

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

RAMDEO MAHABIR Appellant

- and -

ALLAN PAYNE Respondent

CASE FOR THE APPELLANT

RECORD

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1. This is an Appeal from a Judgment and Order of the Court of Appeal of Trinidad & Tobago (Sir Isaac Hyatali CJ, Corbin & Rees JJA) dated the 14th June 1976 which reversed with costs a Judgment and Order of the High Court (Malone J) dated the 15th February 1974 setting aside a Deed of Conveyance of Land at 71 Stella Street, Curepe in the island of Trinidad, granting a declaration that the appellant was owner thereof and making an order for possession in favour of the appellant with costs. The appeal is brought by leave by the Court of Appeal granted on 14th July 1976.

p. 17
p. 10

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2. The material facts are not in dispute and the main question for determination is whether the Appellant or the Respondent is entitled to ownership and possession of the parcel of land described in the Writ and subsequent Proceedings as lot 71 Stella Street, Curepe in the ward of Tacarigua in the island of Trinidad herein called "the lot". The Appellant and the Respondent each held at the date of commencement of the action a registered deed of conveyance executed in respect thereof by the owner in fee simple and her Attorney respectively.

pp 17-18

pp.20-23
pp.26-28

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3. The territory of Trinidad and Tobago has two concurrent systems of conveyancing one being a system of registration of title the other being a system of registration of deeds. The lot subject

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to these proceedings falls within and was dealt with under the latter system.

- pp.29-32 4. On the 30th July 1960 Beatrice Abidh the owner in fee simple under registered Deed No: 14582 of 1956 granted to the Respondent by registered Deed No: 11248 of 1960 a lease of the lot for a period of twenty-five years commencing 1st June 1960. The lot formed part of a larger parcel of land comprising 6 acres 2 roods and 4 perches which was conveyed to Beatrice Abidh by the Deed No: 14582 of 1956. 10
- pp.33-44
- pp.20-23 5. On the 26th March 1964 Beatrice Abidh executed by way of settlement another deed whereby she conveyed a considerable amount of land to herself for life with remainder to the Appellant and Ramlochan Mohan as joint tenants. The deed was registered as No: 11685 on the 26th August 1964. The land so conveyed included the lot. Beatrice Abidh died on the 25th September 1964 and Ramlochan Mohan died on the 2nd October 1964. 20
- p. 24
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- pp.26-28 6. On the 4th July 1964 Lucien Albert Gobin, a Barrister-at-Law then the Attorney of Beatrice Abidh himself prepared and executed a conveyance by way of sale of the lot in favour of the Respondent. The said deed was registered on the 3rd September 1964 as Deed No: 11964 of 1964.
- p.6 7. Upon the death of Ramlochan Mohan the Appellant requested the Respondent to pay to him rent falling due under the lease No: 11248 of 1960 but the Respondent refused to pay and asserted his ownership of the lot by virtue of the Deed No: 11964 of 1964. 30
- 11.32-34
- p.7 1.32-37
- pp.1.30 8. On the 8th April 1972 the Appellant instituted against the Respondent in the High Court of Trinidad & Tobago a claim for an order setting aside the conveyance to the Respondent for an order setting aside the conveyance to the Respondent registered as Deed No: 11964 of 1964 for injunctive relief and for possession. In his defence to the claim the Respondent whose pleading was settled by the said Lucien Albert Vincent Gobin as Counsel denied the title of the Appellant and relied upon the Deed No: 11964 of 1964 as proof of his title. 40
- pp.5-6
- pp.9-10 9. The action in the High Court was heard by the Honourable Mr Justice Malone and was determined on the 15th February 1974 when Judgment was entered

for the Appellant. By that Judgment the Deed No: 11964 of 1964 was set aside, an Order of Injunction was granted prohibiting disposition of the lot by the Respondent and requiring possession of the lot be delivered up to the Appellant within four months.

10 10. The Respondent on the 14th May 1973 appealed to the Court of Appeal against the decision of the High Court on the sole ground that the decision was unreasonable and could not be supported having regard to the evidence. At the hearing before the Court of Appeal the Respondent was permitted to amend the Grounds of Appeal by adding the following:-

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20 A. There are errors of law in the Reasons, Judgment and Order of the learned trial Judge, errors disentitling the Respondent to the relief claimed by him and the Judgment delivered and Orders made in his favour:

P A R T I C U L A R S

- 30 1. The Plaintiff took nothing under the alleged Deed of Gift No: 11685 of date 26th March 1964 purporting to convey certain properties to Ramlochan Mohan and Ramdass Mahabir, and the Appellant's Deed of Purchase No: 11964 of date 4th July 1964 was and is a valid and effective conveyance to the Appellant of the lot of land conveyed thereby, and is with possession a good and valid and effective instrument of title against the Respondent.
- 40 2. Assuming (but not admitting) that the Plaintiff did take a valid interest under and by virtue of the alleged Deed of Gift, any such interest did not establish the relation of Landlord and Tenant, and did not in law entail Forfeiture, Order for Possession and other consequential orders in favour of the Respondent.
3. The consideration in the said alleged Deed of Gift No: 11685 of date 26th March 1964, not having been truly stated within the spirit and intendment of the conveyancing and Law of Property Ordinance, such deed should not in all the circumstances of the case be enforceable against the Appellant.

pp.14-16

The Court of Appeal further permitted the Respondent to argue at the hearing of the appeal that the Respondent took the legal estate in fee simple in the lot from Beatrice Abidh and that the Appellant was not entitled to priority as against the Respondent notwithstanding the prior registration of the Appellant's deed. In the events which occurred the Appeal was determined by the Court of Appeal on the two last mentioned points.

