

IN THE COURT OF APPEAL

CIVIL APPEAL No. 1 of 1983

BETWEEN:

SAMUEL RUFUS HODGE - Appellant  
and  
HEIRS OF ABRAHAM HODGE - Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice  
The Honourable Mr. Justice Moe  
The Honourable Mr. Justice Williams (Acting)

Appearances: Mr. F. Kelsick for the Appellant  
Mr. I.D. Mitchell for the Respondent

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1986: Apr. 28.  
1987: July 6.

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JUDGMENT

MOE, J.A.

This appeal concerns the boundary line which correctly demarcates the northern boundary of a parcel of land which the appellant inherited from his mother Augusta Hodge, and the southern boundary of a parcel of land inherited by the respondent.

The two parcels of land concerned are parts of an area at Mt. Fortune divided by one Brandy Hodge between four sons Abraham, William, James and Cobby. The southern portion of Abraham's parcel bounded the northern portion of William's parcel. William gave his parcel to the appellant's mother Augusta Hodge who in turn left it by Will to the appellant. The gift of the land by William to Augusta is evidenced by a document in the following terms:-

"August 15, 1946

"I William Hodge son of Brandy Hodge give to my sister-in-law Augusta Hodge this piece of land situate in Mt. Fortune for cleaning and burying my father Brandy Hodge while I was in the States. The land is bound east to Tommy Webster, west to the public road and the road leading to Junks Hole south to the said Augusta Hodge."

Augusta put up a wall running along the southern edge of the Junk Hole Road or the track to Junk's Hole. In 1958 Irene moved that wall and placed it 40 feet to the south. Irene was sent and received a letter dated 19th April 1958 from Augusta who informed her that she was given the land and had put the bound wall. Augusta also asked Irene not to trespass any further.

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On the area of land between the line along which Augusta had built the wall and the line where Irene had placed the wall in 1958, Abraham had built and lived in a trash house. Annabelle Vanterpool was living in that trash house when Abraham died. After his death, she continued living in it until she left in 1943.

The issue before the learned trial Judge was whether the northern boundary of William's land (which had passed to the appellant) or put another way whether the common boundary between William's land (which passed to the appellant) and Abraham's land is where Augusta had put a wall along the track to Junk's Hole or where Irene had placed the wall in 1958. In a written Judgment, the learned trial Judge posed the question to be determined as - whether Augusta owned the spot on which Abraham's house was built. The learned Judge found that that area is the property of Abraham Hodge. The import of that finding being that the common boundary between the two parcels of land concerned is where Irene placed the wall in 1958.

The grounds of complaint were argued under one main head namely, that the decision is unreasonable having regard to all the evidence in the case including the evidence given in proceedings before the Adjudication Officer and particularly the Judgment entered in the High Court of Justice for the Anguilla Circuit by the appellant on the 22nd April 1967 for an order for possession of the said land which is the subject of the appeal.

In seeking to determine the issue of the true position of the boundary between Abraham's land and that of the appellant, the learned trial Judge referred to the document set out above and stated:-

"The document signed by William Hodge did not clearly specify the extent of the land that was given to Augusta Hodge. It specifies all boundaries except the northern boundary and it is this boundary which is of importance in this case, as the evidence is that the Appellant's northern boundary is Abraham's southern boundary."

The learned Judge looking at the issue from the point of view as to whether Augusta owned the **area** of land on which Abraham had built a trash house also said:-

"In the absence of information relative to the northern boundary I am unable to find that Augusta Hodge owns a specified area of land on which Abraham's house had been built."

The Judge went on to find the common boundary between Samuel Hodge and the respondent to be the boundary indicated by Irene Gumbs.

Mr. Kelsick for the appellant submitted that in construing the document set out above by which William made a gift of the land to Augusta, the learned  
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trial Judge ought to have imported the words "NORTH to" before the phrase "the road leading to Junk's Hole". His contention was that consideration of the evidence relating to Junk's hole Road would clarify the reference in the document to "the road leading to Junk's Hole. Mr. Mitchell's submission was that there was abundant evidence before the learned Judge that the boundary line ran from Abraham's Cave to the low ground or in other words ran along the line where Irene Gumbs the administratrix of the estate of Abraham had placed a wall in 1958. He however accepted that the trial Judge had a large amount of evidence going both ways but submitted that the learned Judge was justified on the evidence in coming to the conclusion that the boundary was where Irene Gumbs put the wall in 1958.

In reviewing the findings of the learned trial Judge this Court is governed by principles which are well known. Guidance is provided by the opinions delivered in the House of Lords in *Watts v Thomas* (1947) A.C. 484. Three propositions with which three Law Lords were in agreement are as stated by Lord Thankerton at pp 487-488.

