Privy Council Appeal No. 53 of 1924.

Edouard Le Cudennec and another - - - - - *Appellants*

v.

La Compagnie Sucrière de Bel Ombre - - - - *Respondents*

FROM

THE SUPREME COURT OF MAURITIUS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 6TH JULY, 1925.

Present at the Hearing:

LORD ATKINSON.
LORD SHAW.
LORD PARMOOR.

[*Delivered by* LORD SHAW.]

The appellant, Mrs. Le Cudennec (her husband joining with her and authorising her action), brought this action, claiming that she had acquired a right by prescriptive possession of 20 years to certain land in the district of Savanne in the island of Mauritius, known as the Concession Bolgerd. The extent of the land is 416 arpents. The respondent company resists the claim on the ground that the property belongs to it by title as well as by the possession of its predecessors in title and of itself, and that prescriptive possession never ran against it or them.

The action was brought in the Supreme Court of Mauritius. That Court, consisting of two learned Judges, Herchenroder, C.J., and Roseby, J., dismissed the action with costs. It is against this judgment, pronounced on the 12th October, 1922, that the present appeal is brought.

A large number of plans and documents have been produced; and a large body of evidence was taken in the case. The learned counsel for the appellants delivered a close and logical argument confined to one point and one point alone, in respect of which

the judgment of the Court below was said to be erroneous. That point may have been argued in the Court below, but undoubtedly little, if any, notice is taken of it in the judgments delivered. Their Lordships, however, were willing to assume that the point is open before the Board, and the argument accordingly was fully heard.

There is a long chain of titles printed in the proceedings extending from the earlier half of the nineteenth century : and the plans are, some of them, over 100 years old. It may be expedient, before further mention of the particular point raised before the Board, to state that their Lordships have fully considered the whole series of titles and plans produced. They are of opinion, concurring with the Court below, that the land in suit in this case has in point of fact been throughout treated by the owners thereof, and under the title, as included within the lands comprehensively named Ste. Marie, formerly known as Longchamp.

This estate, thus successively and comprehensively named, consisted of various portions ; and a convenient narrative with regard to the title thereof is to be found in a deed of sale Toulet to Lucas of April, 1882. The " domaine " is thus generically described :—

> " Situé au quartier de la Savanne connu sous le nom de *Ste. Marie* de la contenance autrefois des deux mille huit cent cinq arpents."

In the course of this long deed, a narrative is given showing the various portions which go to make up the complete measurement of 2,805 arpents. One of these, the third in the enumeration, is Bolgerd, containing 457 arpents. This deed is mentioned, not as any contradiction to, but as in confirmation of the entire series of transmissions as recorded in the documents.

Their Lordships have, as stated, seen and considered all the documents. In 1819 a plan of all the properties was drawn up. In 1841 certain figures, applicable to a transaction of sale in that year, were put upon the 1819 plan ; and from 1841, through various steps, a number of which were administrative sales conducted under the authority of the Court, the title to this property descended until, in 1885, Mons. Rampal made the purchase of the entirety, that is to say, of Ste. Marie as an estate inclusive of various portions, one of which was Bolgerd.

Mons. Rampal died in 1889. A sale of the property belonging to him took place in 1894. From the Record of Proceedings of this sale by licitation " of the estate of Ste. Marie, formerly known under the name of Longchamp, situate in the district of Savanne," it appears that the plaintiff, Mrs. Cudennec, and her husband, who had given his authorisation to his wife, was one of the grantors of this deed,—Mrs. Cudennec being Mons. Rampal's daughter and one of his heirs. Under the deed of 1894, 40 acres of that part of Ste. Marie known as Bolgerd were sold by Mons. Rampal himself to the Colonial Government. A clearer assertion of possession of Bolgerd by Mons. Rampal, and consequently by those claiming through him, viz., his heirs, including the plaintiffs,

could not be made. To allow the appellants to plead prescriptive possession of Bolgerd prior to this date would be intolerable; and the case accordingly was presented to this Board by learned counsel for the appellants upon the footing that Mons. Rampal and his heirs, including the appellants, had, in fact, been, and were in 1894, the owners of the property of Ste. Marie, including Bolgerd, the ground in dispute in this action.

The *terminus a quo* for the running of the alleged prescription is thus 1894. There was, further, practically no dispute that in 1910, and thereafter, the running of prescription was interrupted at the instance of the present defendant company, who in that year bought the estate. Prescriptive possession for the period of 20 years has therefore not run.

The Court below has held that possession sufficient to qualify a prescriptive one has not been had of this estate, either of the requisite quality or for the requisite period. Their Lordships think it right to say that, in their opinion, the learned Judges of the Court below have considered the appeal in this case with great thoroughness and care. The Board agrees with the judgment which they have pronounced upon this question of prescription.

