

**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 012 of 2013**  
**GY Civil Appeal No. 78 of 2010**

**BETWEEN**

**GANGA CHARRAN SINGH**

**APPELLANT**

**AND**

**RAM SINGH AND RAJCOOMARIE SINGH**

**RESPONDENTS**

**Before The Honourables**

**Mr Justice R Nelson**  
**Mr Justice A Saunders**  
**Mr Justice J Wit**  
**Mr Justice D Hayton**  
**Mr Justice W Anderson**

**Appearances**

**Sir Fenton Ramsahoye, SC, Mr Rajendra Poonai, Mr R Satram, Mr C V Satram and Mr Manoj Narayan for the Appellant**

**Mr Edward A. Luckhoo, SC, Mr Robin M S Stoby, SC, Ms Kim Kyte-John, Ms Sharon F Small and Ms Faye Barker for the Respondents**

**EXECUTIVE SUMMARY**

- [1] The Respondents (“the Mortgagors”) owned property which was the subject of a mortgage in favour of Guyana National Cooperative Bank Trust Corporation (“the Bank”) to secure a loan. They defaulted on the mortgage payments so the Bank sought and obtained an order authorising the property to be sold by a judicial sale in order to receive the amount owed to it.

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- [2] At the sale by auction the Appellant (“the Purchaser”) purchased the property for \$11,020,000 and immediately paid the required 25% deposit. The articles of the auction sale reflect Order 36 r 57 of the Rules of the High Court. Rule 57(1) requires a purchaser to pay a deposit of 25 per cent of the purchase money and pay the balance by three equal instalments, with interest, at the expiration of two, four and six months. Rule 57(2) provides that where a purchaser defaults in payment of the instalments the deposit shall be forfeited unless on application made within seven days of the default the Court extends the time for payment.
- [3] In November 2004 just before expiry of two months from the date of his paying the deposit, the Purchaser attempted to pay the whole 75% balance of the purchase price with interest. He gave evidence, however, that he was told by a member of staff in the Registry of the Supreme Court that no payment could be accepted due to legal proceedings undermining the sale. He thus had to wait until those proceedings were resolved.
- [4] Just after these proceedings instituted by the Mortgagors were dismissed in April 2008, the Purchaser paid the amount of the 75% outstanding balance and interest that he had offered to pay in November 2004, and a judicial sale transport was passed in his favour. The Mortgagors then initiated another action to challenge the validity of the Purchaser’s transport which was discontinued. After this, the Purchaser brought proceedings against the Mortgagors seeking possession of the property, damages for trespass and an injunction restraining the Mortgagors from remaining, re-entering and/or occupying his property. The Mortgagors’ defence was that the transport was void because of the Purchaser’s non-compliance with the Articles of Sale and the requirements in Order 36 rule 57(2), so the proceedings should be dismissed.
- [5] The trial judge ordered the Mortgagors to deliver up possession to the Purchaser within six weeks, but rejected the Purchaser’s claim for damages for trespass. He found that the November 2004 conduct of the Registry staff in refusing to accept

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from the purchaser the proffered 75% outstanding balance of the purchase price was no more than an irregularity and that the Purchaser had duly become owner of the property in April 2008.

[6] Upon the Mortgagors' appeal, however, the Court of Appeal vacated the orders of the trial judge. It held that the Purchaser's evidence about what was said by the Registry staff member upon his attempt to pay the outstanding balance was inadmissible hearsay evidence. The court further considered that even if the Purchaser's evidence could be admitted he still had a duty to apply to the court to make the payment due out of time. It found that, because the Purchaser's title had been obtained in breach of the Rules of Court, he did not obtain an indefeasible title and ordered that the Purchaser's 25% deposit be forfeited and that he pay the costs of each of the Mortgagors. It further indicated that the Purchaser was entitled to recover the outstanding balance paid to the Registrar (and which had already been paid on to the Bank) though the Registrar was not involved in the proceedings.

[7] Upon the Purchaser's appeal to the CCJ, the Court first considered whether the Purchaser's evidence about what he was told at the Registry was inadmissible hearsay. It concluded that the evidence was not inadmissible hearsay evidence as he gave original direct admissible evidence of what he actually did and then what he attempted to do but was unable to do. The evidence of what was said at the Registry was admissible to establish that the statement was made, not the truth of the statement, though in the record there was evidence of legal proceedings brought by the Mortgagors in November 2004 to impeach the sale before the Purchaser's attempt to pay the outstanding balance of the purchase price. The Court emphasised that, in civil cases tried by a judge, if no objection is taken to hearsay evidence at the time it is being given in the witness box, such evidence is admitted as part of the evidence in the proceedings, though what weight, if any, is given to it depends on the trial judge in the light of all the available evidence.

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- [8] The Court then dealt with the issue of whether the Purchaser was in breach of rule 57. It accepted the findings of the trial judge that the Purchaser's offer to pay the outstanding balance of purchase price was refused. It stated that the Purchaser had therefore done all he could and so was not in breach of his obligations. Consequently, since rule 57(2) was premised on the default in payment of an instalment, it could not apply to enable the deposit to be forfeited.
- [9] The Court then considered whether the Purchaser duly obtained a judicial sale transport where there had been a breach of duty on the part of the Registrar when there was a refusal to accept the Purchaser's proffered payment. The Registrar and his or her staff have no discretion to refuse prompt payments obliged to be made pursuant to rule 57(1). The breach of duty, however, was remedied when in April 2008, after proceedings undermining the sale had been dismissed, the Registry was obliged to accept, and did accept, the payment that it should have accepted in November 2004. Thus the Mortgagors could not successfully challenge the validity of the Purchaser's transport and the Purchaser was entitled against the Mortgagors to possession of the property.
- [10] Saunders, JCCJ agreed with the decision of the Court and commented on the issue of forfeiture of the deposit. He first stated that forfeiture is effected by the Registrar and does not occur automatically by operation of law. He also indicated that if a party is aggrieved that the Registrar failed to effect forfeiture, that party should include the Registrar as a party to any relevant action which was not done in the present case. He also commented that a court should not ordinarily declare a deposit forfeited or a transport void where no action was commenced or a counterclaim made for such relief. He concluded that the Court of Appeal erred in making a declaration that the deposit was forfeited in the circumstances where the Mortgagors did not file a counterclaim.
- [11] The Court allowed the Purchaser's appeal, vacating the orders of the Court of Appeal and upholding the orders of Chang CJ (Ag). The Purchaser was declared

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to be the owner of the property and entitled to possession of the property. It ordered the Mortgagors to deliver up possession of the property and to pay the costs of the Purchaser to be taxed, if not agreed.

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