
O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N:

DOROTHY ROULSTONE

Appellant

- and -

O.L. PANTON (Administrator
of the Estate of Olive Hinds)

Respondent

10

CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment dated the 20th day of September 1976 of the Court of Appeal of Jamaica (Watkins J.A. (Ag.), Swaby J.A. and Robinson P. (dissenting)) allowing an appeal from a judgment of the Grand Court of the Cayman Islands (Moody J.) on or about the 28th November 1973 dismissing an appeal from the decision of the Land Adjudicator of the Cayman Islands dated the 11th September 1973 dismissing the Respondent's 4 Petitions (all dated the 31st day of July 1973) under the Cayman Islands Land Adjudication Law 1971 against the registration of the Block Parcels Numbered 1/E-16, 1-D-127, 1-D-32, 1-D-60, 1-E-31 and 1C-80 1664 in the sole name of the Appellant. p.51
- 20
2. By a majority the Court of Appeal of Jamaica, in allowing the appeal, set aside the said order of the Land Adjudicator, as affirmed by Moody J, that the said lands in their entirety should pass to the Appellant, ordered that judgment should be entered in favour of the Respondent and directed that the said properties should be divided in equal shares between the Respondent, p.59
- 30

RECORD

as Administrator of the Estate of Olive Hinds, and the Appellant. The Court of Appeal further directed that the Register kept under the Registered Land Law 1971 be rectified in accordance with the order of the Court and that the Respondent should have his costs before the said Court and the Grand Court of the Cayman Islands.

3. The facts relevant to this Appeal are as follows :-

10

p.35

(i) By a Conveyance dated the 20th March 1958 and made between (1) the Appellant and Olive Hinds jointly ("the Sellers") and (2) Florence Potter ("the Buyer") the Sellers conveyed to the Buyer for the sum of \$2,200 certain land therein described to hold forever both free and clear in fee simple.

(ii) By the following Conveyances the title to various parcels of land in Grand Cayman was transferred into the joint names of Olive Hinds and the Appellant:-

20

p.27

(a) Indenture dated the 18th November 1958 between (1) Henry Eli Bush and Loretta Manderson ("the Sellers") and (2) Olive Naomi Hinds and Dorothy F. Roulstone ("the Buyers") whereby for the sum of £250 the Sellers conveyed to the Buyers "all right title and interest forever in that land described herein". This is the land referred to in the proceedings as Block Parcel No. 1 1-C-80 1664.

30

p.11

p.34

(b) Indenture dated the 7th January 1959 and made between (1) George Jefferson and (2) Dorothy Roulstone and Olive Hinds whereby for the sum of £85 George Jefferson sold and conveyed "unto the said Dorothy Roulstone and Olive Hinds of the second part their heirs and assigns" the land therein described "for the said parties of the second part their heirs and assigns to hold possess and enjoy forever free from all and every encumbrance whatever". This is the land referred to in the proceedings as Block Parcel No. 1-D-60.

40

p.7

p.32

(c) Conveyance dated the 19th November 1959 and made between (1) Harry Glidden ("the Vendor") and (2) Dorothy B. Roulstone and

- 10 Olive N. Hinds ("the Purchasers") whereby for the sum of £75 "the Vendor as beneficial owner hereby grants and conveys to the Purchasers and their heirs" the land therein described "to hold the same unto and to the use of the said Dorothy B. Roulstone and Olive N. Hinds jointly with their heirs and assigns in fee simple". This is the land referred to in the proceedings as Block Parcel No. 1-E-31. p.9
- (d) Conveyance dated the 30th November 1959 and made between (1) Donald E. Glidden ("the Vendor") and (2) Dorothy B. Roulstone and Olive Naomi Hinds jointly ("the Purchasers") the Vendor for the sum of £200 as beneficial owner granted and conveyed "to the Purchasers their heirs and assigns" the land therein described "to hold the same unto and to the use of the Purchasers their heirs and assigns in fee simple". This is the land referred to in the proceedings as Block Parcel No. 1/E-16. p.26
- 20
- (e) Conveyance dated the 30th January 1960 and made between (1) Donald E. Glidden and Harry E. Glidden ("the Vendors") and (2) Dorothy Roulstone and Olive Hinds ("the Purchasers") the Vendors for the sum of £400 as beneficial owners granted and conveyed "to the Purchasers and their heirs" the land therein described "to hold the same unto and to the use of the Purchasers, their heirs and assigns in fee simple". This is the land referred to in the proceedings as Block Parcel No. 1-D-127. p.28
- 30
- (f) Conveyance dated the 29th June 1963 and made between (1) Lois R. Powell ("the Vendor") and (2) Dorothy E. Roulstone and Olive Hinds ("the Purchasers") whereby the Vendor for the sum of £100 conveyed to the Purchasers the land therein described "to hold the same unto and to the use of the said Purchasers and their heirs and assigns in fee simple. This is the land referred to in the proceedings as Block Parcel No. 1 D-32. p.24
- 40
- (iii) All the said Conveyances and Indentures were duly recorded in the Public Records of the Cayman Islands. p.25,27
28,29,33
35,36
- 50 (iv) Olive Hinds died on or about the 15th September p.5

