

In the Grand Court of the Cayman Islands
 Holden at George Town
 Before His Lordship, Sir John Summerfield, Chief Justice.
 On the 12th day of April, 1978

Cause 597/77

BETWEEN : JAMES A. RYAN for the Estate of
 CATHERINE A. RYAN PLAINTIFF/APPELLANT

AND : CYNTHIA ANN SCOTT for the Estate
 of ROBERT B. LEITCH DEFENDANT/RESPONDENT

Mr. R. Alberga, Q.C., instructed by Messrs Walker & Co for the appellant.
 Mr. Truman Bodden instructed by Messrs. Truman Bodden & Co. for the respondent.

JUDGMENT

The appellant in this appeal (the estate of Catherine A. Ryan) and the respondent (the estate of Robert B. Leitch through the daughter of the deceased Cynthia Ann Scott) initially laid claim to the land, the subject matter of this dispute, in October 1974. The claims were adjudicated upon pursuant to the Land Adjudication Law, 1971.

The land in question is that delineated as number 1 on the sketch plan at page 6 (and at page 8) of the record with the legend "Estate of Catherine A. Ryan". It is noteworthy that the whole of the land shown in that sketch (lots 1 to 5), known as the "Football Ground", belonged to one J. R. Scott (senior) and devolved, on his death, to his children each having a one-fifth undivided share therein. One of those undivided one-fifth shares devolved on Catherine A. Ryan whose estate is the appellant herein. The land was never subdivided or partitioned so as to vest any specific estate in any part thereof legally in any of those having a one-fifth undivided share.

The adjudicator found in favour of the appellant his decision being in the following terms:

"The Scott family could lay claim to a specific piece of land at the football Ground. They could claim an undivided share of 1/5th in the Estate of the late Catherine A. Ryan. They were unable to produce any documentary evidence of ownership by Mrs. Scott's parents of this 1/5th share and could only state what they had been told by Mrs. Scott's parents and neighbours. Mr. Leitch may well have purchased a share in the land at the Football Ground but in the absence of evidence to this effect

the claim by the Estate of the late Robert B. Leitch must fail.
Title to the whole goes to Estate Catherine A. Ryan.

TITLE ABSOLUTE

Stake Bay Friday 29th November, 1974."

To make sense of that decision one would have to insert the word "not" after the word "could" in the first line. No doubt the omission was a typographical error.

The respondent petitioned the Tribunal on 14 February 1975 pursuant to section 20 of the Land Adjudication Law. The ground specified in the petition was "additional evidence discovered".

That additional evidence was referred to in the adjudicator's decision which was in the following terms:

"Petitioner Mrs. Cynthia Ann Scott sought leave to produce evidence not available to her at the dispute stage (Dispute heard 29.11.74). This consisted of the oral evidence of John B. Scott who testified to the late Robert B. Leitch's avowed interest in the Football Ground land and of his and his father's acceptance of Leitch's claim to a one fifth share to land west of the Channel Road. Mr. Guy Banks, District Commissioner also produced from Government Records a diagrammatic sketch showing the division of the land into 5 equal lots (one of which was in the name of Leitch,) attached to a payment voucher dated 9.9.55 signed by the Superintendent Public Works for Ten pounds payable as an advance to R.B. Leitch for "lands used for airstrip". Also attached was the receipt for the Ten Pounds which states "This advance payment is only in connection with lands belonging to myself and my wife Editha". It is signed by Leitch (See Exhibit "A" 45/CBW/D/P.).

At that time Government was satisfied as to Leitch's ownership and entered into negotiation with him and my decision is that the 1/5th share of the now divided lands at Football Ground formerly awarded to the Estate of Catherine B. Ryan be now awarded instead to the Estate of R. B. Leitch.

Title absolute.

West End, Cayman Brac, The Cay
11th March, 1975."

It is common ground that the payment voucher, with sketch attached, and Government receipt, Ex. A (pp21 and 22 and 7 and 5), do not constitute a good root of title for the purpose of section 16 (1)^(a)(ii) of the Land Adjudication Law. I share that view. Nor does the finding that Government was satisfied as to the respondent's ownership so as to enter into negotiations which led to the issue of Ex.A constitute a good root of title.

The Adjudicator therefore erred in law in reaching the conclusion he did on the documentary evidence before him and awarding absolute title to the respondent thereon.

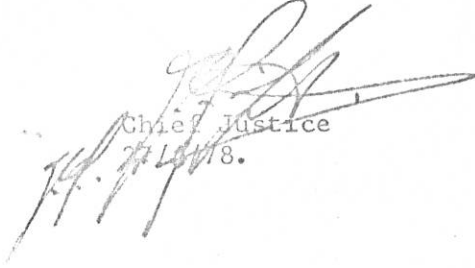
It is clear from the adjudicator's second decision that he has not applied his mind to the question of whether either party is entitled to a declaration as to title pursuant to section 16 (1)^(a)(i) of the Land Adjudication Law. There is evidence on the record on which the adjudicator could have made a finding one way or other in relation to that provision. It is essentially a question of fact and it is not open to this court to attempt to reach any such finding of fact on the basis of the record.

It seems to me that the only course open to this Court is to allow the appeal and remit the case to another adjudicator to determine all the issues between the parties according to law. It is so ordered.

There will be no restriction on the issues to be adjudicated between the parties and the parties are to be at liberty to adduce such evidence or further evidence in support of their respective claims as they see fit.


SIR JOHN SUMMERFIELD.
27th May, 1978.

Order: Costs of this appeal awarded to the appellant in the event that he is ultimately successful when this matter is finally determined. Otherwise no order as to costs of this appeal.
Liberty to apply.


Chief Justice
27/5/78.