

1, 1969

1.

IN THE PRIVY COUNCIL

No.33 of 1966

O N A P P E A L

FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N :

JOSEPH ALLEN SMITH Appellant

- and -

1. FATULA CHRISTIANA WALKER  
2. TAIWO VICTORIA EDWARDS  
Respondents

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 9 MAR 1970  
25 RUSSELL SQUARE  
LONDON, W.C.1.

CASE FOR THE RESPONDENTS

Record

1. This is an appeal from a judgment of the Court of Appeal for Sierra Leone (Sir Samuel Bankole Jones, President; G.F. Dove-Edwin, J.A.; and J.B. Marcus-Jones, J.) dated the 3rd day of June 1966 allowing the Respondents' (Defendants) appeal from the judgment of the Supreme Court of Sierra Leone (Cole, Ag. G.J.) dated the 7th day of January 1966 whereby

pp.51-56

(a) a deed of gift dated the 6th day of October 1953 made between Ransolina Patience Cromanty now deceased and Executrix of the will of Jacob Williamson Sawyerr and the Respondents was set aside, and

pp.36-42

(b) the property in question No. 98 Fourah Bay Road, was ordered to be dealt with in the manner laid down in the will of the said Jacob Williamson Sawyerr (deceased).

2. The principal questions arising in this appeal are:-

(a) whether the property in question formed part of the estate of Jacob Williamson Sawyerr, in which estate the Appellant is

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beneficially interested and

(b) whether Ransolina Patience Cromanty possessed the legal right to convey it by deed of gift to the Respondents.

3. The material facts and documents are as follows:-

- pp.37 & 61 (1) 6th July 1887. Conveyance whereby William Smith conveyed to James Beresford Sawyerr inter alia property now known as 98 Fourah Bay Road Freetown Sierra Leone in fee simple 10
- pp.37 & 67 (2) 16th May 1895. Mortgage whereby the mortgagor James Beresford Sawyerr mortgaged inter alia the said property to Jacob Williamson Sawyerr to secure £328.1.10 repayable on the 8th ~~September~~ <sup>February</sup> 1897 with interest at 5% per annum
- p.49 (3) 17th May 1909. Death of the mortgagor James Beresford Sawyerr having remained in possession of the property from the date of the said mortgage until his death 20
- p.55
- p.39, 56 (4) 1909. Ransolina Patience Cromanty entered into possession of the said property and received the rents of the property from 1909 until her death in 1957.
- p. 74 (5) 15th August 1916. Death of the mortgagee Jacob Williamson Sawyerr
- p. 74 (6) 14th October 1916. Probate of the last Will of the Mortgagee Jacob Williamson Sawyerr granted by the Supreme Court of the Gold Coast to the said Ransolina Patience Cromanty 30
- p. 83 (7) 6th October 1953. Deed of gift whereby the said Ransolina Patience Cromanty conveyed the said property to the Respondents in fee simple.
- p. 3 4. On the first question arising on this appeal the Appellant pleaded that the mortgagee Jacob 40

- Williamson Sawyerr was seised in fee simple of the said property. The trial Judge held that the equity of redemption was barred and that the said property belonged to and formed part of the estate of the mortgagee Jacob Williamson Sawyerr, on the ground that the mortgage was not redeemed within 12 years after the 8th February 1897 on which date the principal sum secured by the said mortgage was thereby expressed to be payable. Record  
p. 38
- 10        The Court of Appeal held, in the submission of the Respondents rightly, that the said property did not form part of the estate of the mortgagee Jacob Williamson Sawyerr, because the mortgagor James Beresford Sawyerr was in possession of the said property down to the date of his death on the 17th May 1909. p. 55
5.        On the second question the trial Judge held that Ransolina Patience Cromanty had no power to give away the said property because she was constructive trustee of the said Jacob Williamson Sawyerr as regards his estate in Sierra Leone. p. 41
- 20
- The Court of Appeal held, in the submission of the Respondents rightly, that the said Ransolina Patience Cromanty acquired a possessory title to the said property. p. 56
6.        On the 26th day of September 1966 the Court of Appeal for Sierra Leone granted the Appellant final leave to appeal to Her Majesty in Council. p. 60
- 30        7.        It is respectfully submitted that this appeal should be dismissed for the following (among other)

R E A S O N S

- (a)        BECAUSE the property in dispute did not in law form part of the estate of Jacob Williamson Sawyerr (deceased).
- (b)        BECAUSE Ransolina Patience Cromanty acquired a possessory title to the disputed property.

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- (c) BECAUSE the deed of gift to the Respondents was valid and the Respondents are the lawful owners of the property in question.
- (d) BECAUSE the judgment of the learned trial Judge is wrong and the judgment of the Court of Appeal is right for the reasons stated therein.

S.W. TEMPLEMAN

MONTAGUE SOLOMON

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