

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

ROMANIE GOUVEIA

Plaintiff

-and-

DENNIS HILL

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Alana Lall representing the Plaintiff

Ms. Birget Corbin representing the Defendant

Delivered July 13th 2020

RULING

BACKGROUND

The Plaintiff is the owner of Parcels 361 and 362, Block XVIII, Zone L.B.E.R. by virtue of Certificate of Title No. 2014/ 154 [**Exhibit “A”**].

The Parcels were registered by “First Registration” in the Plaintiff’s name pursuant to a Declaration of Title Order from Commissioner of Title, Mr. Rabindra Rooplall, dated July 11th 2013 in Application No. 124 of 2012 [**Exhibit “D1 - D2”**].

The Order of Court states that the Parcels [361 and 362] are laid down and defined on Plan No. 28122 by SLS R. N. Durbeej dated July 4th 1995 [**Exhibit “Q”**].

The Defendant filed Application No. 156 of 1999 therein applying for Parcels 361 and 362 [**Exhibit “C1 - C6”**], however, as stated in that Application, the Parcels 361 and 362 he applied for are laid down and defined on Plan No. X-468 by SLS L. F. McGregor dated April 1st 1987 [**Exhibit “R”**].

The Defendant obtained a Declaration of Title Order from Commissioner of Title, Mr. Rabindra Rooplall, dated October 12th 2012 in Application No. 156 of 1999 for Parcels 361 and 362 laid down and defined on Plan No. 28122 by SLS R. N. Durbeej dated July 4th 1995 [**Exhibit “Q”**].

This Order was issued in accordance with Plan No. 28122 [**Exhibit “Q”**] because the Defendant filed a supplementary affidavit which was sworn to by him on May 28th 2012 in Application No. 156 of 1999 [**Exhibit “C3 - C4”**] wherein he averred that the Parcels 361 and 362 that he was applying for were laid down and defined in Plan No. 28122.

In May 2015 the Plaintiff discovered the existence of the Declaration of Title Order issued to the Defendant and as a result she instituted this High Court Action to have that Order of Court set aside on the ground that it was obtained by fraud.

The Defendant counterclaimed asking the Court to set aside the Declaration of Title Order issued to the Plaintiff in July 2013 and the Certificate of Title issued to her in December 2014 on the ground that those were obtained by fraud.

The Defendant’s Attorney, in her closing address, submits that Parcels 361 and 362 laid down and defined in Plan No. 28122 [**Exhibit “Q”**] are geographically similarly located as Parcels 361 and 362 laid down and defined in Plan No. X-468 [**Exhibit “R”**].

However, when the Defendant was shown Parcels 361 and 362 on **Exhibit “R”** he clearly testified that those were not the Parcels he occupied.

ISSUE I

Are Parcels 361 and 362 laid down and defined in Plan No. 28122 the same Parcels 361 and 362 laid down and defined in Plan No. X-468.

FACTS

In addition to the facts stated in the “BACKGROUND”, above, the following evidence was received at the trial.

Exhibit “G1 - G2” is a surveyor’s report dated October 30th 2012 issued by the Guyana Lands and Surveys Commission and therein it is recorded that Plan No. X-468 was a sketch plan and Plan No. 28122 is the original plan for Plantation Good Hope.

Further, in the schedule attached to the report, it is recorded that Parcels 361 and 362 on Plan No. 28122 are in fact numbered 228 and 226 respectively on Plan No. X-468.

Exhibit “H1 - H2” is a surveyor’s report dated June 9th 2015 issued by the Guyana Lands and Surveys Commission and therein it is recorded that Plan No. X-468 was a sketch plan and Plan No. 28122 is the original plan for Plantation Good Hope.

Further, in the schedule attached to the report, it is recorded that Parcels 361 and 362 on Plan No. X-468 are in fact numbered 406 and 407 respectively on Plan No. 28122.

SLS L. F. McGregor, the maker of Plan No. X-468, testified that Parcels 361 and 362 on Plan No. X-468 are in fact numbered 406 and 407 respectively on Plan No. 28122.

His testimony and explanation are embodied in his report dated January 9th 2020 [Exhibit “J”].

ANALYSIS

This is purely an issue of fact and a basic visual comparison of Plan No. X-468 and Plan No. 28122 immediately reveals that the Parcels numbered 361 and 362 on Plan No. X-468 are physically located where Parcels numbered 406 and 407, respectively, are on Plan No. 28122.

This, coupled with fact that the Court finds that Exhibits “G1 - G2”, “H1 - H2” and “J” have not been materially contradicted in any way, it must be concluded that Parcels 361 and 362 are different portions of land on the two plans.

CONCLUSION

Parcels 361 and 362 laid down and defined in Plan No. 28122 are not the same Parcels 361 and 362 laid down and defined in Plan No. X-468.

ISSUE II

Did the Plaintiff obtain the Declaration of Title Order and /or the Certificate of Title for Parcels 361 and 362 fraudulently.

FACTS

In addition to all of the foregoing facts, the following evidence was received at the trial.

The Plaintiff testified that she held Transport for the Parcels and therefore her Application was an application for First Registration. This assertion was not challenged.

