

eps.
3.4.98

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

3 CAUSE NO. 624/96
4
5
6
7

8 BETWEEN: L.E. Kendal Ryan & Louise Priscilla
9 Ryan (*as administrators of the estate*
10 *of Astley Kendal Ryan, deceased*)
11
12

Plaintiffs

13 AND: Ida Pearl Bodden
14
15

Defendant

16 For the Defendant - Mr. Ross McDonough
17 For the Plaintiffs - Mr. Pierre Lamontagne, Q.C. and
18 Mr. Charles Adams
19
20

21 **CORAM: Harre CJ.**
22

23 **REASONS FOR ORDER**
24

25 This was an application by the defendant for summary judgment, as now permitted by
26 Order 14 rule 12 of the Grand Court Rules. The cause relates to family land on Little
27 Cayman. It was common ground that if the plaintiffs' claim were dismissed the
28 defendant must succeed on her counterclaim.
29

30 The matter was adjourned part-heard before me on 27th November 1997 and since
31 that time there has been further amendment of the statement of claim and the issues
32 for present purposes have been narrowed. What is now claimed is a declaration that
33 the decision of the Registrar of Lands of 3rd November 1994 whereby he ordered that
34 the land described as registration section Little Cayman East Block 91 A, Parcel 8
35 ("Parcel 8") be partitioned equally between the plaintiffs and the defendant was
36 obtained by the fraud of the defendant and one of her privies; and damages and other

1 relief. It falls to me to consider the present application on the basis that the hypothesis
2 of fraud is true. Any investigation of that would be for trial..
3

4 The plaintiffs are the son and the widow of the late Astley Kendall Ryan (“the
5 deceased”).

6

7 The defendant applied to the Registrar of Lands for the equal partition of Parcel 8 on
8 2nd September 1992 and the plaintiffs requested by a letter to the Registrar of Lands
9 on 20th July 1994 that a part of Parcel 8 be transferred to them in their capacity as
10 administrators of the estate of the deceased prior to any partition of the parcel taking
11 place. The defendant had on the 27th June 1994 certified to the Registrar of Lands in
12 writing that she had never agreed to transfer any part of her half-share in Parcel 8 to
13 the deceased and that under an agreement between the deceased and her they were
14 each to receive one-half. The defendant’s husband, also gave a certificate in support
15 of that, and to the effect that the handwriting on a copy of a memorandum or note of
16 an agreement dated 27th February 1982 was not the defendant’s. These events of
17 1994 were the outcome of a long history which I need not recount now.

18

19 The application for partition of Parcel 8 was heard by the Registrar of Lands on 2nd
20 November 1994. The following is the relevant part of the record of that hearing -

21

22 “POINT AT ISSUE

23 Leonard Edward Kendal Ryan on behalf of the other proprietor
24 in common, objects to Ida Pearl Bodden’s application for partition
25 because he claims that his father (Astley Kendal Ryan) was
26 promised by his grandfather that he was to be given some “96 feet”
27

1 of the subject land. Of a variety of documents and papers produced
2 to me, including several affidavits, only one was directly in point, viz
3 a photocopy of a letter dated February 27, 1982 reputedly in the
4 hand of Ida Pearl Bodden and admitting inter alia "my brother
5 to get 96 feet from Emmice Georgiana Ryans land at Little
6 Cayman Block 91A, Parcel 8." The original was produced
7 to me for inspection by Leonard Edward Kendal Ryan. Ida
8 Pearl Bodden, through Ms. Reid, denied having written the
9 letter. Ms. Reid invited me to compare the hand writing and
10 especially the signature with a copy of a Land Registry Form
11 which Ida Pearl Bodden had signed in June, 1992 (sic) some four
12 months after the date on the said letter.

13
14 Having compared the copy Registry Form with the original
15 lodged in this Registry, I believe that the said Form carries
16 Ida Pearl Bodden's true signature. This signature is different
17 in style and execution from that on the "letter."

18
19 I now hold that, on a balance of probabilities, the said letter is
20 not in the hand of Ida Pearl Bodden. Consequently I further
21 hold that Little Cayman East, Block 91A, Parcel 8 is not subject
22 to any overriding interest, nor to any duty or obligation by the
23 proprietor of either share as a trustee. Accordingly, the
24 proprietors each have a free and unencumbered 1/2 share in the
25 freehold title."

