

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

CIVIL JURISDICTION

Civil Appeal No. 12 of 1996

BETWEEN:

AGATHA BLACKETT

(Appellant)

AND

ALBERTHA EUNICE BLACKETT

(Administratrix of the Estate of

Goulbourne St. Aubyn Blackett,

deceased)

(Respondent)

AND BETWEEN:

AGATHA BLACKETT

(Appellant)

AND

CAROL ANN KNIGHT

(Administratrix "ad Litem" of the

Estate of Goulbourne Clement

St.Aubyn Blackett, deceased)

(By original Notice of Appeal and

by order to carry on proceedings

dated 28th January, 1997)

(Respondent)

BEFORE: The Honourable Errol DaCosta Chase, Chief Justice (Ag.), The Honourable Colin Anthony Williams, Justice of Appeal, and the Honourable Frederick Lawrence Adamstraw Waterman, Justice of Appeal (Acting)

1999: 25th June

2001: 20th April

Mr. Vernon O. Smith of Smith and Smith for the Appellant.

Mr. Clement E. Lashley for the Respondent.

DECISION

Colin Williams, J.A. These proceedings arise out of a family dispute over certain land at Belle Gully in the parish of St. Michael containing by admeasurement 12,369 square feet or thereabouts abutting and bounding on lands now or late of one Lynch on the Public Road on lands now or late of one William Allsopp and on another Public Road 1 4 feet wide or however else the same may abut and bound.

The following are the principal family members involved:-

1. Goulbourne Clement St. Aubyn Blackett. It is common ground that he was the beneficial owner of the land in dispute at least up to the time when his son Livingstone was put on the land in the latter part of the 1950's.
2. Albertha Eunice Blackett. She was Goulbourne's wife, and she duly qualified as administratrix of his estate following his death in 1984.
3. Livingstone Leinster Blackett, who was the son of Goulbourne and Albertha. He died in 1975.
4. Agatha Blackett, Livingstone's widow.

On the 27th September 1989 Albertha commenced these proceedings, qua administratrix, claiming against Agatha possession of the land in dispute. The Statement of Claim alleged that in or about the year 1956 Livingstone was permitted to place a chattel house on the land, and he and Agatha lived there until Livingstone's death; that Agatha had been a tenant of Goulbourne and, on Goulbourne's death, she became a licensee or tenant-at-will of Albertha; and that Agatha remained on the land in spite of service on her by Albertha of a notice to quit.

Agatha's defence is that in or about the year 1956 Goulbourne gave Livingstone and her "the land on which the Defendant's house stands jointly...as an absolute and outright gift; that after she and her late husband took possession of the land, they never paid rent or mesne profits to Goulbourne; that in or about the year 1966, on the strength of the purported gift, she and Livingstone erected and built wall structures to the said house with Goulbourne's knowledge, consent, permission and acquiescence. By way of counterclaim, Agatha pleaded propriety estoppel founded on Goulbourne's conduct and promise on the strength of which she and Livingstone "constructed a wall part of their said dwellinghouse on the said land at considerable costs and expenditure" to her and Livingstone. She counterclaimed a conveyance of the land or repayment of the money expended by her and Livingstone.

The plaintiff and the defendant both gave oral evidence and were duly cross-examined. The Trial Judge's findings in relation to the plaintiff's claim appear at pages 45 and 46 of the Record. After commenting that even in examination-in-chief the plaintiff contradicted herself, the Trial Judge continued:

"Under cross-examination the quality of her evidence became worse, she did not know anything about her husband's business as he never discussed it with her, he never told her about any rent (in chief she said he had), and the defendant had never paid her any rent, nor did she tell the defendant how much rent she was to pay.

"I find that the plaintiff has not proven her case and that on the evidence neither the defendant alone nor with her husband, nor the husband alone, were Mr. Blackett's tenants nor was the defendant a licensee nor tenant of the plaintiff as Administratrix or in her own right.

