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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 13/88

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Miss Justice Morgan, J.A.

BETWEEN RUBY WILLIAMS PLAINTIFF/APPELLANT
A N D LUCINDA WILLIAMS DEFENDANT/RESPONDENT

Mrs. Sandra Minott-Phillips for Appellant

Mr. Horace Edwards Q.C. for Respondent

February 26 & March 26, 1990

CAMPBELL, J.A.

In the Manchester Resident Magistrate's Court held in Mandeville the appellant claimed recovery of possession of property situated at Lower Albion in Manchester. The property was originally owned by Albert Williams, now deceased. The appellant and the respondent are sisters born of the same father Albert Williams but from different mothers. The appellant claims the land by virtue of an alleged transfer purportedly evidenced by memorandum in writing dated 1st July, 1974 to which the deceased is said to have affixed his mark. The respondent on the contrary claimed the land as executrix of the will of Albert Williams dated 28th July, 1975, probate of which, was granted on August 13, 1976. By virtue of her being executrix and universal successor, the respondent placed

one Amy Clarke in possession sometime in June 1976 and entered into a contract of sale with the said Amy Clarke on May 4, 1982. Albert Williams had on the evidence died in March 1976. The only issue raised on these divergent sets of facts assuming each set was satisfactorily proved was whether at the time of death of Albert Williams in March 1976, he was still seised of the land in issue or had divested himself of his legal estate therein. This necessitated a consideration of the document Exhibit 2 purportedly signed by Albert Williams on July 1, 1974. The appellant said in evidence that she had discussion with the deceased. As a result she paid certain debts for her father. A paper was prepared on the direction of her father by Mrs. Ersie Henry and witnessed by that lady and one Mr. Warren Housen. The paper was given to her and she was told by her father to go and administer the property. She caused her name to be entered at the tax office as the person paying the taxes. She said she was relying on the paper given to her by her father as evidence of her ownership of the land.

Her witness Mrs. Ersie Henry gave evidence of writing the document which stated that the deceased wanted to give "the remaining portion of land at Bottom Albion to Ruby because she was taking care of him and taking over bills which he could not pay". The document recites the words "I Albert Williams have now decide to give"

The learned Resident Magistrate gave judgment for the respondent. In doing so he stated his findings thus:

- "10. The Court holds that Exhibit 2 is not a document recognizable in law or equity as a means of transferring the legal estate and consequently the ownership of Albert Williams' land to Ruby Williams his daughter. It is noteworthy that Ruby Williams did not even sign the document albeit present when it was prepared.

11. I accept the evidence of the defendant Lucinda Williams as being true and the documentary evidence tendered in support.
12. The plaintiff has not shown a better right to possession of the premises nor has she established to the court on a balance of probability ownership of the premises."

Before us Mrs. Minott-Phillips for the appellant has submitted that the learned Resident Magistrate was in error with regard to the first finding stated above. She sought to support her submission on Lysaght v. Edwards [1876] 2 Ch. 499. She submitted, based on that case, that exhibit 2 operated as a contract of sale and since it showed "enface" that all consideration had been paid, the appellant had as at July 1, 1974 an immediate right to possession. This right had been taken away and the appellant was therefore entitled to recover possession.

We were of the opinion that Mrs. Minott-Phillips' submission was not well founded. Section 89 of the Judicature (Resident Magistrates) Act under which the recovery of possession was undoubtedly sought, admittedly empowers not only the legal owner but an equitable owner to maintain an action for recovery of possession and damages for trespass against a person who could show no title. The issue however was not whether the appellant could sue for recovery of possession if exhibit 2 did in fact transfer to her the equitable estate in the land as she contended but whether the respondent was in possession by some lawful title. The learned Resident Magistrate did not base his decision on the existence of any equitable right in the appellant thereby entitling her to bring action. Without making any express finding on this aspect of the matter, he made an express finding with which we are in entire agreement

namely, that the legal estate still resided in Albert Williams on his death. This legal estate became vested in Lucinda Williams who was in possession by virtue of her legal title and so was not a trespasser. Equally she had lawfully placed Amy Clarke in possession. It could not therefore be said that Lucinda Williams and/or Amy Clarke was in possession of the land "without any title thereto whatever either from the Crown or from any reputed owner" thereby exposing them to proceedings for recovery of possession under section 89 of the above-mentioned Act.

With this view expressed by the learned Resident Magistrate we are in entire agreement. The appellant's action was misconceived and judgment was properly entered for the respondent. It was for this reason that we dismissed the appeal on February 26, 1990.