3/85

IN THE PRIVY COUNCIL No. 20 of 1983

ON APPEAL

FROM THE COURT OF APPEAL OF THE COMMONWEALTH OF THE BAHAMAS

BETWEEN:

BILLY WALLACE ENTERPRISES LTD. Appellant (Plaintiff)

- and -

STANLEY ROLLE and CATHERINE ROLLE Respondents (Defendants)

CASE FOR THE RESPONDENTS

Record

1. This is an Appeal from the Judgment and Order of the Court of Appeal of the Commonwealth of the Bahamas (Blair-Kerr, P. Jasmin and Georges, JJ.A) whereby the Appeal of the Respondents herein against the Judgment and Order of the Supreme Court (Equity side) of the Commonwealth of the Bahamas (Blake J.) dated the 18th and 26th days of June, 1980, was allowed with costs. By the said Order of Blake J. the Appellant herein (the Plaintiff at the trial) was granted a declaration that it was the owner in fee simple of two parcels of land, that the Respondents herein (the Defendants at the trial) should give the Appellant possession of part of one of the said parcels and that the Respondents should pay to the Appellant certain mesne profits until possession of the same was given up. The Respondents were further ordered to pay the Appellant the costs of the action. By the said Order of the Court of Appeal of the Commonwealth of the Bahamas the said Order of Blake J. was set aside and Judgment was entered for the Respondents herein in the action and the Appellant herein were ordered to pay the costs of the Respondents in both Courts below.

pp 83-85

pp 53-73

2. The Respondents respectfully submit that no question of law falls for decision in the instant appeal. It is further submitted that

the Court of Appeal of the Commonwealth of the Bahamas correctly allowed the appeal of the Respondents herein because the learned Trial Judge had placed the burden of proof incorrectly upon the Respondents herein and had made errors in findings of fact which were not supported by the evidence before him and thus in the premises the Court of Appeal of the Commonwealth of the Bahamas was entitled to reverse the findings of the learned Trial Judge.

3. In its undated Statement of Claim, the
pp 1-3 Appellant Company alleged that it was the owner and claimed possession of two parcels of land referred to therein. The Appellant Company thereafter pleaded:

p 2 Cl.31-42 "5. Sometime during the month of January 1978 the Defendants wrongfully entered the land and erected a building thereon.

6. By a letter to the Defendants Plaintiff informed the Defendants that the land belonged to it but the Defendants have continued with the erection of the said building.

7. The Defendants continues (sic) unlawfully to use and occupy the Plaintiff's land.

8. By reason of the matters aforesaid the Plaintiff has been deprived of the use of its land and has thereby suffered damage."

The Appellant thereafter sought relief including the relief subsequently granted by the learned Trial Judge.

4. In their Defence, dated 9th May, 1978, the
p 4 Respondents denied that the relevant land belonged to the Appellant saying that the land described in the Statement of Claim was -

p 4, Ll 16-25 ".....not the land on which the Defendants have entered and erected a building as alleged in paragraph 5 of the said Statement of Claim and they assert that the land on which they have entered and erected a building was not in possession of the Plaintiff prior to the Defendants' taking possession of it. The Defendants will at the trial hereof put the Plaintiff to strict proof of the claims and assertions made in this respect and otherwise in the said Statement of Claim".

The Respondents further pleaded that they had on 19th November, 1976 lawfully entered land conveyed to them by Emmie Grant, Administratrix of the Estate of the late Rufus Grant, by an Indenture of Conveyance dated the 19th day of November 1976.

5. The action came on for hearing before Blake J. on 18th April, 1979. It was adjourned part-heard to 19th April, 11th and 12th July, and 14th, 15th, 16th and 17th August, 1979. On behalf of the Appellant herein eight witnesses were called. Both the Respondents gave evidence on their own behalf and three further witnesses were examined. As the relevant portions of the evidence of all the witnesses are fully reviewed in the Judgment of Georges J.A. it is not now proposed to summarise the same in the course of this Case. At the conclusion of the hearing, the learned Trial Judge reserved his Judgment until 18th June, 1980. pp 6-48

6. The Respondents respectfully submit that in the course of his Judgment Blake J. fell into error in the respects adverted to in the Judgment of Georges J.A. in the Court of Appeal. Accordingly, the Respondents propose merely to summarise the Judgment of Blake J. herein without making further detailed submissions as to the respects in which it is submitted that the learned Trial Judge fell into error.

7. Blake J. commenced his Judgment by setting out the relevant titles of the Appellant herein. He then referred to the title of the Respondents herein to land which had been conveyed to them by Emmie Grant as Administratrix of the Estate of Rufus Grant. The learned Trial Judge then turned to the circumstances in which the dispute had arisen saying that the conveyance to the Respondents herein was said by the Appellant herein to form part of the land already conveyed to it. The learned Trial Judge then reviewed the plans and came on to the evidence of the parties' witnesses. The learned Trial Judge concluded that the evidence of Noel Grant and Albert Grant should be rejected and that it was unsafe to act on the evidence of Hubert Williams. He then accepted the evidence of Leazer Grant, Allan Hanna, Jr. and William Alfred Wallace. He then proceeded to make certain findings of fact and concluded his judgment by stating pp 53-72

> "For all the aforementioned reasons, the Plaintiff has satisfied me on balance of probabilities that the land which it bought p 71, l 33- p 72, l 4

from Rufus Grant in 1964, is the land described by William Alfred Wallace and depicted in Exhibit 1. It seems that Emmie Grant was not aware of the transactions which her husband had had with the Plaintiff Company in 1964, and being unaware of them, proceeded to sell the lot in question to the Defendants, genuinely believing that she had a right to do so. The Defendants appear to have been the unfortunate victims of Emmie Grant's ignorance as well as their own failure to carry out a proper search in the Registry of Records before purchasing the lot and laying out a large sum of money in building their shop. It is also unfortunate that after the conveyances to the Plaintiff came to light in 1978 and even during this litigation, wiser counsel did not prevail to ensure that a course of action was taken to avoid the severe consequences that a judgment against them was bound to entail.

8. Thereafter the learned Trial Judge gave judgment for the Appellant herein for the following relief:

p 72, Ll 9-28

1. A Declaration that the Plaintiff is the owner in fee simple of the lots of land as described in the conveyances referred to in paragraph 3 and 4 of the Statement of Claim and being the land hatched in blue, shown on the plan prepared by Chee-a-Tow and Company Ltd., Land Planners and Surveyors, dated the 4th of July 1978.

2. An Order that the Defendants give the Plaintiff possession of the land described in the Indenture of Conveyance, dated 19th of November 1976, and made between Emmie Grant of Eight Mile Rock in the Island of Grand Bahama and the Defendants, the said land being part of the parcel of land referred to in 1.

3. Mesne profits at the rate of $50 per month as from the 19th day of November 1976 until the Defendants give the Plaintiff possession pursuant to 2.

9. By Notice dated 29th July, 1980, the Respondents herein gave Notice of Appeal against the said Judgment and Order of Blake J. Therein the Respondents, by way of Grounds of Appeal, alleged that Blake J. had misdirected himself as to certain specified matters of evidence and in particular that he had erred in holding:

"that the Defendants were in effect required to discharge the burden of proving the situation of the lands comprised in the Plaintiff's conveyances."

10. The appeal of the Respondents herein to the Court of Appeal came on for hearing, on a date that does not appear in the Record, before Blair-Kerr, P. Georges and Jasmin JJ.A. On 19th June, 1981, the appeal was allowed by that Court. Blair-Kerr, P. and Jasmin J.A. delivered short Judgments concurring with the Judgment of Georges J.A. p 95

11. In his Judgment Georges J.A. set out the history of the matter. Georges J.A. then correctly reminded himself as to the appropriate test to be employed in reversing findings of fact, He then held, it is submitted correctly, that the Trial Judge had inverted the onus of proof. He pointed out that there was no obligation upon the Respondents herein to suggest where the land purchased by the Appellant herein was supposed to be found. Thereafter Georges J.A. correctly, in the submission of the Respondents, pointed out that once the Defendants were in possession of a parcel of land they need do no more than plead possession in their defence and it would then be up to a Claimant to establish the identity of the parcel he claimed to have purchased. Details were then given of how the learned Trial Judge had fallen into error by Georges J.A. pp 83-94

12. Subsequently in his Judgment Georges J.A. correctly pointed out that whole of the case for the Appellant herein rested on the identification of the "family residence". After carefully reviewing the evidence Georges J.A. correctly concluded that the only evidence of identification rested on Mr. Wallace and that evidence was flawed by a contradictory statement in cross-examination. It was then pointed out that in any event the learned Trial Judge had approached the matter from an incorrect basis whereas there was no doubt whatever about what the Respondents herein had purchased. The learned Judge of Appeal then held, correctly, in the submission of the Respondents herein, that the Appeal should be allowed and Judgment entered for the Respondents both before the Court of Appeal and in the court below.

13. By an Order, dated 11th December, 1981, the

Appellant herein obtained Final Leave to Appeal to Her Majesty in Council.

14. The Respondents respectfully submit that the Appeal of the Appellant herein against the said Judgment and Order of the Court of Appeal of the Commonwealth of the Bahamas should be dismissed with costs for the following, amongst other

R E A S O N S

(1) BECAUSE the Judgment of the Court of Appeal was right both as to facts and law. 10

(2) BECAUSE the Judgment of the Supreme Court was wrong in the respects mentioned in the Judgment of the Court of Appeal, and

(3) BECAUSE on the facts of the case Judgment ought to be entered for the Respondents herein.

NIGEL MURRAY

No. 20 of 1983

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CASE FOR THE RESPONDENTS

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