

2009

No. 88-S

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

DINDIAL RAMDHANI

Plaintiff

-and-

1. RAMLOCHAN RAGHUNANDAN

2. HARNARINE RAMLOCHAN

Defendants

Jointly and severally

Mr. Arun Gajraj for the Plaintiff

Ms. Jamela A. Ali for the Defendants

DECISION

The Plaintiff filed this action claiming vacant possession of property situate on the left bank of the Mahaica Creek as well as mesne profits and damages for trespass. The Plaintiff claims that he is the owner of the property (which comprises two pieces of land) vide Transport No. 1213 of 2008 dated 18th June, 2008. The Plaintiff further claims that the Defendants are trespassers and are unlawfully occupying the property. The Plaintiff relies on the said Transport No. 1213 of 2008 in his claim for possession.

The Defendants filed an Affidavit of Defence denying the Plaintiff's claims and contended that they have a good defence. The Defendants challenged the validity of Transport No. 1213 of 2008 which they alleged was fraudulently obtained by the Plaintiff. The Plaintiff filed

an affidavit in reply which was struck out on the ground it did not disclose any supporting exhibits. Leave was given to the Defendants to defend the matter with pleadings.

However when the matter came up on the 17th November 2009 Ms. Ali made a preliminary point that the statement of claim did not disclose a cause of action, in that the Transport on which the Plaintiff based his claim was issued out of a spent transport. Ms Ali contended that the history of the Transports show that the said properties, the subject matter of the Plaintiff's claim, were originally described in Transport No. 86 of 1953. The property described in Transport No. 86 of 1953 was subsequently conveyed and became incorporated in Transport No. 616 of 1976. Transport 86 of 1953 would therefore have been spent. However, for some unknown reason, in 2008 the said two pieces of land now in dispute which had already been conveyed (and were now held by the owners of Transport No. 616 of 1976) were again conveyed to the Plaintiff from the spent Transport No. 86 of 1953 and now incorporated in the Plaintiff's Transport No. 1213 of 2008. There is no evidence that the owners of these two pieces of property, Kausiliya and Teekram, were aware that their property had been conveyed to another person.

A perusal of certified copies of Transports Nos. 86 of 1953, 616 of 1976 and 1213 of 2008 reveal that in 1953 one Ramdhani was the owner of the properties described in Transport No. 86 of 1953, the two pieces of land which are now being claimed by the Plaintiff in this action. In 1976, the reputed wife of the deceased, Kausiliya in

her capacity as Executrix named in the Last Will and Testament of the said Ramdhani, deceased, Probate whereof was granted to her on the 9th September 1975, No. 715 of 1975, transferred, in accordance with the terms of the Will, a life interest of the said property to herself with remainder at her death to the deceased's son Teekram vide Transport No. 616 of 1976. Therefore Transport No. 86 of 1953 became spent and was no longer a valid Transport for purposes of conveyance of any property described therein, and should have been annotated to show the conveyance to Kausiliya and Teekram in 1976. At most Transport 86 of 1953 would only be of academic importance for the purpose of tracing the history of the movement of the said property therein from one person to another, but it could no longer be used for the purpose of conveying any property therein to any person or entity whatsoever.

However, it appears that Transport No. 86 of 1953 was inadvertently not cancelled by the Registrar of Deeds. Thirty one years after the death of the said Ramdhani, deceased, the Plaintiff in 2006 applied for and obtained Letters of Administration of the very estate of Ramdhani (a/k Ramdani Maraj), who died testate in 1975 and whose estate had already been granted Probate No. 715 of 1975. As stated previously, the property of the said deceased had already been conveyed pursuant to the terms of the Will more than 30 years ago. However, after the Plaintiff obtained Letters of Administration of the said Estate, he thereafter conveyed the said property in dispute as described in Transport No. 86 of 1953 to himself. However this could not lawfully have been done since Transport No. 86 of 1953

was spent. Transport No. 86 of 1953 was conveyed to Transport No. 616 of 1976 which remains valid and subsisting.

The Defendants are in possession of the property in dispute by virtue of an Agreement of Sale dated 19th January 1979 whereby the first named Defendant and his wife bought the said two pieces of land from the owners Kausiliya and the Defendants have been in possession until the present time. A perusal of a certified copy of the Transport No. 616 of 1976 reveals an annotation stating that the Transport was advertised in the Official Gazette in favour of the first named Defendant on the 18th August 1979 No. 82.

