

BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 4 of 1985

BETWEEN:

JAMES SKELTON, ODEAN SKELTON  
CYRIL SKELTON, MARY FREEMAN  
LINDO SKELTON, SYLVANITA HODGE  
ESMIE HYMAN - Defendants/Appellants

and

JAMES ALFRED SKELTON - Plaintiff/Respondent

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

Appearances: Dr. J. Ramsahoye, Q.C., and E.A. Hewlett for Appellants  
McW. Todman, Q.C., for the Respondents

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1986: Jan. 13, 15.  
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JUDGMENT

ROBOTHAM, C.J.

During the year 1970, certain land reform measures were introduced in the British Virgin Islands. One such Act was "An Ordinance to provide for the Adjudication of rights and interests in land and for purposes connected therewith and incidental thereto." That Act was the Land Adjudication Ordinance 1970 - No. 5/1970. The whole purpose and intent of this was to place all land in the B.V.I., which had been adjudicated upon on a Land Register, for which purpose companion legislation in the form of the Registered Land Ordinance 1970 - No. 8 of 1970 - was also passed.

There was an important amendment in 1971 to the Land Adjudication Ordinance 1970, and this is to be found in Law No. 13 of 1971.

This appeal turns solely on whether or not a High Court Judge sitting in her original jurisdiction has the right to alter or amend a final decision of the Adjudicating Officer, by invoking the provisions /of section.....

of section 140 of the Registered Land Ordinance, No. 8 of 1970, there having been no appeal, and after a lapse of 9 years from the date of the decision of the Adjudicating Officer. Sec. 140 reads as follows:-

"140(1) Subject to the provisions of sub-section (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."

The relevant facts:-

All seven defendants/appellants and the plaintiff/respondent are related and with the exception of the respondent who resides in New York, they all reside in the British Virgin Islands.

On 9th November, 1972, the respondent filed a claim with the Adjudicating Officer in respect of what he described in his evidence as "land for Skeltons" situated at Baughers Bay. It is not necessary to go into the details of succession, but it is sufficient to say that the respondent alleged that his father Joseph Emmanuel Skelton had inherited a half share of his father's estate and that in the year 1954, his (respondent's) father sold to him his one half undivided share in the land for the sum of five hundred dollars. He further alleged that the seven defendants/appellants then became proprietors in common of the other undivided half share. The deed by which he purported to acquire this land was before the Adjudicating Officer at the hearing.

Having appeared before the Adjudicating Officer, the respondent returned to the United States before the final decision was given. Whilst in New York, he heard something and on returning to Tortola, B.V.I., he found that the Land Register, Edition 1, of 19th October, 1972, showed that he had now been registered in respect of the land which had been adjudicated upon for an equal one-eighth share in common with the seven defendants/appellants in respect of  $5\frac{1}{4}$  acres of land in the  
/registration.....

registration section of Road Town Block 3038B Parcel No. 114. His one-half share as claimed before the Adjudicating Officer had therefore been rejected.

His next step was a filing of a writ in the High Court, No. 38/1981. The writ was filed on 27th April, 1981. The Statement of Claim alleged that -

"as a result of fraud or mistake or both he was registered together with the seven named defendants as proprietor in common with an equal one-eighth share in respect of the property instead of being registered as owner of an un-divided one-half share to which he is entitled."

He claimed an order under section 140 of the Registered Land Ordinance that the register of Parcel 114 of Block 3038B.....be rectified to show he is the registered proprietor of an undivided half share.

To briefly recapitulate the sequence of events, and put them in their proper perspective, we now have -

- (1) The appellant filing his claim with the Adjudicating Officer in 1972;
- (2) He left for New York before the decision was given;
- (3) The decision of the Adjudicating Officer was recorded in the Land Register on October 19, 1973;
- (4) It is undisputed that there was no petition or appeal of any sort, nor was there any extension of time sought in which to appeal;
- (5) In 1981, some nine years later it is being sought to rectify the decision of the Adjudicating Officer by invoking the powers conferred by section 140 of the Registered Land Ordinance on the basis of mistake.

The learned trial Judge in a judgment delivered on 3rd April, 1982,

/found.....

found for the respondent and ordered rectification of the register.

In doing so, she said:-

"It seems to me that by holding that the plaintiff was entitled to one-eighth share, the Adjudicating Officer mistakenly concluded that the plaintiff was one of the children of James Skelton (Senior) when in fact he was the son of Joseph Emmanuel Skelton and claimed half share through purchase from his father. It follows the subsequent registration giving effect to this finding was done by mistake."

In the last paragraph quoted above, the judge recognized that the Land Register contained no mistake in the recording of the expression of the finding of the Adjudicating Officer; what in effect and in fact she was therefore amending when she ordered rectification was the final decision of the Adjudicating Officer. To determine whether this is permissible, one must look at the statutory provisions which exist for a claimant to pursue appeals if for any reason he is dissatisfied with the decision of the Adjudicating Officer, as well as at the structure of the Land Adjudication Ordinance 8 of 1970 as amended by 13 of 1971.

