COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

1964/CLE/qui/00333

IN THE MATTER OF ALL THAT piece parcel or lot of land containing (214.50) Acres situate West of Victoria Point in the vicinity of Mangrove Cay in the Island of Andros one of the Bahama Islands.

AND

IN THE MATTER OF the Petition of Building Heritage Limited

AND

IN THE MATTER OF the Petition of Quieting Titles Act, 1959

Before Hon. Mr. Justice Ian R. Winder

Appearances: **Shadrach A Morris for the Petitioner and Reorien Rolle**

Kirkland Mackey with Sophia Lockhart for the Ministry of Education

Rodger Outten for the Estate of Levy Wright and Deborah Wright

Ludell Wright pro se

25 April 2022

JUDGMENT

WINDER J

This is my brief decision with respect to the challenge and objections of the Petitioner (Building) to the continued participation of the Ministry of Education (Education) in this quieting action having regard to the decisions of the Court of Appeal and the Judicial Committee of the Privy Council in this matter.

[1.] Having considered the submissions of the parties and considered the material advanced, it is my considered view that the objection of Building to Education's continued participation as an adverse claimant is unassailable.

[2.] This action has a tortured history having been commenced as far back as 1964 by Mae Harris. It concerns some 220 acres of property situated in South Andros. Deaths and subsequent transfers have resulted in Building being the substituted Petitioner.

[3.] There were a number of adverse claimants including Education which purported to purchase two acres of the property on 1 June 1954 from Alexander J. Rolle, some 10 years prior to the filing of the Petition. At some point a public school was built on the property by Education.

[4.] The matter came on for hearing before Thompson J (now retired) who, amongst other things, dismissed Building's petition on 30 March 2007. Thompson J found that Education was not entitled to a Certificate of Title but ordered that all parties were estopped from making any entry on the land claimed by Education. In her written decision, in relation to Education's claim, Thompson J stated as follows:

> 32 It is unfortunate that this action has taken so long to be brought to trial as so many persons have died, and the evidence of possession has become scanty and unreliable. Indeed, many adverse claimants seem to be basing adverse possession on occupation post 1964 which cannot be counted because of the decision in *MATHER v THE GRAND BAHAMA PORT AUTHORITY LTD (No. 7/1966) [1965 - 70] 1LRB 10* which held that time stops running once a Quieting Petition has been filed. Consequently, the occupation by Mr. Anthony Bastian from 1990 cannot be counted, neither can the occupation by the Orange Rail Company

Limited in attempting to build a marina. For that matter the occupation by the Ministry of Education would be from 1954 to 1964, ten years not 20.

...

52 The situation with the Ministry of Education is interesting. The Ministry purported to purchase in 1954 from Alexander J. Rolle possibly on behalf of Laura Wright Rolle.

53 I accept the submissions put forward by counsel for Elgin Wright et al that although the conveyance to the Ministry is clearly not a valid one from the evidence of the parties, they all stood by while the Department of Education, possibly in ignorance, believing itself to have ownership built a school and occupied it without any objections.

54 In the circumstances it is submitted, and I agree, that all the parties including the Petitioner are estopped from making any entry on the land conveyed to and occupied by the Department of Education. However, the Ministry is not entitled to a certificate of title in this action.

55 I am also satisfied that Reorien Rolle is entitled to a certificate of title in respect of her one-half acre.

56 The documentary title of the Petitioner has been challenged by the Ministry of Education and the other Adverse Claimants for various reasons. Of particular note is the fact that the documentary title pleaded differs from the documentary title relied upon by the Petitioner. Further, the pleadings allege that Felix Benjamin Wright obtained a Grant of Letters of Administration in the estate of Henry Wright Sr. However, the claim as pleaded has not been established as no such Grant has been produced to the court.

...

58 It is submitted that the oldest son during his lifetime is the "heir apparent" of his father upon his death intestate. However, any entitlement does not arise until death and the heir is determined from such of the descendants of the deceased who have survived him in accordance with the applicable rules of intestacy.

