

Ivan Paraboo - - - - - Appellant

v.

Tom Crawford - - - - - Respondent

FROM

**THE GUYANA COURT OF APPEAL**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 28TH JULY 1969**

*Present at the Hearing :*

LORD HODSON

LORD DIPLOCK

SIR GARFIELD BARWICK

*[Delivered by SIR GARFIELD BARWICK]*

The appellant sued the respondent for trespass to certain land  $3\frac{1}{2}$  acres in extent of which the appellant claimed to be in possession. It seems that at some time prior to 1944 a plantation in Guyana referred to in these proceedings as the Plantation Brahan which at all material times was Crown Land was divided into a number of parcels of which at least two were described by metes and bounds as well as by area. In 1944 a licence was granted under section 3 (c) of the Crown Lands Ordinance to a predecessor of the appellant to occupy one of these parcels described in the licence by metes and bounds and there said to contain 27.59 acres. It would appear that some time prior to 1952 a licence to occupy another of these parcels was granted to a group of persons of whom the respondent was one. This parcel was said to contain 53.7 acres and presumably the licence with respect to it described it by metes and bounds. These two parcels were contiguous along a line bearing north/south. At least between 1946 and 1960 both parties assumed their common boundary to be in such a position that the  $3\frac{1}{2}$  acres in respect of which the appellant now claims trespass was contained within the parcel which the said group was entitled to occupy. Apparently this group agreed amongst themselves to divide up the parcel and assign various portions of it to one or other of them. The portions were quite small ranging it would seem from  $1\frac{1}{2}$  to  $3\frac{1}{2}$  acres. The portion allotted by the group to the respondent was a portion bounded on its west by the common boundary between the two parcels covered by the licences. Because of this assumption of the parties the respondent in fact occupied and worked the  $3\frac{1}{2}$  acres at least between 1947 and 1960; and in fact the appellant assisted him to do so, receiving wages from the respondent for the work he did. At some time prior to 1959 and after 1952 the respondent's group applied for a provisional lease to be granted to them under section 3 (b) of the Crown Lands Ordinance in respect of the parcel said to contain 53.7 acres. In 1959 permission to occupy and work the 53.7 acres was given to the group with effect from the 1st September 1952 which was the expiry date of the earlier licence to occupy and the application for the provisional lease was approved. It would seem that it was necessary for the land to be surveyed, that is to say for its occupancy to be checked against its description by metes and bounds, before such a lease could be issued. Consequently the respondent paid the necessary survey fees and an official surveyor pegged on the land the description as contained in the earlier permission to occupy. When he did so it was found that the appellant

and his predecessor and the respondent had been under a misapprehension as to the location of their common boundary. According to the surveyor that boundary was more easterly than the parties had conceived it to be with the result that the  $3\frac{1}{2}$  acres in question which had been thought to be within the area to which the licence to occupy given to the respondent's group referred was in truth within the parcel covered by the licence to occupy given to the appellant's predecessor. The surveyor found that the land described in the licence to occupy comprised only 51.9 acres and not 53.7 as it was said to contain in the document given to the respondent's group in 1959. The surveyor concluded his work in October 1960. What happened thereafter does not clearly appear from the evidence. The appellant gave evidence that he ploughed and sowed the land in 1962 but he agreed that the defendant ploughed at least some part of it in that year. He claimed that the respondent had not been on the land thereafter. On the other hand the respondent said that he had ploughed and sowed it in 1963 and claimed to have been occupying it for 15 years which would appear to mean 15 years from 1947. He was not prepared to accept the common boundary fixed by the official surveyor. The trespass for which the plaintiff sues was a trespass committed in 1962 by the reaping and carrying away of a rice crop equal to 28 bags of rice. The Primary Judge found that the "plaintiff has never been in possession of the disputed land". Their Lordships understand this finding to mean that it had never been occupied by the appellant or his predecessor at any time certainly up to the time of the commencement of the action and presumably up to the time of the hearing.

The Court of Appeal dismissed the appellant's appeal to it on the ground that the respondent was in lawful occupation of the land in dispute—"lawful in the sense that his occupation was so accepted by all sides" and that consequently the appellant could not complain of a trespass committed prior to the survey. Their Lordships are unable to agree with this reasoning and would feel difficulty in concluding from the reasons given by the Court of Appeal that that Court had found as a fact that the appellant had never been in possession of the land as the trial judge had found. But though there may not for that reason be a concurrent finding as to the possession of the land, the Primary Judge's finding was arrived at after an oral contest and there was evidence upon which it would be made. Their Lordships would therefore not be willing to disturb it.

On the footing of this finding of fact the only basis of the appellant's claim to maintain trespass according to the pleadings in the action fails.

The trial judge gave as a reason for dismissing the plaintiff's claim for an injunction to restrain trespass that the respondent had been in adverse possession of the land for upwards of 12 years which entitled him "to the land by virtue of the terms of the Title to Land (Prescription and Limitation) Ordinance Chapter 184". The Court of Appeal did not deal with this ground. As their Lordships are of opinion that upon the findings made by the trial judge the plaintiff fails upon the issues raised by the pleadings they are not called upon to express any opinion upon the propriety of the reason given by the Primary Judge for refusing an injunction to restrain trespass. Their Lordships see grave difficulties in the way of acceptance of the trial judge's view but without the benefit of the opinion of the Court of Appeal on the matter and in the absence of any argument on behalf of the respondent, they express no opinion of their own on the question.

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be dismissed.



**In the Privy Council**

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**IVAN PARABOO**

**v.**

**TOM CRAWFORD**

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**DELIVERED BY  
SIR GARFIELD BARWICK**