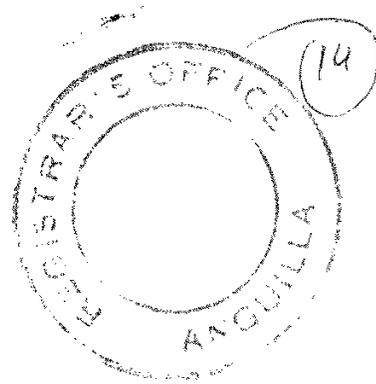


ANGUILLA

IN THE COURT OF APPEAL



CIVIL APPEAL NO: 5 of 1984

BETWEEN:

CONNELL LORENZO HARRIGAN - Appellant

and

GEORGE EMMANUEL LLOYD - Respondent

Frederick S. Kelsick for Appellant

Respondent does not appear and is not represented-
Appeal heard ex-parte by virtue of Rule 35 of
Rule 35 of the Court of Appeal Rules 1968

April 29, 1986

JUDGMENT OF THE COURT : *Robotham CJ*

On January 14, 1976, an Adjudication Officer held that lands at Shoal Bay devised under the Will of Joseph Benjamin Harrigan (deceased) including land which for the purposes of this case is known and referred to as lot 27, Block 89118B and which is claimed by the Appellant Connell Lorenzo Harrigan, vested in the Respondent George Emmanuel Lloyd, as Executor of the Will of the said Joseph Benjamin Harrigan.

On November 6, 1984, a Judge by virtue of an appeal by way of a rehearing, reversed the decision of the Adjudicating Officer and ordered that the land in dispute comprising, we are told, two acres more or less, should be registered in the name of the Appellant, after one acre had been measured and deducted therefrom, for registration in the name of Wendell Harrigan, in accordance with a devise in the Will of Joseph Benjamin Harrigan which read

"the bush land at Shoal Bay is to be shared equally between Sylvia and Haraldo after one acre is given to my son Wendell".

There was no direction in the judgment by what means the particular acre to be given to Wendell was to be identified.

/The Sylvia....

The Sylvia and Haraldo referred to in the devise are Sylvia Vanterpool (Nee Harrigan) and Haraldo Harrigan. They are sister and brother respectively of Wendell Harrigan and they are all children of Joseph Benjamin Harrigan who died in November 1963.

The evidence in support of the claim of the Appellant to the land was that in 1966 Sylvia and Haraldo asked the Executor Lloyd for their share of the land. Lloyd told Haraldo that he (Lloyd) was getting old, and they both should go and take their share of the land. With the knowledge and approval therefore of the Executor Lloyd, and assisted by the Appellant they went on the land and cut out the portion known as lot 27. This is the land the Appellant subsequently bought from Haraldo and Sylvia on April 22, 1970, and got a receipt for \$2500.00. This receipt was put in evidence. Also cut out at the same time in 1966 was a piece for Wendell.

For the purposes of this appeal, it is not necessary to go into any further detail as Mr. Kelsick for the Appellant stated before us that he accepted all but one the findings of the learned trial Judge, and that the only ground on which the appeal was brought was the finding that one acre of the land comprised in lot 27 should go to Wendell Harrigan. To quote the exact words of Mr. Kelsick:-

"I have no quarrel with the finding of the Judge except that portion of the decision where she purported to give effect to the Testator's wishes and award Wendell one acre of land out of lot 27, and the remainder to be registered in the name of Connell Harrigan, when she had already found that the Executor had actually or impliedly assented to the devise of lot 27 to Haraldo and Sylvia as the land to which they were entitled under the Will and she had found as a fact that that was the land sold to the Appellant Connell Harrigan on April 22, 1970".

There was also he submitted the evidence of the Executor Goerge Lloyd that he gave to Sylvia, Haraldo and Wendell their entitlement under the Will. There was also evidence that in Suit 5/1981, Lloyd as Executor consented to a judgement allotting to Evelyn St. Clair Harrigan lots 28, 29, 30 and 31 comprising some fifteen (15) acres. This he said included the land which Wendell had got under the Will, yet Wendell sat on his rights and did nothing. These lots were all formally lot 23 of Block 8911B.

/At the.....

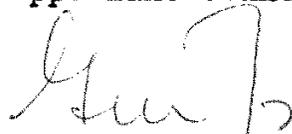
At the hearing of this appeal the Respondent did not appear. Mr. Mitchell who appeared for the Respondent Lloyd at the trial, stated that Lloyd is now about 90 years old and has expressed virtually no interest in the appeal. When pressed further and asked if as Counsel for the Executor he was prepared to argue the appeal as such, protecting at the same time the interest of Wendell, he stated that the case for the Respondent Lloyd would be contrary to and in conflict with that of the claim of Wendell Harrigan to part of lot 27 and he could not therefore argue as Counsel for the Executor Lloyd, the claim of Wendell Harrigan. Further, he does not appear on behalf of the respondent who has not instructed him although he has been in contact with him. Rather, the Respondent told him that "Wendell must represent himself."

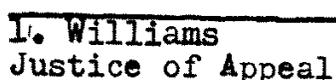
As far as this Court was concerned Wendell was never a party to the suit and could not at that stage have even made a party to the appeal. The Court was therefore left with no alternative but to proceed exparte with the hearing of the appeal in the absence of the Respondent as provided by Rule 35 of the Court of Appeal Rules 1968.

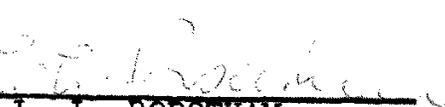
What clearly emerged was the fact that the Respondent Lloyd as executor could not support the claim of Wendell to any portion of lot 27. We have examined the notes of evidence very carefully and we are unable to support the finding of the learned trial Judge that one acre of land comprising lot 27 should go to Wendell Harrigan. In this respect therefore the appeal must be allowed. It would seem that if Wendell has any claim outstanding to lands which may have fallen to him under the terms of his father's Will, he should pursue that claim against the Executor George Lloyd.

We are of the opinion that there was no evidence to justify the Judge's order that one acre of the land comprised in lot 27 should go to Wendell Harrigan.

The appeal is therefore allowed in part and the order of the Trial Judge varied by the substitution of an order that the land comprised in lot 27 Block 8911B be registered in the name of the Appellant Connell Lorenzo Harrigan. There will be no Order as to costs.


 G.C.R. MOE
 Justice of Appeal


 I. Williams
 Justice of Appeal


 L. L. ROBOTHAM
 Chief Justice