RECORD

1972 intestate and Letters of Administration to her estate were granted on the 5th July 1973 by the Grand Court of the Cayman Islands to the Respondent, Ormond L. Panton.

- p.4 (v) By a letter dated the 31st July 1973 the Respondent informed the Land Adjudicator of the Cayman Islands that he had been appointed Administrator of the estate of Olive Hinds, that he claimed certain parcels of land of the estate in accordance with Conveyances in his possession and enclosed Petitions in respect of the said parcels under the Cayman Islands Land Adjudication Law 1971 (Section 20) claiming a half interest in the parcels of land referred to in the said Petitions and in the Conveyances mentioned in (ii) above. 10
- p.6-12
- p.12 (vi) On the 3rd August 1973 the Land Adjudicator gave notice to, inter alia, the Appellant P.O. Box 42 Bent Mountain Virginia and to the Respondent of the hearing of the said Petitions on the 10th September 1973 requiring them or their representatives to attend the hearing bringing any witnesses, documents, maps and other relevant information that might help the Tribunal to determine the Petition. 20
- p.15 (vii) By a letter dated the 13th August 1973 the Appellant asked the Land Adjudicator if the hearing of the Petitions could be postponed until the 1st November or the middle of October and informing him that she had written to one Karl Brandon, asking him to help represent her. 30
- p.16 (viii) On the 15th August 1973 the Land Adjudicator wrote to the Appellant at Bent Mountain Virginia U.S.A. informing her that it was not possible to change the date set for the hearing of the Petitions and suggesting that if she were not able to attend the hearing in person she should appoint a local representative to put her case for her.
- p.17 (ix) On the 20th August 1973 the Appellant wrote to Karl R. Brandon, Attorney at Law Grand Cayman with reference to the hearing and saying that "I do know, it was Miss Hinds' intention that title should pass to either survivor, as some possible means to show her appreciation for the many kindnesses and friendship expressed in the many years, to the co-owner; yet as I see it, this is not the point in question" and that "In view of the fact that the matter is a legal point, 40

I can see no assistance my presence could contribute" and appointing the said Karl Brandon to represent her as her attorney.

(x) The hearing of the Petitions took place before the Adjudicator and Assessors on the 11th September 1973. Karl Brandon put the case for the Appellant and the Respondent put the case on behalf of the Estate of Olive Hinds. p.18

10 (xi) The Tribunal heard oral evidence from the following witnesses who were called by the Respondent and were cross-examined by Karl Brandon: p.18-22

(a) Thomas William Farrington p.18-19

(b) Henry Eli Bush p.19-20

(c) Granville Burns Ruddy p.20-21

20 (xii) The Tribunal also heard oral evidence from Frank Elston Roulstone Jr., the Appellant's son who was called by Karl Brandon on behalf of the Appellant and who was cross-examined by the Respondent. p.21-22

4. In the decision given on the 11th September 1973 the Adjudicator and assessors held that p.23

(i) Unless words of severance are used in the drawing up of a conveyance for two or more owners the persons to whom the property is conveyed are joint proprietors.

(ii) No words of severance appeared in the deeds submitted to the Tribunal.

30 (iii) The evidence did not establish that Olive Hinds had paid half the purchase price in the six purchase transactions or that she had received half the proceeds of sale from the two sales.

(iv) The Appellant was "merely using Hinds name and standing to effect purchases for land for herself" and that "this would be consistent with Hinds living virtually free on Mrs. Roulstone throughout the period when they enjoyed close friendship and were as inseparable as sisters".

40 (v) Olive Hinds had taken no step to sever the joint proprietorship.

RECORD

(vi) Olive Hinds had quite clearly said that "all her property at her death would become the property" of the Appellant.

(vii) The Petitions failed, the Adjudication record remained unchanged and the Appellant had absolute title to all the properties in question.

