

**Bahiya Levi** - - - - - *Appellant*

*v.*

**Amin Nicolas Khoury and others** - - - - - *Respondents*

FROM

**THE SUPREME COURT OF PALESTINE**

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1947

---

*Present at the Hearing :*

LORD ROCHE  
LORD NORMAND  
MR. JAMES STRATFORD

[*Delivered by MR. JAMES STRATFORD.*]

---

This is an appeal from the judgment dated 23rd July, 1941, of the Supreme Court of Palestine, sitting as a Court of Appeal, dismissing an appeal from a decision of the Settlement Officer for the Haifa area. The Settlement Officer had decided a dispute arising between the parties to this appeal and other parties in favour of the respondents. The appellant appealed but did not join the parties other than the respondents as parties to the appeal. The Court of Appeal dismissed the appeal upon the short and preliminary ground that the parties, whose presence was required by the Civil Procedure Rules, were not before them. The question for this Board is whether that dismissal was justified.

The facts and circumstances of the case are short and simple. They are as follows: Prior to the year 1917 the appellant was the registered owner of an undivided one-quarter share in a number of plots in Haifa Village. In 1918 the respondents or their predecessors in title became the registered owners of the aforesaid quarter share of the appellant. The change of registration was effected in consequence of a sale purporting to be made by virtue of two Powers of Attorney given by the appellant under her signature to one Gad Hakim and bearing the date of 19th June, 1914. They were not acted upon until after the end of the war of 1914-1918. These Powers of Attorney were made and authenticated in and before the Sharia (Religious) Court, Nazareth District. The appellant subsequently, that is to say in 1920, gave or caused to be given Notarial Notices alleging that her signatures to these Powers of Attorney were forged but she took no steps to set them aside. The respondents or their predecessors in title and the owners of the remaining three-quarter shares in the plots in due course proceeded to partition of their property. This was effected in the year 1929 and the respondents became the registered owners of plot 10875/7. Eleven years after, that is to say on 29th March, 1940, the appellant filed with the Settlement Officer, Haifa, a claim to a quarter share of Parcels 3 to 7 inclusive and of Parcels 18, 19, 21, 27, 29, 35, 36, 37, 47, 48 and 38 all in the same Block No. 10875 and therefore in the same vicinity as No. 7. The claimant supported the claim by production of the two Powers of Attorney and by alleging that they were forged. By the claim she objected to the partition. In accordance with Land Settlement of Title (Procedure) Rules competing claimants to the plots claimed by the appellant came forward. They included the respondents whose claim was numbered 1391 and dealt with Parcel No. 7 Seven

other claims competing with the appellant's claim were lodged by other persons in respect of seven parcels additional to No. 7. The respondents and these other persons were constituted either defendants or third parties by the Settlement Officer empowered by Section 10 of Ordinance 80 (Land Settlement of Title) to hear and decide upon such disputed claims to land in his area. The matter was heard before the Settlement Officer and a number of parties other than the appellant and respondents appeared and were represented. In the course of the proceedings the appellant continued to allege that the Powers of Attorney were forged and to insist on her claim against the respondents but took a course as to certain other parcels stated by the Settlement Officer as follows: "At the trial of the claims the plaintiff withdrew her claim to parcels 3, 19 and 21 and was furthermore prepared to accept the parcellation of the properties which her co-owners had been instrumental in securing and was willing to accept Parcel 7 in whole in lieu of the undivided quarter share claimed in all the parcels in which she had not unconditionally withdrawn her claim provided that the acceptance of this parcellation did not imply her acquiescence in the transaction". Their Lordships observe in passing that this curious and conditional withdrawal of claims in effect disputed the very root of title to all the partitioned properties in dispute—namely the Powers of Attorney by reason of which the defendants became registered and were able to effect or join in effecting the partition—but at the same time proceeded to claim Parcel No. 7 which only came into undivided ownership by reason of the partition. Their Lordships are therefore not surprised to find that the Settlement Officer when passing his final decision on the matter between the appellant and the respondents in favour of the latter expressly stated that his decision was given without prejudice to the conflicting claims of the defendants and third parties which remained to be decided. He passed no decision and made no formal order dismissing any party from the proceedings.

