

[2018] UKFTT 440 (PC)

**PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

**REF No 2017/0685
BETWEEN**

JANE RYAN

Applicant

and

BRIDGET MURPHY

Respondent

**Properties: 70 and 72 Church Street, Kingsbridge 7Q7 1DD
Title Numbers: DN611370 and DN120778**

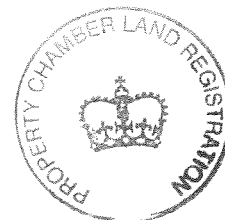
ORDER

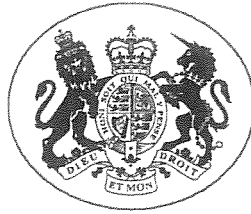
The Chief Land Registrar is ordered to give effect to the application dated 25 October 2016

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 31st day of July 2018





[2018] UKFTT 0440 (PC)

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LAND REGISTRATION DIVISION**

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LAND REGISTRATION ACT 2002

**REF No 2017/0685
BETWEEN**

JANE RYAN

Applicant

and

BRIDGET MURPHY

Respondent

**Property: 72 Church Street, Kingsbridge TQ7 1DD
Title number: DN120778**

**Before: Judge McAllister
Plymouth Tribunal Centre
17 July 2018**

Representation: both parties appeared in person.

DECISION

Introduction

1. The Applicant, Mrrs Ryan, is the registered owner of 70 Church Street, Kingsbridge ('Number 70') under title number DN611370. The Respondent, Mrs Murphy, is the registered owner of the adjoining property, 72 Church Street ('Number 72') under title number DN120778.

2. Prior to the root conveyance of Number 72 on 27 October 1965 both properties were owned by the Dodbrooke Parish Charity (as it was, or became) ('the Charity'). The Charity owned a number of properties in Church Street. Over the course of a number of years, some or all of these properties were disposed of to raise funds for the Charity.
3. The cottages on Church Street are estimated to be at least 200 years old. The layout has altered over time, leading to a number of conveyancing issues.
4. The issue in this case is the ownership of a hallway or accessway, access to which is through the front door of Number 70 or through the back door at the end of the passageway, which in turn leads onto a small yard, and from there to a steep flight of steps. The steps lead to the gardens of Number 70, 72 and 68. I will simply refer to this as the 'disputed area'. There is no direct access to the disputed area from Number 72. The yard and steps are part of the title of Number 70.
5. The property register of title DN611370 (Number 70) describes the property as: '*The freehold land shown edged red on the plan of the above title filed at the registry and being 70 Church Street, Kingsbridge (Q7 1DD) NOTE: as the part tinted blue on the title plan the ground floor entrance and stairs to the first floor are excluded from the title*'. The land tinted blue is the disputed area.
6. The property register of title DN120778 (Number 72) describes the property as: '*The freehold land shown edged with red on the plan of the above Title filed at the registry and being 72 Church Street Kingsbridge... NOTE: As to the part numbered 1 on the filed plan only the ground floor entrance and stairs leading to the first floor are included in the title*'. The part numbered 1 is the disputed area.
7. By an application dated 25 October 2016 Mrs Ryan applied to alter the title to Number 70 pursuant to paragraph 5 of Schedule 4 to the Land Registration Act 2002 to remove the note to entry number 1. Her case, simply stated, is that the disputed area forms part of the title of Number 70 or, in any event, has been used exclusively as part of Number 70 since 1965 if not before: the entry is therefore a mistake. Ms Murphy objected to the application and the matter was referred to the Tribunal on 20 July 2017.

8. There is no issue between the parties that the register of Number 70 is incorrect in so far as it refers to the stairs leading to the first floor. The stairs in Number 70 are unarguably part of Number 70.
9. For the reasons set out below I will order the Chief Land Registrar to give effect to the application. It may also be necessary for the Land Registry to amend the title plan to DN120778 to make it clear that the ground floor and stairs referred to in the property register are not the disputed area, but the ground floor and stairs underneath the flying freehold of Number 70. The Land Registry will, in the usual way, receive a copy of this decision and I will specifically draw their attention to this concern. It may be advisable to request a further survey of the interior of both properties on the ground and first floors.