- p.37 5. By a Notice of Appeal dated the 17th October 1973 the Respondent appealed to the Grand Court of the Cayman Islands against the decision of the Adjudicator and on the 16th November 1973 gave notice of Supplemental Grounds of Appeal 10
- p.41
- p.51 6. In the reasons for judgment dismissing the appeal, Moody J. stated that he was satisfied that the decision of the Adjudicator was not erroneous in point of law and held that
- (i) Unless words of severance are used in drawing up of a Conveyance for two or more owners the persons to whom the property is conveyed are joint proprietors. 20
- (ii) No words of severance appeared in the deeds submitted to the Tribunal.
- (iii) The Adjudicator had accepted the case put forward on behalf of the Appellant and rejected the case put forward on behalf of the Respondent.
- (iv) If there were any inaccurate statements or faulty observations or illconceived arguments made by the Adjudicator in the course of dealing with the arguments addressed to him they did not contradict, undermine or challenge his clear and unambiguous decision. 30
- p.52 7. By a Notice of Appeal dated the 12th December 1973 the Respondent appealed to the Court of Appeal of Jamaica as to costs and by a
- p.56 Notice of Appeal dated the 26th June 1975 the Respondent appealed to the Court of Appeal of Jamaica against the decision of Moody J. The appeal came on for hearing before The Honourable Mr. Justice Robinson (President), The Honourable Mr. Justice Swaby J.A. and The Honourable Mr. Justice Watkins J.A. (Ag.) on the 25th June 1976. 40
- p.59 8. The judgments of the Court of Appeal of Jamaica allowing the appeal were given on the 29th

September 1976.

9. In the judgment delivered by Mr. Justice Watkins J.A. (Ag.) and concurred in by Mr. Justice Swaby J.A. the course of the proceedings was summarised and reference was made to the provisions of the Land Adjudication Law of the Cayman Islands (No. 20 of 1971). The learned judge stated that the question to be determined on the facts as found and on the proper inferences to be drawn therefrom was whether "the beneficial interests in these lands also subsist in joint tenancy or in tenancy in common-" The learned judge then referred to the evidence given before the Land Adjudicator and commented that the Appellant had declined to attend the hearing "thereby depriving that Tribunal of relevant information peculiarly within her knowledge". The judge criticised as "totally unacceptable and unwarranted" the inference made by the Adjudicator that the Appellant "was merely using Hinds' name and standing to effect purchases of land for herself". The learned judge also criticised the Land Adjudicator's finding of fact that "Hinds had said quite clearly that all her property at her death would become the property "of the Appellant", having regard to the record of the testimony of Frank Roulstone Jr. The learned judge concluded that the inferences drawn by the Adjudicator on the facts found by him were unwarranted in law. The learned judge then referred to the distinction between joint tenancies and tenancies in common at law and in equity and held that it was clear that Mrs Hinds "considered that she had not merely a legal but also a beneficial interest in the lands and that such interest was in her power to dispose of" and that "such an interest had of necessity, if at all, to be an undivided share in equity in the land". The learned judge concluded that the undisputed facts were that the deceased and the respondent took conveyances in their joint names, not merely of one property, but of eight, two of which they subsequently sold and that these transactions covered a period of 5 years. The learned judge concluded that "from these undisputed facts the inference of the existence of a joint undertaking on the part of these ladies seems irresistible, and a fortiori, of the existence in equity of tenancies in common in the lands".
10. In his dissenting judgment the President Mr. Justice Robinson stated that :-
10. In his dissenting judgment the President Mr. Justice Robinson stated that :-

RECORD

- p.67 (i) It appeared from the evidence that from the 29th June 1963 up to the death of Olive Hinds in September 1972, the Appellant and Olive Hinds made no joint purchases, sold none and did no trade or business on or with any of the lands which they had jointly purchased.
- (ii) The evidence of the witnesses called in support of the contention of a joint tenancy "did not seem very impressive".
- p.68 (iii) There was "absolutely no evidence of any activities on the part of these two ladies which could justify the assertion that they were engaged in any joint business venture" in the sense considered in the authorities Jeffreys v. Small (1683) 1 Vern. 217, Lake v Gibson (1729) 21 E.R. 1052 Lake v Craddock (1732) 1 P. Wms. 158 and Hulton v. Lister (1890) 62 L.T. 200. 10
- p.69
- p.70
- p.71
- p.73 (iv) If Olive Hinds and the Appellant "had decided to put up money in equal shares to purchase lands in their joint names as joint tenants, without more, that would not make them business partners, engaged in trade or business, so as to make them tenants in common in equity" and the fact that the money was put up in equal shares and that they required a conveyance to them as joint tenants strongly support the view that a joint tenancy was intended in all respects". 20
- p.74 (v) In two of the 6 Conveyances Olive Hinds and the Appellant were described as acquiring "jointly" (those Conveyances being dated the 19th and 30th November 1959). 30
- p.74 (vi) There was nothing in the evidence given by Frank Roulstone Jr. to justify any inference other than that both Olive Hinds and the Appellant appreciated that the doctrine of survivorship applied to their situation.
- p.76 (vii) The letters sent by the Land Adjudicator to the Appellant on the 15th August 1973 could well have misled the Appellant into thinking that her own evidence at the inquiry would not have been necessary, whereas it might have been most helpful to her case. 40
- p.78 11. On the 4th February 1977 the Court of Appeal of Jamaica made an order granting the Appellant final leave to appeal to Her Majesty in Council.

