

JAMAICA

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL NO: 42/90

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

BETWEEN

AUSTIN FERGUSON
MAUREEN FERGUSON

DEPENDANTS/APPELLANTS

AND

CHRISTINE BURKE

PLAINTIFF/RESPONDENT

Rudolph Francis for Appellants

Roger Davis for Respondent

September 30, October 1 & December 2, 1991

GORDON, J.A.

On 4th December, 1974 premises 14 Hoylett Avenue, Queensbury registered at Vol. 1096 Fol. 883 of the Register Book of Titles was registered in the name of Marie Fairweather. By instrument of transfer No. 454535 the said premises were transferred to Myrtle Williams on 18th December, 1986. On 6th January, 1989 by instrument of transfer No. 477465 the premises were transferred to the respondent. The appellants have been in occupation of the said premises since October 1974. On 4th May, 1989 the respondents filed a plaint in the Resident Magistrate's Court for the parish of St. Andrew seeking recovery of possession of the premises from the appellants. In a judgment delivered on 19th October, 1989 the learned Resident Magistrate for the parish of St. Andrew made an Order for possession to be delivered up on 31st December, 1989. From this order the appellants appealed and on the hearing, the appeal was dismissed, the order of the court below affirmed and it was ordered that the appellants deliver up possession on or before the 30th November, 1991. Costs awarded to the respondent were fixed at \$500.

The dispute arose when the plaintiff, the registered owner of the premises, sought to recover possession from the appellants who were in possession. A notice requiring possession was ignored so the plaintiffs had recourse to proceedings in the Resident Magistrate's Court. The appellants sought to show that they were let in possession by Marie Fairweather in 1974 and had remained there as licensees. They claimed a right to possession by virtue of the title of Marie Fairweather the sister of Maureen Ferguson..

Mr. Francis abandoned two of the supplementary grounds of appeal he obtained leave to argue. The third he conceded was unarguable so he proceeded on the three remaining grounds viz:

- "(iv) The learned Resident Magistrate erred in law when she found that the Plaintiff/Respondent is the owner of the premises which is the subject of the action, in the absence of the production of an instrument of Transfer which it was the Plaintiff/Respondent's duty to produce, showing what interests (if any) were transferred to the Plaintiff/Respondent and by whom.
- (v) The learned Resident Magistrate misdirected herself in law when she found in her reasons for judgment that although no relationship of Landlord and Tenant existed between the Plaintiff/Respondent and the Defendant/Appellants, the Court was only concerned with the status of the Plaintiff in relation to the Defendants at that stage without going on to consider the effect of the provisions of section 89 of The Judicature Resident Magistrates Act on the relationship, having regard to the respective positions of the parties.
- (vi) The learned Resident Magistrate had no jurisdiction to hear the case.

On ground 4 he submitted that the provisions of section 63 of the Registration of Titles Act made the title of the plaintiff unimpeachable. What he sought to challenge was the interest that was transferred to the plaintiff by the transfer registered on the

6th January, 1989. The endorsement on the title reads:

"Transfer 477465 registered on 6th January 1989 to Christine Burke of 28 Coolshade Avenue Kingston 19, St. Andrew, Businesswoman, consideration money Three Hundred Thousand Dollars."

He submitted that section 88 of the Registration of Titles Act provided how land is to be transferred and the interests therein that can be transferred. The learned Resident Magistrate erred, he submitted, when she said in her judgment that she could not go behind the title. She had not seen the instrument of transfer lodged with the title.

He conceded that this point was not taken before the court below and also that fraud was not pleaded as a defence. Fraud is a special defence and as such has to be specially pleaded as provided for in section 150 of the Judicature (Resident Magistrates) Act. On the title there is but one estate viz: the fee simple, therefore the transfer to the plaintiff must be of that estate only. Although the practice of naming the estate which had hitherto been followed on the title should have been adhered to, section 88 provides for the transfer of a lease, mortgage or charge or of any estate, right or interest by Forms provided in the schedule but contrary to Mr. Francis' submissions, this section is of no application in this case.

Section 88 of the Registration of Titles Act provides the complete answer to the submissions of counsel. It reads:

"No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of

"the particulars therein set forth, and of the entry thereof in the Register Book, and shall subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power."

There being no evidence of the application of the Limitation Act herein, the learned Resident Magistrate was right in accepting the title as conclusive evidence of the plaintiff's rights.

