
St. Christopher & Nevis -- Plaintiff/Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: F. Kelsick and C. Wilkin for the Appellant.
T. Byron for the Attorney General

1985: Oct. 9,
March 10.

JUDGMENT

ROBOTHAM, C.J.

The appellant is a citizen of Jamaica by birth, and in December, 1973, was the spouse of a Guyanese national Hans Matadial, who was then Registrar of Titles for the State of St. Christopher and Nevis (hereinafter also referred to as St. Kitts).

The marriage is still subsisting and to date neither the appellant, nor her husband are, were, or ever have been registered or naturalised as citizens of St. Christopher and Nevis and there exists at present no legal basis whereby they can become citizens.

Both the appellant and her husband resided in St. Kitts for 5 to 6 years during which period, they produced a son Rajendra born on November 30, 1970. Whilst therefore Rajendra became a believer of St. Christopher and Nevis by virtue of his birth, both the appellant and her husband remained aliens and as such were incapable of holding any land or any mortgage on land within the State of St. Kitts by virtue of section 5 of the Aliens Land Holding Regulation Law Cap 102 - (hereinafter referred to as.....)

to as the Act).

On December 28, 1973 a registered title was issued to the appellant recorded at Y1 Folio 199 in respect of 2 acres of land being part of Shadwell Estate. This title was signed by her husband as Registrar of Titles. It was not issued to her in her own name, simpliciter, but rather it was issued to "Marjorie Ramsaran Trustee for Rajendra Ramsaran". This is of importance because as we shall later see, it was the argument of Counsel for the appellant that the Act does not say that an alien cannot hold land in trust for a citizen.

Nothing further occurred until April 26, 1976 when the appellant applied in her own name for a licence under section 3 of the Act in respect of $3\frac{1}{4}$ acres of land which included the 2 acres mentioned above. After giving the particulars required by the application, she added:

"This application is only for the purpose of holding the lands mentioned in trust for my son who was born on the 30.11.70. I regret that at the time of purchase I did not realise that I required a licence to hold land in trust for my son....."

The record does not clearly disclose by what process the size of the "trust land" was increased from 2 to $3\frac{1}{4}$ acres but suffice it to say the application was refused and no licence was even granted.

The next step was on September 4, 1981, when the appellant in respect of the 2 acres of land comprised ⁱⁿ Y1 Folio 199 signed a memorandum of transfer in favour of a citizen "John F.A. Clarke Trustee for Rajendra Ramsaran Matadial". It was not filed in the Land Registry until December 6, 1982. It remained unregistered, and on May 3, 1983, the Attorney General entered a caveat against the land. This was followed by the filing on June 19, 1984 of an originating summons in which the Attorney General sought an order declaring that the title of the appellant to the said 2 acres of land described in the certificate of title was forfeited to the Crown under and by virtue of section 5 of the Aliens Land Holding Act Cap. 102.

/On February.....

On February 21, 1985, Peterkin J. granted the declaration sought and vested the land in Her Majesty in accordance with section 5 of the Act.

The appellant appealed on the ground that it was unreasonable and against the weight of the evidence, and that the Judge erred in finding that he had no alternative but to make the order for forfeiture.

Section 3 of the Act provides:-

"Subject to the provisions of this Act, neither land in the State nor a mortgage on land in the State shall after the commencement of this Act be held by an unlicensed alien and any land or mortgage so held shall be forfeited to Her Majesty provided that....."

Subsections (a)-(e) provide the exceptions.

In my view, nothing could be clearer than the above. It expressly forbids an unlicensed alien to hold land or a mortgage on land without a licence. An interesting exception is (e) which states:

"Nothing in this Act shall affect the estate or interest of an alien in any land or mortgage held by him at the commencement of this Act."

The right of the alien to hold land of which he was possessed at the time the Act came into force was preserved. His right to hold land acquired after the commencement of the Act, was not taken away, but he could only do so if he obtained a licence. This licence is granted by the Governor with or without conditions under section 4(1) of the Act, and it shall have no force and effect after having been granted until it is registered in the Record Office.

Under section 4(2)

"On breach of any condition in a licence to hold land as owner or tenant or mortgagee the estate and interest of the alien in the land or mortgage held under the authority thereof shall be forfeited to Her Majesty."

/It will....

It will be seen therefore that forfeiture can arise either under section 3, if a person holds without a licence, or under section 4(2) for breach of any condition contained in the licence.

