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Romany v Romany

COURT OF APPEAL OF TRINIDAD AND TOBAGO

PHILLIPS CJ (AG), DE LA BASTIDE, GEORGES JJA

8 JUNE 1972

Landlord and Tenant —Dwelling house —Mother and son —Intention to create legal relations —Tenancy at will or licence —No clear finding in judge's notes —Whether inaction after request to licensee to lease is extension of licence —Adverse possession —Misdirection —Real Property Limitation Ordinance, Cap 5, No 7 [T].

In 1931 a mother, Marie, became the registered proprietor of dwelling premises and gave her son Jules permission to occupy a part of these premises for a while, until he found alternative accommodation. From early on Marie repeatedly requested Jules to vacate the premises but each time he found an excuse to stay on a little longer. Jules continued in occupation of the premises together with the respondent, who later became his wife, until his death in 1952. In 1961 Marie conveyed the premises to the appellant. The appellant made repeated requests for the respondent to deliver up possession of the premises, but the respondent refused to do so. Consequently, the appellant filed a writ claiming possession of the premises, to which the respondent pleaded exclusive and undisturbed possession for more

than 30 years. The trial judge held that the respondent had acquired a good title to the premises she occupied by virtue of the Real Property Limitation Ordinance.

On appeal it was submitted that the learned judge had erred in law in so deciding. It was contended that the judge's findings were consistent with the existence of a tenency at will and that he should have found there was a licence terminated by the death of Jules in 1952.

Held: (i) that in family situations of this sort where one member helps another in a period of difficulty over accommodation there is usually no intention to create legal relationships, so that there can be no tenancy at will but merely a licence;

(ii) that it was reasonable to infer from the evidence that the judge interpreted the relationship between Jules and Marie as a licence rather than a tenancy at will in the absence of an intention to create legal relations, therefore, the judge would not be taken to have misdirected himself;

(iii) that Marie's repeated requests to Jules to vacate the premises revoked his licence, and her mere inaction after each request could not without more amount to an extension of his licence, therefore the judge's findings on these points would not be disturbed and the appellant did acquire a good title adverse to the appellant.

Appeal dismissed.

Cases referred to

Norman v King [1946] 1 All ER 339, 96 LJ 108, 39 BWCC 1

Cobb v Lane [1952] 1 All ER 1199, [1952] WN 196, [1952] 1 TLR 1037, 96 Sol Jo 295, 102 LJ 355, affirming (1952), 102 LT 123, 16 Conv 220, 225

Wheeler v Mercer [1956] 3 All ER 631, [1957] AC 416, [1956] 3 WLR 841, 100 Sol Jo 836, 21 Conv 78, reversing, [1956] 1 QB 274, [1955] 3 WLR 714, 99 Sol Jo 754, 105 LJ 803

Booker v Palmer [1942] 2 All ER 674, 87 Sol Jo 30, 30 Digest (Repl) 539

Errington v Errington & Woods [1952] 1 KB 290, [1952] 1 TLR 231, [1952] 1 All ER 149, 96 Sol Jo 119, 214 LT 35, 102 LJ 355, 15 MLR 236, 68 LQR 337

Isaac v Hotel de Paris Ltd [1960] 1 All ER 239, [1960] 1 WLR 239, 2 WIR 105, 104 Sol Jo 230, 24 Conv 246, 104 Sol Jo 245

Lynes v Snaith [1899] 1 QB 486, 68 LJQB 275, 80 LT 122

Appeal

Appeal against a declaration of title made by a judge of the High Court on the ground of adverse possession.

Kelvin Richardson *for the appellant*

S Maharaj for the respondent

GEORGES JA. In 1931 Marie Romany, the appellant's mother, purchased the parcel of land on which she lived. Shortly after, her son Jules, who lived nearby in a rented house, was given notice to quit so that the premises could be repaired. As there was an understanding that he would be accepted again as a tenant when the repairs had been completed, Marie allowed him to occupy an old house on the land she had just purchased. He moved in with the respondent with whom he was then living as man and wife much to Marie's displeasure.