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11. The questions of law which arose in the Appeal fell to be determined by statutory provisions contained in the Conveyancing and Law of Property Ordinance, Chapter 27, No: 12 and the Registration of Deeds Ordinance, Chapter 26, No: 2.

12. The relevant provisions are as follows:-

Conveyancing and Law of Property Ordinance, Ch 27
No: 12

Section 3. Every deed made after the 10th of June 1844, shall be taken to have the same effect as the same would have by the law of England in force on the 1st of April 1858, subject however to the provisions of any statutory enactments for the time being in force in this Colony, and where any question shall arise in any suit, action, or other proceeding in any Court or before any Judge or Magistrate, as to the operation or construction of any such deed, or as to the estate, use, trust, confidence, or interest of or in any real or personal property, created or given by, or arising or resulting by the implication or construction of law from, any such deed, or as to the quality, quantity, vesting, transfer, or extinguishment of, or the incidents to any such estate, use, trust, confidence, or interest; or whether the estate, possession, and seisin of any lands, or the possession and seisin of any annual rent is executed unto the person having the use of such rent; or as to the validity or effect of any condition contained in any such deed, or as to any power given by any such deed; every such question shall be decided according to the law of England in force on the 1st of April 1858, subject however to the provisions of any statutory enactments for the time being in force in this colony.

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Section 10(1) All conveyances of land or of any interest therein are void for the purpose of creating a legal estate unless made by deed.

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(2)

Section 17(1) Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

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(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance, and to the provisions therein contained.

(3) This section applies to conveyances made after the 1st of January 1885.

Registration of Deeds of Ordinance, Ch28, No: 2

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Section 3. Every deed executed in the Colony or elsewhere in the presence of and attested by one witness at least not being a party thereto shall be held and taken in law to be a speciality and shall otherwise as a deed be valid and effectual for all purposes; Provided that nothing in this section shall give an unregistered deed any effect or operation which by law is dependent on registration.

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Section 16(1) Every deed whereby any lands in the Colony may be in any way effected at law or in equity shall be registered under this Ordinance, and every such deed duly registered shall be good and effectual both at law and in equity, according to the priority of time of registering such deed, according to the right, title, and interest of the person conveying such lands against every other deed, conveyance or disposition of the same lands or any part thereof, and against all creditors by judgment of the

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same person as conveying the land.

- (2) Every such deed that shall not be duly registered shall be adjudged fraudulent and void as to the lands affected by such deed against any subsequent purchaser for value or mortgages without notice of the same lands or any part thereof, whose conveyance shall be first registered.

Section 18(1) Every deed of gift and every settlement 10
executed after the 29th March 1933
shall be registered within a period
of twelve months from the date of the
execution thereof; Provided that
any such deed of gift or settlement
may be registered after the said period
of twelve months upon payment to the
Registrar General of a sum equal to
five times the amount of fees which 20
would have been chargeable for
registration if the deed of gift or
settlement had been registered within
the said period, together with such
further penalty not exceeding the
sum of two hundred and forty dollars
as the Governor may think proper to
impose.

- (2) No deed of gift or settlement until 30
registered in manner hereinbefore
prescribed shall be effectual to pass
any estate or interest in any land
sought to be affected thereby or to
render such land liable as security
for the payment of money.

p.9 13. In the High Court Malone J found that the
Respondent had consistently refused to pay rent to
the Appellant whose deed he held to be first in time
and valid and he also held that the Respondent who
p.9 considered the lot to be his had incurred a
11.10-20 forfeiture of his lease by his denial of the 40
Appellant's title.

pp.15-16 14. Rees J.A. with whose judgment the other members
of the Court of Appeal agreed did not consider it
necessary to decide any point other than that
relating to the validity of the Respondent's title.
He held that by reason of the execution of the Deed

of Conveyance by way of sale prior to the registration of the Appellant's deed the legal estate in the lot had passed to the Respondent and that the Appellant whose deed was subject to the provisions of Section 18(2) of the Registration of Deeds Ordinance, Chapter 28 No: 2 took no interest in the lot when his Deed was subsequently registered. Rees J.A. further held that the Appellant could not take priority under section 16(2) of the Registration of Deeds Ordinance because he was not a purchaser for value without notice.

