GRENADA

IN THE COURT OF APPEAL

Civil Appeal No. 5 of 1999

BETWEEN:

AGATHA NOEL
(As Administratrix of the Estate of
Hence McLawrence Noel, Deceased)

Appellant

and

MELINA VERNE NOEL

Respondent

Before:

The Hon. Mr. C.M.Dennis Byron	-	Chief Justice
The Hon. Mr. Satrohan Singh	-	Justice of Appeal
The Hon. Mr. Albert N.J.Matthew	-	Justice of Appeal (Ag.)

Appearances:

Dr. Francis Alexis for the Appellant
Mr. Tillman Thomas for the Respondent

1999:July 8 and 19.

JUDGMENT

MATTHEW J.A. (Ag.)

The Appellant is the widow of Hence McLawrence Noel whose father was Jeremiah Noel. The Respondent is the widow of George Washington Noel who was the nephew of Hence McLawrence Noel.

The Appellant brought an action for trespass against the Respondent in respect of part of a portion of land situate at Harvey Vale, Carriacou, being Lot No.46 containing by estimation 3 acres 1 rood 19 poles.

In the particulars indorsed on the writ, the Appellant claimed that Hence McLawrence Noel was the owner in fee simple of the land at Harvey Vale, being Lot No.46 of which 11,319 square feet purportedly

conveyed to George Washington Noel by Hence McLawrence Noel by way of deed of gift formed part.

The Appellant claimed that Hence McLawrence Noel bought Lot 46 from the Government of Grenada on a sale by the Government for arrears of land tax due and owing on the land by the former owner, Jeremiah Noel.

In her statement of defence the Respondent denied that Hence McLawrence Noel was ever owner of Lot 46 and alleged that Lot 46 is part of the Estate of Jeremiah Noel. She also alleged that Lot 46 was always occupied by David Hudson Noel, the first son of Jeremiah Noel and father of her deceased husband, George Washington Noel.

Besides claiming the land to be that of her husband, the Appellant was also stating that the deed of gift was void for when McLawrence purportedly executed the deed of gift he lacked the legal capacity to effect the disposition as he was suffering from the mental disorder, *senile dementia*, as to be incapable of understanding what was being effected by the deed of gift.

Alleyne J. heard the case between October 6 - 8, 1998 and on December 4, he delivered a written judgment in which he held that the Appellant had failed to prove title to the land, or a right to possession thereof as against the Respondent and he dismissed the claim for an injunction and for an order for possession sought by the Appellant.

The learned Judge held further that the evidence did not persuade him that at the time of the execution of the various documents which McLawrence executed in 1988, and that must include the deed of gift executed on August 31, 1988, his mental capacity was so impaired

is to render his acts void or voidable. The learned trial Judge concluded his judgment with the words:

> "In sum, the plaintiff's claims against the defendant are dismissed, with costs to the defendant."

Needless to say, the Plaintiff was not happy with the decision and so she has appealed to this Court by filing six grounds of appeal as follows:

> "The learned Judge erred in law by:-
> 1. Holding that Hence McLawrence Noel did not see himself as the owner in fee simple of lot No.46 whereas –
>   (a) Hence McLawrence Noel paid taxes on those lands in his own name;
>   (b) Hence McLawrence Noel was in long continuous, undisturbed, open possession of those lands;
>   (c) Hence McLawrence Noel was described as "seised in fee simple in possession" of those lands in the deed of gift, a legal document prepared by the Respondent's solicitor.
> 2. Failing completely to address the wholly undeniable fact that McLawrence, in purporting to execute the said deed of gift, grounded his ownership of those lands in his own right, and could not have grounded and did not seek to ground his ownership thereof in Letters of Administration taken out by him over the estate of Jeremiah Noel, the said deed of gift of 31 August 1988 predating such Letters of Administration of 30th September, 1988..
> 3. Failing completely to address the fact that taxes on the said lands were paid in McLawrence's name, proven by available Carriacou District Revenue Officer Property Tax Register Excerpts going back to 1965.
> 4. Misconstruing the letter of 7th March 1972 written by Hudson Scipio deceased, Barrister-at-Law to his client, Davidson Noel.
> 5. Holding that Hence McLawrence Noel did not by reason of the mental disorder, *senile dementia*, lack mental capacity when he purported to execute the said deed of gift, such ruling being fundamentally against the weight of the medical records and other evidence.
> 6. Holding that the said deed of gift did not involve unfair dealing with, and an imposition on Hence McLawrence Noel, he being too old, of too weak a character, and of too weak intellect to allow the transaction to stand."

At the hearing learned Counsel for the Appellant summarised his grounds of appeal and submitted that the appeal is firstly against the finding that Hence McLawrence Noel was not the owner of lot 46 and secondly against the finding that the mental capacity of Hence McLawrence Noel was not so impaired as to render his acts void or voidable.

