

IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 19 OF 1999

BETWEEN:

1. SHEIK SHEIR YUSUF
2. DOREEN YUSUF

Appellants/Petitioners

- and -

THE LUTHERAN CHURCH IN GUYANA

Respondents/Opposers

BEFORE:

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| Hon. Madame Justice Desiree P. Bernard | - | Chancellor |
| Hon. Madame Justice Claudette M.C. Singh | - | Justice of Appeal |
| Hon. Mr. Justice Ian N. Chang | - | Justice of Appeal |

Mr. R. Poonai for Appellants
Mr. J. Seenan for Respondents

2002: February, 12
March, 14

R U L I N G

BERNARD, C. delivered the judgment of the Court:

This appeal concerns a petition for declaration of title to land situate at lot 13 7th Street, Success, East Coast Demerara, made by the Appellants and opposed by the Respondents. The petition was dismissed by the learned Commissioner of Title, and the Appellants appealed to this Court.

From the decision of the learned Commissioner it seems that he did not believe that the Appellants were in occupation for the requisite twelve-year period, and certainly did not believe that they were in occupation from

1975. He found that their occupation began only around October, 1994 preferring to accept the evidence of Pastor Lochan of the Respondent Church.

Although he found that the planting of cash crops on a residential lot of land was not a sufficient degree of occupation to ground a claim of adverse possession or that the watch house did not indicate substantial occupation, we are of the view that his finding that the payment of rates and taxes in October 1994 indicated an intention to possess the land - animus possidendi - was wrong as there is authority that the mere payment of rates and taxes confers no rights of ownership or occupation.

We are also of the view that fencing of the area could constitute evidence of an intention to possess adverse to the true owner. However, we are mindful of the fact that in this case the Appellants produced no documentary evidence to corroborate their oral testimony about expending sums of money to erect a fence, and the learned Commissioner of Title did not believe them. He also did not believe that they erected a watch house or built up the land as no receipts were produced to substantiate this. The learned Commissioner of Title also rejected the evidence of the witness Mustapha whom he disbelieved and deemed to be a witness of convenience and of poor memory.

We agree that the learned Commissioner of Title ought to have considered the fact that James Lochan had an interest to serve when assessing the value of his testimony as he had been allocated the said lot by the Respondents, but be that as it may he was a Pastor of the Respondent Church and was entitled to testify on their behalf. He testified about what he saw when he visited the land, and no doubt from his demeanour the learned Commissioner considered him a witness of truth.

Apart from Lochan the learned Commissioner seems also to have based his decision on the fact that he did not believe the Appellants or their witness Mustapha that they were in occupation for the requisite period of time.

In cases where a trial judge bases his decision on the credibility of witnesses whose demeanour he has observed and assessed, an appellate court is hard pressed to differ from his conclusions. This was held to be so in the case of Bookers Stores Ltd. v. Mustapha Ally (1972) 19 WIR, 230, and Sumair Singh v. Chase Manhattan Bank NA (1991) 45 WIR, 220.

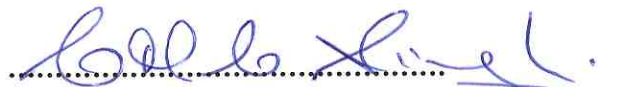
The learned Commissioner having seen the Appellants and observed their demeanour was in a far better position to decide whether he believed them on the factual issues of the case, and it is difficult for us to decide otherwise even if we may have come to a different conclusion on the printed evidence before us.

In the circumstances the appeal is dismissed with costs to the Respondents fixed in the sum of \$25,000.00.

Dated the 14th day of March, 2002.


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Desiree P. Bernard
Chancellor.


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Claudette M.C. Singh
Justice of Appeal.


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Ian N. Chang
Justice of Appeal.