Counsel for the appellant argued that section 3, with which we are concerned does not create automatic forfeiture, but rather, it must be sought under section 5 which reads:-

"5(1) Land or a mortgage forfeited under this Act shall not vest in Her Majesty unless and until a judgment is obtained declaring the forfeiture; but on such judgment being obtained, the title to Her Majesty shall relate back to and commence at the time when the forfeiture took place."

If Counsel's argument is correct, what would be the meaning of the words at the very commencement of the section "land.....forfeited under the Act"? The answer surely must be that it relates to the two types of situations where forfeiture can arise as envisaged in sections 3 (no licence) and 4(2) (breach of condition). This view is reinforced by the words used at the very end of the section showing that on obtaining the declaratory judgment of forfeiture, "the title of Her Majesty shall relate back to and commence at the time when the forfeiture took place". Again it relates back to the sections 3 and 4(2).

In my opinion, section 3 is a mandatory provision creating an express prohibition from which relief can only be had if a licence is obtained, by the alien, or if he can bring himself within any of the exceptions in (a) to (e). The forfeiture takes place under section 3 and it is only the vesting of the title in Her Majesty which is postponed until the judgment is obtained declaring the forfeiture.

For the purposes of this appeal, one must not allow the fact that an attempt was made to transfer the land comprised in certificate of title Y1 Folio 199, to John F.A. Clarke a citizen of the State to confuse the issue. The transfer was never registered and for all intents and purposes the land remained in the name of Marjorie Ramsaran, an alien up to the hearing of the summons.

/In presenting....

In presenting his arguments, Counsel for the appellant conceded at the very outset that in law a trustee of land holds the legal estate and that the beneficial interest created resides in the beneficiary. He submitted however that when the appellant bought the land it was vested in her as trustee for her son. She thereby acquired the legal interest in the land, subject to the equitable interest of the beneficiary and this is so even though under section 3 she could not hold land as an alien, because section 3 does not create automatic forfeiture but it must be sought under section 5. He then said:

"I submit that it is because she had title why she stood to forfeit the land under section 5."

As I have already indicated I am unable to agree with him on the manner in which forfeiture is brought about.

Counsel for the appellant further submitted when dealing with her having acquired the legal interest subject to the equitable interest of the beneficiary, that although it may be possible to declare the legal interest null and void, the beneficial interest in equity would have to be preserved. This argument brings us right down to the question - Did the appellant ever hold the legal interest in this land, when at the time of purchase she was an alien and had no licence to hold the land? I would bluntly answer that question in the negative. It would be tantamount to driving a horse and carriage through the Act to hold that an alien by adding in the title "as trustee for X" behind his or her name, could circumvent the provisions of the Act.

If the appellant was as I hold, unable to hold the legal interest in the 2 acres of land, then she could have no beneficial interest to confer upon her son as the latter springs from the former.

As Mr. Byron for the Attorney General pointed out, the appellant was registered as the registered proprietor of this land all-be-it that she added "Trustee for Rajendra".

/The estate.....

The estate created thereby under section 10 of the Title by Registration Act Cap 279 was "the fullest and most unqualified right which can be had in land by any subject of the Crown under the law of England." That is a fee simple estate and nothing less. This she could not hold as an alien and in my opinion the order declaring the forfeiture was properly made.

Counsel for the appellant also argued that the decision to forfeit deprived the infant Rajendra Ramsaran of his beneficial interest in the said land contrary to the provisions of section 8(1) of the Constitution of St. Christopher and Nevis. I do not consider there is any merit in this submission. There was no beneficial interest because the appellant never held the legal estate and in any event, section 8(1) of the Constitution is subject to the exclusion provisions contained in section 8(6)(a)(ii). It says that nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question (i.e.) the Act herein) makes provision for the taking possession of any property interest, or right by way of penalty for breach^{of} any law or forfeiture in consequence of breach of any law.

In Civil Appeal Nos. 1 and 2/1982 Chase Manhattan Bank v Johannesⁱⁿ Kaffka and David Berglund, judgment/which was delivered in Anguilla on November 15, 1983, this Court held that a mortgage held by Kaffka a German national, was unenforceable because he did not hold a valid Land Holding Licence under the same Act Cap. 102, which applies to this Colony. He could not therefore rank in priority for the payment of the mortgage debt over the Chase Manhattan Bank, who had a registered charge under section 4 of the Judgments Act Cap. 37, or David Berglund whose U.S. Virgin Islands judgment was later confirmed in the High Court of Anguilla. There was an appeal by Kaffka to the Privy Council, which was dismissed for non-prosecution on October 28, 1985 (P.C. Appeal No. 17/1985).

/In all....