Minister of Lands and Kalanivalu v Tekiteki

Privy Council
Appeal Case 6/1973

12 February, 1974

Land - verbal grant of allotment prior to 23 August, 1972 valid

Land - registration in November, 1927 of verbal grant prior to 23 August, 1927 not invalid

Land - allotment in excess of area permitted by s7 Land Act 1927, valid if made prior to commencement of Act

In 1971 the Minister of Lands declared void a grant of town allotment which had been registered on 28 November 1927 on the ground that the area of the grant i.e. 1 acre 2nd 29.2p was in excess of the area permitted for a town allotment by s7 Land Act which came into force on 23 August, 1927.

The grantee appealed to the Land Court and this appeal was upheld on the ground that the grant was made prior to 1927 when verbal grants were valid and when town allotments were not restricted to the area limited by s7 Land Act. The Minister of Lands and the Noble upon whose land the grant had been made appealed to the Privy Council.

HELD:
Affirming the decision of the Land Court

1. The date of the grant for the purposes of s49 Land Act is the date when the grant was actually made;

2. Prior to the coming into force of the Land Act on 23 August 1927 a valid grant of a town allotment could be made verbally.

Cases referred to:
Minister of Lands v Kamoto II Tongan L.R. 132

Statutes referred to:
Land Act s7, s49

Privy Council

Judgment

The town allotment concerned in this appeal covers an area of 1ac.2rd. 29.2p., substantially in excess of the maximum area permitted under sec.7 of the Land Act which came into force on 23rd August 1927. The allotment was registered on the 28th November 1927, and the Minister of Lands on 24th June 1971 declared the grant to be null and void under the provisions of sec.49 of the Land Act. The evidence - including that of the Noble Kalanivalu on whose estate the allotment is situated - which was accepted by the learned trial Judge, was to the effect that a verbal grant of the allotment had been made to the father of the appellant many years prior to 1927. Upon this verbal grant possession was given of the allotment; a Tongan house and copra oven were built on the land and many trees planted on it. It was contended in the Land Court by the appellant that the date of the grant of an allotment can only be the date of registration. In the Court below it was held, following two previous decisions of that Court, that at the relevant time a grant of an allotment might be made verbally, and the date of that verbal grant would be the proper date to take into account when considering the effect of sec.49.

The question for determination on this appeal is accordingly this: on what date was the grant made of the allotment in question? It is clear that if, as counsel of the appellant contends, the date of the grant is that of its registration, namely 28th November 1927, the grant is null and void under sec.49. If on the other hand the appropriate date is that when the verbal grant was made and the grantee went into possession, this was prior to the 23rd August 1927 and sec. 49 does not apply.

Prior to the passing of the 1927 Act, it was not obligatory to register the grant of an allotment, though in many cases such grants were registered. It has been held, in two decisions cited by the Judge in his judgment in this case, that prior to 23rd August 1927 a verbal grant of an allotment was valid and legally sufficient to pass title to the grantee. In Minister of Lands -v- Manase Kamoto 2TLR 132 at p.135, it was held that registration was not the grant of an allotment, which in that case had been verbally granted many years before.

In the present case it is not disputed that a verbal grant was made, that the grantee entered into possession pursuant to the verbal arrangement, and that both grantor and grantee treated it as a valid disposition.

Respondent's submission, that the relevant date is that of the verbal grant, is in our opinion well founded. We are satisfied that the verbal grant was made in the present case long before 1927, and that the date of that grant, and not its registration, is the appropriate date to be taken into account in considering the application of sec.49.

That being so we hold that decision appealed from was correct and the appeal is dismissed. No order as to costs.