

IN THE PRIVY COUNCIL

No. 42 of 197~~8~~7

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

MILDRED PARRIS
(Defendant)Appellant

- and -

SOOKDAYAH DOOKIE
(Plaintiff)Respondent

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CASE FOR THE APPELLANT

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1. This is an appeal from a judgment dated the 2nd day of February 1976 of the Court of Appeal of Trinidad and Tobago (Hyatali C.J., Phillips and Rees J.J.A.) dismissing an appeal from a judgment dated the 29th day of May 1972 of the High Court of Justice of Trinidad and Tobago (Achong J.) granting the Respondent a declaration that she was the fee simple owner of a parcel of land situate at D'Abadie Village in the ward of Tacarigua, Trinidad. The learned judge also granted the Respondent an injunction restraining the Appellant from entering or remaining upon the said area of land and further ordering the Appellant to pay 500 dollars damages for trespass to the Respondent.

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2. The principal issue to be determined on this appeal is whether an action part-heard before one trial judge can be retried in full before a second trial judge without the express consent of both parties to the action.

3. The Appellant and the Respondent are the owners of two contiguous parcels of land situate at the Eastern Main Road, D'Abadie, Trinidad. Prior to 1918 the two parcels of land formed one parcel of land belonging to one Samuel William

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P.38 11.14-15

Record

- P.38 11.15-24 Gilkes. By a Deed dated the 27th day of May 1918 the said Samuel William Gilkes conveyed the western portion of that parcel of land therein described as measuring 45 ft. from east to west along the northern and southern boundary lines and 135ft. from north to south along the eastern and western boundary lines to one Bhowdee. The said Samuel William Gilkes retained the remaining or eastern portion of the parcel of land.
- P.38 11.25-29 4. The said Samuel William Gilkes died on the 28th December 1920 and his legal personal representatives conveyed by deed dated the 20th day of July 1963 the said eastern portion to the Appellant. The said Bhowdee died on the 17th day of July 1936 and her legal personal representative conveyed the western portion to one Danasary by deed dated the 4th day of January 1954. 10
- P.38 11.30-34
- P.38 11.34-35 5. The said Danasary conveyed the said western portion to one Edward Dookie by a deed dated the 13th day of April 1957. By a deed dated the 21st day of April 1967 the said Edward Dookie conveyed the said western portion to the Respondent. 20
- P.39 11.1-2
- P.39 11.2-5
- P.39 11.12-27 6. Both the Appellant and the Respondent claim to be the owners of a strip of land running roughly down the centre of the whole parcel and measuring 6.8 ft. along the northern boundary line, 7.4 ft. along the southern boundary line, 174 ft. along the western boundary line and 172.6 ft. along the eastern boundary line.
- PP.1-3 7. By a Writ of Summons dated the 24th day of April 1971 the Respondent instituted the present suit, claiming a declaration, an injunction and damages against the Appellant. The essence of the Respondent's case as pleaded was that she was the owner of the said western portion including the disputed strip by virtue of the deed of conveyance to her dated the 21st day of April 1967. She averred that the Appellant had entered upon the disputed strip, demolished the Respondent's fence along the eastern boundary thereof and damaged and destroyed her crops growing thereon. She further alleged that the Appellant had erected a wire fence on the western boundary of the disputed strip of land. 30
- P.4 11.11-26
- P.4 11.30-32
- P.4 11.33-34
- P.4 11.34-35
- P.5 11.1-3
- P.4 11.1-15
- P.9 11.9-14
8. By her defence and counterclaim dated the 8th day of May 1968 the Appellant counterclaimed that the said eastern portion included the disputed strip as delineated in a survey on the deed of 40

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conveyance to her dated the 20th day of July 1963. Alternatively, the Appellant contended that she and her predecessors in title had always been in exclusive and undisturbed possession of the disputed strip of land.

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9. In her defence to the Appellant's counterclaim, the Respondent alleged that if the disputed strip of land was ever part of the Appellant's holdings, then the Respondent and her predecessors in title had been in like exclusive and undisturbed possession thereof for more than 16 years before the Appellant commenced her claim to the disputed strip.

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P.11 11.11-23

10. The action came on for trial before Mr. Justice M.A. Corbin on the 21st day of October 1970. The case for the Respondent, who was the Plaintiff in that action, was opened by counsel on her behalf. Counsel for the Respondent then called Mr. Phil Douglin who was a licensed land surveyor. Before Mr. Douglin had completed his evidence in chief, Mr. Justice M.A. Corbin suggested that the parties should consider a settlement. The action was then adjourned.