59 Consequently it is submitted that Henry Wright Jr. was not at the time of his death seised or entitled to possession of the property through his father or otherwise in his own right. There was nothing vested in his estate at the time of his death and accordingly his personal representative Mercy Wright Darling could not lawfully convey the disputed property to Mae Harris. Therefore, all subsequent conveyances founded thereon must be considered as invalid.

60 The description has also been questioned because of authority and there is further evidence that the entirety of the purchase price was not paid by Mae Harris to Mercy Wright Darling.

61 I accept these arguments raised with reference to the Petitioner's title and I dismiss the Petition accordingly.

(Emphasis added)

[5.] Building appealed the decision of Thompson J to the Court of Appeal. Elgin Wright and Orange Rail Co Ltd (collectively "Elgin") had applied for leave to appeal out of time

but that application was denied by the Court of Appeal. The important point to note is there was no appeal by Education of the finding of Thompson J, rejecting its claim and refusing to grant a Certificate in its favor. Building however, appealed the injunction restraining it from interfering with Education's occupation of the property.

[6.] The Court of Appeal allowed Building's appeal and granted it a certificate of title in respect of the lands the subject of the petition subject to:

(1) the claims of the Bastians (who were adverse claimants in respect of five acres and some additional property;

(2) a half-acre claim of Reorien Rolle.

That injunction in favor of Education was specifically set aside by the decision of the Court of Appeal. The matter was remitted to a judge of the Supreme Court for the determination of the extent of the interest of the Bastians and Reorien Rolle having regard to the finding made by Thompson J and for their respective interests to be properly reflected in their certificates of title.

[7.] In deciding Building's appeal of the decision of Thompson J, the Court of Appeal, whose decision was authored by Longley JA (as he then was), stated as follows:

> 7 With the exceptions of the claim made by Reorient Rolle for half acre of the property the subject of the petition, which was not contested by the appellant, and the claim made by the Bastians for an area in excess of 5 acres of the said property, all the adverse claims that were filed were dismissed including that of the Ministry of Education which had purchased a piece of the property in 1954 from a James Rolle. That conveyance was found to be invalid but the learned judge issued an injunction against all the parties including the appellant from interfering with the Ministry of Education since she found that they had stood by while the ministry built a school upon the property.
>
> ...
>
> 11 None of the adverse claimants appealed although attempts were made to appeal out of time and the applications were dismissed by this court, differently constituted. The Ministry of Education whose claim was dismissed appeared at the hearing of the appeal in opposition to the appeal of the appellant. In this regard I should point out that in Bodie v Sigismund and others, [1965-70] 1 LRB 71, this court while accepting that the grant of a certificate under the Quieting Titles Act created a right in rem, held that an adverse claimant whose claim was dismissed and who appealed against the grant of the certificate of title to the petitioner but

who had not appealed against the dismissal or rejection of his claim had no locus standing in the appeal. In this case, however, the Ministry of Education which was represented by Crown counsel from the Attorney General's office was heard as it was seeking to defend the order made in its favour.

...

19 On the evidence, in my judgment, the appellant, clearly had the strongest claim to title to the properties the subject of the petition and should have succeeded.
20 In this regard I make one further observation. The adverse claimants for the most part based their claims on adverse possession. That meant that they had to show whose title they claimed to have ousted. At paragraph 46 of the judgment, for example in rejecting certain adverse claims the learned judge said: "46. In all the circumstances I am of the opinion that the claims of Elgin Wright, Prince Wright, and Leopold Wright have to be dismissed as on the evidence it has not been shown that the documentary title in the Petition was ousted by any adverse possession by their predecessors in title for a continuous period of 20 years prior to 1964."
21 Here the learned judge seems to be accepting that the documentary title to the properties the subject of the petition is vested in the appellant/petitioner. Otherwise she would not have had a basis for determining whose title was to be ousted by the adverse claimants had the claims succeeded.
22 Similarly, the claim of the Ministry of Education could only have been dismissed on the basis that the conveyance from James Rolle was invalid if the learned judge accepted that the property did not vest in him but in some other claimant.
23 Additionally, although the learned judge dismissed the petition on the basis of an inconsistent claim, as I understand it that claim was based on a conveyance from a descendant of Levi Wright a son of Henry Wright Sr. That person was claiming that Levi and not Percival was the eldest son. There were undoubted conflicts on the evidence about the order of birth of the children of Henry Wright Sr. but even if it were true, Levi was the eldest son and the judge did not accept it, indeed she doubted it, that person sold his interest, whatever it was, in the property, to the appellant. I do not therefore accept that the petition should have been rejected on this basis. The petitioner was reinforcing its claim to the properties. In any event on the preponderance of the evidence Percival was the eldest child.
24 It seems to me on the evidence that the petitioner/appellant's claim was stronger than any of the other claims and it should have succeed having regard to Lord Diplock's statement in Ocean Estates v Pinder that there are no absolute titles and that where disputes to property is concerned the court has to determine who has the better title. That is particularly so in the case of a quieting action, which is a claim in the nature of an action in rem, because unlike an action in personam, notice is required to be given to the world and claims not submitted timely and in accordance with the rules may be barred. This is a case where on the evidence the claim made by the appellant should have been upheld.
25 Finally, the learned judge made an order preventing or prohibiting the appellant from interfering with the Ministry of Education's use of the land on which the school was built since the appellant's predecessors in title allegedly stood by and did

