

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

MARK LEVY through his duly constituted Attorney
JOAN STRAUGHN agreeably with Power of
Attorney executed on the 13th day of May, 2005 and
registered in the Deeds Registry as No. 4586 of 2007.
Plaintiff

-and-

SHAIRAZ ALI

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Neil Boston S.C. for the Plaintiff

Messrs. Sohan Poonai and Rajendra Poonai S.C. for the Defendant

Delivered March 19th 2021DECISION

The evidence in the trial of this action was taken at the same time as High Court Action No. 354-W of 2010 (Demerara) wherein the Defendant herein is the Plaintiff and the Plaintiff herein was sued by his duly constituted attorney, Garfield Strans, together with two other Defendants. It is noted that he prosecutes this Action through his duly constituted attorney, Joan Straughn.

The two High Court Actions were heard together but the Court did not consolidate the Actions and therefore the Court has to deliver separate decisions, however, having heard and considered the evidence, it is now clear that the issues in both Actions are materially identical and so the though two decisions must be delivered they are likely to be very similar.

The Plaintiff claims that he is the owner of Parcel 917; Block VII; Zone Right Bank Essequibo River by virtue of Certificate of Title No. 83/ 473 dated June 11th 1983 [Exhibit “T”].

The Defendant contends that he holds Lease No. A12158 [Exhibit “H1 - H5”], issued by the Government of Guyana on March 31st 2006, for certain lands known as and situate at Parcels 914, 915, 916, **917** and **936**; Block VII; Zone Right Bank Essequibo River.

The Plaintiff claims, *inter alia*, for a Declaration that Lease No. A12158 is null and void with respect to Parcel 917 by virtue of the existence of his Certificate of Title and with respect to Parcel 936 because Parcel 936 is subject to existing public rights recognised by section 4 (4) of the Civil Law of Guyana Act; CAP 6:01 of the Laws of Guyana and for damages for trespass to Parcel 917.

The Plaintiff had previously instituted High Court Action No. 764-W of 2001 (Demerara) against the Defendant on November 22nd 2001 for trespass which Action was deemed abandoned by Chief Justice Ian Chang in December 2010.

The Plaintiff claims that Parcel 917 was owned by his father, Tyrell August Levy, by virtue of Transport No. 1457 of 1957 [Exhibit “U1 - U3”] and by virtue of a First Registration of that Transport under the Land Registry Act his father obtained a Certificate of Title and subsequently he, the Plaintiff, became the owner of Parcel 917 by virtue of Certificate of Title No. 83/ 473.

The Defendant contends that Parcel 917 is part of the foreshore of the Essequibo River and Parcel 936 is the Sea Defence Reserve Dam and therefore both Parcels are State Lands and incapable of private ownership.

The Defendant contends that in these circumstances, with respect to Parcel 917, Certificate of Title No. 83/ 473 was issued in error and therefore not valid.

ISSUE I

Is Parcel 917; Block VII; Zone Right Bank Essequibo River, State Land.

FACTS

Parcels 909 - 1700 Block VII; Zone Right Bank Essequibo River are shown on Plan No. 15526 dated August 1st 1972 [**Exhibit “A”**] which Plan was surveyed and paled off under **section 21 of the Land Registry Ordinance No. 18 of 1959.**

The Plaintiff and the Defendant have accepted the validity of Plan No. 15526.

The Defendant testified that he applied to the Lands and Surveys Department for a lease to the land in 1993 and this is evidenced by correspondence dated February 22nd 1994 from the Lands and Surveys Department [**Exhibit “C”**].

The Defendant also testified that he received permission to construct a wharf at Parika, East Bank Essequibo from the Transport & Harbours Department and the Sea Defence Board in 1994 [**Exhibits “D” and “E”**].

A copy of Plan No. 29891 drawn by SLS M. S. Azam and dated March 29th 2000, which is referred to in Lease No. A12158 was tendered into the evidence [**Exhibit “G”**] though not for the truth of the contents since the original could apparently not

be located. It is noted nevertheless that Plan No. 29891 displays materially the same information with respect to Parcels 917 and 936 as Plan No. 15526.

