THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2018/0014

BETWEEN:

[1] CARRIACOU DEVELOPMENT CORPORATION
[2] THE ATTORNEY GENERAL

Appellants

and

[1] MARGARET CORION
[2] NELLIE ADAMS (The personal representative of the Estate of Samuel Corion, deceased)

Respondents

Before:

The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Mario Michel	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

Appearances:

Mr. Ramesh L. Maragh SC, Ms. Kim George and Ms. Sheriba Lewis for the First Appellant
Mr. Darshan Ramdhani, Attorney General and Ms. Dia Forrester, Solicitor General for the Second Appellant
Mr. Rohan A. Phillip and Mr. V. Nazim Burke for the Respondents

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2019: October 29;
October 31.

Civil appeal – Property – Land Law – Crown Lands Act Cap. 78 Revised Laws of Grenada 2010 – Crown's prerogative right of ownership of foreshore and swamp lands – Establishing title to land – Whether the Crown is required to prove ownership or title in the same way as a private person – Whether respondents have paper title – Whether learned judge erred in finding that the appellants owned the property – Approach of appellate court to judge's finding of fact

ORAL JUDGMENT

Introduction

[1] **WEBSTER JA [AG.]**: This is an appeal by the 1st Appellant, Carriacou Development Corporation ("CDC"), against the judgment of the learned trial judge ("the Judge") declaring the Respondents to be the owners of seven acres of land at Grand Ance, Carriacou, and ordering CDC to pay the costs of the proceedings in the High Court.

Background

[2] By indenture of conveyance dated 18th February 1914 ("the 1914 deed"), the late Samuel Corion became the owner in fee simple of property at Grand Ance, Carriacou. The property is described in the 1914 deed as "[a]ll that Plantation or Estate lot piece or parcel of land called and known by the name Grand Ance situate and lying in the quarter of Grand Carenage in the island of Carriacou… containing one hundred and six and one half (106½) aces English Statute Measure be the same more or less…" ("the Estate"). The deed did not contain any further description of the land conveyed. The vendors to Samuel Corion had acquired the Estate in 1885 by Deed of Appointment that described the Estate as comprising 160 acres. The Respondents are the personal representatives of the estate of the late Samuel Corion ('the Deceased").

[3] The Crown is the owner of lands adjacent to the Estate known as "Harvey Vale". In 2005 the Crown granted a lease of 4.66 acres of the Harvey Vale property to CDC for the purpose of operating a marina. The leased area is shown on the plan attached to the lease as being immediately south of land described as "private land" on the plan.

[4] In or about July 2014 the Crown decided to lease a further seven acres to CDC. The seven acres are located immediately north of the property already leased, that is to say, over the land described as "private land" on the plan attached to the 2005 lease. The Respondents claim that the land to be leased belongs to them while the

Appellants say that it is Crown land. The seven acres is described in this judgment as "the disputed land". The Respondents filed a claim seeking a declaration that the disputed land belongs to them by virtue of the paper title in the 1914 deed and/or by long possession. CDC responded to the claim by alleging that the disputed land is Crown land and that the Government was entitled to lease it to them.

Proceedings in the Court below

[5] The Judge ordered that the issue of the ownership of the disputed land should be tried as a preliminary issue and the trial proceeded on that basis. The Attorney General was not joined as a party but participated in the proceedings.

[6] CDC, supported by the Attorney General, argued three main points in the court below which I summarise as follows:

(i) The disputed land is a swamp that is almost entirely covered by sea water and is therefore presumed to be Crown land that has never been ceded to the Respondents.

(ii) Even if the disputed land is not Crown land, the 1914 deed did not describe the land that was sold to the Deceased, and there is no other admissible or proper evidence describing the property owned by the Respondents. Alternatively, the 1914 deed conveyed 106 acres to the Deceased and there was evidence that the Respondents had sold 123 acres out of the estate during the 1980's and 1990's. The entire Estate has been disposed of and therefore the disputed land could not be a part of the Estate.

(iii) There is no proper evidence that the Respondents occupied the disputed land for the required period to acquire a possessory title.

[7] The Judge found that although the Estate is swamp land, that did not make it Crown land and the Crown was required to prove ownership or title in the same way as a private person. This, they failed to do. On the issue of the location of the disputed

land, the Judge was satisfied that it was a part of the Estate and that the Respondents' paper title conveying the Estate to them prevailed over the Government's claim to a prerogative title to the disputed land. The Judge, having found that the Respondents had a good paper title, did not go on to deal with the Respondents' claim to the disputed land based on long possession. The Judge made the declaration of ownership sought by the Respondents.

