

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 20 of 1989

BETWEEN:

SUZANNA ISIDORE
AUGUSTIN LOUIS
JOACHIM LOUIS
PHILLIP LOUIS
ELIZABETH LOUIS - Appellants
and
CHRISTOPHER GEORGE - Respondent

Before: The Honourable Mr. Justice Bishop - Chief Justice (Acting)
The Honourable Mr. Justice Moe
The Honourable Miss Justice Joseph (Acting)

Appearances: D. Theodore for the Appellants
K. Monplaisir, Q.C., for the Respondent

1990: Jan. 29,
May 28

JUDGMENT

Moe, J.A.:

This appeal is against a decision of Matthew J. dismissing the appellants' action in which they claimed:- (1) a declaration that the respondent does not have and never had any share of or any right, title or interest over a portion of land in area 2 acres, 37 roods, 33.2 perches which forms part of 7½ carres of land situate at Vielle Sucreire and (2) a declaration that they are owners in possession of the said portion of land.

The appellants the lawful children of Rosabelle Louis who died intestate claimed as the only persons entitled to the succession of Rosabelle Louis. They averred that pursuant to the respondent's claim, the respondent's predecessor in title Moise George caused the portion of land concerned to be surveyed and that at the time of the survey Rosabelle Louis objected to it on the ground that Moise George had no right, title or interest in it. The respondent contended that as to the ownership of the land judgment was given in favour of his predecessor in title on 19th

/December.....

December 1986 in High Court action No. 209 of 1972 and he is the registered owner of the land registered as Parcel No. 1253B 128. The appellants say that they are not bound by that judgment and the registration of the respondent as the owner of the land is erroneous and the Register ought to be rectified.

In the action 209/72 between Christopher George the respondent, and the said Rosabelle Louis, Christopher George as the Administrator of the Estate of Moise George, claimed to be owner in possession of the land and that Rosabelle Louis had wrongfully taken possession of a part of it on which she was building a house. He sought possession of the land and an injunction restraining Rosabelle Louis from entering or in any way interfering with the land. Rosabelle Louis denied George's claim and herself claimed that the land in issue belonged to her mother and that she was in lawful possession of it through her mother and herself.

The action 209/72 came on for hearing on 26th January 1973 but Rosabelle Louis died on 5th October 1977 before the case could be finally disposed of. An application was made pursuant to Order 15 Rule 7 of the Rules of the Supreme Court on 28th June 1983 for an order that Bernard Isidore, known as Marcus Sonson, husband of the first appellant, be made a party to the cause so as to enable the proceedings to be carried on as a result of the death of Rosabelle Louis. On 27th July 1983 Singh J. ordered that Bernard Isidore be made a party in the Suit as a result of the death of the defendant Rosabelle Louis and that the Writ of Summons and Statement of Claim be served on him. There was personal service of them on Isidore. He entered no appearance nor filed a defence.

At the hearing of the action 209/72 Counsel appeared for Bernard Isidore made submissions and elected to stand on them. Those submissions were rejected and judgment entered for Christopher George. It was ordered inter alia that:-

1. The defendant give up possession on or before 31st December 1986.
2. An injunction issue restraining the defendant his servants and/or agents or otherwise howsoever from entering or in any way interfering with the plaintiffs' land.
3. \$1600.00 Damages.
4. Costs to be taxed if not agreed.

/The learned.....

The learned Judge in the instant matter considered the proceedings in Action 209/72 and came to the view that the instant matter is res judicata. Thus the dismissal of the appellants' present action.

The appellants' submission is that action 209/72 is not a judgment in rem but a judgment inter parties to which judgment the appellants were not parties; nor were they privies to Bernard Isidore the defendant in that case. That the action only decided that Christopher George had a better possessory right to the land than Bernard Isidore, which decision had no effect on Rosabelle Louis or her Estate in any way. That the question of ownership of Christopher George to the land was not decided in that action. There were therefore no grounds for the operation of res judicata in the present matter.

In Halsbury, Third Edition, Vol. 15, it is stated in paragraph 372, referred to by the appellants as follows:- "A judgment inter parties raises an estoppel only against the parties to the proceeding in which it is given and their privies, for example, those claiming or desiring title under them". It is clear that the appellants claim title under or through Rosabelle Louis.

A question for determination then is whether the judgment in action 209/72 affected in any way those claiming through Rosabelle Louis. The appellants' contention is that there is no evidence that Bernard Isidore, against whom judgment was entered, ever purported to represent the Estate in Succession of Rosabelle Louis and there is no evidence whatever of the assignment of the interest or liability of Rosabelle Louis to Bernard Isidore.. Counsel for the respondent submitted that the status of Bernard Isidore is as set out in the Order making him a party to Action 209/72 and the Court cannot look beyond the Order. Therefore it must be assumed that the learned Judge acknowledged an interest of Bernard Isidore with two aspects:-

- 1) Relating to the interest and Title of Rosabelle Louis.
- 2) Relating to the land the subject matter of the Suit.

