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IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL No. 19 of 1976

BEFORE: The Hon. Mr. Justice Luckhoo, P. (ag)
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Swaby, J.A.

HYLTON SINCLAIR - Plaintiff/Respondent

vs

JAMES WILLIAMS - Defendant/Appellant

Horace Edwards, Q.C. for the Appellant

Heron S. Dale for the Respondent

MAY 6 and 7, 1976

SWABY, J.A.

On August 6, 1974 the respondent obtained a judgment in the Resident Magistrate's Court for the parish of St. Thomas ordering the appellant to give up possession of three quarters of an acre of land at Spring Garden in the parish of St. Thomas to the respondent by August 31, 1974, to pay $152 for arrears of rent and $50 for costs. The defendant appealed against that judgment which came before this court on February 13, 1975 when the following order was made:-

> "Appeal allowed. Order of the resident magistrate set aside. Matter remitted to the resident magistrate for the appellant to be allowed an opportunity of adducing evidence in relation to the annual value of the land only. Costs of the appeal to abide the determination of the matter upon further hearing by the resident magistrate."

In compliance with the above Order the learned resident magistrate for St. Thomas on March 22, 1975 heard evidence on oath from the appellant and two witnesses tendered by him for cross-examination only, but which cross-examination was declined. The resident magistrate held that her jurisdiction to hear and determine the case was not ousted and accordingly gave judgment for the respondent with costs to be agreed or taxed, as also $50 costs of the first appeal awarded by this court to the plaintiff/respondent.

This further appeal came before us on May 6 and 7, 1976 when we made the following order:-

> "Order of the resident magistrate set aside and a new trial ordered before another resident magistrate. No order as to the costs of this appeal."

In view of the new trial ordered it is not proposed to express any views as to the merits of the case but only to deal with such portions of the proceedings, evidence and submissions as relates to our reasons for ordering a new trial.

In 1974 the respondent sought to recover possession from the appellant of three-quarters of an acre of land at Spring Garden in the parish of St. Thomas, the boundaries of which were briefly set out in the particulars of claim. He further claimed a sum of $152 for mesne profits and the annual value of the land was stated as not exceeding $50. Having regard to the terse way in which the particulars of claim had been set out it was not surprising that the defendant's attorney-at-law served a notice on the plaintiff's attorney-at-law requiring further and better particulars of the full names of the adjoining land owners or occupiers and an itemised statement of how the claim for mesne profits was made up. These further and better particulars were duly given, the claim for mesne profits being said to be for nineteen quarters arrears of rent at $8 a quarter.

At the commencement of the trial in the resident magistrate's court on August 29, 1974 the defence stated, as is required by s. 184 of the Judicature (Resident Magistrates) Act, hereinafter referred to as the Act, was as follows:-

> "The defendant is in possession of the land situated at Spring Garden, St. Thomas, as owner having bought it from the plaintiff in September, 1968 and has been in possession ever since, installing water, building a concrete piggery and improving the land generally and paying water rates and taxes."

The plaintiff's case briefly was that he had leased the land in question to the defendant, his cousin, for a period of 5 years as from June 22, 1968 at Four Pounds (Eight Dollars) a quarter. The lease was written by his common law wife, Florence Smallwood - that he and Smallwood signed it but the defendant did not do so saying that as they were all one family he did not have to sign it but he would deal fairly with the plaintiff. The defendant paid one quarter's rent and was put into possession of the land but since then he had paid no further rent under the lease and that upon going to look for the defendant with a view to collecting the arrears of rent the defendant had hidden himself, and still continued to occupy the land hence his taking action to recover it and 19 quarters rent due at $8 a quarter (presumably for 4 3/4 years up to the expiry of the lease. Under cross-examination the plaintiff denied that he had on September 2, 1968 sold the land in question to the defendant for $175. He also denied that a document (exhibit 1) shown to him, purporting that he had done so, either bore his signature or that the name Hylton Sinclair thereon was authorised to be placed on it by him. He denied knowing one Eustace Bogle whose name appeared on it as witnessing the execution of the document. The plaintiff was asked to give a specimen of his signature and to write the word "house" - these writings were tendered as exhibits 2 and 4.

