

5/81

IN THE PRIVY COUNCIL

No. 3 of 1979
No. 4 of 1979

O N A P P E A L
FROM THE COURT OF APPEAL
THE WEST INDIES ASSOCIATED STATES SUPREME COURT
(VIRGIN ISLANDS)

B E T W E E N :

ELLIS SKELTON Appellant

- and -

- 10 (1) RICHARD HOGARTH MADURO (Junior)
(2) CONRAD MADURO
(3) OMAR HODGE
(Administrators of the Estate of Richard
Hogarth Maduro (Senior))

Respondents

AND

B E T W E E N :

ELLIS SKELTON Appellant

- and-

- 20 (1) RICHARD HOGARTH MADURO (Junior)
(2) CONRAD MADURO
(3) OMAR HODGE
(Administrators of the Estate of Richard
Hogarth Maduro (Senior))
(4) LENA HOPE
(5) ANTONIO MADURO
(6) LUCY ANN HODGE
(7) SYDNEY MADURO
(8) IRVIN MADURO
(9) GEORGE EGBERT MADURO
30 (10) BEULAH PICKERING
(11) AMERIA MALONE
(12) JOYCE BREWLEY
(13) JULIAN MADURO
(14) KENNETH MADURO

Respondents

CASE FOR THE RESPONDENTS IN BOTH APPEALS

Record

1. These are two appeals by the Appellant, Ellis Skelton, from a judgment of the Court of Appeal of the West Indies Associated States, Virgin Islands (Sir Maurice Davis, C.J., Bernard and Peterkin, JJ.), dated the 14th February, 1977, which allowed in part both the Respondents' appeal in Civil Appeal No. 23 of 1973 and the Appellant's appeal in Civil Appeal No. 4 of 1974, both appeals being heard together by the Court of Appeal by consent and concerning an order of the Land Adjudication Officer (P.G. Owen, Esq.) dated the 5th April, 1973, in respect of a land adjudication dispute arising out of claims numbered 28/753 and 56/1503 made on behalf of the Appellant and the Respondents.

pp.39-43

pp.44-45

p.39, 1.14

pp.31-32

pp.1-4

10

2. The two Records herein are identical, save that:-

- (1) in Privy Council Appeal No. 3 of 1979, the Record at pp.37-38 contains the Respondents' Notice of Appeal in Civil Appeal No. 23 of 1973 whereas the Record in Privy Council Appeal No. 4 of 1979 contains at pp.37-38 the Appellant's Notice of Appeal in Civil Appeal No. 4 of 1974. No.3 of 1979 pp.37-38
- (2) in Privy Council Appeal No. 3 of 1979, the Record at pp.48-54 contains the Appellant's Petition, Notice of Appeal/Grounds of Appeal and Affidavit concerning leave to appeal to the Privy Council in Civil Appeal No. 23 of 1973. At pp.48-54 of the Record in Privy Council Appeal No. 4 of 1979 there are similar documents concerning leave to appeal to the Privy Council in Civil Appeal No. 4 of 1974. No. 3 of 1979 pp.48-54
No. 4 of 1979 pp.48-54
- 20
3. The principal questions sought to be raised in these two appeals by the Appellant are :-
- (a) whether both the land Adjudication Officer and the Court of Appeal were wrong in finding that Cadastral Survey showed that what Deed No. 35 of 1906 described as 42 acres was actually 89¼ acres; No. 4 of 1979 p.51, 11.8-10
- 30
- (b) whether both the Land Adjudication Officer and the Court of Appeal were wrong in describing the trust property of 37¼ acres conveyed by Deed No. 35 of 1906 as being undivided; No. 4 of 1979 p.51, 11. 11-23
- (c) whether both the Land Adjudication Officer and the Court of Appeal were wrong in law in allegedly failing to take into account the consequence in law of the alleged open and undisturbed possession for 24 years prior to the dispute by the appellant of certain lands comprising some 55 acres marked Parcel A on the plan Exhibit B. No. 3 of 1979 p. 50, 1.40 - p.51, 1.2
No.4 of 1979 p.51, 11.24-30
Exhibit B. p.57
- 40
4. On the 4th September, 1906, certain land known as Fish Bay Farm on the Island of Tortola, Virgin Islands and estimated to be 56 acres was conveyed by Deed No. 35 of 1906 to Joseph Skelton, the Appellant's father, on trust for the seven children of Roceita Maduro in certain proportions therein expressed amounting to 42 acres: reference was made in the said Deed to some 13 acres, 7 acres of which was expressed to belong to Joseph Skelton. The said Deed after setting out the proportions of the seven children, as follows:-
- 10
- | | |
|---------------------------|---------|
| John James Maduro | 4 acres |
| Richard Maduro | 6 acres |
| Ellen Eliza Maduro | 6 acres |
| Ann Elizabeth Maduro | 4 acres |
| Claudius Waldemar Skelton | 8 acres |
| Emma Clothilde Skelton | 7 acres |
| Alice Lutecia Skelton | 7 acres |
- Exhibit A.pp.56 58
p.55, 11.43-45
p.56, 11.18-28
p.56, 11.9-17
p.56, 11.28-35