nothing while the school was being built. I can find no such evidence against the appellant. Nor is it certain on the evidence when the school was built for it could have been built after the action was started. I would also set aside that part of her judgment.

26 Mr. Morris had attacked the judgment in favour of the Bastian claim but apart from the fact that the evidence is just too scanty for us to interfere, the finding in favour of the Bastians that they had farmed the area in the vicinity of the school was determined in part by the observations made by the learned judge during her visit to the locus in quo and this court is not in position to contradict those observations.

27 I would accordingly allow the appeal and grant a certificate of title to the appellant in respect of the lands the subject of the petition subject to the claims of the Bastians in respect of the five acres and the additional area to be determined and the claim of Reorient Rolle for her one half acre.

28 I would remit the matter to a judge of the Supreme Court for the determination of the extent of the interest of the Bastians and Reorient Rolle having regard to the finding made by the learned judge and for their respective interests to be properly reflected in their certificates of title.

[8.] Education did not appeal the decision of the Court of Appeal, setting aside the injunction, to the Privy Council.

[9.] Elgin appealed to the Privy Council against the decision of the Court of Appeal refusing to grant them leave to appeal. The Privy Council admitted further evidence and granted them leave to appeal and heard the appeal. After hearing the appeal the Privy Council remitted Elgin's matter back to the Supreme Court under specified terms.

[10.] The Board in giving its opinion dated 13 March 2013, Lord Walker, stated:

[1] On 13 February 2013 the Board gave the Appellants permission to appeal against the rejection by the Court of Appeal of the Bahamas of their application for leave to appeal and to adduce fresh evidence in proceedings under the Quieting Titles Act 1959. The fresh evidence is centred on an indenture dated 24 June 1909 ("the 1909 Deed"), the significance of which is explained below. The Board also indicated that it would humbly advise Her Majesty to allow the appeal and direct that the matter should be remitted to a judge of the Supreme Court to be heard together with the claim remitted by the Court of Appeal on 27 January 2010 (as set out in para 28 of the judgment of the Court of Appeal delivered by Longley JA). These are the reasons for the Board's decision.

...

[4] In this case the proceedings have been very protracted. They were commenced as long ago as 1964, and there have been several changes in the parties as a

result of deaths and other transmissions of title (or claims to title). The various competing claims are complex and difficult. One of the reasons for this is the large number of descendants of Henry Wright Senior ("HWS"), the original owner of the disputed land, and doubts about their correct names and dates of birth, death and marriage. An even more potent cause of doubt and difficulty is that of all the many deeds relied on in the proceedings, so far as appears from the record before the Board, only two contain a plan as part of the description of the land conveyed: the original Crown grant made in 1870 to HWS, and a conveyance dated 1 June 1954 of about two acres to the Education Department. In every other case the land conveyed is described only by its area (or approximate area) and the names of the owners (or in some cases former owners) of the adjacent land (or in some cases by a reference to the sea, or to a public road). With some of the deeds now more than a century old, identification of the plots of land is often very difficult.

