

Mildred Parris - - - - - Appellant
v.
Sookdayah Dookie - - - - - Respondent

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD MAY 1979

Present at the Hearing :

LORD EDMUND-DAVIES
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL

[Delivered by LORD EDMUND-DAVIES]

This is an appeal from a judgment of 2nd February, 1976, of the Court of Appeal of Trinidad and Tobago, dismissing an appeal from a judgment delivered on 29th May, 1972, by Mr. Justice Achong in the High Court of Justice of Trinidad and Tobago. On that occasion the learned trial judge granted the respondent to this appeal, who was the plaintiff in the action, a declaration that she was the fee simple owner of a parcel of land in Trinidad. He also granted an injunction restraining the defendant, the appellant before this Board, from entering or remaining upon the property. He further ordered the payment of damages for trespass.

What happened was that at a date which has not been specified in the documents before their Lordships the case had been opened before another judge, Mr. Justice Corbin, and one witness only was called, a valuer. He did not go very far with his evidence because it occurred to the learned judge that it was manifestly a case which ought to be open to settlement and so he adjourned the matter for that purpose.

Their Lordships do not know exactly what happened thereafter although the irresistible inference is that if an attempt at compromise was made it proved unsuccessful because Mr. Justice Achong began the case *de novo* on a later date. The parties were then each represented by counsel. The case was called on and it went through to its conclusion, the learned judge giving judgment in favour of the plaintiff, the nature of which has already been indicated sufficiently for the purposes of this appeal.

No sort of objection was taken to Mr. Justice Achong sitting upon that occasion and it was only after the adverse judgment against the defendant

was delivered that it was sought to impeach the validity of the judgment on a number of grounds. It was said in the Notice of Appeal to the Court of Appeal that the learned judge erred in law (a) by proceeding with the trial of the action after it was already part heard by Mr. Justice Corbin on 21st October, 1970, and (b) by holding that the plaintiff acquired title to the land by prescription, and also that the decision was unreasonable and/or could not be supported having regard to the evidence.

Of those grounds the only one pursued in the Court of Appeal was the first, namely that the trial judge erred by proceeding with a trial after the part hearing before Mr. Justice Corbin. What was said in the Court of Appeal was that it would have been perfectly all right for Mr. Justice Achong to proceed with the trial as he did, starting *de novo*, and that the case was not one of those where the trial was impaired by defects such as the reading over of evidence of witnesses and not calling them afresh. But, even so, there was no jurisdiction, because there was no express consent to Mr. Justice Achong trying the case at all.

It was conceded below, as the Court of Appeal has recorded, that, had there been express consent, the trial would not have been open to any sort of impeachment, but it was submitted that, even though the implied consent of both parties was irresistibly to be inferred in the absence of any sort of protest, nothing short of an express consent would do. The Court of Appeal described that as a rather extraordinary submission and they would have nothing to do with it. They dismissed the appeal. Their Lordships think that they were right in the conclusion that they came to.

Before the Board Mr. Birtles, whose position as counsel is one which excites sympathy and commands admiration for the way he has manfully tried to overcome his difficulties, has sought to raise a fresh point. As their Lordships understand it, he concedes that you cannot draw a valid distinction for the purposes of jurisdiction between an express consent, which is good, and an implied consent, which is no good. He does not seek to pursue that point. He now says that there was no jurisdiction because there was nothing to indicate, certainly to the public, that Mr. Justice Achong had been authorised to embark upon a fresh trial. By a provision in the Rules of the Supreme Court, Order 61, Rule 2, in circumstances such as those which arose in this case the Chief Justice may nominate some other judge to try the case.

Mr. Birtles submitted, as their Lordships understood, that there was no indication—certainly no announcement—that there had been a nomination of Mr. Justice Achong to begin the case afresh. But it will not do to raise that entirely new point now. It is true that this appeal was heard by the Chief Justice, but he had no reason to have this matter in mind at all. For all their Lordships know there *was* a proper nomination of the new judge, if nomination was indeed required. They just do not know.

In those circumstances it would be quite wrong to permit Mr. Birtles to pursue this point for the first time before this Board. For all their Lordships know, had it been raised in the Court of Appeal it could have been speedily disposed of one way or the other. It was not raised. Their Lordships are therefore completely in the dark as to what happened, and in such circumstances the only course they can take is that of proceeding upon the assumption that that which was required to be done (if anything was required to be done in order to seise Mr. Justice Achong with jurisdiction) was in fact done.

This case, their Lordships would add, is one in which there is not the slightest suggestion that Mr. Justice Achong arrived at a wrong conclusion, either on the law or on the facts, the other criticisms raised in the grounds of appeal having, as already indicated, been abandoned by the appellant.

In these circumstances there can be only one outcome to this appeal. Their Lordships dismiss it with costs.

In the Privy Council

MILDRED PARRIS

v.

SOOKDAYAH DOOKIE

DELIVERED BY

LORD EDMUND-DAVIES