Mr. Francis next submitted that the learned Resident Magistrate must have proceeded under section 89 or 96 of the Judicature (Resident Magistrates) Act. He further said that once the plaintiff went on the land and told defendants that she was the new owner and that she was seeking possession from them, and they replied that they were put there by Marie Fairweather who bought it in 1974, that that put the plaintiff's title in issue. He relied on Arnold Brown v. The Attorney General [1968] 11 J.L.R.

35. This is the headnote:

"The respondent brought proceedings in Resident Magistrate's Court, St. Andrew, to recover possession of a certain room from the appellant. This room had been rented to A.B. by the respondent and the tenancy had been properly determined. In his answer to the respondent's claim the appellant, as he was required to do by s. 184 of the Judicature (Resident Magistrates) Law, Cap. 179, stated his defence to be that he had an equitable title as the surviving spouse of the deceased tenant, and, in the alternative, that the respondent was not entitled to possession. The Resident Magistrate heard evidence from one witness (for the respondent). The appellant called no witnesses and rested his case on the submission, inter alia, that the Resident Magistrate, by reason of the provisions of s. 96 of Cap. 179, had no jurisdiction to adjudicate upon the respondent's claim since there had arisen, on the defence stated by the

"appellant, a bona fide dispute as to the respondent's title, and no evidence had been led to show that the value of the land did not exceed £50. The magistrate held that, as no evidence had been adduced to show that there was a bona fide dispute as to title, he had jurisdiction under s. 89 of Cap. 179 and, accordingly, made an order for possession in favour of the respondent. On appeal, Held: (i) (Shelly, J.A., dissenting) that the statement of defence made by the appellant at the commencement of the trial showed a bona fide intention to dispute the respondent's title; the cause that the Resident Magistrate was required to try was that which was defined by the particulars of claim and the answer given thereto by the statement of defence; and since the appellant, by that statement, intended to set up a right to possession the magistrate had no jurisdiction under s. 89, nor under s. 90, as the respondent had not proved that the annual value of the land was not in excess of £50 and that he had a right to immediate possession of the land; (ii) (per Shelly, J.A.) that the respondent having proved that the tenancy of the room had been validly determined the burden was on the appellant to show that the respondent was not entitled to possession and this the appellant could show only by adducing evidence; the oral statement by way of defence was not sufficient to raise an issue as to the respondent's title."

In the third ground which is conveniently coupled with the above Mr. Francis submitted that the defence raised the issue as to title and there was no evidence led by the plaintiff as to the gross annual value of the property the subject of the claim as is required by section 96 of the Judicature (Resident Magistrates) Act. This section gives the Resident Magistrate jurisdiction to try disputes as to title to land in cases in which the gross annual value of the subject matter does not exceed \$3000. The plaintiff he submitted, failed to prove the gross annual value and that, he said, was fundamental. He relied heavily on Francis v. Allen [1957] 7 J.L.R. 100 particularly the headnotes:

"The respondent sought to recover from the appellant possession of a shop the rental of which was £4. 5/- per month. The appellant denied that the respondent was entitled to possession, claiming that she was the tenant of the shop. Held: (i) that there was a bona fide dispute as to title. (ii) that the section of the Judicature (Resident Magistrates) Law, Cap. 179, giving the Resident Magistrate's Court jurisdiction is s. 96, which limits the jurisdiction to cases where the annual value of the land does not exceed fifty pounds. (iii) that the only evidence as to the annual value of the land was that the rental was £51 per annum, and that the Resident Magistrate was not entitled to draw on his general knowledge as to rates, taxes, etc. to set off against the rental and so infer that the annual value must be under fifty pounds. (iv) that section 253 of the Judicature (Resident Magistrates) Law, Cap. 179, providing that no appeal shall lie in respect of the decision of a Court given upon any question as to the value of any real or personal property for the purpose of determining the jurisdiction of the Court, did not apply, there being no evidence upon which the Resident Magistrate could have come to his conclusion."

It must be recognized that in this case the plaintiff was the registered proprietor of the land. Any claim Marie Fairweather had, was extinguished when the property was transferred to Myrtle Williams on 18th December, 1985 as of that date the defendants ceased to hold by virtue of Marie Fairweather's right to possession and the subsequent transfer on 6th January 1989 to the plaintiff did not enhance the defendant's position. The appellant had become a squatter. The cases relied on by the appellant, Brown v. Attorney General and Francis v. Allen are wholly inapplicable and unhelpful to the appellant's cause. In Brown v. Attorney General the appellant claimed he had an equitable title as the surviving spouse of the deceased tenant, alternatively, he put the respondent to proof of his title. The Court of Appeal by a majority reversed the

the finding of the Resident Magistrate in favour of the respondents and held that section 96 of the Act applied. In Francis v. Allen the dispute was about the sub-tenancy of a shop and the Court of Appeal allowing the appeal held that section 96 applied.

