

IN THE PRIVY COUNCIL

No. 2 of 1979

ON APPEAL
FROM THE COURT OF APPEAL OF THE
WEST INDIES ASSOCIATED STATES SUPREME COURT

B E T W E E N:

ROBIN A. COOPER

Plaintiff - Appellant - Appellant

and

VICTOR CHARLES

JOHN M. COMPTON

EMANUEL H. GIRAUDY

Defendants - Respondents - Respondents

CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a decision of the Court of Appeal of the West Indies Associated States Supreme Court (Sir Maurice Davis CJ. and St. Bernard and Berridge JJ.A.) delivered on the 27th day of February 1978 which dismissed with costs an appeal that sought to set aside the Judgement in the St. Lucia High Court of Justice (Civil) of Renwick J. which is contained in the Judgement - Order dated the 25th day of January 1977 and entered in the said High Court of Justice (Civil) on the 7th day of March 1977.

pp.25-28

2. The appeal arises out of a purported sale by two deeds of sale dated respectively the 30th day of January 1961 and the 7th day of May 1963 by Elima Edward to the first-named Respondent of two portions of land situate at Desruisseaux in the Quarter of Micoud in the State of St. Lucia more particularly described in the Schedules to the said deeds of sale. The said deeds of sale were executed before the second and third-named Respondents. It is the case for the Appellant that the purported sales are false claims against the property of the Appellant are null and void and that ownership of the said portion of land vests in the Appellant as Administrator and Attorney by virtue of Letters of Administration granted on the 12th day of June 1969 and a Vesting Deed dated the 16th day of

pp.51-54

pp.58-60

pp.60-62

September 1969.

3. The question for decision in this appeal turn upon the fraudulent nature of the purported sales to the first-named Respondent and upon the following provisions of the Civil Code of St. Lucia:

Rules Particular to Different Titles by which
Real Rights are Acquired

1980. (Subst.10-1904) All acts inter vivos, conveying the ownership, nuda proprietas or usufruct of an immovable must

10. be registered at length or by an abstract hereinafter called a memorial.

In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property or received an onerous gift of it from the same vendor or donor for a valuable consideration and whose title is registered.

In the proviso to the section it is stated as follows:

20. "Provided always that all acts inter vivos purporting to convey the ownership, nuda propriatas or usufruct of an immovable shall be null and void, unless prior to the execution of such acts the title of the person or persons purporting to make such conveyance shall have been registered; but this proviso shall not annul or render void any act whereby the Crown purports to make any such conveyance, or in any manner whatsoever affect any right of the Crown".

4. By her last Will and Testament dated the 4th day of January 1892,

Louise Dareix bequeathed to her five grandchildren therein named, among whom was Elima Edward, inter alia three and a half carres (approximately 10 $\frac{1}{2}$ acres) of land at Desruisseaux aforesaid.

Louise Dareix died on the 29th day of January 1892 and her said Will was registered in the records of the Royal Court of St. Lucia by the executor Robert Edward on the 24th day of August 1893. pp.47-49

By a Declaration of Succession dated the 11th day of February 1966, the Appellant claimed ownership on behalf of himself and his brothers and sisters to an undivided half share of the land pp.55-57

at Desruisseaux. Elima Edward died intestate and unmarried and without issue on or about the 31st day of July 1967 and the Appellant obtained Letters of Administration to her estate on pp.58-60

the 12th day of June 1969. The Appellant in 1970 commenced proceedings in the High Court of Justice of St. Lucia as Administrator of the estate seeking a declaration that the deeds of sale dated 30th January 1961 and 7th May 1963 were null and void on the ground that the purported deeds of sale executed and caused to be registered by the second and third-named Respondents in their capacity as Notaries Royal in favour of the first-named Respondent were fabrications of the said Notaries, thereby enabling the first-named Respondent to fraudulently acquire from Elima Edward the Appellant's Aunt two portions of the said lands using the false title of prescription. The first-named Respondent thereby making trespass and unlawfully occupying the two portions of the said lands contrary to Article 2134 (8) of the Civil Code of St. Lucia, also in contravention of Article 2072 of the Civil Code of St. Lucia which reads:

"No one can prescribe against his title, in this sense that no one can change the the cause and nature of his own possession, except by interversion."

In a Judgement of Peterkin J. of the 25th day of April 1972, the Appellant was granted a declaration that failure to register the title before selling made all acts purporting to convey the ownership null and void, also based on the law of Trusts. pp.62-65

5. The Appellant commenced proceedings against the Respondents by Writs of the 2nd day of March 1973 and the 10th day of June 1974 claiming a declaration as to ownership of the land at Desruisseaux, an order for possession and an order for the ejectment of the Respondents together with damages and costs. pp.1-3 pp.9-12

The said actions were consolidated by Order of Renwick J. dated the 15th day of November 1976. The Appellant claimed that the purported sales of land to the first-named Respondent were void as having been induced by fraudulent means. He further relied upon the Judgement of Peterkin J. referred to in paragraph 4 of this Case as declaring that the deeds of sale to the first-named Respondent were null and void. The Appellant p.20-22 p.10 L34 p.11 L9 p.3 L1.13-17

