

SALE'IMOA PLANTATION LIMITED v ATOA (JOE) (No.1)

Supreme Court Apia
Bremner J
12 July, 15 July 1985

PRACTICE AND PROCEDURE - when beneficial owner is not the registered owner.

HELD: Application to strike out claim for trespass on grounds that Plaintiff is not the registered owner dismissed. The Plaintiff is the beneficial owner and entitled to bring a trespass action.

CASES CITED:

- Brunker v Perpetual Trustee Co. (Ltd) (1937) 57 C.L.R. p.555, 581 and 582

LEGISLATION:

- Samoa Land Registration Order of 1920; S 8
- Samoan Land Registration Amendment Order of 1921 Ss 10, 12

3rd Edition of Halsbury Vol. 38 page 745 paragraph 1215

T K Enari for Plaintiff
A S Epati for Defendant

Cur adv vult

This matter which came before me on the 12th July is a Motion by the Defendant to strike out a Statement of Claim and all proceedings which have arisen and have flowed from that Statement of Claim. There are two grounds for striking out the Statement of Claim in the Notice of Motion but only one was pursued at the hearing. To put it simply the ground is that the Plaintiff has no standing to bring the proceedings. The amended Statement of Claim seeks a purported injunction and damages for trespass. The Defendant is one of two shareholders and directors in the Plaintiff Company although he is a minor shareholder. He has filed a Statement of Defence to the Statement of Claim. The law on the striking out of a Statement of Claim is clear. The

Statement of Claim should only be struck out where it is clear on the face of the proceedings that the claim cannot possibly succeed.

In the instant case the Plaintiff company purchased the plantation from the trustees of the Douglas Atoa Estate. On the 5th November 1984 a conveyance of the lands was executed by the trustees. This conveyance together with other documents were produced at the Lands Office in Apia for registration on 7th and 8th November 1984. The documents were registered or purported to be registered by the Registrar of Lands. On the 22nd of February 1983 prior to the registration of the conveyance the Defendant had registered a caveat against the lands. The Defendant says that all the documents and transactions which have been registered since he registered that caveat are invalid. The argument is that by section 8 of the Samoa Land Registration Order of 1920 no instrument of title, in other words, the conveyance, shall affect the legal title to land until and unless the conveyance is registered in accordance with the 1920 Order.

It is said that any purported registration contrary to this section is void ab initio. The effect of a caveat is contained in the Samoan Land Registration Amendment Order of 1921. Section 10 of that Order provides that as long as the caveat remains in force the Registrar shall not register any instrument affecting the estate or interest protected by the caveat. The only exception to this is in respect of documents which were lodged for registration before the receipt of the Caveat. Once a Caveat is registered and documents or instruments are produced for registration, the Registrar is required pursuant to Section 12 to give notice to the caveator advising him that his caveat will lapse if he has not applied to the Court within 14 days for an Order to the contrary. In this case as I perceive from the documents filed no such notice was given by the Registrar of Lands.

During the hearing it was found that there had been no transmission of the estate of Douglas Atoa registered.

The argument is that as there is no effective registration of the conveyance therefore there is no legal title in the plaintiff and therefore it cannot bring action as it has done.

Counsel for the Plaintiff puts forward two propositions. The first is that in the amended Statement of Claim it was alleged that the Plaintiff company was the owner of the plantation and in the Statement of Defence which has been filed that allegation is admitted. Counsel says having admitted ownership the Defendant cannot now plead otherwise.

The second matter is that the defendants arguments are looking at the wrong point. It is not a question of the registration of the documents but the right to bring an action to the Court in respect of trespass. It is common ground that a conveyance was executed by the trustee of the Douglas Atoa Estate to the Plaintiff Company and it is also common ground that that conveyance purports to convey the land to the Plaintiff for valuable consideration. To put it simply the Plaintiff says that while it may not be the legal owner yet it has such a beneficial or equitable interest in the land for it to bring the action which it has. A similar point was considered by the Privy Council in the case of Brunker v Perpetual Trustee Co. (Ltd), reported in (1937) 57 C.L.R. at page 555 and in particular pages 581 and 582. I accept that once equitable ownership is established and at the time of the bringing of the Action that ownership is not defeated by valid registration of other interests then there exists a right to bring an Action founded on trespass. I accept the Plaintiffs propositions that what the Court is required to consider is not the validity of the registration but the right to bring an Action. The matter I think is simply set out in the 3rd Edition of Halsbury Vol. 38 page 745 paragraph 1215 where it is said that a person having a right to possession may entertain trespass against any person. I leave out the words in that sentence which are "acquires by entry", because I believe that a person with a right to possession may entertain an Action in trespass against a person whom it is alleged continues wrongly on the land. That is a matter of substantive evidence. For those reasons therefore I find that the Defendants application to strike out the Statement of Claim cannot succeed, the application is refused and costs in the application are to be costs in the cause.