(Privy Council Appeal No. 2 of 1979)

Robin A. Cooper – – – – – – *Appellant*

v.

Victor Charles and others – – – – – – *Respondents*

FROM :

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY 1982

Present at the Hearing :

LORD FRASER OF TULLYBELTON

LORD KEITH OF KINKEL

LORD BRIGHTMAN

[*Delivered by* LORD BRIGHTMAN]

This is an appeal from an order of the Court of Appeal of the West Indies Associated States Supreme Court. The appellant is Mr. Robin Cooper. He is the sole plaintiff in the proceedings. In his statement of claim, however, he says that he is suing in a representative capacity. By this he means that he sues on behalf of himself and his brothers and sisters. Mr. Cooper claims, on his own behalf and on their behalf, to be entitled to certain land expressed to be comprised in deeds of sale executed in favour of the first respondent Mr. Victor Charles. The appellant attacks the deeds of sale and claims possession of the land expressed to be comprised therein on two grounds. First, he asserts that the grantor, the late Elima Edward through whom the appellant and his brothers and sisters claim, was senile and illiterate at the time of execution. Secondly, he claims that the deeds were null and void on the ground of non-registration of the title of the grantor. The appellant failed in these claims both in the High Court and in the Court of Appeal.

The appellant has appeared before their Lordships in person. The respondents have not appeared at all.

In addition to the issues raised by the appellant, a problem is occasioned by the fact that the land in question was held in undivided shares by the grantor and others, but was conveyed by the grantor as if she were the owner of the whole interest. This affects the form of order which is proper to be made.

In order to explain the course of events, their Lordships must begin with a brief outline of the system of registration of title to land in St. Lucia, as they understand it. In so doing, their Lordships must emphasise that they have not had the advantage of submissions from any one versed in the law of St. Lucia.

Article 1980 of the Civil Code provides as follows:—

> " All acts *inter vivos,* conveying the ownership, *nuda proprietas* or usufruct of an immovable must 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.
>
> Every conveyance by will of the ownership, *nuda proprietas* or usufruct of an immovable must be registered either at length or by memorial, with a declaration of the date of the death of the testator and the designation of the immovable.
>
> The transmission of the ownership, *nuda proprietas* or usufruct of an immovable by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death, and the designation of the immovable.
>
> Provided always that all acts *inter vivos* purporting to convey the ownership, *nuda proprietas* 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."

Their Lordships analyse Article 1980 as follows. The first paragraph is a direction that a conveyance of title to land must be registered in full or by an abstract. The second paragraph provides that, in default of such registration, the title so conveyed cannot be set up against a purchaser for value (whether full value or not) from the same grantor if such purchaser for value has registered his title. The third paragraph requires registration of a conveyance by will of the title to land, as distinct from a conveyance *inter vivos.* The fourth paragraph requires registration of intestate succession to the title to land. The proviso deals with a different aspect of non-registration, that is to say, the omission of an *inter vivos* grantor of title to land to have registered his title prior to the date of a conveyance by him. In the latter circumstances the conveyance of the title is declared to be null and void. Failure to register a conveyance *inter vivos* has the consequence that the grantee is unable to rely on it as against a subsequent purchaser for value who has registered. Failure on the part of a grantor to register his title prior to conveyance has a different consequence, namely, the conveyance purporting to convey such title is avoided.

By her will dated 4 January 1892 Louise Dareix of the Island of St. Lucia devised to her five grandchildren a piece of land at Desruisseaux in the Island of St. Lucia, measuring 3½ carrés. Their Lordships are told that a carré is a little over 3 acres, so that the subject matter of the devise comprised about 11 acres. Louise died on 29 January 1893 and her will was duly proved. It will be convenient to refer to the 3½ carrés so devised as " the Dareix land ".

Under English law, the devise would have been construed as a gift to the five grandchildren as joint tenants, with the result that on the death of one grandchild without any severance having taken place, the land

would have belonged jointly to the survivors, and ultimately to the sole survivor. The appellant however told their Lordships that joint tenancy was unknown in St. Lucia before 1956. This is consistent with the subsequent proceedings. Throughout the long litigation that has taken place, the court has at all times proceeded on the basis that Louise Dareix's gift took effect in favour of her grandchildren as tenants in common in equal undivided shares. Their Lordships will therefore assume that this is the correct interpretation of the devise.

