

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11 OF 1993

BETWEEN:

HEIRS OF HAMILTON LA FORCE represented by
NATHAN LA FORCE qua Administrator of the
estate of **HAMILTON LA FORCE** and also
represented herein as an heir of Hamilton La Force
of the Town of Soufriere

Appellants

and

[1] **ATTORNEY-GENERAL OF** Castries

[2] **LUCY ADRIEN**

[3] **LEON JUSTIN**

[4] **ANDREW ST.ROSE**

[5] **ELVINA DELIGNY** all of the Village of Choiseul

Respondents

Before:

The Hon. Mr. Justice C.M. Dennis Byron Justice of Appeal

The Hon. Mr. Justice Satrohan Singh Justice of Appeal

The Hon. Mr. Justice Albert Redhead Justice of Appeal [Ag.]

Appearances:

Mr. E. Calderon and Mr. C. Rambally for the Appellants

Mr. A. Richelieu for the Respondents

1996: May 29; July 22.

JUDGMENT

BYRON, J.A.

On 8th October 1993 Matthew J. dismissed an action brought by the appellants for Rectification of the Land Register on the ground that the Recording Officer or the Adjudication Officer had decided the issue of ownership in favour of the respondents 2 - 5 with complete precision.

The notice of appeal contended that there was no evidence to support the learned trial Judge's finding that the appellants had made a

claim to the Recording Officer and that the learned trial Judge erred in law in finding that section 98 of the Land Registration Act 1984 did not provide a remedy in the circumstances of this case.

The Background

The respondents 2 - 5 are registered owners of 2.60 Hectares of the Lemaignant lands in the Quarter of Choiseul registered as parcel No.0426B29.

The appellants alleged that in 1932 the late Hamilton La Force purchased from the late Desir Michel, the respondents predecessor in title, an undivided 1/3 share in the said land as evidenced by a Deed of Sale, but that they inadvertently failed to present their claim under the Land Adjudication Act 1984 and now pray to have the land register rectified to enter them as owner of the said 1/3 share of the said parcel.

Although there was mention that the La Force family occupied 2 acres and 21.28 perches of the land identified in a survey plan dated 17th December 1989 no relief was sought on the basis of a prescriptive or possessors title. The sole issue raised on the pleadings was the rectification of the Land Register because of the inadvertent omission to file a claim under the Land Adjudication process.

The Factual Issue

The trial was ex parte as the respondents did not attend. The appellants called two witnesses who testified without being cross-examined. The learned trial Judge concluded from the testimony of Wellington La Force, a son of the deceased Hamilton La Force that:

"The Recording Officer must have been satisfied that the plaintiff could neither obtain absolute title under section 16[1][a][i] nor provisional title under section 16[1][d] "

He explained that: "Wellington La Force made some representation to the Recording Officer and it is obvious he did not satisfy the Recording Officer. It would seem that it is perhaps incorrect to say that the plaintiffs inadvertently failed to enter a claim."

When the appeal was being argued the challenge to this finding of fact was not pursued. Instead the appellants advanced arguments to support the conclusion that the claim by the Heirs of Hamilton La Force was wrongly omitted or rejected by the relevant officers in breach of the Land Adjudication Act 1984 sections 9[1], 14, 15 and 16[1].

Although the evidence on this issue was vague and scanty, it was not contradicted. The learned trial Judge saw the witnesses and he was in a good position to assess them and their testimony. In my view there was evidence from which he could have drawn the inferences he did. I would not interfere with the finding of fact on this issue.

The Law

The court's jurisdiction to order Rectification of the land register is prescribed by the Land Registration Act 1984 section 98[1] as follows:

"98[1] Subject to the provisions of sub-section [2] the Court may order 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."

The power to order Rectification must be contrasted with the power to register ownership acquired by positive prescription. The Land

Registration Act 1984 sections 94 to 96 make provisions for the registration of prescriptive title by procedures which include the publication of notices. In this case there was no claim for the registration of any interest acquired by positive prescription.

In any event, the appellants claim of undivided ownership in the land would have been inconsistent with any allegation that their possession was adverse their co-owners.

The statutory jurisdiction conferred by section 98[1] restricts the remedy of rectification to a registration obtained, made or omitted by fraud or mistake. This contrasts with the position in England where section 82[1][a] of the Land Registration Act 1925 empowers a Court of competent jurisdiction to decide whether a person is entitled to any estate, right or interest in or to any registered land or change, and to order rectification in certain cases.

Rectification must also be distinguished from appeals under the Land Adjudication Act 1984.

The unequivocal intention of the legislature is evidenced by section 9[1] of the Land Registration Act 1984:

"The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Act....."

Disputes as to the ownership of land were to be resolved in

accordance with the Land Adjudication Act 1984 with appeals to the Land Adjudication Tribunal and the Court of Appeal within the specified times prescribed by section 24 of the Land Adjudication Act 1984 as amended by the Land Adjudication [Amendment] Act 1986.

It is already well settled that the jurisdiction to rectify the register of land is not to be used as an indirect method of appeal against decisions taken under the Land Adjudication Act 1984, and that the term "mistake" in section 98[1] of the Land Registration Act 1984 does not include a failure to employ the appellate procedure laid down by the Land Adjudication Act 1984 as amended.

In the British Virgin Islands case of **Skelton v Skelton [1986]** 37 WIR 177 the only ground of appeal argued was whether the High Court had jurisdiction to amend, reverse or vary the award of an Adjudication Officer in the absence of an appeal against his decision. Section 140 of the Land Registration Ordinance is identical to section 98 of the Act in St. Lucia. Robotham C.J. said:

"I would agree that if the expression of the final decision of the Adjudication Officer was incorrectly recorded on the Land Register, section 140 could be resorted to. I cannot, however, accept that it can be applied in the original jurisdiction of the High Court to alter in a material particular his individual findings of fact, based upon his own inquiry, simply because the Judge sitting in an original jurisdiction is of the opinion that his findings were erroneous."

This was applied in **Webster v Fleming**, Anguilla Civil Appeal No.6 of 1993 where I expressed the opinion of the court at p.12:

"In my Judgment any mistake made in the registration process could be rectified. The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration process."

In this case the fact alleged on the pleadings was an inadvertence to claim under The Land Adjudication Act 1984, and the fact found by the learned trial Judge on the evidence was a failure to appeal from an unfavourable finding by the relevant Officer. In my view neither of these factors could invoke the jurisdiction to order rectification of the land register under section 98 of the Registered Land Act.

The appellants did not employ any of the appellate procedures under the Land Adjudication Act 1984, and cannot rely on that failure as the basis for his application to the court to order the rectification of the land register.

I would therefore dismiss the appeal with costs.

C.M.DENNIS BYRON
Justice of Appeal

I Concur.

SATROHAN SINGH
Justice of Appeal

I Concur.

ALBERT REDHEAD
Justice of Appeal [Ag.]