

**IN THE CARIBBEAN COURT OF JUSTICE  
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF GUYANA**

**CCJ Appeal No GYCV2017/014  
GY Civil Appeal No 23 of 2007**

**BETWEEN**

**CHANDRA RAMOTAR SINGH**

**APPELLANT**

**AND**

**BHAGWANTLALL MOSSAI**

**FIRST RESPONDENT**

**ALVIN ALVES**

**SECOND RESPONDENT**

**Before The Honourables**

**Mr Justice A Saunders, PCCJ  
Mr Justice J Wit, JCCJ  
Mr Justice D Hayton, JCCJ  
Mme Justice M Rajnauth-Lee, JCCJ  
Mr Justice D Barrow, JCCJ**

**Appearances**

**Mr CA Nigel Hughes and Ms Prithima Kissoon for the Appellant**

**Mr Chandrapratesh V Satram and Mr Roopnarine Satram for the Respondents**

**JUDGMENT**

**of**

**The Honourable Justices Saunders, Wit, Hayton, Rajnauth-Lee and Barrow**

**Delivered by**

**The Honourable Mme Justice Rajnauth-Lee**

**and**

**CONCURRING JUDGMENT**

**of**

**The Honourable Mr Justice Barrow**

**Delivered on the 6<sup>th</sup> day of February 2019**

## JUDGMENT OF THE HONOURABLE MME JUSTICE RAJNAUTH-LEE

### Introduction

[1] In Guyana, a fraudulently obtained transport is liable to be declared void by the court in any action brought within twelve months after the discovery of the fraud.<sup>1</sup> This appeal concerns the Respondents' transports which were set aside for fraud in an action commenced by the Appellant, Chandra Ramotar Singh (Singh). In respect of Singh's claim we were asked to address the following issues: (a) whether Singh, who was in possession of the land, had standing to bring a claim for trespass and fraud; and (b) whether the trial judge erred when he set aside the fraudulent transports because (i) Singh failed to bring his claim within twelve months after he discovered the fraud as required by section 22(1) of the Deeds Registry Act<sup>2</sup> or (ii) Singh failed to request specifically that the transports be set aside. We considered these issues and decided them in favour of Singh.

[2] The Respondents also raised an important procedural point. They submitted that the Court of Appeal of Guyana had no power to extend the time specified in Rule 10.3 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules (the CCJ Rules) for the filing of an application to the Court of Appeal for leave to appeal to this Court as of right pursuant to section 6(a) of the Caribbean Court of Justice Act of Guyana (the CCJ Act).<sup>3</sup> Although we agreed with this submission, we are of the view that this was an exceptional case and for the reasons discussed later in this judgment, we heard the appeal. We have dealt with the procedural point first.

### Factual and Procedural History

[3] On 7 March 1989, Singh entered into a written agreement with Johnathan Abrams, Sybil Griffith, Benjamin Abrams and Muriel Harris (the vendors) to purchase Lot 14 Mortice, Mahaicony River (the land). The land formed part of

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<sup>1</sup> See section 22(1) of the Deeds Registry Act, Cap. 5:01.

<sup>2</sup> Cap. 5:01.

<sup>3</sup> Cap. 3:07.

the estate of Laban Abrams. The vendors, who were some of the heirs of Abrams, agreed to pass transport to Singh within two months of obtaining letters of administration in the estate. In keeping with the terms of the agreement, Singh paid half the purchase price and took possession of the land immediately upon signing the agreement. He built a house and planted crops on the land. No transport was ever passed to Singh despite his continued possession of the land.

- [4] In 1994 the Second Respondent, Alvin Alves (Alves), a grandson of Laban Abrams, applied for prescriptive title in respect of the land by Petition No. 2710 of 1994 and obtained a declaration of title made by Brooms J, Commissioner of Title, on 14 January 1997. Thereafter transport No. 316 of 1999 was passed to Alves. The First Respondent, Bhagwantlall Mossai (Mossai) through his agent, his brother, Ramrattan Mossai (Ramrattan) thereafter purchased the land from Alves and transport No. 1317 of 1999 was passed to him. Mossai was represented in that transaction by Ramrattan, pursuant to a Power of Attorney from Mossai. A Writ of Summons No. 605/W of 2000 was issued in the year 2000 on behalf of Mossai seeking an order for possession against Singh. This action was discontinued after judgment in the instant proceedings was delivered by the trial judge, Bovell-Drakes J.
- [5] On 15 July 2002 Singh filed Petition No. 262/P of 2002 seeking a declaration of title in respect of the land. On the same date, a Writ of Summons No. 440/W of 2002 was issued on behalf of Singh seeking orders that the Respondents' transports be set aside on the ground of fraud. In the Petition he alleged that he had been in open and exclusive possession of the land since 1987 and that, with clear knowledge of his possession, and without any notice to him, the Respondents fraudulently obtained transports in respect of the land. The Petition filed by Singh was dismissed for want of prosecution on 17 April 2012 by Rooplall J. The Writ of Summons was deemed abandoned and dismissed for want of prosecution on 13 April 2012 by Rishi Persaud J.
- [6] In May 2003, Singh initiated these proceedings against Mossai and Alves claiming damages for fraud committed by Alves in Petition No. 2710 of 1994 whereby Alves fraudulently obtained transport, damages for trespass by both

