

IN THE COURT OF APPEAL

DOMINICA

Civil Appeal No. 2 of 1969

Between: MRS. DANIEL DUPUIS Defendant/Appellant

and

NICHOLAS JOSEPH LABADIE Plaintiff/Respondent

Before: The Honourable the Chief Justice
 The Honourable Mr. Justice Gordon
 The Honourable Mr. Justice St. Bernard (Ag.)

J. Armour for the Appellant
R. Lockhart for the Respondent

1970, March 19, 20, July 7

JUDGMENT

ST. BERNARD, J.A. (Ag.):

The respondent holds a registered certificate of title issued under the provisions of the Title by Registration Ordinance, Cap. 222, of the Laws of Dominica of a parcel of land containing 3 roods 10 poles situate at Portsmouth, Dominica. He was absent from the State for a period of approximately 10 years and on his return found the appellant in possession of part of this land. By a letter dated the 18th April, 1967, written on his behalf by his solicitor he requested delivery of possession to him of the portion of land occupied by the appellant. The appellant refused to deliver up possession and a writ was issued in the Court of Summary Jurisdiction praying the following relief -

- (a) a declaration that he is the registered proprietor of the said land in virtue of an indefeasible certificate of title and that the defendant has no right or claim thereto;
- (b) an order that the defendant do forthwith or at such time as to the Court shall seem just quit and deliver up peaceable possession of the said land;
- (c) mesne profits to such an amount not exceeding \$1,000 as to the Court shall seem just.

/At the trial

At the trial the respondent stated that the appellant occupied a portion of the land comprised in his certificate of title and put the said certificate in evidence. In cross-examination he said that he once sold a portion of land which the defendant occupies to her husband and gave him the boundaries before he left in May, 1956. The defendant gave no evidence but submitted there was no case to answer. The Court overruled this submission and made orders in terms of the relief sought.

The appellant has appealed from these orders. Counsel for the appellant raised before this Court for the first time the question of the jurisdiction of the Court of Summary Jurisdiction to make an order for the recovery of land. The Court gave leave to argue this ground of appeal inasmuch as if there was no jurisdiction in the Court the trial was a nullity. Counsel submitted that sections 8 and 9 respectively of the Summary Jurisdiction Ordinance, Cap. 27 of the Laws of Dominica (hereinafter called 'the Ordinance') are the sections which confer jurisdiction on the Summary Court. In this case the relevant section is, in my view, section 9 of the Ordinance. That section, as amended, reads as follows:

"9. The Court shall have full power and jurisdiction to hear and adjudicate, without a jury, actions of trespass and title to land, wherein the damages or property claimed shall not exceed one thousand dollars: Provided that, in case the defendant disputes the value of the property in question, the judge may, before entering into the case, inquire into and fix the value thereof, and such valuation shall be conclusive for the purpose of deciding whether the judge has jurisdiction."

Counsel urged that this section did not clothe the Court with the necessary power to make orders for the recovery of possession of land but simply gave the Court power to adjudicate on matters of trespass where the question of title was involved. He argued that under the Small Tenements Ordinance, Cap. 20, the Magistrate's Court had jurisdiction to make orders for the recovery of land but in cases of trespass where title was involved there was no jurisdiction. Section 9 of the Ordinance was simply an extension of the jurisdiction given to magistrates in cases of trespass involving title to land.

Counsel for the respondent submitted that there was jurisdiction in the Court of Summary Jurisdiction to make

/orders for

orders for the recovery of possession of land within the limits set out in section 9. He urged that though there was no procedure set out in the Ordinance for enforcing such orders section 40 of the Ordinance applied and therefore the Rules of the Supreme Court would apply and gave power for the issue of warrants of possession.

Section 40 of the Ordinance reads:

"In all matters of procedure or evidence, not provided for by this Ordinance, the provisions of the Supreme Court Ordinance shall apply to causes and proceedings in the Court in the same and the like manner as such provisions apply to causes and proceedings in the Supreme Court, and shall in all respects govern the same."

Part VI of the Ordinance, headed "Decrees and Orders", speaks of decrees and orders which may be made under the Ordinance. It contains no reference to and makes no provision for enforcing an order for recovery of possession of land. In my view section 40 applies where in carrying out the decrees and orders which the Court is empowered to make the provisions of the Ordinance are found to be wanting; then the Rules of the Supreme Court relative to enforcement of similar decrees and orders may be applied. I do not consider the power to issue a warrant authorising a bailiff to enter premises and take and deliver up possession of such premises to another to be simply procedural. In my view such power must be specifically conferred on a court of limited jurisdiction. Nowhere in the Ordinance is this power conferred. Part VI which gives various powers to the Court of Summary Jurisdiction is silent in this regard and deals only with personalty and not realty. There is nothing in the forms or in the scale of fees set out in the schedule to the Ordinance to indicate that there was any intention by the Legislature to empower that Court with authority to issue warrants in cases of recovery of possession of land.

An examination of the Small Tenements Ordinance, Cap. 20 of the Laws of Dominica, which confers jurisdiction on magistrates to make orders for the recovery of possession of land shows that express authority is given to the magistrate to make orders for such possession, to issue warrants to officers to enter premises and to use force, if necessary, in order to execute the orders of that court.

The Court of Summary Jurisdiction is a creature of statute and, in my view, express authority should be given to the officers of that Court to enter premises in order to

/carry out

carry out its orders. There should be some substantive provision in the Ordinance conferring this authority.

