Privy Council Appeal No. 36 of 1968

Her Majesty's Attorney-General for Dominica – – – *Appellant*

v.

Howell Donald Shillingford – – – – – – *Respondent*

FROM

THE WEST INDIES ASSOCIATED STATES SUPREME COURT IN THE COURT OF APPEAL, DOMINICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH JUNE 1970

Present at the Hearing:

LORD HODSON
LORD GUEST
LORD DONOVAN
LORD PEARSON
SIR FRANK KITTO

[*Delivered by* SIR FRANK KITTO]

This appeal arises out of proceedings which began in 1964 in the Supreme Court of the Windward Islands and Leeward Islands, Colony of Dominica, concerning the title to six portions of land described as Lots 1 to 6 inclusive of the Batalie Estate. The six portions comprised some 486 acres being part of a total area of 776 acres in respect of which a certificate of title had issued to the respondent on 14th November 1941 under the provisions of the Title by Registration Ordinance of the Colony (Cap. 222) and was registered as folio 126 of Liber " R " of the register kept under that Ordinance. The appellant, suing on behalf of the Crown in right of the Colony, claimed a declaration that the six portions were Crown lands of which the Crown was entitled to immediate possession, an order for delivery of possession thereof to an officer of the Government, and an order for the cancellation or correction of the certificate of title.

Upon the trial of the action the appellant failed as to Lot 5, but he succeeded in respect of Lots 1, 2, 3, 4 and 6, the trial Judge (Louisy J.) holding in respect of those Lots that the Ordinance did not bind the Crown, that for that reason the certificate of title provided no answer to the appellant's claim, and that the respondent had shown no title to the Lots independently of the certificate. The respondent appealed to the British Caribbean Court of Appeal against the order made by Louisy J. in respect of the Lots other than Lot 5, and the appeal succeeded upon the the ground (*inter alia*) that the Certificate of title was conclusive against the claim of the Crown. The order of Louisy J. was set aside, and an order was made that judgment in the action be entered for the respondent.

From the order of the Court of Appeal the appellant brings the present appeal. At the outset of the argument counsel for the appellant informed

their Lordships that the appeal was not pressed in respect of Lots 3 and 4, as to which both the Trial Judge and the Court of Appeal had affirmed the respondent's title for reasons unconnected with the certificate of title. Only Lots 1, 2 and 6, therefore, remain to be considered. As to these it is common ground that they became Crown lands by conquest and cession of the island of Dominica in 1763, and it follows that the appellant was entitled to succeed unless the evidence established a title in the respondent derived directly or indirectly from the Crown. The evidence upon which the respondent relied in this respect fell into two parts, one consisting of the certificate of title and the other consisting of a number of instruments of earlier dates by which the respondent sought to make out a title independently of the certificate. The question that arises at the threshold of the matter is whether the certificate is conclusive as against the Crown to establish a title in the respondent: if it is, the other instruments referred to need not be considered.

The certificate is in the form prescribed by s. 3 and Form 4 in the Second Schedule to the Ordinance: " Know all men to whom these presents shall come that [the respondent] is the registered proprietor of [the land] all as the same is delineated and set forth on the plan thereof . . . annexed hereto . . . " The signature of the Registrar of Titles is subscribed and the seal of his office is affixed. The Ordinance provides for the issue of such a certificate in two types of cases. Where a grant of land is made by the Crown and the grantee elects, instead of receiving the grant, to have a certificate of title issued to him in lieu thereof, s. 7 requires that the grant be delivered to the Registrar of Titles instead of being given to the grantee, and that a certificate of title be issued to the grantee. Again, where a person satisfies a judge, in respect of land not registered under the Ordinance, (*a*) that he can show a good documentary title in himself and his predecessors for at least thirty years, or (*b*) that he has the right to claim the land as owner and has been in undisturbed possession of the same continouusly during the preceding twelve years, or (*c*) that he has, by descent or by will or deed, acquired a title to the land from a person who would have been entitled to have the land registered in accordance with (*b*), or (*d*) that the land has been continuously for thirty years in the sole and undisturbed possession of himself or partly of himself and partly of any other person through whom he claims, s. 13 provides that the Registrar of Titles shall issue a certificate of title to him and that the title deeds and documents which accompanied his request for the issue of the certificate shall remain in the custody of the Registrar.

It will be observed that whether a certificate of title be issued pursuant to s. 7 or pursuant to s. 13 the person whom it designates as the registered proprietor is denied for the future all right to the instruments which he would need to retain for proof of his title if the certificate of title is not to be in all circumstances sufficient proof, that is to say as against the Crown as well as subjects. The sufficiency of the certificate of title for this purpose depends upon a provision made by s. 8 that all certificates of title granted under the Ordinance shall be indefeasible. By s. 2 (3) and the First Schedule the word " indefeasible " is given a meaning which is expressed in the form of two propositions. The first, so far as material, is that the certificate cannot be challenged in any Court of law on the ground that some person other than the registered proprietor is the true owner of the land, except on the ground of fraud connected with the issue of the certificate or that the title of the registered proprietor had been superseded by a title acquired under a certain Ordinance that is mentioned. The second proposition is that, the certificate of title being issued by the Government of the Colony, the Government of the Colony is, with the exceptions above mentioned, prepared to maintain the title in favour of the registered proprietor, leaving anyone justly aggrieved by its issue to bring an action for money damages against the Government of the Colony.

Words could hardly make it clearer that the issue of a certificate is an act of the Crown, and, subject to the exceptions mentioned, is effectual in law to vest a title to the land in the registered proprietor. The nature of the title is defined by s. 10, which describes the certificate of title as being " granted " under the Ordinance and provides that the right of the registered proprietor to the land comprised in the certificate shall be the fullest and most unqualified right which can be held in land by any subject of the Crown under the law of England. The right so described is the right of a tenant in fee simple. Apart from legislative provision, an estate in fee simple requires for its creation a Crown grant. The Ordinance thus by its very terms equiparates a certificate of title to a Crown grant of a fee simple.

Their Lordships find no necessity in this case to discuss the principles to be applied in determining whether a statutory provision which does not specifically mention the Crown is nevertheless binding upon it. Upon the plain terms of the Ordinance its operation is to give to the issue of a certificate of title under its authority the legal quality of an act of the Crown. The Ordinance, it should be said, does not provide in so many words that a certificate of title shall have the force and effect of a Crown grant, as did s. 12 of the Land Transfer Act 1885 of New Zealand which was under consideration in *Assets Company, Limited, v. Mere Roihi* [1905] A.C. 176. Indeed the Ordinance differs in many respects from enactments in force in other jurisdictions concerning title to land by registration, and of course it must be interpreted according to its own terms. But the provisions that have been mentioned seem to their Lordships to produce the same effect as s. 12 of the New Zealand Act. As applied to the present case their operation is that the respondent's certificate of title is equivalent to a Crown grant of a fee simple to him, and it therefore conclusively answers the claim of the Crown in respect of Lots 1, 2 and 6.

Being for these reasons of opinion that the decision of the Court of Appeal was right, their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant will pay the costs of the appeal.

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In the Privy Council

HER MAJESTY'S ATTORNEY-GENERAL FOR DOMINICA

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Printed by HER MAJESTY'S STATIONERY OFFICE
1970