
O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

MR. & MRS. BENJAMIN PATRICK Appellants

- and -

1. BEVERLEY GARDENS DEVELOPMENT
 COMPANY LIMITED Respondents

B E T W E E N :

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MR. & MRS. BENJAMIN PATRICK Appellants

- and -

1. BEVERLEY GARDENS DEVELOPMENT
 COMPANY LIMITED

2. XDOL MIGNOTT Respondents

CASE FOR THE APPELLANTS

RECORD

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1. These are Consolidated Appeals from a Judgment and Order of the Court of Appeal of Jamaica (Hercules, J.A., Zacca, J.A., Acting, and Edun, J.A. dissenting) dated and entered on the 20th December 1974 dismissing the Appellants' Consolidated Appeals, Nos 36 of 1972 and 21 of 1974.

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2. Appeal No. 36 of 1972 was from the Judgment and Order of the Supreme Court of Judicature of Jamaica (Chambers, J.) dated the 16th November 1972, whereby Judgment was entered for the First Respondents (Plaintiffs) against the Appellants (Defendants) on the First Respondents' claim for possession of land, an injunction restraining the Appellants from constructing any building on the said land and a mandatory order to pull down dismantle and demolish any building erected on the said land.

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- p.121 3. Appeal No. 21 of 1974 was from the Judgment and Order of the Supreme Court of Judicature of Jamaica (Vanderpump, J.) whereby the Appellants claim against the First and Second Respondents, for damages, for wrongful entry and trespass was struck out on the ground that it was frivolous and vexatious.
- p.161 4. An Order granting leave to Appeal to Her Majesty in Council was made by the Court of Appeal of Jamaica on 30th May 1975. 10
5. The principal questions raised by these Appeals are :-
- i) whether the Judgment and Order of the Resident Magistrate for the Parish of Clarendon (H.F. Shelly, Esq.) in Information No. 4479 of 1962, that the Respondents' predecessors in title were entitled to an order for possession against the Appellants under Section 3 Recovery of Small Tenements Act, 1912 (Cap 18) was conclusive on the issue as to title to the land so as to give rise to a plea as of res judicata in future litigation; 20
- p.88 ii) whether in Suit No. CLP 005 there was a reasonable cause of action that was neither frivolous nor vexatious irrespective of any issue of res judicata.
- Section 3, Recovery of Small Tenements Act, 1912 is set out in the Appendix to this Case. 30
6. The land, the subject matter of these Appeals is a parcel of about $5\frac{1}{4}$ acres situated at Sunnyside, May Pen, in the Parish of Clarendon. In July, 1942 the First Appellant took a lease of the land from Rebecca Lyons, who held herself out to be the registered owner. That lease contained an option to purchase upon 6 months notice or 6 months rent in lieu of notice. The term of the lease was 5 years at £6 per annum. On the 1st December, 1960 the Resident Magistrate for the Parish of Clarendon made an order vesting the said land in one Frederika Goode, the daughter of Annie Brown, the then registered owner. 40
- p.15
- p.24 7. The said Information No. 4479 of 1962 was laid

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by the agent for Frederika Goode, Frederika Walker. In those proceedings Frederika Walker alleged that the First Appellant (who occupied the premises with the Second Appellant) was and had been since 1944, tenant of the said land. The First Appellant asserted the terms of the lease (paragraph 6 above) and that he had in July, 1944 exercised the option to purchase the said land, having paid 6 months rent in lieu of notice and £125 as first payment of the purchase price. Further he contended that he had paid the full price by making further payments, as to £100 in August 1945 and £25 in January 1946. Receipts had been given for each payment but in 1951 a hurricane destroyed the house he had built there and the receipts were lost. After the destruction of the first house he built another which was completed in 1957. The First Defendant called in support of his claim one Ivan Lawrence (an independent witness) who testified that he had been present on the occasions when the purchase money was paid. The complainant Frederika Walker produced 3 counterfoils the first dated 18th May 1954 purporting to be receipt for rent for £12 (2 years), £6 (1 year) and £3 (6 months). Notwithstanding the above conflict of evidence the learned Magistrate granted an order for possession, stating that the evidence of the First Appellant was a mere fictitious pretence of title. The said order for possession was not enforced and the Appellants have remained in possession of the said land to the date hereof.

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8. By Suit No. E11 of 1963 the First Appellant claimed, inter alia, a declaration that he was entitled to the Fee Simple of the said land and that Frederika Walker, had no right, title, estate or interest in the land. On the hearing of Frederika Walker's Summons dated 12th February, 1963 to strike out the First Appellants' Statement of Claim, the learned Judge (Fox J. acting) held that the matter had been determined by the Resident Magistrate and was res judicata. Accordingly the Statement of Claim was struck out and Judgment was entered for Frederika Walker. The Appellants sought leave to appeal but were refused leave on the ground that their application was out of time. No further appeal was pursued.