"In the circumstances the Notice to Quit served on the defendant was of no effect in law".

I am satisfied that the Trial Judge had ample material to support these findings and to reject the plaintiff's claim; and I would therefore confirm his judgment on this aspect of the dispute.

As to the title to the house and the land, the Trial Judge said the following at page 46:

"The plaintiff's evidence is that the house was bought by the parents for the son. This is a gift and ownership and possession passed to the son. He remained independent of the parents erecting his house on 2 spots before moving to the father's land. Yet the plaintiff claims continuing ownership in the parents, in herself and some future ownership in a granddaughter. None of these altered the son's right of ownership and possession. I accept the defendant assisted in the repairs and extensions and find that on her husband's death she acquired the entire interest in the house and continued to upgrade it. The plaintiff's counsel had contended that there was no evidence to support any improvements in the house beyond expected repairs, nor of the amount of money spent on claimed repairs. I disagree on one point, and would point to the Land Tax bills which note the increase in improvements from \$22,000.00 in 1989 to \$32,000.00 in 1991 clearly in support of the defendant's evidence the house is now quite different from that of 1959".

and on page 47:

"The land in dispute is fairly large spanning from one public road to another. It is capable of carrying several chattel houses, but on putting the son on the land the father put off his existing tenant so as, no doubt, to put the son in free and peaceful possession of the entire lot. And the son used up the entire lot; the house on what in Barbados is referred to as "the front road, and the remainder in vegetable garden and access for his car from "the back road". It is reasonable in these circumstances for the father to say to the son "you are my only child, my son, this is yours, you may move your house on it, use up all the space you can for it is yours to do with as you please". And the son did just that until illness and death stopped him.

"I am fortified that my view is correct by the fact the father executed a gratuitous mortgage in the son's favour, allowed an action against him so he could obtain a good title to his parcels of land. I am satisfied this was done to formally convey this Belle Gully parcel of land to the son. Unfortunately he was thwarted by the death of his Solicitor and the perceived legal humbug and expenses in having to go all over again. Untrue, but that is the effect it had on old Mr. Beckles; as the defendant put it "he said he had only one son and whatever he had concerned him".

It is clear that, in dealing with Livingstone's position, the Trial Judge treated the house and the land as a single unit of real property, that approach being in keeping with his finding that, by the time of Livingstone's death, the house had been converted into a permanent structure and had thereby become part of the realty. That was good ground for the Trial Judge to find that Livingstone had established an indefeasible claim to an equity in the property as a whole, based on the oft-quoted statement of the relevant law by Lord Denning in *Inwards v. Baker* [1965] 1 All E.R. 446 at page 449:

"It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as a result of that expenditure, he will be allowed to remain there. It is for the Court to say in what way the equity can be satisfied."

However, when the Trial Judge came to examine the defendant's counterclaim, he adopted the strange course of again separating the house and the land. Having previously determined that at some stage during Livingstone's lifetime the house had become a permanent structure forming part of the realty, he had no choice but to treat ownership of the house as inseparable from ownership of the land.

The Trial Judge did eventually conclude that the defendant became entitled to the land, but on other grounds. At pages 50 and 51, after having considered the relevance of certain cases that were cited to him (including *Greaves v. Barnett* [1978] 31 W.L.R. 88, and *Inwards v. Baker* [1965] 1 All E.R. 446), he said:

"In addition to saying how the equity raised in the above cases, *Greaves* and *Inwards*, was to be dealt with, they respectively decided that a widow may succeed to the benefit of any equity her husband may have had, and that the trustees of an estate are also bound by that equity. These two factors arise in the instant case. The defendant is widow of a man who, on the authorities had an interest in the property and the plaintiff as administratrix is bound by that equity."