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P.50 11.16-17

P.50 11.20-30;

P.51 11.1-18

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11. The parties were unable to reach a settlement and the action was restored before Mr. Justice C.A. Achong. The hearing of the action took place on the 4th, 5th, 8th 9th and 10th days of May 1972. Both parties were represented by different counsel from those representing them on the hearing before Mr. Justice M.A. Corbin. For the purposes of this appeal it is not necessary to set out the evidence given during that trial. Mr. Justice C.A. Achong gave judgment on the 29th day of May 1972. He held that the Respondent had been in occupation of the disputed strip of land for upwards of 16 years before the action was brought. The learned judge held that the Respondent was the fee simple owner of the disputed strip by virtue of the deed of conveyance to her dated the 21st day of April 1967. He granted a declaration to this effect and also granted an injunction against the Appellant restraining her from trespassing or remaining upon the disputed strip. He also awarded the Respondent 500 dollars damages for trespass to the land.

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P.47 11.2-9

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P.47 11.23-26

P.48 11.8-9

Record

- P.51
P.54 12. By a notice of appeal dated the 28th day of June 1972 the Appellant appealed to the Court of Appeal of Trinidad and Tobago. The appeal came on before Sir I.E. Hyatali C.J., C.E. Phillips and E.A. Rees, J.J.A. on the 2nd day of February 1976.
- P.53 11.4-7 13. The grounds of appeal were that Mr. Justice C.A. Achong had erred in law in (a) by proceeding with the trial of the action after the same was already part-heard by Mr. Justice M.A. Corbin on the 21st day of October 1970; (b) 10
P.53 11.8-9 by holding that the Respondent had acquired title to the land by prescription; and (c) that
P.53 11.10-12 the decision was unreasonable and/or could not be supported by the evidence.
- P.56 11.20-22 14. At the hearing of the appeal on the 2nd day of February 1976 counsel for the Appellant
P.56 11.22-25 did not pursue the second and third grounds of appeal. He argued the single ground that the trial was a nullity because it was proceeded with by Mr. Justice C.A. Achong when it was already part-heard by Mr. Justice M.A. Corbin. 20
- P.54 15. The judgment of the Court of Appeal was delivered by Sir I.E. Hyataili, C.J., on the 2nd day of February 1976. The learned Chief Justice first summarised the course of the proceedings, and referred to the earlier action tried by Mr. Justice M.A. Corbin.
- P.55 11.34-36 The learned Chief Justice said that (and it is not disputed by the Appellant) that the trial before Mr. Justice C.A. Achong took place with no objection to the hearing of the case being taken by either counsel. The learned Chief Justice went on to say that the Respondent appeared, ready to proceed before Mr. Justice C.A. Achong, and made no protest that the judge ought not to hear the case. It was also clear that the Appellant appeared by counsel without protest and indicated by her conduct that she was ready to proceed. Mr. Justice C.A. Achong had heard the whole of the evidence, and decided the case in the Respondent's favour. 30
- P.55 11.36-39
P.55 11.39-42 40
- P.56 11.43-48; 16. The learned Chief Justice went on to deal with the authorities cited to the Court of Appeal by counsel for the Appellant and held that they were distinguishable upon the facts. He held that the Appellant had waived her right to object to the court presided over by
P.57 11.1-33

Mr. Justice C.A. Achong taking cognisance of the proceedings by failing to object to it. That was implied consent by the Appellant to the case proceeding.

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17. Both other members of the Court of Appeal concurred without adding to the reasons. The Court of Appeal dismissed the Appellant's appeal.

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18. On the 26th day of July 1976 the Court of Appeal granted final leave to the Appellant to appeal to Her Majesty in Council against their judgment aforesaid.

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19. The Appellant submits that the judgment of the Court of Appeal was wrong and ought to be reversed, and this appeal ought to be allowed with costs, for the following (amongst other)

R E A S O N S

1. BECAUSE there should be an express consent required by a court before hearing an action if the same action is part-heard before a different court.
2. BECAUSE there should be an express consent given to a court before hearing an action if the same action is part-heard before a different court.
3. BECAUSE the authority cited by the Court of Appeal in support of its decision (a) does not in fact support that decision; alternatively (b) is wrong.

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WILLIAM BIRTLES

No. 42 of 1978

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