Layout of the properties

10. Before turning to the conveyancing history of the two properties it is helpful to describe the two properties.
11. Access to both properties is by means of ‘an up and over’, that is to say two flights of steps leading to a raised area above the pavement, and in turn leading to the front doors of Numbers 70 and 72. There is a small wall across the raised area between the two front doors, so that it is not possible to pass from Number 70 to 72 (or vice versa) without going down the steps, along the pavement and up again. I have seen two photographs, one taken in 1965 and one taken considerably later (possibly at the turn of the 20th century) both of which show a gate or barrier where the little wall now is.
12. The entrance to Number 70 is, as I have said, through the front door leading to the disputed area. On the righthand side, there is a further door leading to the front room of Number 70. The steps to the upper floor are of a back room, some distance away from the disputed area. On the first floor and above the hallway and stairs of Number 72 there is a flying freehold which consists of a small bedroom and toilet.

13. The disputed area contains a further wooden door, leading to a smaller area, which in turn leads to a back door which can be bolted from the inside only. This door gives onto a very small paved area and then to a flight of steep stone steps. Almost at the top, to the right, is the entrance to the garden of Number 70. Further up, to the left, is the entrance of the garden of Number 72. Above and to the east of the garden of Number 70 is the garden of Number 68. Access to this garden is along a pathway, divided from the bottom of the garden of Number 70 by a fence, then up the steps, and beyond.
14. The front door of Number 72 gives onto an open living room, and a flight of stairs almost immediately in front of the front door. The flying freehold is above the area between the front door and the stairs and (at least part of) the stairs. Mrs Murphy had removed the plaster from the wall immediately to the right of the front door to show what appears to have once been a doorway leading to the disputed area. This consisted of lath and plaster, and further towards the stairs, to some upright boards.
15. It is also possible to access the small yard at the rear from a door in the side of Number 72.

Conveyancing history

Number 72

16. There is no copy available of the 1965 Conveyance (of number 72). Entry A2 in the property register provides as follows: *'TOGETHER WITH the appurtenances thereunto belonging or anywise appertaining and particularly (in common with the Trustees or other the owners or occupiers for the time being of the adjoining premises on the Southerly side of the property hereby conveyed) a right of way on foot only at all times and for all purposes over and along the steps shown coloured green on the said plan and over and along the steps and footpath at rear of the dwellinghouse hereby conveyed shown coloured brown on the said plan the Purchaser contributing a proportionate part of the cost of the maintenance of such steps and footpaths and TOGETHER WITH the right as hitherto enjoyed to the flow of water from the downpipe on the Southerly side of the said dwellinghouse across the land coloured brown to the drain'*. The register then notes that the land coloured brown and coloured green on the said plan is tinted brown and yellow respectively on the filed plan.

17. The colouring on the filed plan shows the yard and steps to the gardens as coloured in yellow/brown and it would seem that the steps coloured green are outside Number 70. But I have to say that the colouring is not entirely clear. There is no right of way over the disputed area. The property on the 'southerly side' is Number 70.
18. A3 of the register contains another provision in the 1965 Conveyance: *'IT IS HEREBY AGREED AND DECLARED that the wall dividing the dwellinghouse hereby conveyed from the adjoining property on the Southerly side shall be deemed to be a party wall and repairable accordingly and further that the right to the flow of water drainage gas and electricity through and along the pipes wires or cables over or under the property hereby conveyed and the adjoining property of the Trustees and all other rights and easements or rights in the nature of easements shall henceforth be used and enjoyed by the Trustees and Purchaser in as full and ample manner as the same have been hitherto enjoyed under one ownership.'*
19. Mrs Murphy was registered as owner on 17 July 2007. I am told that there were three other owners before her. I have seen the memorandum of sale between Mrs Kerr and Miss Fletcher and Mr Harvey dated 18 February 1991. The particulars of sale make no reference to any access through the disputed area. The outside area is described as flagstone steps leading from the side of the property to the rear garden.

Number 70

20. The trustees of the Charity applied, through their solicitors, Windeatts, for first registration of Number 70 on 9 May 2011. The application was based on two statutory declarations deposing to the fact that the Charity did not have in its custody any documents relating to the title of the property.
21. The statutory declarations were made by David Tucker, a trust and probate clerk employed by Windeatts, who had been appointed as the Charity's clerk in June 1973, and by Kenneth Fewings Court, who had been a trustee of the Charity for 20 years. Mr Tucker collected the rent from the tenants of the property (and other properties). In the last 12 years Number 70 had been let to a Mr Martin and a Miss Luscombe. He deposed to the fact that the Charity had been in full and undisturbed possession of the

Property. Mr Court made a declaration in similar terms. Both attached a plan to their declarations, which I have not seen, but which (it seems to me clear) included the disputed area.