The Appeal

[8] CDC appealed against the Judge's order. Following the filing of the appeal, the Attorney General was granted leave to be joined as an appellant. The main issues on appeal are substantially the same as those argued in the court below. I will now deal with them in greater detail.

The Crown's prerogative claim

[9] CDC and the Attorney General (together "the Appellants") assert that the disputed land, being swamp land covered by water, is a part of the foreshore and they rely on the common law presumption that the foreshore is vested in the Crown. The presumption is set out in **Halsbury's Laws of England**:

> "By prerogative right the Crown is prima facie the owner of all land covered by the narrow seas adjoining the coast, or by arms of the sea or public navigable rivers, and also of the foreshore, or land between high and low water mark, the right being limited landwards to the medium line of high tide between spring and neap tides. There is a presumption of ownership in favour of the Crown, and the burden of proof to the contrary is on the claimant."[1]

The Appellants support this presumption by reference to the evidence that the disputed land is swamp land that is almost entirely covered by sea water. Therefore, it is a part of the foreshore and belongs to the Crown. Further, there is no evidence that the Crown disposed of any part of the disputed land to the Respondents or any other person, and there is no credible evidence that the Respondents acquired a

[1] Halsbury's Laws of England, Fourth Edition, Crown Property Vol. 12(1) para 242.

possessory title to the land. The presumption of ownership therefore operates in the Crown's favour and they have not lost their presumed title.

[10] If the fact that the disputed land is swamp land covered by sea water is sufficient to invoke the presumption Crown ownership the Appellants would be on good ground because the evidence of water coverage is not disputed by the Respondents. However, the Judge rejected this submission. She found that "although the disputed parcel may be referred to as swamp lands this does not make it Crown lands".[2] We agree with the Judge.

[11] The standard of proof that the Crown needs to meet, in order to claim the disputed land by the presumption that it forms a part of the sea or foreshore, is far more stringent. The passage from **Halsbury's** cited above shows that the presumption of ownership arises in favour of the Crown when there is evidence that the land being claimed, or the Crown's prerogative right, is "…limited landwards to the medium line of high tide between spring and neap tides".[3] Put another way, the Crown's right is limited to the land below the mean high water mark. There was absolutely no evidence led by the Appellants of the high water mark in the area of the disputed land. In the absence of such evidence this Court cannot determine how much, if any, of the disputed land was below mean high water mark and is presumed to belong to the Crown. Swamp land or land covered by sea water is not the test. There must be evidence of the technical issues relating to high water mark and the foreshore in the area and how they relate to the disputed land. The Court was referred to the **Integrated Coastal Zone Management Act 2019** on another issue. The Act does not apply in this case, and there was no suggestion that it does. However, we note that the definition of high water mark in the definition section is "…determined with the use of scientific and technical data." This Court also takes notice that in other cases dealing with the issues relating to the foreshore, there is usually technical evidence to establish the mean high water mark and the extent of the foreshore. There is no

[2] GDAHCV2014/0334, per Adrien-Roberts J at para. 19.
[3] See n.1.

evidence in this case, technical or otherwise, of the location of the high water mark and the extent of the foreshore in the area of the disputed land. The Appellants have not discharged the evidentiary burden of raising the presumption of Crown ownership of the disputed land and there was nothing for the Respondents to rebut.

[12] The grounds of appeal dealing with the Crown's prerogative claim to the disputed land are dismissed.

The Respondents' paper title

[13] CDC's primary contention regarding the Respondents' paper title is that their root of title, the 1914 deed, does not describe the land being conveyed and that there was no satisfactory proof before the Judge that the disputed land is a part of the Estate conveyed by the deed. It is correct that the 1914 deed did not describe the land that was conveyed other than the general description that it was "the Grand Ance Estate". That is regrettable but not fatal. In **Alan Wibberley Building Ltd v Insley**[4] Lord Hoffman referred to some of the things that can go wrong in describing the property in a deed and went on to say:

> "It follows that if it becomes necessary to establish the exact boundary, the deeds will almost invariably have to be supplemented by such inferences as may be drawn from topographical features which existed, or may be supposed to have existed, when the conveyance was executed."

In this case the deed was executed in 1914 and the Respondents could not have produced evidence from anybody who was around when it was executed. The Judge had to infer what was the disputed land and whether it was a part of the Estate. The map that is attached to the 2003 lease between the Crown and CDC shows a parcel of land immediately to the north of the leased land that is described as "private land". The evidence of Mr. Ronald Lendore, who owns land in the area, is that the land, known as the swamp, is situated in the Grand Ance Estate, and that he has always known the Corion family to be the owners in possession of the disputed land.

[4] [1999] 1 WLR 894.

