

CA LAND Suit for declaration that plaintiff/respondent fee simple owner of land. Declaration granted whether any basis upon which judge could have granted declaration — whether placing of respondent's name on valuation roll or tax roll amounted to a transfer of land. Appeal allowed — signing of tax roll, or the like, not one of conveyancing methods for transferring ownership. Order of Court below set aside. Ordered that defendant be at liberty to file a defence within seven days. Costs to appellant.

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 90/87

No case referred to

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
 THE HON. MR. JUSTICE FORTE, J.A.
 THE HON. MR. JUSTICE DOWNER, J.A.

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BETWEEN	JOHN FOTTERGILL [Executor of the Estate of Jonathan Jordon]	DEFENDANT/APPELLANT
AND	HARTY JORDON	PLAINTIFF/RESPONDENT

W.B. Frankson for the Appellant
Sylvester Morris for the Respondent

October 3, 1988

CAREY, P. (Ag.):

This appeal must be allowed. It comes before the Court in this way: Jonathan Jordon died, we are told, some time round about the 13th of January, 1978, and he left a Will in which he devised land which he owned to various offspring and grandchildren, but excluded this plaintiff, one of his sons.

It is not altogether clear, however, whether the land, the subject of the proceedings before us this morning, forms part of the estate. However that may be, the plaintiff sought a Declaration that he is the owner in Fee Simple of certain land which is set out in the statement of claim. The learned judge granted the declaration as prayed.

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In his statement of claim the plaintiff made the following averments. At paragraph 2 he said this:

"On or about the 8th day of January 1973 the said Jonathan Jordon in consideration of love and affection and in support which the Plaintiff have (sic) been giving him gave a parcel of land to the Plaintiff but did not effect a transfer. The said land is registered at Volume 1087 Folio 652"

and there follows a description of the parcel of land.

Paragraph 3 is in the following terms:

"On the said date the said Jonathan executed a transfer of ownership in the office of the Collector of Taxes at Old Harbour in the parish of Saint Catherine."

Paragraph 4:

"On the 1st day of April 1974 the said Jonathan Jordon placed the said Harty Jordon's name on the Valuation Roll by signing such a document in the Valuation Office and from the 8th day of January 1973 the Plaintiff has been in possession exercising all acts of ownership to the said land and paying the taxes therefor."

So far as the pleadings went, it would seem that some informal or unrecognised method of transfer of the land was being pleaded.

When one examines the affidavits which were placed before the learned judge in the Court below, one finds this in paragraph 3 of the affidavit:

"That in pursuance of paragraph 4 of the filed Settled Statement of Claim I exhibit hereto marked 'A' a copy of Valuation Roll" [which in the event was not exhibited] "upon which Jonathan Gordon did sign transferring on the Tax Roll the land the subject matter of claim herein and upon which I have exercised all acts of ownership, been in possession and have been paying the taxes since therefor."

Paragraph 4:

"That I claim to be a bona fide owner of the said land in possession thereof"

Now a supplemental affidavit was filed and so far as is relevant, I need only refer first of all, to paragraph 4 which said this:

"That on the 8th day of January 1973 the said JONATHAN JORDON executed a Transfer of ownership in respect to the said land in favour of the Plaintiff at the Office of the Collector of Taxes at Old Harbour in the parish of Saint Catherine which effectively placed the name of the Plaintiff on the Tax Roll for the parish of Saint Catherine."

Paragraph 5:

"That on the same day the late JONATHAN JORDON, Deceased, placed the Plaintiff in possession of all the land as contained in Duplicate Certificate of Title registered at Volume 1087 Folio 652"

Mr. Frankson has argued before us this morning that there really was no basis upon which the learned judge could have granted the Declaration which was sought in the statement of claim. He said, as we think rightly, that the signature of the plaintiff on the Tax Roll could hardly satisfy the Statute of Frauds.

Mr. Morris contended that the basis of the possession was adverse possession and that he was not relying, it would appear, on the transfer set out in the two affidavits filed in support of the motion.

It is clear to us that both on the pleadings and on the affidavits the purported basis upon which the plaintiff sought to demonstrate that he was the owner in Fee Simple was this alleged "Transfer" which took place in the Tax Office. Signing the Tax Roll, or the like, is not one of the conveyancing methods for transferring ownership in this country and I do not think that Mr. Sylvester Morris was so bold as to put that forward. That explains his endeavours to rely on the doctrine of adverse possession. But where the evidence shows that a person is put in possession with the consent of the owner, then it is not possible to prove title based on adverse possession.

His father, the plaintiff said, put him in possession by a method not known to law. No adverse possession could begin in this way. At all event, that was not pleaded. In my judgment, the learned judge fell into error when he made the order which he did and I would, accordingly, allow the appeal and set aside his order.

FORTE, J.A.:

I have listened with care to the reasons of the learned President, Acting. I concur with his reasoning and his conclusion and I have nothing to add.

DOWNER, J.A.:

The gist of this appeal is whether the order made by Wright, J. (as he then was) in the Supreme Court ought to be set aside. The basis of the learned judge's finding was the affidavit of the plaintiff/respondent Harty Jordon that there was a transfer of land to him. As Mr. Frankson for the appellant pointed out, land could not be transferred on the informal basis as alleged, i.e., by the respondent's name appearing on the Valuation Roll or on the Tax Roll.

Mr. Morris sought to support the judge's finding by stating that the affidavit disclosed that the respondent would have benefited from adverse possession as he was in possession for upwards of thirteen years. But no such claim was alleged or averred in his Statement of Claim. The respondent's case was hopeless before the learned trial judge and was also hopeless in this Court.

The appeal must be allowed and the learned judge's order set aside.

CAREY, P. (Ag.):

The Court will, accordingly, make the following order:

The appeal is allowed. The order of the Court below is set aside and it is ordered that the defendant be at liberty to file a defence within seven days hereof. The appellant is entitled to the costs of this appeal.