

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.24 OF 2001

BETWEEN:

ULINA JENNIFER GEORGE

Appellant

and

HILARY CHARLEMAGNE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Colin Foster for the Appellant
Mr. Hilford Deterville, QC for the Respondent

2003: February 17;
April 3.

JUDGMENT

[1] **BYRON, C.J.:** Ms. Ulina George was the registered proprietor of a parcel of land at Columbette Soufriere. Mr. Hilary Charlemagne claimed to be owner of a portion of that land. Both of them claimed to have purchased from Mr. Charles Dolor within two years of each other. The learned trial Judge applied section 28[g] of the Registered Land Act in St. Lucia and declared that although Mr. Charlemagne did not have a registered interest, he had purchased his land first and was in actual possession of it when Ms. George purchased and registered her title, consequently he was entitled to enjoy the rights of a purchaser in possession. Ancillary orders giving effect to the declaration were made.

Background Facts

- [2] On 23rd April 1987 Charles Dolor and his wife Mercian Dolor had been registered as proprietors of a said Parcel of land being a dismemberment of the Colombette lands situate in the quarter of Soufriere in St. Lucia described as 0232B parcel 6 in the Registration Quarter of Soufriere. In the Land Register the parcel is described as being approximately 0.09 hectares.

The First Sale

- [3] It is an interesting fact that Hilary Charlemagne's father is the registered proprietor of an adjoining property parcel 56. On the 13th October 1994 Hilary Charlmagne purchased approximately 1 acre from Charles and Mercian Dolor situate at Colombette in the quarter of Soufriere. He did not register the sale or procure documents of transfer. The payment of the purchase price of the land was acknowledged by receipt dated 13th October 1994 witnessed by the daughter of Charles Dolor known as Thomasine Ludges.
- [4] Mr. Bernard Beaubrun acting as agent in the sales transaction for Mr. Dolor, pointed out the physical boundaries of the land which ran from a canal that Mr. Dolor had dug to the lands of Mr. Charlemagne's father. The land was formally described as being bounded on the north by parcel 0232B56 and on the south by parcel 0232B5 on the east by the highway and right of way and on the west by the remainder of parcel 0232B6 and was more particularly described by a sketch plan submitted to the Development Control Authority on 24th July 1997 and approved on 22nd day of August 1997 as approval 733/97 showing the actual area to be 35,000 sq. ft.
- [5] The learned trial Judge believed the evidence that within three weeks of the purchase date Mr. Charlemagne entered the land and has remained in possession

up to the present. He has cleared the land, made charcoal, ploughed the land, planted and harvested tomatoes, cabbages, peppers and cucumbers, mango and orange trees and has erected a concrete building on the land.

The Second Sale

- [6] On 1st September 1996 by deed of sale executed before J. Baiden Allain, Notary Royal Charles and Mercian Dolor sold to Ulina George ½ carre of land from the parcel of land registered as 0232B6. The Dolors also executed a memorandum of transfer and Ms George was registered as proprietor of the entire parcel No.0232B6 on the 18th of September 1996. Bernard Beaubrun testified that on behalf of Charles Dolor he pointed out the boundaries of the parcel that was being sold as well Hilary Charlemagne's to the mother of Ulina George who had acted for her in the sale.

The Judgment

- [7] The learned trial Judge concluded that Mr. Dolor had sold separate and distinct portions of parcel 6 to each of the parties to the case. If one were to conduct a mathematical approach it would be apparent that half a carre and one acre approximate 0.9 Hectares of land. The area of land that Mr. Dolor owned was, therefore, consistent with aggregate of the sales he had made. The learned trial Judge ruled that as Mr. Charlemagne was actually in possession of the land when Ms George became registered as proprietor, section 28(g) of the Registered Land Act protected his unregistered interest as a purchaser in possession of the land and made orders giving effect to those findings.

The Appeal

- [8] The appeal was brought under three broad heads of challenge to the judgment:
- [a] There were challenges on the findings of fact. The appellant contends that the learned trial Judge was wrong to believe that the witnesses he

did, and that in any event there was insufficient evidence to justify the findings that he made;

[b] The appellant has challenged the legal process in this case and contends that the learned trial Judge did not give due effect to the rules relating to the registration of title; and

[c] There was a challenge to the trial process in that the learned trial Judge acted on claims to the overriding interest which took the appellant by surprise because the dispute was not included in the prayer in the statement of claim