20 then made provision as follows:-

"provided however, in the event of either of said children dying unmarried or without issue the share or portion of such child shall go to and be divided amongst the survivors in manner and proportion following that is to say the one half thereof to the aforesaid Maduros or the survivors or survivor of them, share and share alike and to the three Skeltons or the survivors or survivor of them as the case may be the other half in equal proportions" p.56, 11.35-43

5. On the 3rd July, 1943, by Deed No. 55 of 1943 the said Joseph Skelton conveyed 14 acres to the Appellant expressed to be "the remaining portion of fourteen acres of land approximately in the Fish Bay Estate of a total acreage of fifty six acres as per Deed No. 35 of 1906". An issue later arose in the land adjudication dispute as to whether the 14 acres was part of the Trust property referred to in Deed No. 35 of 1906. Exhibit C. p.58

40 6. On the 15th September, 1943, the said Joseph Skelton conveyed by two Deeds, namely Deed No. 78 of 1943 and Deed No. 79 of 1943 six acres and two acres respectively in Fish Bay Estate to Richard Hogarth Maduro, one of the said seven children Exhibit H. p.65

7. Between 1949 and 1955, the Appellant acquired from two aunts, his mother and an uncle (all four being one of the said seven children) 25 acres in all out of the said Fish Bay Farm, being their proportions of the same as set out in Deed No. 35 of 1906. The said 25 acres was acquired by the Appellant as follows:-

10 (1) 4 acres from his aunt, Ann Elizabeth Maduro conveyed to the Appellant by Deed No. 53 of 1949 dated the 13th July 1949; Exhibit D. pp.59-60

(2) 7 acres from his aunt, Alice Lutecia Skelton, conveyed to the Appellant by Deed No. 70 of 1949 dated the 13th August, 1949;

(3) 6 acres from his mother, Ellen Eliza Maduro, conveyed to the Appellant by Deed No. 74 of 1951 dated the 20th December, 1951; Exhibit G. pp.63-64

20 (4) 8 acres from his uncle, Claudius Waldemar Skelton, conveyed to the Appellant by Deed No. 11 of 1956 dated the 3rd November, 1955 Exhibit O. pp.72-73

8. Between 1956 and 1970 the Appellant demised certain land at Fish Bay from time to time to various lessees set out in six leases. Exhibit X. p.74
Exhibit M. pp.68-69
Exhibit N. pp.70-71
Exhibit Y. pp.75-76
Exhibit Z. pp.77-78