Reference will later be made to these exhibits. The plaintiff admitted selling the defendant another parcel of land with a small house on it for $5 and of giving receipt in respect of this transaction which bore his signature - the receipt was tendered as exhibit 3. The plaintiff called as his only witness his uncle, Robert Williams father of the defendant, who swore that upon the defendant telling him he wished to lease the plaintiff's land at Spring Garden he told the defendant not to interfere with the plaintiff. Robert Williams said he knew that the plaintiff had not sold the land to the defendant.

Upon the plaintiff's case being closed the defendant's attorney-at-law submitted that there was no case for the defendant to answer because:-

> 1. no evidence had been adduced regarding the boundaries so that the court would be unable to state what land should be handed over to the plaintiff if the court found for the plaintiff, and
>
> 2. no evidence had been given that the annual value of the land did not exceed $200.

He elected to rely on these submissions and the defence gave no evidence. He therefore asked that the plaintiff's case be dismissed or that he be non-suited.

The plaintiff's attorney-at-law replied to these submissions that the nature of the defence was such that there was no dispute as regards the boundaries and that as regards the question of the annual value as the plaintiff was claiming that the rent of the land was only $8.00 a quarter (i.e. $32.00 annually) that would be within the resident magistrate's jurisdiction which extended to cases where the annual value did not exceed $200 - the relationship between the parties was not that of vendor and purchaser but one of landlord and tenant and the court's jurisdiction had been established.

The learned resident magistrate reserved her ruling until July 31, when the plaintiff's attorney applied to recall the plaintiff to give evidence regarding the annual value. The application was granted, the case being part heard and adjourned to August 6, 1974. On that day the defendant's attorney submitted that the case could not be re-opened, but that if the court granted permission to do so then the defendant should be allowed to re-open his case because if this were not done he would take no further part in the trial as he would not be in a position to do so. The learned resident magistrate granted the application of the plaintiff's attorney but refused the application of the defendant's attorney to call a witness for the defence.

The plaintiff was re-sworn and gave evidence that the annual value was $50, although under cross-examination he said he didn't remember what was meant by annual value, yet he knew it was $50. The learned resident magistrate then made an order that the defendant give up possession of the land on or before August 31, 1974, pay $152 and costs agreed on at $50:10 - formal order to be drawn up.

The defendant appealed from that judgment which came before this Court as Resident Magistrates' Civil Appeal 63/74 and was heard on February 13, 1975 when the order previously quoted was made. Acting upon that order of this court the learned resident magistrate on March 22, 1975 heard the evidence on oath from the defendant/appellant as to the annual value of the land which he said was over $600 a year and that he paid water rate at the rate of $1 monthly in 1974. He said that he cultivated the land and reared cattle on it and that he would now rent the land at $100 a month. Under cross-examination he admitted that he obtained possession of the land in question under the terms of a lease made with the plaintiff, the rental thereunder being $8 a quarter, but the

improvements he carried out on the land was because he had bought same from the plaintiff, although the land was on the Tax Rolls in Wilhel Williams' name - she was his aunt. Two witnesses were put up by the defence for cross-examination but this was declined.

At the close of the evidence called by the defence the defendant's attorney submitted that there was no challenge to the evidence as to the annual value being $600 as stated by the defendant and he cited the case of Francis v Allen, 7 J.L.R. p 100 as authority for saying that the jurisdiction of the resident magistrate would therefore be ousted as the annual value was sworn by the defendant to be over $200. The plaintiff's attorney-at-law on the other hand submitted that on the defendant's own admission he had leased the land at $8 a quarter, (i.e. $32 annually) and consequently the annual value after deducting rates and taxes would be less than $32 annually, clearly well below $200 and therefore within the court's jurisdiction under section 96 following the decision in Francis v Allen. He further submitted at the trial, that the defendant could not without the permission of the landlord effect improvements and expect the landlord to pay for these improvements or claim to fix the annual value based on them when no rent had been paid for nearly 5 years and no evidence had been given of the expenses involved therewith.