Learned Counsel for the Respondent submitted that the central issue in the appeal is whether Lot 46 comes under the Estate of Jeremiah Noel or whether it is part of the property of Hence McLawrence Noel. Mr. Thomas stated that if Lot 46 comes under the Estate of Jeremiah Noel all issues of senility fade into insignificance. If, however, is part of the property of Hence McLawrence Noel, only then does senility become relevant.

The issues for consideration then is firstly, whether or not the ownership of the portion of land known as , Harvey Vale Estate in Carriacou passed from father to son, from Jeremiah Noel to Hence McLawrence Noel; and secondly, if ownership did so pass, it becomes crucial to consider the issues raised at grounds 5 and 6 of the appeal, that is, mental capacity of Hence McLawrence Noel when he made the deed of gift; and whether the transaction did or did not involve unfair dealing.

Transfer of Ownership of Lot No.46

It is beyond dispute that the land in question belonged to Jeremiah Noel, the father of Hudson Noel and Hence McLawrence Noel and grandfather of George Washington Noel. His title was put in as **Exhibit AM1** at the trial. The Appellant is alleging that due to non-payment of taxes the land was put up for sale by public auction and she purchased it in the name of her husband as early as 1948 and she began paying taxes for that land ever since. The Appellant stated that she paid £14.19s [Fourteen Pounds Nineteen Shillings) to the Bailiff for the land and she obtained a receipt which she gave to her solicitor, Mr.

Anselm Clouden. She tendered a document to show that McLawrence Noel was on the tax list for Harvey Vale.

The learned trial Judge found that the Appellant had failed to prove title to the land, or a right to possession thereof as against the Respondent. The Appellant is not able to show any deed or any other documentary evidence of title to the land. She relies on payment of taxes.

As I indicated to learned Counsel for the Appellant at the hearing, payment of taxes in one's name may be an indication of ownership but this is not necessarily so. All persons who hold their land by proper title will indeed be paying taxes in their names but it is quite possible to pay taxes in one's name without that person being the real owner. If, as in this case, Jeremiah Noel died in 1928 and there was a lapse in payment, nothing would debar the municipal clerk from receiving taxes paid by Hence Noel in 1948. The clerk is not really interested in giving a certificate as to ownership of land and such a payment can be received whether by error or otherwise.

In this context I noticed that under cross-examination Agatha Noel stated:

> *"I brought this action against the Defendant because I was paying the taxes all the years."*

She did not say she brought the action because the land is hers or her husband's but because she was paying the taxes all the years. It is also significant in another context that just below that she says:

> *"I did not take the other people on the land to court. Defendant could have told me she was going to build a house there".*

First of all, this is an admission that other people are on the land and it challenges the allegation put on her behalf that she was in *"long,*

continuous, undisturbed, open possession of Harvey Vale". Secondly, it suggests that her real grievance is that she was not told before that the Respondent was going to build, she, no doubt, being senior in the family tree.

The learned trial Judge found, in effect, that there was a paucity of evidence to establish title. He puts it this way:

> "However, she has no title deed, nor was she able to produce any receipts in proof of purchase, some of which she said she gave to her former lawyer, Mr. Clouden, and some of which she has."

I understand learned Counsel for the Appellant to be saying during his submissions that the Appellant had presented evidence that she had purchased the land and had paid taxes and the Respondent did not produce evidence to the contrary and on the balance of probabilities the learned trial Judge should have found in the Appellant's favour. With respect, this is not the way to approach the matter. In any case it is not correct to say that the Respondent did not challenge the Appellant's allegation. As the learned Judge stated in his judgment –

> "The defendant, for her part, denies that McLawrence was ever the owner or occupier of lot 46, or that the same was sold to her by the government for arrears of land taxes. She claims that lot 46 and other lands at Belle Vue South in Carriacou comprised the estate of Jeremiah Noel, McLawrence's father, who died on 26th August 1928."

The Appellant herself tendered in evidence at the trial "AM1" the title of Jeremiah Noel. If she wants to establish her title and to negate that of Jeremiah she must prove it and it is this which the learned trial Judge said she failed to do.

She has not even established exclusive possession as I stated earlier. Under cross-examination, she herself stated that Hudson Noel, the father of George Washington Noel, was living on the land from 1942 and no one else was living there. She said also that various relatives of Jeremiah were working the land in shares. One Bright-Eye, and Marie Cudjoe who was Hudson's daughter were living on the property. Another child of Hudson called Sugar Bowl also occupied land there.

The Appellant took issue with the learned trial Judge in the first ground of appeal for suggesting that Hence McLawrence Noel never considered himself to be sole owner of the land especially as the Judge used a letter written by a solicitor, Mr. H.R. Scipio, to his client, concerning something McLawrence wrote to him to come to that conclusion.

I agree with learned Counsel for the Appellant that the learned Judge may have misconstrued the letter and put too much weight on it and use it against McLawrence.

But even if the Judge was wrong to say or suggest that McLawrence did not see himself as sole owner in fee simple of Lot No.46, that does not assist the Appellant. He must prove title. The fact that McLawrence stated in the deed of gift executed on August 31, 1988, that he is "*seised in fee simple in possession"* does not make the statement sacrosanct and that is so whether the execution of the deed predates the grant of Letters of Administration in the Estate of Jeremiah Noel or not.