Mossai and Alves, and an injunction preventing Mossai and Alves from entering or attempting to enter upon the land or selling, mortgaging or otherwise alienating the land. In his statement of claim filed in March 2006, Singh alleged that he was in possession of the land in March 1989 when he executed the agreement with the vendors, and that he had been in occupation of the land since that date. The trial judge, Bovell-Drakes J, found clear evidence of fraud and trespass. He granted the injunction and damages for trespass. In relation to the claim for fraud, the trial judge noted that Singh had failed specifically to seek the recall and cancellation of the fraudulent transports. However, upon examination of the reasoning in *Patch v Ward*<sup>4</sup> and *Flower v Lloyd*,<sup>5</sup> he formed the view that whenever fraud was proven, he had the “jurisdiction or power limited to the *restoration of the parties to their former situation, whatever their rights may be.*” Having found that both Mossai and Alves had obtained their transports by fraud, the trial judge was satisfied that Singh should be restored to the position he occupied as possessor of the land before the fraudulent transports were obtained. He therefore cancelled the fraudulent transports.

- [7] There was no appeal against the finding of fraud by the trial judge. Mossai and Alves however appealed the trial judge’s setting aside of their transports on the grounds that that relief had not been claimed and that section 22(1) of the Deeds Registry Act barred such relief. By a majority decision, the Court of Appeal allowed the appeal. The majority, relying on the decisions of this Court in *Ramkishun v Fung Kee Fung*<sup>6</sup> and *Ramdass v Jairam*,<sup>7</sup> held that Singh had no legal capacity or *locus standi* to initiate proceedings against Alves and Mossai or to challenge Mossai’s transport, as the agreement for sale between the vendors and Singh “did not confer or vest any legal or equitable interest” in the land in Singh’s favour. The Court of Appeal held that in these circumstances, the right to institute proceedings against Mossai and Alves for fraud resided with the lawful representatives of the estate of Laban Abrams. They further observed that the agreement for sale made between the vendors and Singh was “unenforceable, void and of no legal force and effect” as it was entered into

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<sup>4</sup> (1867) LR 3 Ch. App. 203, 206.

<sup>5</sup> (1877) 6 Ch. D. 297.

<sup>6</sup> [2010] C CJ 2 (AJ); 76 WIR 328.

<sup>7</sup> [2008] C CJ 6 (AJ); 72 WIR 270.

between Singh and only *some* of the beneficiaries of the estate of Laban Abrams, with no evidence that all the beneficiaries had consented to the sale of the land. Additionally, there had been no grant of administration in the deceased's estate.

[8] Furthermore, the majority was of the view that the claim was barred by section 22 of the Deeds Registry Act<sup>8</sup> which provided that any challenge to a transport obtained by fraud should be brought within twelve months after the discovery of the fraud. The majority found that the evidence before the trial judge was “overwhelming” to the effect that since the year 2000, if not before, Singh was fully aware that Mossai had obtained transport to the land. He did not initiate these proceedings until May 2003. There was therefore, it was stated, a delay of some three years. In addition, the majority held that the trial judge erred when he cancelled the transports in that Singh did not specifically ask for such relief. The majority was of the view that the trial judge ought to have given the parties an opportunity to be heard, particularly the party who was likely to be adversely affected by the point of law identified by the trial judge. In their view, the trial judge's decision to cancel the transports was therefore an “aberration and was arrived at in a manifestly unfair manner with scant or no attention having been paid to the Rules of the High Court and elementary principles of pleading, practice and procedure.”

[9] Cummings-Edwards CJ (Ag), as she then was, did not agree with the majority. In her view, “given the fact that it was undisputed that Singh was in possession of the land, he was the proper plaintiff to bring an action against Mossai and Alves.” Singh therefore could have initiated an action in trespass and “did not have to rely on the agreement of sale and purchase to so do.” Cummings-Edwards CJ (Ag) noted that there seemed from the submissions and grounds of appeal no real objection to the finding of fraud by the trial judge. Rather, the objection was to the fact that the trial judge had vacated the transports. She was of the view that one consequence of a finding of fraud was the setting aside of the fraudulently obtained transport. In her view, the absence of a specific request to set aside the transport was no bar to granting that relief in the circumstances.

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<sup>8</sup> Cap. 5:01.

