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No. 45 of 1948.

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In the Privy Council.

UNIVERSITY OF LONDON
W.C.1.

ON APPEAL

15 JUL 1953

FROM THE WEST AFRICAN COURT OF APPEAL.

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

ABDUL KARIM BASMA

Appellant

AND

GLADYS MURIEL WEEKES and OTHERS

Respondents.

Case for the Respondents.

RECORD.

10 1. This is an appeal from a judgment of the West African Court of Appeal delivered on the 25th March 1948 allowing an appeal by the Respondents from a judgment of the Supreme Court of Sierra Leone of His Honour Mr. Justice Wright dated the 24th May 1947 whereby he had granted to the Appellant certain relief against the Respondents. p. 32. p. 27.

20 2. The first three Respondents who are brother and sisters were the owners of a fee simple of land and premises known as Nos. 2 and 2A Kissy Street, Freetown in the colony of Sierra Leone; the Respondent H. M. Basma had been in occupation of the premises as tenant for many years. The matters giving rise to these proceedings took place in November 1946. The first three Respondents wanted to sell the said property. An agreement was made between the first three Respondents and the Respondent H. M. Basma for the sale of the property to H. M. Basma for the sum of £1,950. The precise date of this agreement was one of the matters in dispute at the trial. The property was conveyed by the first three Respondents to the Respondent H. M. Basma by deed dated 2nd December 1946.

30 3. The Appellant claimed that the first three Respondents had agreed to sell the property to him for the sum of £1,900 before they made the agreement with the Respondent H. M. Basma but that they had refused to complete.

4. The questions which arise upon this appeal are :—

(i) Whether there was a memorandum of the agreement contended for by the Appellant sufficient to satisfy the Statute of Frauds.

(ii) If the first question is to be answered in favour of the Appellant whether the Appellant was entitled to specific performance of such agreement.

p. 29.

5. The West African Court of Appeal answered the first question in the negative and in consequence did not deal with any of the other issues in the action. It is convenient to deal with this question separately 10 and paragraphs 6 to 12 of this case are devoted to it.

6. The answer to the first question depends upon—

(A) one proposition of law namely that where an agreement for the sale of land is made by an agent acting for a disclosed principal the memorandum of such agreement must contain the name of the principal or otherwise satisfactorily identify him to enable him to sue upon it; and

(B) one finding of fact namely that the agreement contended for by the Appellant was made by his agent acting for a disclosed principal. 20

p. 1.
p. 2.
p. 3.
p. 4.
p. 4.

7. The Writ was issued on the 27th day of December 1946. The Statement of Claim was delivered on the 14th day of January 1947. The Defence of the first three Respondents was delivered on the 17th day of February 1947. The Defence of the Respondent H. M. Basma was delivered on the 24th day of February 1947. At the opening of the trial leave was given to the first three Respondents to amend their Defence in order to raise a plea of the Statute of Frauds.

p. 2.

8. By his Statement of Claim the Appellant alleged that by an agreement dated the 29th of November 1946 the first three Respondents had agreed to sell the property to him for £1,900 and that his Solicitor and 30 Agent Mr. C. B. Rogers-Wright had paid to each of them the sum of £633 6s. 8d. The Memorandum of the said agreement upon which the Appellant relied was in the following terms :—

pp. 35, 37, 38.
p. 35

“ Nos. 2 and 2A Kissy Street, Freetown.”

“ We the undersigned the owners of the above premises hereby agree that we have today sold the above premises Nos. 2 and 2A Kissy Street, Freetown to Mr. C. B. Rogers-Wright, of 27, Liverpool Street Freetown at the price of £1,900, which he has completely paid in three separate sums of £633.6.8d. to each of us. We also hereby agree that we will execute the deed of conveyance of the 40 said premises whenever it is prepared and that in the meantime Mr. Wright shall be in possession of the said premises as from date hereof.”

The above memorandum was signed by the first three Respondents.

9. The action came on for trial on the 14th, 16th, 17th, 19th, 20th, 23rd day of May 1947 before His Honour Mr. Justice Wright. It was contended on behalf of the Appellant that the first three Respondents were well aware that Mr. C. B. Rogers-Wright was acting as agent for the Appellant in making the said agreement and that in law the memorandum set out in paragraph 8 hereof was sufficient to satisfy the requirements of the Statute of Frauds. It was contended on behalf of the Respondents that the memorandum did not satisfy the requirements of the Statute of Frauds.

10 Judgment was given by His Honour Mr. Justice Wright on the 23rd day of May 1947. The material part of the judgment is printed at page 24 lines 28-44 of the Record. The learned Judge held that the memorandum was sufficient, he made no express finding of fact as to whether Mr. C. B. Rogers-Wright was acting for a disclosed principal. The terms of the order made are not relevant to the present question. pp. 23-26.

