

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E 317/91

IN THE MATTER of the Registration of  
Titles Act and dealing with land  
registered at Volume 1009 Folio 102

AND

Section 142 of the Registration of Titles  
Act.

|         |                                              |                   |
|---------|----------------------------------------------|-------------------|
| BETWEEN | MIGUEL GEORGE THOMAS AND<br>JOSEPHINE THOMAS | APPLICANTS        |
| AND     | WILLIAM JOHNSON                              | FIRST RESPONDENT  |
| AND     | KATHLEEN JOHNSON                             | SECOND RESPONDENT |
| AND     | THE REGISTRAR OF TITLES                      | THIRD RESPONDENT  |

Dennis Forsythe instructed by Forsythe and Forsythe for the Applicants.

H. S. Rose for the First and Second Respondents.

The Third Respondent is unrepresented.

Heard: 18th November, 1991 and 6th April, 1992.

PITTER, J.

The genesis of this action began with the first and second respondents entering into an agreement with Etheline Dayes, the mother of the applicants herein, for the sale of premises Lot 384 Greendale Boulevard, Saint Catherine and registered at Volume 1009 Folio 102 to the said respondents. The Agreement for Sale is dated 12th February, 1983.

By Deed of Gift dated 10th March, 1983, Ms. Dayes purport to transfer the said premises to the applicants in consideration of "love and affection."

Ms. Dayes died subsequently since the execution of the said Deed of Gift.

A series of court actions followed as a result. The first was an application by the first and second respondents for specific performance of the Agreement for Sale of the said premises against Etheline Dayes and the

Victoria Mutual Building Society which held a mortgage thereon. In Suit No. E 293 of 1908 Langrin J. made the following order on the 16th October, 1990:

"Upon hearing summons for Liberty to Apply dated the 25th day of September, 1990, and upon hearing the Affidavit in Support of Summons for Liberty to Apply sworn to on the 25th day of September, 1990, and upon hearing Mr. H. S. Rose, Attorney-at-Law, on behalf of the Applicants and the Respondents not appearing nor being represented

IT IS HEREBY ORDERED THAT:

- (1) HERBERT S. ROSE, Attorney-at-law of # 60 East Street, Kingston, be declared to have Carriage of Sale in regard to completion of the said matter.
- (2) The Registrar of the Supreme Court be designated the person authorised to sign the Transfer on behalf of the first named Respondent.
- (3) The Victoria Mutual Building Society deliver to the Attorney with Carriage for Sale the Certificate of Title registered at Volume 1009 Folio 102 and the discharge of mortgage on receipt by them of the mortgage debt or an undertaking to pay the debt by the Attorney having the Carriage of Sale.

Costs for the application to be agreed or taxed."

The applicants herein, not to be out done, on the 22nd November, 1990 lodged with the Registrar of Titles Caveat No. 645923 against the said Certificate of Title referred to above. Subsequently, the first and second respondents again brought the applicants to court, seeking the removal of the Caveat. The matter was heard before Smith J. on the 26th day of September, 1991 who dismissed the summons.

Prior to this however, on the 10th January, 1991, the Registrar of Titles registered Transfer No. 649160 in the names of both respondents on the said Certificate of Title despite the existence of the Caveat having been lodged against it.

The applicants not to be discouraged apply by way of Originating Summons dated 9th October, 1991 "to have the said Certificate of Title cancelled and that a new Certificate of Title be issued either in the name of the previous owner or the present applicants." It is this summons which is now being heard before me.

The applicants contend that they are beneficially entitled to the said premises by virtue of the Deed of Gift dated 10th March, 1988, which purport to transfer to them the premises in dispute. They further say that the premises were mortgaged to the Victoria Mutual Building Society and that they have since paid off the outstanding balance.

Mr. Forsythe for the applicants argues that the Registrar acted ultra vires in registering the transfer on the 16th January, 1991 in spite of the existence of the caveat. He prayed in aid Section 142 of the Registration of Titles Act which reads:

"142. So long as any caveat shall remain in force prohibiting any registration or dealing with the estate or interest in respect to which such caveat may be lodged, the Registrar shall not enter in the Register Book any change in the proprietorship or any transfer or other instrument presented for registration subsequent to the date on which such caveat was lodged purporting to transfer or otherwise deal with or affect the estate or interest in respect of which such caveat may be lodged, unless such transfer or other instrument or dealing be expressly exempted from the operation of the caveat or unless the caveator shall consent thereto in writing."

He relies too on the judgment of Smith J. (Supra) which dismissed the action by the first and second respondents for the removal of the caveat. It is of note to observe that this summons was heard subsequent to the grant of Specific Performance to the first and second respondents as also the registration of transfer by the Registrar of Titles.

It is convenient here to determine whether the Registrar acted ultra vires in registering the transfer in the names of the first and second respondents. It would appear that Section 44 of the said Act is relevant.

"S. 44. The Registrar upon receipt of such caveat, shall notify the same to the applicant, and shall suspend proceedings in the matter until such caveat shall have been withdrawn or shall have lapsed as hereinafter provided or until an Order in the matter shall have been obtained from the Supreme Court or a Judge. .....

It is obvious that the Registrar's authority resided in the judgment of Langrin J. which was earlier referred to. There is therefore no basis for the complaint made by Mr. Forsythe against the Registrar for registering the transfer in favour of the first and second respondents. The complaints as set out in Mr. Forsythe's affidavit never once addressed the authority upon which the Registrar acted.