The Defendant testified that since the issuance of Lease No. A12158 he has been paid the annual rental for Parcel 917 to the Lands and Surveys Commission without fail and tendered receipts to support this testimony [Exhibits “J1 - J33”].

Based on the evidence the Defendant deposited boulders on Parcel 917, covered it with sand and mud and subsequently dumped several tons of mud on Parcel 917.

The Judge visited the area on March 13th 2021 and the Joan Straughn, Garfield Strans and the Defendant were present.

During that visit, the Joan Straughn, Garfield Strans and the Defendant all pointed to what they referred to as the sea dam and it is the same portion of land described as Parcel 936 on the Plans.

They also pointed out what they consider to be Parcel 917 and it is the same portion of land described as Parcel 936 on the Plans. In addition they all pointed into the Essequibo River as being the northern boundary of Parcel 917, in fact Joan Straughn pointed to beyond a sea vessel moored in the river.

LAW

Sea Defence Act; CAP 64:02 of the Laws of Guyana.

Section 2 provides;

“sea defence” includes -

- (a) any dam, concrete, stone, timber, or other wall, groyne, koker run, or any construction whatever, constructed or used by the Board as a protection fo the sea coast or river banks against the erosive action of the sea or river current;*
- (b) the bed of the sea, river, creek or canal whereon there is or is built any structure under paragraph (a).*
- (c) all land fifty feet landwards from the centre of any sea or river dam or sea or wall under paragraph (a), and all land on the other side of such sea or river dam or sea or river wall in the direction of the sea or river to the toe of such sea or river dam or sea or river wall;*
- (d) any shell bank or reef, mud bank or reef, sand bank or reef, or other natural feature, which serves as a protection of the sea coast against the erosive action of the sea or which protects the bank of any river from the erosive action of the river current; and*
- (e) all land fifty feet landward of the crest or top of any reef, bank or natural feature under paragraph (d) hereof, and all land on the other side thereof in the direction of the sea or river as far as the mean high water mark;*

Section 12 (1) provides;

All sea defences which are or shall be in existence in any district shall by force of this Act become the property of the State.

Civil Law of Guyana Act; CAP 6:01 of the Laws of Guyana.

Section 2 (1) provides;

From and after 1st January 1917, hereinafter in this Act referred to as “the date aforesaid” ...

Section 4 (1) provides;

From and after the date aforesaid, the foreshore of Guyana (that is to say, the part of the shore of the sea and the tidal navigable rivers which is covered by the medium high tide between the spring tides and the neap tides), the soil under tidal waters, and the sea-bed within the territorial waters of Guyana (hereafter in this section called "the land"), shall be deemed to be State lands and may be dealt with in the same manner in which State lands are now dealt with under the State Lands Act or under any later Act.

Section 4 (7) provides;

Nothing in this section contained shall be construed as vesting in the State any land forming part of the foreshore or a sea-bed over which a private right has been established by virtue of any law or custom and whether by prescription or otherwise.

ANALYSIS

Based on the undisputed facts, particularly Plan No. 15526 [**Exhibit "A"**] and the actual identification and description of the lands to the Judge by the Plaintiff's duly constituted attorney, Joan Straughn, and the Defendant, Parcel 936 is irrefutably a sea/ river dam and therefore "**sea defence**" as defined by and by virtue of **section 2 of the Sea Defence Act** which also incontrovertibly means that by the same **section**, Parcel 917 or a portion thereof is also "**sea defence**".

It follows that by virtue of **section 12 (1) of the Sea Defence Act**, Parcels 917 and 936 are property of the State.

Counsel for the Plaintiff submits that **section 12 (1) of the Sea Defence Act** only takes effect after the publication of an order under **section 12 (2) of the Sea Defence Act**.

This contention is disingenuous, since the order referred to in **section 12 (2) of the Sea Defence Act** is referable to **sections 9 and 10 of the Sea Defence Act** which speaks to the publication of an order by the Minister for the construction of a “**sea defence**”.

Counsel for the Plaintiff also submitted that pursuant to **section 13 of the Sea Defence Act** there ought to have been an annotation on the Plaintiff’s Title but this is a duplicitous submission since the “**sea defence**” clearly existed before any Title.