She held that Mossai and Alves would not have been taken by surprise as the issue of fraud was a live issue in the case. The trial judge could therefore set aside the transports for fraud as there was evidence of fraud from the record before him. Even if Singh had brought these proceedings outside of the twelve-month limitation period, it was the view of Cummings-Edwards CJ (Ag) that there existed an equitable jurisdiction outside of the rigidity of section 22 to cancel a fraudulently obtained transport. In her view, the circumstances of this case warranted the exercise of such an equitable jurisdiction in favour of Singh. We do not consider it necessary to decide whether or to what extent such an equitable jurisdiction exists in Guyana, having regard to our determination at [28] to [34] that Singh's claim was brought within the twelve-month period after his discovery of the fraud.

[10] Singh was dissatisfied with the majority decision of the Court of Appeal and sought leave to appeal as of right to this Court in accordance with section 6(a) of the CCJ Act. Having failed to file his application for leave to appeal as of right within the time specified by Rule 10.3 of the CCJ Rules, Singh applied for and obtained permission from the Court of Appeal to extend the time within which to make the application for leave. The Court of Appeal granted the extension of time and leave to appeal on 31 July 2017. The order giving leave was entered on 4 August 2017. Singh proceeded to file his Notice of Appeal in the Registry of this Court on 12 October 2017. In the written submissions filed on behalf of the Respondents on 18 September 2018 they challenged for the first time the jurisdiction of the Court of Appeal to extend the time in which Singh could file an application for leave to appeal as of right to this Court.

### **Issues to be determined**

[11] The issues to be determined in this appeal are essentially:

- (a) Whether the Court has the jurisdiction to entertain this appeal?
- (b) Whether Singh had standing to bring a claim for trespass and fraud? and
- (c) Whether the trial judge was entitled to set aside the fraudulent transports? We have considered the following issues under this head:
  - (i) Whether Singh's claim was statute barred? and

- (ii) Whether Singh’s failure to specifically seek a cancellation of the fraudulent transports prevented the trial judge from setting aside the transports?

**Whether the Court has the jurisdiction to entertain this appeal?**

[12] Section 6(a) of the CCJ Act provides that an appeal shall lie to the Court from decisions of the Court of Appeal as of right in civil proceedings where the matter in dispute is of the value of not less than one million dollars or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the value of not less than one million dollars.

[13] Rule 10.3 of the CCJ Rules sets out the procedure for the making of applications to the Court of Appeal for leave to appeal. The Rule provides:

“10.3

- (1) An application to the court below for leave to appeal shall be made by notice in writing within forty-two (42) days of the date of the judgment from which leave to appeal is sought.
- (2) An application to the court below for leave to appeal in cases in which the appeal is claimed to be as of right shall-
  - (a) identify precisely the constitutional or statutory provision under which the right of appeal is claimed;
  - (b) state succinctly such facts as may be necessary in order to demonstrate that the applicant is entitled to appeal under the provision so identified; and
  - (c) be signed by the applicant or his attorney-at-law.”

[14] The CCJ Rules also provide in Rule 5.4 that:

**“Exceptions to time-limits**

5.4 Any time-limit prescribed under these Rules may be extended for good and substantial reasons.”

[15] Mr. Satram, Counsel for the Respondents, submitted that, after a delay of almost six months, Singh sought an extension of time within which to file an application for leave to appeal pursuant to section 6(a) of the CCJ Act. The Court of Appeal granted the requested extension pursuant to Rule 5.4 of the CCJ Rules. Mr. Satram argued that the Court of Appeal erred in granting the

extension of time within which Singh could file his application for leave to appeal as of right since the Court of Appeal had no jurisdiction to extend the time prescribed by Rule 10.3(1) of the CCJ Rules. In his opinion, Rule 5.4 of the CCJ Rules only applied to applications filed before this Court. Mr. Satram therefore submitted that the Court of Appeal erred when it relied upon Rule 5.4 to extend the time for Singh to appeal. The consequence of the statutory regime in his opinion was that there was no power in the Court of Appeal to extend time for filing such an application. He argued that whenever an applicant failed to file an application for leave to appeal as of right within the time specified by Rule 10.3(1), that applicant's only alternative was to apply for special leave to appeal under section 8 of the CCJ Act, this Court having jurisdiction to extend time.

[16] Mr. Satram also took issue with Singh's reason for his delay in filing the application to the Court of Appeal. It had been submitted on Singh's behalf that the delay was due to the unavailability of the judgment of the Court of Appeal. Mr. Satram submitted before us that this reason was not plausible since delay in the delivery of written judgments was common in matters before the Court of Appeal. In oral submissions, Mr. Satram submitted that to accept the unavailability of the written judgment as a good and substantial reason would "encourage delays in appealing to the CCJ, legal ineptitude and would further burden the legal system." Almost every applicant would then be entitled to an extension of time for the filing of applications in the Court of Appeal for leave to appeal. Further, it was argued, Singh would not have suffered prejudice if time could not be extended in the Court of Appeal since he had the alternative avenue of applying to this Court for special leave.

