SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.6 OF 1993

BETWEEN:

RAYMOND JNBAPTISTE

Appellant

v

FRANCIS MAUREEN ESTHER MILLER

Respondent

Before:	The Rt. Hon. Sir Vincent Floissac	Chief Justice
	The Hon. Mr. C.M. Dennis Byron	Justice of Appeal
	The Hon. Mr. Satrohan Singh	Justice of Appeal

Appearances: Ms. Fleur Byron-Cox for the Appellant
Mr. Dextor Theodore for the Respondent

1995: November 1;
1996: January 29.

JUDGMENT

BYRON, J.A.

On the 29th June 1993 Matthew J., having declared the respondent to be the owner of a parcel of land registered in the Urban Castries Registration Quarter at Block 0848D Parcel 525, and the deed of sale between the appellant and Elizabeth Fulgence in relation to the said parcel null and void, ordered the rectification of the Land Register by cancelling the registration of the said Elizabeth Fulgence as proprietor and substituting the respondent therefor. Elizabeth Fulgence, however, has not joined in this appeal.

FACTS

The appellant was the adopted son and the late Clarita Miller nee JnBaptiste a natural daughter, of Merope Peart deceased (the testatrix) from whose Estate Parcel 525 was inherited. By an order of the High Court made on the 10th day of December 1955 the respondent became entitled to the succession of Clarita her late mother.

Prior to her death on 20th November 1952 the testatrix made her last will and testament dated 4th July 1939 before A.M. Lewis, Notary Royal. The provision which is relevant to this case is Clause 4 which reads as follows:

> " I give devise and bequeath unto my nephews and nieces to wit: ...4.Raymond JnBaptiste, ...6.Clarita JnBaptiste.....all the property ...which may belong to me or to which I may be entitled at the date of my death I give them the aforesaid property in equal shares, and I stipulate that the share of any of my legatees who shall predecease the said Raymond JnBaptiste shall accrue to the said Raymond JnBaptiste and that on and after his death his share and the share of those dying after him shall accrue to the survivors."

Letters of Administration with the said will dated 4th July 1939 annexed were granted to the appellant pursuant to a consent order made in the Supreme Court of the Windward Islands and Leeward Islands (St.Lucia) on the 21st day of August 1953 in proceedings in which all the legatees under the will including Clarita were parties, upon it being proved that Arthur Green Peart the executor appointed under the said will had previously died on the 4th day of February 1950.

On 12th June 1954 a Deed of Partition was made between the appellant as the personal representative of the said Estate and the Universal legatees including himself and Clarita to put an end to their undivided ownership of the immovable property of the said deceased in accordance with the terms of her will. That Deed contained the following recitals:

> "And whereas by a consent order of the said Supreme Court dated 21st August 1953 and registered on 28th August 1953 in Vol. 98 a No. 61097 Letters of Administration with the will annexed were granted to the said Raymond JnBaptiste in respect of the Succession of the said Merope Peart (deceased) and it was further ordered that a partition of the immovable property described in the first schedule hereto be made amongst the parties in a manner to be agreed by them the Administrator being authorised to sell any portion of the said property which cannot conveniently be partitioned or which the parties may agree in writing to sell...."

The appellant distributed the estate in that Deed of Partition, and parcel 525, the subject of this litigation, was therein conveyed to Clarita. He expressly disseized and divested himself of all the rights of property and all other rights which he had to or in or upon the said lot of land in her favour.

Several deeds were tendered in evidence in support of the respondent's pleading that the appellant had sold lots of land included in that Deed of Partition as Administrator and also as a beneficiary, and that other beneficiaries had also sold thereby demonstrating the reliance placed on the validity of the recitals and the conveyance.

On 18th October 1988 the appellant as "Administrator of the estate of Merope Peart deceased" was registered as proprietor of parcel 525 which he, as such

Administrator, had previously conveyed to the said Clarita by the Deed of Partition some 34 years earlier in 1954. Then on 14th July 1989 as such Administrator he sold the said land to Elizabeth Fulgence for the sum of $50,000.00. This case was brought to challenge that sale and the registration based on it.

THE APPEAL

Counsel for the appellant argued two main grounds of appeal which I hope could be fairly described as being:

> 1. That the grant of probate to Arthur Green Peart had the effect of negativing the subsequent grant of administration to the appellant and the consequential deeds and registrations.
>
> 2. That as the appellant was registered on the Land Register as Administrator and sold as Administrator his title could not be challenged on proceedings for rectification under the principle in Skelton v Skelton.

VALIDITY OF THE PARTITION DEED

The appellant tendered in evidence a grant of probate registered on 6th March 1953 to Arthur Green Peart the sole executor named in the said will. The learned trial Judge dismissed this grant as being a nullity and said:

> "It is common knowledge that this probate is a nullity, for Arthur Green Peart died approximately two years before the death of his wife."

