

[2018] UKFTT 0080 (PC)

REF/2017/0112

**PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL**

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Dennis Green and Joan Green

APPLICANTS

and

Graham Francis Hoyland

RESPONDENT

**Property Address: (1) High Peak House & (2) Rookery House, Blackbrook, Chapel en le
Frith, High Peak, SK23 0PU**

Title Number: (1) DY460862 and (2) DY462121

ORDER

IT IS ORDERED as follows:

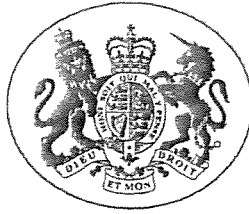
1. The Chief Land Registrar is to give effect to the Applicants' application dated 22 June 2016 to be registered as proprietor of a plot of land within the Respondent's registered title as if the Respondent's objection had not been made.
2. Pursuant to rule 40(3)(a) of the Tribunals Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and for the avoidance of doubt the land to which the Applicants' application relates is to be removed from the Respondent's registered title.
3. The Respondent is to pay the Applicants' legal costs of this reference, to be assessed if not agreed.

Dated this 31 January 2018

BY ORDER OF THE TRIBUNAL

Elizabeth Cooke





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DECISION

1. The Applicants, Mr and Mrs Green, are the registered proprietors of Rookery House, a farm on the outskirts of Chapel-en-le-Frith in the Peak District; title to Rookery House was registered in October 2011 under title number DY462121, but Mr and Mrs Green have lived there since 1977. The Respondent, Mr Hoyland, is the registered proprietor of High Peak House, another lovely stone dwelling with some outbuildings next door to Rookery House; title was first registered when he purchased, under title number DY460862, in August 2011.
2. Mr and Mrs Green have applied to HM Land Registry to be registered as proprietors to a small square of land, big enough to park two cars or one larger vehicle (“the

disputed land”), which is situated a few yards away from the boundary of Rookery House and within the registered title of High Peak House.

3. Mr Hoyland has objected to the application because the disputed land falls within his title and he says it is part of his property. The dispute was referred to the Land Registration Division of the First-tier Tribunal pursuant to section 73 of the Land Registration Act 2002.
4. I am grateful to both parties for showing me the disputed land on 23 January 2018. I conducted a hearing in Manchester on 24 January 2018, at which the Applicants were represented by Mrs Metcalfe of counsel and Mr Hoyland presented his case himself. I am grateful to both for their helpful arguments.
5. I have directed the registrar to respond to the Applicants’ application as if the Respondent’s objection had not been made. They have a clear documentary title to the disputed land and a series of mistakes has led to its inclusion in the registered title of High Peak House. As I shall explain, the circumstances are such that it is clearly right for the title to High Peak House to be rectified by the removal of the disputed land.

The lie of the land

6. Rookery House and High Peak House are next to each other on a lane near the A6 to the north of Chapel-en-le-Frith. Walking up the lane away from the A6 one comes to a grassy area on the left, which the parties tell me is a village green and of which they share the mowing. As one faces that grassy area, Rookery House is on the left and High Peak House is straight ahead. The disputed land is inside the boundary wall of High Peak House, next to the coach house in which Mr Hoyland is living (the house itself is tenanted); the disputed land is not contiguous to Rookery House and can only be accessed from the driveway to High Peak House.

The outcome of the hearing, in summary

7. Essentially both parties claim to have a documentary title to the disputed land, which Mr Hoyland said in his Statement of Case had always belonged to High Peak House. He bought High Peak House (which has been known by several names within living memory but to which I refer by its current name only) from Mr Chris Chilcott and Mr Timothy Oaks, who sold as the executors of Mrs Stirling who had owned it with her husband (who died in 2006) since 1984.
8. The hearing before me was listed for two days but ended at 1430 on the first day, essentially because of the production by the Applicants at the hearing of the contract and transfer made between Mr Chilcott, Mr Oaks and Mr Hoyland – retrieved, I think,

from Mr Chilcott's records. The contract, signed by Mr Hoyland, and the transfer clearly and expressly excluded the disputed land, and the contract stated that High Peak House was transferred to him subject to whatever access rights were held by the owners of the disputed land.