With regard to the allegation of forgery raised in respect of the Powers of Attorney the Settlement Officer recited that the appellant had served the Notarial Notice in 1920 but took no action to have the respondents' title vacated though she instituted actions in the Courts for other properties that had been transferred in similar circumstances, viz., under Powers of Attorney challenged as forgeries, but these actions were never carried by the appellant to a decision upon the issue of forgery. The Settlement Officer then proceeded as follows:

"The Plaintiff now comes to the Land Settlement Officer and asks him to enquire into the genuineness of the powers of Attorney which were executed before the competent Authority 27 years ago, and nearly 20 years after the notarial notice to the 5th Defendant and the Registrar of Lands. He is asked to do this by reason of the provision to Section 10 (3) of the Land (Settlement of Title) Ordinance Cap. 80 which requires him to have regard to equitable as well as legal rights to land in deciding questions of disputed ownership or possession.

This I must decline to do and find support for my decision in Rule 13 of the Land Settlement of Title (Procedure) Rules which empowers a Settlement Officer to enquire into the authenticity of documents not authenticated before the Court, notary public or similar authority.

Where documents are authenticated by a competent authority and their authenticity is challenged the complainant must go and seek her remedy from that authority or one superior to it, and the Land Settlement Officer has no authority to enquire into the authenticity of the document or vary its contents even if he thought it equitable to do so.

The only question for me to decide is whether the Plaintiff should be granted time in which to prove the forgery she alleges. In this instance the powers were executed 27 years ago, and were acted upon 23 years ago and the Plaintiff was aware of this not less than 20 years ago when she served her notarial notice. Since then she has instituted proceedings in the Courts and these powers have been before the Courts during proceedings that extended over a period of from 8 to 10 years. The question of title has been examined and decided against her and I find she has had ample opportunity to prove the allegation of fraud.

After considering this lapse of time and the opportunities the Plaintiff has had to prove her allegations I find it would be unjust to permit her to harass and pursue the Defendants through the Courts and put them to the inconveniences and expenses of continued litigation.

I therefore dismiss Plaintiff's claim to ownership based on the original registrations in her favour and leave her to prove her claim by possession adverse to the present registered owners."

Later the appellant failed also in her claim to a title based on possession.

This appeal was then brought and was dismissed upon the preliminary ground that the appellant had failed to comply with Rule 313 of the Civil Procedure Rules which is in the following terms:

" An Appeal shall be lodged by filing a notice of appeal in the Registry of the Court to which the appeal lies and all parties to the original action other than the appellant shall be made Respondents to the appeal."

The Court of Appeal held that the words " the original action " mentioned in the Rule covered and applied to the claim and proceedings before the Settlement Officer. It was also held that what had passed before the Settlement Officer without any actual dismissal of these other parties in no way made them cease to be parties. In consequence the preliminary objection was upheld and the appeal dismissed. Their Lordships are of opinion that the decision of the Court of Appeal was correct. It was argued that Rule 313 did not apply to proceedings before the Settlement Officer for a variety of reasons, including the contention that those proceedings were not an action. Their Lordships are clearly of opinion that Rule 313 and the Rules connected therewith did apply to appeals from a Settlement Officer and that the reasons assigned for a contrary opinion are without foundation. It follows that their Lordships will humbly advise His Majesty that this appeal should be dismissed. But their Lordships feel constrained having regard to the very full argument that was addressed to them to make some further observations. The Chief Justice, after giving the decision of the Court of Appeal, added, " That is of course in some respects an unsatisfactory result. At the same time we do not feel that in this particular case it is likely to result in any injustice." Their Lordships agree that it is as a rule unsatisfactory, if it can be avoided, to dispose of a matter on a technicality. But they agree even more unreservedly that in this case no injustice resulted. They are of that opinion not merely because of the appellant's dilatory conduct, but also because after the full argument on the point addressed to them they are satisfied that the judgment of the Settlement Officer was right in respect of his incompetence to adjudicate upon the alleged forgeries.

