

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1987

BETWEEN:

HILTON JOSEPH - Appellant

and

ST. PIERRE VOLNEY
HUBERT PHILLIP - Respondents

CIVIL APPEAL NO. 6 of 1987

BETWEEN:

ST. PIERRE VOLNEY
HUBERT PHILLIP - Appellants

and

HILTON JOSEPH - Respondent

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

Appearances: Dr. F. Ramsahoye, S.C. and E. Calderon for Appellants
St. Pierre Volney and Hubert Phillip
K. Monplaisir, Q.C., for Appellant Hilton Joseph

1987; Oct. 20
1988; Jan. 25

JUDGMENT

MOE, J.A.

In this case each of two claimants to ownership of the same parcel of land has appealed the decision of a Judge of the High Court whereby he declined to issue a declaration of title to the land concerned in favour of either of them.

The appellant St. Pierre Volney in 1980 petitioned the High Court Under Article 2103A of the Civil Code of Saint Lucia, Cap. 242 for a declaration of title to the land. Article 2103A is in the following terms:-

"Title to immoveable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of Court."

/On 14th.....

On 14th January, 1981 an Order was made by Mr. Justice Glasgow declaring St. Pierre Volney owner in title to the land. The appellant Hilton Joseph on 11th August, 1981 gave notice of a motion amended on 29th March, 1982 to have the Order of 14th January, 1981 set aside. On 26th November, 1982 when both parties were represented by Counsel, the High Court made an order that it will entertain the motion to set aside the January, 1981 Order. St. Pierre Volney, having died on 14th October, 1983, Hubert Philip, the executor to his estate, was on 11th January, 1985 added as a party to Volney's petition.

The motion to set aside the order of 14th January, 1981 came on for hearing on 25th April, 1985. Counsel for both parties were heard and on that date not only was the 1981 order set aside but in addition Hilton Joseph was granted leave to enter an appearance to Volney's petition and file a written claim to title to the said land. There was no appeal from that order of 25th April, 1985. Hilton Joseph entered an appearance and filed his claim.

On 19th September, 1985 Volney's Petition and Joseph's claim came on for hearing and an order was made under which a Declaration of Title to the land in favour of Joseph was issued. That Order was however set aside on 6th November, 1985 and the petition and claim ordered to be put down for hearing on 25th November, 1985. Hearing commenced on that date and concluded on 2nd May, 1986.

The learned Judge was not satisfied that Hilton Joseph was in continuous and uninterrupted, peaceable, public, unequivocal possession of the lands in question and as proprietor for a period of thirty years and he took the view that the evidence could not support a declaration of title by prescription for thirty years in his favour. He also found that the evidence led on behalf of St. Pierre Volney was insufficient and unsatisfactory and did not establish that Volney had the continuous and uninterrupted, peaceable, public, unequivocal possession of the lands and that he did so as proprietor. Accordingly he was not satisfied that St. Pierre Volney had acquired ownership of the land by thirty years prescription.

The thrust of appellant Joseph's complaint was to urge that there was ample evidence on which the learned Judge could have found in his favour. He contended that there was abundant evidence that he was in possession of land thus satisfying the first requirement of the relevant Articles of the Civil Code. That there was also abundant evidence that he continued the possession of his father John Joseph and there was thus continuity of possession which satisfied Article 2064 of the Civil Code: That evidence of interruption of the appellant's possession is as from the year 1979, at which date the thirty year prescription had crystallised.

/This approach.....

This approach by the appellant Joseph concentrated on and only dealt with some of the requirements to be satisfied before the Court may issue a declaration of title pursuant to Article 2103A. The learned Judge had to consider Articles 2057 and 2060 of the Civil Code to which he made reference in his judgment. Article 2057 provides:-

"For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public unequivocal and as proprietor."

Article 2060 says:-

"Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription."

In the light of these provisions the learned Judge considered the following portions of the evidence of Hilton Joseph himself. He gave evidence that one Man Floris was collecting rent to pay one Floissac for the same land. Man Floris had a condition with his father to collect the rent and pay Floissac for the land. (He (Hilton) was the one who paid Floissac the price for the land. Mr. Floissac gave him a deed of sale which was registered. He said "I am claiming this land because I bought it from Mr. Floissac". He paid Mr. Floissac because he rented the land.

The learned Judge held that the evidence of Joseph indicated that he was claiming the land by virtue of a purchase of the ownership of the land. Further that he was now in possession of the land nec vi, nec clam, nec precario - another way of describing the possession necessary to satisfy Article 2057 (supra). The learned Judge also stated that by the evidence Hilton Joseph identified a Mr. Floissac as the previous owner from whom he purchased the land and the title to the land.

In view of the appellant's own evidence to which reference has been made I do not fault the learned Judge's refusal of his application for a declaration of title by prescription under the provisions of Article 2103A of the Civil Code. His appeal fails.