In fact Jules was never accepted as a tenant of the repaired house and remained in Marie's house as he had nowhere else to go. Although in time Jules did marry the respondent Marie seemed never really to have approved of him and kept asking him to move. He kept promising to do so but never did. He appeared to have been beset by many problems. In 1940 he fell ill and in 1950 he had to have a leg amputated. There was evidence that up to the period 1947-1949 Marie had been pressing Jules to go and he had been promising to do so. He died in 1952 and his wife, the respondent, continued to occupy the house.

By deed dated 5 December 1961, Marie conveyed the parcel of land to the appellant. She died in 1962. The appellant wrote the respondent in January 1962, asking her to deliver up possession of the house and the land occupied with it. She refused to do so and in due course the appellant filed a writ claiming possession to which the respondent in defence pleaded exclusive undisturbed possession for more than 30 years.

At the trial the learned judge having accepted the case for the appellant as set out above stated:

> 'Having found these facts I found that Augustine Romany had acquired a title adverse to Marie Romany and Gregorio Romany of the house and the piece of land on which it stands being a portion of the whole parcel.'

The appeal against this judgment is based on two grounds:

> (1) The decision of the learned trial judge is unreasonable and/or against the weight of evidence and/or cannot be supported having regard to the evidence.
>
> (2) The learned trial judge erred in law in holding that the defendant is entitled to possession under the Limitation Ordinance.

No specific ground has been set out of misdirection in law but it was argued that the trial judge may well have reached the conclusion which he did by holding that Jules had been a tenant at will of his mother, Marie, and that under the Real Property Limitation Ordinance, that tenancy would have been deemed to have determined at the expiration of one year from its commencement so that time would have begun to run against Marie early in the 1930's.

The fact is that the trial judge has nowhere in his judgment stated that he has so found, nor indeed is there any suggestion that the trial judge may have thought that Jules was ever a tenant of the disputed plot.

In setting out the facts as he found them the trial judge stated:

> 'In order to assist her son in his difficulty Marie Romany permitted him to occupy a small house standing on a portion of her land.'

This certainly is not language indicative of the creation of a tenancy.

In *Norman v King* ([1946] 1 All ER 339, 96 LJ 108, 39 BWCC 1) the Court of Appeal considered the proper approach to be adopted in deciding whether a county court judge had misdirected himself or not LORD GREENE expressed himself thus:

> 'It is for the appellant to satisfy us that he did misdirect himself. If we are left in doubt as to that in my opinion his reasons must be construed in a favourable way so as to support his judgment. This court is not entitled, in my view, to scrutinise the type of concise note that we have in this case with very critical care; it must be satisfied that there was a misdirection. If the matter is left in doubt, the court should construe the judge's language in a benevolent way so as to support his judgment.'

MORTON LJ, agreed and said in part:

> 'To my mind, the county court judge has arrived at the proper conclusion justified by the evidence, and on the construction of his judgment as I see it, there is no ground for saying that he has misdirected himself. But even if it was open to the other construction I myself would not be inclined to give it in a case where there was undoubtedly at the least a doubt as to the true meaning of his notes.'

BUCKMILL LJ, was quite succinct in his agreement. He stated:

> 'Also, I think, if there is a doubt as to how to read the words, one should impute rightness on the part of the judge and not wrongness.'

This approach impresses me as being eminently proper and I accept it. It is true that reasons given by judges of the High Court would normally be expected to be rather more fully developed than notes of judgment prepared by county court judges in England but this cannot justify any difference in the basic approach to the consideration of either.

I would agree that the trial judge would have misdirected himself had he held that Jules had become a tenant-at-will of his mother. Recent authority makes it clear that in family situations of this sort where one member helps another in a period of difficulty over accommodation there is usually no intention to create legal relationships so that there can be no tenancy but merely a licence–see *Cobb v Lane* ([1952] 1 All ER 1199, [1952] WN 196, [1952] 1 TLR 1037, 96 Sol Jo 295, 102 LJ 355, affirming (1952), 102 LT 123, 16 Conv 220, 225). There is, however, nothing on the record to show that the learned trial judge thus directed himself, while his language in setting out the facts is far more consistent with the existence of a licence other than of a tenancy. I am satisfied that the trial judge could only have acted on the basis that the relationship between Marie and Jules was that of licensor and licensee.