The relief the applicants seek is to be found in Section 158 of the Registration of Titles Act. The Originating Summons filed on behalf of the applicants seek the following:

- "(1) Make an Order in compliance to Section 158 (2)(a) of Registrar of Titles Act that the Registrar of Titles cancel the Certificate of Title to the land registered at Volume 1009 Folio 102 and that a new Certificate of Title be issued either in the name of the previous owner or in the name of the present applicants."

The entry on Volume 1009 Folio 102 reads as follows:-

"Transfer No: 349160 registered 10th January, 1991, to William Johnson and Kathleen Johnson both of 37 Stratford Drive, Greendale, St. Catherine, Security Officer and Housewife respectively as joint tenants. Consideration money Four Hundred and Fifty Thousand Dollars."

Section 158 of the Registration of Titles Act reads:-

"158 - (1) Upon the recovery of any land, estate or interest, by any proceeding at law or equity, from the person registered as proprietor thereof, it shall be lawful for the Court or Judge to direct the Registrar -

- (a) to cancel or correct any certificate of title or instrument or any entry or memorandum in the Register Book, relating to such land, estate or interest; and
- (b) to issue, make or substitute such certificate of title, instrument, entry or memorandum or do such other act, as the circumstances of the case may require, and the Registrar shall give effect to that direction.

"(2) In any proceeding at law or equity in relation to land under the operation of this Act the Court or a Judge may, upon such notice if any, as the circumstance of the case may require, make an order directing the Registrar -

- (a) to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the persons specified for the purpose in the order; or
- (b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge."

Section 158 (1) confers power on a court or Judge to direct the Registrar to cancel or correct a certificate of title upon the recovery of any land, estate or interest by any proceeding at law or equity from the person registered as proprietor thereof. It is clear that this power lies only in actions, suits or proceedings brought by the categories of persons mentioned in section 161 (a-f).

161. "No action of ejectment or other action, suit or proceeding, for the recovery of land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say -

- (a) the case of a mortgagee as against a mortgagor in default;
- (b) the case of an annuitant as against a grantor in default;
- (c) the case of a lessor as against a lessee in default;
- (d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;
- (e) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land not being a transferee thereof bona fide for value;
- (f) the case of a registered proprietor with an absolute title claiming under a certificate of title prior in date of registration under the provisions of this Act, in any case in which two or more certificates of title or a certificate of title may be registered under the provisions of this Act in respect of the same land,

and in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding."

Section 153 (2) refers to proceedings at law or equity other than those expressly mentioned in Section 161 (a-f) supra. Such other proceedings are limited to the instances where the court or a Judge is empowered to entertain applications under the Act by persons therein mentioned.

The Originating Summons filed by the applicants is not a recovery proceeding under Section 153 (1) since it was not permissible under Section 161 because they did not come within any of the exceptions mentioned in paragraphs (a-f). However they would be persons entitled under the Act to invoke the jurisdiction of the Court or a Judge, they being caveators. Section 44 of the Act provides the exceptions to that category mentioned in Section 161. See Section 44 of the Act (supra).

Mr. Rose for the respondents contends that the first and second respondents are bona fide purchasers for value based on the Agreement for Sale dated 12th February, 1938, which in any event predates the Deed of Gift which purports to transfer the said premises to the applicants. He further argued that once that contract for sale was signed by the parties, the beneficial interest passed to the respondents aforesaid, and that the vendor Etheline Dayes cannot thereafter seek to transfer the said property to another party. A repudiation of the Agreement for Sale was sought by Etheline Dayes, but the court dismissed this action. To buttress his arguments, Mr. Rose submits that his clients are the registered proprietors in fee simple of the said premises and which they acquired by virtue of the Sales Agreement dated 12th February, 1938 from the registered proprietor Ms. Etheline Dayes and which agreement was enforced by this Honourable Court on the 16th October, 1990. It is further contended by Mr. Rose that the caveat lodged by the applicants was flawed in that it was based on a transfer in which the applicants had no interest to protect.

Mr. Rose submits that the applicants having been registered as proprietors of the premises in question, they acquired an unimpeachable and undefeasible title against the whole world as no fraud has been alleged or proved against them. In support of this submission, reference was made to Section 68 of the Registration of Titles Act. The effect of Section 68 is that the Certificate of Title is conclusive evidence of title.

"Section 68 - No certificate of title registered and granted under this Act shall be impeached or defeasible by reason on or account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all the Courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor or having any estate or interest in, or power to appoint or dispose of the land therein described is seized or possessed of such estate or interest or has such power."

The case of *Fraser v. Walker et al* [1967] 1 All ER p. 649 establishes that it is the fact of registration and not its antecedents which vests or divests title. It also establishes that even if the proceedings precedent to registration were not merely irregular but void, any registration effected thereby remain operative and establish in the person registered an indefeasible

and unimpeachable title subject to the cases specifically exempted under the Registration of Titles Act. Such excepted cases are totally independent of the existence or non-existence of fraud.

Having considered the evidence and the relevant submissions I find as follows:

- (1) That the first and second respondents acquired title by virtue of an Agreement for Sale.
- (2) That the said Agreement for Sale was enforced by This Honourable Court consequent to an Order made on the 16th day of September, 1990.
- (3) That the Caveat # 645923 registered against premises registered at Volume 1009 Folio 102 of the Register Book of Titles on the 22nd November, 1990 predates the Order of the Court above and is therefore of no effect.
- (4) That the Register of Titles in registering the transfer to the first and second respondents acted in accordance with the Order of the Court.
- (5) That the first and second respondents are registered proprietors of the land in question having thus acquired an unimpeachable and indefeasible title.
- (6) There is no basis in law or equity for the cancellation of the respondents title.

For the above reasons the summons brought by the applicants for the cancellation of title is dismissed.

Costs to the first and second respondents to be agreed or taxed.