In her argument before us the appellant relied on **Robinson v Isaacs** (1984) 1 A.C. 97 and submitted that it was wrong to categorise the grant to A.G. Peart deceased as a nullity because while it remained as an order it had a deleterious and negativing effect on the subsequent administration in favour of the appellant and the consequential deeds and registrations to which he was a party, in that capacity. This argument was adversely affected by the circumstance that the grant in favour of the appellant was based on an order of the High Court dated 21st August 1953 to which he and Clarita were both parties. The order must be interpreted to have discharged the grant in favour of A.G. Peart deceased, so that it could no longer be regarded as a valid or existing order. Additionally although the learned trial Judge confessed an inability to see the relevance of estoppel to this case, the issue was a live one because the appellant must be affected by the principle of estoppel by record or as it is more commonly described by res judicata. The court order to which the appellant and Clarita were both parties binds them as to its terms and the appellant is thereby precluded from challenging the legality of the grant to himself.

In addition the appellant must be estopped by convention from denying the efficacy of the conveyance to Clarita, and his legal right to convey the same to her. This estoppel is founded on the agreed statement of facts in the recitals of the Deed of Partition (quoted above), the truth of which was assumed, by the convention of the parties, as the basis of the transaction into which they were about to enter. The

appellant and the respondent had acted on the assumption that the state of facts set out in the recitals contained in the Deed of Partition was to be accepted between them as true, and each ought to be estopped against the other from questioning the truth of the statement of facts so assumed. It would seem so transparently clear as hardly to require authority that the recital of facts placed by the parties in the very forefront of the instrument into which they entered must serve to estop both from averring to the contrary, that I will merely refer to Halsbury's Laws of England 4th edition, Volume 16 para.1572

> "Effect of Recitals. A party is estopped from denying any specific facts contained in a recital in a deed to which he is a party, provided the recital is certain, precise and unambiguous."

It follows that the learned trial Judge was entitled to rule that the appellant acting as Administrator of the Estate of the testatrix was competent to convey the property to Clarita in the Deed of Partition, and that it effectively passed title to her. Consequently, he was entitled to make the declaration of ownership in favour of the respondent and conclude that the appellant was incompetent to sell the same property to Elizabeth Fulgence making the sale and the deed evidencing it null and void.

POWER TO ORDER RECTIFICATION

The court's power to order rectification of the land register is contained in the Registered Land Act 1984 section 98 (1):

> "Subject to the provisions of subsection (2) the Court may order the rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake."

Counsel for the appellant argued that the first registration was to the appellant as Administrator and as his title as such could not be challenged under section 98 in these proceedings, the title he conveyed was equally immune from impeachment. She relied on **Skelton v Skelton** (1986) 37 W.I.R. 177. In that case Robotham C.J. explained that a High Court Judge sitting in original jurisdiction has no jurisdiction to impeach a final decision of the Adjudication Officer, in proceedings for rectification of the Land Register. Any such challenge must be made in accordance with the appellate procedure prescribed in the Land Adjudication Act. In this case, the respondent did not challenge but rather relied on, the registration of the appellant as Administrator and no challenge was accordingly being made to the first registration. The principle in **Skelton v Skelton** was therefore irrelevant to this case.

In the amended statement of claim the respondent alternatively alleged in paragraph 1(c) that the appellant was sued as Trustee. In my view the evidence established that by his entry on the Land Register as the Administrator of the Estate of the testatrix, the appellant was holding the land as a Trustee by virtue of the legal principle that once he had conveyed the land to Clarita to give effect to the dispositions

of the will he was stripped of his representative capacity. The principle was expressed by Viscount Haldane in **Attenborough v Solomon** (1913) A.C. 76 at 85:

> "The executors had long ago lost their vested right of property as executors and become, so far as the title to it was concerned trustees under the will. Executors they remained, but they were executors who had become divested, by their assent to the dispositions of the will, of the property which was theirs *virtute officii*; and their right *in rem*, their title of property, had been transformed into a right in *personam*, a right to get the property back by proper proceedings against those in whom the property should be vested if it turned out that they required it for payment of debts for which they had made no provision.."

In this case it is clear from that statement of the law that the appellant had ceased to have any continuing power to dispose of the property as Administrator of the Estate from the time he executed the Deed of Partition and his registration on the Land Register as such Administrator constituted him a Trustee holding for the benefit of the respondent.

At the trial, the appellant did not rely on his title as such Administrator as the basis of his entitlement to sell. He may have shifted his position in an attempt to avoid the formidable obstacle of the Partition Deed he executed in 1954 and the estoppel to which I have earlier referred. He testified that he was entitled to the beneficial ownership of the land under the provisions in clause 4 of the will, because Clarita having predeceased him her share accrued to him. The appellant must have known that this proposition was erroneous. After the death of the testatrix he had conveyed an absolute interest in the disputed land to Clarita. It vested in her with full power to alienate which any absolute owner would have and formed part of her succession on her death leaving no interest in it for him to inherit by virtue of clause 4.

