

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 9 of 1986

BETWEEN:

FREDERICK PROSPERE

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Appellant

and

1. ERNEST MONTOUTE

2. RENE MONTOUTE

3 JEROME MONTOUTE

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Respondents

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

Appearances: F. Ramsahoye, Q.C. and E. Calderon for the Appellant  
W.Cenac, Q.C., V. Cooper and H. Deterville for the Respondents

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1988; Jan. 28,  
May 9.

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JUDGMENT

MOE, J.A.

This appeal is against the dismissal of the appellant's claim to an undivided one-third share in six parcels of land. In a Statement of Claim endorsed on a Writ of Summons taken out against the first and second respondents, the appellant pleaded that he was entitled to the one-third share of the properties by a Deed of Sale to him by Edmond Montoute dated 25th July, 1978 and registered on the 31st July, 1978. He set out further that the first and second respondents were each entitled to a one-third share of the said properties by virtue of the right of inheritance.

The first and second respondents denied that the appellant was an undivided co-owner of the properties with them and averred that prior to the alleged purchase by the appellant the third respondent had become an undivided owner with them. They referred to the following documents:-

- (1) A Deed of Sale by Edmond Montoute to Jerome Montoute dated 27th June 1978 and registered on that date.
- (2) Deposit by Ernest Montoute of a Power of Attorney to him from Edmond Montoute executed before Evelyn Luckhoo, a Notary Public in Guyana, to him, dated 15th July 1978 and registered on 14th August 1978.

/(3) Deed.....

(3) Deed of Confirmation of Sale by Edmond Montoute to Jerome Montoute executed before V.A. Cooper, Notary Royal, on 31st July 1978 and registered on 25th August 1978.

The third respondent was later added as a defendant in the action and his defence was in terms similar to that just stated of the first and second defendants.

The appellant gave evidence that in 1972 in Guyana Edmond Montoute sold him all rights, interest and title to what he had between himself and his the brothers in St. Lucia for the sum of \$12,000 and he paid Montoute \$1,000 in the presence of the lawyer who drew up the agreement for sale. He paid Montoute the balance of \$11,000 in 1973. He produced the agreement for sale and the receipt from Edmond Montoute for \$11,000. He said that he came to St. Lucia in June 1978 with a letter from Edmond Montoute to the first and second respondents. He went to Rene Montoute's home on Tuesday the 20th June 1978 where he met Ernest the first respondent, who, after some conversation, told him they will meet in Court. Later the same day, he met Jerome, the third respondent who promised to show him the land on the following Sunday i.e. the 25th June 1978. On that date Jerome showed him the land and asked the appellant if he intended to sell when everything is finished. He told Jerome yes and Jerome asked for first preference. On the next day the 26th June 1978 Jerome met him at the office of Mr. Kenneth Foster the Attorney-at-Law in order to purchase from him. The Attorney-at-Law gave an opinion on the matter, they did not draw up any documents and he waited for his deed to come from Guyana. He said his deed returned from Guyana and was registered. Put in evidence was a Deed of Sale of the properties between Edmond Montoute and the appellant bearing a signature Edmond Montoute and a certificate that it was signed in the presence of a notary public in Guyana. It was also signed by Frederick Prospere and stated it was executed before Mr. Kenneth Foster as Notary Royal. That deed was registered on the 31st July 1978.

The respondents put in evidence the documents referred to in their pleadings. Jerome gave evidence that he did take the appellant on the land and the appellant showed him an agreement he had with Edmond Montoute. The day after this happened he met the appellant in the lawyer's office. He offered to buy the land from the appellant who asked \$100,000. He agreed but asked to see the appellant's deed.

He also related how the lawyer expressed an opinion on the appellant's position.

The evidence is that the Deed of Sale to Jerome dated and registered on 27th June 1978 was in fact executed by Ernest by virtue of a Power of

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Attorney given him by Edmond on 27th March 1975. Ernest had no authority to sell Edmond's property under that Power of Attorney. There was then a subsequent Power of Attorney dated 15th July 1978 and a confirmation of the transaction which took place on the 27th June 1978.