Exhibit “B” is a Field Inspection Report based on an inspection of the Parcels on January 15th 2013 by SLS L. F. McGregor and it is recorded therein that on that date Parcels 361 and 362 were unoccupied and covered with bamboo and secondary forest. It is apparent that the report was as a result of a request by the Land Court.

The particulars of fraud alleged by the Defendant in his Statement of Defence at paragraph 9 are that;

1. The Plaintiff applied for a Declaration of Title to the Parcels even though she nor her predecessors in title were never in possession of them, and
2. The Plaintiff falsely represented to the Land court that the Parcels were vacant.

Exhibits “M1 - M2” are photographs of the Parcels tendered by the Plaintiff which she testified were taken in April 2015. The Defendant was unable to say if the pictures were of Parcels 361 and 362.

The Defendant testified that the land he claims has coconut trees and a barbed wire fence which was built in 1990.

Vivian Missigher testified that he built a fence on Parcels 361 and 362 in 1990 at the Defendant’s request and did some more work on it in 2015, however, he did not recognise the land shown in **Exhibits “M1 - M2”**.

Lawrence Marks testified that Parcels 361 and 362 have had coconut trees on them since the 1960’s.

LAW

Section 24 of the Land Registry Act; CAP 5:02 of the Laws of Guyana

24. The Commissioner shall determine who is entitled to each and every parcel of unregistered land in the area and shall -

(a) record all documents of title to unregistered land in respect of which he is satisfied -

(i) that the person claiming ownership under any such document is the person or derives title through the person named in the document;

(ii) that no other person is able to establish title to the land by possession adverse to the title of the claimant.

Application by Alvin Bishop [Application No. 135 of 1999] [Land Court of Guyana; Unreported - January 12th 2018]

ANALYSIS

Since the Plaintiff was applying for First Registration of a title in accordance with **Section 24 of the Land Registry Act**, she was not required to prove that she was in possession or occupation of the Parcels and therefore the first particular of fraud must fail.

The Defendant claims to have been in occupation of the Parcels but he was unable to refute the testimony of SLS McGregor or the truthfulness of **Exhibit “B”**, which was prepared because of a request from the Land Court.

In fact an examination of **Exhibit “M1 - M2”** does not reveal any coconut trees or barbed wire fence and certainly no evidence of a fence that would have been about 25 years old in 2015.

The fact that the Defendant swore an affidavit in 2012 stating that Parcels 361 and 362 which he was applying for were defined and laid down in Plan No. 28122 despite his Application, thirteen years earlier, was based on Plan No. X-468 which he testified in this trial does not show the Parcels he claims he occupies, demonstrates that the Defendant is not an honest witness.

The fact, as established in ISSUE I, that they are not the same Parcels means that, assuming that the Defendant was in occupation of Parcels 361 and 362 as defined and laid down in Plan No. X-468 as per his Application in 1999, then in attempting to change his Application to Parcels 361 and 362 as defined and laid down in Plan No. 28122, he would have had to intentionally and deliberately physically go to parcels of land which he knew were not the same and which he was not previously occupying.

Alternatively, the only logical explanation is that the Defendant never occupied any land and his Application was fraudulent.

Which ever is true, it demonstrates that the Defendant is not a witness that the Court can rely upon to testify truthfully.

The fact that Vivian Missigher did not recognise the property shown in **Exhibits “M1 - M2”** further demonstrates that the land for which the Plaintiff has title is not the land that he, Missigher, purportedly built a fence on.

Lawrence Marks testimony that the Parcels have coconut trees on them and that the Defendant had coconut trees on them since the 1960's. This can only mean that he is not describing the Parcels of land for which the Plaintiff holds title since all of

the documentary evidence, which the Court accepts as accurate, show that the Parcels do not have coconut trees.

In this regard the Court finds that the Defendant was never in possession or occupation of the Parcels of land for which the Plaintiff holds title and therefore the second particular of fraud must fail.

CONCLUSION

The Defendant has failed to prove that the Plaintiff obtained the Declaration of Title Order and/ or the Certificate of Title for Parcels 361 and 362 fraudulently.

ISSUE III

Did the Defendant obtain a Declaration of Title for Parcels 361 and 362 fraudulently.

FACTS & ANALYSIS

Based on the foregoing analyses, the Court finds that the Defendant committed fraud upon the Land Court when he swore in the supplementary affidavit dated May 28th 2012 [**Exhibit “C3 - C4”**] that the Parcels 361 and 362 that he was applying for were laid down and defined in Plan No. 28122 when he had to have known that was false and that that would have changed his Application materially.

CONCLUSION

The Defendant obtained a Declaration of Title for Parcels 361 and 362 fraudulently. Further, based on the Defendants’s testimony, he therefore did trespass on the Plaintiff’s property situate at Parcels 361 and 362, Block VIII, Zone L.B.E.R. when he attempted to fence those parcels.

Based on the foregoing, the Defendant's Counterclaim is hereby dismissed.

Paragraphs (a), (b) and (d) of the Statement of Claim dated June 30th 2015 are hereby granted.

The Court further awards the sum of \$350,000.00 as general damages for trespass to property to the Plaintiff against the Defendant.

The Court awards costs to the Plaintiff against the Defendant in the sum of \$200,000.00.

Justice N. A. Singh