The other ground of appeal raises the issue as to whether the decision of the learned judge can be supported having regard to the evidence. The argument is that on the facts as proved the proper inference was that Marie had never terminated the licence. Although she had kept on asking Jules to leave, her failure to take any action against him should have led the judge to deduce that she had extended her licence on each occasion. In such a case time would not have begun to run until 1952 when Jules died and the limitation period would not have expired.

As a general proposition it would appear wrong to hold that a licence had been renewed merely because the licensor had not taken steps promptly on its termination to evict the former licencee. Mere inaction ought never to be construed as acquiescence in the existing situation. There ought to be circumstances from which it could be implied that inaction involved acquiescence. In this case there was no evidence other than of Marie's inaction from which it could be deduced that she had extended the licence on each occasion. She died in 1962–some 10 years after Jules himself had died at which time his licence would clearly have been terminated–yet she took no action against the respondent who had remained on the land. It was never suggested either here or below that the respondent was a licencee as far as Marie was concerned but if extensions of the licence were to be based on sheer inaction there could be no reason why this should not be so. The more reasonable interpretation is that Marie having asked her son repeatedly to leave making it clear that he was no longer occupying the land with her consent thereafter failed to take steps to eject him, perhaps because of the family connection.

It is clear from the conclusions of the trial judge that he must have interpreted the evidence that way. It seems to us to be a proper interpretation well founded on the evidence.

No doubt this appeal would have been far more difficult to argue and perhaps might not have been brought at all had the learned trial judge set out step by step

the reasoning which led him to the conclusion at which he arrived. This is the desirable course. His failure to do so has not itself been made a ground of appeal. Since there is no misdirection in law apparent in the judgment and since the conclusion reached can be supported on the evidence the appeal must fail. Accordingly, I would order that it be dismissed with costs.

PHILLIPS CJ AG. I agree with the judgment of GEORGES JA, and have nothing to add.

DE LA BASTIDE JA. By a Deed of Conveyance dated 13 May 1931, (registered as No 1925 of 1931) Augustine de Souza conveyed in fee simple to Marie Elizabeth Romany, a parcel of land comprising 5,557 superficial feet situate at Maraval in the Ward of Diego Martin, Trinidad and bounded as therein described.

During the year 1931 the said Marie Elizabeth Romany at the urgent request of her son Jules Romany who was then being ejected from a house which he rented nearby, permitted him with the respondent (then his common law wife) and their child to occupy her house which stood on a portion of these lands said to comprise 2,250 superficial feet. As appears from the record Marie Elizabeth Romany on several occasions thereafter repeatedly and urgently requested her son, Jules to vacate the house but it would seem that there was always an excuse coupled apparently with a request for a little more time because he was at first not very well, then became seriously ill, had a leg amputated and eventually died in 1952 leaving the respondent (then his lawful wife) still in occupation of the said house where she has continued to reside to the present time.

On 5 December 1961, by deed registered as No 15559 of 1961 Marie Elizabeth Romany conveyed the fee simple of the first mentioned parcel of land (which included a lot and house still occupied by the respondent) to the appellant herein who has from that date repeatedly requested the respondent to deliver up to him possession of the said premises. Upon her refusal to do so the appellant eventually instituted these proceedings on 6 June 1967, claiming possession, an injunction restraining the respondent and her servants and agents from entering and remaining upon the said lands, costs and such further and other relief as the nature of the case may require. The respondent while admitting that she was in possession of the land and premises (which she describes as containing 4,400 superficial feet) pleaded that she and her husband, Jules Romany had been in exclusive and undisturbed possession for more than 30 years prior to the commencement of the action and that the appellant's title (if any) to the said land had accordingly been extinguished by virtue of the provisions of the Real Property Limitation Ordinance.

The learned trial judge–having found the facts as enumerated above–in giving judgment for the respondent stated as his reason that the respondent:

> 'had acquired a title adverse to Marie Romany and Gregorio Romany of the house and the piece of land on which it stands being a portion of the whole parcel. In the result the plaintiff has failed, in my view, to establish a good title to the whole parcel.'

