Freetown
Dec 11,
1963

Ames Ag.P.,
Dove-Edwin
J.A.
Cole Ag.C.J.

[COURT OF APPEAL]

BEDEVIA SCOTT AND OTHERS . . . . . *Plaintiffs/Respondents*

v.

SAMUEL BANJOKO JOLLY . . . . . *Defendant/Appellant*

[Civil Appeal 18/63]

Real property—Sale of property by life tenant—Vendor remained in occupation as tenant—Action for possession by executrices of vendee—Vendor estopped to deny validity of sale.

Evidence—Notice of intention to use original conveyance in evidence to be given to opposite party—"Within a reasonable time of the trial"—General Registration Act (*Cap.* 255, *Laws of Sierra Leone*, 1960), *s.* 19.

Samuel Broughton Jolly (the testator) died in 1923 leaving certain real property, which, under the terms of his will, was sold at auction. The purchaser was Maria Tucker, and the property was conveyed to her upon trust for Samuel Banjoko Jolly (the defendant) for life with remainders over. In 1937, Maria Tucker purported to convey the legal estate in the property to defendant. In 1948, defendant conveyed the property "as beneficial owner" for valuable consideration to Joseph E. King. Defendant remained in occupation of the top floor of the property as a monthly tenant of King.

King died on February 6, 1955, having devised the property to his three daughters as tenants in common. Defendant paid no rent after June 1955. On September 8, 1955, a solicitor wrote to defendant on behalf of the executrices of King's estate asking for payment of arrears of rent, and on September 14 defendant replied, promising to pay on September 30. He did not pay, however, and in June, 1961, King's two surviving daughters and son-in-law (the plaintiffs) sued defendant for possession of the property, mesne profits and costs. The Supreme Court gave judgment for the plaintiffs, and defendant appealed. One of the grounds of appeal was that the requirements of section 19 of the General Registration Act regarding the use of instruments in evidence had not been complied with.

Held, dismissing the appeal, (1) that, in the circumstances of this case, the requirements of section 19 of the General Registration Act were sufficiently complied with; and

(2) That, in the circumstances of this case, defendant would not be allowed to say that his sale of the property to King was invalid.

Cyrus Rogers-Wright for the appellant.
Edward J. McCormack for the respondents.

AMES AG.P. The respondents sued the appellant for (a) possession of 9, Mammy Yoko Street, Freetown (which I will call the property), (b) mesne profits and (c) costs. They obtained judgment for (a) possession of the top floor of the property, (b) £144 mesne profits and (c) costs to be taxed. This appeal is against that judgment.

The first ground of appeal concerns not the main matter in dispute but a question of admissibility of evidence. It is:

"1. The learned trial judge erred in law in failing to construe the mandatory provisions of section 19 of the General Registration Act which

stipulates that a party intending to use any registered document shall give notice of his intention to the other party, and shall send a copy of the said document to the other side within a reasonable time of the trial."

The writ was issued in June 1961. The first time that anything other than adjournments happened in court was on January 7, 1963. On that day counsel for the two parties agreed that a conveyance, a deed of release (as it was called), another conveyance and probate of a will should be put in evidence and the action decided without calling evidence, after argument on an agreed issue, turning on what was the effect of the deed of release. The documents were then marked exhibits 1, 2, 3 and 4, and became documentary evidence put in by consent. (I have mentioned them in their chronological order. Their contents will be referred to later.) The action was then adjourned to the 14th of that month for the argument.

There had to be, however, a series of more adjournments until May 2, 1963. By then, there had been a change of solicitor for the appellant, and on that date, his counsel asked leave to withdraw the agreement to have the matter decided on argument and for the action to proceed in the ordinary way. An order was made accordingly and it was adjourned to May 8 for the hearing to start. On that day, when the first witness for the respondents was referring to one of the conveyances, counsel for the appellant objected to its admissibility for the reason set out in this ground of appeal. The learned judge, having regard to what had happened when the action was before him on January 7, ordered a copy to be served on the appellant's solicitor and adjourned it for seven days, with costs of the day for the appellant.

The section does not say how notice is to be given, or what it means by "within a reasonable time of the trial." When the appellant's counsel consented to its (and the others) being put in evidence, he then had notice (even if he did not have it before), the week's adjournment for service of a copy was a reasonable time. Mr. Rogers-Wright argued that the "reasonable time" must be before the commencement of the trial. It cannot mean before issue and service of the writ. In my opinion, what happened in the court below sufficiently complied with the section.

I now come to the main matter in dispute, as I called it. Its background is this.

On June 13, 1923, one Samuel Broughton Jolly died. The property was part of his real estate. In accordance with his will, his executors sold it, by public auction. The purchaser was Maria Tucker. At her request it was conveyed to her upon trust for the appellant for life with remainders over as set out in the conveyance of March 5, 1925. The appellant was then a minor, apparently.

On February 2, 1937, when the appellant "is now of age," Maria Tucker, by a deed of that date, did thereby "release and convey" the property to the appellant "to the end and intent that (it) shall absolutely remain and be to the uses declared" in the conveyance of March 5, 1925. This deed apparently purported to be a conveyance by the sole trustee of the legal estate to the tenant for life, namely, the appellant.

Nothing more is heard of Maria Tucker. She is not mentioned again in any of the oral or documentary evidence.