It is to be observed that under Rule 333 of the Procedure Rules adequate provision is made for the curing of defects consisting in the non-fulfilment of conditions precedent to the hearing of an appeal. No application whatsoever was made to the Court of Appeal to exercise this power of amendment. Had it been made and good cause shown within the meaning of the Rule their Lordships cannot doubt but that leave to put matters right would have been granted. Their Lordships would also observe in reference to the decision of the Court of Appeal that in addition to the reasons assigned in the judgment of the Court there is a further reason which appears to their Lordships to be substantial. The appeal sought to raise a matter going to the root of the title of all the parties to the original proceedings. It seems to be obvious that a decision favourable to the appellant on the forgery issue would of necessity have a practical effect on the titles of owners of plots contiguous to No. 7 and dependent on the like root of title, as for example by reducing their status to that of possessory titles. If, having been cited, such parties felt uninterested and cared to rely on the conditional oral statement in their favour before the Settlement Officer no harm would have been done. They were entitled to be cited and they were not so cited and that is more than a technicality.

Their Lordships propose now to state briefly their view of the substantial matter of his jurisdiction dealt with by the Settlement Officer. That does not depend wholly or even mainly upon Rule 13 of the Land Settlement of Title (Procedure) Rules and the Settlement Officer did not say that it did so depend. He said that he found support for his decision in Rule 13 and so do their Lordships. Rule 13 provides as follows:

“ 13. (1) The person against whom a document (other than a document authenticated before the Court, notary public or similar authority) is produced, including the heirs or assigns of the alleged author of the document, may be called upon either to acknowledge or to deny the signature or seal and the handwriting of the author of the document; silence on the part of the alleged author, or a profession of ignorance on behalf of the heirs or the assigns, shall be regarded as an acknowledgment.

(2) If a person by whom the document purports to have been executed denies his signature, seal or handwriting, or if the heirs or assigns of such persons deny their knowledge of the same, the Settlement Officer shall proceed to verify and compare the seal, signature or handwriting either himself or by the appointment of an expert or experts as he deems fit.

(3) The person denying the handwriting shall produce, if required, specimens of his handwriting and, subject to any order as to the costs of the case made by the Settlement Officer, shall pay the fee of the expert or experts.”

It was said at one stage of the argument that Rule 13 was not apt to cover a case such as this because the appellant and not the respondent had produced this document. Their Lordships do not agree with this view of the facts but this point is really immaterial. Rule 13 clearly recognises that there is removed from the jurisdiction of the Settlement Officer competence to deal with documents authenticated before a Court. This is a clear provision, it may be *ex abundante cautela*, that where as here the proceedings of a Court are in question they can only be reviewed or disturbed by a Court of equal or superior jurisdiction. This principle is well recognised by the Courts of Palestine, see *Rutman v. Khalil and others*, 1943, L.R. (Palestine) vol. x, p. 407. That decision related to the setting aside of a judgment but the same principle applies to the setting aside of an act solemnly done, as was the execution of these Powers of Attorney, in and under the authentication of a Court. That is the principle which is recognised and safeguarded by Rule 13. The Settlement Officer's jurisdiction is a strictly limited one and extends to the limits laid down in the Ordinance and no further. Competence and power to undo what has been done by Courts properly so called, of which he is not one, are not within those limits. It follows from this conclusion that in their Lordships' opinion no injustice at all has been suffered by the appellant by reason of her appeal to the Court of Appeal in Palestine having been dismissed sooner rather than later.

The advice that their Lordships will humbly tender to His Majesty is that this appeal should be dismissed. The appellant must pay the costs of the appeal.

TO THE LATAI COMMISSION

THE CHIEF OF POLICE

AND MEMBERS OF THE LATAI COMMISSION

ORDERED BY THE LATAI COMMISSION

IN THE MATTER OF

THE

In the Privy Council

---

BAHIYA LEVI

v.

AMIN NICOLAS KHOURY AND OTHERS

---

DELIVERED BY MR. JAMES STRATFORD

Printed by His Majesty's Stationery Office Press,  
DRURY LANE, W.C.2.

1947