The last two survivors of the grandchildren were Sophia Cooper and Elima Edwards. The other three grandchildren had died intestate and without issue, and Sophia and Elima became entitled to the Dareix land in equal shares. Elima did not register her title to the land.

On 28 October 1947 Sophia Cooper died intestate. The persons entitled to her estate were her 11 children, of whom the appellant is one.

On 30 January 1961 Elima executed a deed of sale. This was done before a notary, Emmanuel Henry Giraudy. The purchaser was the respondent Mr. Victor Charles. The consideration was $200. The property sold was expressed to be a parcel of land measuring 400 feet × 400 feet, forming part of the Dareix land. The deed stated that Elima claimed the land by virtue of prescription, she having been in possession for over 30 years. The deed was signed by Elima, Victor Charles and the notary.

In the same year Elima made or purported to make a disposition of a further 1½ acres of the Dareix land in favour of Clermina Montrose. Their Lordships interrupt the chronology to say that in 1969 the appellant brought proceedings against Clermina challenging the validity of the disposition on the ground of the non-registration of Elima's title. The action was compromised on appeal in terms which the appellant repudiated, and this led to further proceedings which ended in favour of Clermina. This piece of litigation is only of marginal importance in the instant appeal.

On 7 May 1963 there was executed on Elima's behalf a further deed of sale in favour of the respondent. This was done before another notary, John George Melvin Compton. The consideration was again $200. The subject matter was expressed to be a further site which amounted, with that comprised in the 1961 deed of sale, to 1½ carrés. The title was again based on prescription. The deed was signed by the respondent Victor Charles, by the Rev. Father Chaigneau who was the parish priest on behalf of Elima who declared her inability to sign owing to illness, and by the notary. It is not in dispute that the appellant was aware of the sales to the respondent, but it does not appear that he knew of the terms of the deeds of sale. Their Lordships understand that the notaries registered the two deeds of sale but the point is not directly relevant.

On 11 February 1966 the appellant made a " declaration of the succession of the late Sophia Cooper ". This was made before a notary and filed the following day with the St. Lucia Office of Deeds and Mortgages. It recited the will and death of Louise Dareix, and the death and children of Sophia Cooper, and stated that the appellant on behalf of himself and his brothers and sisters claimed ownership of an undivided one half of the Dareix land.

On 15 November 1966 a deed of correction of the 1963 deed of sale was made, amending the description of the property expressed to be conveyed. The parish priest signed on behalf of Elima.

On 31 July 1967 Elima died intestate and unmarried. At some time thereafter the appellant became aware that Elima's title to the Dareix land was unregistered.

On 12 June 1969 the appellant obtained from the High Court of St. Lucia a grant of letters of administration to her estate. The grant contains a recital that the deceased was at her death seized of an undivided half share of the Dareix land.

On 16 September 1969 the appellant executed before a notary a vesting deed whereby, as the administrator of Elima, he purported to assent to the vesting in himself of an undivided half share in the Dareix land on behalf of himself and his brothers and sisters.

In 1970 the appellant and his brothers and sisters brought an action (Suit No. 7 of 1970) against Victor Charles seeking an order that the 1961 and 1963 deeds of sale were null and void because Elima had not registered her title. The action came before Mr. Justice Peterkin. The learned judge began by saying that the Dareix land had become vested after the death of the third grandchild in Sophia and Elima in equal shares, and that the half share of each sister had thereafter devolved on the 11 children of Sophia.

The failure of Elima to register her title was not in dispute, and the learned judge accordingly declared that the deeds were void. However he pointed out that such declaration was of little value to the plaintiffs, and that the real issue would arise when the parties litigated the effect of the failure to register.

In 1972, as anticipated by Mr. Justice Peterkin, Victor Charles petitioned for a declaration of title in accordance with Article 2103A of the Civil Code. His claim was based on prescription. The petition came before Mr. Justice Peterkin. He gave judgment on 1 March 1974. He repeated that Sophia and Elima had become entitled to the Dareix land in equal shares. In the course of his judgment he said this:—

> " There is no evidence that the land has been partitioned, either by agreement or by any order of the Court. By a judgment of this Court given in Suit No. 7 of 1970 . . . . . it was adjudged that the two deeds of sale referred to above were null and void, the Title thereto not having been previously registered as required by law . . . The Petitioner has however been in possession and occupation of the two portions of land from the respective dates of the alleged sales until now. Bearing in mind that the Petitioner's possession, by himself, relates to a period of approximately 10 years only, the urgent question as far as this application is concerned is whether or not Elima Edward in the circumstances of her joint and undivided ownership could in law have prescribed against her sister Sophia and/or her lawful heirs. The success or otherwise of the instant Petition rests as I see it entirely on the answer to this question."