The learned Judge found that there was an agreement dated 7th January 1972 made in Guyana between Edmond Montoute as vendor and Frederick Prospere as purchaser whereby Edmond Montoute agreed to sell to Frederick Prospere all his rights, title and interest in certain lands in St. Lucia inherited jointly with his brothers Rene Montoute and Ernest Montoute. Further that according to that agreement the rights of the parties to it shall be governed by the law for the time being in force in St. Lucia.

He however found that the document of sale signed in Guyana on 21st July 1978 and in St. Lucia before Mr. Kenneth Foster on 25th July 1978 and registered on 31st July 1978 did not satisfy the requirements of the relevant provisions of the Civil Code of St. Lucia to effect the true conveyance of the property to Frederick Prospere. Consequently he did not thereby obtain lawful ownership of the property and therefore was not an undivided owner of it.

The learned Judge went on to find that Edmond Montoute through his duly authorised Attorney Ernest Montoute and by an unequivocal act of ratification and confirmation effected the sale and conveyance of his rights, title and interest in an undivided one-third share in the property concerned to Jerome Montoute.

Eight grounds of appeal against the decision were filed but argued under two main heads. Put succinctly the appellant's contention is that the finding that the appellant obtained no interest in the property cannot be sustained for two reasons: Firstly that it was wrong to hold that the document signed on 21st July 1978 in Guyana was ineffectual; secondly the third respondent Jerome Montoute took with notice of the sale to the appellant and became bound by the contract between Edmond and the appellant. Jerome was a person against whom the appellant was entitled to specific performance.

It was Counsel's submission that the signing by Edmond of the document in Guyana on 21st July 1978 was an act inter vivos, reducing into writing of a transaction already entered into; that act inter vivos was registrable and was registered i.e. on the 31st July 1978. At that date the appellant's document became effectual. No question of priority would arise for on the 27th June 1978, when Ernest, the first respondent and Attorney for Edmond purported to sell the property to Jerome, he had no power to do so under his power of attorney and the purported confirmation by Edmond on the 25th August 1978 of the sale by Ernest could not have worked retroactively to

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take priority over the appellant's interest already registered.

For his alternative submission Counsel first referred to Articles 917A and 916A of the Civil Code Cap. 242. Two specific provisions may be set out. Article 916A(a) provides "(2) Implied, constructive and resulting trusts shall arise under the Law of St. Lucia, in the same circumstances as they arise under the Law of England" and Article 916A(4) provides "(4) Whenever by the Law of England a beneficiary of a trust is entitled to a right in Equity a beneficiary shall be entitled to a like right under this Code".

Counsel submitted that when Edmond agreed to sell to the appellant in 1972 he became a constructive trustee of the land in favour of the appellant. The appellant upon payment of the full purchase price in 1973 became entitled to specific performance of the agreement to sell him the property concerned.

Therefore Jerome is on the horns of a dilemma. (1) Either he is in the position where retroactivity of the effect of the purported confirmation of the sale to him does not assist him; (2) or even if he had contrived to obtain title under the second power of attorney, he would have been holding as trustee for the appellant because he had taken with Notice of the previous sale.

For the respondents, Counsel's submission was that the deed of 21st July 1978 cannot have any effect in St. Lucia as a private writing for there is no authentication of the signature of Edmond. Reference was made to Article 1153 of the Code which provides:-

"A writing which is not authentic by reason of any defect of form, or of the incompetency of the officer, has effect as a private writing, if it has been signed by all the parties; except in the case mentioned in Article 831 (which is not relevant)."

His submission was that the document cannot be said to be signed by Edmond. He contended that it was necessary to prove in Saint Lucia the deed and its authenticity either by acknowledgement by the vendor himself or by the oath of Mr. Holder the Notary Public. He relied on *Thomas Nye v. James McDonald* (1870) 4 L.R.P.C. 331. He maintained there was no evidence that the document of the 21st July 1978 was signed by Edmond Montoute.

