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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD  
AND TOBAGO

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B E T W E E N :

MILDRED PARRIS                      Appellant

- and -

SOOKDAYAH DOOKIE                      Respondent

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CASE FOR THE RESPONDENT

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Record

1. This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali, C.J., Phillips and Rees, JJ.A.) dated the 2nd February, 1976 which dismissed the Appellant's appeal from the judgment of Achong, J. dated the 29th May, 1972 granting a declaration that the Respondent was the fee simple owner of a certain strip of land at D'Abadie Village, in the Ward of Tacarigua in the Island of Trinidad and an injunction restraining the Appellant from entering or remaining on the said strip of land or from interfering in any other way with the Respondent's use and occupation of the same and further, awarding damages for trespass to the Respondent in the sum of \$500.00.

pp. 54-58  
pp. 59-60  
pp. 38-48  
pp. 48-49

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2. The points raised by this appeal are as follows:-

(1) Whether Achong, J. erred in law in proceeding with the trial of the action as he did in May, 1972, leading to his said judgment dated the 29th May, 1972 without first obtaining the express consent of both parties to the trial being begun afresh before him, having regard to the fact that the trial had come on for hearing before Corbin, J. on the 21st October, 1970 and had then been

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Record

adjourned by him (after part of the evidence-in-chief of one witness had been heard) for the parties to endeavour to reach a settlement;

- (2) Whether Achong, J. was entitled to proceed with the trial of the action, the same having been called on before him and both parties appearing and participating in the trial without objection or protest.

pp. 1-3	3. The Respondent by her Writ dated the 24th April, 1967, and Statement of Claim dated the 11th March, 1968, claimed a declaration that she was the fee simple owner of a certain strip of land situated between parcels of land occupied by her and the Appellant and which ran from the northern to the southern boundary lines thereof. The Respondent further claimed an injunction in appropriate terms together with damages for trespass.	10
pp. 4-7		
pp. 7-9	By her Defence dated the 8th May, 1968, the Appellant denied that the Respondent was the fee simple owner of the disputed strip of land and counter-claimed a declaration that she was the fee simple owner of the same and damages for trespass. By her Reply dated the 7th June, 1968, the Respondent joined issue with the Appellant, denied that the disputed strip of land belonged to the Appellant and pleaded that, if the disputed strip of land formed part of any lands belonging to the Appellant, the Respondent and her predecessors in title had been in exclusive and undisturbed possession of the same for more than 16 years next before the commencement of the Appellant's claim thereto and accordingly the Appellant's title thereto (if any) had been extinguished by virtue of the provisions of the Real Property Limitations Act Cap.5 No.6.	20
pp. 10-11		
p. 11 LL. 11 - 23		
pp. 53 1.7 pp. 50 - 51 pp. 50 11. 13 - 14 p. 50 1.19- p. 51 1.18 p. 51 11. 19-20	4. On the 21st October, 1970, the action came on for trial before Corbin, J., both parties appearing by Counsel. It appears that part of the evidence-in-chief of one Douglin, a surveyor called on behalf of the Respondent, was heard. Corbin, J. then suggested, apparently, that the parties should endeavour to reach a settlement and adjourned the matter.	30
p. 12 p. 12 11 12-13 pp. 12 - 26 pp. 12 - 17 p. 26	5. In or about May, 1972, the action was called on for hearing before Achong, J., both parties appearing by different Counsel. The Respondent and three witnesses on her behalf including the said Douglin gave evidence: the said Douglin gave evidence-in-chief and was cross-examined. The Respondent's case was then closed. There is no indication in the Record that Achong, J,	40

referred to Corbin, J.'s notes of the said Douglin's evidence. The Appellant and five witnesses on her behalf gave evidence. The Appellant's case was then closed. No objection was taken by either party to Achong, J. hearing the action, which appears from the Record to have been begun afresh.

Record

pp. 26-37  
p. 37

10 6. On the 29th May, 1972, Achong, J. delivered judgment. Achong, J. first set out the background to the dispute and then summarised the evidence. The learned Judge preferred the evidence of the Respondent and her witnesses to that of the Appellant and her witnesses where the two conflicted. The learned Judge found that the Respondent had been in occupation of the disputed strip of land exercising acts of ownership thereover for upwards of 16 years before action was brought. The learned Judge held that the Respondent was entitled to the declaration sought together with the injunction restraining the Appellant from  
20 interfering in any way with her enjoyment of her land including the disputed strip of land. The learned Judge awarded \$500 damages for trespass to include special damage.

pp. 38 - 48  
pp. 38 - 40  
1.30  
p. 40 1.31 -  
p. 46 1.43  
p. 46 1.44 -  
p. 47 1.1.

p. 47 11.2 -  
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p. 47 11.20-  
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p. 48 11.3 -  
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7. By her Notice of Appeal dated the 29th June, 1972, the Appellant appealed to the Court of Appeal on the grounds therein set out but without setting out the relief sought.