[17] In the written submissions filed on behalf of Singh, Ms. Kissoon submitted that it was implicit in the Court's decision in *Mohan v Persaud*,<sup>9</sup> a decision cited in *Attorney General of Guyana v Dipcon Engineering*,<sup>10</sup> that the Court of Appeal had jurisdiction to grant an extension of time for filing applications for leave to appeal to this Court. She submitted that in *Mohan*, where the Court of Appeal

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<sup>9</sup> [2012] CCJ 8 (AJ).

<sup>10</sup> [2017] CCJ 17 (AJ).



refused to grant the extension of time, this Court held that the Court of Appeal should have assessed “whether, and to what extent, refusal of an extension of time might result in a miscarriage of justice.”<sup>11</sup>

[18] In our view, upon a proper construction of the CCJ Act and the CCJ Rules, the Court of Appeal has no power to extend the time specified in Rule 10.3 of the CCJ Rules when an application pursuant to section 6(a) of the CCJ Act is made. This Court in *Mohan* and *Dipcon* was far from acknowledging the existence of such a power in the Court of Appeal. Indeed, those cases recognized the power of this Court to prevent a miscarriage of justice and to extend time for the filing of a special leave application in those circumstances, and not the power of the Court of Appeal to extend time where the time specified in Rule 10.3 had elapsed. Indeed, Ms. Kissoon’s submission at [16] above was misconceived. This Court in *Mohan*<sup>12</sup> was considering the refusal of the Court of Appeal to enlarge the time for the filing of an appeal from the trial judge to the Court of Appeal, and not from the Court of Appeal to this Court.

[19] Had the CCJ Rules intended to specify a power in the Court of Appeal for extending time in relation to these applications, that would have been made explicit in Rule 10.3. In our view, Rule 5.4 of the CCJ Rules allows for extensions to time limits prescribed for proceedings before this Court and not for proceedings in the Court of Appeal. The proper course for an applicant who finds himself out of time for filing an application for leave to appeal as of right, is to seek special leave from this Court under section 8 of the CCJ Act. The Court of Appeal therefore erred in extending time in this case.

[20] As mentioned earlier, Singh was purportedly granted the extension of time and obtained leave to appeal by an Order of the Court of Appeal dated 31 July 2017 and entered on 4 August 2017. He filed a Notice of Appeal in this Court’s Registry on 12 October 2017. The Respondents filed their Acknowledgment of Service on 27 October 2017. The record of appeal was filed on 16 May 2018. During this time, Singh was led to believe that he was properly before the Court

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<sup>11</sup> See *Mohan* at [21].

<sup>12</sup> *ibid.*

and that the Respondents were not raising any procedural objections to these proceedings until they filed their written submissions on 18 September 2018, over a year since the making of the Court of Appeal's order granting the extension of time and leave to appeal. Whilst we recognise that the Respondents' delay does not correct the error of the Court of Appeal, we think it important to consider Singh's position. He acted upon the order of the Court of Appeal, obtained a certificate of compliance from the Registrar of the Court of Appeal pursuant to Rule 10.9 of the CCJ Rules, filed a Notice of Appeal in this Court and settled the record of appeal. On 27 July 2018, this Court held a case management conference and proceeded to set a date for the filing of submissions and the hearing of the appeal, still without objection by the Respondents.

[21] It is logical to assume that had the objection been taken earlier and had this Court found that the Court of Appeal had erred in granting the extension, Singh would have proceeded to seek an extension of time within which to file an application for special leave to appeal to this Court. It is likely that he would have obtained such leave given the important substantive issues raised before us. We are also reminded of our duty to do justice in the case before us. Considering all the circumstances of this case, and bearing in mind that (a) Singh proceeded upon the basis that he was validly before the Court, (b) the late stage at which the objection was brought to the attention of both Singh and the Court, and (c) the substantive issues raised in the appeal, we are of the view that this is indeed an exceptional case and that we should hear this appeal.

### **Whether Singh had standing to bring a claim for trespass and fraud?**

[22] We now proceed to consider the appeal on its merits. One of the grounds on which the majority of the Court of Appeal allowed the Respondents' appeal was that Singh did not have standing to bring a claim against the Respondents as he had no legal or equitable interest in the land. Ms. Kissoon submitted that the majority of the Court of Appeal erred when they ignored the fact that Singh had been in undisturbed possession of the land since 1989 and had therefore

acquired an interest in the land on which he could mount this claim. Mr. Satram correctly conceded before us that Singh, having claimed to be in possession of the land at all material times, could have brought proceedings for damages for trespass.

