

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 RESPONDENT

RECORD

20

30

40

1. This is an Appeal from the Judgment and Order of the Court of Appeal of Jamaica (Robinson, P. (dissenting) Swaby, J.A. and Watkins, J.A. (Ag.)) dated the 20th day of September, 1976 allowing the Appeal of the Respondent herein from the Judgment and Order of the Grand Court of the Cayman Islands (Moody, J.). (The said Judgment of the Court of Appeal of Jamaica also dismissed an Appeal by the Appellant herein from the said Judgment of the Grand Court of the Cayman Islands brought by the Appellant herein on the issue of costs). The aforesaid Judgment of the Grand Court of the Cayman Islands was given on Appeal from the Land Adjudication Tribunal of the Cayman Islands (P.G. Owen, Esq. and Assessors) dated the 11th day of September, 1973 whereby all Petitions of the Respondent herein claiming an interest in four parcels of land were dismissed. In the aforesaid Order of the Court of Appeal of Jamaica, the Court ordered that Judgment should be entered in favour of the Respondent herein and directed that the properties comprised in the aforesaid parcels of land should be divided in equal shares between the Respondent herein and the Appellant herein. It was further ordered that the Register kept under the Registered Land Law, 1971 be rectified in accordance with the Order of the Court and that the Respondent herein should have his costs before the Court of Appeal of Jamaica and the Grand Court of the Cayman Islands.

Pp.58-77

P.51

Pp.59-77 and  
Pp.54-55

Pp.23-24

RECORD

2. On the 31st day of July, 1973 the Respondent presented four Petitions to the Adjudicator under Section 20 of the Land Adjudication Law, 1971. The said Law was, according to the "Memorandum of Objects and Reasons" prefacing the said Law "designed to pave the way for the establishment of a modern system of land registration, whereby titles to all land in the Islands will become certain and guaranteed by the Government, and transfers in other dealings in land can be accomplished simply and expeditiously." It is also stated therein "The Law provides for the demarcation and survey of the boundaries of land held in the Islands, and in cases of dispute as to boundaries or ownership, for such disputes to be settled by a land tribunal." Under Section 7 of the said Law it is provided that

10

"Except with the consent in writing of the Adjudicator, no action concerning land or rights to land in an adjudication section shall be begun in any civil court until proceedings under this Law have been completed."

20

Section 20 of the said Law provides

"Any person (including the Administrator) who is aggrieved by any entry in or omission from any completed adjudication record may, at any time during the period declared under section 19, petition the Tribunal in respect of such entry or omission and the petition shall be heard by the Tribunal and determined or redetermined in accordance with the provisions of section 4(1)".

30

Section 4(1) of the said Law deals with the establishment of a Land Adjudication Tribunal and the appointment of officers thereto. In the premises the Land Adjudication Tribunal was in the instant case, rather than the ordinary courts of law, seized with the dispute between the parties with regard to the ownership of the parcels of land that are the subject of the instant appeal.

40

P.5

3. The Respondent to this Appeal is the administrator of the estate of the late Olive Hinds, Letters of Administration having been granted to him on the 5th day of July, 1973. The four Petitions presented by the Respondent herein all related to parcels of land in section West Bay N.W. under the Land Adjudication Law, 1971. All the said Petitions related to parcels of land which the late Olive Hinds had owned jointly with the Appellant. The issue requiring

50



RECORD

. . . . To hold the same unto and to  
. . . . the use of the Purchasers their heirs and  
. . . . assigns in fee simple."

The said Conveyance dated the 30th January, 1960  
in its material parts reads as follows

" . . . .  
between Donald E. Glidden and Harry . . .  
E. Glidden . . . . 10  
(hereinafter called "the Vendor") of the  
one part and Dorothy Roulstone and Olive  
Hinds, (hereinafter called "the Purchaser")  
of the other part.

Whereas the Vendor . . . .  
. . . . has agreed to sell to the  
Purchasers for the sum of Four Hundred  
Pounds; Now this Indenture witnesseth that  
in pursuance of the sum of Four Hundred  
Pounds, paid by the Purchasers to the 20  
Vendors (the receipt whereof the Vendors  
hereby admits and acknowledges), the  
Vendors as beneficial owners grants and  
conveys to the Purchasers and their heirs  
. . . .  
To hold the same unto and to the use of  
the Purchasers, their heirs and assigns in  
fee simple."