[5] It is unnecessary, and would be inappropriate, to go far into these complexities. The general picture is that HWS took two areas of land, totalling roughly 220 acres, under the 1870 Crown grant. HWS had three sons (Percival, Levi and Albert) and one daughter (Cevas). The Appellants are descendants of Albert. HWS is known to have disposed of some relatively small areas of his land in 1904 and 1908 to Gabriel McPhee (apparently his son-in-law) and in 1915 to Percival's widow and children. It is reasonable to conjecture that he might have made similar dispositions in favour of his other sons, Levi and Albert, and Levi is mentioned as an adjoining owner in some deeds. But until the appearance of the 1909 deed there has been no direct documentary evidence of any such disposition to Albert. The bulk of the land granted to HWS by the Crown grant passed on his death intestate in 1920 to his grandson Benjamin, from whom the Respondent Building Heritage Ltd derives title.

[6] It has to be said that in the proceedings eventually heard by Thompson J (in which judgment was given on 30 March 2007) the Appellants and their predecessors were criticised for having failed to file abstracts of title, despite being represented by counsel. That is a matter to which the Board has to give due weight. On the other hand a recent affidavit made by Mrs Deborah Outten deposes that in 2000 the conduct of the proceedings on behalf of this group of Claimants was undertaken by the Appellant, Prince Albert Wright ("PAW"), then aged about 70. Mrs Outten (who is his cousin and holds a power of attorney for him) has deposed that within a year of undertaking this responsibility PAW began to suffer from Alzheimer's disease, and by the time of the hearings before Thompson J his state of health was very bad.

...

[9] The 1909 deed is a conveyance dated 24 June 1909 between Henry Wright (described as a farmer) and Albert Wright (described as a farmer). Its standard parts are on a form printed by a law stationer and the particulars are written in ink in a good legible hand. The consideration paid was £3.4s.0d and the land was described as:

> "all that piece, parcel or lot of lands containing four (4) tasks situate in the Orange Hill settlement of Mangrove Cay Andros bounded as follows: on the East by land the property of Levi Wright, on the West by land the property

> of the said Henry Wright, on the North by the public road and on the South, by land the property of Henry Wright."
>
> The exhibit to Edith Glovina Greene's affidavit has been photocopied with a fold, so that the execution of the 1909 deed is obscured. But as it bears an official Land Registry number there is no reason to suppose that it was not duly executed.
>
> [10] The 1909 deed is on its face very clear evidence of an inter vivos disposition of four tasks (that is, 40 acres) of land from HWS to his son, Albert. There is, however, real difficulty in identifying which part (if any) of the disputed land consists of these 40 acres (it is no doubt at least theoretically possible that it refers to other land owned by HWS, not subject to the proceedings under the Act). One affidavit obtained by Mrs Outten (that of Leroy Bannister) indicates that the area of the Blue Hole (a scenic feature referred to in many of the deeds) and Orange Hill are the same settlement. Another affidavit (that of Elizabeth Flowers) indicates that Orange Hill is "some distance from the Blue Hole". Yet another affidavit (that of Maggie Thompson, forming part of an abstract of title) refers to "two specific areas of the Henry Wright tract, namely, Orange Hill and the Blue Hole".
>
> [11] The Board takes the view that these are matters which ought to be investigated by the Supreme Court. The 1909 deed is potentially of critical importance to the Appellants' claim, and it ought to be considered in the remitted proceedings in order to avoid the risk of injustice.
>
> (Emphasis added)

[11.] Education did not participate in Elgin's appeal before the Privy Council. Additionally its claim was not considered by the Board in any way. The Board did not disturb the Court of Appeal remittance order save to require a consideration of Elgin's claim. Elgin was now relying on a newly located 1909 conveyance alleging that Henry Wright Senior (whom it is accepted was the original owner of the disputed property) made an inter vivos transfer to their predecessors in title.

[12.] In all the circumstances, notwithstanding this is an investigatory proceeding, the assertion that the claim of Education is still viable would be contrary to the clear words in the remittance orders and the principles of res judicata.

[13.] Building shall have its costs to be taxed if not agreed.

Dated the 4th day of July 2022

Ian R. Winder

Justice