20. further relied upon the Letters of Administration to the estate of Elima Edward as conclusive that the land had not been sold by Elima Edward to the first-named Respondent. Counsel for the first-named Respondent who was also Counsel for the second and third-named Respondents denied the allegation of fraud and alleged that by deeds of sale aforesaid and by a Deed of Correction dated the 15th day of November 1966 (executed again by the second-named Respondent) Elima Edward put an end to indivision between herself and her co-heir Sophia Cooper p.7 L1.30-38 p.17 L1.20-29 p.18 L1.3-11 p.13 L1.9-16 L1.32-42

deceased (the Appellant's mother). Counsel for the first-named Respondent claimed an order directing the Appellant as Administrator of the estate of Elima Edward to execute all necessary documents required to correct the deeds of sale and a declaration as to the first-named Respondent being the owner of the land. Counsel for the second and third-named Respondents denied that Elima Edward purported to sell land belonging to the Appellant although Counsel for the second and third-named Respondents admit the deeds of sale were declared null and void. Counsel for the first-named Respondent merely admits that a Judgement of the High Court of Justice in St. Lucia in Suit No. 7 of 1970 and dated 24th April 1972 was handed down.

p.15 Ll.6-16

p.5 Ll.31-34

6. The action came on before Renwick J. on the 20th and 25th January 1977. For the purpose of this appeal it is necessary to set out the evidence given by the Appellant by his Affidavit sworn on the 26th day of March 1975 wherein he refers to and has produced evidence to a payment by him of \$502.42 by way of Succession Duty paid upon demand by the Comptroller of the St. Lucia Inland

Exhibit
Mark A22

p.41 Ll.25-30

Revenue in respect of Elima Edward's undivided half share in the land at Desruisseaux. Also, the Appellant's Affidavit sworn on the 6th day of May 1977. It is the Appellant's claim that quite apart from other aspects of fraud alleged in this case, the purported sales to the first-named Respondent of the two portions of the land for \$400.00 constituted a gross undervalue when compared with the Affidavit of A. J. d'Auvergne a retired Government Assessor and Land Valuer who valued the property at \$76,665.50 thereby evidencing a substantially fraudulent transaction with a weak, poor and ignorant person (the Appellant's

pp.31-33

p.70

Aunt under duress) who had absolutely no knowledge of these fraudulent transactions.

pp.25-27

7. Renwick J. gave Judgement on the 25th day of January 1977. He described the nature of the claim and set out certain evidence when he said that the Appellant was aware of the sales made by Elima Edward at the time of the sales but did not discover until after her death that her title had been incorrectly stated in the Deeds.

P26 L1.12-20
L1.25-30

For the purpose of this appeal it is necessary to refer to the Appellant's evidence as appears by his Affidavit sworn on the 6th day of May 1977. The Learned Judge held that there was no evidence of fraud against the second and third-named Respondents and he declared the first-named Respondent to be the owner of the land purported to be sold to him by Elima Edward. It must be noted that at the hearing of the Consolidated Action only the Appellant gave evidence on oath. The Appellant claims that he was never allowed to cross examine the Respondents. The second-named Respondent has in fact never appeared in Court at any time throughout

pp.31-33

p26 L1.36-39

p26 L1.40-42

these proceedings. The Appellant is at pains to know whether the second-named Respondent is above the law.

8. By a notice of appeal dated the 4th day of March 1977 the Appellant appealed to the Court of Appeal of the West Indies Associated States Supreme Court. The appeal came on before Sir Maurice Davis CJ., St. Bernard and Berridge JJ.A. on the 2nd day of November 1977.

pp.29-31

9. Before the Court of Appeal the Appellant (in person)

p35

advanced the following arguments, namely:

Firstly, that the deeds of sale upon which the first-named Respondent based his claim of title to the property had been declared null and void by the Judgement of Peterkin J. referred to in paragraph 4 of this Case and accordingly no claim to ownership could be founded on them.

Secondly, that the claim of the first-named Respondent to a declaration of title to the property based on prescription pursuant to Article 2103 A of the Civil Code had been dismissed by Peterkin J. in a Judgement delivered on the 1st of March 1974. pp.66-69
p36 LL.1-30

Thirdly, that there was no claim before the Court which would justify the Court in making a declaration of ownership in favour of the first-named Respondent, he having advanced no counterclaim in the action.

Fourthly, that his title to the property derived from Louise Dareix whereas the first-named Respondent relied upon two deeds of sale which had already been declared null and void. The second and third-named Respondents admitted the declaration yet contended that Elima Edward was lawfully entitled to effect the said deeds. p.36 L44
p.37 L26

Fifthly, that the Respondents conspired to register the title of Elima Edward as one acquired by prescription when they were aware that the property being undivided, she was incapable of acquiring title by that means. p.37 L36
p.38 L11

Sixthly, the Letters of Administration to the estate of Elima Edward include the land at Desruisseaux thereby p.41 Ll.17-35

negating the alleged sale to the first-named Respondent. The Appellant knew of no money having been paid to Elima Edward by the first-named Respondent. The Appellant had made payment of Succession Duty in respect of the said property.

