

IN THE SUPREME COURT OF BERMUDA

Civil Jurisdiction

1961: No.148

In the Matter of Section 36 of The Parish Vestries Act, 1929

and

In the Matter of Section 19 of The Supreme Court Act, 1905

and

In the Matter of the Transfer of certain lands previously registered in the name of Ambrose Ball to Charlotte Oates

and

In the Matter of an Application by Eunice Ford to transfer the remainder after a life estate and the refusal of the Parish Vestry to transfer the same lands

and

In the Matter of an objection by Charlotte Elizabeth Wellman to the said Application.

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Mr. J. M. S. Patton for Eunice Ford the Applicant.

Mr. Robert H. Motyer for the Respondent Pembroke Parish Vestry.

Mr. R. L. Barnard and Mr. Donald Smith for the Respondent Charlotte Wellman.

Before the Honourable Myles John Abbott, Chief Justice.

JUDGMENT

This is an application to make absolute a rule granted under S.36 of the Parish Vestries Act, 1929 (hereinafter called "the Act") calling upon the Pembroke Parish Vestry to show cause why the transfer of certain land at Boss's Cove, Spanish Point, (hereinafter called "the land in dispute") should not be made to one Eunice Ford (hereinafter called "the applicant") in accordance with the notice given by her.

The land in dispute is shown in blue colour on the plan (hereinafter called "the plan") annexed to the probate of the will of one Grace Charlotte Philip Oates (hereinafter called "Mrs. Oates").

The history of the case is briefly this. The whole of the land coloured pink and blue on the plan was at one time the property of one Ann Amelia Wood who died intestate in 1898 leaving a husband and three married daughters, Mrs. Oates, Susan Saunders and Emeline Ball her surviving. The husband of Mrs. Wood died so that his life estate by the curtesy determined and does not concern us here. Susan Saunders died intestate in 1904 leaving her husband Arthur and her son Robert her surviving. Arthur's estate by the curtesy also terminated by his death. Emeline Ball, then the owner of ^{one} ~~the~~ undivided third share of the land coloured pink and blue on the plan died intestate in 1902 leaving her husband Daniel (hereinafter called "Daniel") and her son Ambrose (hereinafter called "Ambrose") her surviving.

It is common ground that on 6th June, 1927, Robert Saunders conveyed his one undivided third share in the property coloured pink and blue on the plan to Mrs. Oates, although this deed, like the majority of the deeds relative to this case, is lost and cannot be traced. Thus on the 6th June, 1927, Mrs. Oates, it is accepted, became the owner of two undivided third shares in the land in dispute.

It is also accepted that Daniel Ball died, his life estate thereby determining.

Sometime in 1950, as a result of certain happenings, Mrs. Oates, consulted her lawyer Mr. Richards, who, on her instructions, informed the Pembroke Parish Vestry clerk that he had been sending Vestry Tax notices to Ambrose or to an agent of his instead of to her (see Ex. P.P.V.1 to affidavit of Mr. Murray, the present Vestry Clerk). Lot 2 referred to in Mr. Richards' letter is the land in dispute. The opinion which accompanied Mr. Richards' letter is Ex.P.P.V.2 to Mr. Murray's affidavit.

The Parish Vestry acting under the provisions of S.34 of the Act considered Mr. Richards' letter and the enclosure thereto and on 22.12.50 caused the then Vestry Clerk to notify Mrs. Oates of the intention of the Vestry to transfer the registration of the land in dispute into her name. Mrs. Oates naturally not objecting, the

intention was carried out and registration of the land was transferred into her name. S.34 provides that such a transfer is valid for purposes of assessment but for no other purpose, so it cannot be said that the transfer, of itself, gave Mrs. Oates any title to the land in dispute.

Mrs. Oates died on 24.5.56 at what has been aptly described as "the ripe old age" of 102, and by her will purported to devise the land in dispute to Mrs. Charlotte Wellman who is variously referred to in these proceedings as "the objector" and "the respondent". I shall hereafter use the latter designation.

On 26.8.57, in order to determine with precision certain rights of way there said or thought to be vested in Ambrose (who left Bermuda for the United States over 30 years ago and has never returned) the then owners of the servient tenement and Ambrose entered into a deed whereby Ambrose gave up what were alleged in the deed to be his rights of way (up to that time ill-defined) over the servient tenement and was, in exchange, granted a defined right of way as shown on the plan annexed to this deed.

On the following day, 27.8.57, Ambrose purported, by a voluntary conveyance to uses to grant and convey the land in dispute (not, I must point out, merely his undivided third share therein) to his solicitor, Mr. J.M.S. Patton. Under this deed, Mr. Patton was to hold the property to the use of Ambrose for his life and after his death to the use of the applicant who thus became entitled in remainder. Ambrose, I gather, is still alive.

The applicant's case is that Ambrose acquired absolute sole ownership of the land in dispute by virtue of a deed said to have been executed in July 1927 and made between Mrs. Oates(1) her husband John Oates(2) Daniel(3) and Ambrose(4) whereby the parties of the first three parts released all their respective interests in the land in dispute to Ambrose.

The respondents case is briefly that Mrs. Oates acquired one undivided third share in the land coloured pink and blue on the plan by descent as one of the heirs-at-law of her mother Mrs. Wood, one

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undivided third share by conveyance thereof by Robert Saunders and the third undivided third share by conveyance from Ambrose, and that she thus became sole owner of the whole of the said land.

Now, what is it that this Court has to decide in this case. As I see it, I have to decide on the evidence before me if the rule calling upon the Vestry to show cause why the transfer to the applicant should not be made, should be made absolute or be discharged.

It would be wrong for me, in my opinion, to express in this judgment any view as to the validity or otherwise of the numerous documents whose validity has been called in question before me. That may fall to be decided hereafter in another kind of proceeding. I deliberately refrain from expressing any such view.

I hold, on the evidence before me that the rule calling upon the Vestry to show cause must be discharged. The applicant must pay the costs of both the Vestry and the respondent.

I desire to emphasise, in coming to this decision (in case I have not already made that clear) that this judgment does not confirm or impugn the validity of the titles sought to be set up by the applicant and the respondent.

Chief Justice.

June, 1962.