Against this judgment the appellant has appealed on two grounds, namely:

> (1) The decision of the learned trial judge is unreasonable and/or against the weight of the evidence and/or cannot be supported having regard to the evidence.

(2) The learned trial judge erred in law in holding that the defendant is entitled to possession under the Limitation Ordinance.

There has actually been very little dispute about the main facts of this case as found by the trial judge and he appears however to have limited his consideration of this

matter mainly to the applicability of the provisions of the Real Property Limitation Ordinance to the facts found. There does not appear to have been much reference to the main legal issues involved which in my view were whether the arrangement and circumstances under which the appellant and her husband, Jules were permitted to occupy the house and premises constituted a licence or tenancy at will or otherwise.

It seems clear in law that had the trial judge held that the respondent and her husband were tenants at will of his mother then the appellant's case would fail but if on the other hand and on the facts before the court they were mere licencees whose licence had never actually been terminated then so long as the licence continues the statute of Limitation cannot run as against the owner of the premises who in this case is the appellant.

The question as to whether a licence or a tenancy at will was created between the parties is of course a question of mixed facts and law to be inferred from the evidence as above set out.

The general rule is clear; a tenancy at will exists when a person occupies the land of another on the understanding that he may go when he likes and that the owner may terminate his interest at any time the owner wishes so to do. A tenancy at will has been properly described as a personal relation between the landlord and his tenant and it is important, in this case, to note that it is determined by the death of either of them or by one of a variety of acts, even by an involuntary alienation, which would not affect the subsistance of any other tenancy (*Wheeler v Mercer* ([1956] 3 All ER 631, [1957] AC 416, [1956] 3 WLR 841, 100 Sol Jo 836, 21 Conv 78, reversing, [1956] 1 QB 274, [1955] 3 WLR 714, 99 Sol Jo 754, 105 LJ 803) ([1956] 3 All ER at p 634)).

The express creation of a tenancy at will is somewhat rare but where a person has been given exclusive possession of premises for an indefinite period without any declaration of the exact interest he is to hold and without anything to explain why he has been allowed into occupation, he may be presumed to be a tenant at will. But this is not necessarily conclusive, for, his true position depends, in the final analysis, upon the intention of the parties, the presumption being rebutted if the circumstances negative an intention to create a tenancy at will and it may then well appear that he was let into possession as a mere licensee if the inference to be drawn from the circumstances and the conduct of the parties is that he shall have a mere personal privilege of occupation but no definite interest in the land. This situation in law has been well illustrated by a number of comparatively recent authorities and well known cases which, *inter alia,* include *Booker v Palmer* ([1942] 2 All ER 674, 87 Sol Jo 30, 30 Digest (Repl) 539) ([1942] 2 All ER at p 677); *Errington v Errington & Woods* ([1952] 1 KB 290, [1952] 1 TLR 231, [1952] 1 All ER 149, 96 Sol Jo 119, 214 LT 35, 102 LJ 355, 15 MLR 236, 68 LQR 337) and the authorities cited ([1952] 1 KB at p 297); *Cobb v Lane* ([1952] 1 All ER 1199, [1952] WN 196, [1952] 1 TLR 1037, 96 Sol Jo 295, 102 LJ 355, affirming (1952), 102 LT 123, 16 Conv 220, 225); and finally a case from Trinidad *Isaac v Hotel de Paris Ltd* ([1960] 1 All ER 239, [1960] 1 WLR 239, 2 WIR 105, 104 Sol Jo 230, 24 Conv 246, 104 Sol Jo 245).

There are, in fact, many cases where exclusive possession has been given of premises outside the Rent Restriction Acts and yet there has been held to be no tenancy. Instances of this situation may be found in *Errington v Errington & Woods* ([1952] 1 KB 290, [1952] 1 TLR 231, [1952] 1 All ER 149, 96 Sol Jo 119, 214 LT 35, 102 LJ 355, 15 MLR 236, 68 LQR 337) and also in *Cobb v Lane* ([1952] 1 All ER 1199, [1952] WN 196, [1952] 1 TLR 1037, 96 Sol Jo 295, 102 LJ 355, affirming (1952), 102 LT 123, 16 Conv 220, 225), *supra,* which were referred to during the argument before this court and which, especially the latter case, seem

closely to resemble the instant case. Further, as LORD GREENE MR, stated in *Booker v Palmer* ([1942] 2 All ER 674, 87 Sol Jo 30, 30 Digest (Repl) 539):

> 'There is one golden rule which is of very general application, namely, that the law does not impute intention to enter legal relationships where the circumstances and the conduct of the parties negative any intention of the kind.'

