

CAMARAH v. MACAULEY

Supreme Court (Butler-Lloyd, Ag. C.J.): October 4th, 1928

5 [1] Civil Procedure — joinder of causes of action — misjoinder — court's consent to joinder of another cause of action with action for recovery of land usually required under O.XVIII, r.2 — if no objection made to misjoinder court may permit action to proceed: Under the Supreme Court Rules (*cap.* 205), O.XVIII, r.2 the consent of the court is required before any cause of action, which does not fall within the limited exceptions to the rule, may be joined with an action for the recovery of land; however the court may permit an action to proceed despite a misjoinder if no objection is raised (page 151, lines 31–40).

10 [2] Land Law — conveyancing — notice — purchaser from personal representative obtains good title despite irregularities in administration unless party to breach of trust: The provisions of the Intestate Estates Ordinance (*cap.* 104), s.24, whereby the estate of an intestate deceased may be sold only with the consent of the next of kin, do not apply when they cannot be traced and in such circumstances the administrator need not even obtain an order of the court under s.24, since this is required only when known next of kin withhold their consent; despite any irregularity in the administration of an estate the purchaser from the personal representative obtains a valid and unimpeachable title unless he is a party to a breach of trust (page 152, lines 33–37; page 153, lines 11–24; page 153, line 41—page 154, line 2).

15 [3] Succession — administration of assets — realisation of assets — if next of kin not traced administrator may sell without consent required by Intestate Estates Ordinance (*cap.* 104), s.24 — order of court required only if known next of kin withhold consent: See [2] above.

20 [4] Succession — executors and administrators — power to realise assets — if intestate's next of kin not traced administrator may sell without consent required by Intestate Estates Ordinance (*cap.* 104), s.24 — order of court required only if known next of kin withhold consent: See [2] above.

25 30 The plaintiff brought an action against the defendant for the recovery of land which had formed part of her deceased father's estate.

35 The plaintiff's father died intestate in Freetown. At the date of his death the plaintiff was living in the Protectorate and although extensive enquiries were made to discover the deceased's next of kin none were traced. Letters of administration of the deceased's estate were then granted to the Susu tribal ruler, who sold the land in question to the defendant.

40 When the plaintiff heard of the sale she brought the present proceedings to recover the land contending that since her consent to the sale had not been obtained as required by the Intestate

Estates Ordinance (*cap.* 104), s.24, and the court had not ordered the sale, the conveyance to the defendant was invalid and she was therefore entitled to recover the property.

The defendant contended that failure to obtain the consent of the next of kin did not invalidate the conveyance since he, the purchaser, was unaware of any irregularity. 5

The defendant raised no objection to the pleadings but the court considered the effect of the plaintiff's joinder of another cause of action with the action for the recovery of land without the consent of the court which was required in the present case by O.XVIII, r.2. 10

The suit was dismissed.

Case referred to:

(1) *Corser v. Cartwright* (1873), L.R. 8 Ch. 971; on appeal, (1875), L.R. 7 H.L. 731; 45 L.J. Ch. 605, *dicta* of James, L.J. applied. 15

Legislation construed:

Intestate Estates Ordinance (Laws of Sierra Leone, 1925, *cap.* 104), s.24:
 "No land passing under this Ordinance shall be sold by the Curator or any administrator without the consent of all persons beneficially interested, or the order of the Supreme Court or Judge thereof for that purpose first obtained." 20

Supreme Court Rules (Laws of Sierra Leone, 1925, *cap.* 205), O.XVIII, r.2:
 "No cause of action shall unless by leave of the Court be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed. . . ." 25

BUTLER-LLOYD, Ag. C.J.: 30

This action is primarily one of ejectment but the statement of claim is so formed as to involve the question of the validity of the conveyance under which the defendant is now in possession of the land in question. I am of opinion that this constitutes a misjoinder and could have been objected to under O.XVIII, r.2 but no such objection was taken, and I allowed the action to proceed in its present form in the belief that it would be the simplest and the most direct way of arriving at a final decision as to the rights of the parties. 35

The facts may be summarised as follows: James otherwise known as Lamina Johnson died intestate on August 4th, 1920. 40

Allie Kamara, the Susu tribal ruler, obtained letters of administration of his estate on October 28th 1920. By a deed of sale dated November 7th, 1921 the administrator sold certain property situate in First Street comprised in the deceased's estate to the present defendant.

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The plaintiff's case is that she was the legitimate daughter of the deceased by a woman named Mamuna, the first of three women who at various times lived with her father. He having no other issue she would be his next of kin by Mohammedan law. At the time of his death she was residing in the Protectorate but on hearing of it she proceeded to Freetown and she states that she was put into possession of the property in question by one Barber, an intimate friend of her father, in whose house he actually died, and with whom he had apparently deposited his title deeds as security for some money owed to Barber by him. She states further that she drew the rent of this property for a considerable period after her father's death, and even apparently for some time after the purchase of the property by the defendant. I do not think it was seriously disputed that she was in fact Johnson's next of kin according to Mohammedan law, and it is patent that her consent as next of kin as required by s.24 of the Intestate Estates Ordinance (*cap.* 104) was not obtained to the sale to the defendant.