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9. On the 12th August 1969, the said land was sold to the First Respondents and their name was entered on the Register as registered proprietors by transfer No. 253332.

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- p.1 10. On the 23rd March 1972 the First Respondent filed the Writ of Summons in Suit No. C1 371 of 1972, (now appeal No. 36 of 1972). By that action the First Respondents claimed:-
- (1) Possession of the said land;
 - (2) An injunction restraining the Appellants building on the said land;
 - (3) A mandatory order to demolish all buildings on the said land.
- p.2 1 . On the same day the 23rd March 1972, the First Respondents took out a summons by which they sought an interlocutory injunction restraining the Appellants erecting or causing or permitting to be erected on the said land any further buildings. The said summons was heard on the 26th April 1972, by Parnell, J., who made an order that as a preliminary point of law arose on the pleadings the question of ownership of the said land as between the First Respondents predecessors in title and the Appellants should be set down for hearing. The learned Judge purposed to make this order under Section 236 of the Civil Procedure Code as amended by Section 72 of the Civil Procedure Code Amendment Rules, 1960. An injunction was granted until 29th May 1972 on an undertaking in damages being given by the First Respondents. 10
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- p.9 20
- p. 12. There were no pleadings (save the Writ of Summons) in Suit No. 371 of 1972. The Appellants sought leave to appeal from the order of Parnell, J., on the ground that since there had been no pleadings in the case no point of law could have arisen, and in any event, it was not a case in which there could be a trial on a preliminary point of law. 30
- p.52 But on the 16th November 1972, before the Application For Leave to Appeal could be heard, the preliminary point reserved by Parnell, J., was heard by Chambers, J., in spite of objections by Counsel for the Appellants. 40
- p.13 13. In his judgment Chambers, J., held that the question of the ownership of the land had already been determined by a Court of competent jurisdiction. Judgment was accordingly entered for the First Respondents and an application for
- p.13

stay of execution was refused.

14. On the 21st November 1972 an Appeal against the said judgment and order of Chambers, J., (Appeal No. 36 of 1972) was filed.

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15. On the 28th November 1972 the Appellants filed a Motion For Stay of Execution of the Judgment of Chambers, J., pending the Appeal.

10 16. On the 15th December 1972, while the Appellants' application for a stay of execution was being heard by the Court of Appeal and before a Writ of Possession had been obtained, the First Respondents by their servant or agent the Second Respondent demolished the Appellants' dwelling-house and outbuildings on the said land and took and carried away the Appellants' goods and utensils.

17. By reason of the above the Appellants issued the Writ of Summons in Suit No. CLP 005 (Appeal No. 21 of 1974 herein) on the 24th January 1974 claiming:-

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- 1) The value of house and outbuildings destroyed.
- 2) Damages for trespass to goods.
- 3) Rental of temporary premises.
- 4) Damages for trespass and conversion.

18. On the 20th March, 1974 the First Respondents took out a summons to strike out the Appellants' Statement of Claim in Suit No. CLP 005 of 1974 on the ground that it disclosed no reasonable cause of action or alternatively was frivolous and vexatious. The summons was heard on the 24th May 1974 by Vanderpump, J., Acting, who found that although a reasonable cause of action was disclosed the claim was frivolous and vexatious. Accordingly he struck out the Appellants' Statement of Claim and dismissed the said suit.

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19. On the 3rd June 1974 the Appellants by leave of Vanderpump, J., Acting, filed an Interlocutory Appeal against the order. (Appeal No. 21 of 1974).

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20. The two above-mentioned Appeals (No. 36 of 1972 and No. 21 of 1974) were consolidated and

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heard by the Court of Appeal on the 14th, 15th, 16th and 17th October 1974 and on the 20th December 1974 the Court of Appeal of Jamaica by a majority decision dismissed the Appeals.

21. Hercules, J.A., with whose Judgment Zacca, J.A., agreed held that the Facts in issue in Suit No. CL 371 of 1972 were litigated and duly adjudicated upon by the Resident Magistrate in Information 4479 of 1962 and that this adjudication was affirmed by Fox, J., Acting, in Suit E 11 of 1963. Further the claim in trespass (Suit No. CL Poo5 of 1974) involved the same questions of ownership and possession which had already been decided by Courts of Competent jurisdiction and accordingly Vanderpump J. had rightly struck out the Statement of Claim as being frivolous and vexatious.