That accorded with the legal position and the intention of the testatrix. The word "accrue" in clause 4 of the will (supra) imported a technical meaning from Article 804 of the Civil Code of St.Lucia and indicated an intention to provide for succession on the death of her legatees during the lifetime of the testatrix, not after her death. The word was judicially defined in the case of **Marie Egyptienne Alexine v Ferdinand Decaine**, St.Lucia Civ. No.19 of 1952 by Manning J. His interpretation was premised on articles 836 and 804 of the Civil Code which provide:

> "804. When legacies are in favour of several persons jointly, the lapsed share of any one of the joint legatees accures to the others.
> Legacies are held to be so made when they are created by one and the same disposition and the testator has not assigned the share of each co-legatee in the thing bequeathed. Directions given to divide the thing jointly disposed of into equal aliquot shares, do not prevent accretion from taking place.
>
> "836. Every testamentary disposition lapses if the person in whose favour it is made, or his children, do not survive the testator."

He said:

7. Mr. Mathurin, for the defendant, urges that "accretion" in the case of wills has a definite meaning and applies only to a lapse due to the death of a beneficiary before the death of the testator. It cannot apply to the death of a beneficiary after the death of the testator. It does not mean "survivorship". As to the meaning of "accretion" he referred me to Mignault's Droit Civil Canadien, Vol.4, p.323; and to Ripert's Traite de Droit Civil, Vol.3 p.681, 682; and to Vincent v Claude, 1951, Quebec Reports, p.152.

8. Mr. Compton agrees with the usual meaning of "accretion" to be derived from the authorities cited by Mr. Mathurin; but asserts that in this particular case it is clear that the testator meant something different. I am unable to agree with him. It would have been easy for the testator to agree with him. It would have been easy for the testator to agree with him. It would have been easy for the testator to provide in apt words that the shares in the property should be mere life interests for each beneficiary until there was only one beneficiary surviving, and that this beneficiary should take the whole. There is no sufficient expression of any such intention; still less of any intention which would support the illogical claim of the plaintiff to such part of the property as had not been already disposed of by transfer or by will."

I respectfully adopt the view that in St.Lucia accretion in wills applies only to the lapse of a legacy due to the death of the beneficiary during the lifetime of the testator, and rule that as the testatrix predeceased Clarita the appellant was not entitled to inherit the land in dispute under the provisions of clause 4 of the will.

I think that it is also clear from the recitals in the Deed of Partition that the parties had acted on the convention that the legatees were entitled to have absolute title vested in them, and from the deeds exhibited that they had altered their legal position on that basis giving rise to the estoppels to which I had earlier referred.

The legal position would have been similar even if no technical meaning was attributed to the word "accrue". It is explained in Halsbury's Laws of England 4th Edition Vol.50 p.423 para.627:

"**The general rule**. A gift over or property given to a person absolutely in the event of his death is construed as a gift over in the event of his death before the period of distribution or vesting unless some other period is indicated by the context. The rule is based on the ground that, as death is inevitable, it cannot be deemed a contingency; the testator could not have intended merely to provide for the possibility of the donee dying. It is also based on the presumption in favour of vesting.

Therefore, if the gift is immediate and there is a gift over in the event of the donee's death, without any suggestion of succession, prima facie the gift over takes effect only where the donee dies in the testator's lifetime, as an alternative gift, and, if the gift is postponed to a life interest, prima facie the gift over takes effect only on death before the tenant for life, as an alternative gift. Alternatively, if the context so requires, the gift over may be construed as referring to death before vesting."

In the Privy Council decision in the Australian case of **Penny v Commissioner for Railways** (1900) A.C. 628 Lord Lindley explained the applicable rule:

> "It is true that the last clause says only in the case of his death, and does not say at what time. Death in the testator's lifetime may be meant; but it can hardly have been exclusively meant. Death before attaining a vested interest is covered by the words, and cannot be rejected as not intended by the testator.
> The event of death being inevitable, a gift to one person in the event of the death of another is only treated as a gift in remainder where the first taker takes for life only. A gift over of property given to a person absolutely in the event of his death is always construed as a gift over in the event of his death before the period of distribution or vesting unless some other period is indicated by the context."

In this case the land in dispute had vested in Clarita before her death and clause 4 of the will could not be construed as providing for the succession of that property after it had already vested in her, the testatrix having already died and the period of distribution having already elapsed.

The effect of this principle is that the land did not accrue to the appellant on Clarita's death. It remained part of her estate. The respondent was legally entitled to the beneficial ownership of the land, and as a Trustee holding for her benefit the appellant was obliged to convey it to her or to her order.

It is clear therefore that the sale to Fulgence was based on a mistake of the appellant's proprietary interest in the land. If the sale was made as owner, it was based on the mistake that the appellant was entitled to inherit the land under the provisions of the will. If the sale was made as Administrator of the Estate, that too would be mistaken because as already explained he was no longer acting in a representative capacity but only as Trustee for the respondent. In either case the registration would have been obtained by virtue of a mistake as to the appellant's title to the beneficial ownership of the land.

Section 93 empowers the court to rectify that mistake. In my judgment, therefore, the learned trial Judge had the power to order rectification and there was ample evidence to justify the exercise of his discretion to do so.

I would dismiss the appeal with costs to the respondent to be taxed.

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C.M. DENNIS BYRON
Justice of Appeal

I Concur.

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SIR VINCENT FLOISSAC
Chief Justice

I Concur.

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SATROHAN SINGH
Justice of Appeal