12. The Appellant respectfully submits as follows :-

(i) That on the true construction of the Conveyances of the various pieces of land in question Olive Hinds and the Appellant held the land as joint tenants at law.

10 (ii) That at law the interest of Olive Hinds in the said lands passed on her death to the Appellant by right of survivorship and that the Appellant then became sole owner of the said lands at law.

(iii) That there were no words of severance in any of the conveyances of the lands indicating that Olive Hinds and the Appellant were intended to take distinct undivided shares in the lands in equity.

20 (iv) That the Respondent has not established on the evidence that Olive Hinds and the Appellant acquired the said lands pursuant to a partnership between them or a joint undertaking carried on by them or in relation to the said lands with a view to profit.

(v) That there was no evidence that the Appellant and Olive Hinds had contributed towards the purchase price of the said lands in unequal shares

(vi) That there was no evidence of any act or acts by Olive Hinds or the Appellant during the lifetime of Olive Hinds effecting a severance of their interest in the lands in equity.

30 (vii) That the Respondent has not established on the evidence that the said lands were held by Olive Hinds and the Appellant as tenants in common in equity.

(viii) That upon the evidence before him the Adjudicator was justified in making the findings of fact and the inferences that he did.

(ix) That upon his findings of fact and inferences therefrom the Adjudicator was correct in his rejection of the Respondent's contention of a tenancy in common in equity.

40 (x) That the Adjudicator was correct in his conclusion that the said lands had been held upon a joint tenancy at law and in equity and that, as survivor, the Appellant had become the sole owner of the said lands and was entitled to be registered as such.

RECORD

(xi) That the majority in the Court of Appeal of Jamaica erred in holding that the findings of fact and inferences made by the Adjudicator were unwarranted by the evidence and in holding that the said lands had been held upon a tenancy in common in equity.

(xii) That if the majority in the Court of Appeal of Jamaica were right in holding that the findings and inferences of fact made by the Adjudicator were unwarranted by the evidence, they ought to have remitted the matter to him for rehearing on the grounds that (a) the Adjudicator had wrongly exercised his discretion in refusing to grant the Appellant an adjournment of the hearing;

10

(b) That he had wrongly exercised his discretion in not calling the Appellant to give evidence of his own motion in the exercise of his powers under Section 16(4) of the Land Adjudication Act 1971; and

(c) That he had by his letter dated the 15th August 1973 led the Appellant to believe that her presence at the hearing before him was not necessary.

20

13. The Appellant respectfully submits that the majority judgment in the Court of Appeal of Jamaica was wrong and ought to be reversed and that this appeal ought to be allowed with costs, for the following (amongst others) reasons.

R E A S O N S

30

1. BECAUSE on the true construction of the Conveyances of the various pieces of land in question the Appellant and Olive Hinds held the lands as joint tenants at law and in equity.

2. BECAUSE the Appellant by right of survivorship is the sole owner of the said lands at law and in equity.

3. BECAUSE the Respondent has failed to establish by evidence that the said lands were held by the Appellant and Olive Hinds as tenants in common in equity or that there was any act or acts effecting a severance of their interests in equity.

40

4. BECAUSE the facts as found and the inferences drawn by the Adjudicator were justified upon the evidence.

5. BECAUSE on the facts as found by the Adjudicator and the inferences drawn by him from those facts, Olive Hinds and the Appellant were joint tenants in equity.

6. BECAUSE on the facts as found and the inferences reasonably drawn from them the conclusions arrived at by the Adjudicator were justified.

7. BECAUSE of the Opinions expressed by the Adjudicator, Moody J. and Mr. Justice Robinson.

JOHN MUMMERY

10

IN THE PRIVY COUNCIL No. 16 of 1977

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N:

DOROTHY ROULSTONE

Appellant

- and -

O.L. PANTON (Administrator
of the Estate of Olive Hinds)

Respondent

CASE FOR THE APPELLANT

DRUCES & ATTLEE,
Salisbury House
London Wall
London EC2M 5PS