The learned judge decided that the respondent had no title by prescription. The ground of the decision would seem to have been that, under the English law of trusts, which was part of the law of St. Lucia, a tenant in common in equity, at any rate if he is also a trustee for sale under the statutory trusts imposed by the Law of Property Act 1925, cannot prescribe against his co-tenant in common.

On 2 March 1973 the appellant issued a writ (Suit No. 43 of 1973) against Victor Charles and the two notaries, claiming (*inter alia*) a declaration of ownership of the land comprised in the 1961 and 1963 deeds of sale, and an order for possession. As mentioned earlier, he purported to sue in a representative capacity. On 10 June 1974 he issued a further writ (Suit No. 148 of 1974) against Victor Charles alone claiming possession of the same land. On this occasion the statement of claim referred to the deeds of sale as " fabricated documents " whereby the land was " fraudulently " acquired. The nature of the fabrication and the

nature of the fraud were not particularised. In his defence in the 1974 action Victor Charles claimed a declaration that he was the owner of the land described in the 1961 and 1963 deeds of sale. He repeated an allegation that he had made in the course of the 1970 action that Elima and Sophia had partitioned the Dareix land. He did not in terms assert that the land comprised in the 1961 and 1963 deeds of sale was allocated to Elima in the course of the alleged partition, but perhaps that was the intention of the pleading.

On 15 November 1976 the 1973 and 1974 actions were consolidated. The consolidated action came before Mr. Justice Renwick. The appellant conducted his case in person, and he was the only witness to give evidence. The defendants were not called on. The learned judge delivered a brief judgment on 25 January 1977, the relevant part of which reads as follows:—

> " In my view the plaintiff was aware of the sales, and is now seeking to take unfair advantage of the defendant Charles to recover land which the plaintiff was well aware had already been sold by his aunt.
>
> As regards the allegation of fraud against the defendants Compton and Giraudy, there is not one shred of evidence on which such allegations can be based."

The order, which followed almost verbatim the wording of the judgment, was in the following form so far as relevant for present purposes:

> " It is hereby ordered:— (1) that the Defendant Victor Charles be declared the owner of the land which he purchased from Elima Edward; that the Plaintiff is entitled to be declared the owner with the other heirs of such part of the undivided half share which Sophia Cooper owned and of the remaining lands which Elima Edward owned, should there be any such lands remaining.
>
> (2) that the claim for possession and ejectment and damages be dismissed; action against defendants Compton and Giraudy be dismissed."

Mr. Cooper appealed. The judgment given by the Honourable Mr. Justice St. Bernard was adopted by the other two members of the Court. As in the judgment of Mr. Justice Renwick, the assumption was made that Elima owned an undivided half share of the Dareix land, and that the other half share had devolved in 1947 on Sophia's children. The learned judge disposed briefly of the allegation of fraud, which was unsupported by evidence. He then pointed out that the plaintiff, and his brothers and sisters, could have no better right to possession of the land than Elima would have had. Although the deeds of sale might not have complied with Article 1980, they were evidence of a valid contract of sale. The appeal was dismissed, and the order made by the trial judge was directed to stand.

Their Lordships deal first with the appeal so far as it is based on the allegation of fraud. The appellant's case is that Elima was at the date of each of the deeds senile, illiterate and unable to appreciate the effect of the deed, and was subjected to duress and undue influence by Victor Charles. In order to support these allegations, the appellant asked for leave to adduce further evidence consisting of letters written on behalf of Elima to the appellant in 1956 and 1959; a number of affidavits sworn by persons who were acquainted with Elima; and certain other documentary matter, including some which figured in the 1969 action against Clermina Montrose. Their Lordships inevitably rejected this application because, among other reasons, the material had all been available to the appellant

at the date of the trial. In these circumstances their Lordships cannot interfere with the finding of the trial judge that there was no evidence of fraud. The appeal must therefore proceed on the basis that the deeds of sale were binding on Elima in point of execution.

