

IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

**ON APPEAL FROM THE COURT OF APPEAL OF THE CO-OPERATIVE
REPUBLIC OF GUYANA**

**CCJ Appeal No. CV 3 of 2006
GY Civil Appeal No 90 of 2000**

BETWEEN HARRINAUTH RAMDASS APPELLANT

**AND SALIM JAIRAM, substituted for LOKI
Pursuant to order of Court dated 26th February 2008**

**AMINA MOHAMED, substituted for Ali Mohamed
Pursuant to order of Court dated 21st February 1996**

**ASAF ALI MOHAMMED the Administrator of the
Estate of Ali Mohamed by Letters of Administration
granted on the 8th day of September 1994, No 141 of 1994**

**THE REGISTRAR OF DEEDS OF THE RESPONDENTS
HIGH COURT OF THE SUPREME COURT**

**Before The Rt Honourable Mr Justice de la Bastide, President
And the Honourables Mr Justice Nelson
 Mr Justice Pollard
 Mr Justice Saunders
 Madame Justice Bernard
 Mr Justice Wit
 Mr Justice Hayton**

Appearances

Mr Mohabir Anil Nandlall and Mr Adrian Anamayah for the Appellant

**Mr Rajendra Poonai, Mr Kashir Khan and Mr Mohamed S G F Khan appearing as
amici curiae**

**JUDGMENT
of
The Court delivered by
The Hon Mme Justice Bernard
on
the 22nd day of July 2008**

JUDGMENT

Background

- [1] The Appellant, Ramdass, and the first Respondent Loki, now deceased, were brother and sister. Loki inherited from her husband land situate at No. 19 Corentyne, Berbice, held under two transports, and on 18th April, 1984 she agreed to sell to her brother Ramdass three parcels of the said land comprising 36 acres for the sum of \$30,000.00. The said sale was evidenced by a receipt which indicated that the purchase price had been paid in full and that Ramdass had been put into possession.
- [2] Shortly after the sale to Ramdass, Loki left Guyana for the United States of America and remained there for approximately one year. Ramdass having been let into possession, cultivated rice and pastured cattle on the 36 acres which he had purchased. Upon the return of Loki to Guyana, she entered into an agreement of sale on 21st March, 1986 with Ali Mohamed, now deceased, under which she sold for the sum of \$125,000.00 all of the land which she had inherited from her husband including the 36 acres which she had earlier sold to Ramdass. She also agreed to give possession to Mohamed, an arrangement which was fraught with conflict as subsequent events revealed.
- [3] Ramdass continued his cultivation of the land he had purchased, and Mohamed sought to do the same in keeping with his agreement. This resulted in litigation when Ramdass in 1986 in action No. 444/1986 was granted an injunction by a court restraining Mohamed from entering his portion of land. This notwithstanding, Loki passed transport to Mohamed on 5th May, 1987. Inevitably Ramdass upon discovery of this new development filed action No. 639/1987 against Loki, Mohamed and the Registrar of Deeds seeking specific performance of his agreement with Loki and revocation of Mohamed's transport.
- [4] Litigation between the parties continued with Loki instituting proceedings against Mohamed in 1988 for the sum of \$62,500.00, being the unpaid balance of the

purchase price which he seemed to have withheld even after transport had been passed to him.

Judgment of the High Court

[5] The action out of which this appeal arises (No. 639/1987) came on for hearing, and it seems that Counsel agreed that the other actions would await determination of this action. The Registrar of Deeds has taken no part in these proceedings at any stage. In his pleadings Ramdass alleged that Loki and Mohamed fraudulently passed transport to Mohamed in order “to defraud” him of the property, but gave no particulars of the alleged fraud. A perusal of the record indicates that at the commencement of the hearing of the action the allegation of fraud was withdrawn by Counsel for Ramdass. This having been done, Counsel sought to rely on Mohamed’s actual notice of Ramdass’s occupation of the land and argued that Mohamed could not be said to be a bona fide purchaser for value without notice, a claim which was never made by Mohamed. Further, he sought to persuade the trial judge that Ramdass had acquired an equitable interest in the land.

[6] The trial judge found on the evidence that Loki did sell three parcels of land to Ramdass by an agreement which he held to be genuine. He also found that by virtue of Section 23(1) of the Deeds Registry Act, Cap. 5:01 which is set out at [10] below, Mohamed had acquired full and absolute title to the land under the transport passed to him, the allegations of fraud having been withdrawn. Consideration was given to a range of local cases over the years which established that equitable interests in immovable property are not recognised in Guyana, and with which the trial judge agreed. Based on his findings, the trial judge refused the order for specific performance as well as the claim for a declaration that transport was wrongfully passed to Mohamed.