22. That the plan included the disputed area is clear from the copy of the register for Number 70 dated 11 May 2011. The entry at A1 is unqualified, and the filed plan clearly includes the disputed area. This granted possessory title only to the named trustees of the Charity. On 12 May 2011 the Land Registry wrote to Windeatts stating that the land tinted blue (the disputed area) had been excluded from the registration of that title because it had already been registered under title DN120778. Windeatts raised a query on this point, stating that their clients owned the upper level, and asking why it was that possessory title only had been granted.
23. On 20 May 2011 the Land Registry replied stating that the title had been amended to an absolute title. The letter also stated that the title plan had been amended and a note added limiting the extent in respect of the piece of additional land to exclude the ground floor entrance and stairs to the first floor.
24. Windeatts again expressed their concern over the note to Entry 1 in the register, stating that the area excluded might not be correct. They also raised a query as to why the right of way in favour of Number 72 (over the front steps and the steps leading to the gardens) was not entered as a burden in the register of Number 70. The Land Registry's reply (and I have not seen the full copy) dealt with the easement point and not the title point.
25. The first proposed purchasers of Number 70 (Mr and Mrs Steer) pulled out of the purchase due to the difficulties created by the flying freehold. Mrs Ryan's solicitors raised the same queries. I have not seen the full conveyancing file but it is clear that the difficulties posed by the flying freehold and the entries in the registers regarding the extent of the two titles were once again raised but not resolved.

Numbers 22, 30, 64 and 68 Church Street.

26. I have seen the register for the above titles. The title to number 22 derives from a lease of 1000 years from 15 May 1802. By a conveyance dated 29 September 1943 the

residue of the term was converted into a fee simple. In this title, as to part only the ground floor was included and as to part only the ground floor was excluded. There are no further details.

27. Title to number 30 derives from an assent dated 26 February 1959. The property has the burden of a number of easements, in favour of Number 28, including ‘*a right of way over the covered passage and the steps leading from Church Street aforesaid and coloured blue on the said plan from time to time when necessary and with workmen and apparatus necessary for the repair of the adjoining property Number 28 Church Street and for the carriage of manure and apparatus for the cultivation of the garden*’ Unfortunately the title plan does not show the passage or steps.
28. The root conveyance of Number 64 is a conveyance dated 31 March 1970. Again, it is interesting to note that the rights of way granted by this conveyance extend not only to the yard and steps (at the back) but also through the ‘covered passageway’. The relevant colouring is visible on the title plan.
29. The root conveyance of Number 68 (now owed by Mrs Ayers) is dated 3 April 1968. This title has the benefit of the following right: ‘*Together also with the right of the purchasers and his successors in title the owner or owners for the time being of the property hereby conveyed at all times and for all purposes to pass and repass on foot only over and along the pathway coloured brown on the said plan*’. I do not have the title plan to this title, but it is clear that the pathway is not a covered passageway.
30. The reference to the above titles is only intended to show something of the complexity of the rights and burdens granted and reserved in respect of other properties on Church Street. Some properties were granted rights over a ‘covered passageway’, others were not.

Evidence

31. I heard evidence from Mrs Ryan and Mr Dodwell (a trustee of the Charity) and from Mrs Murphy. On behalf of Mrs Ryan I also have read statements from Mrs Ayers, Sue and Adrian Martin, Mrs Wingate, and David Harvey, and a letter from Mrs Noyce.

