

**IN THE COURT OF APPEAL
APPELLATE JURISDICTION**

CIVIL APPEAL No. 76 of 1997

BETWEEN:

MERLYN FRANCIS MARTIN

(Plaintiff) Appellant

-and-

IAN SKEFFERS

**(First Defendant) Respondent
(The first-named Defendant
did not appear)**

BEFORE:

HONOURABLE CHANCELLOR D.P. BERNARD

HONOURABLE MADAM JUSTICE C.M.C. SINGH

HONOURABLE MR. JUSTICE N. KISSOON

2001

June 19 & 20

October 17

Mr. O. Valz, S.C. for Appellant

Mr. K.S. Massiah^{S.C.} for Respondent

J U D G M E N T

BERNARD, C. delivered the judgment of the Court

On 25th March, 1967 the Appellant and Anthony George Wills, now deceased, were married, but the said marriage was dissolved in 1979. During the course of the marriage the parties acquired property situate at lot 13 Roxanne Burnham Gardens, Georgetown, held under transport No. 1491/1971 in equal shares.

Unhappy differences having arisen between the parties the Appellant in 1976 instituted proceedings against her husband for division of the property, and on 16th August, 1979, Fung-a-Fat, J. ordered Anthony George Wills (her husband) to pass transport to her of his undivided half interest in the said property and to give vacant possession of it to the Appellant on or before 18th November, 1979. The order also provided for the Registrar of Deeds to pass transport of the undivided half interest to the Appellant upon failure of Wills to do so within six weeks of the date of the order.

Wills never passed transport of his said undivided half interest in the property to the Appellant as ordered, and died intestate on 13th October, 1987. However, during his lifetime unknown to the Appellant, one Willard Duesbury on 15th February, 1984, had obtained judgment against Wills for the sum of \$5,612.00, and on 28th April, 1987 his half share in the matrimonial property was sold at execution to one Edwin Philip Foo at the instance of Duesbury in satisfaction of the judgment. During this time Wills was still in occupation of the property with the Appellant's consent and permission.

The Appellant did not take any steps to have the Registrar of Deeds pass title to her until December 1987, eight months after the execution sale. However, Foo who had bought at execution did not obtain transport until 10th May, 1989.

Another dimension of this matter is that in 1987 Wills had filed proceedings against Duesbury, Foo, the Registrar of the High Court and the

Attorney General, seeking a declaration that the sale at execution of his half interest in the matrimonial property was null and void. There is nothing on record which indicates the grounds on which the claim was based or whether the action was ever determined.

Meanwhile, Foo entered into an agreement of sale with the Respondent herein on 13th April, 1988 for the purchase of the undivided half share of the property in question which he had acquired under the sale at execution. The Respondent went into immediate possession pursuant to the agreement. Affidavits of vendor and purchaser were filed, and the sale was advertised in the Official Gazette of 15th October, 1988 (N. 40 Demerara).

All of this seems to have taken place unknown to the Appellant as she claimed that she had been residing out of Guyana for several years.

Upon her return in March 1993 the Appellant instituted proceedings against both Foo and the Respondent seeking, inter alia, declarations that the judicial sale transport passed to Foo on 16th May, 1989 was ineffectual in law, that her entitlement under the order of Fung-a-Fat, J. was at all material times and still is good as against the judicial sale transport, that at the time of such sale while she was residing abroad the decedent (her husband) was in occupation as her licensee; she also sought orders directing the Registrar of Deeds to pass title to her in keeping with the order of court, and directing the Respondent to yield up possession of the property to her.

At the hearing of the action the learned trial judge found that the Appellant had failed to satisfy the Court that she had a registered interest in the property, and that the Respondent was a bona fide purchaser for value without notice. The action was accordingly dismissed, and it is from this dismissal that the Appellant has appealed to this Court.

Counsel for the Appellant contended before us that the learned trial judge had failed to consider the statutory right of a co-owner under the **Immovable Property (Sale of Interests) Act, Cap. 60:01**, and made reference to the cases of **D'Aguiar -v- Obermuller (1948), LRBG, 68** and **Dennis Li -v- Lucy Walker (1968) GLR, 341**. However, he indicated, and I agree,

that the most important aspect of the case centres around the judicial sale transport and interest acquired thereunder. He submitted that the seriousness of the order of Fung-a-Fat, J. was overlooked by the learned trial judge, and orders of court are sacrosanct. He relied on the case of Demerara Storage Co. Ltd. -v- Demerara Wharf & Storage Co. Ltd. (1942) LRBG, 306.

Since the genesis of the Appellant's legal problems is the judicial sale transport obtained by Foo as a result of the sale at execution of the undivided half interest of Anthony George Wills, deceased, it is apposite to consider the legal effect of such a transport on the rights of others.

Section 29 of the Deeds Registry Act, Cap. 5:01 provides as follows:

“A judicial sale transport passed ^{after}~~before~~ the 28th May, 1936, shall vest in the transferee the full and absolute title to the immovable property or the rights and interest therein subject only to such statutory claims, registered incumbrances, registered interests and registered leases as have not been extinguished by the sale in execution.”

Section 28(c) of the said Act reflects the same provisions as Section 29 except that it makes reference specifically to the sale of property for the purpose of enforcing the payment of a judgment debt of a judgment-creditor other than the holder of a statutory claim or a registered incumbrance, and which is applicable to the judgment-creditor Foo in the present appeal.

As a consequence the judicial sale transport passed to Foo on 10th May, 1989 vested in him the full and absolute title to the undivided half interest in the property situate at lot 13 Roxanne Burnham Gardens, Georgetown, subject only to any statutory claims or registered incumbrances, interests or leases which were not extinguished by the execution sale.

The question therefore arises as to what is the status of the order of Fung-a-Fat, J. in relation to the title acquired by Foo under the judicial sale