Judgment of the Court of Appeal

[7] Ramdass appealed to the Court of Appeal which dismissed the appeal, upholding the trial judge’s finding that equitable interests in immovable property are not

recognised in Guyana and making reference to the Civil Law of Guyana Act, Cap. 6:01 as well as decided cases on the subject.

[8] Following are the relevant provisions of Section 3 of the Act:

“(b) the common law of Guyana shall be the common law of England as at the date aforesaid including therewith the doctrines of equity as then administered or at any time hereafter administered by the courts of justice in England, and the High Court shall administer the doctrines of equity in the same manner as the High Court of Justice in England administers them at the date aforesaid or at any time hereafter;

(c) the English common law of real property shall not apply to immovable property in Guyana;

(d) there shall be as heretofore one common law for both immovable and movable property, and all questions relating to immovable property within Guyana and to movable property subject to the law of Guyana shall be adjudged, determined, construed and enforced, as far as possible, according to the principles of the common law of England applicable to personal property:

Provided that –

(i) immovable property may be held as heretofore in full ownership, which shall be the only ownership of immovable property recognised by the common law and shall not be subject to any rule of succession by primogeniture or preference of males to females, or to any other incident attached to land tenure or to estates in lands in England and not attached to personal property in England;

(ii) the law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits *à prendre*, or real servitudes, and the right of opposition in the case of both transports and mortgages, shall be the law and practice now administered in those matters by the Supreme Court;

(iii) the relief by judgment for specific performance shall be granted in the case of immovable property on the same principles on which it is granted in England in the case of contracts relating to land or to interests in land.”

[9] The Court also found that although Ramdass would have been entitled to an order for specific performance against Loki, this could not be granted, since the transport passed by Loki to Mohamed conveyed to him full and absolute title of the land, which could only be set aside by fraud specifically pleaded and proved, and in this case allegations of fraud had been withdrawn by Mohamed’s Counsel.

[10] Although not expressly so stated in the judgment, the Court must have had in mind Section 23(1) of the Deeds Registry Act, Cap. 5:01 which is to this effect:

“From and after the 1st January, 1920, every transport of immovable property other than a judicial sale transport shall vest in the transferee the full and absolute title to the immovable property or to the rights and interest therein described in that transport, subject to –

- (a) statutory claims;
- (b) registered incumbrances;
- (c) registered interests ;
- (d) registered leases :

Provided that any transport obtained by fraud shall be liable in the hands of all parties or privies to the fraud to be declared void by the Court

in any action brought within twelve months after the
discovery of the fraud”

[11] Leave was sought and granted by the Court of Appeal to appeal to the Caribbean Court of Justice. Before the delivery of judgment in the Court of Appeal the first Respondent, Loki, died. The second Respondent, Mohamed, died during the pendency of the hearing in the High Court, and had been replaced by his son Asaf Ali Mohamed who also died. Asaf’s wife, Amina Mohamed, was then appointed to represent the estate of her father-in-law, Ali Mohamed. On an application by the Appellant, leave was granted by the Caribbean Court of Justice for one Salim Jairam, a clerk in the office of the attorney appearing for the Appellant, to be substituted for Loki, deceased, for the purposes of the appeal.

[12] Before the hearing of this appeal commenced it was ascertained that none of the Respondents was going to be represented in a case in which important points of law were to be considered. The Court invited the Guyana Bar Association to make available one of its members to appear as *amicus curiae*. Commendably the Bar Association responded and three Counsel including the Association’s President appeared at the hearing.

Issues to be determined

[13] In summary, this appeal involves issues concerning the ongoing debate of whether equitable interests in land in Guyana are recognised or can be acquired, having regard to the development of the law of immovable property in Guyana, particularly in relation to a purchaser who is put in possession under an agreement of sale, and the effect of statutory provisions on the indefeasibility of title to such property. If it is found that such a purchaser acquires an equitable interest in the land purchased, a related issue arises concerning the effect of notice (actual or constructive) of the occupation of an earlier purchaser upon the validity of a transport passed to a subsequent purchaser. The appeal also raises the issue as to whether, allegations of fraud having been withdrawn at the trial of an action, they

can be raised again at the hearing of an appeal in an effort to defeat the title acquired by a purchaser under Section 23(1) of the Deeds Registry Act, Cap. 5:01.

