2005 No.708 DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

RADEKA SEECHARRAN

Plaintiff

-and-

HAROLD SEECHARRAN a/k HERMAN

Defendant

Mr. A. Anamayah for the Plaintiff.

Mr. M. CrawfordS.C for the Defendant.

D E C I S I O N

The plaintiff claims that she is the owner of sublot numbered '12b' (twelve b) being part of sublot A of lot numbered 12 being part of Rising Sun, Berbice, Guyana described in Transport no. 577/2000.

The Plaintiff purchased the said lot from the defendant's father Arthur Seecharran and received Transport on 16th June 2000. During the month of July 2005 the Defendant began to construct and enlarge the small hut he had on the Plaintiff's land.

That despite several requests by the Plaintiff to the Defendant to remove his building on her land the defendant has refused to do so and states that the defendant is not the owner by Transport or Agreement of Sale of the land he has constructed the building on.

The defendant claims that he is in occupation and possession of plot ‘A’ being a portion of lot 12 ‘A’, and that sublot B or lot B of 12 ‘A’ is situated north of Plot ‘A’ of lot 12 ‘A’ the land occupied by the defendant and that he has been in sole and undisturbed occupation of Plot ‘A’ of 12 ‘A’ since the year 1974 when he received same as a gift from his parents. The Defendant claims that his father is owner by transport of lot 12 ‘A’.

The Defendant further deposed that even if he is on the Plaintiff’s land he cannot now be dispossessed by virtue of his long occupation, and claims that the Plaintiff’s right would now be barred and extinguished by virtue of the title to land (Prescription and Limtation) Act Chapter 60:02 of the Laws of Guyana.

The Plaintiff filed an Amended statement of claim in which she states that the Defendant filed Petition No. 124/2006 for Prescriptive Title for the said lot owned by the Plaintiff by Transport No. 577/2000.

The plaintiff states that she opposed the petition and the matter was heard and determined by the Commissioner of Title on 16/04/2008 whereby the petition was dismissed.

The plaintiff further claims that the issues were identical and parties were the same in Petition No. 124/2006 and the instant action and the defendant would be estopped from raising the same defence.

According to the Agreement of sale between the Defendant’s father and the Plaintiff, the Plaintiff purchased one house lot, being the first lot on the east half of sublot A of lot numbered 12 of Rising Sun, Berbice, Guyana.

The land described in the agreement of sale was then transferred to the Plaintiff on Transport No. 577 of 2000 and is described therein as sublot numbered ’12 b’ (twelve b) part of sub lot lettered A of lot numbered 12 being part of Rising Sun Berbice, Guyana.

The land that the Plaintiff claims the defendant is trespassing on is therefore sublot numbered ’12 b” held by Transport No. 577 of 2000. The land claimed in the prescriptive title application is described as plot A being portion of lot 12 A of Plantation Rising Sun, West Coast Berbice, Guyana.

The Commissioner of title found that Plot ‘A’ prescribed for by the Defendant was in fact the Plaintiff’s property under Transport 577/2000 and therefore dismissed the Petition.

The Defendant is still in occupation of the Plaintiff’s Land held under Transport No. 577/2000 and is in this action claiming that the plaintiff’s title has been extinguished, and therefore the plaintiff is not entitled to the Orders prayed for.

Since the Commissioner of Title found that it is one and same land and the matter was fully ventilated after a trial, then the Defendant cannot now claim in his defence that he is entitled to adverse possession by Prescription of the said same land.

The issue was determined on its merits and the decision of the Commissioner of Title is final. The Defendant cannot raise the defence of prescription since he is estopped from doing so. The prescriptive title order was a final order. This court has no jurisdiction to set aside a final order of a court of competent jurisdiction. Such an order has to be appealed if the Defendant wishes to challenge the validity of the order.

The Petition in the land court having been dismissed after an opposition was filed by the Plaintiff and after a trial of the matter the issue of prescriptive rights cannot now be raised as a defence in this action. That defence no longer exists. The judge in the Land Court found that the Defendant had not proven that he had acquired prescriptive rights.

The Plaintiff is the legal owner by Transport No. 577 of 2000 and on her opposition to the Petition the Judge found in favour of the Plaintiff. The Plaintiff has a legal right to the possession and occupation of her property and in the circumstances the defendant would be a trespasser.