- "1. Where a question of fact has been tried by a Judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses would not be sufficient to explain or justify the trial judge's conclusion;
2. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence."

The Appellate Court, either because the reasons given by the trial Judge are not satisfactory or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses and the matter will then become at large for the Appellate Court."

It is clear therefore that if a trial Judge dealt with the evidence inappropriately, or drew wrong inferences, a Court of Appeal may make its own assessment of the evidence and come to its own conclusions.

Now in this case, there is the document evidencing the gift of land to Augusta specifying boundaries. The first question is whether the northern boundary was omitted. It states the eastern boundary - East to Tommy Webster; it states the southern boundary - south to the said Augusta Hodge; it states the western boundary - west to the public road. The words "and the road leading to Junk's Hole" do not describe a continuation of the public road or any other road on the west of the land. Junk's Hole Road or the

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road leading to Junk's Hole is not on the west. The evidence is that it is to the north. Indeed Mr. Mitchell conceded that in construing the document it makes more sense to read into it the word "North".

In addition to the document set out above there is the Will of Augusta Hodge dated the 14th January, 1960 under which in her devise of the land to the appellant she refers to "the road leading to Junk's Hole where I had a wall as my bound".

There was also much oral evidence from various witnesses. The appellant said "on north side of Junk Hole Road was Uncle Abraham share. On south side of Junk Hole Road was Uncle William's share..... Irene came from States in 1958 and moved bound from Junk's Hole Road behind my back and put it a foot and a half from the road to a cave..... The boundary was the wall to Junk Hole Road..... The wall was dry stone wall....." Editha Hodge said "the dry stone wall was boundary between my mother-in-law's land (Augusta) and Abraham Hodge's land..... Irene Gumbs met a stone wall to Junk's Hole Road. She took up that (wall) from there..... Junk's Hole Road divides Abraham share of land from William Hodge's share."

Now Irene Gumbs admits she moved the stone wall to south of where she found it. She moved it about forty feet but she also said "the wall went running along the northern side of land occupied by Samuel Hodge". She also admitted in cross-examination the existence of the track which leads from the main road to Junk's Hole Bay. To the Court she said "it goes through the end of my father's land in certain parts and goes through to Webster's estate and up to Junk's Hole Road." Anabelle Vanterpool who lived in Abraham's house until it was destroyed gave some interesting evidence. She strenuously denied that when Irene came from America she moved a stone wall. This is not in keeping with the evidence of the other witnesses including Irene Gumbs herself. She also said Augusta didn't build any stone wall on land there. Again this is not in keeping with Augusta's own admission in a letter to Irene Gumbs. It seems necessary to look at her evidence with great caution or to give it little weight, if any at all. However as to Junk Hole Track she said "it pass through Abraham Hodge's land..... It pass through the end of the garden of Abraham's land. End of the garden was end of Abraham's land. At the other side of the end of Abraham's land was Samuel Hodge's land."

Finally, Ethelinder Harrigan admitted the existence of the track which she said ran behind or to the north of where the trash house was and the wall put up by Augusta Hodge was to the back of or north of the trash house.

There was therefore much oral evidence as to the existence of Junk's Hole Road or the track to Junk's Hole, as to it being to the north of the /land....

land concerned, and as to it being a boundary of the land. When this oral evidence is related to what is set out in the gift document, it becomes clear that the reference therein to the road leading to Junk's Hole is a reference to the boundary to the north. It appears therefore that on a proper assessment of the evidence, the learned Judge ought to have concluded that the gift document had set out the northern boundary of the land and as being the track leading to Junk's Hole.

As against the evidence set out above leading in the direction that the common boundary concerned is Junk's Hole Road, there is evidence from Irene Gumbs that she knows the land her father owned; "grew up into the southern boundary of the land (which) is the northern boundary of Samuel Hodge's land. There is bound to Tommy Webster on East side; going west to the road you come to a bound on cliff, next you come to bound by the cave; after cave come to public road."

She said she went away when she was of age to look for employment and came back in 1958. When she went away her father had three cattle pens made out of stones and kitchen wall three feet tall out of stones. In 1958 when she came back all she found in her father's yard was a wall, a loose stone wall. Kitchen, cow pens were gone and wall was in its place. It will be recalled this is the wall which she said went running along the northern side of land occupied by Samuel Hodge and which she moved - she said it ran from cherry tree in her yard to another cherry tree down the road. It didn't run along the track to Tommy Webster or the Junk's Hole track.