Counsel admitted there was the agreement signed in Guyana on 7th January 1972 but submitted that by virtue of the Scheme of Registration Provisions of the Code that agreement being unregistered cannot affect Jerome. He relied on the conjoint effect of Articles 1967 and 1969 of the Code. He submitted further that Notice and knowledge of that agreement does not affect Jerome because of the absence of registration of that agreement.

/The provisions.....

The provisions of the relevant Articles are as follows:-

1967. Registration gives effect to real rights and establishes their order of priority according to the provisions contained in this Book.
1968. All real rights subject to be registered take effect from the moment of their registration against creditors whose rights have been registered subsequently or not at all. If however a delay be allowed for the registration of a title and it be registered within such delay, such title takes effect against subsequent creditors who have obtained priority of registration.
1969. The following rights are exempt from the formality registration:
1. The privileges mentioned in paragraphs 1, 5, 8 and 9 of Article 1903.
  2. Hypothecs in favour of the Crown.
1970. The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title is duly registered, except when such title is derived from a bankrupt of a person notoriously insolvent.

As to the issue of ratification the submission was that the Deed of Sale of the 21st July 1978 has no effect to transfer the land to Prospere. He received no vested rights thereunder and there was therefore nothing to prevent the ratification of the Deed of Sale to Jerome to relate back to the date of the registration of his Deed of Sale.

Counsel however admitted that whenever there is an agreement to the sale of land or signing of the contract the rule that the vendor becomes a trustee for the purchaser in certain circumstances comes into play by virtue of Article 916A of the Code. He conceded that the position set out in subsection (4) of that Article is not stated to be subject to the provisions of the Code but contended for the pre-eminence of the provisions of the Code by reference to Article 917(3) which provides:-

"When a conflict exists between the Law of England and the express provisions of this Code or of any other Statute, the provisions of the Code or of such Statute shall prevail."

Was the Deed of Sale dated 21st July 1978 signed by Edmond Montoute? I do not accept the submission that there is no evidence that the document was signed by him. There was in evidence the Agreement for Sale dated 7th January 1972, which the respondents accept was executed and which the learned Judge found was made between Edmond Montoute and Frederick Prospere. That document was signed by Montoute. His signature is not questioned. There was also Montoute's signature on the receipt for \$11,000. Those signatures can certainly be put alongside the signature on the Deed of the

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21 July 1978. The signature of Montoute on the Deed concerned was not challenged and indeed from the delivery of pleadings until close of the case, the challenge to the appellant's claim was conducted on the basis that non-compliance with the registration provisions of the Civil Code precluded the deed of sale from defeating the right of Jerome Montoute. There was never any challenge that the deed was not one signed by Edmond Montoute. In my view there was sufficient before the learned Judge on which he could have concluded that the deed was signed by Edmond Montoute. The deed was not an authentic writing within the provision of the Code but there being evidence that it was signed by both parties it takes effect as a Private Writing: *Goddard v. John* 19 W.I.R. 511.

That Deed of Sale signed by Edmond was registered which by virtue of Article 1967 of the Civil Code gives effect to the real rights to which it relates and establishes their order of priority according to the provisions of the Code. It was registered on the 31st July 1978.

The respondents rely on a ratification by Edmond Montoute by Deed of Confirmation executed on 31st July 1978 and registered on 25th August 1978 of a sale of the land to Jerome by Ernest Montoute, the first respondent, Edmond's Attorney on Record, by Deed of Sale dated 27th June 1978 and registered on the said date. Under his Power of Attorney at that date Ernest had no power to sell Edmond's land on his behalf but the respondents submit that the sale by Ernest was one which Edmond could ratify and ratification would relate back to the date of the registration of Jerome's Deed of Sale thus giving him priority according to the provisions of the Code. Reference was made to Halsbury's (4th Edition) Vol. I, para. 756.

