

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:**VERNON JAMES****(Plaintiff)****-and-****HUGHETTE JOHNSON****(Defendant)****Mr. Sarwan for the Plaintiff.****Mr. Bollers for the Defendant.**The Plaintiff's case

The Plaintiff states that he is the owner of the property situate at 2290 Lover's Lane, South Amelia's ward, Linden.

He said he bought the property and found the defendant therein, and is claiming possession.

The plaintiff states that the defendant is not a tenant nor a licence.

The Defendant's case

The Defendant claims that she has acquired a beneficial half share by virtue of having lived and co-habited with her former reputed husband Colin Whyte since 1995 to 2002 when he moved out and left her in sole occupation. The defendant claims that Colin Whyte told her that he would leave his share to the children.

The defendant claims that Colin Whyte and the plaintiff fraudulently colluded to divest her of her share in the property.

During the evidence there was an issue over the numbering of the parcel of land but I am satisfied from the evidence of both the Plaintiff and Defendant that they are both speaking of the same land that Colin Whyte had owned and on which he and the defendant had lived, and that it is the same land that Colin Whyte sold to the Plaintiff.

In the first place the defendant has not legally acquired any interest in the property by virtue of having co-habited with Colin Whyte. She merely has a right to make an application to the court under the Married Persons Property Act for an award on the basis of duration of co-habitation and the degree of contribution. The Act confers no interest in rem but a statutory right of action ad rem. The court does not make a declaration as to the existence or extent of a pre-existing interest in rem but makes an award which may or may not create an interest in the matrimonial property. In this case the defendant never applied to a court for an award under section 15 of the Married Persons Property Act and no award was ever made.

Furthermore this case does not involve the resolution of any dispute over the interest in the matrimonial property.

The defendant would have had to institute legal proceedings under the Married Persons Property Act as amended by 1990 Act against Colin Whyte for a declaration as to her share if any and any such declaration would have had to be translated into her being entitled to a share in the proceeds of sale as against Colin Whyte.

The defendant also claims that she had an unregistered interest in the property. Since the defendant never applied to a court for a declaration as to any share she may have had under the Married Persons Property Act as amended, then she had acquired no interest that could be registered. There was no beneficial interest in the defendant protected by a caveat, restriction or prohibition, and therefore the

plaintiff was entitled to deal with the land on the assumption that Colin Whyte had full power to dispose of any interest therein.

The fact that the title of a registered proprietor is subject to a beneficial or equitable interest (whether registered or unregistered) does not disentitle the registered proprietor from dealing with or even disposing of or alienating the registered property and the existing interests thereon.

Under the Land Registry Act S.69 (1)

“a person contracting or dealing or taking or proposing to take a transfer in respect of registered land shall neither be required nor be concerned in any manner to

a. to inquire into the circumstances of the previous registered proprietor or

b. give effect to, nor be affected in any way by, any notice of any instrument, fact or thing, whether registered or not under any act, or of any trust, right or interest, unregistered, or unprotected by caveat, any rule of law or equity to the contrary notwithstanding.”

Therefore a third-party does not have to inquire as to anyone else's rights, and a registered proprietor can effectively deal with or dispose of registered land in favour of a third party despite the fact that there exist registered or un-registered beneficial interests which are prior to or have paramountcy over his registered title.

In any event, in this case, there was no beneficial interest in the defendant protected by a caveat, restriction or prohibition.

As regards the issue of fraud the respondent was aware that the title was acquired by Colin Whyte in his name and therefore he had not committed any fraud on her.

Any interest held by her in the land could not have priority or paramountcy over his title outside of the register, and she could only have acquired such an interest by a declaration of the court for a share in the matrimonial property.

Colin Whyte would have held an absolute and indefeasible title and no interest in the registered land in favour of the defendant was registered or entered in the register, and even if the defendant can claim an equitable or beneficial interest in the property under a resulting or constructive trust, that did not prevent the registered proprietor from dealing with or even disposing of or alienating the registered property and the existing interests thereon.

There is no evidence of any fraud committed by the plaintiff when he purchased the land from Colin Whyte with the building thereon, since under section 69 (1) the plaintiff did not have to inquire of the circumstances how the land came to be registered to Colin Whyte, nor is he affected by any notice or instrument, etc. or of any interest unregistered or unprotected by caveat, any rule of law or equity to the contrary notwithstanding.

The CCJ dealt with the issue of fraud in Sukhree's case. In this case the CCJ held that a bona fide purchaser for value is not guilty of fraud even if he had notice of another person's contractual right to the land.

The CCJ held that "since the respondent had no equitable interest in the land at the time when the appellants obtained transport to the land under intestacy, no equitable interest could have been lost by her or obtained from her. What she had was a right of action based on an ad rem right i.e a right to sue for specific performance on the basis of a contractual right to seek to enforce the agreement in court i.e an equitable chose in action ad rem for specific performance."

And the CCJ held that even if the appellants knew of the agreement of sale between the respondent and deceased and the payment by her of \$10,000 deposit it

can hardly be contended let alone concluded, that they obtained the transport by way of fraud.

Likewise in this case I can hardly find that the plaintiff fraudently obtained the title from Colin Whyte, when the defendant had not even acquired an interest in the property, no steps having been taken to obtain a declaration under the MPPA and its amendment.

The defendant may or may not have a claim for a share of the proceeds of sale but she can't claim a share in this case from the plaintiff. There was no beneficial unregistered interest of the defendant protected by a caveat, restriction or prohibition.

In the circumstances judgement is hereby granted to the plaintiff, i.e possession of the premises situate at 2290 Lovers Lane, South Amelia's Ward, Linden, also known as and described as parcel 2278 Block XL111 Zone R.B.D.R in Certificate of title no. 08/522, the defendant to vacate the said premises within 6 months of the date of this order, ie. on or before 27th April 2012.

(b) Cannot be granted since no evidence was lead on this aspect (as to rental prices for the property in that region and at that time.)

Costs \$20, 000.00

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Diana F. Insanally

Dated this 27th day of October, 2011