[23] In respect of the claim for damages for fraud, Mr Satram's position before us was that he did not agree with the finding of the majority of the Court of Appeal that Singh did not have standing to bring proceedings for fraud. He submitted that the issue of *locus standi* was raised in the Court of Appeal for the first time, when in his view, such an issue ought to have been raised before the trial judge and before findings on the substantive issues had been made by him. It was therefore conceded that Singh had the right to bring a claim seeking damages for fraud. However, Mr. Satram argued, any claim to set aside the fraudulent transports would have had to be specifically pleaded and brought within the twelve-month limitation period specified by section 22 of the Deeds Registry Act. Where the claim to set aside the transport was statute barred, the only remedy available to Singh was damages for fraud, taking account of all losses suffered by Singh, the value of the land and the value of his crops among other things.

[24] We accept Mr Satram's concession that Singh had standing to bring the 2003 claim for fraud. Nothing in section 22 of the Deeds Registry Act or elsewhere prevents a person in possession of land from bringing an action to challenge a fraudulently obtained transport, especially when that transport was issued on the false basis that the fraudster had been in possession. The possessor's right to initiate such a claim does not rest upon his having a legal or equitable interest in the land stemming from a contract for sale of land entered into by the possessor. In our view, therefore, the decisions of this Court in *Ramkishun*<sup>13</sup> and *Ramdass*<sup>14</sup> provide no assistance to the Respondents. In addition, as this Court pointed out in *Ramlagan v Singh*<sup>15</sup> the passing of transport did not stop time running in favour of the person in possession. In our view, therefore, Singh had sufficient standing to commence these proceedings.

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<sup>13</sup> [2010] CCJ 2 (AJ); 76 WIR 328.

<sup>14</sup> [2008] CCJ 6 (AJ); 72 WIR 270.

<sup>15</sup> [2015] CCJ 7 (AJ).

### **Whether the trial judge was entitled to set aside the fraudulent transports?**

- [25] In written submissions filed on behalf of Singh, Ms. Kissoon submitted that the natural consequence of the judge's finding that both Respondents had been guilty of fraud was that the transports had to be declared invalid. There was no need to recall the parties to hear their submissions on the issue of the setting aside of the transports and there was no opportunity lost by the Respondents in the light of the trial judge's finding of fraud.
- [26] Mr. Satram on the other hand stressed that the clear interpretation of section 22 of the Deeds Registry Act was that the right to set aside a fraudulent title was lost after twelve months of the discovery of the fraud. This would vest an indefeasible title in the Respondents even if their titles were obtained through fraud. He argued that the claim was statute barred because Singh was aware of Mossai's title for approximately three years before these proceedings were commenced. He contended that Singh became aware of Mossai's transport since May 2000 when Mr Robert Ramcharran, Attorney-at-law of the firm of Luckhoo & Luckhoo, wrote to Singh informing him that Mossai was the owner by transport of the land and demanding that Singh give vacant possession. In Mr. Satram's opinion, it was a stretch to say that when Singh was told that Mossai had acquired transport, Singh would also not have been aware that Mossai had acquired such title by fraudulent means.
- [27] Mr. Satram also submitted that the trial judge erred in setting aside the transports when that relief was not specifically pleaded. He argued that in respect of Alves' transport, Singh merely sought damages for fraud. In respect of Mossai's title the pleadings did not allege fraud against him or his agent Ramrattan and no particulars of fraud committed by them were pleaded. In the circumstances, neither Respondent was put on notice of the possibility of an order being made for the setting aside of his transport. On the contrary, they had every reason to believe that Singh was not pursuing such a claim. In the Writ of Summons No. 440/W of 2002 issued on 15 July 2002<sup>16</sup> Singh had specifically sought the cancellation of the titles but, in these proceedings filed in May 2003, he omitted

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<sup>16</sup> Referred to in [5] of this judgment.

that relief. Mr. Satram therefore contended that Singh's failure specifically to seek an order cancelling the transports deprived the Respondents of the opportunity of pleading the twelve-month limitation as a defence. Accordingly, the Respondents could not have been expected to raise a limitation defence to a relief that was not claimed.

***Whether the claim was statute barred?***

[28] Section 22 of the Deeds Registry Act provides:

“(1) From and after the 1st January 1920, every transport of immovable property other than a judicial sale transport shall vest in the transferee the full and absolute title to the immovable property or to the rights and interest therein described in that transport, subject to –

- (a) statutory claims;
- (b) registered incumbrances;
- (c) registered interests registered before the date of the last advertisement of the transport in the *Gazette*;
- (d) registered leases registered before the date of the last advertisement of the transport in the *Gazette*.

Provided that any transport, whether passed before or after the 1<sup>st</sup> January 1920, obtained by fraud shall be liable in the hands of all parties or privies to the fraud to be declared void by the Court in any action brought within twelve months after the discovery of the fraud, or from the 1<sup>st</sup> October 1925, whichever is the more recent.”