Insufficiency of Evidence

[9] The allegation of insufficiency of evidence was unsustainable. There was the evidence of Mr. Charlemagne and Mr. Dolor. There was also the evidence of Mr. Beaubrun who was involved in the sale of both parcels of land. He gave evidence that he pointed out the boundaries of both parcels of land to the parties in the case and specifically to Victoria Charles the mother of Ms. George who acted on her behalf during the purchase of the land. He also gave evidence of Mr. Charlemagne's occupation of land. There was also the evidence of two labourers who gave evidence of being employed by Mr. Charlemagne to work on the land since 1994. In addition, the learned trial Judge found that the appellant's mother Victoria Charles who lives in the area and acted as the representative of the appellant in these proceedings and in the purchase itself knew that the respondent was in occupation of the land. Ms. Victoria Charles had first denied such knowledge, and although the learned trial Judge stated that he was not favourably impressed with her truthfulness he expressed a willingness to concede that she might have been mistaken because in her evidence she said that she saw the respondent working his father's land which as I have pointed out above, is on the boundary of the land in dispute. The point is that the learned trial Judge found that Mr. Charlemagne's occupation was supported by testimony of both the respondent's and appellant's witnesses. In addition Mr. Bernard Beaubrun, the

person who actually showed and pointed out the physical boundaries of the land, explained that there was a physical demarcation between the two parcels, being a canal that Mr. Dolor had dug. One of the documents submitted was a draft sketch of the land designed by Mr. L. Chastanet, which bore the Development Control Authority stamp showing that the land actually measured 35,000 sq. ft.

Credibility

[10] In a real sense the case turned on the Judge's perception of the truthfulness of Mr. Dolor. He was the star witness. Did he really sell the same parcel of land twice? Over the past recent times we have been describing in different ways the circumstances under which an appellate court would be entitled to set aside a finding of fact of a learned trial Judge. We have explained that in those cases where the decision depends on the learned trial Judge believing one side as opposed to another the appellate court would be very slow to set aside the decision because of the advantage that the learned trial Judge had of seeing and hearing the witnesses. On the other hand we have also emphasized that where there is no question of credibility of the witnesses but the question is rather what is the proper inference to be drawn from the specific facts, an appellate court is in as good a position as a learned trial Judge to form its own independent judgment. Counsel referred us to the cases of **Saunders v Adderley** (1998) 53 WIR at p.15; **Industrial Chemical Co (Jamaica) Ltd v Ellis** (1986) 35 WIR at p.305; **Edwards and another v Buxton** (1982) 30 WIR at p.82. where the principles are set out but I do not think it is necessary to repeat them. In this case not only was there an abundance of evidence to support the testimony given by Mr. Charlemagne and Mr. Dolor, the Judge was definitely impressed by them in court and found them to be witnesses on whom he could rely. I think it is sufficient to recite the section of the judgment which indicated that the learned trial Judge believed Mr. Dolor:

"the key witness in the case was Charles Dolor of Soufriere, whose testimony, at age 94, was remarkable for its clarity. Mr. Dolor is now blind and feeble in his movements. His voice and recollection are quite strong, however. Mr. Dolor said that he sold a portion of Parcel 6 to the Plaintiff. I have not the slightest difficulty in believing him. He is amply supported in

this testimony of the Plaintiff himself and two other witnesses who respectively valued the land for the purpose of fixing the purchase price and identified the boundaries to identify what portion was being sold. From these witnesses and from a receipt for the purchase price given by Mr. Dolor to the Plaintiff, I accept that the Plaintiff bought his portion on 13th October 1994.”

I do not think that we should interfere with the perceptions of the learned trial Judge.

The Receipt

- [11] Counsel for Ms. George criticised the receipt that had been put into evidence because it was not signed by the vendors and had not been registered. His argument had to be based on the premise that the receipt was part of the process of title transfer. It is clear that the receipt has absolutely no value as document of transfer of the legal interest in land. What it does, however, is to provide evidence that the purchase price was paid for the land. This receipt in question was signed by the daughter of Mr. Dolor and certified that the purchase price was paid. That was important supportive evidence of the testimony of the vendor and the purchaser. In this case there was no controversy because all the parties to the transaction gave evidence about it and the learned trial Judge had no difficulty in believing that the transaction did take place. That was the only value of the receipt in this case. It is equally true, however, that the failure to register the receipt does not invalidate the transaction, which it evidenced.

The Failure to Register

- [12] Counsel for Ms. George contended that from a legal standpoint, even if there was a transaction between Mr. Dolor and Mr. Charlemagne it was void and of no legal effect because it was not evidenced by any registered or registerable document. He was very critical of what he described as a sale by receipt. The fact is that Mr. Charlemagne did not have any registered interest. His failure to register his interest cannot operate to deny that the transaction of purchase in fact took place.

The policy of the Land Registration Act, however, was to protect the unregistered interests of persons in actual occupation of land. So the operative questions were whether he was in actual occupation? And what was his interest in the land?