This statement betrays a misunderstanding of the ratio decidendi of the above two cases. In *Greaves vs. Barnett* the Trial Judge made a specific finding on the evidence that Barnett had made his expenditure on the property in the expectation that he was creating a permanent home for his wife and himself, with the result that after Barnett's death his widow was granted the right to remain in occupation of the property for as long as she desired to use it as her home. *Inwards vs. Baker* was about a son's successful claim to an equity in his father's land on which he had constructed a bungalow on his father's invitation and with his encouragement and full knowledge; it had nothing to do with any claim by a wife.

The last-mentioned quotation also reflects a misunderstanding of Agatha's counterclaim. She is asserting her right to an equity, not as part of her husband's estate or by otherwise hanging on to his coat tail, but as a person who says that she has acquired that interest concurrently with her husband but by her own efforts.

On page 51, the Trial Judge came to this conclusion:

"Taking all the circumstances into account, I am satisfied that the defendant and her husband had an interest in the land, which the plaintiff cannot defeat."

but here again it is to be noted that he does not examine Agatha's claim as an independent claim or show how he reached his decision on it.

I think the true basis for upholding the defendant's entitlement to an equity in the property is to be found in the Trial Judge's rejection of Albertha's evidence and his acceptance of Agatha's testimony that Goulbourne gave the land to her husband and her, and that they jointly expended their own money and efforts in converting the original house into a permanent structure which thereby (as stated above) became affixed to and absorbed in the realty as part thereof. Moreover, this is the most reasonable explanation of Agatha's actions in continuing to improve the house after her husband's death and in using the gratuity she received following his death for the same purpose. I hardly think she would have done those things if she felt that her status on the property was in any way precarious but only if she was confident of that status. I would therefore place her claim to an interest in the property on the same footing as that of her husband: she joined in executing permanent improvements on the strength of Goulbourne's assurances to her husband and her, and she was therefore, like her husband, entitled to an equity in the entire property.

Livingstone and Agatha having acquired their equity in the property concurrently, they must be considered to have done so as joint tenants, in accordance with the rule that, where two or more persons together acquire or are given an interest in land for the same estate, they are presumed to have acquired the same as joint tenants unless there are words of severance or the nature of the transaction (e.g. partnership) invites the inference of a tenancy in common: (*Morely v. Bird*, 30 E.R. 1192, a legacy to four beneficiaries without words of severance; *Ward v. Ward* (1871) 6 Ch. App. 789, a case of acquisition by adverse possession). It follows that, on Livingstone's death, his interest passed to Agatha by survivorship under the "jus accrescendi" rule.

In the result, I do not agree with the Trial Judge that Agatha should have a conveyance of only that portion of the land which she said in evidence that she now needs. My assessment of her evidence in this regard is this: here is a 72-year-old woman who, whatever her legal rights, cannot now tend the kitchen garden which her husband used to look after, has no motor car and therefore no need for the driveway that her husband had constructed, and needs only the land she now occupies in order to pass the rest of her life in peace and quiet.

The approach adopted by the Trial Judge ignores the defence and counterclaim as they have been pleaded; but more importantly it loses sight of the time when the equity in the property became reposed and vested in Livingstone and Agatha. Although one cannot identify the exact or approximate date from the evidence, the vesting clearly took place before Livingstone's death, by which time the substantial part of the improvements had been completed and the status of Livingstone and Agatha on the land had been irrevocably settled.

I would grant the appellant a declaration that she is now the sole beneficial owner of the land described in paragraph 2 of the Statement of Claim and shown on Exhibit B being a plan of 1084 square metres certified the 8th December, 1991 by R. S. Gittens, Land Surveyor; and an order that the personal representatives of the late Goulbourne Clement St. Aubyn Blackett (or the Registrar in case of difficulty) convey the said land to the appellant.

As to costs, I would grant the appellant her taxed costs of the litigation here and in the Court below; but since the position of Goulbourne's estate is now analogous to that of a trustee, the conveyancing costs should be borne by the appellant.

CHIEF JUSTICE (Ag.)

JUSTICE OF APPEAL. JUSTICE OF APPEAL.