

Ramdeo Mahabir - - - - - *Appellant*
v.
Allan Payne - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 15TH JANUARY 1979**

Present at the Hearing :

LORD DIPLOCK
LORD RUSSELL OF KILLOWEN
LORD SCARMAN

[Delivered by LORD RUSSELL OF KILLOWEN]

The facts in this case may be shortly stated, together with their chronology. The dispute concerns a property Lot 71 Stella Street, Curepe, and the title thereto. In 1960 Beatrice Abidh was the owner in fee simple together with other adjoining land.

1. In 1960 the owner granted a lease of Lot 71 to the respondent for 25 years.
2. On 26 March 1964 the owner executed a voluntary settlement of land which included Lot 71, by conveyance to herself, the appellant, and a third person as trustees on trust for herself for life with remainder to the appellant and the third person as joint tenants.
3. On 4 July 1964 the owner by her attorney sold and conveyed Lot 71 for valuable consideration to the respondent, the instrument being expressed to merge the existing lease in the freehold.
4. On 26 August 1964 the settlement deed was registered pursuant to the Registration of Deeds Ordinance Ch. 28 No. 2 as No. 11685 of 1964.
5. On 3 September 1964 the conveyance of Lot 71 was registered as deed No. 11964 of 1964.
6. On 25 September 1964 the owner died and on 2 October 1964 the third person died. This left the appellant as the sole surviving trustee and beneficiary under the settlement.

The whole question in this appeal is whether the fact that the conveyance of Lot 71 was not registered until after the settlement was registered deprives the respondent of the ability to say that he owns the freehold. This depends upon the relevant statutes. Malone J. at first instance held that it did. The Court of Appeal held that it did not. Their Lordships are at some disadvantage in that the respondent has not taken any part in this appeal, for which leave was given by the Court of Appeal.

The statutory provisions relevant to the decision of this appeal appear to their Lordships to be the following contained in the Registration of Deeds Ordinance Chapter 28 No. 2. That Ordinance describes itself as "An Ordinance relating to the execution, registration and admission in evidence of deeds, and to provide for the protection of purchasers and mortgagees". Section 3 is as follows:—

"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 specialty, 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".

Section 16 is as follows:—

"(1) Every deed whereby any lands in the Colony may be in any way affected 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 same person so conveying such 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 mortgagee without notice of the same lands or any part thereof, whose conveyance shall be first registered."

Section 18 subsections (1) and (2) are as follows:—

"(1) Every deed of gift and every settlement executed after the 29th of 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 the fees which 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 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."

The present appellant claimed payment of the rent under the lease above mentioned. The respondent refused to pay on the strength of his title under the conveyance to him. In 1972 the appellant sued for a declaration that he was entitled to the freehold under the settlement and for possession on the ground that the respondent by denying his lessor's title had forfeited the lease. The appellant succeeded before Malone J.; the note of his judgment so far as now relevant says:—

"Unfortunately for the defendant his deed is the latter in time".

This was of course correct in respect both of dates of execution and dates of registration. The Judge made an order setting aside the respondent's conveyance and declaring the appellant to be the owner in fee simple of Lot 71, and ordering possession in four months.

The respondent appealed therefrom to the Court of Appeal (Sir Isaac Hyatali C.J. and Corbin and Rees JJ. A.) who set aside the order of Malone J., judgment being delivered by Rees J.A. with which the other members of the Court agreed.

Counsel for the appellant contended that the system of registration of deeds such as these involved the simple proposition, which seems to have been accepted by Malone J., that priority of registration was the answer to the case. Consider, it was said, section 16(1): there are two deeds purporting to convey the same land (Lot 71): the settlement was duly registered and therefore is declared to be good and effectual against the second deed "according to the priority of time of registering".

Their Lordships however consider that the solution to this case lies in section 16(2). The respondent was a subsequent purchaser of Lot 71 for value without notice of the settlement. His right was a right to have the settlement *adjudged* void as against him, it not having been registered at the time when he became such a purchaser: that right crystallised then and could not be taken from him by a subsequent registration of the settlement. The phrase "whose conveyance shall be first registered" cannot mean whose conveyance is registered before the settlement is registered. Such a construction would deprive the subsection of all content, since in that case the registration priority under subsection (1) would suffice for the purchaser under the second deed. It (the phrase quoted) is in their Lordships' opinion but a condition precedent to an attack on the first deed as being void. It may be also that if there were two subsequent purchasers for value without notice the phrase stresses that it would be the first of those two to register who could assert avoidance of the original deed.

The Court of Appeal decided in favour of the present respondent on a rather different ground, that by s. 18(2) the settlement was not effectual to pass any estate in Lot 71 until its registration: therefore the owner retained the fee simple interest in Lot 71 at the date of the conveyance to the present respondent and that conveyance was effectual to pass the fee simple to him on that date: so that when the settlement was registered subsequently it had no content of or operation on that which was no longer hers to dispose of. As to that approach it is to be observed that there is some authority for the proposition that a voluntary disposition of land, when the means of immediate registration are placed in the hands of the donee, is not wholly without all operation: we were referred to *Huggins v. Manning* (1968) 14 W.I.R. 40 and *O'Regan v. Commissioner of Stamp Duties* 1921 St. R. Qd. 283. It may be that an argument could be sustained, against the reasoning of the Court of Appeal based upon section 18(2), that when conveying Lot 71 to the respondent the owner could only convey an interest defeasible on registration of the settlement. However, their Lordships consider it to be unnecessary to pursue that question further. They are satisfied that this appeal must fail having regard to the provisions of section 16(2), and accordingly they dismiss it with costs.

In the Privy Council

RAMDEO MAHABIR

v.

ALLAN PAYNE

DELIVERED BY
LORD RUSSELL OF KILLOWEN

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