

ANGUILLA

IN THE COURT OF APPEAL

BETWEEN:

SIDNEY HUGHES

Appellant

and

URSULA HUGHES

**(As Personal Representative of
the Estate of Mary Richardson,
deceased)**

Respondent

Before: The Hon. Mr Justice C. M. Dennis Byron
The Hon. Mr. Justice Satrohan Singh
The Hon. Mr Justice Albert Matthew

Chief Justice (Ag.)
Justice of Appeal
Justice of Appeal (Ag.)

Appearances: Mr. Courtney Abel, Mr Patrick Patterson with him for
the Appellant
Miss Paulette Harrigan for the Respondent

[May 19, June 2, 1998]

JUDGMENT

SATROHAN SINGH J.A.

On July 31, 1995, the respondent, as personal representative of the Estate of Mary Richardson deceased, brought suit against the appellant for an order of possession with respect of lands described as Registration Section Road Block 08412B Parcel 123 of Anguilla. She also prayed for an injunctive order referable to the said property and for damages for trespass. The appellant in his defence to this claim denied the trespass and averred that he entered the land in 1983 with the permission of his

father. He admitted that when he so entered, he understood that the land was undivided family property. He pleaded that he built on the land without objections from the respondent and claimed that this suit brought by the respondent was barred as a result of the respondent's acquiescence and laches.

Before the suit came on for hearing in December, 1996, the respondent discovered that as a result of an honest genuine mistake on her part caused by the

"bungling at the Lands and Surveys Department" (as found by the judge), that at the time when the suit was filed, the disputed land was already registered in the name of its beneficial owner Orlando Richardson. **Saunders J** found this happened "through no fault of the (respondent) and despite Orlando Richardson's effort precisely to prevent the same."

The effect of this discovery left the respondent with no locus standi to maintain the claims for possession and the injunction. Standing remained only with respect to the trespass. She therefore, in order to maintain the claims for the injunction and for possession, applied to the judge for leave to join Orlando Richardson as an added plaintiff. This application was opposed by the appellant on the ground that to do so, would be to deprive him of a defence under the Limitation Acts that he would have been entitled to should Orlando Richardson decide to bring a fresh suit for possession of the disputed property.

Adrian Dudley Saunder J, in the exercise of his judicial discretion, granted the application and ordered that Orlando Richardson be made an added plaintiff in the suit. The appellant is dissatisfied, hence this appeal. The central issue for our determination therefore is, whether the Court should permit an amendment to a writ of summons, when such application is made after the expiry of any relevant limitation period, and which, if granted, would effectively deprive a defendant of the right to such a defence in a subsequent action that may be brought by the proposed added party should the application be refused.

I think the law is settled that a Court will not allow an amendment joining a new plaintiff to a writ if the effect of so doing would be to deprive the defendant of a defence under the Statute of Limitations. It is accepted practice for a long time now that amendments which would deprive a party of a vested right ought not to be allowed whether the matter is one of discretion or not. The test of whether the added plaintiff should be joined is whether it is unarguable, and not merely reasonably arguable, that the defence would succeed should the proposed added

plaintiff bring his own suit at the subsequent time. [See **MABRO v Eagle Star and British Dominions Insurance Co. Ltd [1932] All E.R. 411** and **Leicester Wholesale Fruit Market Ltd v Grundy and others [1990] 1 All E.R. 442**.

On the legal premise therefore, I would now address the issue whether, on the facts as pleaded, the defence under the Limitation Act as alleged by the appellant is unarguable. S19 of the Limitation Ordinance Cap 45 of the Laws of Anguilla states.

- (1) No period of limitation prescribed by this Ordinance shall apply to an action by a beneficiary under a trust, being an action
 - (a)
 - (b) to recover from the trustee trust property or proceeds thereof in possession of the trustee, or previously received by the trustee and converted to his own use.

In simple language, a trustee is legally impotent from prescribing over property held on trust by such trustee. The term "trustee" in this context includes a constructive trustee. If property is subject to a trust and a person entered into possession or receives the rent of such property with full notice of the trust, he is a constructive trustee. [Halsburys Laws of England 4th Edition Volume 24 page 281 paragraph 556].

Miss Harrigan for the respondent contended that from the defence filed by the appellant, he made himself a constructive trustee of the disputed property. Prima facie, this argument appears to be of merit. In that defence the respondent said he entered the land knowing it to be undivided family property. In my judgment, this disclosure in the pleadings, makes the defence under the Limitation Act, not unarguable. Applying therefore the law abovestated, I would hold that this was not a ground on which the learned trial judge could have refused the respondent's application. This ground of appeal is therefore without merit.

We did not wish to hear the very persistent Miss Harrigan on the other ground of appeal that the judge applied the wrong Rule of Court when he determined the application as we were satisfied that it was of no moment. The learned judge's

judgment demonstrated an exercise of judicial discretion that this Court could not have faulted.

For these reasons I would order that this appeal do stand dismissed with costs to the respondent to be taxed if not agreed. The order of the trial judge is affirmed.

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SATROHAN SINGH
Justice of Appeal

I concur

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C. M. DENNIS BYRON
Chief Justice (Ag.)

I concur

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ALBERT MATTHEW
Justice of Appeal (Ag.)