30

Exhibit AA.
pp.79-82

9. In accordance with the provisions of the Land Adjudication Ordinance, 1970 (Virgin Islands No. 5 of 1970) the Appellant completed a claim form dated the 24th April, 1972 (Claim No. 28/753) claiming some 35 acres at Fish Bay and relying upon Deeds 11 of 1905, 35 of 1906, 53 of 1949, 70 of 1949, 74 of 1951 and 11 of 1956. The Appellant did not rely upon Deed no. 55 of 1943 wherein there was conveyed to him 14 acres by his father, Joseph Skelton. The Appellant never sought leave to amend the claim form to put forward a claim based on long or adverse possession. The issue of "full and undisturbed possession" was first raised in the Appellant's Notice of Appeal from the decision of the Land Adjudication Officer.
- 40 10. On the 30th June, 1972, the Demarcation Officer prepared a dispute form referring to the said Claim No. 28/753 by the Appellant and to Claim No. 56/1503 made by the Respondents and setting out the broad nature of the dispute.
11. On the 6th February, 1973, the hearing of the land adjudication dispute opened before the Land Adjudication Officer (P.C. Owen, Esq.,) the respective cases of the Appellant and the Respondents being opened on that day. In accordance with the practice for the determination of disputes before the Land Adjudication Officer, the Land Adjudication Officer produced at the commencement of the hearing the Plan Exhibit B (at p.57 of the Record) showing the disputed land in different colours according to the claims made and setting out the acreage as found by his Demarcation and Survey Officers. Both parties and their Counsel accepted the accuracy of the Plan Exhibit B. No challenge was made to the accuracy of the Plan Exhibit B or to the fact that What Deed No. 35 of 1906 described as 42 acres of trust property was actually 89¼ acres (as shown on the Plan Exhibit B with the exception of the 6 acres thereon described as "Approx. Area Sold Out of Fish Bay Estate And Now Attached To Kingstown Land") until the Appellant sought to do so in seeking leave to appeal to the Privy Council. Thereafter, on the 2nd, 9th and 28th March, 1973, fifteen witnesses gave evidence on oath to the Land Adjudication Officer. There was a conflict of evidence as to whether the land or part of the land claimed by the Appellant had been recently fenced or fenced for many years as alleged by the Appellant. There was no argument addressed to the Land Adjudication Officer on behalf of the Appellant on the question of long or adverse possession.
- 10 12. On the 5th April, 1973, the Land Adjudication Officer delivered his decision BV1/P/41/72. After referring to Deed No. 35 of 1906, the Land Adjudication Officer said that Joseph Skelton had endeavoured to execute his duties of Trustee honestly and to the best of his ability and had been assisted in this by Claudius Waldemar Skelton

pp.1-2

p.1, 11.21-25

pp.3-4

p.5

pp. 5-9

pp.9-30

pp.31-32

Exhibit A

pp.55-56

p.31, 11.8-22

p.31, 11.22-27

p.31,11.22-27

- 20 and by his illegitimate son, the Appellant. He found that the Appellant had no right to acquire the shares of "fellow beneficiaries" and that the Appellant's mother being unmarried and without lawful issue was deemed still to be in possession of her share of the Trust. He further found, having added the 25 acres acquired by the Appellant between 1949 and 1955 to the 14 acres acquired by him in 1943, that some if not all of the said 14 acres was not Trust land but Joseph Skelton's own land. The Land Adjudication Officer said that what remained of the Fish Bay Estate had been shown by the Cadastral Survey to be not 42 acres but 89 $\frac{1}{4}$ acres; the multiplication factor was seventeen over eight. In the exercise of his powers, the Land Adjudication Officer decided to apportion the land as follows:-
- 30 (1) Emma Fahie to retain the 8 acres claimed her; p.31, 11.43-47
p.31, last line
p.32, 1.8
- (2) Julian and Antonio Maduro to retain the 5 $\frac{1}{4}$ acres claimed by them; p.32, 11.8-10
- (3) The Respondents to retain the 7 acres originally the property of Richard Hogarth Maduro; p.32, 11.10-11
- 40 (4) The Appellant to retain the 14 acres given to him by his father in Deed No. 55 of 1943 and the said 14 acres by reason of the Appellant being a beneficiary under Deed No. 35 of 1906 to be multiplied by seventeen over eight to make a total of 29.75 acres which should include land known as the Baylot. p.32, 11.11-13
- (5) The remaining 39 $\frac{1}{4}$ acres less the two acres claimed by Pickering, to be recorded in the name of the "Heirs of Roceita Maduro" of whom, the Land Adjudication Officer said, the Appellant was one. p.32, 11.13-15
- 10 13. On the same day, the 5th April, 1973, as both Recording Officer and Land Adjudication Officer, P.C. Owen, Esq., prepared the Adjudication Record and confirmed by letter to Counsel for the Respondents that the heirs of Richard Hogarth Maduro should receive his entitlement under Deed No. 35 of 1906 multiplied by seventeen over eight. p.32, 11.16-17
p.32, 11.17-20
14. By a Notice of Appeal in Civil Appeal No. 23 of 1973 the Respondents appealed to the Court of Appeal, Virgin Islands against part of the Order of the Land Adjudication Officer on the grounds inter alia:- No.3 of 1979
pp.37-38
- 20 (1) that the Land Adjudication Officer erred in law in holding the Appellant to be a beneficiary under Deed No. 35 of 1906; No. 3 of 1979
pp. 37,
11.35-40
- (2) that the Land Adjudication Officer erred in law in holding that the Appellant should be recorded as No. 3 of 1979
p.37, 1.41 -