The General Rule

- [13] Under the Registered Land Act the fact of registration as proprietor with an absolute title carries with it the security that no other person can claim to be the owner of the land comprised in the registered title. This is the effect of s.23 of the Land Registration Act and in a sense that was in fact the position that the appellant enjoyed by virtue of being registered as proprietor with absolute title to the entire parcel 0232B6.

Overriding Interests

- [14] There are certain exceptions, however, to the absolute nature of the registered title. S.28 of the Act sets out what it describes as "overriding interests". It prescribes that all registered land shall be subject to these overriding interests even when they are not noted on the register. Of particular relevance in this case is section 28[g] which makes special provision for the unregistered rights of a person in actual occupation of the land.
- [15] Counsel for the appellant argued that Mr. Charlemagne's claim to an overriding interest should fail because mere occupation could not be sufficient in law to make valid what is inherently invalid. He relied on dicta in **Paddington Building Society v Mandelion**. What Counsel failed to recognize is that it was not mere occupation that was relied on to create any rights. What the Act protected were the rights that some one who was in occupation actually had. The rights that were being relied on in this case were the rights that resulted from being a purchaser of land who had taken possession of the land as owner without registering his interest. I think that the law is quite clearly established that such rights are

protected under section 28[g]. The fact that section 28[g] protects the rights of a person who is in actual occupation of land as a purchaser whose title was not registered, has received specific judicial approval in the case of **Spiricor of St. Lucia Ltd v Attorney General of St. Lucia and Another** (1997) 55 WIR p.123 where in the opinion of the Privy Council the following is stated:

“in my view although the section does not refer to the equitable interest of a purchaser whose title has not been registered as an overriding interest, it could and should be included among those equitable rights which are treated as overriding if the purchaser is in actual occupation. This has been the construction given to similar provisions in the English land registration legislation. Given occupation, ie presence on the land, I do not think that the work “actual” was intended to introduce any additional qualification, certainly not to suggest that possession must be “adverse”: it merely emphasises that what is required is physical presence, not some entitlement in law.”

[16] The absence of a registered interest upon which the appellant was relied does not have the effect that counsel for Ms. George contended. The clear intent of s.28[g] of the Act is to give legal effect to the rights that people have if they are in actual occupation of the land but their rights are not registered. I would think that the effect of this statutory provision is to impose an additional duty on the purchasers of registered land. It is not enough to search the land register. They must carry out a search of the land itself to determine whether there is any one in actual possession. The title that they get will be subject to the rights of the person in actual possession. The Judge’s findings of fact indicate that Ms. George knew, at least through her mother of Mr. Charlemagne’s occupation, but it is possible that the legal effect was missed because he did not have a registered interest in the land.

[17] In this case the learned trial Judge applied the law appropriately. He determined that Mr. Charlemagne was in actual occupation as a purchaser whose purchase was not registered.

Community Property

- [18] Counsel advanced a challenge on the ground that the sale offended the rules of community of property. It was strange contention because he was not acting for Mrs. Dolor and had no instructions from her. Yet he purported to contend that at the time the negotiations took place between Mr. Dolor and Mr. Charlemagne, Mrs. Dolor was not an active participant and her name did not appear on any relevant document. He suggested that the sale was void because the real vendors were Mr. and Mrs. Dolor and that since Mrs. Dolor did not participate in the transaction it was void and ineffective. This proposition of Counsel was completely trumped by evidence that the learned trial Judge believed Mrs. Dolor had sworn an affidavit testifying to her participation in the sale. She unequivocally declared on oath that her husband was acting on her behalf and that she was in full agreement with the transaction relating to the sale. There was, therefore, evidence to support the learned trial Judge's findings that Mr. and Mrs. Dolor sold the land that they owned to the respondent.

Procedural Objections

- [19] The appellant accused the respondent of ambush like strategies taking him by surprise with arguments relating to the overriding interests and rectification. He also contended that the learned trial Judge did not permit the appellant to cross-examine Mr. Dolor to show that he knew or ought to have known that the land was bought and sold by notarial instrument to undermine his credibility. Counsel for the respondent dismissed these contentions as being scandalous. It did seem to me that there was absolutely no foundation for either contention. There was absolutely nothing in the record to support the allegation of the judicial intervention in the cross examination as alleged neither was there any affidavit evidence to support that contention. With regard to the challenge on the pleading, the appellant's pleadings were very complete, clear and precise. There was a specific pleading in paragraph 11 which I quote:

"the plaintiff states that he has an overriding interest in the portion of land which Charles Dolor agreed to transfer to him."

[20] The specific orders that the learned trial Judge made were exactly in accordance with the relief prayed for in the pleadings. I thought that the pleadings were very clear and precise. I do not support the contention that the appellant was taken by surprise or was unfairly treated.

[21] I would dismiss the appeal, and confirm the orders of the learned trial Judge. I order costs to the respondent in the sum of \$9,333.00.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]