Their Lordships deal next with the appeal so far as it is based on the fact that Elima had not registered her title prior to the deeds of sale. Their Lordships accept that in consequence thereof the deeds of sale were null and void. That was decided by Mr. Justice Peterkin in 1972. Their Lordships agree with the approach of the Appeal Court that the appellant cannot have a better right to recover possession than Elima would have had. Their Lordships therefore ask themselves whether Elima could during her lifetime have reclaimed possession from Victor Charles and, if she chose to do so, sold the land a second time to someone else.

Their Lordships do not hesitate to answer this question in the negative. It is impossible to suppose that Elima and Victor Charles attended before the notary to execute the deed of sale, and that Elima let Victor Charles into possession of the land, and received the purchase price from him, except upon the footing that they had first agreed upon a sale of the land. The deed of sale is incontrovertible evidence of such a prior agreement. Once it is accepted that Victor Charles is in possession under an agreement for sale, the consideration for which has been paid, there is clearly no legal or equitable ground upon which Elima could have turned him out of possession. The appeal, so far as it is based on lack of registration by Elima, therefore fails.

In his Case the appellant has sought to escape from this conclusion by asserting that he claims, not through Elima, but on the intestacy of Louise Dareix. So far as their Lordships understand the point which he seeks to make, what is said is that Article 1991 required registration of Louise Dareix's will within 6 months of her death; that she died on 29 January 1893, but registration was not effected until 24 August 1893, which was 7 months after her death; that consequently Louise is deemed to have died intestate; and that the appellant claims on such intestacy and not through Elima. Apart from all other objections to this curious submission, this is a new point which was not taken below and is quite inconsistent with the appellant's argument in the Court of Appeal where he said:—

> "My title to the land is based on the last will and testament of Louise Dareix who died on 24 August 1893 . . . She left the property to her grandchildren. Elima Edward was one of those grandchildren."

Their Lordships accordingly reject this ground of the appeal.

The form of the order made by the trial judge and confirmed by the Court of Appeal does however require some further consideration. If, as Mr. Justice Peterkin found, no partition of the Dareix land took place prior to the deeds of sale with an appropriation of the relevant land to Elima, Elima could not validly sell more than her own half interest in the land. On that basis Victor Charles could not have acquired from Elima more than a half interest in the land expressed to be granted by the deeds of sale. This does not necessarily mean that the appellant can himself lay claim to any interest, through the estate of Sophia, in the land purporting to have been sold to Victor Charles; for the appellant appears to have stood by while Victor Charles built a house on the land believing it to belong to him. The principle of such cases as *Ramsden v. Dyson* (1866) L.R. 1 H.L. 129, at page 168, may have extinguished any right he would otherwise have had to claim an interest through the estate of Sophia. Furthermore, any order which is made ought not to prejudice

the interests of the brothers and sisters of the appellant, who are not named as parties to this action. In the circumstances their Lordships consider that the order, so far as it declares the rights of the appellant and of Victor Charles and deals with possession, should be varied so as to consist only of the following three declarations. For convenience their Lordships refer to the land expressed to be comprised in the deeds of sale as the " disputed land ". Such declarations must be without prejudice to any rights of Clermina Montrose in the event of an overlap existing between the definition of the disputed land and the land purporting to have been acquired by Clermina.

(1) A declaration that immediately before the deeds of sale the disputed land belonged as to one half to the heirs of Sophia and as to the other half to Elima.

(2) A declaration that Elima validly contracted to sell to Victor Charles all her interest in the disputed land.

(3) A declaration that Victor Charles is entitled to the possession of the disputed land subject only to such right or interest (if any) as may hereafter be established by any person (including the appellant) claiming through the estate of Sophia on her intestacy.

The satisfactory course will be for the case to be referred back to the High Court to settle the precise terms of the amended order on the general lines of the declarations which their Lordships have set out.

In conclusion their Lordships express the hope that the words introduced into the order to protect any rights which the heirs of Sophia may have will not tempt the appellant to start further litigation, and that a quick and sensible way will be found to settle matters once and for all.

Their Lordships will humbly advise Her Majesty to dismiss the appeal subject to the indicated amendment to the order of the High Court. There will be no order as to the costs of the appeal.

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In the Privy Council

ROBIN A. COOPER

v.

VICTOR CHARLES
JOHN M. COMPTON
EMMANUEL H. GIRAUDY

DELIVERED BY
LORD BRIGHTMAN

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