- one of the persons entitled to share in the remaining 37¼ acres of undivided trust land; p.38, 1.1
- (3) that the Land Adjudication Officer erred in law in holding the Appellant to be owner or the sole owner of the land known as the Baylot; No. 3 of 1979 p.38, 11.2-5
- 30 (4) that the Land Adjudication Officer erred in law in ordering that the land be recorded in the name of the Heirs of Roceita Maduro rather than in the names of the Beneficiaries described in Deed No. 35 of 1906. No. 3 of 1979 p.38, 11.1-9
15. By a Notice of Appeal in Civil Appeal No. 4 of 1974 the Appellant appealed to the Court of Appeal, Virgin Islands against part of the Order of the Land Adjudication Officer on the grounds, inter alia, that the Land Adjudication Officer was wrong in law in awarding part of the lands claimed by the Appellant to the heirs of Roceita Maduro, which lands the Appellant alleged had been in his full and undisturbed possession for approximately 24 years as absolute owner without acknowledging the title of any other person thereto. The Appellant did not challenge the Land Adjudication Officer's finding that the Cadastral Survey showed that 42 acres of the Fish Bay Estate described in Deed No. 35 of 1906 was in fact 89¼ acres No. 4 of 1979 pp.37-38
No. 4 of 1979 p.38, 11.1-9
16. By consent the two appeals were heard together on the 6th and 7th July, 1976 by the Court of Appeal, Virgin Islands (Sir Maurice Davis, C.J., St. Bernard and Peterkin, JJ). In the course of argument, Counsel for the Appellant when invited to do so by the Court was unable to identify in respect of which particular area of land prescriptive title was alleged, what acts were alleged in support of such title, where they were committed or when or for how long they were committed p.39,1.14
17. On the 14th February, 1977 the Court of Appeal unanimously allowed both appeals in part. St. Bernard, J., with whom the learned Chief Justice and Peterkin J. agreed, referred to Deed No. 35 of 1906 and concluded that there was insufficient evidence to find that the Appellant had undertaken to act as Trustee. The learned Judge said that the Land Adjudication Officer had found the 14 acres given to the Appellant by Deed No. 55 of 1943 not to be trust property and had granted the Appellant an additional 15.75 acres to include the Baylot on the basis that the Appellant was entitled as a beneficiary under Deed No. 35 of 1906. After referring to the Appellant's claim to 35 acres, St. Bernard J. said that there was no contention that the 25 acres acquired by the Appellant between 1949 and 1955 was owned by anyone else. The four beneficiaries did not dispute the transactions concerning the 25 acres. St. Bernard J. referred to the Respondent's argument that the 14 acres in Deed No. 55 of 1943 was trust property. The learned Judge said that a surplus of 37¼ acres arose because at the hearing before the Land Adjudication Officer it was revealed that what Deed No. 35 of 1906 described as 42 acres was actually 89¼ acres. After referring to the six acres pp.39-43
pp.44-45
pp.39-43
p.43
p.39, 11.15-29
p.39, 11.35-37
p.39, 11.40-end
p.40, 11.1-5
p.40, 11.5-11
p.40, 11.11-17
p.40, 11.15-17
p.40, 11.17-20
p.40, 11.25-28
p.40, 11.33-46
- 20

