

ANGUILLA

IN THE COURT OF APPEAL

BETWEEN:

Civil Appeal
7/1486.

EVELYN ST. CLAIR HARRIGAN - Applicant/Appellant
and
GEORGE EMMANUEL LLOYD - Respondent/Defendant

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

Appearances: B. Lake, Q.C., for Appellant
J. Benjamin for Respondent

1987; July 7,
1988; April 25.

JUDGMENT

MOE, J.A.

This is an appeal from an Order of a Judge of the High Court withdrawing an Order which the said Judge had made three hours earlier on the 24th November, 1986. On that day the Judge heard an application by the appellant for an Order that the respondent comply in certain respects with an Order of the High Court made on the 17th July, 1981.

Material portions of the 17th July, 1981 Order is as follows:-

".....it is ORDERED:

1. That the Respondent do administer the Estate of Joseph Benjamin Harrigan without further delay.
2. That the Parcel of land with the house thereon, originally recorded as Parcel 23 of Sheet No. 89118B at Shoal Bay be transferred to the Applicant.
3. That the Applicant's 1/3 share of Balsam Bottom be transferred to him.
4. That the Respondent prepare a true account of the estate by the 15th day of November, 1981.
5. That further Orders in this matter be stayed pending the presentation of the above account."

At the hearing of the application on 24th November, 1986 it was put before the learned Judge that the Parcel of land originally recorded as Parcel 23 later comprised lots created as Lots 27, 28, 29, 30 and 31.

/Further.....

Further that there was a transfer to the appellant of Lots 28, 29, 30 and 31. The learned Judge Ordered at 12 noon:-

"That the remainder of original Parcel No. 23 which remainder is now Parcel 27 be transferred by the Respondent/Defendant on or before 5th December, 1986 as ordered in the Order dated 17th July, 1981.

2. That the respondent comply with paragraph 4 of said order on or before the 31st January 1987.

Costs to the applicant to be taxed or agreed upon."

At 2.00 p.m. the Judge recalled the Counsel involved in the application and informed them of a matter coming to her attention after the Order was made. The Judge referred to a Judgment of the Court of Appeal in Civil Appeal No. 5 of 1984, dated 29th April, 1986 in which the Court of Appeal had ordered that the land comprised in Lot 27 be registered in the name of Connell Lorenzo Harrigan. After hearing Counsel, the learned Judge at 3.00 p.m. ruled that there was no alternative but to withdraw the Order earlier made.

The appellant does not dispute the power of a Judge to revoke or withdraw an earlier order made by the said Judge. Counsel submitted that there may be a proper exercise of the discretion to withdraw an earlier order either on the revelation of new facts or matters to the Judge by the parties to the matter before the Judge or on the Judge's own consideration the justice of the case warranted a rethinking. The burden of the appellant's complaint is that in the instant case the learned Judge exercised the discretion capriciously. In support of this, Counsel contended that the matter i.e., the Court of Appeal Judgment of 29th April, 1986 on the basis of which the learned Judge appeared to have acted in order to exercise the discretion to withdraw the earlier Order, was referred to already during proceedings when the original order was made at noon, and as I understand the submission there would have been no new matter or other matter which warranted a rethinking.

I am unable to accede to this submission. The record indicates reference to the Judgment of the Court of Appeal at the hearing around noon only in one paragraph of the respondent's affidavit in answer to an affidavit supporting the appellant's application before the learned Judge. The paragraph reads as follows:-

/"8. That.....

"8. That the said Parcels 28,29,30 and 31 were referred to in the Judgment of the Court of Appeal, Civil Appeal No. 5 of 1984 and it is stated in that Judgment that the said Lots or Parcels 28, 29,30 and 31 were all formerly Lot or Parcel 23 of Block 89118B."

Whereas at 3.00 p.m. on the recall of the Counsel, the learned Judge noted:

"Judgment of Court of Appeal in Civil Appeal No. 5/84 -
(1) Page 2 - 2nd paragraph and last paragraph
(2) Judgment of Court of Appeal dated 29th April 1986 referring to Lot 27 Block 89118B."

At page 2 of the Court of Appeal Judgment the 2nd paragraph reads:

"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."

The last paragraph on that page was:

"There was also he submitted the evidence of the Executor George 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 judgment 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 formerly lot 23 of Block 89118B "

The Judgment ended:

"We are of 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 89118B be registered in the name of the Appellant Connell Lorenzo Harrigan. There will be no order as to costs."

The position then is that the reference to the Court of Appeal Judgment in the paragraph of the respondent's affidavit was limited. But at 3.00 p.m. the Judge had the full text of the Judgment and became aware of the order of the Court of Appeal and its implications. Faced

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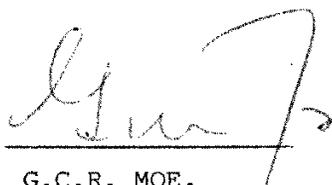
with an Order of the Court of Appeal with respect to Lot 27, the learned Judge had no alternative but to withdraw her contrary order with respect to the said Lot.

During the course of the appeal Counsel submitted that the Order of the Court of Appeal has not been entered and until then the Court of Appeal may review its own Order. Reference was made to Rule 37 Court of Appeal Rules which provides:

"37. A certificate under the seal of the Court and the hand of the Registrar setting forth the Judgment of the Court shall be transmitted to the Registrar of the High Court who shall file the same in the Registry of that Court and the Judgment shall be enforced by the High Court."

Rule 37 does not provide an authority to the Court of Appeal to review its own order. That Rule provides a procedure whereby the High Court becomes aware of the status of the relevant matter or issue and the Court's records updated accordingly. In this case, the Court of Appeal is being asked to review an order made twelve months earlier by a Court of Appeal differently constituted. These are not the circumstances in which the Court can hold that the purposes of Justice require a review of an order.

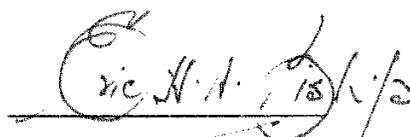
In the result the appeal must fail.



G.C.R. MOE,
Justice of Appeal



L.L. ROBOTHAM,
Chief Justice



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