There was evidence from Annabelle Vanterpool that she knows the southern bound of Abraham's land. "It runs from low ground to the path that is Government Road..... The bound starts in a cave. Abraham Cave. It is round hole." Ethelinder Harrigan also said she knows southern boundary line of Abraham's land on which she grew up and which she used to work. She said the boundary line is from low ground to public road by a cave - don't remember if there was anything on surface of land to mark that boundary.

There was also evidence from Samuel Hodge and his witness that Abraham had built the trash house (on the end of the land of William or the area claimed by Samuel) by permission of Brandy Hodge himself, James Hodge and William Hodge. Sometime before Abraham's death, William told Annabelle in his (Samuel's) presence and that of his father James and his mother Augusta, that after Abraham's death she would have to leave the land. After Abraham's death, Samuel was again present when William told Annabelle she would have to leave but as he was her great uncle he gave time. Editha recounted how when Irene began to move the wall concerned, she went to James who came and spoke  
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to Irene. He told Irene that William had explained to her father Abraham that William was giving the land Abraham was living on to Augusta for taking care of and burying his father Brandy Hodge.

Irene did not advert to this evidence in any way. Annabelle denied it as she denied that Irene moved the wall. Ethelinder Harrigan admitted the trash house was built inside the land enclosed by the wall which was at the back or north of the trash house but she did not know whether the land enclosed by the wall was claimed by William.

The question therefore arose as to the value and weight to be put on the evidence going both ways on the issue. There was the evidence from the appellant and his witness giving a clear demarcation of the boundary line, which evidence was supported by evidence from the respondent and witnesses and it is noteworthy that this supporting evidence from the respondent's side emerged during cross-examination, and in answers to the learned trial Judge, whereas it will be seen that the evidence of Irene Gumbs as to the boundary line was not consistent. As to Annabelle Vanterpool little reliance ought to be placed on her evidence and the evidence from Ethelinder Harrigan on the point is very vague.

In my view the preponderance of evidence is therefore in favour of the boundary line claimed by the appellant Samuel Hodge and the learned trial Judge ought to have found that the disputed area of land, that is the area of land between the line from which Irene moved the wall or (the common boundary line as now held) to the line which Irene placed the wall in 1958, belonged to Samuel Hodge.

That area of land being Samuel Hodge's, when Irene enclosed it with a wall in 1958 she entered into possession of it. She received complaints about her action as evidenced by the letter to her dated 19th April, 1958, but no firm action was taken against her. In 1962 she completed a house on the land. In 1966 Samuel issued a writ to recover possession from her and in 1967 obtained a Judgment in default. No steps were taken to enforce the Judgment but in 1976 Samuel's claim to the land was placed before the Adjudication Officer and has now reached this Court. Samuel Hodge cannot be said to have been dispossessed and the area of land concerned remains his property.

I would allow the appeal set aside the decision of the learned Judge, and order that the common boundary line between Samuel Hodge and Abraham Hodge is the track to Junk's Hole. Further that the disputed area of land is the property of Samuel Hodge.

The Supreme Court Ordinance applicable to Anguilla gives the Court a power granted to it in the other Eastern Caribbean States namely, the power to grant either absolutely or on terms and conditions any remedy or relief to  
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which a party may appear to be entitled in respect of any claim properly before the Court.

Should Samuel retain the area of land concerned and pay Irene some amount for the house which she has built on his land? It is true that complaints on behalf of Samuel Hodge were made to Irene Gumbs in 1958 when she enclosed part of his land with a wall and again when she started to build the house which she completed in 1962 but no firm action was taken against her will until 1966 when a writ issued to recover possession of the land from her. A default Judgment against Irene was obtained in 1967 and the matter appears to have been allowed to hang until 1976 when there were proceedings before the Adjudication Officer. On the other hand, Irene has had the use and occupation of the land and house for some twenty-eight years. In the circumstances the equity of the situation seems to demand that Irene should keep her house. In that event Samuel would convey the portion of land concerned to Irene who would pay Samuel compensation.

Both parties are agreed that the area of land involved is 40 feet deep at its widest point. Evidence from Samuel was that the length is about 100 feet while Irene said it is about 70 feet. The compensation to be ordered must be an arbitrary amount but after taking into account the various factors and circumstances which emerged from the evidence, I think Irene ought to pay Samuel \$3,000 compensation.

I would therefore order that Samuel Hodge convey the disputed area of land to Irene Gumbs and that Irene Gumbs pay Samuel Hodge \$3,000 compensation.

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G.C.R. MOE,  
Justice of Appeal

I agree.

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T.L. ROBOTHAM  
Chief Justice

I also agree.

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L. WILLIAMS  
Justice of Appeal (Acting)