5. The Respondent's Petition in relation to  
Block Parcel No. 1-D-32 and 1-D-60 in its 30  
material parts reads as follows

P.8,11.  
11-35

"Details of Petition: Conveyance dated  
29th June 1963 from Loise Powell to  
D. Roulstone & Olive Hinds (dec) and from  
George Jefferson to D. Roulstone & Olive  
Hinds (dec) dated 7th January 1959.

I hereby petition against the decision with  
regard to the above quoted parcel on the  
following grounds:

(1) That the Lands were purchased 40  
respectively from George Jefferson  
by Conveyance dated the 7th January,  
1959 by D.E. Roulstone and Olive  
Hinds and from Loise Powell by  
Conveyance dated the 29th June, 1963  
by the said D.E. Roulstone and Olive  
Hinds and as such I claim a one ( $\frac{1}{2}$ ) half  
interest in said Lands as Administrator  
for the Estate of Olive Hinds.

- (2) Mrs. D.E. Roulstone has no right of ownership over the entire parcels of land.
- (3) Mrs. D.B. Roulstone has no claim other than her one ( $\frac{1}{2}$ ) half interest therein."

The said conveyance dated 29th June, 1963 in its material parts reads as follows

P.24

10

" . . . . . between Lois E. Powell  
 (hereinafter called "The Vendor") party  
 of the first part and Dorothy E. Roulstone  
 and Olive Hinds (hereinafter called "The  
 Purchasers") of the other part  
 WITNESSETH:

20

. . . . . WHEREAS the Vendor has agreed to  
 sell the said property to the Purchasers  
 for the sum of One Hundred Pounds; NOW  
 this Indenture witnesseth that in  
 pursuance of the sum of One Hundred Pounds  
 paid by the Purchasers to the Vendor  
 (the receipt whereof the Vendor hereby  
 admits and acknowledges), the Vendor as  
 beneficial owner hereby grants and  
 conveys to the Purchasers . . . . .  
 . . . . . to hold the same unto and to  
 the use of the said Purchasers and their  
 heirs and assigns in fee simple."

30

The said Conveyance dated 7th January, 1959 in its material parts reads as follows

"This Indenture made and concluded  
 between George Jefferson of the FIRST PART  
 and Dorothy Roulstone and Olive Hinds of  
 the SECOND PART all of Grand Cayman  
 WITNESSETH:

40

That I George Jefferson for and in  
 consideration of the sum of Eighty-five  
 pounds, to me in hand, the receipt  
 whereof is hereby acknowledged, do by  
 these presents bargain sell and convey  
 unto the said Dorothy Roulstone and Olive  
 Hinds parties of the Second Part their  
 heirs and assigns a piece of land situate  
 at North West Point . . . . .  
 . . . . . for the said parties of the  
 second part their heirs and assigns to hold  
 possess and enjoy forever free from all and

50

RECORD

every encumbrance whatever, and I for myself my heirs and assigns do by these presents warrant to defend and protect the said parties of the SECOND PART their heirs and assigns with this property."

6. The Respondent's Petition in relation to Block Parcel No. 1-E-31 in the material part reads

Pp.9-10

"Details of Petition: From Harry Glidden to D. Roulstone and Olive Hinds 19th November, 1959

10

I hereby petition against the decision with regard to the above quoted parcel on the following grounds:

(1) That the Land was purchased by the above named parties by Conveyance dated the 19th November, 1959 as stated, and I claim a one ( $\frac{1}{2}$ ) half interest as Administrator of the Estate of Olive Hinds, deceased.

20

(2) Mrs. D.E. Roulstone has no right of ownership over the entire parcel of land."

The said Conveyance dated 19th November, 1959 in its material part reads as follows

P.32

" . . . . .  
 . . . . . Between Harry Glidden of West Bay (hereinafter called "The Vendor") of the one part and Dorothy B. Roulstone and Olive N. Hinds (hereinafter called "The Purchasers") of the other part:

30

. . . . . whereas the Vendor has agreed to sell the said property to the Purchaser for the sum of Seventy Five Pounds NOW THIS INDENTURE witnesseth that in pursuance of the sum of Seventy Five Pounds paid by the Purchaser and their heirs to the Vendor (the receipt whereof the Vendor hereby admits and acknowledge), the Vendor as beneficial owner hereby grants and conveys to the Purchasers and their heirs all that piece or parcel of land situate in the district of West Bay. . . . .

40

To hold the same unto and to the use of the said Dorothy B. Roulstone, and Olive N.Hinds, jointly their heirs and assigns in fee simple."

7. The Respondent's Petition in relation to Block Parcel 1 C-80 in the material part reads

50

as follows

"Details of Petition: Land bought from Lorette Manderson & Eli Bush to D. Roulstone and O. Hinds (dec.) Conveyance dated the 18th November 1958.