The appellant's Deed of Sale having been registered on the 31st July 1978, he acquired thereunder his rights in the property on that date there being no other valid competing deed on that date. The ratification on the 25th August 1978 of Ernest's purported sale on 27th June 1978 cannot operate to divest Frederick Prospere of his rights which had already crystallised before the 25th August 1978. See *Re Gloucester Municipal Election Petition 1900 v. Newth* (1901) 1 K.B. 683.

From this point of view the appellant had become entitled to an undivided one-third share in the lands concerned. He however does not rest on this ground.

I look now at the question whether the respondent Jerome is affected by Notice of a previous sale of the property by Edmond to the appellant. The learned Judge does not appear to have considered the evidence in relation to this issue but the outline at the commencement of this Judgment shows there was abundant evidence that Jerome had Notice of the previous sale to the appellant Prospere. The evidence before the trial Judge concerning

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Jerome's contact and dealing with Prospere about the land between 21st June and 26th June 1978 was not challenged nor was it in any way suggested before us that Jerome cannot be held to have Notice.

In my view a careful assessment of the above evidence leads to the conclusion that between the 20th and 26th June 1978 and definitely by the 26th June 1978 Jerome Montoute was aware that Edmond Montoute had sold the land concerned in the appellant Frederick Prospere. When therefore he entered into an agreement to purchase the land on the 27th June 1978, the date the agreement was also registered, Jerome Montoute could not be properly regarded as a bona fide purchaser for value without Notice. Indeed the respondents did not in any way contend to the contrary.

But Counsel says there may be a conflict between what is provided for in Article 916A(4) and Article 1970 and submits that by virtue of Article 917A(3) the provision in Article 1970 must prevail. The effect would be that Jerome would not be affected by his knowledge of or the Notice he had of the agreement to sell to Prospere.

Both parties are agreed that under an agreement for the sale of land, the vendor becomes the constructive trustee for the purchaser. There is also no dispute that by virtue of Article 916A Edmond Montoute became the constructive trustee for the appellant Prospere who as cestui que trust acquired an equitable interest in the land, i.e. he became the equitable beneficial owner of the land.

Where a person acquires property which is subject to a trust, if he has notice of the trust, he becomes a trustee of it for the purposes of the trust. Lord Moulton delivering the opinion of the Privy Council in *Loke Yew v Port Swettenham Rubber Co. Ltd.* (1913) A.C. 491 approved that proposition. In that case, the respondent Company, through its agent in a purchase of lands, was aware that the seller had actually granted away part of the lands to the appellant Loke Yew and had been paid for them. The Respondent Company was held to be trustees for the appellant for all the rights of which they had Notice. By Article 916A(4) the appellant's right as the equitable owner is enforceable against Jerome who with Notice of the trust purchased from Edmond the trustee.

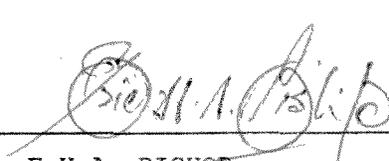
This right of the appellant in accordance with the Law of England and recognized here in Saint Lucia by virtue of Article 916 is not in conflict with the provisions of Article 1970. That Article is concerned with unregistered rights of third parties. In the situation under consideration, Jerome being as I have found a trustee of the appellant or in other words the appellant being a cestui que trust of Jerome, the right of the appellant is not the right of a third party vis-a-vis Jerome. The question of resolving any conflict if there be one between Articles 916A(4) and Article 1970 does not arise.

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In the circumstances the appellant is entitled to an undivided one-third share in the properties concerned and the third respondent Jerome Montoute holds this one-third share in trust for the appellant. I would allow the appeal, set aside the decision of the learned trial Judge and remit the matter to the learned Judge for orders as prayed for consequent upon this ruling. The appellant to have his costs.

  
G.C.R. MOE,  
Justice of Appeal

  
L.L. ROBOTHAM,  
Chief Justice

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