9. That meant that even if the owners of High Peak House over the preceding decades had had a documentary title to the disputed land (which, as I shall explain, is doubtful), and even if Mr and Mrs Stirling had a title to the disputed land by adverse possession (which I find was not the case), the outcome would have been that the disputed land remained part of Mrs Stirling's estate and was not transferred to Mr Hoyland in 2011. Its inclusion in his registered title was a mistake.
10. It had already become clear by that point in the hearing that Mr and Mrs Green did have a clear documentary title to the disputed land and that its exclusion from their registered title was also a mistake.
11. The production of the contract and transfer made it very difficult for Mr Hoyland to pursue his case that the disputed land had been transferred to him. I suggested that in the course of the lunchtime adjournment he speak to his conveyancing solicitors in case there was anything on their file that might assist him, and he did so, but unsurprisingly the file had been archived and so no further information could be had from that source.
12. Thereafter Mr Hoyland spoke briefly to explain why he had believed that he had bought the disputed land, but accepted that on the evidence as it stood it was very difficult for him to argue that the registration of the disputed land as part of his title was anything other than a mistake.
13. However, since 2015 Mr Hoyland has had a vehicle parked on the disputed land. Accordingly I took the view that he was in possession of the disputed land at the date of the hearing. The correction of these two mistakes therefore involves the alteration of the register to the prejudice of a registered proprietor in possession. Paragraph 3 of Schedule 4 to the Land Registration Act 2002 relates to the rectification of the register, defined in paragraph 1 as the alteration of the register to correct a mistake and which prejudicially affects the title of a registered proprietor. Paragraph 3(2) reads as follows:
 - 3(2) If alteration affects the title of the proprietor of a registered estate in land, no order may be made under paragraph 2 [for alteration of the register] without the proprietor's consent in relation to land in his possession unless—

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
- (b) it would for any other reason be unjust for the alteration not to be made.

14. So the register can be altered to remove land from Mr Hoyland's title only if he caused or contributed to the mistake by fraud or lack of proper care or if it would be unjust for the alteration not to be made. I cannot say whether Mr Hoyland caused or contributed to the mistake, but I find that it would certainly be unjust for the alteration not to be made. In order explain that finding I set out the circumstances more fully in the paragraphs that follow.

The documentary title to Rookery House

15. Rookery House was conveyed by Eva Jackson, Mary Jackson, Anthony Jackson, Samuel Jackson, Ada Jackson and Mabel Joule to George and William Hobson on 10 September 1921. The land transferred was described by reference to the plot numbers from the 1890 Ordnance Survey, and "for the purposes of identification only and not of limitation only are delineated and edged round with red on the plan drawn hereon". The plan shows edged red the land surrounding the house itself and the outbuildings, a separate area of fields some way away, and the disputed land which is shown as a small separate square edged red on the plan.
16. There has been no conveyance on sale of Rookery House since then (which is one reason why there is a dispute now, because title to the land has never had to be investigated by a purchaser). I have seen the original of the 1921 conveyance and it is not endorsed with any memorandum of sale off.
17. Rookery House (comprising the 1921 land and some more fields purchased since by the family) has passed by a series of assents to its current owners Mr and Mrs Green, the assent to them being dated 3 October 2011. The property is described on each assent but there is no plan; the description refers to the 1921 conveyance but also lists the parcels of land.
18. Mr Hoyland suggested in his Statement of Case that the disputed land was excluded from the 1921 conveyance, on a correct reading of the parcels, and from the subsequent assents. The disputed land appears to form part of parcel 1587 on the 1890 OS map, and on the conveyance and each assent there is listed "1587 part, Farmhouse and Buildings". Because no acreage is listed beside that entry Mr Hoyland argues that

nothing was transferred under that head. But that is not correct. The 1921 plan is perfectly clear; it includes parts of plot 1587 and it is most unlikely that the detached square of the disputed land was added in error. There is no suggestion in any of the assents that anything in the 1921 purchase was being omitted from the assent.

19. Mr and Mrs Green's title was registered following the 2011 assent to them; looking just at their pre-registration deeds it certainly should have been, and its absence should have been spotted by their solicitors at the time. However, title to the disputed land had been registered shortly beforehand as part of the title to High Peak House.