By deed dated May 15, 1948, the appellant conveyed the property for valuable consideration to one Joseph Emanuel King. Two persons, who, according to a recital, were "appointed by an order of the Supreme Court of

the Colony aforesaid made on the 7th day of May, 1948, to be the trustees for the purpose of the Settled Land Acts," were parties to the deed, and acknowledged receipt of the purchase price. The appellant sold in exercise of the statutory powers of a tenant for life. He conveyed " as beneficial owner."

Thereafter the appellant remained in occupation of the top floor of the property, under an oral agreement, as a monthly tenant of Mr. King, paying rent of £2 a month. He was not the only tenant on the property. He is still on the top floor.

Mr. King appointed the third respondent, who was his son-in-law, his agent to collect the rents from the tenants and the rents were paid to him.

Mr. King had three daughters. The first and second respondents are two of them; the third respondent is the widower of the third. He (King) died on February 6, 1955, testate, having devised the property to his three daughters as tenants in common. The will was proved on June 11, 1955, by the three respondents who were the executors and trustees.

The appellant paid no rent after June 1955, and even at that time he was very much in arrears. In September 1954 (according to him, and it appears that he is correct as to the year; the third respondent in his evidence said 1955, but that appears to be a mistake), the appellant tendered a payment of rent to the third respondent, but it was refused. The third respondent said, in his evidence, that he refused it because he had served the appellant with notice to quit. According to a letter of the appellant it was refused " with the understanding that (the respondent's) solicitor advised him so." In his evidence the appellant denied having had notice to quit.

On September 8, 1955, the respondent's solicitor wrote to the appellant on behalf of the " executrices " of the estate of J. E. King, deceased, asking for payment of £24 arrears of rent, September 1954, to August 1955, " failing which my clients will take proceedings without further notice." The £24 represented five months before Mr. King's death, the month in which he died, and six months after his death.

On September 14, 1955 (and I think the date is important; it was seven months after the death of Mr. King and three months after probate of his will), the appellant replied promising to pay on September 30, 1955.

Presumably he did not pay, and in June 1961 the respondents issued the writ and obtained the judgment, which I have already mentioned.

The remaining three grounds of appeal are as follows, the last of them raises a point not argued in the court below:

" 2. The learned trial judge erred in law in holding that the recital of an appointment of trustees for the alleged purposes of the Settled Land Acts is sufficient evidence of their appointment by the court so as to convey property clearly held in trust.

" 3. The learned trial judge's findings cannot be supported having regard to the evidence.

" 4. Exhibit 3 (the purported deed of release dated February 2, 1937) was not effective in law to denude Maria Tucker of her capacity as trustee. This being so, the learned trial judge erred in overlooking the fact, that Exh. 2 (the deed of conveyance dated May 15, 1948) was not signed by the said Maria Tucker. In view of the fact that the said Exh. 2 was not signed by all the trustees, the said conveyance was ineffective, in that it did not vest the ownership of the property in dispute to Joseph Emanuel King, through whom the plaintiffs claimed."

It should be noted that the question whether (as the third respondent said) or not (as the appellant said) the appellant was given notice to quit, and whether or not the notice was a valid one, were not issues arising on the pleadings. The appellant's case in the court below was, and it was his argument before this court, that his own conveyance of the property to Mr. King was of no effect and "did not vest the ownership of the property in dispute to Joseph Emanuel King through whom the plaintiffs claimed."

Now it may be (I do not say that it is) that, if the respondents were to sell the property to someone, they might (I do not say that they would) run into difficulty in making a title which would satisfy the purchaser. But, in my opinion, that does not matter in this case. In this case we are concerned with the situation of the respondents vis-à-vis the appellant. It was he who agreed to sell the property to Mr. King, and who arranged for the trustees said to have been appointed by the court to whom Mr. King paid the purchase price, and who purported to convey (and perhaps did convey) the legal estate to Mr. King, and who attorned tenant to Mr. King and paid rent to him for several years, and who seven months after his death promised to pay arrears of rent, which included the month of Mr. King's death and six months after it. How can he be allowed now to say to the respondents "The property is not yours; it never was your father's; therefore, it has always been mine; and I cannot be turned out." For that is what it comes to. In my opinion, it is impossible on any principle to allow him to say so now.

The appellant gave some evidence which, I think, is indicative of what went on in his mind. He said that Mr. King "had agreed to reconvey" the property to him when he had paid (meaning by way of rent) the £560 purchase-money which Mr. King had paid, and ". . . I say that because of my agreement with Mr. King I am in lawful possession." That is probably his real grievance. Even when expressing it in words in the witness box, his use of the word "reconvey" implies that he was not then impugning the validity of his own sale and conveyance of the legal estate to Mr. King. He was asserting a collateral agreement to reconvey it to him. There was no proof of any such agreement to reconvey and it was not pleaded, and it is not necessary to consider what effect it might have had. Consequently, the appellant had to look around for other grounds on which to fight the respondents' action and chose a ground which, in my opinion, was not open to him.

I would dismiss the appeal.

[COURT OF APPEAL]

Freetown
Dec. 11,
1963.

REGINA . . . . . *Respondent*

v.

AMADU BUNDUKA CHIRM . . . . . *Appellant*

Ames Ag.P.,
Dove-Edwin
J.A.,
Cole Ag.C.J.

[Criminal Appeal 29/63]

Criminal Law—Obtaining money by false pretence—Whether persons who handed over money were influenced by false pretence—Whether defendant honestly believed that pretence was true—False pretence necessary ingredient of offence contrary to s. 32 (2) *of Larceny Act*, 1916.

Defendant was charged on three counts. Counts one and two charged him with obtaining money by false pretences, and count three charged him with an