From one point of view this might be sufficient for the disposal of the entire case, as disentitling the appellants to put forward the point of challenge of the respondents' title in consequence of a difficulty in certain licitation proceedings in the year 1898. The Board is, however, willing, in view of the careful argument presented, to consider the point and to decide it. It is now maintained that the proceedings of 1898 demonstrated by law that Bolgerd was not included in the seizure of, *inter alia*, Ste. Marie, registered on the 5th February, 1898, in the Supreme Court of Mauritius. This seizure is undoubtedly one of the steps of title under which the properties passed to Hajee Jackaria Haji Ahmed, the immediate predecessor of the respondents, they having purchased from him on 20th June, 1910. Bolgerd, it is said by the appellants, did not pass on account of not being by law capable of being included in the description made in that seizure: *ergo*, all subsequent title to that land under such a title is invalid.

The challenge against the possible inclusion of Bolgerd is rested upon two considerations, namely, first upon the acreage claimed in the enumeration and, second, upon the boundaries of Ste. Marieas set forth in the title. The description is as follows:—

> "3o. *Ste. Marie*: The estate known under the name of *Ste. Marie*, formerly *Long Champ*, situate in the district of Savanne, of the superficial extent, according to the title deeds, of about two thousand three hundred and thirty-three acres and forty-two perches, but actually reduced to about two thousand three hundred and seventeen acres and sixty-eight perches on account of the sales, 'morcellements,' made to divers parties, of about one hundred and fifteen acres. The said two thousand three hundred and thirty-three acres and forty-two perches bounded on one side by the bay of Jacotet and by the sea, on the second side by the River des Galets and on the last side by the River Jacotet."

On the first point, namely, the acreage claimed, the Board has had the advantage of a very clear and careful arithmetical enumeration alongside of the title deeds.

In the course of the 70 or 80 years extending from 1841 onwards, various conveyances were made of portions of the Ste. Marie or Longchamp estate. That estate, including Bolgerd, amounted as stated originally to 2,805 arpents. The Board is fully satisfied that the result of these excisions, or to use the French term employed, these " détractions " from the estate, was to reduce the number of arpents from 2,805 to 2,217. These excisions took place in those parts of the property south of Bolgerd, except that, as mentioned, the last of the excisions included 40 acres of Bolgerd itself. To do, however, what the appellants ask and to confine the acreage in the seizure to that part of Ste. Marie which is exclusive of Bolgerd, the effect of the excisions by sale would be to reduce the 2,217 acres to 1,799, the result being that this title construed according to the appellants' argument would have passed 418 acres less than it purported to pass. If, however, Bolgerd be, as it was undoubtedly meant to be, included, the result is as follows :— Bolgerd's measurement was 457 acres, less the 40 acres sold to Government, that is to say, was 417 acres, which, when added to the 1,799, brings that figure up to 2,217, being (omitted fractions being taken into account) the exact figure actually stated in the conveyance itself. So far as figures are concerned, they do not disprove but they prove the inclusion of Bolgerd. So far for the first part of the argument.

The second is more difficult. It refers to the boundaries. These are, as stated, expressed thus :—

> " Bounded on one side by the Bay of Jacotet and by the sea, on the second side by the River des Galets, and on the last side by the River Jacotet."

It is plain that this is not a complete enumeration of the boundaries. To speak roughly, Sainte Marie is bounded by the sea on the south, and on the east by one river and on the west by another. These rivers do not meet in the north. The only natural boundary of the property is a range of mountains or hills in which they spring. This incomplete boundary accordingly seems to be a boundary of a property which lies between the sea and the mountains, with a river running on either hand. It accordingly is plainly a boundary which is not self interpretative, and which must be cleared up by reference to its natural features, taken along with the state of possession under, and accordingly as interpretative of, the title. This is not only in accord with the good sense of the position, and with principle, but also with authority. A recent and outstanding example of that authority is the judgment of Lord Atkinson in *Watcham* v. *Attorney-General of East Africa*, [1919] A.C. 533.

The Board are much relieved at this stage by what has happened in the Court below. The learned Judges say :—

> " After a study of the several memoranda and plans produced in this case, and our view of the locus on the 1st September last, we see no reason

to decide that the western branch of the Rivière des Galets was meant as one of the boundaries. We are of opinion that there is no topographical reason why the eastern branch should not be considered as the main branch, and an examination of the title deeds and of the acreage of the properties sold results in a confirmation of this eastern branch being the boundary meant.

" We are of opinion that the boundaries, however imperfectly described, do not close up the acreage sold into a triangle, and that they do not exclude a fourth boundry which, as given in document P. = P. 5, would naturally include the greater part, if not the whole, of *Bolgerd*."

Suppose a remit had been made by this Board to ascertain the boundaries, probably nothing more satisfactory than what has been quoted would have resulted. Their Lordships find themselves fully warranted in accepting the opinion and verdict on this matter of fact by the learned Judges of Mauritius.