Title to High Peak House

20. The pre-registration root of title is conveyance of 29 September 1921, just nineteen days later than the 1921 conveyance of Rookery House. George Kirk and Jane Heathcote conveyed High Peak House, together with other land now in different ownership, to Joseph and William Mellor; the plan to the conveyance clearly includes the disputed land.
21. Mr Hoyland suggested that the first conveyance of the disputed land, to the Hobson brother on 10 September 1921, was a mistake, corrected by the conveyance of Rookery House 19 days later. This is not, however, a classic double conveyance (although if it were, it would be the second conveyance that was ineffective). The vendors of High Peak House in 1921 were not the vendors of Rookery House in 1921; it is not a case of one seller conveying the plot and then absent-mindedly conveying it again 19 days later. On the contrary, two different sets of vendors purported to convey it, and the two transactions took place a few days apart.
22. How that happened we cannot tell. Mrs Metcalfe points out that it would be easy to include the disputed land by mistake in the conveyance of High Peak House, simply by drawing a straight line instead of taking the line around the disputed land, whereas its inclusion in the conveyance of Rookery House would have to be deliberate because it is separate from the rest of the land conveyed. That is right, and looking just at these two conveyances in the absence of any other evidence I think one would have to conclude that it was more likely that the earlier conveyance, of Rookery House, was correct and that in all likelihood the vendors of High Peak House did not have title to the disputed land.
23. However, there is more to the story. On 4 November 1958 High Peak House was conveyed to Mr John Robinson. The land was described in two parcels; the land edged red on the plan, which comprises High Peak House without the disputed land, and "so

far as the Vendors can grant the same All that plot of land adjoining the property first hereinbefore described and coloured green on the said plan". The land coloured green on the plan is the disputed land. That wording indicates that by 1958 there was a doubt about title to the disputed land.

24. In 1977 Mr Robinson's widow (whom Mr Green remembers) conveyed to Allan and Barbara Hodgson "the two plots of land one shown edged red and the other coloured green on the plan drawn on the Conveyance dated 4 November 1958."

25. In 1984 the Hodgsons sold High Peak House to Alastair Stirling and Marlyn Strachan (who later married). In doing so Mrs Hodgson made a statutory declaration about the disputed land. She said that when she and her husband bought in 1977 they believed that that land was conveyed to them and were not aware of any other claims upon it. She went on:

"I first became aware of the possibility of a competing claim to the green land shortly after I had moved to the property. This occurred one morning when I observed the owners of neighbouring Rookery Far, upon the green land building a pile of sticks. On being questioned as to what they were doing they stated that they believed the green land to have been owned by their aunt who had been given it as a child, So far as I am aware there is no documentary evidence in support of this. The neighbouring owners were advised that we had bought the land and there have been no recurrences of this incident since that date."

26. The documentary title of the owners of High Peak House to the disputed land was, as we have seen, dubious; so Mrs Hodgson's statutory declaration would have reassured the Stirlings that there was in any event a possessory title. It is not now possible to decide whether that was the case or not, in view of the passage of time and the impossibility of asking Mrs Hodgson about her declaration.

27. As to Mr and Mrs Stirling's own experience of the disputed land there is more to say below. Staying for now with the documentary title, in 2006 Mr Stirling died. In 2011 Mrs Stirling died and Mr Chilcott was her executor. He gave evidence at the hearing to the effect that he asked Mr and Mrs Green to sell the disputed land to the estate so that he could sell a more coherent unit, but that they did not agree to sell. He and his fellow executor sold High Peak House at auction. I have been shown the sales particulars on which the plan clearly excluded the disputed land. A photograph on the particulars includes the disputed land, on which is parked a trailer which Mr and Mrs

Green say was theirs. Mr Hoyland bid for the land at auction and bought it. The contract for sale, which he signed, was dated 5 July 2011 and described the land as follows:

“The freehold land ... comprising the property described in a Conveyance (“the Conveyance”) dated the 4th day of November 1958 ... and shown for the purpose of identification only edged red on the plan annexed thereto.”

28. The contract stated that the property was sold:

“... subject to any rights of way exercised over the property (if any) by adjoining owners and without prejudice to the generality of the foregoing in particular any right of way exercised by the owner of the land coloured green on the plan annexed to the Conveyance over the property in order to gain access to and egress from the said land”.

29. The transfer in form TR1 described the property in exactly the same way by reference to the red edging on the 1958 plan.

30. So even if Mrs Hodgson had title to the disputed land in 1984, and even if the Stirlings owned the disputed land – as to which I make findings below - when High Peak House was sold in 2011 the sale did not include the disputed land and Mr Hoyland did not buy the disputed land.