[29] It has generally been said that the effect of this provision is that the passing of a transport confers an indefeasible title upon the transportee. However, as rightly pointed out in *Coddett v Thomas*,<sup>17</sup> “that quality of indefeasibility does not render the transport unimpeachable in every circumstance.” One such circumstance recognised by the proviso to section 22 is where the transport was obtained through fraud. In the cases of *Ramkishun*<sup>18</sup> and *Chee Yui Kwang and Millicent Denise Murray v Tsui Yokkei a.k.a. Cheekee*<sup>19</sup> this Court considered the meaning of the term “fraud” as used in the proviso. In particular, in the judgment of the majority of this Court in *Ramkishun* delivered by Wit JCCJ, the Court noted that -

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<sup>17</sup> (1957) LRBG 181 at p. 182.

<sup>18</sup> [2010] CCJ 2 (AJ); (2010) 76 WIR 328.

<sup>19</sup> [2016] CCJ 9 (AJ).

“Fraud, like freedom, comes in many shapes. On the one hand, there is the more serious and obvious form of fraud, in legal parlance ‘common law fraud.’ On the other hand, there are various forms of ‘unconscionable conduct’ or ‘improper behaviour’ which qualify as ‘constructive fraud’, ‘quasi fraud’ or, a rather curious expression, ‘equitable fraud.’”<sup>20</sup>

[30] In relation to actions for setting aside a transport for fraud, the proviso to the section is clear. The limitation period is triggered by the *discovery* of the fraud. Accordingly, Singh had to commence his claim within twelve months after such discovery. We understand this to mean that there must be *actual* knowledge of the fraudulent acts committed by the Respondents and not mere knowledge of the passing or existence of a transport. This accords with the judgment of the majority of this Court in *Ramkishun*. Wit JCCJ, delivering the judgment of the majority, pointed out that in Roman-Dutch law the relevant notice or knowledge was strictly limited to actual knowledge.<sup>21</sup> He further observed that unlike English equity, Roman-Dutch law has never accepted the doctrine of constructive notice, as that would require the recognition of equitable rights and interests in immovable property which was a concept repugnant to Roman-Dutch law and the law as it stood in Guyana as this Court had confirmed in *Ramdass*.<sup>22</sup> In *Kwang*, this Court was of the view that the facts of the case triggered the operation of the proviso to section 22(1) in that both appellants had actual knowledge of the existence of the prior agreement for sale to the respondent. In addition, the Court observed that under Roman-Dutch law a person could not lose the right to oppose the passing of transport unless he had actual notice of the passing of transport.<sup>23</sup>

[31] In our view, therefore, the term “discovery of the fraud” in section 22(1) required actual knowledge on the part of Singh of the fraudulent acts of the Respondents. The Respondents’ fraud as the trial judge found, and which has not been disputed, was the conspiracy among Alves, Mossai and Ramrattan to defraud Singh of the land by initiating fraudulent proceedings for prescriptive title through Alves’ 1994 Petition.<sup>24</sup> We must therefore consider from the

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<sup>20</sup> See [23] of *Ramkishun*.

<sup>21</sup> See [32] of *Ramkishun*.

<sup>22</sup> *ibid*.

<sup>23</sup> See [46]-[49] of *Kwang*.

<sup>24</sup> See paragraph 3, 4, and 5 of the Conclusion to Bovell-Drakes J’s Reasons for Decision. See also [38] below.

evidence before the trial judge when Singh had actual knowledge of that fraud and whether the May 2003 action was brought within twelve months of his acquiring that knowledge.

[32] At the trial, Singh testified that in the year 2000, he saw Alves and Mossai going in the direction of his land. He stopped them and Mossai told him that it was “his transported land.” Singh then went to the Mahaicony Police Station to make a report but when he returned, he found no one. Singh also testified that he was served with a letter dated 3 May 2000 from the law firm Luckhoo & Luckhoo that informed him that Mossai was owner of the land by transport and demanded that Singh give vacant possession. He further testified that he did not ignore the letter, but he took it to his attorney who replied to Mossai’s attorney. The letter in response however was not put into evidence. At the hearing before us, Mr Satram undertook to obtain a copy of that letter and to forward it to the Court once it was available. The letter has not been sent to the Court.

[33] Singh further testified that Ramrattan served him with “court proceedings” in the year 2000. This was the 2000 Writ of Summons issued on behalf of Mossai and referred to at [4]. It is not disputed that the Writ of Summons did not make reference to the application for prescriptive title filed by Alves in 1994 that contained or evidenced the fraudulent material. Singh’s knowledge of the 2000 Writ therefore could not amount to actual knowledge of the fraudulent acts of the Respondents nor support the Respondents’ contention that Singh had discovered the fraud more than twelve months prior to filing the 2003 proceedings.

