

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. C. L. E70 of 1973

|         |                    |           |
|---------|--------------------|-----------|
| Between | Halse Hall Limited | Plaintiff |
| A n d   | Martina Robinson   | Defendant |

E. C. L. Parkinson for Plaintiff

E. Grant and N. Edwards, instructed by Miss E. Norton of Messrs. Dunn Cox and Orrett for Defendant.

Heard on: 13th, 14th and 15th February, 10th July, 1978, 12th, 13th and 14th February, 28th May and 29th May, 1979.

Handed down on:

Willkie J:

The matter illustrates the ultimate in a total lack of control of the process of the Courts with the resultant multiplicity of conflicting interlocutory applications.

Regretably also some of these applications came before different Judges and completely unaware of such other proceedings.

This particular matter commences on 5th July 1957 when the Defendant Company filed Writ C. L. 409/57 against the Plaintiff in respect to the recovery of lands called 'Dirty Pit'. 38 acres 2 roods 32.3 perches as appear in the plan of diagram from the survey by W. C. Silvera made on 2nd August, 1956 then in the possession of the Plaintiff who in her defence claimed to be in rightful possession of the said parcel of land.

The matter was tried before Small J. and on the 22nd July, 1965 judgment was entered in favour of the Defendant Company. This judgment was never appealed and therefore its full effect stand to this day.

On about March 1973 Defendant Company by application Nos. 69265 and 69266 directed to the Registrar of Titles sought to bring two parcels of land under the Registration of Titles Law. The Plaintiff through her Attorney-at-law lodged caveats with the Registrar of Titles and filed a Writ E70/1973 against the Defendant Company seeking inter alia:

- (a) An Order to set aside the judgment of Small J. in Suit C. L. 409/1957 delivered on 22nd July 1965 on the ground as having been obtained by fraud;

- (b) A declaration that Plaintiff is the owner of the said parcel of land.

Thereafter Statement of Claim, Defence, Counter Claim, Reply and Defence to Counter Claim were filed by the respective parties.

On 1st July, 1974 the matter came before the Learned Master on the Summons for Directions when as part of the order, Defendant Company was ordered to deliver to Plaintiff within 21 days further and better particulars of the Defence. These were filed on 22nd July, 1974 with a Plan attached and allegedly prepared by Messrs. Arthur V Foreman and R. W. Rutty.

The matter was not permitted to rest there. Plaintiff on 30th September 1974 applied for and obtained an order to deliver to Defendant Company, interrogatories numbered 1, 7 and 8 to which the Defendant replied in its Affidavit of interrogatories filed 17th October, 1974 with Plan attached to Affidavit of H. Wilson, Secretary of the Defendant Company.

This triggered off a series of interlocutory applications to which reference must be made to preserve some historical context.

- (1) Plaintiff applied by summons to strike out the Defence filed 28th October, 1974. This arose because Plaintiff had pleaded at paragraph 3(g) of the Statement of Claim as follows:

" (g) The said parcel of land claimed by the Defendant in Suit C.L.409/1957 was never at anytime comprised in Defendant Certificate of Title as is now clear, and is not claimed by Alcoa Minerals of Jamaica Ltd. to which Company Defendant transferred all its land comprised in its Certificate of Title and which Company carried out its own survey of the said land."

In its defence Defendant pleaded at paragraph 3(g) as follows:

" (g) As to particulars (g) save that the Defendant says that the said parcel of land claimed by it in the said Suit was comprised in its said Certificate of Title and that the Defendant has transferred all of its land comprised in the said Certificate of Title to Alcoa Minerals of Jamaica Limited the Defendant makes no other or further admissions as to particular (g).

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(2) On 30th September 1974 plaintiff applied for and obtained an Order for delivery of interrogatories to defendant numbered 1, 7 and 8 which included the following terms:

1. What was the acreage of the land sold to Alcoa Minerals of Jamaica Inc. by the defendant and when was the sale effected?

(3) In answer to (1) above the Secretary of Defendant Company disposed:

" 1. That no land was sold by Halse Hall Limited to Alcoa Minerals of Jamaica Limited. Alcoa Minerals of Jamaica Limited purchased all the shares of Halse Hall Limited from the shareholders on the 7th February, 1969. Halse Hall Limited is the Registered owner of the land comprised in Certificate of Title registered at Vol. 35 Folio 5 comprising approximately 2,370 acres. It will be seen that the answer to the interrogatory sets up a completely different situation from the one pleaded in paragraph 3(g) of the Defence which used the term 'transferred' in relation to the parcel of land, which might suggest an outright sale of the land itself by Defendant Company to Alcoa Minerals, which the answer to the interrogatory stipulates that it was the shares in Halse Hall Limited that was acquired by Alcoa Minerals as distinct from the asset of the Defendant Company".

The Summons to strike out the defence pointed out this inconsistency and relied upon same as a ground for the applications. The matter came before Master Malcolm (as he then was) on 13th November 1974 and the Summons was dismissed.

