

SAINT LUCIA

IN THE COURT OF APPEAL

CIV. APP. NO.13 OF 1997

BETWEEN:

THELMA CRANE

Appellant

and

DAVID WORRELL ET AL

Respondents

Before: The Hon. Mr. C. M. Dennis Byron Chief Justice [Ag.]
 The Hon. Mr. Satrohan Singh Justice of Appeal
 The Hon. Mr. Albert Redhead Justice of Appeal

Appearances:

Mr. Dexter Theodore for the Appellant
Ms. Cynthia Combie for Respondents No.2 and No.3
Mrs. Shirley Lewis for Respondent No.5

1998: October 26; 27.

JUDGMENT

BYRON, C.J.[AG.]

This is an application to restore to the hearing list an application for leave to appeal out of time which was struck out at the June sitting of the Court. The intended appeal is against an entry of a right of way in the Adjudication record made on the 5th June 1987 and is more than ten years after the conduct complained against. The allegation seems to be that the recording officer made a mistake. It does not seem from our record that there is any allegation that the dominant land owners applied for the entry, or that there was any adjudication between contesting claimants.

The application could not succeed unless it could be shown that the merits of the appeal required the considerable extension of time. In this case there was an apparent lack of jurisdiction to entertain the appeal and it was the first hurdle that the appellant had to leap.

The statutory rights which the appellant sought to invoke were set out in the Land Adjudication Act, 1984. Section 20 of the Act gave any person aggrieved by any entry in the adjudication record ninety days to appeal to the Adjudication Officer, and any person aggrieved by the decision of the Adjudication Officer was required to appeal to the Land Adjudication Tribunal. Section 24 of the Act gave a right of appeal from the Land Tribunal to the Court of Appeal within two months of the issue of the final certificate of the Land Adjudication Officer or such extended time as the Court of Appeal should allow. It was indicated by Counsel for the appellant that the certificate was issued in 1987.

The appellant did not appeal to the Land Adjudication Officer, nor to the Land Tribunal. No appeal to either of these bodies is currently possible because the adjudication process having been completed the entire machinery has been removed. Counsel for the appellant has submitted that we should interpret the appeal provisions purposively and undertake the appeal.

The Land Adjudication Act had unmistakably created a regime intended to produce finality to the adjudication process which would lead to a firm and certain register of lands. In my view a purposive construction would require support for that principle and such support would accord with a number of decisions of this Court.

The affidavits in support indicate that the appellant's case requires findings of fact relating to certain allegations of the existence of a vehicular road for a peppercorn rent and an agreement signed by the landowners concerned. It also involves determination of the whereabouts of a servitude established by deed. These and other contentious issues relevant to determining the matters raised by the appellant require the adjudicative process of the trial court and not the appellate court. There is no judicial decision against which the appellant is appealing. This proceeding is in effect an invitation to the Court of Appeal to exercise an original jurisdiction. Our procedure is

unsuitable to that exercise and a purposive construction would require a ruling against the appellant.

I do not think that the legislation has left a person who is aggrieved without recourse. The result of the Adjudication record was an entry in the land register. The Land Registration Act makes provision for the rectification of the register in cases where entries have been made by mistake or fraud by the institution of proceedings in the High Court. Counsel for the appellant expressed scepticism of the chances his client would have for success because of evidential hurdles on the issue of the knowledge of the persons affected by the entry complained against, created by the statutory provisions. This confirms the need for a trial where evidence could be adduced to determine whether the appellant is in fact deserving of relief in accordance with the unambiguous provisions of the statute.

In the circumstances I would not order the restoration of the application for extension of time to appeal. The appellant submitted that each party should bear their own costs. I could not support this because there is no allegation that the respondents indulged in any conduct which made these proceedings necessary. I think that they should be indemnified in costs.

I would dismiss the application with costs.

**C.M. DENNIS BYRON
CHIEF JUSTICE [AG.]**

I Concur.

**SATROHAN SINGH
JUSTICE OF APPEAL**

I Concur.

**ALBERT REDHEAD
JUSTICE OF APPEAL**