

FOR REFERENCE ONLY

J A M A I C A

IN THE COURT OF APPEAL

NORMAN MANLEY LAW SCHOOL
LIBRARY
U.W.I. MONA, JAMAICA

SUPREME COURT CIVIL APPEAL NO. 71/72

Before: The Hon. Mr. Justice Fox - presiding
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Swaby (Ag.)

Hanover Agencies Ltd. v. Winnifred Reid - Trespass

Mr. R.N.A. Henriques for the Plaintiff Appellant

Mr. Elliott for the Defendant Respondent

6th July, 1973

Fox: J.A.

In this **action** of trespass before the learned Resident Magistrate for the parish of Hanover, the plaintiff produced a registered title with a diagram to land containing 6 acres, 3 roods and 23 $\frac{3}{10}$ perches. Rudolph Anderson, a commissioned land surveyor said in support of the plaintiff's claim that when he made a survey of the land on the 10th and 11th June, 1970, the defendant appeared and claimed a fenced rectilinear area within the boundaries of the diagram attached to the title. Anderson pointed out this fact to the defendant. She told him that she had a title for that portion of land but that **it** was not then in her possession. The surveyor made a sketched plan which shows the disputed area shaded in green, penetrating deep into the land described in the diagram. The registered title and the sketched plan were produced at the trial.

When the counsel for the defendant came to state the defence to the action of trespass he did not assert a claim in terms of a title. He stated that the defendant and her predecessors (her parents) had been in unmolested possession of the disputed portion of land from 1936, and that, despite the registered title of the plaintiff, she was entitled to

ownership of the land on the basis of this long undisturbed possession. The Resident Magistrate accepted the case as presented by the defendant. This involved findings of fact that:

- (a) the disputed land was in the possession of the plaintiff and her parents ~~for~~ a long period prior to 1951;
- (b) the defendant became possessed of the land at the time of her mother's death in 1951;
- (c) the disputed land had been fenced for a period of over ten years;
- (d) the defendant had been in undisturbed possession from 1957 to 1970.

This last finding enabled the Resident Magistrate to hold that the registered title in so far as the disputed land is concerned had been defeated by an adverse possession exceeding twelve years. The appeal was concerned essentially with the Resident Magistrate's findings of fact on the evidence.

The first point to notice is that there was no allegation of fraud or impropriety in securing the registered title. It is dated the 29th January, 1957. The attached diagram was made pursuant to a survey in July, 1950. It was incumbent upon the Resident Magistrate to understand that at the time of that survey no such claim to the disputed land as the defendant advanced had been made. This was, in my estimation, a conclusive answer to the defendant's claim that her parents had been in undisturbed possession of the land for many years prior to 1951.

A second point to notice is that when the defendant came to give her evidence she swore that the disputed land was within the area of her title and was not within the area of the ~~land delineated~~ in the diagram attached to the plaintiff's

title. Her evidence, therefore, went beyond the defence as pleaded and was consistent with the claim she made to Mr. Anderson at the time of his survey in 1970. When, therefore, the defendant failed to produce the title which would have substantiated this claim, such failure should have aroused the deepest concern in the Resident Magistrate's mind concerning the credibility of her evidence. Under cross-examination the defendant explained that the title was in the possession of the Ministry of Housing and that she had been unable to obtain it. This alleged inability to procure the title was not a sufficient explanation for its absence. The plaintiff had produced a registered title to the land in dispute. The defendant was claiming that she was entitled to this land by virtue of a title. The fact that the title was in the possession of the Ministry of Housing tends to indicate that this document was a registered title. In that evidential position, the onus was on the defendant to justify intrusion upon land which prima facie was within the area of the plaintiff's title. This she failed to do. It is, therefore, not surprising that the Resident Magistrate should have based his decision not upon the defendant's allegations concerning her title but upon her claim to long adverse possession.

The third point to notice is the defendant's admitted occupation of the land with a house to the west of the disputed land. The diagram attached to the registered title shows that the eastern boundary of the defendant's land must have been a line running straight across to another line separating the land of one Henry Miller from that of the plaintiff. Both witnesses called by the defendant agreed that the eastern boundary of the defendant's land was such a straight line. The evidence of these witnesses was therefore consistent with the details shown in the diagram attached to the registered title, and (this is the important point) inconsistent with the claim of the defendant to the disputed land since, if the eastern boundary of that

disputed land as shown on the sketched plan was extended, it could not possibly touch the land of Miller or come anywhere near to the eastern boundary of Miller's land. This evidence is conclusive against the claim of the defendant to the disputed land.

The overwhelming probabilities in the evidence clearly vindicated the plaintiff's title. Nowhere in his reasons for judgment was this position noticed by the learned Resident Magistrate. His reasons for judgment must, therefore, be regarded as unsatisfactory.

I would allow this appeal and set aside the judgment of the learned Resident Magistrate. I would enter a judgment for the plaintiff for nominal damages only, since no loss was proved. I would fix this nominal sum at Fifty Dollars.

Edun: J.A

I agree that the appeal be allowed, and with orders proposed. I wish to say that Resident Magistrate's findings of fact in favour of the defendant were not based upon evidence which related to the disputed portion of the land claimed by the plaintiff.

Swaby: J.A (Ag)

I have heard the judgments delivered by my brothers and I do not wish to add anything further. I would allow the appeal and enter judgment for the plaintiff as proposed.

Fox: J.A

The appeal is, therefore, allowed; the judgment of the learned Resident Magistrate is set aside. Judgment is entered for the plaintiff for Fifty Dollars with cost and Attorney's costs to be agreed or taxed. The plaintiff appellant is to have the cost of this appeal fixed at Forty Dollars.