P.11

I hereby petition against the decision with regard to the above quoted parcel on the following grounds:

10

(1) That the Land was purchased by the above named parties by Deed of Conveyance as stated, and as such I claim a one ( $\frac{1}{2}$ ) interest as Administrator of the Estate of Olive Hinds.

(2) Mrs. D. Roulstone has no right of ownership over the entire parcel of land."

The said Conveyance dated 18th November, 1958 in its material parts reads as follows

20

". . . . .  
. . . . . between Henry Eli Bush, of West Bay, Grand Cayman, B.W.I. and Lorette Manderson, of West Bay, Grand Cayman, B.W.I., and hereinafter referred to as the SELLERS, and Miss Olive Naomi Hinds . . . . Mrs. Dorothy F. Roulstone . . . . hereinafter referred to as the BUYERS hereby AGREE that for the sum of £250 pounds Sterling in hand paid this date by the BUYERS unto the said SELLERS hereby conveys to the said Buyers, all right, title and interest forever in that land described herein . . . . ."

P.27

30

8. The said Petitions came on for hearing on the 11th day of September, 1973. Three witnesses were called on behalf of the Respondent herein. The first witness, Thomas William Farrington, had witnessed and possibly drawn some of the Conveyances referred to above. He considered

Pp.18-19

40

"jointly means between the two of them - half and half."

P.19,11.  
37-38

9. The vendor of Parcel No. 1C-80, Henry Eli Bush testified that the Appellant and Miss Hinds had purchased the land from him saying that they wanted to buy between the two of them and that they were in partnership. He

P.19,1.50-  
P.20,1.30

RECORD

further stated Miss Hinds had paid one half of the purchase price.

Pp.20-21 10. The nephew-in-law of Miss Hinds, Granville Burns Ruddy stated that Miss Hinds had kept an exercise book recording the business transactions which she had carried out with the Appellant.

Pp.21-22 11. The final witness called on behalf of the Appellant was Frank Elston Roulstone Jr. He alleged that Miss Hinds had expressed a wish that everything she had should go to his mother the Appellant. 10

Pp.23-24 12. In his Decision the Land Adjudicator commenced by summarizing the case put for the parties. He then held

P.23,11.29-35 "Unfortunately for Hinds none of the witnesses called could establish that Hinds had paid half the purchase price in the six purchase transactions or had received half of the proceeds from the two sales. From the evidence led it could be argued equally well and with greater probability that Hinds did not contribute half the purchase price or even nothing at all." 20

It is respectfully submitted that in making that finding the learned Adjudicator fell into error in that he ignored the evidence of Henry Eli Bush. The Land Adjudicator then dealt with what he called "the first argument for Hinds". This he had earlier summarized as follows 30

P.23,11.15-24 ". . . at the time the Conveyances were made, that is between 1958 and 1963, there were no qualified lawyers on the island, deeds were much more loosely prepared and interpreted, 'joint' had no real meaning in the legal sense and that the use of the words 'heirs and assigns' denoted that if one of the owners should die that owner's share was preserved for the issue." 40

This argument was dealt with, it is respectfully submitted wrongly, by the Adjudicator as follows

P.23,1.45- P.24,1.17 ". . . the Tribunal noted that the expression 'heirs and assigns' had to be included to provide for the issue of the last survivor of the Joint Proprietorship. The Tribunal accepts that at the period when the conveyances were drawn up that they were not drawn up so 50

precisely as by qualified legal practitioners today, not that the implications of the wording were so well understood, but the Tribunal also noted that with the great boom in land prices there was an influx of lawyers; land dealings were frequent and most important to the economy of the Cayman Islands and to the well being of the individual Caymanian. If Hinds had believed she had a half share in the property she must surely at some time in the 14 years she was associated with Roulstone have taken the simple step to sever the Joint Proprietorship. But she did not do so, and there is the evidence of the 4th witness Frank Roulstone Jr. who states that Hinds had said quite clearly that all her property at her death would become the property of his mother Dorothy Roulstone."

It is respectfully submitted that the said findings were wrong for the reasons adverted to by Watkins J.A. in the Court of Appeal of Jamaica.

Pp.59-66

13. From the Decision of the Land Adjudicator the Respondent appealed to the Grand Court of the Cayman Islands by Notice dated the 17th day of October, 1973. Supplemental Grounds of Appeal were lodged on the 16th day of November, 1973.

Pp.37-41

Pp.41-42

14. The said appeal came on for hearing before Moody, J. and was dismissed by him and Reasons for Judgment were delivered. It is respectfully submitted that the learned Judge erred in holding

P.51

"No words of severance. No tenancy in common."