15. It is submitted in reliance upon the decision in Dickinson v Burrell (1866) LR 1 Eq. 337 that the deed executed in favour of the Appellant was of the same force and effect as a deed executed for value and that the Appellant took a valid title to the lot which was complete for all purposes when his deed was registered. It is further submitted that the virtue of the provisions of the Conveyancing and Law of Property Ordinance recited above and in particular Section 17 thereof the Appellant's deed was effectual to pass a remainder in fee simple to Ramlochan Mohan and himself as joint tenants and that the entire interest accrued to the Appellant when Ramlochan Mohan died by right of survivorship.

16. It is further submitted that:-

(a) no conveyance is perfected in law in Trinidad & Tobago without registration of the deed of Conveyance. This rule was developed since the Spanish occupation of Trinidad and was in force in 1814 (See Proclamation by Sir Ralph Woodford concerning registry and authentication of deeds and other instruments dated 5th February 1814, Order-in-Council dated 6th April 1818 made by His Royal Highness the Prince Regent in Council concerning the execution of deeds, acts or instruments included in the Appendix at pages 181 and 196 of the Report of the Commissioners of Legal Inquiry on the colony of Trinidad in Parliamentary Papers 1826/7 Volume XXIII Part 3 (Slave Trade) ordered by the House of Commons to be printed on the 29th June 1872, and, in particular, to page 65

thereof on the subject of the Spanish law, Ordinances No: 49 of 1852 and 5 of 1862 relating to the Registration of Deeds, Ordinance No: 3 of 1862 relating to Purchasers and Mortgagees and the consolidation of the same Ordinances and their amendments as No: 57 and No: 95 in the 1902 edition of the Law of Trinidad & Tobago, Vol II pp.29 and 447.

- (b) wherever a grantor makes more than one disposition of the same estate or interest in the same land by deed the right of a grantee in relation to priorities is determined by the operation of Section 16 (I) of the Registration of Deeds Ordinance (See Macedo v Stroud (1922) A.C.330; Pim v Coyle (1907) I.R. 330), and Warburton v Loveland ex dem. Ivie (1831) & Dow and Clark 480; Eyre v Dolphin (1813) 2 B.A. & B.290; Hamilton v Lyster (1845) Ir.Eq.R.560; Drew v Norbury (1846) 9I Eq.R.524. 10
- (c) statute in the form of section 16 of the Registration of Deeds Ordinance covers the whole field in respect of the rights of holders of deeds executed by the same grantor in respect of the same estate or interest in the same land and the right of the holder of a deed registered in accordance with the provisions of that section can be defeated only where the earlier registered deed is annulled or set aside or is affected by notice in terms of Section 16(2). 30
- (d) where a deed is not registered a subsequent deed in favour of a bona fide purchaser for value without notice can only defeat the unregistered deed by a prior registration (See Section 16(2) of the Registration of Deeds Ordinance and Warburton v Loveland, supra, p.480, 494).
- (e) a gift or settlement is complete and irrevocable as between donor and donee when the appropriate deed is delivered to the donee for registration and although no estate or interest in the land conveyed passes to the donee until registration the donee upon delivery of the deed acquires a right to registration of the interest which is incapable of being defeated by a subsequent disposition by the donor to a bona fide 40

purchaser for value, least of all where there is no prior registration of the subsequent deed. (See *Huggins v Manning* (1969-70) 14 West Indian Rep.40 where the intervention and operation of the law of intestate succession did not defeat a deed of gift which had not been registered at the date of the donor's death), and the Australian cases *Franklin v Ind* (1883) 17SALR 133, *Cuthbertson v Swan* (1877) II S.A.L.R. 102 and *O'Regan v Commissioner of Stamp Duties* (1921) State Reports Queensland 283.

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18. The Appellant submits in the premises that the judgment of the High Court (Malone J) was correct and that the judgment and order of the Court of Appeal should be reversed and the judgment and order of the High Court restored with costs in the Privy Council and the Court of Appeal for the following among other

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R E A S O N S

- (1) BECAUSE the Appellant's Deed was effectual to pass to him a valid title to the lot in the event which occurred.
- (2) BECAUSE the Appellant's deed took effect both in law and Equity according to the time of registration and was not affected or defeated by the execution of the Respondent's deed which was registered subsequent to the registration of the Appellant's deed.
- (3) BECAUSE the Respondent who claimed to be a bona fide purchaser for value without notice did not secure a prior registration of his deed against the Appellant.
- (4) BECAUSE the gift or settlement by the donor in favour of the Appellant was complete before and at the time of the execution of the deed of conveyance in favour of the Respondent and could not in any event be defeated by a subsequent sale or the execution of a deed of conveyance of the same estate or interest by or on behalf of the donor.
- (5) BECAUSE even if any interest passed to or any right was acquired by the Respondent by virtue of the mere execution of his deed

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of conveyance (which is denied) such interest was liable to be defeated by the prior registration of a valid deed conveying the same estate or interest and was so defeated.

- (6) BECAUSE of the reasons given by Malone J in the High Court.
- (7) BECAUSE the judgment of the Court of Appeal was wrong and ought to be reversed.

FENTON RAMSAHOYE S.C.

No. 15 of 1977

IN THE PRIVY COUNCIL

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B E T W E E N :

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Appellant

- and -

ALLAN PAYNE

Respondent

CASE FOR THE APPELLANT

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