This is clear from the fact that the “**sea defence**” is laid down on Plan No. 15526 [**Exhibit “A”**] from which the Titles, including the Plaintiff’s Title, for the area have been derived.

It is clear that construction of the “**sea defence**” referred to as the “*sea defence reserve dam*” in Plan No. 15526 was completed and established prior to the time of the survey, August 1st 1972.

The annotation would only be required or be done if the land that is now the “**sea defence**” became the property of the State after the Title was issued, it therefore follows that there could be no annotation on the Plaintiff’s Title [**Exhibit “T”**], which was issued June 11th 1983, more than a decade after the plan was drawn.

Further consideration of **section 13 of the Sea Defence Act**, must lead to the conclusion that the existence of the “**sea defence**” on the Plan [**Exhibit “A”**]

presumptively shows that all that was required to be done under **section 10 of the Sea Defence Act** was done.

This coupled with the fact that the “**sea defence**” has been in existence for decades prior to the commencement of this High Court Action gives rise to a presumption of regularity [*omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*] and the Defendants did not attempt to lead evidence to show the contrary, rather, they clearly embraced Parcel 936 as being a sea dam.

Further, and specifically with respect to Parcel 917, based on the Judge’s observation on the site visit that more than half of parcel 917 is covered by the waters of the Essequibo River during the medium high tide, coupled with the fact that the Plaintiff’s duly constituted attorney, Joan Straughn, and the Defendant both pointed to points in the Essequibo River as being the boundary of Parcel 917 and the fact that the portion that is not now affected by the tide was in fact filled up by the Defendant, it is clear that by virtue of **section 4 (1) of the Civil Law Act** that Parcel 917 or a large part of it forms the **foreshore** of Guyana and is therefore State lands.

It must be noted that by virtue of **section 2 (1) of the Civil Law Act**, **section 4 (1) of the Civil Law Act** is deemed to have taken effect from January 1st 1917.

Counsel for the Plaintiff submits that by virtue of **section 4 (7) of the Civil Law Act** even if the land is a foreshore a private right has been established by the titular ownership as evidenced by the Transport [**Exhibit “U1 - U3”**].

Reliance on the Transport cannot be sustained since the Plaintiff has not established by evidence that the lands described in the Transport are, or form part of Parcel 917.

Therefore the earliest possible titular ownership of Parcel 917 according the Plaintiff's evidence is Tyrell Levy's Certificate of Title obtained in 1974.

Notwithstanding this, in any event, the submission cannot be sustained, since, as stated previously the section is deemed to have taken effect from January 1st 1917 and therefore any claimed private right would have to have been established as existing prior to 1917 and that was neither pleaded nor established by evidence.

CONCLUSION

Based on the foregoing analysis of the evidence and the law Parcel 917 is State land.

ISSUE II

The Court having made a finding that parcel 917 is State land, what is the status of the Plaintiff's Certificate of Title No. 83/ 473 with respect to Parcel 917.

LAW

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

Section 61 provides;

Rectification of the register may be ordered by the Court in such manner as the Court thinks fit –

(a) where the Court is satisfied that the registration of any person as proprietor of land has been obtained through any error or omission or by reason of any entry procured by fraud or made under a mistake;

(b) in any other case where by reason of any error or omission in the register or by reason of any entry procured by fraud or made under a mistake the Court deems it just to rectify the register.

Provided that as against a proprietor who has acquired the land bona fide value the Court shall not rectify the register unless such proprietor is privy to the fraud or mistake or has caused or substantially contributed thereto by his act, neglect or default.

Section 70 (2) (b)

FACTS

Counsel for the Defendant submitted that since there was clearly an error in the registration of title to the Plaintiff of Parcel 917 since it was State land then the Court has the authority to rectify the Register and by extension the Plaintiff's Certificate of Title to exclude Parcel 917 under **section 61 of the Land Registry Act.**

Counsel for the Plaintiff submitted that the Plaintiff was a bona fide purchaser for value without notice and therefore his Title is protected by the proviso in **section 61 of the Land Registry Act.**

ANALYSIS

The “**sea defence**” [Parcel 936] clearly existed before any Certificate of Title for any Parcels in the area was issued and therefore Parcel 917 is State land in accordance with the Statute as explained in **ISSUE I** above.