Counsel for the respondent contended that the expression "and title to land" in section 9 of the Ordinance is equivalent to the expression "an action for the recovery of land." If by this he means that an action to recover possession of land is the same as an action to establish title to land, I do not agree. The action for recovery of possession of land is, in my view, a different cause of action from an action to establish title to land or in which title comes into question for determination. Admittedly, in an action for recovery of possession, title may come into question, but this does not mean that when a statute confers on a court full power and jurisdiction to hear and adjudicate actions of trespass and title to land, that power is conferred on that court to hear and adjudicate actions for recovery of possession of land. The statute speaks of actions of trespass and title to land. As far as I am aware, there are no actions of title to land as such, but there are actions of trespass and other actions in which 'title to land' comes into question. In my judgment the statute must speak specifically and say in clear terms what the jurisdiction is, and must give specific authority for the issuing of warrants of possession and authority to the officers of the court to enter, take and deliver up possession to the person or persons entitled thereto.

A reference to section 40 of the County Court Act, 1934 (U.K.) may assist. This section gives jurisdiction to the county court to hear and determine actions of contract and tort within certain prescribed limits. The proviso to this section reads -

"Provided that a county court shall not, except as in this Act provided, have jurisdiction to hear and determine -

- (a) any action for the recovery of land; or
- (b) any action in which the title to any hereditament, or to any toll, fair, market or franchise is in question, or
- (c) any action for libel etc."

This proviso treats the action for recovery of land as distinct from an action in which the title to any hereditament comes into question. If the expression "title to any hereditament" embraced actions for the recovery of land, then the provision regarding recovery of land is redundant. I

/think, however,

think, however, those provisions were expressly enacted because the action for recovery of land is not the same action as an action to establish title to land.

In *Gledhill v. Hunter* (1880) 14 Ch. D. 492, Jessel, M.R., in construing Order XVII, rule 2 of the Supreme Court Rules, 1875, stated -

"In my opinion, an action for the establishment of title only, not claiming possession, is not an action for the recovery of land under the Rules. Where the property is let to tenants, and the person who brings the action only seeks to establish his title to receive the rents as against the Defendant, it does not appear to me that such an action is within the words or true meaning of the Rules."

This opinion shows that the action for recovery of land is not the same as an action to establish title only and therefore where a statute gives jurisdiction to a court of limited jurisdiction to hear and adjudicate actions of trespass and title to land it does not follow that that Court has jurisdiction to hear and determine actions for the recovery of land. The jurisdiction, in my opinion, is limited to actions in which the Court is asked to pronounce on title as a preliminary to some remedy which it is authorised to give.

I refer to the case of *Peltier v. Simeon* which was decided by me on the 10th January 1964. That was a claim brought in the Court of Summary Jurisdiction by a plaintiff/landlord for recovery of possession of premises. The claim failed as the value of the property sought to be recovered was beyond the limits prescribed by the Ordinance. I, however, considered the whole question of the jurisdiction of the Court in cases of recovery of possession of land, and expressed the view that there was no jurisdiction in that Court to hear and determine such cases. This appeal gives the opportunity of reviewing that opinion and I find no reason to differ therefrom.

In regard to the claim for mesne profits, it is my view that a claim of this kind will not be sustained alone if the claimant is not in possession of the land for which such profits are claimed. This action was founded on the doctrine of trespass by relation and did not lie until after the plaintiff had re-entered and recovered possession of the land either by way of his own act, or by way of a judgment

/in ejectment

in ejectment and execution issued thereon. By the Common Law Procedure Act (English) 1852, section 214, this condition precedent was abolished and that section expressly allowed such a claim to be joined with a claim for ejectment in the case of landlord and tenant. It is now impliedly allowed in all cases by the Rules of the Supreme Court 1883, O. 18, rule 2. It is clear, therefore, that an action for mesne profits will not lie without an action of ejectment and before recovery of the land. In the present case since the Court of Summary Jurisdiction has no power to hear and determine cases for the recovery of land the claim for mesne profits must fail as the plaintiff is not in possession of the land for which such profits are claimed.

There remains for consideration the declaratory order made by the learned trial judge in regard to the respondent's title to the land. The respondent's statement of claim shows that his action is one for the recovery of land. The fact that he asks for a declaration of title and for mesne profits does not make any difference as regards the cause of action. If he is to receive mesne profits he must recover the land and if he recovers then he has a right which entitled him to immediate possession. I would here adopt the words of Jessel, M.R. at page 500 in the case quoted above -

"Now, what does "an action for the recovery of land" mean? It means the recovery of possession, and you combine with a claim for that a claim for the rents. Then does the fact of the machinery, so to speak, being stated in the statement of claim make any difference? Does it make any difference as regards the cause of action - for that is what we must look at? It is not a new cause of action: it is the same cause of action. The Plaintiff says, "I am entitled to a freehold estate: I ask for my title to be declared, and I ask for possession to be given to me." The claim for a declaration of title and the claim for possession are not the cause of the action: they are only a statement at full length of what the cause of action really is, namely, to recover the land. Therefore, the mere fact of a claim for a declaration of title preceding the demand or claim for the recovery of possession does not make it less an action for the recovery of land: there is no new cause of action joined."

I hold for the reasons stated above that the Court of Summary Jurisdiction has no jurisdiction to hear and

/determine cases

determine cases of recovery of land and both the claims incidental to the action must fail. I would allow the appeal with costs and set aside the judgment and orders made by the trial judge.

(E. L. St. Bernard)
Justice of Appeal (Ag.)
14th April, 1970

LEWIS, C.J.

I have read in typescript the judgment which Mr. Justice St. Bernard has prepared for delivery in this case. I agree that the appeal should be allowed with costs for the reasons which he has stated.

(Allen Lewis)
Chief Justice
14th April, 1970

GORDON, J.A.

I agree.

(K. L. Gordon)
Justice of Appeal
14th April, 1970