The learned resident magistrate held that upon the state of the evidence regarding the annual value the court's jurisdiction had not been ousted and accordingly gave judgment for the plaintiff/respondent with costs to be agreed or taxed, as also a sum of $50 for the costs of appeal awarded by this court to the party succeeding upon the issue of the annual value.

From this second judgment in favour of the plaintiff the defendant appealed, the appeal being heard on May 7, 1976 with

the result stated earlier on.

The grounds of appeal filed in this appeal were that:-

> (i) the judgment of the learned resident magistrate is unreasonable and against the weight of the evidence,
>
> (ii) the learned resident magistrate erred in her interpretation of s. 96 of Chap. 179, and by leave of the Court a further ground was allowed to be argued, namely,
>
> (iii) the learned resident magistrate misdirected herself concerning the person who wrote the document in evidence, exhibit 1.

Counsel for the appellant contended that throughout the hearings before the resident magistrate and at the first appeal the case had been fought on the basis that the plaintiff/respondent had sought recovery of the land under section 96 of the Act and that as the appellant proved that the annual value exceeded $200 the jurisdiction of the resident magistrate to hear and determine the case was ousted following the decision of Francis v Allen. Counsel for the respondent, on the other hand, contended that the respondent's case was brought under s. 85 of the Act, recovery being sought by a landlord from his tenant who was holding-over and had merely stated that the annual value of the premises did not exceed $50 in the particulars of claim because this was a requirement of rule 4 of Order VI of the Resident Magistrates Court Rules, 1934 which reads as follows:-

> "4. In all actions for the recovery of land the particulars shall contain a full description of the property sought to be recovered, and of the annual value thereof, and of the rent, if there be any, fixed or paid in respect thereof."

An action under s.85 of the Act makes no reference to the annual value of the land, and it therefore appears that rule 4 above in so far as stating the annual value of the land in the plaintiff's particulars of claim is inapplicable.

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It is clear, however, that the learned resident magistrate, and Counsel for the parties had proceeded at the trial upon the basis that the defendant having stated his defence at the commencement of the hearing of the action setting up title to the land, the case fell to be decided under s. 96 of the Act provided the annual value was proven not to exceed $200, following the decision in Francis v. Allen, which in part states that a dispute as to title would have arisen within the meaning of s. 96 if a defendant "bona fide intended to set up a claim of title to the land in order that it may be considered by the court." This part of the decision in Francis v Allen was unanimously over-ruled by the judgment of this court delivered on February 5, 1974, in Resident Magistrates' Civil Appeal No. 25/73 Perris Bailey v Ivan Brown; where the cases cited in Francis v Allen as well as several other cases relating to the recovery of possession of land in the English County Courts were fully reviewed. Those cases show that the true test is not merely a matter of a bona fide intention, but rather whether the evidence before the court, or the state of the pleadings 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 the defendant's intention is quite irrelevant.

Had the plaintiff's attorney-at-law appreciated that there was no necessity to prove the annual value of the land having claimed that the action was brought under section 85 some of the difficulties which later presented themselves would not have arisen. Nevertheless we think it desirable to bring to the attention of resident magistrates and practitioners in those courts the decision of Bailey v Brown, where recovery of possession is sought under s. 96 of the Act.

By leave of the Court Counsel for the appellant argued that the learned resident magistrate had found as a fact in her reasons for

judgment in the first appeal that she had examined the word "house" as written by the plaintiff on exhibit 4 with the word "house" appearing in exhibit 1, the alleged receipt said to have been given by the plaintiff for $175 purchase money allegedly paid by the defendant for the land, and found the handwritings dissimilar. He pointed out that the defence had never suggested to the plaintiff that the "body" of the receipt had been written by the plaintiff. It was only the signature thereon which it was suggested was written by the plaintiff, but which he denied. In the circumstances the resident magistrate appeared to have misdirected herself and drawn a wrong inference, and this being so, she may further have misdirected herself upon the other findings of fact made by her.

In light of the above circumstances this Court felt that the appeal should be allowed and that a new trial was desirable and accordingly so ordered as previously set out.