This demonstrates that when Tyrell Levy’s Transport [**Exhibit “U1 - U3”**] was converted to a Certificate of Title the lands in the Transport [or a portion thereof] were erroneously assigned [parcel] number 917 because it was not possible for him to be granted Title to the foreshore or sea defence of Guyana.

The Defendants opted to not lead any evidence, documentary or otherwise, to show that the lands in the Transport are the same lands now known as parcel 917.

Based on the Court’s finding in **ISSUE I** above it is clear that the registration of Tyrell Levy and then Mark Levy as the proprietor of Parcel 917 was obtained through an error. He could not have been registered as the proprietor of State land, especially State land that forms the foreshore and/ or “**sea defence**” of Guyana.

The Plaintiff did not plead that he is a bona fide purchaser for value of Parcel 917 nor lead such evidence and cannot now simply submit that as a fact.

In any event the proviso offers protection to a bona fide purchaser for value without notice where the registration was procured by fraud or mistake but not by error as in the case of the entry with respect to Parcel 917.

CONCLUSION

The Court determines that it is just and fit to order and direct that the Register be rectified by removing Parcel 917 from Certificate of Title No. 83/ 473.

ISSUE III

The Plaintiff claims that the exercise of any acts of ownership by the State over Parcel 936 is subject to existing public rights as provided for under **section 4 (4) of the Civil Law of Guyana Act.**

FACTS

It is undisputed that Parcel 936 is the “**sea defence**” or as described in Plan No. 15526, a sea defence reserve dam.

No evidence was led to show that Parcel 936 is subject to a public right.

Counsel for the Defendants contends that by the mere fact that Parcel 936 is a sea dam that “runs” out to the public road shows that that is the only way of getting to parcels north of Parcel 936.

LAW

Civil Law of Guyana Act; CAP 6:01 of the Laws of Guyana.

Section 2 (1)

Section 4 (1)

Section 4 (4) provides;

Except as provided in the two next ensuing subsections all acts of ownership by the State over the lands and minerals aforesaid, and all grants, leases, or licences shall be subject to any existing public rights under the common law of England.

Section 4 (5) provides;

Whenever the Minister is satisfied that any act of ownership or any grant, lease, or licence of the lands cannot be exercised without a substantial infringement of some

public right, a description of the lands and a statement of the purposes for which they are to be used shall be published in the Gazette during a period of six weeks, and the Minister shall thereafter fix a day for the hearing of objections in writing or by counsel to that act, grant, lease, or licence before him and duly consider any objections.

ANALYSIS

Section 4 (4) of the Civil Law of Guyana Act is wholly inapplicable to Parcel 936, since this section is referable to **section 4 (1) of the Civil Law of Guyana Act** which concerns the **foreshore** of Guyana and by no stretch of the imagination or mental gymnastics can Parcel 936 be considered or classified as being part of the **foreshore** of Guyana.

In any event no evidence has been led to show that a public right exists against Parcel 936 and further assuming that Parcel 936 could possibly considered to be foreshore, such public right must be proven to have existed prior to January 1st 1917 [**section 2 (1) of the Civil Law of Guyana Act**] and even further it is for the Minister to be satisfied that a public right would be substantially infringed [**section 4 (5) of the Civil Law of Guyana Act**].

There has been no attempt to lead evidence to establish any of this. It appears that Counsel for the Plaintiff decided to simply throw in that submission.

Counsel for the Plaintiff contention that the mere fact that the sea dam “runs” to the public road shows that it is a public access dam is illogical and unreasonable since by definition, statutorily and logically, the purpose of (a) sea defence is for

protection of the sea coast against the erosive action of the sea/ river and **not** for the purpose of creating a public passageway.

CONCLUSION

The Plaintiff clearly has not established any standing to challenge the granting of the lease to the Defendant with respect to Parcel 936 and further he has not established that they he is entitled to any rights to Parcel 936.

In the circumstances the Plaintiff's Action/ Case is wholly dismissed with costs to the Defendant in the sum of \$200,000.00.

Justice N. A. Singh