JAMAICA

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL No. 22 of 1971

BEFORE: The Hon. President.
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Hercules, J.A.(Ag.).

LORENZO JONES v. HILDA THAXTER

H. Edwards, Q.C. for the Appellant.

W.B. Brown for the Respondent.

1971
July 1 and 30

SMITH, J.A.

On July 15, 1969 the resident magistrate for Portland entered judgment in favour of the plaintiff in an action for trespass to land which she had brought against the defendant. The action was in respect of a square of land situate at No. 9, West Palm Avenue, Port Antonio.

The learned resident magistrate accepted the plaintiff's evidence that she leased the land in 1957 from the owner, Carlos Roberts, who died March 4, 1969. She built a house on the land and cultivated it. He accepted that on September 4, 1965 she entered into an agreement with the owner, Roberts, to buy the land for £120 and that she paid a deposit of £50. The agreement for sale, which was admitted in evidence, stated that the balance of £70 was to be paid on March 4, 1966. In fact the balance was not paid when due or at all.

The plaintiff said that on October 10, 1966 the defendant went on the land with a surveyor and had it surveyed. She went, as a result, to Carlos Roberts and asked him about it. Roberts told her that he had sold the land to the defendant as she (plaintiff) had told him that she wanted her money (the £50 deposit) back. Plaintiff denied in evidence that she had asked for the return of the £50, and the resident magistrate believed her. She said that on Good Friday, 1967 the defendant went back on the land, said it was his and that plaintiff was only a squatter. He subsequently went back on the land reaped fruit from it and cut down her fence.

The defendant, in his defence, claimed to be in possession of the land. He said he was put in possession by Carlos Roberts in 1964 when he bought the land for £125. He claimed that the plaintiff was present when he was being put into possession. Unlike the plaintiff, he produced no document to support the sale to him in 1964. He produced two receipts dated in 1966 and 1967 respectively but the learned resident magistrate found that these did not refer to the land in dispute. He also found that the defendant was not put into possession in 1964, as he said, but went on the land for the first time on October 10, 1966. He held the defendant to be a trespasser and entered judgment for the plaintiff.

On the defendant's appeal against the judgment, it was contended that on the plaintiff's own case she was merely a tenant at will on October 10, 1966 and that this tenancy was determined on that day when the plaintiff was told by the owner of the land that he had sold it to the defendant. It was said that thereafter she became a squatter, she had no further right to possession and could not bring trespass against the defendant. Lee v. Brown, (1940) 4 J.L.R. 1 and Doe d Davies v. Thomas, (1851) 6 Exch. 854, 857 were relied on.

The character of the plaintiff as lessee of the owner was altered when on September 4, 1965 the owner agreed to sell the land to her and allowed her to remain in possession. She then became tenant at will of the owner (see Lee v. Brown (supra)). The tenancy at will was determined on October 10, 1966 when the owner told her that he had sold to the defendant (see Doe d Davies v. Thomas (supra)). But the plaintiff did not give up possession as she should have done and no steps were taken by the owner to eject her. She, therefore, became a tenant on sufferance (see Woodfall's Landlord and Tenant, 27th edn., Vol. 1 p.287 para. 687). As a person in de facto possession she had all the remedies of a possessor as against strangers and could sue trespass against anyone except him who can show a present right to possession. The learned author of Salmond on Torts, 15th edn., put it this way, at p.59:

> "The mere de facto and wrongful possession of land is a valid title of right against all persons who cannot show a better title in themselves, and is therefore sufficient to support an action of trespass against such persons ..... no defendant in an action of trespass can plead the jus tertii - the right

> of possession outstanding in some third person - as against the fact of possession in the plaintiff. ..... It is otherwise, of course, if the defendant is himself the lawful owner or has done the act complained of by the authority, precedent or subsequent, of him who is thus rightfully entitled."

In this case the defendant did not claim to have done the acts alleged against him by the authority of the owner. He claimed to be entitled to go on the land and to pick the fruits because he was in possession of the land, having been put in possession by the owner. The learned resident magistrate has, however, found that he was not in possession as he said. This was not a difficult finding to make as the agreement between the plaintiff and the owner dated September 4, 1965 clearly indicated that the defendant was not speaking the truth when he said he bought the same land in 1964 and was put in possession.

So unless the defendant could show that on the dates the acts alleged against him were committed he had a present right to possession, the plaintiff was entitled to succeed in her claim against him. The burden was on the defendant to show that he had a better title in himself than the plaintiff had. This, on the facts found by the learned resident magistrate, he completely failed to do. He produced no document of title and there was no evidence apart from his mere say-so, which was rejected. The fact that the plaintiff admitted that the owner told her in 1966 that he had sold to the defendant is not sufficient proof, in the circumstances, that the defendant was owner on the dates of the alleged acts of trespass.

The point was made that the plaintiff claimed as owner in occupation of the land and that as her evidence showed that she was not the owner she was not entitled to succeed. In my view there is no merit in this contention. Nor does it matter, as was contended, that the resident magistrate did not, in his reasons for judgment, deal with the fact that the tenancy at will was determined on October 10, 1966. In my opinion, for the reasons which I hope are apparent from what I have said, the judgment of the learned resident magistrate was right. I would dismiss the appeal with costs to the plaintiff.

HERCULES, J.A.
I agree.

THE PRESIDENT.
I also agree. The appeal is dismissed with costs $40.00.