Submissions of Counsel for the Appellant

[14] Counsel for the Appellant emphasised that Section 3 of the Civil Law of Guyana Act had incorporated in the law of Guyana the common law of England including the doctrines of equity and that the law governing land in Guyana though not the English law of real property, was the common law applicable to personal property in England. In principle the only incidents attached to tenures or estates in land in England which were outlawed in Guyana, were those “not attached to personal property in England.”

[15] Counsel submitted that the Appellant acquired an equity in the property he purchased which ought to have been protected against any rights acquired by the later purchaser, and in this regard he made reference to proviso (iii) to Section 3 of the Civil Law of Guyana Act, which provides for the grant of relief by specific performance in the case of immovable property on the same principles on which it is granted in England.

[16] Counsel sought to persuade the Court to find that the Respondent Mohamed’s transport was obtained by fraud, and he could not be regarded as a bona fide purchaser for value without notice as he had actual notice of the Appellant’s occupation of the land. Notwithstanding the fact that the allegations of fraud were withdrawn before the hearing at first instance began, Counsel submitted that this Court could still find that there was fraud sufficient to defeat Mohamed’s transport in keeping with Section 23(1) of the Deeds Registry Act, Cap. 5:01.

Development of the Law of Immovable Property

[17] The Ordinance passed in 1916 was intended to substitute the English common law and principles of equity, along with certain English statutory provisions for the Roman-Dutch Law, according to the Long Title of the Ordinance. However, it was also enacted to codify certain portions of the Roman-Dutch Law which had

been until then the law governing immovable property in the Colony of British Guiana.

- [18] The said Ordinance came into effect on 1st January, 1917, and by Section 3(2) (now Section 3(b) of the Civil Law of Guyana Act, Cap. 6:01) the common law of the Colony became the common law of England, including therewith the doctrines of equity as administered at the date thereof or anytime thereafter administered by the Courts of Justice in England. It was provided expressly that the English common law of real property was not to apply to immovable property in Guyana (Section 3(c)), and that there was to be as heretofore one common law for both immovable and movable property with the proviso that immovable property may be held as heretofore in full ownership which shall be the only ownership of immovable property recognised by the common law (Section 3(d)). It is not without significance that in both sub-sections the word “heretofore” is used which suggests that the intention was to preserve both the pre-1917 position of one law for both immovable and movable property, and the concept of full ownership of immovable property which had been the only ownership of immovable property recognised prior to 1917. Indeed the heading to Section 3(4)(a) of the Civil Law of British Guiana Ordinance 1916 (which corresponds to proviso (i) of Section 3) is “Full ownership of immovables preserved.”
- [19] The proviso to Section 3 of the Act specifically excludes any incidents attached to estates in land in England and the stipulation that only full ownership of immovable property shall be recognised suggests that all other forms of ownership in immovable property are excluded. Dalton’s commentary on this proviso in his 1921 book “The Civil Law of British Guiana”, was that “under the English system two kinds of ownership may co-exist in the same *res*, but this duplication of ownership with respect to immovable property is not applied and Roman-Dutch law is retained”.
- [20] However, it must be noted that movable property can be held on trust for beneficiaries e.g. those who have equitable co-ownership interests, life interests, interests in remainder or interests under discretionary trusts that bind an insolvent

trustee's creditors under Section 42 of the Insolvency Act, Cap. 12:21, and are capable of binding third parties.

- [21] Debate has raged over the years on whether equitable interests in land are recognised in Guyana, and the case law on the subject indicates the conflict of opinions on the interpretation of Section 3 of the Civil Law of Guyana Act, which has created uncertainty and imprecision. In this regard we endorse the view of a writer on the subject, David de Caires, in a paper entitled "A Problem in Immovable Property in Guyana – The Application of Roman Dutch Law" that in attempting to effect change from one system to another "it would have been infinitely superior if our own land law had been drafted if the English system had been considered undesirable". In his opinion the introduction of the English law of personal property and the continued engrafting of English concepts was anomalous and unsatisfactory.
- [22] The majority view reflected in cases within the distant and recent past indicates an acceptance of the conclusion that equitable interests in land are not recognised in Guyana (see *Mangia –v– Safayan and others*¹, *Gangadia –v– Barracot*², *Dias –v– Cornett*³, *Kitty and Alexanderville Village Council –v– Vieira*⁴, *Fazal –v– Annamanthadoo*⁵ and more recently the unreported case of *Dropattie Singh –v– Raymond Bayne*.⁶ As expected there were several which held differently, some in the early years after enactment of the Civil Law of Guyana Act, particularly where the possibility of creating equitable trusts was in question. Indeed Section 10 provides that the Trustee Act 1893 of the United Kingdom was to be part of the law of Guyana. (See *Sooknanan –v– Sunichery*⁷, *Obermuller –v– Obermuller*⁸, *Coltress –v– Coltress*⁹, and *Joseph –v– Joseph*¹⁰. Others include *British Colonial*

