



into possession of the land in accordance with the agreement of sale. On 21<sup>st</sup> March, 1986, Loki sold to one Ali Mohamed for the sum of \$125,000.00 all of the land which she had inherited from her husband and which included the 36 acres sold earlier to the Appellant.

On 5<sup>th</sup> May, 1987 Loki passed transport to Mohamed, and upon discovery of this development, the Appellant filed an action against Loki, Mohamed, and the Registrar of Deeds seeking specific performance of his agreement with Loki and revocation of Mohamed's transport.

The Appellant alleged in his pleadings that Loki and Mohamed had fraudulently passed transport to Mohamed in order "to defraud" him of the property, but gave no particulars of the alleged fraud. At the commencement of the hearing the allegation of fraud was withdrawn by Counsel for the Appellant. This having been done Counsel sought to rely on Mohamed's actual notice of the Appellant's occupation of the land, and argued that Mohamed could not be said to be a bona fide purchaser for value without notice. Further, he sought to persuade the trial judge that the Appellant had acquired an equitable interest in the land.

The trial judge held that equitable interests in immovable property are not recognised in Guyana, and refused the order for specific performance as well as the claim for a revocation of Mohamed's transport.

The Appellant 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.

The Appellant with leave of the Court of Appeal appealed to this Court, but before the hearing Loki died, and with leave of this Court one Salim Jairam was substituted for the purpose of carrying on the appeal. Mohamed having died during the pendency of the hearing in the High Court, Amina Mohamed was substituted to represent his estate, but took no part in the appeal before this Court. The Guyana Bar Association was invited to appear as *amicus curiae*, which invitation was willingly accepted with three members appearing including its President.

The issues involved in the appeal concerned 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. Further, if it is found that such a purchaser acquires an equitable interest in the land purchased, what is 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 majority view reflected in Guyanese cases and the independent analysis of this Court indicate an acceptance of the conclusion that equitable interests in land are not recognised 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 which in fact he sought, but only after she had passed transport to Mohamed who acquired an indefeasible title subject only to a 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.

On the issue of Mohamed's notice of the Appellant's interest in the land, the Court held that the Appellant's interest was not a registered interest within the meaning of registered interests set out in the Deeds Registry Act, and so did not bind transferees.

The allegations of fraud having been withdrawn the Appellant could not rely solely on Mohamed's actual notice of his occupation, and without more could not defeat the indefeasible title acquired by Mohamed under the transport. The Appellant's claim therefore failed.