In *Cobb v Lane* ([1952] 1 All ER 1199, [1952] WN 196, [1952] 1 TLR 1037, 96 Sol Jo 295, 102 LJ 355, affirming (1952), 102 LT 123, 16 Conv 220, 225) where there was a family arrangement to allow a brother to live in a house bought in his sister's name, the *dictum* of LORD GREENE MR, in *Booker v Palmer* ([1942] 2 All ER 674, 87 Sol Jo 30, 30 Digest (Repl) 539), just quoted, was applied and it was held that the fact of the exclusive occupation of property for an indefinite period is no longer inconsistent

with the occupier being a licensee and not a tenant at will. Whether or not a relationship of landlord and tenant has been created, depends on the intention of the parties, and in ascertaining that intention the court must consider the circumstances in which the person claiming to be a tenant at will went into occupation and whether the conduct of the parties shows that the occupier was intended to have an interest in the land or merely a personal privilege without any such interest. In that case, DENNING LJ, in the course of an authoritative judgment dismissing the appeal and in which the cases old and new were reviewed and discussed, concluded in the following terms:

> 'The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land? It seems to me that the judge has so found. The defendant had only a personal privilege with no interest in the land, which he could assign or sub-let, and he could not part with the possession to another. He was only a licensee, and he cannot pray in aid the provision of the Limitation Act, 1939. I would only add that I agree with all that my Lord has said about *Lynes v Snaith* ([1899] 1 QB 486, 68 LJQB 275, 80 LT 122). That case can no longer be regarded as authoritative. The appeal should be dismissed.'

And finally, reference must be made to *Isaac v Hotel de Paris Ltd* ([1960] 1 All ER 239, [1960] 1 WLR 239, 2 WIR 105, 104 Sol Jo 230, 24 Conv 246, 104 Sol Jo 245) where the following *dictum* of ARCHER J, in the Federal Supreme Court received the approval of Her Majesty's Privy Council [1960] 1 All ER 352]:

> 'It is clear from the authorities that the intention of the parties is the paramount consideration and while the fact of exclusive possession together with the payment of rent is of the first importance, the circumstances in which exclusive possession has been given and the character in which money paid as rent has been received are also matters to be considered.'

In my judgment, on the facts of the instant case it seems clear that this was a case of a family arrangement whereby Marie Elizabeth Romany permitted her son Jules (with his wife and child) on account of his difficulties with his landlord to occupy her premises rent free and as an act of generosity. In these circumstances when the authorities are considered there is no doubt in my mind that this family arrangement must be construed to be a licence and not a tenancy at will.

It is obvious that unless this licence had been previously terminated by Jules' mother it would have expired automatically on his death in the year 1952 which would have meant that the writ for possession filed on 6 June 1967, would have been well within the period of limitation prescribed by law.

The question which therefore assumes great importance is whether or not Marie Elizabeth Romany's repeated requests to Jules to vacate her premises did or did not amount to a revocation of the licence, thereby making him a trespasser in whose favour the statute of limitation would start to run. Or, whether Marie Elizabeth by her inaction on his reluctance to leave did not at least by implication allow the licence to continue.

The learned trial judge did not specifically state in his judgment which of these two inferences he had drawn (although this would seem to have been desirable) but it seems from his judgment when considered as a whole that he may well have been satisfied that the arrangement constituted a licence and further that such licence had been revoked by the requests of Marie Elizabeth Romany to her son Jules.

In those circumstances it would not in my judgment be correct to interfere with the decision arrived at by the trial judge as there was ample evidence on which he could properly have arrived at the conclusions which he did. I would therefore dismiss this appeal with costs to be taxed.

Appeal dismissed.