Possession of the disputed land

31. Mr Hoyland’s case prior to the hearing was that he had bought High Peak House in 2011 including the disputed land, that he had a documentary title to the disputed land, and that his predecessors in title had had possession of the disputed land so that even if doubt was cast on the documentary title he had acquired a title by virtue of his predecessors’ possession. At the hearing, once the contract and transfer to Mr Hoyland were produced, it became clear that this case was going to be very difficult to sustain because even if his predecessors had acquired title to the disputed land by adverse possession, Mr Chilcott did not convey it to Mr Hoyland. If such a title was acquired it remains in Mrs Stirling’s estate.

32. Nevertheless I heard evidence about the possession of the land over the years. Mr Hoyland as a newcomer to the land has no direct knowledge of what happened before he purchased, but the Applicants provided witness statements as follows.

33. Mr Green remembers the disputed land from long before he came to live there in 1977, and says that he has always known that the disputed land formed part of Rookery House. He remembers Mrs Robinson of High Peak House and says the she

acknowledged that the land belonged to Rookery House. He recalls his grandmother Elizabeth Green scything the grass there, and says that Mrs Green continued to do so. Scything of course gave place to mowing eventually; he said in cross-examination that they would mow the land at least twice every summer. His evidence is that Mr and Mrs Stirling in about 1990 asked permission to store building materials on the land, and that when they had finished building they kept their trailer there, with Mr and Mrs Green's permission; in return Mr Green had the use of the trailer now and then. When it was sold after Mr Stirling died, Mr Green put his own trailer on the land.

34. Mr Green says that after Mrs Stirling's death Mrs Green showed potential buyers around, including Mr Hoyland, and she told him that they owned the disputed land; she also gave him a copy of the sales particulars.
35. Mr Green has no recollection of the incident recorded in Mrs Hodgson's statutory declaration. The owners of Rookery House in 1984 were not the present Mr and Mrs Green, although they lived there from 1977, so it is not clear whether they were the people referred to by Mrs Hodgson as having been building a pile of sticks.
36. Mr Hoyland asked Mr Green in cross-examination if the permission to the Stirlings was given in writing, and he said it was not.
37. On the plan to the 1958 conveyance there is a note that adjoining land belongs to Mr Hearnshaw. Mr Hearnshaw moved there in 1953 and still lives there, and gave evidence for the Applicants. His witness statement was very brief. He said that he had bought the land next door to High Peak House in 1953 and that he remembered Mrs Green scything the grass for a few years after that on the disputed land. "The picture of an old lady in a long coat scything a small area of grass, sometimes in the rain, does tend to stay in one's memory." This was not the current Applicant Mrs Green, but Mr Green's grandmother, Mrs Elizabeth Green. Mr Hearnshaw attended the hearing and Mr Hoyland asked him if he was aware of the Applicants having maintained the land, and he said yes, they had mown it, albeit intermittently.
38. Mr Chilcott, Mrs Stirling's executor, provided a detailed witness statement for the Applicants. He was a close friend of the Stirlings. He said that they had thought initially that they had owned the disputed land but that when they found out that they did not they made an amicable arrangement with Mr and Mrs Green to the effect that they could store their trailer on the land in return for Mr Green having the occasional use of the trailer.

39. My Hoyland asked Mr Chilcott why he had not, when he sold High Peak House, made a clear agreement that set out what he was selling. I find that that is exactly what Mr Chilcott did and that it is hard to see how he could have been more careful or more explicit in the terms of the contract and transfer to make it clear that the disputed land was not included, and moreover that the sale was subject to the rights of access of the owners of the disputed land.
40. Mr Hoyland's Statement of Case is endorsed with a statement of truth and I accept it as his evidence. In it he has put a very different interpretation on the actions of the Stirlings; it was his case that they were in adverse possession of the land. In the face of evidence from witnesses who had direct knowledge of the Stirlings and the Greens over so many years he accepted that he could not maintain that position and he was not cross-examined on his evidence.
41. I find as a fact that the owners of Rookery House have claimed to own, and have looked after, the disputed land for as long as anyone can now remember. It is likely that the family treated it as their own from 1921 onwards. I find as a fact that since at least since 1990 when the arrangement was made with Mr and Mrs Stirling the Applicants themselves have been in possession of the disputed land (until Mr Hoyland took possession in 2015).