¹ (1917) LRBG 58-60

² (1919) LRBG 216

³ (1960) LRBG 215

⁴ (1961) LRBG 88

⁵ (1991) 48 WIR 150

⁶ (C.A. No. 61 of 1991)

⁷ (1942) LRBG 260

⁸ (1927) LRBG 71

⁹ (1931-7) LRBG 523

¹⁰ (1960) LRBG 392

*Film Exchange Ltd –v- S.S. de Freitas*¹¹, *Ishriprasad –v- Jaikaran*¹², and *Seeram Singh –v- Dariau Singh*¹³).

- [23] The Civil Law of Guyana Act in 1917 having expressly enacted that full ownership was to be the only ownership of immovable property recognised in Guyana, the Deeds Registry Act passed in 1920 placed this beyond doubt and went even further when Section 23(1) provided that every transport of immovable property vests in the transferee full and absolute title to immovable property, subject only to certain claims, encumbrances and interests mentioned therein.
- [24] The success of the Appellant’s claim rests on a finding that he acquired an equitable or some other interest in the land which he occupied under the agreement of sale entered into between himself and Loki, and such interest has priority over the full and indefeasible title acquired under Mohamed’s transport. In somewhat similar, though not identical, circumstances the Court of Appeal of Jamaica in *Phillips –v- Bisnott*¹⁴ held that a plaintiff who had been let into possession of a portion of land under a verbal agreement of sale with a vendor who later conveyed title to him, but who before doing so had conveyed the title to a subsequent purchaser, had acquired an equitable interest in the land. Thus when the vendor had conveyed title to the subsequent purchaser the vendor had only a bare legal estate, and the purchaser, the defendant, took this legal estate subject to the plaintiff’s equitable interest of which from the evidence she had notice.
- [25] This case, in a jurisdiction without any Roman–Dutch influence, stands in sharp contrast to decided cases in Guyana on the type of interest which a purchaser acquires under an agreement of sale when let into possession before title is conveyed to him. Even among the Guyanese cases opinions differ. In *Udit –v- Macouba Cooperative Land Society Ltd.*,¹⁵ Rennie, J. queried whether the interest of a purchaser let into possession is that of a tenant at will, although conceding

¹¹ (1938) LRBG 33

¹² (1951) LRBG 86

¹³ (1955) LRBG 62

¹⁴ (1965) 8 WIR 229

¹⁵ (1961) 3 WIR 244

that a tenancy at will would arise in circumstances where the purchaser had paid a portion of the purchase price and been let into possession, as this is the best means of expressing the intention of the parties. Incidentally the Landlord and Tenant Act, Cap. 61:01 defines a tenancy at will as “a holding of land or buildings under a contract for the exclusive possession thereof to hold at the will of the landlord”. In an earlier decision in *Mangia –v- Safayan* (supra) Sir Charles Major C.J. held that a purchaser of immovable property who had partly paid for it, but had no legal transfer, had only a *jus incorporale*, which is the *jus ad rem*, i.e. the contractual right to demand and obtain transfer from the sellers.

[26] The Court of Appeal in *Sarabjeet Ramlakhan –v- Boodnie Farouk*¹⁶ followed Verity, J. in *Gondchi –v- Hurrill*,¹⁷ and reasoned that where a purchaser entered into possession of land in pursuance of an agreement of sale, title to which is to be conveyed at a subsequent date, he acquired an interest on the basis of his possession.

[27] As stated earlier and now re-emphasised, dicta from a formidable array of cases of older as well as more recent vintage lead to the inevitable conclusion that equitable interests in immovable property are not recognised and cannot be acquired in Guyana. Accordingly the Appellant acquired no equitable interest in the land purchased from Loki. He, however, was entitled to seek from Loki an order for specific performance of the agreement of sale under proviso (iii) to Section 3 of the Civil Law of Guyana Act, but only, if title to the land had remained vested in her. A distinction must be made between acquiring an equitable interest in immovable property and seeking equitable relief on the same principles on which it is granted in England.

[28] The Appellant, in fact, did seek an order for specific performance against Loki, but only after she had passed transport to Mohamed, who, by virtue of Section 23(1) of the Deeds Registry Act, acquired an indefeasible title subject only to a

¹⁶ (1974) 21 WIR 224

¹⁷ (1931-7) LRBG 509

- possibility of it being declared void for fraud. An attempt by the Appellant to rely on fraud was abandoned at the hearing of the action in the lower court.
- [29] His Counsel sought to persuade this Court that despite the withdrawal of the allegations of fraud Mohamed's notice of Ramdass's occupation of the land and knowledge of his earlier purchase could constitute collusion with Loki to deprive him of title. The evidence led at the trial revealed no conspiracy between Loki and Mohamed, only knowledge by Mohamed of his (Ramdass's) occupation.
- [30] The issue of fraud raised in Section 23(1) of the Deeds Registry Act was discussed by George, J. in *Allicock –v- Demerara Bauxite Co. Ltd.*¹⁸ In *Waimiha Sawmilling Co Ltd –v- Waione Timber Co. Ltd*¹⁹, the Judicial Committee of the Privy Council expressed the view that fraud clearly implies some act of dishonesty, and dishonesty must not be assumed solely by reason of knowledge of an unregistered interest; in fact in that case the relevant statute governing transfer of land expressly provided that knowledge of an unregistered interest should not be imputed as fraud.
- [31] On the issue of constructive notice by Mohamed of the Appellant's interest in the land in question, Counsel who appeared as amici curiae drew the Court's attention to the fact that although every transport vests in the transferee full and absolute title to immovable property, this is subject to certain claims and registered interests as enumerated in Section 23(1) of the Deeds Registry Act and set out at [10] above. In this regard reference was made to the case of *Fazal –v- Annamanthadoo* (supra) where two agreements of sale to a third party had been registered at the Deeds Registry before an agreement had been entered into with a subsequent purchaser. The Court of Appeal held that the two agreements of sale did not fall within the term "registered interests" defined in Section 2 of the Deeds Registry Act as being "all liabilities, rights, interests, and special conditions, imposed or attached to immovable property by agreement or otherwise which

¹⁸ (1968) LRG 140

¹⁹ [1926] AC 101

have been registered”. Contracts of purchase and sale do not fall within this definition, and hence do not affect the title of a purchaser to whom transport is passed. Earlier in a related issue in *Dhanpaul –v- Demerara Bauxite Co. Ltd.*²⁰ the Court was called upon to determine whether an oral agreement of tenancy for land which was never registered under the Deeds Registry Ordinance was binding on purchasers to whom transport of the property had been passed. Luckhoo, J. held that the purchasers took free of the tenancy on the ground that unless reserved by the conveyance itself, interests in immovable property which are required to be registered, if not registered are void against a purchaser even if he has actual notice of those interests. Similar English statutory provisions have the same effect on unregistered interests in immovable property. (See *Lloyds Bank plc – v- Carrick and Another*²¹ and *Midland Bank Trust Co. Ltd. and Another –v- Green*²²).

[32] The Appellant’s agreement with Loki was not registered in the Deeds Registry and even if it were it could not have been regarded as a registered interest as defined in the Deeds Registry Act, so as to bind transferees as a proprietary interest.

[33] In light of the foregoing views expressed and cases referred to earlier, it is reiterated that the Appellant acquired no equitable interest in the land which he purchased from Loki and of which he was let into possession under the agreement of sale. He merely had the right to sue for specific performance (a “*jus in personam ad rem*”) before title was conveyed to Mohamed. The Appellant not having so sued, Mohammed obtained an indefeasible title which could only have been declared void by a Court upon proof of fraud. Allegations of fraud having been withdrawn at the hearing of the action at first instance the Appellant could not rely solely on Mohamed’s knowledge of his occupation to defeat the indefeasible title acquired under the transport. The Appellant’s sole remedy may have been an action against the estate of Loki to recover the purchase price paid

²⁰ (1959) 1 WIR 257

²¹ [1996] 4 ALL ER 630

²² [1981] A.C. 513

and possibly damages, but such an action would presumably have been time-barred several years earlier.

[34] In the circumstances the appeal is dismissed. No order for costs is made as none of the Respondents took any part in the appeal, and the order for costs made by the Court below in relation to the Registrar of Deeds who took no part in those proceedings, is hereby vacated.

[35] This Court wishes to express its gratitude to those attorneys who appeared as amici curiae for the assistance which was so generously given.

_____/s/_____
Mr. Justice Michael A. de la Bastide (President)

_____/s/_____
Mr. Justice Rolston Nelson

_____/s/_____
Mr. Justice Duke Pollard

_____/s/_____
Mr. Justice Adrian Saunders

_____/s/_____
Mme. Justice Désirée P. Bernard

_____/s/_____
Mr. Justice Jacob Wit

_____/s/_____
Mr. Justice David Hayton