- granted to Richard Hogarth Maduro by Deed No. 78 of 1943, p.40, 1.46 -
to the detailed provisions of Deed No. 55 of 1943 p.41, 1.32
concerning the 14 acres conveyed to the Appellant and to
certain arguments concerning the effect of the latter p.41, 1.33
deed, St. Bernard J. held that the wording in Deed No. p.42, 1.19
55 of 1943 clearly showed that Joseph Skelton p.42, 1.19-21
was conveying to his son the Appellant, 14 acres which
40 were not Trust land. In St. Bernard J's view, the
Land Adjudication Officer was right in construing Deed
No. 55 of 1943 as conveying 14 acres not Trust property p.42, 11.23-25
to the Appellant
18. St. Bernard J. then dealt with the question whether
the Appellant was a beneficiary under Deed No. 35 of p.42, 11.26-47
1906. The relevant words were "dying unmarried or
without issue" in the passage cited by St. Bernard J. p.42, 11.37-41
which he interpreted to mean that the share of any
beneficiary who died unmarried reverted to the Trust p.42, 11.28-37
property as did the share of any beneficiary who died
married and without issue i.e. lawful issue. In
St. Bernard J's view as the Appellant was the illeg- p.42, 11.45-47
imate son of Eliza Ellen Maduro, he was not a bene-
ficiary under Deed No. 35 of 1906 and had no claim to
10 any portion of the 37¼ acres of Trust property. p.42, 11.42-45
Accordingly, the Land Adjudication Officer had been
wrong to find the Appellant to be a beneficiary and
thus to grant him a share of the Trust property.
However, St. Bernard J. allowed the Appellant's p.42, 1.47 -
appeal in part and granted him 39 acres, being the 25 p.43, 1.1
acres acquired by him between 1949 and 1955 plus the 14
acres conveyed to him by his father, Joseph Skelton.
19. St. Bernard J. dealt with Deed No. 78 of 1943 and p.43, 11.2-12
concluded that the Land Adjudication Officer was right
in holding that the 7 acres originally the property of
20 Richard Hogarth Maduro was to be retained by the
Respondents in Appeal No. 3 of 1979 called the current
claimants
20. St. Bernard, J. allowed the Respondents' appeal p.43, 11.12-17
in part and set aside the Land Adjudication Officer's
order in so far as it stated "the remaining 39¼ acres
less 2 acres claimed by Pickering at the Baughers end
of the estate to be recorded in the name of the Heirs
of Roceita Maduro of whom Ellis Skelton is one".
Ellis Skelton, the Appellant, was not entitled as a
beneficiary. St. Bernard, J. ordered that the follow-
30 ing words be substituted, namely "that the remaining p.43,11.18-23
37¼ acres of undivided trust property to be divided
as follows: half equally to the persons lawfully
entitled and claiming under the Maduros mentioned
in the trust instrument and the other half equally to
the persons lawfully entitled and claiming under the
Skeltons mentioned in the trust instrument".
21. On the 28th February, 1977, the Order of the Court p.44-45
of Appeal was entered in accordance with the judgment
of St. Bernard J., including the Court's decision that
40 there should be no order as to costs.
22. On the 11th January, 1978, the Appellant was granted No. 3 of 1979

leave to appeal to the Privy Council in both Civil Appeals No. 23 of 1973 and No. 4 of 1974 and in Notices of Appeal both dated the 3rd April, 1978, set out grounds of appeal which raised the three questions appearing in paragraphs 3 hereof

p.49, 11.4-5
No. 4 of 1979
p.49, 11.12-13
No. 3 of 1979
pp. 50-51
No. 4 of 1979
pp.50-51

23. The Respondents respectfully submit that the two appeals herein should be dismissed and that the judgment of the Court of Appeal, Virgin Islands is correct. It is respectfully submitted that both the Land Adjudication Officer and the Court of Appeal correctly found that the Cadastral Survey showed that what Deed No. 35 of 1906 described as 42 acres trust property was in fact 89¼ acres. That finding of the Land Adjudication Officer was not challenged by the Appellant in the Court of Appeal and it is respectfully submitted that it is not now open to the Appellant to take the point having regard to the concurrent findings of fact of both the Land Adjudication Officer and the Court of Appeal.

