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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M.054 OF 1994

BEFORE: THE HONOURABLE MR. JUSTICE MALCOLM
THE HONOURABLE MR. JUSTICE BINGHAM
THE HONOURABLE MR. JUSTICE LANGRIN

IN THE MATTER of an Application by NOEL WILLIAMS for Leave to apply for an Order of Mandamus.

IN THE MATTER of an Action in the Resident Magistrates Court of Clarendon between Noel Williams and Norma Dennis.

BETWEEN	NOEL WILLIAMS	APPLICANT
A N D	THE ATTORNEY GENERAL	RESPONDENT

Mr. Bert Samuels and Miss Ivett Wallace instructed by Knight, Pickersgill Dowding & Samuels for Applicant.

Mr. Neville Fraser & Mr. Foster instructed by Director of State Proceedings for Respondent.

Heard: March 17 & 18, 1995

ORAL JUDGMENT

This is a Motion for an Order of Mandamus directed to the Resident Magistrate of the parish of Clarendon requiring the said Resident Magistrate to hear and determine Plaint No.392 of 1993 entered by the applicant Noel Williams against Norma Dennis for Recovery of Possession.

The Affidavit evidence disclose that the applicant is a registered proprietor of 4 Glenmuir Road, Clarendon registered at Volume 1260 Folio 74 of the Register Book of Titles. Norma Dennis has been in possession of the said property.

On the 19th April 1993 a writ was filed in the Supreme Court by Norma Dennis versus Mavis Spence and Noel Williams seeking a declaration that she is co-owner of the said land. In addition she seeks to recover damages as well as an injunction restraining the defendants from entering on the said premises. The basis of her claim is that she along with her 12 children are the survivors of her Common law spouse who died intestate in 1990 after living on the said premises since 1958.

On the 27th May, 1993 the applicant commenced an action against Norma Dennis in the May Pen Resident Magistrates Court claiming Recovery of Possession.

It is significant that there is no allegation of fraud in these two actions.

At the hearing of the action in the Resident Magistrates Court, the Learned Resident Magistrate took the preliminary view that since an action was filed in the Supreme Court she would not hear the matter until the outcome of that action.

The grounds upon which relief is sought on the motion are:

1. That the Learned Resident Magistrate failed to hear and determine the matter according to law.
2. That the Learned Resident Magistrate erred in law in holding that she had Jurisdiction to hear the said matter (a claim for recovery of possession brought by the Applicant Noel Williams against Norma Dennis) but would not hear the said matter until the outcome of Suit No. C.L. D.065 of 1993 (a matter filed by Norma Dennis, the Defendant as Plaintiff) in the Supreme Court.
3. That the matter of Plaint No.392 of 1993 was not determined by the Learned Resident Magistrate.
4. That on the contrary, the learned Resident Magistrate ought to have heard the matter since, inter alia:-
   (a) she held that she had jurisdiction in the matter.
   (b) The case in the Supreme Court is not between the same parties nor on the same issues."

By Section 564B(I) it is provided that no application for the Prerogative Order should be made unless leave has been granted by a single Judge in Chambers on an exparte application. If the applicant <u>fails</u> to show an <u>arguable</u> case when he applies for leave the Court would not grant the leave. When the application was made before the single Judge in this case the leave was refused.

In a oral ruling given by the Judge he stated that the issues in both the cases are essentially the same. Additionally, that the Resident Magistrate in exercising her discretion to await

the outcome of the action in the Supreme Court did not refuse to hear the Plaint and refusal is the sine-qua-non of mandamus proceedings.

When the appeal in respect of the Refusal for Leave came before us the grounds of appeal are stated as follows:

1. The Learned Judge erred when he ruled that the issues in the suit filed by Norma Dennis against Noel Williams (as Second Defendant) were essentially the same as the issue in the Plaint filed by Noel Williams against Norma Dennis.
2. The Learned Judge erred when he ruled that the adjournment of the Plaint brought by Noel Williams by the Magistrate awaiting the outcome of the suit filed in the Supreme Court against the said Noel Williams did not amount to a refusal to hear and determine the said Plaint.

Mr. Samuels, Learned Counsel for the applicant submitted that a declaration for co-ownership was a different issue entirely from Possession and since the applicant was a registered owner of land he was entitled to possession of the land.

Section 89 of the Judicature (Resident Magistrates) Act deals with Possession and has nothing to do with ownership in the strict sense of the word.

The adjournment of the hearing in the Resident Magistrates Court to await the outcome of the action in the Supreme Court is an implied refusal to hear the matter. See Regina v. Evans etal Vol.62 Law Times 570.

There was no fraud alleged in any of the actions by way of Defence.

Mr. Neville Fraser, Learned Counsel for the Respondent submitted that the issues in the action before the Supreme Court and the Plaint in the Resident Magistrates Court are the same and the real issue is the ownership of the land.

The Learned Resident Magistrate exercised her discretion in awaiting the outcome of the action in the supreme Court and because of the competing claims the Court should not interfere with her discretion. He cited the case of Graham v. Nash R.M. C.A. 35/90

in support of his submission.

It is trite law that a registered owner of land has an immediate right to possession and that right can only be defeated by fraud. Since there is no allegation of fraud in either claim the issue in the Plaint could only be one for possession. Accordingly it is our view that the issues in the Court below are different from those in the Supreme Court.

There is adequate authority for the proposition that adjourning or postponing a matter before a public authority in the manner in which this was done by the Learned Resident Magistrate is tantamount to a refusal to decide the issue.

In our view to do so in order to await the outcome of the action in the Supreme Court would cause an injustice to the applicant. The case of Graham v. Nash in a judgment delivered by Carey JA is in support of that view.

We treated the appeal in relation to the Refusal of Leave as the Hearing of the Motion.

The appeal is therefore allowed and an order has been made in terms of the Motion.

In the circumstances, we unanimously grant the application and order that Mandamus should go to direct the Resident Magistrate of the Parish of Clarendon to hear and determine according to law the Plaint No.392/93: Noel Williams v. Norma Dennis.

Costs to the applicant to be agreed or taxed.

Langrin J

17/3/95