[14] The evidence of Mr. Andrew Alleyne, a retired surveyor who worked for the Lands and Survey Division of Grenada for 30 years, is that he knows the lands comprising the Estate and that he spent many hours reviewing the various deeds and plans related to the Estate. He concluded that the disputed land is a part of the Estate and is not Crown land. He was cross-examined and held to his position.

[15] The 1st Respondent, Margaret Corion, also gave evidence that the disputed land is a part of the Estate.

[16] In1980, Mr. Denis Thomas, a licensed land surveyor, inspected the Estate with Mr. Roosevelt Corion, and prepared a plan of the Estate based on boundaries pointed out to him by Mr. Corion ("the 1980 plan"). The 1980 plan shows the disputed land as a part of the Estate. In 2013, he prepared another plan ("DT 2") that showed the disputed land as Lot 7, comprising seven acres located immediately north of the land already leased by the Crown to CDC. He concluded his affidavit evidence by saying that the disputed land is not a part of the Estate. However, the Judge found that, in cross examination, he "... admitted that the disputed parcel is part of the Grand Ance Estate and therefore part of the Corion's estate".[5]

[17] The evidence of Mr. Venance Msacky, another land surveyor, is that the disputed land is not a part of the Estate.

[18] The role of appellate courts in reviewing findings of fact by a trial judge is well known and barely needs repeating in this decision.[6] Suffice it to say that the Judge had the advantage of seeing the witnesses give their evidence and observing their demeanor. She was far better placed than this Court to assess the witnesses and their credibility. An appellate court will interfere with the trial judge's findings of fact only if it is satisfied that the trial Judge did not take proper advantage of having seen and heard the witnesses.

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[5] (n 2) para 17.

[6] See Watt (or Thomas) v Thomas: [1947] AC 484 as applied and developed in several decisions of the Court of Appeal.

[19] In this case the Judge was faced with conflicting evidence on a heavily disputed factual issue. She resolved the issue by accepting the evidence presented by the Respondents that the disputed land is a part of the Estate. That was the core factual issue that she had to decide and there is no basis for this Court to interfere with her finding.

[20] The grounds of appeal dealing with the Appellant's challenge to the Respondents' paper title are dismissed.

Other points raised by the Appellants

[21] CDC in its written and oral submissions urged the Court to find that the disputed land could not be a part of the Estate for the following additional reasons:

(i) The 1885 deed conveyed 160 acres to the predecessors in title of the Deceased and the 1914 deed conveyed only 106 ½ acres to the Deceased. Nothing turns on this and this Court will not speculate on the reasons for the difference in size.

(ii) By virtue of the 1914 deed the Deceased owned only 106 ½ acres and there is evidence that during the 1980's and 1990's, members of the Corion family conveyed 123 acres of land out of the Estate. Therefore, the family conveyed the entire Estate and more, and the disputed land could no longer be a part of the Estate. This type of syllogistic reasoning is not proof that all the lands formerly comprising the Estate have been disposed of or that the disputed land is not a part of the Estate. What was required was evidence that the family had disposed of the disputed land itself.

(iii) CDC relied on the **Crown Lands Act**,[7] to submit that the prerogative right of the Crown to the disputed land means that it is Crown land. Mr. Phillip for the Respondents countered by pointing out in his written submissions that the **Crown Lands Act** lists certain properties that are Crown lands but

[7] Cap. 73, Revised Laws of Grenada 2010.

for all other properties to which the Crown claims title, it has to prove ownership or title as if it were a private person. The Judge found that the provisions of the **Crown Lands Act** did not assist the Appellants. We agree with her finding. The **Crown Lands Act** deems certain named properties to be Crown lands. This deeming provision does not apply to lands in respect of which the Crown claims a prerogative right to be owner. Where the Crown claims other lands, not listed in the Act, the land becomes Crown land only when the Crown proves that it is the owner as with any private person claiming the ownership of land.

(iv) Finally, Ms. Dia Forrester who argued the case for the 2nd Appellant suggested that if the Court is not satisfied with the evidence of high water mark and the foreshore the case should be remitted to the High Court for such evidence to be taken. With respect, we decline the invitation. This is not an appropriate case to be remitted to the High Court.

Conclusion

[22] The Appellants have failed to discharge the evidentiary burden of establishing the extent of the foreshore in the area of the disputed land and the presumption of Crown ownership does not arise on the facts of this case. The learned trial judge found as a fact on the disputed evidence that the disputed land is a part of the Estate.

Order

[23] The appeal is dismissed with costs to the Respondents, such costs to be two-thirds of the costs awarded in the court below.

[24] The assistance of counsel is gratefully acknowledged.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar