

IN THE CAYMAN ISLANDS COURT OF APPEAL

CIVIL APPEAL NO. 25 OF 1989

THE HONOURABLE MR. JUSTICE ZACCA - PRESIDENT

THE HONOURABLE MR. JUSTICE GEORGES - J.A.

THE HONOURABLE MR. JUSTICE KERR - J.A.

BETWEEN: MUMS INCORPORATED/
ANTHONY THIAM-HONG TAN PLAINTIFFS/Appellants

AND: CAYMAN CAPITAL TRUST FIRST DEFENDANT
(In Liquidation)

BARRY V. RANDALL SECOND DEFENDANT

EVELEEN G. RANDALL INTERVENER/Respondent

Miss Cherry Bridges for the Appellant

Mr. Pierre Lamontagne Q.C. for the Intervener/Respondent

Mr. Aldin McLaughlin for the Second defendant

The 6th and 7th December, 1989
and 28th March, 1990

JUDGMENT

GEORGES, J.A.

The Second Defendant, Barry V. Randall (Mr. Randall) and the Intervener Respondent, Eveleen G. Randall (Mrs. Randall) are husband and wife. They are registered in the Register kept pursuant to the Registered Land Law (RLl) as joint proprietors of a parcel of land in Registration Section West Bay South, Block 12C, Parcels No. 162 and 163 (the registered parcels). It is their matrimonial home.

On 18th July, 1989, the Appellants obtained final Judgment against Mr. Randall and the First Defendant, Cayman Capital Trust, and by Summons dated 3rd October, 1989, applied for an Order that the estate or interest of Mr. Randall in the registered parcels be sold by public auction pursuant to Section 42 of the Judicature Law.

By Summons dated 12th October, 1989, Mrs. Randall sought leave to be added as a party to that Summons and asked that it be dismissed. She was granted leave to intervene.

part -

"(1) If the court is satisfied that a person against whom judgment has been obtained has no sufficient goods which can conveniently be taken to satisfy such judgment, the court may, if it thinks fit, on application of the judgment creditor, make an Order for the sale of the estate or interest of the judgment debtor in any lands, at any time and place and subject to such conditions as the court thinks fit."

The Appellants contended that Mr. Randall had an estate or interest in the registered parcels in respect of which his name appeared as a joint proprietor and that that estate should be put up for sale to satisfy the judgment debt. It was contended on behalf of Mrs Randall that the estate or interest held in land by a registered joint proprietor under the RLL could not, on a proper interpretation of the RLL, be sold under Section 42 of the Judicature Law. The Trial Judge accepted the submissions made on behalf of Mrs Randall, hence this appeal. The issue is essentially one of statutory interpretation.

The long title of the RLL reads -

"A Law to make provision for the registration of land and for dealings in land so registered and for purposes connected therewith."

Section 3 states -

"Except as otherwise provided in this Law, no other law and no practice or procedure relating to land shall apply to land registered under this Law so far as it is inconsistent with this Law." (Emphasis supplied).

There is a proviso which is not relevant to the circumstances under discussion.

Section 164 provides -

"Any matter not provided for in this Law or in any other law in relation to land, leases and charges registered under this Law and interests therein shall be decided in accordance with the principles of justice equity and good conscience."

It would appear from these provisions that RLL is intended to cover completely the matters pertaining to registration of land

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and dealings in registered land with which it purports to deal. While concepts of English Land Law both before and 1925 may provide a useful backdrop against which to view the RLL, they should not be permitted to intrude into its interpretation.

Section 37(1) of the RLL provides -

"No land lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Law shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge."

In the definition section - section 2 - "disposition" is defined as meaning:

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

These sections were considered by Henry, J.A. in Paradise Manor Limited (in liquidation), W.M. Becker & M.L. Becker v.

Bank of Nova Scotia [1985] CILR 437 and he concluded at p. 480

"By applying the definition of "disposition" to section 37, the meaning that emerges is that no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law and the system of registration established by it."

I accept this dictum as accurately expressing the position. Co-proprietorship and Partition are dealt with in Division 6 of the RLL, Sections 99 to 114.

Section 100 provides -

"(1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently -

- (a) dispositions may be made only by all the joint proprietors; and
- (b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.

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(2) For avoidance of doubt it is hereby declared that -

- (a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and
- (b) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.
- (3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument."

It can be seen that the estate of joint proprietorship provided under the RLL bears a strong resemblance to the tenure of joint tenancy which existed in English Law prior to the 1925 legislation.

In Williams on Real Property 23rd Ed. (1920) at p. 143 the Law is stated thus -

"A gift of lands to two or more persons in joint tenancy is such a gift as imparts to them, with respect to all other persons than themselves the properties of one single owner. As between themselves, they must, of course, have separate rights." (Emphasis supplied).

As in the joint proprietorship under the RLL, joint tenants at common law prior to 1925 had no separate share in the land. They did, however, have separate rights or interests. The Appellants contend this interest can be sold under Section 42 of the Judicature Act.