32. The statements, together with the letter from Mrs Noyce, are all of a piece. Mrs Noyce was the first purchaser of Number 72 in 1965. She stated in the letter (written for her by Mrs Ryan but signed by her) that she never used the disputed area or the door at the back of Number 70. She was not aware of any right of way over the disputed area, but gained access to her garden from her back door, up the garden steps. Mrs Murphy criticised this statement because it was not written by Mrs Noyce. Mrs Noyce is clearly very elderly, and I fully accept the evidence of Mrs Ryan that she wrote what Mrs Noyce told her. Mr Harvey purchased Number 72 in 1991. He too stated that he had no access through the disputed area.
33. Sue and Adrian Martin lived at Number 70 from March 1995 to January 2011. Mrs Murphy did not live at Number 72 when they first moved there, and at no time did Mrs Murphy use the passageway or have a key to it. The space between the middle door and the back door of the passageway was used as a store making access impossible in any event.
34. Mr and Mrs Ayers have lived at number 68 since 1978. Her family owned number 68 since 1967 and number 66 since 1973. All four properties belonged at one time to the Charity. Mrs Ayers has known 6 different owners of Number 72 and none to her knowledge ever made any claim to ownership of the disputed area.
35. Mrs Wingate is the chairman of the Charity. She stated that nothing had changed in relation to the layout of Numbers 70 and 72 since Number 72 was first sold in 1965. In her view the title to Number 72 does not reflect the true position, and this only became apparent when the Charity was in the process of selling Number 70 to Mrs Ryan. No owner of Number 72 (including Mrs Murphy) had laid claim to the disputed area before this dispute. In living memory both Numbers 70 and 72 had their own front door and hallways. The only access over Number 70's land is over the steps at the back to allow access to the garden of Number 72.
36. Although none of the above witnesses attended to give evidence, I accept their evidence for the reasons set out more fully below.

37. I turn now to the oral evidence given at the hearing. Mr John Dodwell's knowledge of Church Street is extensive: he was born in one of the houses; he owned number 84 and his mother owned number 38. As a trustee he was well aware of the complications caused by the fact, as he put it, that the legal conveyancing documents did not always reflect what was on the ground. He became a trustee at the time Number 70 was sold to Mrs Ryan, but was not involved in the sale. He had visited Number 70 when it was empty before the sale.
38. He expressed surprise (shared, he said, by all the trustees) that any issue should have been raised as to the ownership of the disputed area. Whilst it may be the case that 100 years ago or so there was a shared passageway leading to the gardens, this had long gone. Number 84 once had a shared passageway but was incorporated into the house.
39. It remains something of a mystery, he said, as to why Number 72 had its own front door if, as Mrs Murphy claimed, the front door to each property was once off the disputed area.
40. In his view, the entry in Mrs Murphy's title as to the ground floor and stairs is correct: the colouring on the plan is mistaken, although the scale is so small that it is difficult to be sure. . The trustees, at the time of the sale of Number 70, believed that they were selling the disputed area to Mrs Ryan.
41. Mrs Ryan lived at Number 70 in the 1980s and gave evidence that the entrance hall was then as it is now, and that no-one else had access to it. The dispute between the parties began in September 2005 when Mrs Murphy first asked for a key to the front door and then posted a note through her door asking for the key to the front door and that the back door be left open. The reason for this request was that Mrs Murphy was carrying out works to Number 72 and needed access to the back through the disputed area. Her claim initially was that she had right of way over the disputed area.
42. Mrs Murphy instructed Windeatts (who, it will be recalled, acted for the Charity on the sale of Number 70) who wrote to Mrs Ryan later in that autumn. The claim was made (not, as I believe, backed by any evidence) that 'historically no lock was fixed ' on the front door of Number 72, and threatening to remove the lock.

43. In February 2017 Mrs Murphy issued proceedings in the County Court seeking a declaration that she was the owner of the disputed area or in the alternative that she had a right to pass and repass over this area and requesting a key to the front door. The particulars also allege that first, there exist/existed alleyways all along the terrace enabling access to the rear of the properties and secondly that the alley was enclosed by a PVC door in November 2005 and thirdly that during Mrs Murphy's ownership until Mrs Ryan purchased Number 70 in August 2011 Mrs Murphy enjoyed access to and from the back garden of number 70 using the key left in the hallway. In evidence Mrs Murphy stated that these details had been added by the solicitors.
44. Those proceedings have been stayed pending the outcome of this case on 20 July 2017.
45. Mrs Murphy stated in evidence that she had been told when she purchased her property in 2007 that she had rights of access over the disputed area by the estate agents and her solicitors. There is no written record of any such advice. Mrs Murphy also stated that, in fact, she only used the disputed area when Number 70 was empty (in the months prior to the sale to Mrs Ryan): the front door was open, and the key was on the electricity meter. Sean Raymont, her son, made a statement confirming his mother's account, and stating that when Number 70 was empty he went through the back door of the passageway which was not locked but was very stiff and opened the front door with a key left on the electricity meter. He stored a ladder, bucket and other items.
46. A further problem has arisen. There is evidence of flooding under the stairs of Number 72. South West water are of the view that this is not due to any leakage from the public water and sewerage infrastructure but may be due to a problem with a galvanised iron pipe which appears to be a joint supply to both properties. The writer was not able to gain access to the disputed area.
47. Mrs Ryan stated at the conclusion of the hearing that she would allow South West Water or any other surveyor concerned with the source of the flooding access to the disputed area. This right may in any event be found in entry A3 of the title to Number 72, or failing that, might be exercisable under the Access to Neighbouring Land Act 1992. This is not a matter I need consider further.

