

J A M A I C A

IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO. 1/79

BEFORE: THE HON. MR. JUSTICE ROBINSON, PRESIDENT
THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.

B E T W E E N: HEPSY DIXON - PLAINTIFF/APPELLANT
A N D EFFIE FREDERICKS - DEFENDANT/RESPONDENT

Mr. Charles Adams for Plaintiff/Appellant.

Mr. James McDonald for Defendant/Respondent.

27th June, 1979.

KERR, J.A.

This is an appeal from a judgment of the learned Chief Justice sitting in the Grand Court in an action brought by the plaintiff/appellant against the defendant and as set out in her statement of claim. It's an action for trespass and a prayer for injunction in relation to land situated at Bodden Town.

Both plaintiff and defendant in their contention agreed that their root of title originated in a conveyance of John McBride to Rachael Terry dated the 16th of April, 1936. The defendant/respondent as the wife and administratrix of the estate of her husband, Fredericks, deceased, claimed through a conveyance, exhibit B, dated the 27th of January, 1950, from the said Rachael Terry, deceased, to Isaac Fredericks; whereas the plaintiff rested on exhibit A, a conveyance dated the 20th of October, 1965, made after the death of the deceased Fredericks by Rachael Terry purporting to convey the said land to the plaintiff.

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This is the second trial. The first was as far back as 1968 and an appeal therefrom by the plaintiff, the Court of Appeal allowed the appeal and ordered a new trial to enable the parties to adduce some cogent evidence, expert or otherwise, with a view to resolving the issue of validity or non-validity of the execution of the Deed, exhibit B. It is clear then that the vital issue in this case is the validity or non-validity of exhibit B.

Notwithstanding that the plaintiff was given another opportunity to put her house in order, at the re-hearing it was the defence who produced expert evidence to prove the validity of exhibit B, although the burden was on the plaintiff to prove on the balance of probability the non-validity or the fraud in exhibit B.

In this appeal leave was sought and granted to perfect certain preliminary requirements and in particular the giving of the security for cost, and the time has been extended to file grounds of appeal and to the extent that the grounds filed with the application were deemed to be properly filed and to be the grounds of appeal. The Court for reasons stated earlier refused leave to call additional evidence.

Among the grounds argued were grounds one, two and three of the supplementary grounds which dealt in general with the evidence pertaining to the validity of exhibit B. The learned Chief Justice in his judgment dealing with this aspect of the matter identified and isolated the vital issues and at page 160 found as follows:-

"The plaintiff failed to prove that the conveyance dated the 27th January, 1950, from Rachael Terry to Isaac Fredericks, exhibit B, was fraudulent or that the signatures of the witnesses and the Justice of the Peace thereon were forgeries.

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I accepted the evidence of the witness, Robert Vollmer that the signatures of the witnesses on exhibit B were quite probably made by the same persons who made the signatures before the Court, that is, Thomas Berry and Adler Bodden respectively." These witnesses denied their signatures on the document, exhibit B.

"I reject as untrue the evidence of the witness Thomas Berry, and Adler Bodden when they said or purported to say the signatures on exhibit B were not made by them. I accepted as true the evidence of Ernest Panton that he recognised the signature on exhibit B as being that of Mr. R.P. Bodden, Justice of the Peace, who died in 1961."

In my view the evidence was sufficient to support these findings of fact and despite the energetic and pleasing presentation of the attorney for the appellant I conclude that there is really no merit in these grounds.

Two other grounds are worthy of note: that the Judge mis-directed himself in construing the fifth paragraph of exhibit A as implying that on the date on which exhibit A was executed the plaintiff knew or ought to have known of the existence of exhibit B on the basis of certain words in the form when in fact those words in the fifth paragraph of exhibit A, are as provided for by Section 9(1)(a) of the Conveyancing Law, and were in common use at the material time in conveyances of the type. Accordingly, the learned Judge had made an erroneous inference from the facts found in concluding that the plaintiff knew or ought to have known of the existence of exhibit B on the date on which she, the plaintiff, accepted delivery of exhibit A.

The attorney conceded that this is a collateral matter because even if the plaintiff did not know of the existence of the document, it would not make any difference if the document was validly issued and executed. He, however, contended that in the general assessment of the credibility of the plaintiff's evidence, this would play an important part in the acceptance or rejection of that evidence.

I have considered carefully these submissions and I find that there were certain admissions made by the plaintiff in cross-examination from which the Judge could quite properly infer that she knew of the existence of exhibit B when "A" was executed.

ROBINSON, P.

I would like to say that I agree with everything that my brother has just said but I would like to add that the two witnesses who purported to be witnesses to exhibit B-that it is significant that both those witnesses admitted being at Rachael Terry's home on or around the date on which exhibit B was supposed to have been executed. Both admit signing their names to some paper on that occasion, but denied that it was on exhibit B.

Both gave specimen signatures in Court which when compared by a handwriting expert with their alleged signatures on exhibit B led the expert to the opinion that it was most probably, in all probability, their signatures that were on exhibit B. One of those witnesses who purported to sign before Mr. Bodden, Mr. R.P. Bodden, whose purported signature appears on that document at the attestation clause, led me to the view that unless Mr. Thomas Berry was a party to a fraud it was the J.P. whose signature appeared at the attestation clause who witnessed it.

In my view it was not difficult therefore for the Judge to prefer the evidence of Mr. Ernest Panton to that of Miss Agnes Bodden that the signature was that of Mr. R.P. Bodden. It is also significant that Miss Agnes Bodden who conceded that Mr. Ernest Panton would be familiar with the signature of her father also testified that she had

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heard Miss Rachael Terry say that she was going to sell this particular bit of land to Mr. Isaac Fredericks, and exhibit B is entirely consistent with what Miss Agnes Bodden had said she understood to be the position.

I can't for myself, having regard to the evidence put before the learned trial Judge, see that I would come to any different conclusion had I been the trial Judge.

CARBERRY, J.A.

I agree with what has been said by my brothers. If the case had been somewhat differently presented it might have had a greater chance of succeeding. But on the evidence as led I am satisfied that the Judge came to the only conclusion that was possible on that evidence.

Accordingly, the appeal is dismissed and the judgment of the Court below affirmed with costs to the respondent, (such costs to be agreed or taxed).

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