

2010

NO.177/S

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

EUTINA MC FARLANE

Plaintiff

-and-

MARY ROBERTS

Defendant

Ms. R. Kissoon for the plaintiff

Ms. Edwards for the defendant

DECISION

The plaintiff claims that she acquired the land from the Government of Guyana since 1994 and that she gave the defendant permission to live there temporarily until the defendant was able to acquire her own land.

The defendant, on the other hand, said she does not know the plaintiff, and that the plaintiff never gave her permission to live on the land. The defendant said she went onto the land when the witness Ramesh Seeraj told her that there was land available which belonged to Guysuco and that she could take a piece of the land. She

said she cleared the land and fenced it and built her house in the middle of the land with the help of Ramesh Seeraj.

The plaintiff, on the other hand, submitted documents from the Government of Guyana showing her allocation of land and has tendered a Certificate of Title to the land.

There is no such documentary evidence submitted on behalf of the defendant who said she applied to the Ministry of Housing for the said land and was never informed that someone else had been allocated the same piece of land.

From the evidence it was stated that the Ministry of Housing was informed of the conflicting interests in the same piece of land, but did nothing to resolve it. Eventually the Ministry of Housing passed title to the plaintiff. In the absence of any fraud, which was not alleged in this case, the plaintiff is protected by the Land Registry Act and her title is indefeasible and cannot be set aside by this court.

The fact that the defendant said she was living on the land as well as the plaintiff does not give the defendant any equitable or legal interest that could override the plaintiff's title.

It appears that at some point in time they were both applicants to the same portion of land, and it is immaterial for the purpose of this

case who went onto the land first. It is also immaterial who gave whom permission since neither is the owner of the land. Even if the defendant went onto the land without permission from anyone she never protected her interest by filing a caveat. Furthermore she has no documents from the government allocating the land from which she could infer her interest , and if she did then her action cannot be against the plaintiff but against the Ministry of Housing, and she has only an action in contract assuming she had a contractual relationship with the Government for the purchase of the land. And if she had such a contractual relationship then her action lies in damages for breach of contract, since she can no longer claim specific performance ,since the title has already been passed to the plaintiff.

The plaintiff's title cannot be defeated , and in the absence of fraud cannot be set aside or nullified by the court. The plaintiff's title remains intact and she is entitled to possession of the land. The defendant will have to seek her remedy against the Ministry of Housing.

Reference is hereby made to **Ramdeo v Heralall** CCJ Appeal No. CV3 of 2008. This case emphasizes the need for a contractual purchaser of land from a registered proprietor to protect himself against a subsequent transfer of title to another person by lodging a caveat against that title under section 125 of the Land Registry Act, Cap.

5:02. Otherwise under sections 4, 65(1), 66, 69 and 70 of that Act the new registered proprietor will obtain an indefeasible title unless involved in some fraud relating to the transfer, section 69 (2) making it clear that mere knowledge of a contract unprotected by a caveat is not of itself to be imputed as notice of fraud.

As Lord Wilberforce said in **Midland Bank Trust Co. Ltd. V Green** (1981) AC 513 at 531 “It is not fraud to rely on legal rights conferred by Act of Parliament so that a contractual purchaser can take advantage of his right to become registered proprietor free from the right of another purchaser who failed to protect his contract by entering a caveat.”

In **Ramdass v Jairam** the CCJ held that “equitable proprietary interests in Guyanese immovables (as opposed to movables) could not exist in Guyanese property law. The interest of a purchaser under a contract of sale of an immovable, while affording him the right to sue the landowner for specific performance, is merely a personal right exercisable against the landowner to compel full and absolute title to the land to be transferred to the purchaser: this is a “ius in personam ad rem.”

It made no difference that the purchaser had been given vacant possession of the land and had even paid the full purchase price.

Section 66 of the Land Registry Act states as follows:

“Every proprietor registered with an absolute title shall hold the registered land subject to-

- (a) Any interests registered or entered in the register
- (b) Any public right of way or easement
- (c) Any charge on or over land created by the express provisions of any other Act without reference to registration under this Act to secure any unpaid rates, taxes, assessments, or other moneys due and owing to the state or to any statutory authority.
- (d) Such interests as may under the provisions of this Act subsist over registered land without being entered in the register

But with all rights, privileges and appurtenances belonging or appurtenant to such land and free from all other rights and interests whatsoever including rights and interests of the state.

Section 65 (1) states that every registered proprietor shall hold absolute and indefeasible title ...except

- (a) In the case of fraud
- (b) Any portion of land erroneously included in any parcel by misdescription of boundaries.

To protect persons dealing with registered land section 69 provides –

“that a registered proprietor shall not be required to inquire into the circumstances for which the registered proprietor was registered, nor be affected in any way by any notice of any instrument, fact or thing, whether registered or not under the Act or under any other Act, or of any trust, right or interest unregistered or unprotected by caveat.”

Section 70 states “the production of the Certificate of Title shall be held in every court of law to be an absolute bar and estoppels to any such action, any rule of law or equity to the contrary notwithstanding.”

By virtue of sections 69 (2) the protection afforded by section 69 (1) does not apply to a purchaser “who is privy to or has notice of any fraud relating to the transfer making him registered proprietor, while the purchaser’s knowledge of any fact or thing, trust, right or interest unregistered or unprotected (eg by a caveat) or his omission to investigate any such matters “shall not of itself be imputed as fraud.”

The proviso to section 61 which deals with rectification states:

“as against a proprietor who has acquired the land bona fide for value the court shall not rectify the register unless such proprietor is privy to the fraud or mistake or has caused or substantially contributed thereto by his Act, neglect or default.”

In the circumstances possession is hereby granted to the plaintiff of lot 729 D Field Turkeyen, Greater Georgetown, known as parcel 2870, Block 413332, Zone 413. It is further ordered that the defendant do vacate the property within 6 months of today's date, that is, on or before 15<sup>th</sup> July 2013.

Each party to bear his own costs.

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Diana F. Insanally

Dated this 16<sup>th</sup> January 2013.