SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2007/009

BETWEEN:

EVERARD GELLIZEAU

Appellant

and

ULRIC HUTCHINSON

Respondent

Before:

The Hon. Hugh A. Rawlins	Chief Justice
The Hon. Mr. Michael Gordon, QC	Justice of Appeal [Ag.]
The Hon. Mde. Indra Hariprashad-Charles	Justice of Appeal [Ag.]

Appearances:

Mr. Carlisle Dougan Q.C. for the Appellant
Mr. Emery Robertson for the Respondent

2008: October 8;
November 10.

Civil Appeal- Property law- Deed of Exchange- correction of errors in deeds- effect of errors in deeds

The appellant and the respondent entered into an agreement for the exchange of two pieces of land to allow the respondent's road to connect to the main road. The agreement was effected by a Deed of Exchange dated 18th March, 2001. The appellant filed an action against the respondent alleging that the Deed of Exchange was null and void and requesting cancellation of the Deed as the respondent was without title and therefore authority to convey title by way of exchange. The trial judge found that the respondent did have title to the land he exchanged with the appellant. The appellant appealed against this finding of the trial judge. The appellant also contended that there was an error in the reference to the title deed of the respondent in the Second Schedule of the Deed of Exchange which made the Deed void. The trial judge found that although there was an error in the reference to the title deed, the operative parts of the Deed were clear and nobody was deceived by the incorrect reference in the Second Schedule.

Held: dismissing the appeal, and awarding costs in favour of the respondent in the sum of 2/3 of the costs awarded in the court below:

(1) "Since an instrument is to be construed according to the intention of the parties as appearing from the whole of its contents it follows that that intention must not be defeated by too strict an adherence to the actual words, and any corrections may be made which a perusal of the document shows to be necessary."

Halsbury's Laws of England, 4th edition, Volume 12, para 1502.

JUDGMENT

[1] GORDON, J.A. [AG]: The appellant and the respondent entered into an agreement for the exchange of two pieces of land. The agreement was that the appellant would convey to the respondent 1,547 square feet of his land and the respondent would convey to the appellant 1,504 square feet of his land. The purpose of the exchange, as the learned trial judge expressed it, was to facilitate the respondent whose road could only connect to the 20 foot main road leading to Ashton Village in Union Island if a crossing could be made across the appellant's land. The land that the appellant was to receive adjoined land that he had previously purchased from the respondent's mother.

[2] A Deed of Exchange dated 18th March 2001 was executed between the parties. There was no reservation of any easement over the exchanged land in favour of the appellant.

[3] The respondent built a road to the public road across the land which he had received from the appellant and then put an electric gate across the road. The result was that only the respondent and those he permitted could use the newly constructed road. The appellant was offended by this and brought this action.

[4] The statement of claim alleged that the Deed of Exchange was null and void and requested a cancellation of the Deed. In the statement of claim the appellant contended, inter alia, that the respondent was not entitled to vest his grandfather's land in himself because when his grandfather, Edward Hutchinson, died on March 12, 1917 the law of intestate succession observed and applied the rule of primo geniture and, based on that rule, the respondent was not entitled to share in the estate of his grandfather. That being

so, the appellant's argument ran, he was without title, and hence authority, to convey title by way of exchange resulting in a complete lack of consideration for the receipt by the respondent of title to the land conveyed by the appellant.

[5] The learned trial judge found that under either the old law or the current law of succession the respondent was entitled to make the vesting deed to himself thus giving himself title to the land which he exchanged with the appellant. The appellant in his Notice of Appeal appealed against that finding by the learned trial judge. However, neither in his written skeleton argument nor in his oral argument did learned Queen's Counsel for the appellant refer to this issue. Rather, in oral argument learned Queen's Counsel for the appellant simply stated the proposition that the respondent in fact had no land to exchange because the land which he vested in himself should properly have been vested in his mother. As I say, the statement was baldly made without more. I find it impossible to consider this as an argument.

[7] The principal plank on which argument in favour of the appellant was based was that there was an error in the Deed of Exchange which according to learned counsel made the Deed void. As I understand the argument advanced by learned Queen's Counsel for the appellant he agreed that the title of the parties to the Deed of Exchange, the appellant and the respondent, were correctly stated in the recitals to the Deed of Exchange, in the case of the appellant his title was stated to have derived from an Indenture No. 1302 of 1983 and in the case of the respondent from an Indenture No. 2449 of 1988.

[8] In the Habendum of the Deed the respondent conveyed to the appellant that certain property described in the Second Schedule to the said Deed. In that Second Schedule the land being conveyed unto the appellant is described as "ALL THAT LOT PIECE OF LAND situate at Ashton Valley in the State of Saint Vincent and the Grenadines and being, 1,504 square feet Part of Lot No. 6 on Plan Gr722 surveyed by Raymond Jones and registered in the Land Surveys Department in May 2000 same as described on Deed No. 1302 of 1983 or howsoever otherwise the same may be butted bounded known distinguished or described on plan Gr722 of 2000 TOGETHER with all ways waters watercourses rights lights liberties privileges easements and appurtenances thereto

belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto." (emphasis added for identification)

[9] It is clear that the provenance of title recited in the Second Schedule (portion in bold) is a mistake. Indeed, when questioned by the court, learned Queen's Counsel agreed that the parties had indeed agreed to the exchange and that there was no mistake in the parties' minds as to what was intended. That being so, it becomes obvious that the appellant, for his own purposes, is looking for any device by which he might be relieved of his willingly undertaken obligations.

[10] In expressing the view above, I am agreeing with the finding of the trial judge when he stated at paragraph 17 of his judgment:

> "As far as the second schedule of the deed of exchange is concerned, there seems to be an error with reference to the deed, but the operative parts of the deed are clear. In addition the parties gave evidence by reference to drawings showing the locations of both portions of land. Nobody was deceived by the incorrect reference in the second schedule."

[11] Halsbury's Laws of England, 4th edition, Volume 12 at paragraph 1502 treats with the correction of mistakes in deeds. Paragraph 1502 reads in part: "Since an instrument is to be construed according to the intention of the parties as appearing from the whole of its contents it follows that that intention must not be defeated by too strict an adherence to the actual words, and any corrections may be made which a perusal of the document shows to be necessary." I would find it extraordinary if the law were otherwise.

[12] In conclusion, I find that the appellant has put forward no argument that could cause an appellate court to vary the findings of the trial court. The appeal is therefore dismissed.

[13] In the court below costs in the sum of $4,000.00 were awarded to the respondent. I would therefore award costs in favour of the respondent in the sum of 2/3 of $4,000.00 being the sum of $2,666.67.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Hugh A. Rawlins
Chief Justice

I concur.

Indra Hariprashad-Charles
Justice of Appeal [Ag.]