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22. The President, Edun, J.A., dissented holding that as there was a bona fide question of title set up by the First Appellant before the Resident Magistrate and that he did not have jurisdiction to deal with the merits of the possession action and should not have continued hearing the complaint. Further that it was incumbent on Fox, J., Acting to examine the merits of the First Appellants case as Section 54 of the Landlord and Tenant Law Chap 206 by its proviso specifically reserves the rights of the occupier. Accordingly the matters raised by Action CL 371 of 1972 were not res judicata and the merits of the case should have been investigated. Further the facts and circumstances of the taking of possession of the said land amounted to a flagrant and high-handed case of forcible entry. The question of forcible entry was a triable issue irrespective of the question of ownership of the land. For these reasons Edun, J.A., would have allowed both Appeals.

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23. It is respectfully submitted that a party is estopped from questioning in a new legal proceeding a decision of a Court of Competent jurisdiction and such a decision cannot be challenged as being incorrect or unjust. For "if (the Magistrate) has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact or law will destroy his jurisdiction" (per Lord Reid in Armagh -v- Government of Ghana and Another (1968) A.C. 192 at 234).

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10 But where there is no jurisdiction to decide the question in dispute no decision can be conclusive so as to prevent it being raised in a further hearing. Further, where an issue which is outside the jurisdiction, arises, the existence of which is a condition precedent to a matter within the jurisdiction of the tribunal, that tribunal may inquire for the purpose of deciding whether to continue the hearing, as to whether the issue is bona fide (Colonial Bank of Australasia -v- Robert William (1874) 2 Doels 288) but its decision upon such a matter is not a determination of the issue.

20 24. The said Information was brought under Section 3 Recovery of Small Tenements Act, 1912. By the said Section a landlord may recover possession of premises where the rent does not exceed £3 a month and the term, not being for more than 3 years has expired, and the tenant is holding over. Where a bona fide claim is made by a Defendant in such proceedings which raises an issue as to the title to land, it is submitted that the Magistrate has no jurisdiction to determine that issue as to title, where the annual value of the land exceeds £50. (S. 96 Judicature (Resident Magistrates) Law. CAP 179 set out in the Appendix hereto).

30 25. In the instant case the First Appellant gave evidence and called a witness in support of his contention and it is respectfully submitted that a bona fide case was raised and the learned Magistrate should not have continued hearing the information. Further it is submitted that in any event the learned Magistrate decided the question of ownership only insofar as it gave him jurisdiction to hear the matter under the Recovery of Small Tenements Act 1912. Further it is respectfully submitted that since Fox, J. struck out the First Appellant's claim for a declaration on the ground that the learned Magistrate's adjudication constituted res judicata, and not on 40 the merits there never has been an adjudication by a court of competent jurisdiction of the First Appellant's claim.

26. It is, therefore, respectfully submitted that the suits herein should be remitted to the Supreme Court of Jamaica in order that a finding on the question of title may be determined upon the merits of the case.

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27. It is respectfully submitted, in relation to Appeal No. 21 of 1974, that if the Appellants were the owners of the said land the Respondents are liable in trespass and conversion for the damage they did. If the Appellants were not the owners of the land but merely tenants holding over they were in actual possession of the land and the Respondents not having a Writ of Possession were only entitled to use reasonable force to gain entry. Insofar as the Appellants' goods were removed from their dwellinghouse so that its demolition could be accomplished it is respectfully submitted there was forcible entry.

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28. Further it is submitted that the second proviso to Section 3, Recovery of Small Tenements Act, 1912 expressly preserves the right of a tenant to bring a claim for damages for trespass and wrongful eviction.

29. Accordingly the Appellants respectfully submit that these Appeals be allowed and that the suits herein should be remitted to the Supreme Court of Jamaica for determination upon the merits for the following among other.

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REASONS

(1) BECAUSE the decision of the Resident Magistrate in Information No. 4479 that the Respondents were entitled to possession of the said land was not and could not constitute a determination as to the ownership of the land

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(2) BECAUSE the order of Fox. J. was not made after a consideration of the Appellant's claim on the merits.

(3) BECAUSE the First Appellant raised a bona fide issue as to title and the learned Magistrate erred in failing to find that such an issue had been raised.

(4) BECAUSE by virtue of the Second Proviso to Section 3 Recovery of Small Tenements Act 1912 Suit No. CLP 005 of 1974 was neither frivolous nor vexatious nor an abuse of the Court.

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(5) BECAUSE in Suit No, CLP 005 of 1974 the Appellants had a reasonable cause of action for forcible entry independent of any question of ownership of the said land.

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(6) BECAUSE of the reasons given by Edun, J.A.,
in his dissenting judgment in the Court of Appeal
of Jamaica.

EUGENE C.L. PARKINSON Q.C.

GEORGE NEWMAN

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

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1. BEVERLEY GARDENS
DEVELOPMENT COMPANY
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2. XDOL MIGNOTT Respondents

CASE FOR THE APPELLANTS

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