THE STATUTORY PROVISIONS OF THE LAND ADJUDICATION ORDINANCE

In No. 5 of 1970, Part 1 deals with preliminaries and interpretation. Part II deals with the appointments and powers of officers. Part III illustrates how claims are to be made. Part IV sets out the principles of adjudication and the manner in which the adjudication record is prepared. Part V which is germane to this appeal, deals with objections and the finality of the Adjudication record. Sections 20-23 (to be found in Part V) were repealed and replaced by Law 13 of 1971. Section 20 as amended provides -

"The Administrator or any person named in or affected by the adjudication record or demarcation map who considers that record or map to be inaccurate or incomplete in any respect or who is aggrieved by any act or decision or omission of the Demarcation Officer or Survey Officer or by any entry in or omission from the adjudication record by the Recording Officer may, within ninety  
/days of....

days of the date upon which notice of completion of the adjudication record is published petition the Adjudication Officer in respect of the act, decision, entry or any omission concerned, and the petition shall be heard and determined by the Adjudication Officer."

This is the first opportunity for redress given an aggrieved party by way of a petition to the Adjudicating Officer.

Under section 21, the Adjudicating Officer may correct any error or omission in the record at any time before it becomes final after giving interested parties notice and opportunity to be heard.

Section 22 reads -

"After the expiry of ninety days from the date of publication of the notice of completion of the adjudication record or on determination of all petitions presented in accordance with section 20, whichever shall be the later, the adjudication record shall, subject to the provisions of the Registered Land Ordinance, 1970 become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the adjudication record and the demarcation map to the Registrar together with all documents received by him in the process of adjudication."

This section is designed to bring to a finality the adjudication process and firmly bring the land under the provisions of the Registered Land Ordinance 1970, No. 8 of 1970, section 9(1) of which reads:-

"The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Ordinance 1970....."

Although section 22 (above) speaks of the finality of the adjudication record, a further right of appeal is given under section 23 which reads:-

"(1) Any person including the Administrator who is aggrieved by any act or decision or omission of the Adjudication Officer and desires to question it or any part of it on the ground that it is erroneous in point of law or on the ground of failure to comply with any procedural requirement of this Ordinance may within ninety days from the

/date....

date of the certificate of the Adjudication Officer under section 22 or within such extended time as the Court of Appeal, in the interests of justice, may allow, appeal to that Court in the form prescribed in the Court of Appeal Rules for civil appeals from the High Court.

(2) On an appeal the Court of Appeal may, if it is satisfied that the act, decision or omission is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Ordinance make such order or substitute for the act decision or omission of the Adjudication Officer such decision as it may consider just and may under section 140 of the Registered Land Ordinance, 1970 order rectification of the register, and the order or decision of the Court of Appeal shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(3) A decision of the Court of Appeal under subsection (1) shall be in writing and copies of it shall be furnished by the Court to the Registrar, to the appellant and to all other parties to the appeal and, by the Registrar, to all other parties who, in his opinion, may be affected by the appeal."

The terms of these two sections are quite clear and need no exposition.

The only ground of appeal argued was that the High Court had no jurisdiction under section 140 of the Land Registration Ordinance to amend the Land Register, or to amend, reverse or vary in any manner or form the award of the Adjudicating Officer, no appeal having been entered or brought against such decision.

#### THE SUBMISSIONS

Counsel for the appellants submitted that the only Court that has the power to declare the decision of the Adjudicating Officer erroneous, is the Court of Appeal and they are given specific power if the circumstances warrant it to order rectification under section 140 of the Registered Land Ordinance 1970. The High Court sits in an original jurisdiction and what the learned Judge did in this case he submitted amounted to sitting as a Court of Appeal on the final decision of the Adjudicating Officer, and thereby alter his award. He submitted that she had no authority to do this, and the position remains the same even if it is established that the Adjudicating Officer erred in his finding on the /relationship.....

relationship of the parties. The respondent he said, having had no recourse to any of the statutory rights specifically given to him as the aggrieved party is now bound by the decision of the Adjudicating Officer and must accept the 1/8 share awarded him as being final and conclusive of his rights.

Counsel for the respondent on the other hand submitted that the right to seek rectification of the land register under section 140 of the Registered Land Ordinance is an optional remedy which was open to the respondent and which he exercised on filing of the writ. If therefore, the Adjudicating Officer made a mistake in coming to his conclusion, then the High Court could invoke section 140 to correct it.

#### CONCLUSIONS

I would agree that if the expression of the final decision of the Adjudicating Officer was incorrectly recorded on the Land Register, that 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 any material particular his individual findings of fact, based upon his own enquiry, 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. No doubt Counsel had in mind the pronouncement sometimes made in judicial quarters that it does not matter through which door a litigant enters the judicial forum. The qualification to this, however, is that he must do so in pursuit of a legitimate claim.

I am of the view that the respondent not having exercised his right to petition the Adjudicating Officer, and not having exercised his right of appeal to the Court of Appeal, nor sought an extension of time within which to appeal, and lastly but by no means least not having done anything for a period of 9 years, cannot now impeach the finding of the Adjudicating Officer by an ingenious action for rectification in the High Court. That  
/the learned.....

the learned trial Judge did in this case was a function which was open only to the Court of Appeal, had the respondent sought relief therein in accordance with his established statutory rights.

I would allow the appeal and enter judgment for the defendants/appellants on the claim with costs to be taxed in this Court and the Court below.

The effect of this judgment is that the decision of the Adjudication Officer stands, and the respondent and the 7 defendants/appellants must abide by the entry in the land register which makes them proprietors in common, each with an equal one-eighth share of the land registered as Parcel 114 Block 3038B of the Road Town Registration Section.

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L.L. ROBOTHAM,  
Chief Justice

Bishop, J.A.

I do not wish to add anything. I agree that the appeal ought to be allowed for the reasons given with costs to be taxed here and in the Court below.

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E.H.A. BISHOP,  
Justice of Appeal

MOE, J.A.

I agree.

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G.C.R. MOE,  
Justice of Appeal.