Matters appeared to have reached a quietness thereafter as the trial opened before me on 13th February with the pleadings in the state I have outlined above. Alas, my views were wholly inaccurate as Mr. Parkinson for the Plaintiff applied and argued in limine that the Defence be struck out on the same ground argued before Master Malcolm on 13th November, 1974. Mr. Grant for Defendant in the course of his argument in reply acknowledges the discrepancy between paragraph 3(g) of the defence and paragraph (17) of the Answer to the interrogatory and stated that at the proper time the defence would be applying for leave to amend the defence to reflect the position as set out in Answer (1) of the interrogatory which had always been the factual situation. After further

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arguments the application to strike out the defence was denied on 14th February, 1978.

Mr. Grant thereupon applied to make a preliminary submission the gravamen of which was that the Writ and Statement of Claim did not disclose a cause of action and as such should be struck out. His submission continued on 14th and 15th February, 1978 when the matter was adjourned for a date to be fixed by the Registrar.

The matter came up before me again on the 10th July, 1978 but was adjourned due to Mr. Parkinson's illness.

The records reveal that before the period<sup>of</sup> the adjournment 10th July, 1978 and when next the matter came before me the necessary proceedings under the Companies Act had been taken and the Defendant Company voluntarily wound up on the 27th April, 1978 and its name removed from the Register of Companies.

On 28th October, 1978 the Plaintiff filed a summons to strike out the Defence on the ground that the Defendant Company has ceased to exist.

This summons came before Ross J. on the 22nd January, 1979 and after argument, was dismissed. Leave to appeal was granted.

On 30th January, 1979 Plaintiff, instead of proceeding by way of Appeal for which leave has been granted, filed a Notice of Motion to have the defence struck out and judgment entered for the Plaintiff and for an order that the liquidator of the Company be added as a party to the proceedings.

The Defendant also filed on 30th January, 1979 Summons for leave to Substitute Alcoa Minerals of Jamaica Limited as defendants. Both matters were fixed before me for 12th February, 1979. The Summons was adjourned to open Court and was heard together with the motion.

The arguments put forward were submitted by Mr. Grant to be substantially the same as were adduced before Ross J. and extended over 12th, 13th and 14th February, 1979 and 28th May, 1979. Mr. Parkins did not concede this to be so. I, however, reserve my ruling on this point.

The argument on the Preliminary Point continued and were

completed on 29th May, 1978 when ruling reserved.

I shall now deal with these points.

The substantial issue in regard to the Notice of Motion filed on 30th January, 1979 by Plaintiff is whether it covers the same issue argued before Ross J. in the Summons dismissed by him on 22nd January 1979 and as such could not be raised as an issue before me.

These matters were not exhibited as part of the records in this matter before me. I have had no transcript of the evidence adduced or the argument raised. Counsel differ as to the contents of the arguments. Consequently, my consideration is limited to only the records before me and the arguments adduced in support. I would hold that it was competent for Mr. Parkinson to have raised the matter as he did.

(1) I however, find no merit in it, and the Motion is dismissed.

(2) The application by defendant to amend his defence by deleting 3(g) of the defence and substituting the following:

" The defendant will say that the said parcel of land was comprised at all material times in its said Certificate of Title and that all its shares had been acquired by Alcoa Minerals of Jamaica Limited save as aforesaid the defendant makes no admissions as to particular (g)".

is granted in those terms.

(3) Defendant Summons filed 30th January, 1979 to substitute Alcoa Minerals as defendant 'granted in terms'.

I shall now deal with the Preliminary Point raised by Mr. Grant  
Mr. Grant submits that:

(1) Examination of the endorsement of the Writ clearly (a), (c), and (d) are tied together;

(2) (a) Dealing with injunction which taken by itself is not a cause of action but is merely a claim for relief. It therefore showed no cause of action;

(3) Only cause of action shown by Writ therefore, is the setting aside of a judgment obtained by fraud. That this is what is claimed in paragraph (a) and (c) and (d) is indirectly bound up with (a);

(4) That particulars of the fraud must be specifically pleaded and must be so specified to warrant the setting aside of a judgment of a superior Court;

Mr. Parkinson's reply is to repeat in substance the contents of the Statement of Claim.

Having heard the arguments and reviewed the authorities available at the hearing, I am constrained to accept Mr. Grant's submissions.

Small J's, Judgment was delivered after an extensive trial. A diagram of the land subject matter of the dispute from a survey by Mr. W. A. Silvera was attached to and became part of the judgment. The land was subsequently registered at Volume 35 Folio 5. What are the specific allegations of fraud pleaded that would warrant the setting aside of Small J's. judgment. I can find none. Mr. Parkinson in his argument placed heavy reliance on paragraph (e) of the Statement of Claim dealing with the two parcels of land that is being put up for registration.

Clearly these cannot form part of the land registered at Volume 35 Folio 5 as you cannot register land already registered.

A close examination of the diagrams in Court and which unfortunately I have not before me now clearly establishes that the two parcels of land subject matter of application 69265 and 69266 were wholly different and have nothing to do with land the subject of the judgment of Small J. and I so hold.

I can find no connection between the application for registration in 1973 and the judgment of Small J: on 22nd July, 1965. The parcel of lands appear by their description to be completely different, from the land subject matter Suit C. L. 409/57 on the basis of the many plans and diagrams I examined in Court and I would uphold the preliminary point taken by Mr. Grant. I find no merit in the Plaintiff's contention. There shall be judgment for the defendant with costs. Such costs to be taxed or agreed.

W. B. Willkie  
25th May, 1980.