

'Ilavalu v Minister of Lands

Land Court

Hill J

Land Case 10/1977

Land - limitation of proceedings - does not remove title but only prevents its enforcement

Land - limitation of proceedings - prevents enforcement of title by adult but not necessarily by infant

10

'Ofa 'Ilavalu succeeded to a town allotment after the death of her husband but the deed of title which was signed in July 1966 restricted the area to 1r24p. She later challenged this and proceedings were issued in the Land Court against the Minister of Lands in April 1977.

HELD:

Dismissing the claim by the widow but adding her son as a plaintiff

20

- (1) The widow was prohibited by s148 Land Act from bringing any proceedings to challenge the validity of the deed of grant, but that did not prevent her occupying the land and raising her title as a defence to any attempt to dispossess her
- (2) The son of the widow, who was an infant, was not necessarily barred by s148 Land Act

Statutes considered

Land Act s148

22

Hill J

Judgment

In this case the plaintiff, a lady called 'Ofa 'Ilavalu who is a widow, claimed that she has been deprived of a part of her widow's estate which she should have taken from her husband, now deceased, who was called Tevita 'Ilavalu. No doubt the first point to establish is the family tree. There was a man called Tevita Latu and he had two sons, one called Leha'uli and one called Paula. Leha'uli had a son called Pauliasi.

He married a lady called 'Ilaise 'Ilavalu and they had 3 children of whom the important one is Tevita 'Ilavalu who was the husband of the Plaintiff in this case. The plaintiff had 2 children of the marriage, Pauliasi, Tu'ipulotu. Now the family have owned ever since the days of Tevita Latu, a town allotment. Part of this has been registered in the plaintiff's name as a widow's estate but she claims that she had been deprived of a portion and that this was done when she was given a deed of title to 1r 24p and this was done on the 16 July, 1966. As this is outside the 10 year limitation period imposed by Section 148 of the Land Act, I have ordered that the question of limitation should be tried first as preliminary point. I should say that I have also ordered that the plaintiff's son, Pauliasi the younger, should be joined as a plaintiff to this action. The reason for this is that I think that even if his mother, 'Ofa the Plaintiff, is caught by the limitation period, he may well not be because he is an infant. Now the basic point is when did 'Ofa's cause of action arise or to use the words of the Act, when did her right to bring the action first accrue. Now it is said on her behalf and I accept that the lease which was granted to one F. 'Ilavalu and the land which was granted as a town allotment to Manukafoa Halaevalu was only let and granted in 1968 which would make 'Ofa within the 10 year period. However, the fact which in my mind is decisive against her is that in July 1966, she signed the Deed of Grant which limited her holding to 1r 24p. It seems to me that her right to sue, at least the Minister of Lands, must have accrued on that date. The Writ in this action was issued on the 15th April 1977, so that she is, in my view, clearly out of time and prohibited by Section 148 from bringing any action. This does not mean of course that she has not got a good title to the land if she can prove it. All it means is that she cannot enforce her right by action in the courts. Supposing e.g. she got possession of this land, she could hold it subject to being able to prove the larger extensive allotment of course against the world because she would not be bringing an action then, she would be defending one. However, in this action she is making a claim and that is what she is not allowed to do. I of course feel a certain amount of sympathy for her because she did not, she says, understand very clearly what was going on but I am afraid that does not help her to overcome the limitation imposed by the statute. I therefore hold that the plaintiff, 'Ofa, fails on the preliminary point, and therefore the case will go on, when it does go on, without her as a plaintiff but with her son, Pauliasi (Junior), as the plaintiff.