To ask this court to consider that the Defendant has acquired a prescriptive title in this action is akin to a re-hearing of the matters already dealt with by the Land Court Judge. This Court has no jurisdiction to re-hear the issue of prescriptive rights which can only be determined by the Court of Appeal in an appeal against the Land Court order. It was a final determination of the merits of the Defendant's petition. Therefore the defendant cannot raise the same issue in this action, this is known as issue estoppel.

Henderson v Henderson 3 HARE 99 p 313 at page 319

It is stated as follows:

"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of Competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, only because they have,

from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgement , but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

In a **Practical Approach to Civil Procedure** 3rd ed page 411 it is stated as follows:

"Estoppel per rem judicatam is a generic term covering what are known as cause of action estoppels and issue estoppels. As was made clear by Wigram V.C. in the passage quoted above, the rule covers not only matters already decided between the parties, but also matters which might have been brought forward in the first action, but were not. The rule prevents unnecessary proceedings involving expense to the parties and the waste of Court time which could be used by others. It tends to avoid stale litigation and to enable the defendant to know the extent of the claims being made arising out of a single incident. Where the rule is infringed the subsequent proceedings will be stayed or struck out as an abuse of the court's process. (Brisbane City Council v Attorney General for Queensland (1979) AC 411)."

The same Land that is in dispute in this matter was the same land in dispute in the Land Court. The parties were the same as in this action. The same issue of prescriptive rights relied on by the Defendant in the Petition before the Land Court is the same issue of prescriptive rights that the defendant is relying on in this matter.

The principle of res-judicata means that there must be a hearing and determination of all the issues relevant to the subject matter and a final adjudication of those issues. There was a trial of the Petition, after which the Judge gave his decision. If no reasons were given by the Land Court Judge, then that would be a ground upon which to appeal, where upon, the judge will then have to write his reasons.

Whether the defendant had no locus to file an opposition to the Petition should have been raised at the hearing of the Petition, and if it was so raised, and the Land Court Judge found for the Plaintiff then it is to be assumed that he considered the objection. That objection cannot be raised as a defence to the Plaintiff's right to possession in this matter.

The issue as to whether the area of Land is described properly or whether there are two different plots of land would have been determined at the trial in the Land Court, and if it was not so determined, or if determined incorrectly, then that too would be the subject of an appeal. It was a necessary step to be taken in order to arrive at a decision by the Land Court Judge, and was actually decided upon by the Judge after hearing evidence from the Surveyor, and if the decision is incorrect also on this issue then that is the subject of an appeal. It is evident that after hearing the evidence the judge found that the land petitioned for by the Defendant is one and same as that held by the Plaintiff by Transport and if the Judge so decided incorrectly, then the Defendant should have appealed the order.

In this case the substantive cause of action was already adjudicated upon in the Land Court, and cannot now be re-opened and re-tried in the High Court.

In the **Rev. Oswald Joseph Reichel v the Rev. John Richard Magrath** Vol. XIV The Law Reports page 665 the following case is stated as follows:-

"The Appellant brought an action against his Bishop and the patrons of a benefice claiming a declaration that he was vicar of the benefice, and that an instrument of resignation which he had executed was void, and an injunction to restrain the Bishop from instituting and the patrons from presenting any other person to the benefice. The action was tried and judgment was given against the appellant on the ground that the vicarage was void by reason of his resignation thereof with the consent of the Bishop. Afterwards the respondent having been duly appointed to the benefice as the appellant's successor brought an action against the appellant claiming a declaration that the respondent was vicar and a perpetual injunction to restrain the appellant from depriving the respondent of the use and occupation of the house and lands. In his statement of defence the appellant set up the same case as that on which he had been defeated in the action in which he was plaintiff.

It was held affirming the decision of the Court of Appeal, that there was an inherent jurisdiction in the Court to strike out the statement of defence as frivolous and vexatious and an abuse of the procedure, and to enter judgment for the plaintiff with a declaration and injunction as claimed."

The defendant is attempting, in these proceedings, to set up the same case again, and I find that the defence is frivolous and vexatious and an abuse of the process of the court.

The defence is hereby struck out and judgment entered for the Plaintiff.

Costs $25,000.00

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Diana F. Insanally

Dated this 8th day of December, 2010