The very simple question posed by learned Counsel for the Respondent in this context has not been satisfactorily answered. If the land at No.46 belonged to Hence McLawrence Noel from as early as

1948 when the Appellant says she purchased from the Government why in 1988 is he applying for letters of administration of the Estate of his father in respect of that portion of land?

It must also be noted that when any issue is made as to the dates in respect of the execution of the deed of gift, that is August 31, 1988 and the date of the grant of Letters of Administration in the Estate of Jeremiah Noel, that is, September 30, 1988, the date of application to the Judge for the grant of Letters of Administration was in fact, August 21, 1988.

The Appellant, as indicated above, is the Personal Representative of Hence McLawrence Noel. She obtained the grant of Letters of Administration on February 25, 1991. As learned Counsel for the Respondent has shown, when she presented the oath of the administratrix to obtain her grant she stated as follows:-

> "That the whole estate amounts in value to the sum of $26,136.00 as shown by valuation report attached hereto and marked `N', the whole of which is realty and which consist of two lots of land situate at Belle Vue South in the Island of Carriacou aforesaid, with an annual rental of $1,200 and no more to the best of my knowledge, information and belief."

The inevitable question is, if the Appellant considered that her husband owned land situate at Harvey Vale, Carriacou, being lot No.46, why did she not include it in the valuation? All through this case evidence has been given of lands situated at Belle Vue South as distinct from lands situate at Harvey Vale both in Carriacou and formerly owned by Jeremiah Noel.

In his judgment the learned Judge wrote:

> "The plaintiff claims that Hence McLawrence Noel bought Lot No.46 from the Government of Grenada on a sale by the Government for arrears of land tax due and owing on the land by

> the former owner Jeremiah Noel, deceased, the father of McLawrence. It is convenient at this point to say immediately that the plaintiff has failed to satisfy me, even on a balance of probabilities, that McLawrence in fact purchased the land for arrears of tax as claimed. I, unhesitatingly reject this claim as being without foundation in fact, contrary to the evidence and contrary to reason."

I am of the view that the learned Judge was justified in coming to the conclusion that the ownership of lot No.46 at Harvey Vale never passed from Jeremiah Noel to his son Hence McLawrence Noel.

This disposes of grounds 1-4 of the appeal.

Mental capacity of Hence McLawrence Noel and Unfair Dealing

Ground 5 of the Appellant's appeal is that the learned Judge erred in law in holding that Hence McLawrence Noel did not by reason of the mental disorder, *senile dementia,* lack mental capacity when he purported to execute the deed of gift, such ruling being fundamentally against the weight of the medical records and other evidence.

I noticed learned Counsel could not say the ruling was against the weight of medical evidence.

Now if , as I have found in agreement with the learned trial Judge that, Hence McLawrence Noel was not the beneficial owner of then it follows he could not make a gift of it. The old maxim still applies that *NEMO DAT QUOD NON HABET.*

But assuming for a moment that the transfer to George Washington Noel was made by virtue of the Letters of Administration of the Estate of Jeremiah Noel or otherwise, I would still agree with the learned trial Judge when he said that the evidence did not persuade him that at the time of the execution of the various documents which

McLawrence executed in 1988, his mental capacity was so impaired as to render his acts void or voidable.

The Judge had before him a document dated November 6, 1970 by an unnamed “C.B.E, M.B. PRCG1” that one Hence Noel was a patient at the Grove Health Centre, London, suffering from *senile dementia* before 1985. The document was not signed. There was a record from the Hammersmith Hospital, London dated November 6, 1984 which stated that Hence Noel after a scan of the brain revealed tuberculosis in the brain. A report obtained from the record of the Carriacou Hospital showed that between 1985 and 1990 Hence Noel was admitted to the hospital on two occasions and was diagnosed to be suffering from *cataract, senility and tuberculosis* of the brain. None of these reports or records answer the Respondent’s allegation that even if Hence McLawrence Noel was suffering from *senile dementia* “there are always lucid moments when such a person could make rational and sound judgments.”

In ground 6 of his appeal the Appellant stated that the learned Judge erred in law by holding that the said deed of gift did not involve unfair dealing with Hence McLawrence Noel. I agree with learned Counsel for the Appellant that the learned trial Judge did not directly address this matter. Before us Learned Counsel did not address the Court on this ground of appeal even though we had the Appellant’s outline submissions and authorities on this ground of appeal.

In my judgment, because of the earlier finding that Hence McLawrence Noel was never the beneficial owner of Lot 46 at Harvey Vale, both grounds of appeal fade into insignificance.

I would therefore dismiss the appeal and affirm the judgment of the learned trial Judge. I order that the Appellant pay the Respondent's costs both here and in the Court below to be agreed or otherwise taxed.

A.N.J. MATTHEW
Justice of Appeal (Ag.)

I concur

C.M.D. BYRON
Chief Justice

I concur

SATROHAN SINGH
Justice of Appeal