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On these facts it was argued that since neither her consent nor an order of court were obtained, the sale by the administrator to the defendant was invalid on the same principle as that by which all personal representatives are required by s.2(2) of the Land Transfer Act, 1897 to join in a conveyance of an estate, but to my mind the two cases are poles apart.

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The ascertainment of the personal representatives is the work of a moment whereas no amount of diligence can be sure of discovering the person or persons who may be entitled as next of kin. I do not think that the order of court mentioned in s.24 of the Intestate Estates Ordinance is required, as suggested by the plaintiff's counsel, in all cases where no next of kin have been discovered, but it is required where the known next of kin object to a sale. If the contention of the plaintiff's counsel on this point is right, all sales by the vendor or an administrator would require either a consent by some person interested or an order of the court and even so I may point out that a purchaser would not be protected against further next of kin who have not consented to

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the conveyance making their appearance thereafter and impugning it.

In my opinion therefore this case is to be judged in accordance with the ordinary principles which govern alienation by personal representatives. The Land Transfer Act, 1897 is of course not in force here, but a very similar position is brought about by s.11 of the Intestate Estates Ordinance which vests all real property of an intestate in the Curator. Now the principle alluded to above is a simple one. In the words of 14 *Halsbury's Laws of England*, 1st ed., at 296 (1910):

“The . . . purchaser from the representative has the right to infer that the representative is acting fairly in the execution of his duty. . . .”

And at p. 297 I find:

“[I]t rests . . . upon the person seeking to impeach the validity of the transaction to prove that the purchaser . . . had notice of the true state of facts. . . .”

In the case to which this passage has reference, *Corser v. Cartwright* (1), I find the following in the judgment of James, L.J. (L.R. 8 Ch. at 976):

“[W]here a person advances money by way of purchase or charge on an estate so vested in the hands of a trustee, unless that person is absolutely a party to a breach of trust he cannot be deprived of the estate he has acquired.”

The reason for the existence of this principle is as clear as the principle itself, namely, that in its absence no one would be safe in purchasing from a personal representative. Applying this principle to the facts it is impossible to say that the purchaser was acting in collusion with the administrator or even had notice of the existence of a next of kin whose consent was necessary to the conveyance. I accept unhesitatingly the evidence of Mr. Hebron and Santiggie Colleh which shows that the completion of the purchase was held up for several months whilst enquiries were being made as to the existence of next of kin, and also that neither of them had any knowledge whatsoever of the present plaintiff's existence. It is true that the defendant on taking possession after completion of the purchase found some people on the premises of whom he only got rid with some difficulty, but there is no evidence that he knew that these persons claimed to represent the deceased's next of kin, much less that he knew it before completion of the purchase. I am therefore of the opinion that the sale

by the administrator to the defendant gave the latter a valid and unimpeachable title and this action should be dismissed with costs. I may add that I have been asked to state a case as to the effect of s.24 of the Intestate Estates Ordinance (*cap.* 104) but I see absolutely no reason for doing so. The plaintiff has a right of appeal and should she avail herself of it the Court of Appeal will no doubt go into the whole matter at issue, whereas to state a case on this single point would be conclusive of nothing and would only lead to fresh litigation.

Suit dismissed.

DAVIES (J.L.) v. REGEM

Supreme Court (Butler-Lloyd, Ag. C.J.): October 25th, 1928

[1] Courts — magistrates' courts — appeals — procedure — general grounds of appeal to be submitted strictly in accordance with Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, or appeal dismissed — fact that record forwarded to Supreme Court not conclusive evidence that conditions of appeal fulfilled: The provisions of the Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, requiring general grounds of appeal to be given orally in the magistrates' court, or in writing within eight days afterwards, must be strictly complied with; even if the lower court gives both conditional and final leave to appeal and forwards the record to the appeal court, this does not show conclusively that the conditions of appeal have been fulfilled and the appeal may be dismissed on the grounds that they were not (page 156, lines 7—34).

[2] Courts — Supreme Court — appeals from magistrates' courts — procedure — general grounds of appeal to be submitted strictly in accordance with Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, or appeal dismissed — fact that record forwarded to Supreme Court not conclusive evidence that conditions of appeal fulfilled: See [1] above.

[3] Criminal Procedure — appeals — procedure — general grounds of appeal to be submitted strictly in accordance with Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, or appeal dismissed — fact that record forwarded to Supreme Court not conclusive evidence that conditions of appeal fulfilled: See [1] above.

The appellant was charged in the police magistrate's court with possessing stolen goods contrary to s.12 of the Summary Conviction Offences Ordinance (*cap.* 201).

The appellant was convicted and sentenced by the police magistrate and gave notice of his intention to appeal. He did not