

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

CIVIL APPEAL NO. 137 OF 1998

BETWEEN:

SHEIK INSANALLY individually and as representative of HABIBUL (deceased)

Appellant/Plaintiff

- and -

- 1. ALLAN PHILLIPS**
- 2. PANSY MARSHALL**
- 3. HERBERT WILSON**

Respondents/Defendants

- and -

BETWEEN:

SHEIK INSANALLY individually and as Representative of HABIBUL (deceased)

Appellant/Plaintiff

- and -

- 1. RAMBARRAN IMPORTS AND EXPORTS LIMITED**
- 2. SAGAN TRADING COMPANY LIMITED**

Respondents/Defendants

BEFORE:

- The Hon. Madame Justice Desiree Bernard - Chancellor**
- The Hon. Madame Justice Claudette Singh - Justice of Appeal**
- The Hon. Mr. Justice Ian Chang - Justice of Appeal**

Mr. Ashton Chase with Ms. Pauline Chase for Appellants
Mr. Frank James with Mr. R. Satram for First, Second & Third-named Respondents.

Mr. Moendin McDoom, SC with Mr. Moendin McDoom for the Fourth and Fifth-named Respondents.

2002: June, 5 and 6

October 7, 30
2003: April 1

J U D G M E N T

CHANG, JA:

In 1936, one Nazeban in her own right and as sole executrix of the estate of her deceased husband vested title by transport in Habibul and Sheik Mohamed Insanally (the appellants) and Bibi Zaphitoon Nisa, all then minors, in respect of Plantation Land of Canaan save and except certain portions of the said Plantation already transported.

In 1957, the appellants and Bibi Zaphitoon Nisa then adults, subdivided and partitioned the North part of the said Plantation into lots A,B,C and D among themselves. Bibi Zaphitoon Nisa became the transported owner of lots A and B and the appellants became joint transported owners of lots C and D. Transport No. 2475 of 1957 relates to lots C and D. In the new 1957 transports, no portions were saved and excepted.

In 1985, the respondent Herbert Wilson applied for and obtained under section 35 of the Deeds Registry Act, Chapter 5:01, an order of court that title to lot 1 of Plantation Land of Canaan as shown on a plan by Sworn Land Surveyor Caesar Van Duben dated 28th April, 1847 be passed and registered in his favour. Consequent upon the said order of court, the Registrar of Deeds executed and passed transport No. 207 of 1985 in respect of Lot 1 in favour of the respondent Wilson. Similarly, in 1986, the respondents, Phillips and Marshall, by separate applications but using the same procedural route, obtained in May, 1986 separate orders of court under section 35 of the Deeds Registry that lots 2-6 and lots 7-12, as shown on the said plan by Caesar Van Duben of 1847, be passed and registered in their

favour respectively. Consequent upon the said orders of court, transports No. 478 of 1986 in respect of lots 2-6 in favour of the respondent Phillips and transport No. 479 of 1986 in respect of lots 7-12 in favour of the respondent Marshall were executed and passed by the Registrar of Deeds.

In August 1987, the appellants, Sheik Insanally and Habibul (represented by the said Sheik Insanally) filed an action against the respondents, Phillips, Marshall and Wilson seeking, inter alia, declarations that their transport No. 2475 of 1957 which relates to lots C and D was valid and effective in respect of ownership of all lands described therein and that transports No. 307 of 1985, No. 478 and No. 479 of 1986 held by the said respondents were invalid, ineffective and inapplicable in respect of lands held by the appellants as lots C and D in transport No. 2475 of 1957 (Action No. 2787 of 1987). The dispute arose because lands held by the said respondents in their transports formed part of lots C and D in transport No. 2475 of 1957.

The action brought by the appellants was heard by **Pompey J** who found in favour of the appellants and granted the declarations sought. The respondents appealed against the decision of **Pompey J** to the Court of Appeal. However, the appeal was never heard on merits. Neither the notes nor the records were available. Moreover, it was brought to the attention of the Court of Appeal that the decision of **Pompey J** was written and delivered after he had demitted judicial office on retirement. The Court of Appeal concluded that the decision of **Pompey J** was invalid and remitted the matter to be heard de novo by the High Court.

While hearing of the action de novo was pending, the respondent Wilson, on the 1st July, 1992, entered into an agreement of sale and purchase with Sagan Trading Company Limited, the second-named respondent in

Appeal No. of 1998, in respect of lot 1 on transport No. 267 of 1985. Under the agreement, the full purchase price of \$1,000,000 was paid to Wilson. On the 2nd March, 1993, while the de novo hearing was still pending, the respondent Phillips entered into an agreement of sale and purchase with Rambarran Imports and Exports Company Limited, the first-named respondent in Appeal No. of 1998, in respect of lots 2-6 on transport No. 478 of 1986. The full purchase price of \$3,000,000 was paid under the agreement to Phillips. In both instances, possession was given to the vendors.

The appellants opposed the passing of transport by Wilson to Sagan Trading Company Limited and followed up their opposition with Action No. 1091 of 1993. However, it appears that this action was never heard.

In August 1994, the appellants filed two actions against Rambarran Imports and Exports Company Limited and Sagan Trading Company Limited (Nos. 3547 and 3550 of 1994) seeking, inter alia, declarations that their purported purchases of lot 1 from Wilson and lots 2-6 from Phillips were invalid, null and void. These actions were not at all related to any opposition proceedings.

By consent of all the parties, three actions (No. 2787 of 1987 against Phillips, Marshall and Wilson and No. 3547 and No. 3550 of 1994 against Rambarran and Sagan) were heard together by **Trotman J.**

The appellants alleged against the respondents Phillips, Marshall and Wilson that since 1957, they were owners by transport No. 2475 of 1957 of 290 acres of land comprising lots C and D, parts of the North part of Plantation Land of Canaan, and that they had leased the said lots from 1965 to 1986 to one Mohamed Khan who had assigned the lease to Demerara Company (later Guyana Sugar Corporation); further, in 1985 and 1986, the