Before leaving the subject, however, they think it right to allude to the suggestion which was pressed before the Board that, under a construction of the seizure of 1898, it is imperative upon a Court of Law to treat the head waters of the River des Galets as necessarily that stream of water which lies most to the westward. The Board sees neither necessity nor occasion to treat the description in this way. The plans suggest that the true head waters of the river were not at the western, but in its eastern stream; and one of the old plans, which seems as near the truth as any other, treats the whole gorge lying to the east and including the bulk of Bolgerd as the Gorge des Galets. The case accordingly, the more it is investigated, comes to be one in which the only thing that will clear up the ambiguity is the state of possession. This shows that when the most easterly of the head waters of the River des Galets are run in, and not until then, the nearer is the approximation made to the extent of land purported to be conveyed. Judged by this perfectly appropriate test, the title of the respondents to the land seems less and less open to question.

Their Lordships will now refer to the argument presented, founded upon Article 675 of the Code de Procédure Civile. That article is to the following effect:—

" Art. 675. Le procès-verbal de saisie contiendra, outre toutes les formalités communes à tous les exploits,

" 1. L'énonciation du titre exécutoire en vertu duquel la saisie est faite;

" 2. La mention du transport de l'huissier sur les biens saisis;

" 3. L'indication des biens saisis, savoir:

" Si c'est une maison, l'arrondissement, la commune, la rue, le numéro s'il y en a, et, dans le cas contraire, deux au moins des tenants et aboutissants;

" Si ce sont des biens ruraux, la désignation des bâtiments quand il y en aura, la nature et la contenance approximative de chaque pièce, le nom du fermier ou colon s'il y en a, l'arrondissement et la commune où les biens sont situés "

Following upon this citation, a reference was made to one or two French cases to the effect that, when a property consists of parcels, these parcels require to be enumerated, and if one of them is not enumerated, the transmission fails in that particular.

The answer to the argument is in the simple fact that this Article 675 now particularly alluded to is no longer the law of Mauritius. The law of Mauritius is contained on this head in Ordinance No. 19 of 1868, being an Ordinance to repeal, *inter alia*, certain of the provisions of the Code of Civil Procedure relative to sales of immoveable properties. It says (4) :—

> "The Memorandum of Seizure (procès-verbal de saisie) besides the formalities common to all Ushers' process shall contain :—
>
> i. A description of the Title in virtue of which the seizure is effected, the said description containing the date of the title, the name of the Notary (if the act is notarial), the amount of the Debt, and a reference to the Transcription, if the title has been transcribed.
>
> ii. Mention of the presence of the Usher upon the property at the time of effecting the seizure.
>
> iii. . . . . In the case of Rural Property, the district, the boundaries, the approximate area of the land, a description of the buildings, machineries, and plantations thereon, and the enumeration of the carts and animals seized."

The distinction between the French Procedure Code and the Mauritius Ordinance is thus clear. The former requires an enumeration of "la nature et la contenance approximative de chaque pièce." The Mauritius law simply requires "the district, the boundaries, the approximate area of the land."

It is now necessary to see how the document in challenge cited the property. It gave the name of Ste. Marie. It gave the district of Savanne. It stated the superficial extent according to the title deeds, mentioning reduction on account of the sales made to divers parties. Then follow the boundaries as already referred to. This description is, in their Lordships' opinion, quite in accordance with the law of Mauritius. Its indefiniteness is the indefiniteness which belongs to circumstances perfectly familiar in the transfers of landed estate, when, notwithstanding various transactions in which bits of the property have been disposed of, the original boundaries as per the titles are repeated all along. It does seem an extraordinary contention that these descriptions repeated from decade to decade and admitted to be quite sufficient to pass the dominion of the lands from predecessor to successor should be now challenged at the instance of a former owner, who was a party to a transaction which acknowledged this dominion, and that a challenge on the ground of adverse possession only reaches the requisite 20 years' period by including a tract of years in which she is alleged to have been prescribing against the estate of her own father. It appears further to their Lordships that section 208 of the Ordinance of 1868 applies to this case. That section is as follows :—

> "208. Any Nullities enacted by any of the provisions of the present Ordinance can only be raised in objection by parties prejudiced thereby."

Had it been necessary specially to decide it, their Lordships would have been accordingly inclined to hold that the appellants

have no title to put forward the objection which is now as stated the only remaining point of their case.

In conclusion, their Lordships adopt, with their entire approval, the language of the judgment of the Court below, as follows :—

> "This being said, we find that the heirs Rampal, of whom plaintiff was one, reasserted their ownership and possession when the estate of Jules Rampal was put to sale by licitation and that all what was left of the original portions of land—united into one estate, formerly called *Longchamp*, then *Ste. Marie*, and including *Bolgerd* (minus 40 odd acres)- -passed in full ownership and enjoyment, to the purchaser at the Bar in 1894.

Their Lordships will therefore humbly advise His Majesty that the appeal should be refused with costs.

In the Privy Council.

EDOUARD LE CUDENNEC AND ANOTHER

v.

LA COMPAGNIE SUCRIÈRE DE BEL OMBRE.

DELIVERED BY LORD SHAW.

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