[34] In our view, Mr Satram’s submission that Singh had known of the fraud committed by the Respondents on the Land Court from as early as the year 2000 cannot be sustained on the evidence before the trial judge. The earliest date in which it could be argued that Singh knew of the fraudulent acts of the Respondents was 15 July 2002 when the earlier Writ of Summons and the Petition were filed. Singh then had actual knowledge that Alves in his Petition filed in 1994 had fraudulently alleged that he (Alves) had been in possession of the land from 1976 to the filing of the Petition. We see nothing on the record to

suggest otherwise. Accordingly, we are satisfied that Singh filed these proceedings within the twelve-month limitation period, and so triggered the operation of the proviso to section 22(1) of the Deeds Registry Act.

***Whether Singh’s failure to seek a cancellation of the fraudulent transports prevented the trial judge from setting aside the transports?***

[35] On this issue, Cummings-Edwards CJ (Ag) relied in her minority judgment on the Rules of the High Court Order 23 rule 4.<sup>25</sup> She was of the view that one consequence of the finding of fraud by the trial judge was the setting aside of the fraudulent transports. Accordingly, she concluded that the absence of a specific request for cancellation by Singh was no bar to the grant of relief for cancellation by the trial judge. She observed that fraud was always a live issue in the case and therefore there was ample notice to the Respondents as to the ambit of the case.<sup>26</sup> Order 23 rule 4 provides that –

“Nothing in these rules shall be construed to prevent the Court from giving effect to any point of law appearing on the record or at the hearing of any action or matter although not raised by either party in his pleadings or otherwise.”

[36] In *Campbell v Narine*<sup>27</sup> this Court accepted that although a party may fail specifically to plead a particular kind of relief, the court may nevertheless grant such relief under this rule. In that case, the Court considered whether the pleadings were deficient for failing to allege particulars of “undue influence” or “unconscionable bargain” in respect of an agreement between the parties. The Court agreed that Order 23 rule 4 empowered the trial judge to set aside the contract on the basis of undue influence once the issue was clearly made out from the evidence before the trial judge.

[37] The trial judge found that Alves had committed a fraud upon the court. At page 10 of the trial judge’s Reasons for Decision, he stated:

“... I do find [Alves], the principal person chargeable with the fraud in this case having become possessed and imbued with the bad intention of

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<sup>25</sup> Cap.3:02.

<sup>26</sup> See [25] and [26] of Cummings-Edwards CJ (Ag)’s judgment.

<sup>27</sup> [2016] CCJ 07 (AJ).



dispossessing [Singh] of the property engaged his corrupt mind and acted in a manner whereby he took undue advantage of [Singh] for the purpose of knowingly and distinctly defrauding him of his property by the corrupt use of a Court system and order.”

[38] The trial judge also found fraud on the part of Ramrattan and Mossai. He concluded:

“It is also clear to me from the evidence that Ramrattan Mossai, the agent of Bhagwantlall Mossai, was integrally involved in the perpetration of the fraud from its inception with the requisite *malus animus*... they both embarked on the pernicious plan of denuding [Singh] of his right of possession of the land through a legal charade, Petition no. 2710 of 1994 Demerara.

Bhagwantlall Mossai, though absent when the pernicious acts were executed, on a balance of probabilities in my view, was the principal actor, through his agent in that he provided the means by which all the necessary acts for a successful realization of the prize, possession of the property, was pursued.”<sup>28</sup>

[39] We agree with the judgment of Cummings-Edwards CJ (Ag) that the case of *Adams v London*<sup>29</sup> supported the position taken by the trial judge. In *Adams* Luckhoo CJ had made the point that a judgment of the Commissioner of Title could be set aside once obtained by “collusion”.<sup>30</sup>

[40] Upon finding fraud, the better approach by the trial judge may have been to have requested further submissions from Counsel on the nature of the relief that should be awarded. But, in our view, the judge’s failure to do so is not fatal to Singh’s appeal. In our view the judge was empowered by Order 23 rule 4 to set aside the fraudulent titles although there was no specific claim for cancellation in Singh’s pleadings.

## **JUDGMENT OF THE HONOURABLE MR JUSTICE BARROW**

[41] I fully concur in the judgment of Justice Rajnauth-Lee and add these observations for emphasis.

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<sup>28</sup> See paragraphs 4 and 5 of page 10 the Bovell-Drakes J’s Reasons for Decision.

<sup>29</sup> [1964] LRBG 188.

<sup>30</sup> *ibid*, p. 192.