Conclusion

48. Entry A1 in the title of Number 70 is clearly a mistake. The mistake arose on the occasion of the first registration of Number 70 in 2011. It is not made as a result of any title documentation relating to Number 70 but simply in order to ensure that the entry in the title of Number 70 matched or corresponded with the entry in the title to Number 72. The two statutory declarations made in support of first registration clearly included the disputed area as part of Number 70.
49. The entry in A1 of the title to Number 72 is correct in so far as it states that only the ground floor and stairs leading to the first floor are included in that title because the area immediately above the ground floor entrance and stairs is part of Number 70 (the flying freehold). The mistake in this title lies in the title plan which shows ground floor and stairs of Number 70 as the disputed area. The ground floor and stairs referred to in this title should be shown as the entrance hall and stairs in Number 72. Had a survey been carried out at the time of the first registration of Number 70 this problem would have been avoided. That there is a mistake on the title of Number 70 is further confirmed by the fact that, on any basis, the stairs in Number 70 form part of Number 70.
50. The statutory declarations made at the time of the first registration of Number 70 were accurate: the disputed area formed part of Number 70. Although I did not hear from any of the witnesses (other than Mr Dodwood) the evidence given is entirely consistent with Mr Ryan's own recollection of the layout of Number 70 in the 1960s, and with the evidence given by Mr Dodwood as to the Charity's understanding of the position. I accept the evidence given on behalf of Mrs Ryan.
51. In short, there is no evidence at all to suggest that, at any time since 1965 if not before, the disputed area was part of a shared access way not forming part of the title of Number 70 or, alternatively, subject to any rights of way in favour of Number 72. There may have once been a door in the disputed area leading to Number 72 but this was closed off many years ago: the fact that lath and plaster, and not plaster board, was used gives some indication of the age of the door. (if such it was). But I have had no expert or other evidence as to the existence of any door, and it is undoubtedly odd

that Number 72 had a front door giving onto the street and a further door off the disputed area.

52. The effect of the evidence is that, in any event, even if (and I do not find this to be the case) the disputed area of part of it formed part of the title of Number 72, it had been acquired by adverse possession by the Charity prior to the sale to Mrs Ryan.
53. I do not accept Mrs Murphy's evidence that she always believed the disputed area to be part of her title, nor that she frequently used this area. At most, there may have been one occasion when Number 70 was empty and, in one way or another, access was gained to the disputed area to carry ladders and other equipment.
54. I also do not accept Mrs Murphy's analysis that the wall between Number 72 and the disputed area is no more than a partition wall, the party wall being the wall between the disputed area and Number 70. This is the wall referred to in the entry A3 of this title.
55. Although the reference is concerned with the ownership of the disputed area, I also find that there is no express right of way in favour of Number 72 over the disputed area and none has been acquired by prescription. The rights over Number 70 are limited to the front steps (in practice of no use, because of the little wall between the two front doors) and the steps leading to the gardens.
56. For all these reasons, therefore, I will order that the register of the title to Number 70 be altered to remove the note to entry 1 on the grounds that this is a mistake. As mentioned above, it seems to me advisable for the Land Registry to alter the plan of Number 72 so as to make it clear that the ground floor entrance and stairs referred to are those found in Number 72 and not the disputed area.

Costs

57. Both parties are in person. Mrs Ryan, as the successful party, is entitled to costs incurred by way of disbursements (such as photocopying and postage) and £19.00 per hour for time spent on the case. These costs can only be claimed from the date of the reference to the Tribunal (20 July 2017) (though reference should also be made to paragraph 9 of Schedule 4 to the 2002 Act).

58. If a claim for costs is to be made, a schedule (supported by receipts) must be sent to the Tribunal and served on Mrs Murphy within 14 days. Mrs Murphy may of course object to the amount sought within 14 days of receipt.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 31st day of July 2018