11. The Respondents appealed to the West African Court of Appeal. The Appeal came on for hearing before His Honour the Chief Justice of Sierra Leone presiding Judge, His Honour Mr. Justice Beoku Betts and His Honour Mr. Justice Kingsley on 22nd March 1948. The Judgment of the Court was given by His Honour Mr. Justice Kingsley on 25th March 1948 and is printed at pages 29-31 of the Record. pp. 29-31.

12. The West African Court of Appeal allowed the appeal. They decided the point of law in favour of the Respondents. They held that on any view of the evidence it was clear that at no time did the Respondents think that Mr. C. B. Rogers-Wright was acting on his own behalf. It is submitted that the West African Court of Appeal came to a correct conclusion in law and fact upon this question. pp. 29-31.

13. If the first question is to be decided in favour of the Appellant then it is submitted that the order of the West African Court of Appeal allowing the Respondents' Appeal can be supported on other grounds. 30

14. At the trial the first three Respondents were given leave to amend their Defence by adding the following Plea :— p. 10.

“The Defendant Gladys Muriel Weekes and the Defendant Ettie Spaine are married women.”

This plea was intended to raise the question of the capacity of the Respondent Gladys Muriel Weekes to make any contract in respect of her interest in the property without the concurrence of her husband. Nothing turns on the allegation in respect of the Respondent Ettie Spaine.

15. Gladys Muriel Weekes née Williams was married on 19th April 1931 to John Ernest Bankole Weekes and her husband is still alive. The position of women in Sierra Leone remained what it had been in England prior to the Married Women's Property Act 1882 until the Imperial Statute (Law of Property) Adoption Ordinance 1932 came into force in 40

the Colony. It was contended on behalf of the Respondent Gladys Muriel Weekes that as she had been married before the Ordinance came into force and that as the Ordinance did not take away from a husband rights already acquired by him in his wife's property the Respondent Gladys Muriel Weekes could not make any contract in respect of this property without the concurrence of her husband

16. The first three Respondents further contended that the contract between them and the Appellant was not divisible, that the Appellant had constructive notice of the incapacity of the Respondent Gladys Muriel Weekes to contract and that in the premises the contract was void. 10

In the alternative the first three Respondents contended that as the contract was not divisible no order for specific performance could be made.

17. It was contended on behalf of the Appellant that the plea by which it was sought to raise this defence was defective, that the onus of proving that the said property was not the after acquired separate property of the Respondent Gladys Muriel Weekes was upon her and that she had not discharged it. The material passages in the judgment of the Learned Trial Judge are printed at pages 24-26 of the Record. He held that he had insufficient evidence as to the title of the Respondent Gladys Muriel Weekes in the said property and on the 23rd of May 1947 adjourned this part 20 of the case until the following day for an enquiry to be made as to the interest of the Respondent Gladys Muriel Weekes in the said property.

18. As appears from that part of the Learned Judge's judgment given on 24th May 1947 which is printed at page 27 of the Record the enquiry was not held, the Appellant being content to take and the Learned Judge to make an order for specific performance of the agreement of 29th November 1946 to the extent of the interest of the Respondents Ettie Spaine and John Williams with the consequent order upon the Respondent H. M. Basma. The formal Judgment is printed at pages 27-28 of the Record. 30

19. The following submissions are made on behalf of the Respondents :—

(i) That in law the Respondent Gladys Muriel Weekes had no power to contract in respect of her interest in the property without the concurrence of her husband.

(ii) That the contract is not divisible and hence is void.

(iii) That the plea that Gladys Muriel Weekes was a married woman was sufficient to raise this defence.

(iv) That if the onus of proof was upon the Respondents to prove that the interest of Gladys Muriel Weekes was not her 40 after acquired property then she has discharged it.

(v) That in any event the learned Judge had no power to make an order for specific performance of the agreement.

The Respondents submit that this appeal should be dismissed for the following amongst other

REASONS

- 10
- (1) BECAUSE the judgment of the West African Court of Appeal was correct.
 - (2) BECAUSE there was no memorandum of the agreement of 29th November 1946 sufficient to satisfy the Statute of Frauds.
 - (3) BECAUSE the agreement of 29th November 1946 was not divisible.
 - (4) BECAUSE specific performance as a matter of law could not be ordered against some of the Respondents and not all.
 - (5) BECAUSE the Respondent Gladys Muriel Weekes had no power to contract without the concurrence of her husband.

PATRICK O'CONNOR.

In the Privy Council.

ON APPEAL
from the West African Court of Appeal.

BETWEEN

ABDUL KARIM BASMA - *Appellant*

AND

GLADYS MURIEL WEEKES
and Others - - *Respondents*

Case for the Respondents

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