

Privy Council Appeal No. 48 of 1929.

John Agabeg Vertannes - - - - - *Appellant*

v.

James Golder Robinson and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1930.

Present at the Hearing :

LORD BLANESBURGH.

LORD RUSSELL OF KILLOWEN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The matter under appeal before their Lordships is a decree dated the 19th June, 1928, of the High Court of Judicature at Rangoon, affirming a decree of the District Court of Insein, dated the 8th March, 1928. The last-mentioned decree dismissed, on a preliminary issue, a suit brought by the appellant to establish against the first respondent his title as absolute owner to a quarter of two-thirds (or an undivided one-sixth share) in certain lands. The appellant claimed to be entitled to such share as one of the four children of Sarkies Vertannes who had died intestate as to the land on the 18th May 1897.

The District Court dismissed the plaintiff's action on the ground that a judgment of this Board on appeal in an action to which the present appellant and first respondent were parties, had finally dealt with the question of the ownership of the said share. The High Court affirmed this dismissal on the same grounds.

The said judgment of the Board was delivered on the occasion of an appeal in an ejection action in which the present

first respondent (hereinafter called Robinson) sought as owner of the said land to obtain a decree of ejectment against the present appellant (hereinafter called Vertannes), the three other children and the widow of the said Sarkies Vertannes. Robinson, whose title to the land was derived under a conveyance to him by the widow (and executrix) of Sarkies Vertannes, had granted a lease to Vertannes of the said land, upon which he and the other defendants were residing.

The Board was of opinion that the conveyance by the widow operated to pass to Robinson only her interest as widow in one-third of the said land, and not the beneficial interests of the children. As regards the four children, Robinson contended that as against them his title was complete by estoppel under section 115 of the Evidence Act, and that in any event as regards the share of Vertannes, Vertannes being his tenant was estopped under section 116 of the Evidence Act.

The Board held that as regards the children, other than Vertannes, no case of estoppel under section 115 had been established; and that as regards Vertannes, he being clearly estopped under section 116, their Lordships were relieved from the necessity of considering whether he might also be held estopped under section 115. Their Lordships humbly recommended His Majesty that the judgments of the District Judge and of the High Court should be discharged and that in lieu thereof Robinson should have a decree for ejectment against Vertannes and the widow, and that it be declared that Robinson was entitled to one-third and one-quarter of the remaining two-thirds of the property in suit; and that the three children, other than Vertannes, were each entitled to one quarter of the two-thirds, with liberty to Robinson or to any of the last-mentioned three children to apply for a partition.

Vertannes seeks by his present action to obtain a decision that the one-quarter of two-thirds so declared by this Board to be the property of Robinson is the property of Vertannes, not by any title acquired by him subsequently to the date of the Board's decision, but by virtue of a title then existing in him as one of the children of the intestate. He claims that the estoppel under section 116, which prevented him from asserting his title in the ejectment action, was temporary only, and ceased to operate when he gave up possession of the land and when his tenancy accordingly came to an end. He claims that being no longer estopped under section 116, he is now entitled to assert and obtain a declaration of his ownership, and that the matter is not *res judicata*.

In view of the wording of the previous judgment of this Board in the ejectment action, their Lordships are unable to accede to these contentions. The language is clear and unambiguous, and according to its tenor the judgment of this Board purported to determine finally and conclusively the ownership of the share now claimed by Vertannes in the new action. Not only did the Board declare that share to belong to Robinson, but their

Lordships classed it with the widow's one-third and made provision for partition of the entirety of the land among Robinson and the three children other than Vertannes.

In these circumstances, it is not open to Vertannes to seek to obtain in fresh proceedings a declaration of ownership of the share in question which would be inconsistent with the previous judgment of the Board in proceedings between the same parties.

While their Lordships think that the intention of the Board finally to determine the ownership of the share in question is clear from the language of the original judgment, this intention seems to be established beyond all doubt by subsequent proceedings before the same Board.

The judgment of the Board was delivered on the 31st March, 1927. Subsequently, Vertannes presented a petition alleging that he had, before the appeal had been heard, given vacant possession to Robinson, and asking to have the order on the appeal so framed as to make it clear that their Lordships were not deciding that Vertannes was not entitled to assert his title as one of the next of kin of his father against Robinson.

The Board heard this petition on the 1st July, 1927, and it was dismissed with costs. From the language used by Lord Phillimore in announcing the Board's decision on that occasion, their Lordships to-day are satisfied that the Board intended that the decision on the appeal should, as between Robinson and Vertannes, finally and conclusively determine the ownership of the one-quarter of two-thirds which is the subject-matter of the new action. Indeed, it is difficult to imagine why, unless such was the Board's intention, no relief should have been granted on the petition.

Their Lordships feel themselves constrained, without expressing any views as to the construction or effect of section 116, to hold that the appellant is prevented by the judgment delivered on the 31st March, 1927, and the Order in Council made thereon, from obtaining the relief sought by him in the new action.

For these reasons, their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed with costs.

In the Privy Council.

JOHN AGABEG VERTANNES

v.

JAMES GOLDER ROBINSON AND OTHERS.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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