Privy Council Appeal No. 93 *of* 1921.

J. C. A. Macedo and others - - - - - - *Appellants*

v.

Beatrice Stroud - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH JULY, 1922.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD PARMOOR.
LORD TREVETHIN.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of Trinidad and Tobago which affirmed, the Chief Justice in part dissenting, a decision of Mr. Justice Deane that the respondent was entitled to recover possession of land and houses in Port of Spain. These she had claimed as validly given to her by one Ribeiro deceased, whose natural daughter she was. He was a merchant of considerable wealth, who had several natural children: the respondent, three children by a Mrs. Neverson, and another daughter, Isabella de Cabral, who is an appellant. Ribeiro died on the 3rd February, 1915. By his will, which was dated the 26th September, 1911, he appointed his nephew, the appellant Macedo, and one Vasconcellos, who predeceased the testator, his executors and trustees. The appellant, de Freitas, was appointed by the Court a trustee in addition to Macedo. The testator by the will gave pecuniary legacies of considerable amounts, including $15,000 to the respondent, whom he referred to as "my daughter Beatrice," a legacy of $45,000 for the benefit of his three children

by Mrs. Neverson, and $50,000 to his nephew, the appellant Macedo. The residue he bequeathed as to half in trust for the appellant Isabella de Cabral and her issue, and as to half in trust for his sisters and their issue.

About the beginning of November, 1914, one Siegert was the owner of the land and houses to which the question in this appeal relates. All of these were of freehold tenure excepting one, which was leasehold. They were subject to a mortgage for $40,000 and interest. Siegert was indebted to Ribeiro and had agreed, about the beginning of November, 1914, to sell the land and houses to him for $20,000 subject to the mortgage. By Ribeiro's direction Siegert gave notice on the 13th November for payment off of the mortgage, and on the next day the property was conveyed by him to Ribeiro subject to the mortgage. Most of the property was governed, as regarded the mode of conveyance, by the general law under which freehold and leasehold property is assured in Trinidad by deed, like land in England, although in Trinidad such deeds require only signature and delivery but not sealing. Registration under the local ordinance is not required in the case of such property so far as concerns the validity of the deed, although non-registration may postpone title to that conferred by a registered assurance. But certain parts of the property, including a house known as 37, Dundonald Street, were held upon titles registered under the local Real Property Ordinance No. 60, and amending ordinances. These ordinances provide as to land subject to them that no transfer is to be effectual to pass any estate or interest in land with a registered title, unless the transfer is registered in accordance with the ordinances, and the title of the registered proprietor as appearing on the register is to be conclusive. The amending Ordinance 19 of 1913, further provides that no instrument of transfer of land in the Colony is to be registered unless it bears the signature of some barrister or solicitor or conveyancer as having prepared the instrument.

Shortly before Ribeiro bought the property from Siegert the appellant de Freitas asked the former to sell to him 37, Dundonald Street, and he agreed to do so. When Ribeiro had made the purchase from Siegert, de Freitas paid to him $3,000 on account of the purchase-money, which amounted to $9,600, and entered into possession. The balance of $6,000 was paid after Ribeiro's death. A few days after Siegert had conveyed to Ribeiro, in November, 1914, the latter gave instructions to his solicitor, Iles, that he desired to give the property bought from Siegert to the respondent. He accordingly prepared a conveyance by Ribeiro to the respondent of so much of the property as was not held under registered titles, and a separate memorandum of transfer to her of so much as was held under registration, and handed them to Ribeiro. Iles was not informed of the sale to de Freitas of 37, Dundonald Street, which was part of the registered property, and this part of the property was included in the memorandum. The two documents were executed by Ribeiro at his own house. The

evidence of George, Iles's clerk, is that he and Iles went there, and that Ribeiro executed the transfer and the memorandum in George's presence as attesting witness. Ribeiro told Iles to keep them and not to register them. George then took them away to Iles' office, where they were kept. These are the facts as found in concurrent findings by all the Judges in the Courts below. Iles said that Ribeiro added certain directions which imported that Iles was to keep the documents within his control with a view to their alteration or recall. This testimony by Iles was unanimously rejected in the Courts below, and the account given by George, to the effect above stated, was accepted. The conveyance of the unregistered property proceeds on the recital that in consideration of the love and affection which Ribeiro bore for the respondent he as settlor conveyed and assigned to her the freehold and leasehold property absolutely, subject only to the mortgage then subsisting on it for what was said to be $60,000 and interest. It bears to be signed and delivered by Ribeiro. The memorandum of transfer is in an analogous form, but, probably because this was unnecessary, contains nothing about delivery. There is no signature, as required by the ordinance of 1913, of the person who had prepared it, but it is not on this ground that their Lordships proceed.