26
27 The defendant says that even if there was fraud on her part, the Registrar of Lands was

28 bound by section 102(1) of the Registered Land Law (1995 Revision) ("the Law") to

29 partition Parcel 8 as he did because the plaintiffs and the defendant had expressly

30 agreed that the land was to be held as tenants in common in equal shares. That

31 proposition rests on Section 102 (1) of the Registered Land Law (1995 Revision)

32 which reads as follows -

33

34 "An application for the partition of the land owned in common may
35 be made in the prescribed form to the Registrar by -

36 (a) any one or more of the proprietors; or

37 (b) any person in whose favour an order has been made for
38 the sale of an undivided share in the land in execution
39 of a decree,
40

1 and subject to this and any other law by or under which minimum
2 areas or frontages are prescribed or the consent of any authority to
3 a partition is required, the Registrar shall effect the partition of the
4 land in accordance with any agreement of the proprietors in common,
5 or, in the absence of agreement, in such manner as the Registrar may
6 order.”
7
8

9 The defendant also contends that the alleged agreement is on its proper analysis a
10 contract for the sale of land and that Section 37 of the Law (1995 Revision) applies to
11 it. That section reads as follows -

12 “37. (1) No land, lease or charge registered under this Law shall
13 be capable of being disposed of except in accordance with the Law,
14 and every attempt to dispose of such land, lease or charge otherwise
15 than in accordance with this Law shall be ineffectual to create,
16 extinguish, transfer, vary or affect any estate, right or interest in
17 the land, lease or charge.
18

19 (2) Nothing in this section shall be construed as preventing any
20 unregistered instrument from operating as a contract, but no action
21 may be brought upon any contract for the disposition of any interest
22 in land unless the agreement upon which such action is brought, or
23 some memorandum or note thereof, is in writing, and is signed by
24 the party to be charged or by some other person thereunto by him
25 lawfully authorised.”
26
27

28 Clearly the alleged agreement does not comply with section 37 (2), either as an oral
29 agreement as described in paragraph 11 of the Statement of Claim or on the basis of
30 the memorandum or note dated 27th February 1982 which the plaintiffs assert was
31 signed by the defendant.

32
33 I consider first whether the alleged agreement in this case is a contract for the
34 disposition of an interest in land on which no action may be brought unless there is
35 compliance with S. 37 (2) of the Law; and secondly if the answer to that question is

1 'yes' whether the Registrar should, as the plaintiff's claim, have nevertheless have
2 given effect to it in reaching his conclusion on the application to partition the land.

3

4 "Disposition" is defined as follows in S. 2 of the Law -

5

6 " "disposition" means any act inter vivos by a proprietor
7 whereby his rights in or over his land, lease or charge are
8 affected, but does not include an agreement to transfer, lease
9 or charge."

10

11 That is a comprehensive definition. I think however that what I am concerned with in
12 relation to S. 37 (2) is an unregistered contract for the disposition of any interest in
13 land and the restriction there expressed on the bringing of an action upon such a
14 contract.

15

16 I am satisfied as to the following matters -

17

18 1. In making their submissions to the Registrar by their letter dated 20th July 1994
19 and appearing at the hearing on the application for partition of Parcel 8 on 2nd
20 November 1994 the plaintiffs were not "bringing an action" on a contract for the
21 disposition of land.

22

23 2. The registrar found, on the balance of probabilities that the letter dated 27th
24 February 1982 was not in the hand of the defendant and that consequently Parcel
25 8 was not subject to any overriding interest nor to any duty or obligation by the
26 the proprietor of any share as a trustee. What his finding on those matters would


1 have been if he had made a finding of fraud against the defendant is a matter for
2 speculation.
3
4 3. The issue is really this. The plaintiffs say that the relief which they now claim
5 rests on fraud. The defendant says that that is merely a cloak for an action - the
6 present action- brought on an agreement which does not meet the requirements
7 of S. 37 (2) of the Law.
8
9 4. The Registrar gave weight to the respective positions of the parties as persons who
10 had transferred half shares to themselves s beneficiaries under an intestacy
11 and referred to S. 23 of the Law.
12
13 5. There are issues of law and fact here which need to be determined at trial. I
14 declined to dismiss the plaintiffs action on the ground that it had no prospect
15 of success and accordingly dismissed the summons of the defendant.
16
17 Defendant to pay the plaintiff s costs of the summons to be agreed or taxed. Leave to

18 appeal granted.

19

20 \$750 as security for the Plaintiff s costs of the appeal to be paid into Court.

21


22 G.E. Harre
23 Chief Justice
24

25

26 Order made 3rd April, 1998.

27 Written reasons dated 11th May, 1998