Order 15 Rule 7 provides:-

"(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of death or bankruptcy.

/(2) Where...

- (2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first-mentioned party.

An application for an order under this paragraph may be made ex parte.

- (3)

- (4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

- (5) Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person."

The learned Judge in the instant matter concluded that the Order in respect of Isidore having been made pursuant to Order 15 Rule 2 Singh J. must have been satisfied that the interest or liability of Rosabelle Louis had been assigned or transmitted to or had devolved upon Bernard Isidore. I can find no fault with that conclusion. Such a conclusion is acceptable, reasoning from what is required to be established for an Order to be made under the relevant rule.

Of greater significance however is that once a substituted person becomes a party in an action, the substituted party is placed in the exact position of the party whom he replaced. Bernard Isidore when he became a party to the action 209/72 was placed in the exact position of Rosabelle Louis. He is taken therefore to have delivered the same defence and raised the same issues. Isidore taking the same position which Rosabelle Louis had on the issues, a decision on those issues or any of them against Isidore is as much a decision against ^{Rosa} Rosabelle Louis or those claiming through her.

A classic passage on the plea of res judicata is in the judgment of Lush J. in *Ord v Ord* (1973) 2 K.B. at page 432 and is as follows:-

/There is.

"There is no difficulty in seeing what, in the strict and proper sense, the plea of res judicata means. The words "res judicata" explain themselves. If the res - the thing actually and directly in dispute - has been already adjudicated upon, of course by a competent court, it cannot be litigated again. There is a wider principle,..... often treated as covered by the plea of res judicata, that prevents a litigant from relying on a claim or defence which he had an opportunity of putting before the court in the earlier proceedings and which he chose not to put forward....."

Now in action 209/72 the plea of Rosabelle Louis and the issues she raised which Isidore is taken to have raised were that the land belonged to Rosabelle Louis' mother and she Rosabelle Louis was in lawful possession of it by virtue of her mother's Title. As against her claim was Christopher George's claim to ownership of the land. In the present action the appellants are making the same claim made by Rosabelle Louis in action 209/72.

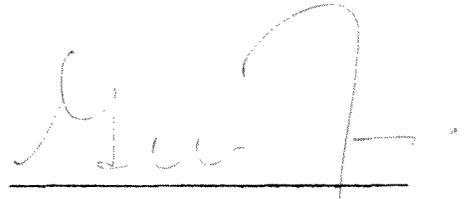
The submission that the decision in that action only decided that Christopher George had better possessory rights than Bernard Isidore seems to have been prompted by merely referring to the Order made and entered. We are not restricted to looking at the Order to be able to decide what questions were determined in the earlier action. As Lush J. also said in *Ord v Ord* (supra) at p. 442 "It is often necessary to see what the evidence before the Court at the previous trial was in order to see what the precise facts were that cannot afterwards be disputed", and we are entitled to look at the Judge's reasons for his decision.

In his judgment in the action 209/72 the learned Judge stated "I accept the evidence of the plaintiff (Christopher George) and Gaspard that the land belongs to the Estate of Moise George and that the defendant Isidore or Sonson is a trespasser on the land at the very moment as was Rosabelle Louis". Thus there was a determination of the issue whether the land belonged to Rosabelle Louis' mother through whom Louis claimed to be entitled to possession of the land or to the Estate of Moise George through whom Christopher George claimed. The High Court decided that Louis was not the owner entitled to possession of the land. That the land belonged to the Estate of Moise George. The Order to give up possession of the land and to refrain from

/trespassing.....

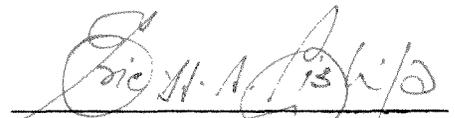
trespassing thereon was made against the person who had been substituted for Rosabelle Louis and stood in the exact position in which she stood. I am of opinion that the issue which the learned Judge was called upon to determine in the instant action was clearly decided already. The learned Judge's decision that the matter is res judicata is therefore sustained.

I would dismiss the appeal with costs to the respondent.



G.C.R. MOE,
Justice of Appeal,

I agree with the reasons given and would also dismiss the appeal, with costs to the respondent.



E.H.A. BISHOP,
Chief Justice (Acting)

I agree.



MONICA JOSEPH
Justice of Appeal (Acting)