24. It is respectfully submitted that both the Land Adjudication Officer and the Court of Appeal correctly described the trust property of 37¼ acres as being undivided and it is respectfully submitted that it is not now open to the Appellant to challenge that concurrent finding of fact. Alternatively, although there was a conflict of evidence as to which land was fenced and when, there was ample evidence justifying the conclusion of the Land Adjudication Officer and Court of Appeal that the 37¼ acres trust property was undivided.

20. 25. It is respectfully submitted that the Appellant did not establish his allegation that he was in open and undisturbed possession of the 55 acres marked Parcel A on the plan Exhibit B and accordingly neither the Land Adjudication Officer nor the Court of Appeal was obliged, or indeed entitled, to take the said allegation into account. Alternatively, it is respectfully submitted that to the extent that any evidence supported the Appellant's said allegation both the Land Adjudication Officer and the Court of Appeal were entitled to reject the same as they did by, inter alia, their finding that the 37¼ acres of trust property was undivided. Accordingly, in so far as the Land Adjudication Officer and the Court of Appeal have concurrently found that the Appellant's said allegation should be rejected, it is respectfully submitted that it is not now open to the Appellant to pursue the said allegation herein

Exhibit B. p.57

26. The Respondents respectfully submit that the judgment of the Court of Appeal, Virgin Islands is right and ought to be affirmed, and these two appeals ought to be dismissed with costs for the following (among other)

R E A S O N S

(1) BECAUSE both the Land Adjudication Officer

and the Court of Appeal were right in finding that the Cadastral Survey showed that what Deed No. 35 of 1906 described as 42 acres of trust property was actually $89\frac{1}{4}$ acres:

- (2) BECAUSE both the Land Adjudication Officer and the Court were right in describing the trust property of $37\frac{1}{4}$ acres conveyed by Deed No. 35 of 1946 as being undivided:
- (3) BECAUSE neither the Land Adjudication Officer nor the Court of Appeal was obliged to take into account the Appellant's allegation that he was in open and undisturbed possession of 55 acres marked Parcel A on the plan Exhibit B, or alternatively, both the Land Adjudication Officer and the Court of Appeal rejected the Appellant's said allegation, as they were entitled to do:
- (4) BECAUSE it is not now open to the Appellant to challenge the concurrent findings of fact in (1) and/or (2) and/or (3) above:
- (5) BECAUSE the Order of the Land Adjudication Officer as varied by the Court of Appeal is correct upon the facts and as a matter of law:
- (6) BECAUSE of the other reasons given in the judgment of St. Bernard, J.

STUART N. MCKINNON Q.C.

IN THE PRIVY COUNCIL No.3 of 1979
No.4 of 1979

O N A P P E A L
FROM THE COURT OF APPEAL
THE WEST INDIES ASSOCIATED STATES
SUPREME COURT (VIRGIN ISLANDS)

B E T W E E N

ELLIS SKELTON Appellant

- and -

(1) RICHARD HOGARTH MADURO (Junior)
(2) CONRAD MADURO
(3) OMAR HODGE
(Administrators of the Estate of
Richard Hogarth Maduro (Senior))
Respondents

AND B E T W E E N

ELLIS SKELTON Appellant

- and -

(1) RICHARD HOGARTH MADURO (Junior)
(2) CONRAD MADURO
(3) OMAR HODGE
(Administrators of the Estate of
Hogarth Maduro (Senior))
(4) LENA HOPE
(5) ANTONIO MADURO
(6) LUCY ANN HODGE
(7) SYDNEY MADURO
(8) IRVIN MADURO
(9) GEORGE EGBERT MADURO
(10) BEULAH PICKERING
(11) AMERIA MALONE
(12) JOYCE BREWLEY
(13) JULIAN MADURO
(14) KENNETH MADURO Respondents

CASE FOR THE RESPONDENTS
IN BOTH APPEALS

Charles Russell & Co.,
Hale Court,
Lincoln's Inn,
London, W.C.2.

Ref: R/JA/9753
Tel: 01-242 1031