10. The Judgement of the Court of Appeal was delivered by St. Bernard JA. on the 27th day of February 1978. His Lordship said that Elima Edward owned a half share in $3\frac{1}{2}$ carres of land left under a Will of her grandmother. The other half share belonged to the Appellant's mother who died in 1947 and her share devolved upon her children. Elima Edward sold a portion of her share to the first-named Respondent in 1961. There was no fraud or any suggestion of duress or undue influence. He was given a title not under the Will but by prescription for 30 years' possession. In 1963 the same Respondent bought another parcel of land from her and was given the same type of title. The first-named Respondent was placed in lawful possession. After Elima died the Appellant discovered a 'technical defect' in the deed and as administrator of the estate sued for a declaration that both deeds were null and void. He was granted the declaration. He brought this action. His Lordship held that the Appellant stood in the shoes of Elima Edward who, by a valid contract of sale under Article 1382 of the Civil Code placed the first-named Respondent in lawful possession of the two parcels of land but gave a defective title, although capable of giving a valid title. In 1969 on discovering the defect "she" asks the Court to declare the title null and void, to declare the possession unlawful and to award damages.

pp.43-46
p45 L1.12-41

Article 1980 of the Civil Code under which the deeds were declared null and void appeared to his Lordship to be for the protection of third parties and not to assist a dishonest vendor from depriving an honest purchaser from possession of land under a valid contract of sale. The deeds, although not complying with Article 1980, are evidence of a valid contract of sale. The only complaint by the Appellant was that there was a technical defect in the deed of sale. Their Lordships dismissed the appeal. p.46 L.10

11. The Appellant applied to the Court of Appeal of the West Indies Associated States Supreme Court for leave to appeal to Her Majesty in Council and on the 24th November 1978 the said Court of Appeal (Sir Maurice Davis C.J., Peterkin and Berridge J.J.A.) granted the Appellant final leave to Appeal to Her Majesty in Council. p.46 L20 p.47 L20

12. The Appellant adduced evidence in the form of an Affidavit sworn by A. J. d'Auvergne, retired Government Assessor and Land Valuer, on the 17th day of March 1978 to the effect that the property, the subject matter of these proceedings, was valued by him at \$76,665.50. p.70

13. The Appellant respectfully submits that the decision of the Court of Appeal of the West Indies Associated States Supreme Court, dismissing the appeal with costs, should be reversed and the decision of the High Court of Justice contained in the Judgement of Renwick J. should be reversed for the following (among other) pp.43-46 pp.25-27

REASONS

(1) BECAUSE due weight has not been given to the evidence

of fraud on the part of the Respondents adduced by the Appellant demonstrating that they permitted the title of Elima Edward to appear upon the deeds of sale as a title acquired by prescription and Elima Edward purported to convey ownership of the land to the first-named Respondent by virtue of such title when they knew that the said Elima Edward could lawfully advance no such claim to ownership of the land.


(2) BECAUSE due weight has not been given to the evidence adduced by the Appellant demonstrating that, at the time when Elima Edward executed the deeds of sale she was senile, illiterate and unable to appreciate the effect of the said deeds.

(3) BECAUSE due weight has not been given to the evidence adduced by the Appellant that the sales to the first-named Respondent were at an undervalue thereby evidencing duress and/or undue influence on the part of the Respondents in respect of the sales.

(4) BECAUSE St. Bernard JA. erred in holding that the Appellant claimed title to the land through Elima Edward and accordingly stood in her shoes in relation to the first-named Respondent. The Appellant claims title by descent from Louise Dareix who, by virtue of the provisions of Article 1991 of the Civil Code of St. Lucia, is deemed to have died intestate.

(5) BECAUSE having regard to Articles 1980 and 1991 of the Civil Code of St. Lucia and to the principles of construction applicable Elima Edward was incapable of passing title to the property to the first-named Respondent firstly because the Will of Louise Dareix was not registered as is required by Article 1991 within six months from the death of the testator

and accordingly ownership of the property could not vest in the beneficiaries under the said Will and secondly because such claim to the property as Elima Edward may have had by prescription for 30 years' possession fails by virtue of the fact that such possession had never been established to the satisfaction of the Supreme Court nor was such a claim registered as required by Article 1980 aforesaid.

A handwritten signature in black ink, appearing to read 'R.A. Cooper', with a large, stylized flourish above the name.

ROBIN A. COOPER

Appellant (in person)

No. 2 of 1979

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF THE
WEST INDIES ASSOCIATED STATES
SUPREME COURT

B E T W E E N:

ROBIN A. COOPER Appellant

and

VICTOR CHARLES

JOHN M. COMPTON

EMANUEL H. GIRAUDY Respondents

CASE FOR THE APPELLANT
~~RECORD OF PROCEEDINGS~~

Durrant Piesse
73 Cheapside
London EC2V 6ER
01 236 6515
AT/APT/C.3903
Solicitors for
the Appellant