Mr Hoyland's evidence about his purchase

42. Mr Hoyland's evidence is that when he was shown round High Peak House before the auction, by Mrs Green, she told him that she owned the disputed land. He also admitted that he had been aware of the auction particulars and the plan which excluded the disputed land. In his Statement of Case he said (at paragraph 12) that the disputed land was excluded from the sales particulars probably at the Greens' request. This is an extraordinary allegation which he did not pursue at the hearing. Mr Hoyland said at the hearing that he asked the auctioneer whether the disputed land was included and that the auctioneer "hinted broadly" that it was and showed him the title deeds. Mr Hoyland concluded, from the wording of the 1958 and 1977 conveyances, and from Mrs Hodgson's statutory declaration, that it was included.
43. Mr Hoyland explained that he had no recollection of the contract that he signed.
44. Since Mr Hoyland's case was that title to the disputed land had been acquired by adverse possession prior to his purchase I asked him if he had offered evidence of adverse possession to Land Registry in order to secure the registration of the disputed land and he had no recollection of having done so; he said that he had simply asked

his solicitor to deal with the registration. I find as a fact that he made no attempt to secure registration of it by virtue of adverse possession. Indeed, he could have had no such evidence to offer, since only Mr Chilcott could have supplied it and his evidence is to the contrary.

45. I have found that Mr Hoyland bought only High Peak House, without the disputed land, and that what should have been registered on his behalf was just that. I find also that his evidence, or argument, in his Statement of Case as to possession by the Stirlings is no more than conjecture. I accept his evidence that he asked the auctioneer if the disputed land was included. I accept that he misunderstood the 1958 conveyance, as is reasonable since he is not a lawyer. But if he had given any attention to the contract that he signed, with its reference to the 1958 conveyance, he would have understood that the disputed land was excluded. Accordingly, at the very least, Mr Hoyland was remarkably careless about the disputed land and the extent of the title he was purchasing after he spoke to the auctioneer.

46. However, there is no evidence that Mr Hoyland or his solicitor caused the mistaken registration of the disputed land as part of his title by making an inaccurate application for registration. How the mistake came about is not known.

Conclusion

48. I explained above that the register can only be altered by removing land from Mr Hoyland's title if either he caused or contributed to the mistake, or it would be unjust not to rectify. There is no evidence that he caused or contributed to the mistake on the register. But it would clearly be very unjust not to rectify. Mr Hoyland's conduct makes it unjust for him to profit from the mistake on the register. I have found, putting the most favourable possible light upon his conduct, that he was extremely careless in his purchase and his signing of the contract. Following his purchase he had a number of conversations with Mr and Mrs Green about the disputed land, and was actually critical of them for not having documents of title to hand – although when the 1921 conveyance was produced to him later he dismissed it as being a mistake. Yet he could at any point easily have checked whether he owned the disputed land. He could have referred to the transfer to him and to the contract that he signed, both of which could have been made available to him by his solicitors. As a result of his failure to check what he had bought Mr and Mrs Green have been subjected to years of distress and inconvenience. It would be extremely unfair to Mr and Mrs Green not to rectify the

register by removing the land from Mr Hoyland's title. For the avoidance of doubt I have made a direct reference to that in the direction I have made to the registrar.

50. Mr Hoyland asked me at the hearing about access, which he regards as a problem. He bought High Peak House expressly subject to Mr and Mrs Green's rights of access, whatever they might be, and I reminded Mr Hoyland that rights of access can be acquired by long use and that Mr and Mrs Green have been accessing the land for many years. I asked the parties to endeavour to reach an agreement about access after the hearing; Mr Hoyland should be in no doubt that the Greens are entitled to access and that any attempt on his part to exclude them is likely to result in legal action.

51. In this tribunal costs follow the event and there is no reason why Mr Hoyland should not pay Mr and Mrs Green's legal costs, incurred since the date of the reference to the Tribunal, to be assessed if not agreed. If agreement has not been reached that the Applicant's detailed schedule of costs is to be sent to the Tribunal within 28 days of the date of this decision; if Mr Hoyland wishes to dispute specific items on that bill he may do so within 28 days of the date on which it is posted to him. I will then either assess the costs summarily or make an order for detailed assessment.

Dated this 31 January 2018

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL

