

Privy Council Appeal No. 2 of 1993

(1) Noel Gregson Graham Davis and
(2) Cecile Inez Graham Davis

Appellants

v.

(1) Henry Strickland Charles
(2) Samuel Joseph
(3) Johana Charles
(4) Paget Joseph
(5) Ronald Michael and
(6) Steadman Scotland

Respondents

FROM

THE COURT OF APPEAL OF ANTIGUA
AND BARBUDA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
21ST FEBRUARY 1994

Present at the hearing:-

LORD KEITH OF KINKEL
LORD JAUNCEY OF TULLICHETTLE
LORD SLYNN OF HADLEY
LORD WOOLF
LORD NOLAN

[Delivered by Lord Jauncey of Tullichettle]

This appeal arises out of a dispute between the parties as to the ownership of a piece of land known as "the Bluff" extending to 10.29 acres in the Parish of St. Paul on the island of Antigua. The Bluff was formerly part of the Patterson's and Horsford Estate which extended to some 407 acres.

In 1926 a certificate of title was granted to David St. John Herd ("Dr. Herd") as proprietor of the Patterson's and Horsford Estate. Dr. Herd died in 1935 vested in the said estate less an area of 0.202 acres which he had transferred to the Governor of the Leeward Islands on 22nd July 1932. By his will dated 18th January 1935 Dr. Herd appointed James A. Pigott and another to be his executors and trustees and he left the residue of his estate, which included the Patterson's and Horsford estate, in trust for his daughter, Mrs. Ellie Joyal, who resided in Oklahoma. James A. Pigott, as sole qualifying

executor, obtained a certificate of title to the Patterson's and Horsford estate on 27th November 1956 and Mrs. Joyal obtained a similar certificate on 10th December 1956 by transference from Pigott. Sometime later in 1956 or in 1957 the whole of the Patterson's and Horsford estate, with the exception of the Bluff, was sold to the Crown. In 1975 the appellants completed negotiations for the purchase from Mrs. Joyal of the Bluff and obtained a certificate of title thereto consequent upon a memorandum of transfer on sale of 7th July 1975. Following upon the introduction in September 1975 of new legislation governing the registration of title to land the appellants obtained registration in the Land Register as absolute proprietors of the Bluff on 24th October 1978.

The respondents claimed that notwithstanding the appellants' registered title they had a superior title derived from the prescriptive possession of one John D. Charles who was for many years the overseer or manager of the Patterson's and Horsford estate until the sale to the Crown and who continued to live in the house on the Bluff until his death, aged 87, in November 1974. John D. Charles had, during 1971, granted conveyances covering the whole of the Bluff to the respondents or their predecessors in title. It is unnecessary at this stage to refer in more detail to the respondents' claim.

By letter of 3rd October 1975 the appellants required John D. Charles' disponees, all of whom were in possession of parts of the Bluff, to give up that possession. In 1985 the appellants initiated proceedings against the disponees seeking *inter alia* declarations that they were the owners in fee simple of the Bluff and that they were entitled to possession thereof. The disponees counterclaimed *inter alia* for declarations that they were entitled to possession of their respective parcels of land by virtue of the Real Property Limitation Act and that the appellants' certificate of title was void and should be cancelled. Byron J. dismissed the appellants' claims and upheld the counterclaim. The Court of Appeal whose judgment was delivered by Floissac C.J. upheld the decision of Byron J. and dismissed the appeal. Before this Board Dr. Ramsahoye Q.C. presented two arguments of which the first requires detailed consideration of the relevant statutory provisions governing the registration of titles to land in Antigua.

Before the autumn of 1975 registration of title was governed by the Title by Registration Act, Cap. 293, which dated from 1887. Section 12 set out the various circumstances in which land might for the first time be registered under the Act and the formalities required to be completed by an applicant for registration. Section 13 provided *inter alia*:-

"The Registrar of Titles shall thereupon submit such titles, deeds and documents to a Judge, and if such Judge shall be satisfied that the person presenting the request is entitled to have a certificate of title issued

to him, the Registrar of Titles shall issue such certificate of title accordingly, ..."

Thus initial registration of land required judicial approval. Sections 20 and 21 provided machinery for transference of land already registered whereby the transferee could be registered in place of the transferor. Section 8 provided that all certificates of title granted under the Act should be indefeasible which word was defined in the First Schedule to the Act in *inter alia* the following words:-

"INDEFEASIBLE. The word used to express that the certificate of title issued by the Registrar of Titles, and the notings by him thereon, cannot be challenged in any Court of law on the ground that some person, other than the person named therein as the registered proprietor, is the true owner of the land therein set forth, or ...; except on the ground of fraud connected with the issue of such certificate of title, or the noting of such mortgages or incumbrances, or that the title of the registered proprietor had been superseded by a title acquired under the Real Property Limited Act, by the person making the challenge."

Section 2 of the Real Property Limitation Act, Cap. 290 provided *inter alia* that:-

"... no person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims:"

Finally section 34 of the Title by Registration Act provided as follows:-

"Where any person has acquired, or claims to have acquired, under the Real Property Limitation Act the ownership of land brought under the operation of this Act, he shall present a request to the Registrar of Titles to have a certificate of title issued to him in lieu of the registered proprietor in the original certificate of title, and the person who has acquired, or claims to have acquired, such ownership shall not be entitled to maintain any suit in regard to such land until he shall have obtained a certificate of title thereto. When a request for such a certificate of title is presented to the Registrar of Titles, he shall state a case to the Court, and shall not issue a certificate of title on such request until he has received the direction of the Court thereupon."

It is apparent from these provisions that a title registered under the Title by Registration Act could only be superseded by a prescriptive title acquired under the Real Property Limitation Act where the court had directed

the Registrar to issue a certificate of title to the person claiming under section 34 of the former Act. No such supersession of the certificate of title of Mrs. Joyal or of the appellants had taken place prior to the coming into effect in September 1975 of the new legislation governing registration of title. At that time the appellants had a certificate of title which was indefeasible as defined in the Title by Registration Act.

The 1975 legislation was embodied in three statutes of which two, the Land Adjudication Act and the Registered Land Act, contained provisions which are relevant to this appeal. The Land Adjudication Act made provision for the adjudication of rights and interests in land which could thereafter be registered under the Registered Land Act. Section 6 provided for the preparation and publication of a notice in respect of each separate piece of land to be adjudicated upon, which notice should by sub-section (1)(c) thereof:-

"(c) declare that any interest in land within the adjudication section which is registered under the Title of Registration Act will be carried forward to the new register established under the Registered Land Act, 1975;"

Section 15 provided *inter alia* :-

"15.(1) If in any case -

...

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them.

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer.

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign a record of the proceedings:

Provided that nothing in this section shall empower the Adjudication Officer to vary an interest in land registered under the Title by Registration Act."

An identical proviso to that in section 15 was also repeated in sections 20 and 22 which dealt with petitions against a published adjudication record and correction of an adjudication record.

Section 10(1) of the Registered Land Act provided for the compilation of the Land Register from adjudication records which had become final in accordance with the provisions of the Land Adjudication Act. Section 10(2) provided:-

" (2) Any person having an interest in any parcel registered under the Title of Registration Act shall be given notice by the Registrar in writing that the particulars of his registration have been transferred to the Land Register compiled under this Act and thereupon the Title by Registration Act shall cease to apply to such parcel and this Act shall apply thereto."

Section 23 of the Registered Land Act provided that registration of a person as proprietor of a parcel of land vested in that person absolute ownership but subject:-

"(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register:"

Section 28 provided *inter alia*:-

"28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register -

...

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;"

Since both the appellants and John D. Charles' disponees claimed ownership of the Bluff the Recording Officer referred the matter to the adjudication officer in accordance with section 15(1) of the Land Adjudication Act. The adjudication officer decided that he had no power to vary an interest in land registered under the Title by Registration Act and he accordingly recorded the appellants as owners of the Bluff by virtue of their Certificate of Title and further recorded the existence of the disponees' counterclaims in a Note to the Registrar in the Adjudication Record. In his decision he further noted that counsel for the appellants and for three of the disponees had agreed that the recording of evidence by him would be futile.

Dr. Ramsahoye argued forcefully that the adjudication officer was wrong to decide that he had no power to vary the appellants' certificate of title. He referred to section 16(1)(a)(ii) and (2)(b) of the Land Adjudication Act which were in *inter alia* the following terms:-

"16.(1) In preparing the adjudication record -

(a) if the Recording Officer is satisfied that a person -

...

(ii) has a good documentary title to the parcel and that no other person has acquired or is in course of acquiring a title thereto under any law relating to prescription or limitation, and that he would succeed in maintaining and defending such possession or title against any other person claiming the land or any part thereof, the Recording Officer shall record that person as the owner of the parcel and declare his title to be absolute;

(2) For the purpose of this section -

...

(b) 'good documentary title' means a title registered under the Title by Registration Act, or ..."

These provisions, it was submitted, showed that where A had acquired a prescriptive title against B who had a registered title the adjudication officer was not obliged to include A's registered title in the record. Furthermore the disponees had not raised the question of prescriptive possession before the adjudication officer, relying entirely on the conveyances in their favour by John D. Charles with the result that they had lost the right to raise the matter before the courts. In any event the appellants' title having been registered under the Registered Land Act any prescriptive period must run from the date of that registration which was less than 12 years before the commencement of the present proceedings.

Their Lordships have no doubt that these arguments are unsound. The scheme of the 1975 legislation was that an interest registered under the Title by Registration Act would be registered in the 1975 Land Register without alteration but that such registration would not affect the existence of overriding interests such as rights acquired or in process of being acquired by prescription. This was an eminently logical approach since many of the overriding interests detailed in section 28 are of a character which might very well not be apparent to an Officer visiting the land in the performance of his duties under the Land Adjudication Act. It would be manifestly unfair that a person who had acquired or was in the process of acquiring an overriding interest in a parcel of land and upon whom no specific notice had been served should forfeit such interests simply because he had not become aware of the publication by the adjudication officer of the statutory notice under

section 6 of the Land Adjudication Act 1975. It was no doubt one of the purposes of section 28 of the Registered Land Act to avoid such unfairness. In their Lordships' opinion the proviso to section 15 left the adjudication officer with no alternative but to record that ownership of the Bluff should be vested in the appellants. In so doing he made no decision as to the validity of the disponees' counterclaim leaving it to them to pursue their remedies through the courts. Indeed the acceptance by some of the disponees that it would be futile for the adjudication officer to record evidence emphasised that this was the case. It follows that the respondents did not lose any overriding interests which they or their predecessors in title possessed at the date of the appellants' registration and are in no way barred from seeking now to enforce those interests. In the event of their success in this appeal it will be open to them to apply to the Registrar for registration as proprietors under section 135(2) of the Registered Land Act.

In upholding the respondents' counterclaim both Byron J. and the Court of Appeal held that John D. Charles by himself or through the persons who in 1971 became his disponees had occupied the Bluff as owner from 1956 to 1971 when he executed the conveyances in favour of the respondents and their predecessors in title and that he thereby acquired a possessory title. They also held that during these years neither Pigott nor Mrs. Joyal performed any act of ownership or possession in relation to the land. As a result the respondents' occupational rights fell to be treated as overriding interests protected by section 28 of the Registered Land Act. Dr. Ramsahoye's second argument challenged these conclusions and he submitted that since John D. Charles had, as manager of the estate, been living in the house on the Bluff for a number of years prior to 1956, there was insufficient evidence to establish that his continued occupation had become due to an assertion of ownership rather than a licence to occupy for the remainder of his life granted by Pigott.

Byron J. and the Court of Appeal found that James A. Pigott had sold the Bluff to John D. Charles. The evidence upon which Byron J. relied was that of one McChesney George who had been Peasant Development Officer at the time of the sale of the major part of the estate to the Crown. George spoke to Pigott who informed him that he intended to give the Bluff to John D. Charles as he had obligations to him. There was also the evidence of the respondent, Joseph Charles, that John D. Charles had told him that Pigott had given him the Bluff. Although Byron J. did not refer to this piece of evidence he accepted the evidence of Joseph Charles to the effect that although the conveyances by John D. Charles were signed in 1971 the actual sale, followed by assumption of possession by the disponees, had taken place in the 1960's. There may be doubt as to whether Pigott sold or gave the Bluff to John D. Charles but there

was certainly evidence from which the trial judge and the Court of Appeal were entitled to conclude that he had somehow sought to transfer ownership to him. Byron J. accepted the evidence of McChesney George that, after his above-mentioned conversation with Pigott, John D. Charles began, for the first time, to cultivate the Bluff and that by 1960 or 1961 some of the Bluff had been divided by fences. This evidence fitted in with that of Joseph Charles to the effect that John D. Charles' disponees had entered into possession in the 1960's. There was no suggestion that prior to Pigott's attempt to transfer ownership to John D. Charles the latter had a personal interest in any part of the Bluff other than the house thereon in which he lived. There was further evidence, accepted by both Byron J. and the Court of Appeal, that John D. Charles had paid the property tax in respect of the Bluff for the years 1968 to 1972. The Court of Appeal considered that such payments by an occupier of land had always been regarded as unequivocal acts of ownership. There was, however, no evidence as to who had paid the tax prior thereto.

In 1971 before the conveyances to the respondents or their predecessors in title John D. Charles in an attempt to obtain a documentary title to the Bluff conveyed the land for a specified sum to his brother H.C. Charles who promptly reconveyed it for the same sum to John D. Charles. This exercise was held by Byron J. to be ineffective to achieve the desired objective but both he and the Court of Appeal considered it to be evidence of John D. Charles' contention as to his ownership of the land. This is no doubt correct but their Lordships do not consider that it constitutes evidence of adverse possession since there was no suggestion that Mrs. Joyal knew or could have known of the transaction.

The evidence of adverse possession by John D. Charles and his disponees during the period from 1956 to 1971 is not particularly strong. However during that period Mrs. Joyal took no step, indicative of an assertion of her right of ownership, and it appeared from correspondence that she did not even know what was happening. On the evidence it is clear that had she visited the Bluff the fencing and cultivation would have been apparent to her. In all the circumstances their Lordships do not think that Byron J. and the Court of Appeal can be criticised for concluding that by 1971 there had been established overriding interests in the Bluff which could properly be relied upon by the respondents. It follows that the judgment of the Court of Appeal must be affirmed and their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The appellants must pay the respondents' costs before their Lordships' Board.