P.51,11.  
42-43

disposed of the issue. The Respondent submits that the said Judgment is wrong for the reasons given by Watkins J.A. in the Court of Appeal of Jamaica.

15. On the 12th day of December, 1973 the Appellant herein gave Notice of Appeal to the Court of Appeal of Jamaica against the refusal of Moody J. to award her the costs before the Grand Court of the Cayman Islands. It appears from the Record that the learned Judge subsequently gave a Supplementary Judgment in relation to the issue of costs. On the 26th day of June, 1975 the Respondent herein gave notice of appeal to the Court of Appeal of Jamaica against the substantive Decision of Moody J.

Pp.52-54

Pp.54-55

Pp.56-59

RECORD

- P.59,11.  
15-39
- P.59,1.40-  
P.60,1.45  
P.60-62
- P.64,11.  
26-29
- Pp.64-65
- P.66,11.  
15-39
- Pp.66-77
16. The said Appeal came on for hearing on the 25th day of June, 1976 and Judgment was reserved until the 20th day of September, 1976. Watkins J.A. (with whom Swaby J.A. concurred) gave the majority Judgment of the Court of Appeal of Jamaica. After recalling that the Appeal had been allowed and setting out the Orders that had been made the learned Judge continued his Judgment by summarizing the effect of the Land Adjudication Law. The learned Judge then set out the facts that were in evidence in the proceedings in the Cayman Islands. The findings of fact were summarized and the Court held that the inferences that were drawn by the Adjudicator on the facts found by him were unwarranted in law. The learned Judge of Appeal then considered, it is submitted correctly, the principles applicable to joint tenancies and tenancies in common. The learned Judge of Appeal then reached the following conclusion
- "The failure to sever during her lifetime was at best inconclusive and at worst a non-sequiter. It still remained therefore for the Adjudicator to have determined whether the facts disclosed the existence of joint-tenancies in equity as well as in law or tenancies in common in equity. Those undisputed facts were that the deceased and the respondent took conveyances in their joint names, not of merely one property, but of eight, two of which they subsequently sold, and that these transactions covered a period of five years. Both parties were persons of some means, of varying but unascertainable degree. What was the extent of the contribution, if any, of any particular party to any particular transaction is utterly unknown. 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. Where it is impossible to determine the extent of respective contributions, the rule is that equality is equity."
17. Robinson, P. delivered a dissenting Judgment, which it is respectfully submitted is incorrect and that the Judgment of Watkins J.A. is to be preferred.
18. On the 20th day of September, 1976 the Appellant was granted Conditional Leave to Appeal to Her Majesty in Council. By paragraph 2 of the said Order it was provided as follows

"2. That the Defendant Appellant do procure the preparation of the record and despatch them to England within 120 days of the date of this order."

Pp.78-79

10 On the 4th day of February, 1977 an Order was made granting Final Leave to Appeal to Her Majesty in Council. At the hearing of this Application it was submitted that as ninety days had expired in accordance with the terms of the Order of 20th September, 1976 the Appeal should be struck out. The said submission was however overruled. It is respectfully submitted that in making the said ruling the Court of Appeal of Jamaica fell into error. The Respondent respectfully refers to and relies upon the Judgment in Cayman Islands Civil Appeal No. 6 of 1965, Smith v. McField. Copies of the Judgment of Luckhoo J.A. therein will be provided  
20 prior to the hearing of the instant appeal by the Respondent. In the premises it is respectfully submitted that this Appeal ought not to be entertained.

19. The Respondent humbly submits that the said Appeal should be dismissed with costs and the Judgment and Order of the Court of Appeal of Jamaica be affirmed for the following among other

R E A S O N S

- 30 (1) BECAUSE, the Appellant not having complied with the conditions granting her provisional Leave to Appeal, the Order granting Final Leave to Appeal was wrongly made.
- (2) BECAUSE the majority of the Court of Appeal of Jamaica (Watkins and Swaby were right.
- (3) BECAUSE the minority Judgment of the Court of Appeal of Jamaica (Robinson P.) was wrong.
- 40 (4) BECAUSE the Grand Court of the Cayman Islands (Moody J.) was wrong.
- (5) BECAUSE the Land Adjudication Tribunal was wrong.

NIGEL MURRAY

No. 16 of 1977

IN THE PRIVY COUNCIL

---

---

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 RESPONDENT

---

---

JAMES & CHARLES DODD,  
18 Tranquil Vale,  
Blackheath,  
London, SE3 OAZ.