Counsel for appellant Volney made it clear he was not challenging the conclusions of the learned Judge. He could not fault the Judge's findings on the evidence as it stood. He rather concentrated on matters relating to the Order of the 25th April, 1985 made by Mitchell J setting aside the Order of Glasgow J of 14th January, 1981.

The submissions on this issue for consideration by the Court may be summarised as follows:-

1. The Order of Glasgow J granting title to St. Pierre Volney was not a default judgment to which Order 13 rule 8,

/or Order.....

or Order 19 rule 9, or Order 35 rule 2 of the Supreme Court Rules applied.

2. The Supreme Court - Prescription by Thirty Years (Declaration of Title) Rules gave no power to the High Court to set aside the declaration of title.

3. The Order being a final judgment properly obtained could only have been set aside in an action in which fraud was established or in which it was established that Glasgow J had been imposed upon.

4. The Order of Mitchell J setting aside the Order of Glasgow J was made without jurisdiction and St. Pierre Volney is entitled to have Mitchell J's Order set aside *Ex debito justitiae*.

5. Justice requires that the proceedings before Mitchell J in open Court (i.e. the hearing out of which the present appeal arises) be treated as:-

(i) an action to set aside the Order of Glasgow J, and

(ii) a determination of the claim of Hilton Joseph.

Further and/or alternatively, the claim of Hilton Joseph having been disallowed in these proceedings, St. Pierre Volney ought to have his title reinstated or he should have in the alternative a new trial of his petition alone with Hilton Joseph being barred from opposing it.

Now the submissions set out are in support of an effort to question and upset an order made by a Judge of the High Court on the 25th April, 1985 and it is sought to do so by way of this appeal against a decision on a matter hearing of which commenced on 25th November, 1985 and concluded on 2nd May, 1986. In my view when the Order of 25th April, 1985 was made, a party who was dissatisfied with that order and wished to appeal against it was required to follow a certain procedure which it is not necessary to set out here. That procedure was not followed by Volney and he cannot now succeed in upsetting that Order by way of appeal and clearly not by way of appeal against another decision given at the conclusion of proceedings taken consequent and pursuant to the very order now questioned.

However the general rule that no court has power to review, alter or vary any judgment or order after it has been entered except by way of appeal is subject to certain exceptions. One such exception which may be referred

/to for.....

to for these purposes is that where there has been some procedural irregularity in the proceedings leading up to an Order which is so serious that the Order in question ought to be treated as a nullity then the Court will set it aside. But again no great exposition is needed for the point that the appropriate procedure would have to be followed to have the Order set aside on that basis.

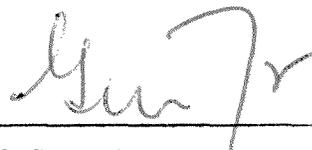
The correct procedure for getting the Order of 25th April, 1985 reviewed and set aside has not been followed. But apart from that, it must be observed that in the procedure leading up to the Order of Glasgow J, there was a failure on the part of the petitioner Volney to comply with a number of provisions governing his petition. It is sufficient to mention that there was no service of process as was required and there was no statement of the facts on which he based his claim in accordance with Rule 5(c) of the Supreme Court - Prescription by Thirty Years (Declaration of Title) Rules. Thus on the application by Hilton Joseph to have that Order set aside, there was good and sufficient reason for the Order of 25th April, 1985. Counsel involved in the case at that time appears to have seen the matter in this light. He did not appeal against nor in any way question the Order of 25th April, 1985 but took steps to have Volney's petition heard before the High Court pursuant to that very Order. This Court has been given no basis for a review of the Order and it stands.

With regard to the first part of submission five, the record shows quite clearly that what was before the learned Judge were (a) Suit No. 255/80 a petition by St. Pierre Volney for a Declaration of Title to the land concerned and (b) Suit 207/81 a claim by Hilton Joseph to the said land, both matters being heard together. The learned Judge had before him two competing claims to title to the land and the case proceeded on that basis, both parties being represented by Counsel. I can see no basis for now treating the proceedings as other than what they were, an adjudication on the claims of St. Pierre Volney and Hilton Joseph to have a Declaration of Title to the land.

As little as possible should be said about the alternative stated in submission five. Appellant Volney, having not appealed against the Order setting aside a Declaration in his favour, and having then presented his petition before the High Court pursuant to that Order; and having presented his evidence in support of his petition; and not having satisfied the trial Judge that his petition should be granted, does not challenge the learned Judge's findings on the evidence which he presented but wishes to have a Declaration of Title from this Court or a new trial without the other party to these proceedings being allowed to participate. I say only that I was not impressed by this submission and St. Pierre Volney could not succeed in this appeal in this manner.

/In the.....

In the result the appeals of both Hilton Joseph and St. Pierre Volney fail. There will be no order as to costs.



G.C.R. MOE,
Justice of Appeal

I agree.

L.L. ROBOTHAM,
Chief Justice

I also agree.



E.H.A. BISHOP,
Justice of Appeal.