It is clear from the evidence that the respondent had for several years lived in Ribeiro's house, of which she took charge for some time before his death. He had been in ill-health, and she took care of him as a daughter might take care of her father. Ribeiro lived for only about two months after executing the documents. During that period he paid certain rates which had become due in respect of the property and received the rents and profits.

On consideration of the evidence and of the concurrent findings of the Courts below, their Lordships think that the deed of transfer of the unregistered property must be held to have been duly and completely executed by Ribeiro, and the memorandum relating to the registered property to have also been duly and sufficiently signed by him. The reason why he did not wish to hand the documents over to the respondent may have been that he wished to make corresponding alterations in his testamentary dispositions. This is not improbable, but there are no materials which afford reliable evidence on the point. In any view, Iles's evidence being rejected, there is nothing shown to justify the contention that the two documents were nullities or of no effect. There arise, however, in connection with them, important questions of law. Deane, J., and Russell, J., in the Court of Appeal held that both documents were operative to confer title on the respondent. The Chief Justice, in the Court of Appeal, dissented from this as regards the memorandum relating to the registered property. He considered it, unlike the conveyance, to constitute only an imperfect voluntary gift, which a Court of Equity had no jurisdiction to enforce.

Their Lordships entertain no doubt that the conveyance of the unregistered property was a deed which was duly delivered.

As was said by Blackburn, J.. in *Xenos* v. *Wickham* (2 E. and I. Ap. at p. 312), no particular technical form of words or acts is necessary to render an instrument the deed of the party who has executed it. For as soon as there are acts or words showing that it is intended to be executed as his deed that is sufficient. The usual way of showing this is formal delivery:

> "But any other words or acts that sufficiently show that it was intended to be finally executed will do as well. And it is clear on the authorities, as well as the reason of the thing, that the deed is binding on the obligor before it comes into the custody of the obligee, nay, before he even knows of it; though, of course, if he has not previously assented to the making of the deed, the obligee may refuse it."

He goes on to point out that the grantor may deliver to his own servant, if the grantor makes delivery, intending to make the deed his own deed. That a deed may be validly executed, even though it remains in the custody of the person who made it or his agent, appears from what was laid down in *Doe dem. Garnons* v. *Knight* (5 B. & C., 671). It is no doubt true that a deed may be delivered on a condition that it is not to be operative until some event happens or some condition is performed. In such a case it is until then an escrow only. But in the present case there was no event or condition specified to qualify the delivery which Ribeiro is said in the attestation clause to have made, and which the Courts below have found that he made. As it is not possible to contend successfully that the conveyance was a nullity, it must be taken to have operated completely to transfer the title to the respondent.

The memorandum of transfer, however, stands on a different footing. It was never made the subject of registration, nor did Ribeiro present it, or hand it to the transferee, for that purpose. It therefore, having regard to the terms of the ordinance, transferred no estate or interest either at law or in equity. At the most it amounted to an incomplete instrument which was not binding for want of consideration. Had it been in terms a declaration of trust, a Court of Equity might have compelled the trustee to carry out the trust, which would have been binding on him, even if voluntary. But it does not purport to be a declaration of trust, or anything else than an inchoate transfer. As such and as it is voluntary, their Lordships think that it is no more than an imperfect gift of which a Court of Equity will not compel perfection. The judgments of Lord Eldon in *Ellison* v. *Ellison* (6 Ves. Jun. 656), and of Turner, L.J., in *Milroy* v. *Lord* (4 De G. Fisher and Jones, 264) have placed this principle beyond question. Their Lordships are therefore of opinion that the respondent was not entitled to succeed on her claim to the registered property. They are at one with the view of the Chief Justice who, agreeing with the other learned Judges about the validity of her title to the unregistered property, himself thought that she must fail on this branch of her case.

In the result their Lordships will humbly advise his Majesty that the appeal should be dismissed as to the unregistered property, but should succeed as to that which was registered, and that as to this, judgment dismissing the plaintiff's claim should be given for the appellants. The burden of the mortgage which affected both properties will be distributed, in proportion to their values at the date of the gift. The question of costs gives rise to some complication; but their Lordships consider that under the circumstances and as the difficulties have arisen out of the arrangements made by Ribeiro himself, justice will be done if the orders as to costs in the Courts below are left undisturbed and no costs of this appeal are given.

In the Privy Council.

J. C. A. MACEDO AND OTHERS

v.

BEATRICE STROUD.

DELIVERED BY VISCOUNT HALDANE.

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