## **No Extraordinary Order**

- [42] Counsel for the Defendants, now Respondents, Mr. C. Satram, challenged in oral submissions whether it was appropriate and in order for this Court to allow the Appellant's appeal to proceed, given the invalidity of the order granted by the Court of Appeal extending time for appealing to this Court. The invalidity of that court's order is settled in the judgment of Justice Rajnauth-Lee, at [18], above and it must now be expected that no Court of Appeal will hereafter purport to grant an extension of time for appealing to this Court.
- [43] The focus of counsel was that this Court decided in *Attorney General of Guyana v Dipcon Engineering*<sup>31</sup> that it was not permissible for a purported appellant, who had let time for appealing expire, to make an oral application to this Court, during the hearing, for the grant of special leave. The purported appellant had failed to apply for special leave to appeal and had also failed to apply for an extension of time within which to apply for special leave.
- [44] The great difference with *Dipcon* was that the purported appellant had let time for appealing to the Court of Appeal expire and was refused an extension of time, by *that court*, to appeal to that court. The Court of Appeal, after its refusal, then purported to grant leave to the appellant to appeal *to the CCJ* against the refusal to extend time. In *Dipcon*, this Court confirmed<sup>32</sup> its earlier decision, in *Mohan v Persaud*<sup>33</sup> that there existed no appeal as of right to this Court pursuant to section 6 of the Caribbean Court of Justice Act, and that the recourse of the appellant was to have applied to this Court for special leave to appeal, pursuant to section 8 of the Act.
- [45] In *Dipcon*, the appellant was refused an extension of time for appealing to the Court of Appeal. In the present appeal, the Appellant was given an extension of time for appealing to this Court. Hence, in the former, there was no appeal on foot; while, in the latter, there is an appeal purportedly on foot. In *Dipcon*, the issue before this Court was whether the appellant should be allowed to proceed

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<sup>31</sup> [2017] CCJ 17 (AJ).

<sup>32</sup> *ibid*, [5].

<sup>33</sup> [2012] CCJ 8 (AJ).

with a procedural appeal against a refusal to extend time. In the present appeal, the issue is whether the appellant should be allowed to proceed with a substantive appeal in a case where there is an un-appealed finding of fraud against both defendants/respondents.

[46] Mr. Satram is correct that in neither case was there an application for special leave to appeal or for an extension of time to make that application. Indeed, he could have gone further and observed that in *Dipcon* there was, at least, an oral application to this Court for special leave while there has been none in the present case. For us to allow the present appeal to proceed implicitly amounts to the grant of special leave.

[47] There is no need to shrink from acknowledging that this is effectively what this Court has done. As stated in the lead judgment, the extension of time for appealing that was granted to the present Appellant was given without the power of the Court of Appeal to do so. But, in both *Dipcon* and *Mohan v Persaud* this Court confirmed its power to prevent a miscarriage of justice. In *Dipcon* we stated:

“[11] However, instead of simply dismissing this appeal on that clear basis, we refer to our decision in *Mohan v Persaud* which established that the CCJ may, in a proper case, grant an extension of time to comply with the rules in order to avert a clear miscarriage of justice. It is a serious question whether, as a matter of justice, this Court may or should consider granting an extension of time when there is not even an out-of-time application for special leave, for which we are asked to extend time.”

[48] In *Dipcon*, the Court stated at [14] that on an application to extend time to apply for special leave to appeal an applicant must show more than a realistic prospect of success; he must show there would be a miscarriage of justice if the appeal were not heard. The appellant was unable to satisfy that requirement in *Dipcon*, being able to show, at best, that he had an arguable case. In the present case, as mentioned, there is an undisturbed finding that the Respondents acquired transport to the Appellant’s land by fraud on the Land Court. It would be an aberration for this Court, in the face of such a clear and unchallenged finding,

not to conclude there would be a miscarriage of justice if the Court were to decline to hear the appeal, as Mr. Satram submitted we should do. In the circumstances, it is natural and just and not an extraordinary order to grant, pursuant to section 8 of the CCJ Act, special leave to appeal.

### **Disposition**

- [49] Having regard to our reasoning above, we make the following orders:
- (a) The appeal is allowed.
  - (b) The order of the Court of Appeal dated 21 December 2016 is hereby set aside.
  - (c) The First Respondent's transport No. 1317 of 1999 and the Second Respondent's transport No. 316 of 1999 are hereby declared void.
  - (d) The order of Mr Justice Bovell-Drakes dated 9 January 2007 is hereby reinstated.
  - (e) The Respondents shall pay to the Appellant the costs ordered by the courts below and basic costs in this appeal.

*/s/ A. Saunders*

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**The Hon Mr Justice A. Saunders, President**

*/s/ J. Wit*

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**The Hon Mr Justice J Wit**

*/s/ D. Hayton*

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**The Hon Mr Justice D Hayton**

*/s/ M. Rajnauth-Lee*

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**The Mme Justice M Rajnauth-Lee**

*/s/ D. Barrow*

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**The Hon Mr Justice D. Barrow**