From these facts, it is clear that the Registrar of Deeds had no power to issue a Transport from a spent Transport, thereby creating two Transports for the same property. This is not lawfully possible and it is obvious that the Plaintiff obtained Transport in error or by mistake because had the Registrar been aware that Transport No. 86 of 1953 was spent she would not have allowed transport to pass to the Plaintiff.

This mistake was obviously made by the Registrar of Deeds who is the custodian of all Transports and Deeds and it was the duty of the Registrar of Deeds to cancel Transport No. 86 of 1953 and have it annotated to show the conveyance to Kausiliya and Teekram in 1976. Transport No. 86 of 1953 was no longer valid and could not be used to convey any property described therein. It is therefore clear that the Plaintiff has no legal claim to the property which was conveyed to

him by a mistake made by the Registrar who could not lawfully have issued Transport No. 1213 of 2008.

Section 22 of the Deeds Registry Act, Chapter 5:01 does not give the Plaintiff an absolute and indefeasible title where there was a mistake in the issuance of that Transport. A letter from the Registrar dated 18th March 2010 confirms that the Registrar's conclusion is that Transport No. 1213 of 2008 was passed to the Plaintiff in error.

In **Harry Sahoy v Ramdehol Sahoy** 1967 LRBG 240, Justice Crane examined section 23 of the Deeds Registry Ordinance, Cap. 32 which is the same as section 22 of the Deeds Registry Act, Chapter 5:01 and stated that although section 23 of the Deeds Registry Ordinance confers an indefeasible title which, according to the proviso therein (similar to section 22, Chapter 5:01), could only be set aside by 'fraud', this was not the only ground on which a title could be set aside. The learned Judge referred to the equitable doctrine of rectification which is available where a mistake has been made, and also went on to say that the object of rectification was "to put the parties into the position in which they would have been if the mistake had not happened".

Justice Crane said at page 248 "the mere fact that fraud only has been mentioned in the proviso to section 23 (1) of the Ordinance (section 22 (1) Cap. 5:01) is not derogatory of the application of any other equitable remedy. As I view it, the only reason why the legislation specifically mentions fraud in the proviso is because of the limitation

it is desirable to impose on its use as a means of declaring void a transport.”

In my view it is quite clear, therefore, that the equitable principle of mistake is applicable in the case before us, and since the mistake in this case is not capable of rectification, the only remedy available is to declare the Transport to be void.

The arguments raised by Counsel for the Plaintiff have no merit since in this case the issue raised by Counsel for the Defendants on the preliminary point is that the Statement of Claim should be struck out as disclosing no cause of action and is based on the irregularity of the Transport on which the Plaintiff based his claim. Therefore the issue which this Court has to decide is the validity of Transport 1213 of 2008 on which the Plaintiff relies on to support his claim for possession.

I am of the opinion that the Court has an inherent jurisdiction in the interests of justice to declare a Transport null and void and of no effect if satisfied that it was issued by mistake, and that this Court can take judicial notice of the Transports in question which originated in the Deeds Registry.

Where it is clear beyond any doubt that the Plaintiff’s Transport could not lawfully have been issued from a spent transport from which nothing can be conveyed, then the Plaintiff’s claim clearly does not disclose a cause of action, since a cause of action must be

grounded in a lawful claim and cannot, by any means, be grounded in something that is absolutely void ab initio. This is not a case where the court has to embark on a trial and take evidence to arrive at a decision. The facts herein are clearly beyond dispute. While the Plaintiff's claim could be based on a voidable transport which can be determined after evidence is taken of the facts surrounding the acquisition of the property which is disputed, in this case the Plaintiff's Transport is equal to that of a document that has no lawful existence. The document itself has nothing upon which it can stand lawfully and therefore must be void ab initio. It is a document which should not have been issued in the first place and has no lawful foundation for its existence.

It is therefore this Court's view that the Plaintiff has no cause of action against the Defendants, his Transport having been obtained by a mistake or error created by the Registrar of Deeds when she failed to cancel Transport No. 86 of 1953.

In the circumstances, the action herein is hereby dismissed and it is hereby declared that Transport No. 1213 of 2008 dated 18th June 2008 was passed in error or by mistake and is therefore void. And it is further ordered that the Registrar of Deeds be and is hereby directed to cancel Transport No. 1213 of 2008 dated 18th June 2008, and the Plaintiff is hereby ordered to deliver up Transport No. 1213 of 2008 dated 18th June 2008 to the Registrar of Deeds for cancellation.

Costs are awarded to the Defendants in the sum of \$75,000.

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Diana F. Insanally

Puisne Judge

Dated this day of July 2010.