pp. 51 - 53

30 8. At the hearing of the appeal to the Court of Appeal Counsel for the Appellant argued one ground of appeal alone, namely, that the trial before Achong, J. was a nullity because it was proceeded with at a time when it was already part-heard before Corbin, J. The other grounds of appeal concerning Achong, J.'s decision on the merits of the case were not pursued.

p. 56 11.20 -  
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p. 58 11.37 -  
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40 9. In the Judgment of the Court of Appeal (Sir Isaac Hyatali, C.J., Phillips and Rees, JJ.A.) dated the 2nd February, 1976, delivered by the learned Chief Justice, the nature of the dispute between the parties was first set out. The course of the proceedings as appeared from the Record was then set out. The learned Chief Justice said that it was clear from the Notes of Evidence of Achong, J. and from his Judgment that the trial began afresh before Achong, J: it was further clear that no objection was taken by Counsel for either party to Achong, J. hearing the case. The learned Chief Justice said that Achong, J. heard the whole of the evidence and made a careful assessment of it in coming

pp. 54 - 58

p. 54 1.12

pp. 55 1.9

pp. 55 11.32 -  
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pp. 55 11.34 -  
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pp. 55 1.39  
- p. 56 1.9

Record

p. 57 ll. 34-39 to the conclusion that the Respondent had established her claim. In dealing with the only point taken by Counsel for the Appellant, the learned Chief Justice said that Counsel for the Appellant had conceded before the Court of Appeal that the Appellant would have had no cause for complaint if the parties at the hearing before Achong, J. had expressly consented to the trial being begun afresh before Achong, J. Counsel for the Appellant had submitted that implied consent was not good enough and in the absence of express consent the whole trial was a nullity. The learned Chief Justice said that the Court of Appeal did not agree with the submission. He said that Achong, J. clearly had jurisdiction to try the matter and the only question was whether the parties consented to the court proceeding with a case in which it clearly had jurisdiction. The learned Chief Justice held that the parties did in fact consent impliedly. In the circumstances of the Appellant appearing in the case before Achong, J. without taking any objection, the learned Chief Justice held that the point taken by Counsel for the Appellant was not a good one. The learned Chief Justice added that in the Court of Appeal's view Achong, J. was right in coming to the conclusion which he did on the merits of the case. Accordingly, the Appellant's appeal was unanimously dismissed with costs. 10

p. 57 ll. 39-end

p. 58 l.1. 19-20

p. 58 ll. 26-29

p. 58 ll. 29-33

p. 58 ll. 33-37

p. 58 ll. 38-43

p. 58 ll. 44-45

10. The Respondent respectfully submits that this appeal should be dismissed and that the judgment of the Court of Appeal is correct. It is respectfully submitted that at worst it was a procedural irregularity for the action to have been listed and called on for hearing before Achong, J., the action in a sense being part-heard before Corbin, J. That irregularity, it is respectfully submitted, did not deprive Achong, J. of jurisdiction to try the action or render the trial before Achong, J. a nullity. The effect of such irregularity was, in the Respondent's respectful submission, to give the parties the right to object to Achong, J. hearing the action and to apply for the hearing to be resumed before Corbin, J. In the event of no objection being taken or application made, it is respectfully submitted that the parties were properly taken by the Court of Appeal to have waived any objection and to have consented to the trial taking place before Achong, J. If objection had been taken or application made, it would have been for Achong, J. to investigate the matter and to determine whether the original hearing should be resumed before Corbin, J., and/or whether there 30 40

10 was any substance in the objection to the matter being heard afresh by Achong, J. It is respectfully submitted that Counsel for the Appellant rightly conceded that the Appellant would have had no cause for complaint if Achong, J. had obtained the express consent of the parties to the hearing of the action proceeding as it did. Having made that concession and thus accepting that Achong, J. had jurisdiction to try the action, as the learned Judge undoubtedly did, it is respectfully submitted that there is no substance in the proposition that the trial was vitiated because in the event only the implied consent of the parties was forthcoming.

11. The Respondent respectfully submits that the judgment of the Court of Appeal is right and ought to be affirmed and this appeal ought to be dismissed with costs for the following (among other)

R E A S O N S

- 20 (1) BECAUSE Achong, J. had jurisdiction to try the action and in the absence of any objection by either party properly proceeded with the hearing of the same;
- (2) BECAUSE the action was properly heard before Achong, J.;
- (3) BECAUSE Achong, J. correctly held that the Respondent had established her claim;
- (4) BECAUSE of the other reasons given in the judgments of Achong, J. and the Court of Appeal.

STUART N. MCKINNON

IN THE JUDICIAL COMMITTEE      No. 42 of 1977  
OF THE PRIVY COUNCIL

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B E T W E E N :

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- and -

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CASE FOR THE RESPONDENT

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JAQUES & CO.,  
2 South Square,  
Gray's Inn,  
London,  
WC1R 5HR.

Respondent's Solicitors