The dissenting judgment of Shelly J.A. in Brown v. Attorney General was upheld, without any direct reference thereto, by Graham-Perkins J.A. delivering judgment of this court (Henriques P., and Swaby J.A.) in Ivan Brown v. Perris Bailey [1974] 12 J.L.R. at p. 1333:

"In June 1959 the respondent signed an agreement to purchase an acre of land from M. and was put into possession having paid half of the purchase price. In due course she paid the balance and in August 1967 she received a certificate of title. Up to that time she had made very infrequent visits to the land. On one such visit in 1967 she discovered that a 'board house' had been erected on her land by the appellant who told her that he had some money for M. 'in connection with land'. She told the appellant that she knew of no transaction concerning her land. In an action in the Resident Magistrate's Court for recovery of possession the appellant's case was that he knew that the respondent was the owner of the acre of land but that he had purchased half of that acre in 1965 from M. who had been authorised by the respondent to sell. He had paid the full purchase price to M. Apart from his own oral evidence as to the alleged purchase from M. the appellant called no other evidence. The magistrate awarded judgment in favour of the respondent. On appeal it was contended that once there was evidence before the magistrate that the appellant had paid for the land and built his house thereon he would have laid the foundation for the magistrate to say that he had no jurisdiction to try the case since (i) a dispute as to title would have arisen within the meaning of s. 96 of the Judicature (Resident Magistrates) Law, Cap. 179, and (ii) there was no evidence as to the value of the land, the subject of that dispute.

"Held: (i) that an action for the recovery of possession of land in a Resident Magistrate's Court a dispute as to title cannot be said to arise within the meaning of s. 96 of Cap. 179 unless the evidence is of such a nature as to call in question the title, valid and recognizable in law or in equity, of someone to the subject matter in dispute. If there is no such evidence the bona fides of a defendant's intention is irrelevant.
(ii) that where the party seeking to recover possession relies on a certificate of title under the provisions of the Registration of Titles Law, and no question arises as to that party's title having been barred by the operation of any statute of limitation then no dispute as to title can be said to arise in the absence of a credible narrative of events pointing to the probable existence in the other party of an equitable interest, albeit not registered."

The cases of Francis v. Allen and Brown v. Attorney General were discussed in the judgment and the court found that the conclusions arrived at in those cases are 'totally unsatisfactory.' It is our view that the decision in Brown and Bailey (supra) is eminently correct and should be adopted. The decisions in Francis v. Allen and Brown v. Attorney General should not be followed, as they are distinguishable from the instant case in that a Registered Title plays a significant role here: there was no registered title in Brown v. Attorney General and Francis v. Allen.

The evidence in this case does not call in question the title of the respondent, therefore a dispute as to title cannot be said to arise within the meaning of s. 96 of the Act. This case falls under the provisions of section 89 which reads:

"29. When any person shall be in possession of any lands or tenements without any title thereto from the Crown, or from any reputed owner, or any right of possession, prescriptive or otherwise, the person legally or equitably entitled to the said lands or tenements may lodge a plaint in the Court for the recovery of the same and thereupon a summons shall issue to such first mentioned person; and if the defendant shall not, at the time named in the summons, show good cause to the contrary, then on proof of his still neglecting or refusing to deliver up possession of the premises, and on proof of the title of the plaintiff, and of the service of the summons, if the defendant shall not appear thereto, the Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the Magistrate shall think fit to name; and if such land be not given up, the Clerk of the Courts, whether such order can be proved to have been served or not shall at the instance of the plaintiff issue a warrant authorizing and requiring the Bailiff of the Court to give possession of such premises to the plaintiff."

"In short, this section shows how to deal with the squatter. The question of annual value does not arise in proceedings under it. The plaintiff is required to prove that the defendant is a squatter, which the respondent in the instant case has done." (per Shelly, J.A.) in Brown v. Attorney General (supra)

The respondent proved that she is the registered owner of the premises and the person entitled to possession.

ROWE, P.

I agree.

FORTE, J.A.

I agree.