Joint proprietorship under the RLL and joint tenancy at common law prior to 1925 had another characteristic in common - the right of survivorship. As set out in Section 99 1(b), "on the death of a joint proprietor his interest rested in the surviving proprietors jointly".

There is, however, a clear distinction between the two. At common law prior to 1925 the rule is as stated in Williams op. cit. at p. 147 -

"The incidents of a joint tenancy above referred to last only as long as the joint tenancy exists. It is in the power of any one of the joint tenants to sever the tenancy, for each joint tenant possesses an absolute power to dispose, in his life-time of his own share of the lands, by which means he destroys the joint tenancy."

This right has clearly not been preserved under the RLL. Dispositions under Section 99(1) can be made only by all joint proprietors. The term "dispositions" in that sub-section cannot, in my view, be interpreted to mean a disposition of the entire estate in the parcel of land jointly held. Such a proposition would plainly not need to be enacted. It can only mean that one joint proprietor can dispose of his or her interest in the land jointly held only if all the other joint proprietors agree. This is confirmed by the fact that there is one exception. The joint proprietor can transfer his or her interest to the other joint proprietors. Accordingly, any sale under Section 42 of the Judicature Act would result in a disposition inconsistent with the RLL and would be ineffectual.

It appears to me that the argument on behalf of the Appellants is based on the premise that a joint proprietor under the RLL has the same right as has a joint tenant to sever the tenancy unilaterally. Section 99(3) makes it clear that joint proprietorship can only be severed by the agreement of all the joint proprietors. A unilateral right of severance would be inconsistent with the RLL and could not, therefore, be implied.

The distinction between the characteristics of joint proprietorship and proprietorship in common serves, in my view, to confirm the intention to make joint proprietorship severable only with the consent of all the joint proprietors. Section 101 provides -

"(1) Where any land, lease, or charge is owned in common each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

(2) No proprietor in common shall deal with his undivided share in favour of any person other than a proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld."

The proprietor in common is entitled to a separate share in the land held in common and can dispose of it against the wishes of his co-proprietors once their refusal to consent is unreasonable.

It should also be noticed that while Section 102(1) makes provision for the partition of land owned in common, no such provision is made in regard to land held in joint proprietorship. Section 100(3) provides only the mechanism for severing such a proprietorship and converting it into a proprietorship in common. Thereafter, clearly there could be partition.

It is not necessary for the purposes of this appeal to decide whether a joint proprietor or a proprietor in common of land could apply to the Court under the Partition Law, Chap 117, for an order for sale or partition. There is no such application before the Court. The RLL makes clear that severance of joint proprietorship can only be by consent of all joint proprietors and that severance does no more than create a proprietorship in common. The Partition Act is not, in my view, relevant to these proceedings.

It is of interest to note the provisions made in the RLL to deal with the bankruptcy of a joint proprietor. These are contained in Section 118 which reads -

"(1) A Trustee-in-Bankruptcy shall, upon production to the Registrar of a certified copy of the order of Court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his place, and a copy of the order shall be filed in Registry.

.....

(3) The Trustee-in-Bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restriction contained in any law relating to bankruptcy or in any order of Court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the Trustee-in-Bankruptcy shall have all the rights and be subject to all the limitations conferred by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration."

The provision contemplates that in the case of one joint proprietor becoming bankrupt, the Trustee-in-Bankruptcy would have his or her name substituted on the Register as joint proprietor with the remaining proprietors - subject to the same limitation of being unable to dispose of the joint property except with the consent of the other joint proprietors. The substitution of one joint proprietor would not change the nature of the estate to one of common proprietorship.

It was, of course, pointed out that in dealing with matrimonial property held by husband and wife as joint proprietors the Courts routinely make orders for sale and distribution of proceeds. Section 21 of The Matrimonial Causes Law 9 of 1976 reads -

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"At the time of pronouncing a decree under this Law the Court shall, as appropriate, make orders for -

.....

(b) the disposition of matrimonial property including the matrimonial home."

The power there granted to the Court is a power to dispose of the entire matrimonial property. Property held by the spouses as joint tenants can be sold in its entirety. The spouses can be ordered to sign or a court official authorised to sign on their behalf. In this case there is no power to order disposition of the whole property since Mrs Randall's interest is not liable to being disposed, there being no judgment against her and she

cannot be compelled to join in any conveyance to dispose of the entire property as would be possible if the Court was exercising its jurisdiction under Section 21 of the Matrimonial Causes Law.

Section 120 of the RLL provides -

"Where the Crown or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the Crown or the person entitled as the proprietor."

The RLL does contemplate that estates registered under the RLL may be sold by order made or issued under some law presumably by a Court. The disposition ordered under any such law must, however, be such as not to be inconsistent with the RLL. In this case there is no power to order the entire property to be disposed of and the RLL does not provide for the disposition of the interest held by one joint proprietor of land without the agreement of the other unless that disposition be to the remaining joint proprietor.

Accordingly, the appeal must be dismissed with costs to the Respondent/Intervener.

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