

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT VINCENT AND THE GRENADINES

SVGHCVP2023/0006

[Formerly SVGHCVP2006/0023]

BETWEEN:

PRINCESS BIBBY

(Administratrix of the estate of Lloyd Bibby, deceased Pursuant to Order dated
21/11/13 in Claim No.260 of 2013)

Appellant

and

[1] ANTHONY CONSTANTINE
[2] KELLY-ANN CONSTANTINE
[3] JIMMY CONSTANTINE
[4] MELVINA CONSTANTINE

Respondents

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mr. Trevor M. Ward
The Hon. Mr. Gerard St. C Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Ronnia Durham-Balcombe for the Appellant
Mr. Chrislon Fraser with him Mr. Roderick Jones for the Respondents

2025: February 13
June 20

*Civil Appeal – Allegations of fraud – Legal and beneficial owners of land – Deed of Gift -
Appellate review of findings of fact of trial judge - Whether the trial judge misdirected herself
in respect of the allegations of fraud – Whether the learned judge erred in principle in not
allowing the allegation to be put to the 1st respondent that he had instructed the legal
practitioner to prepare the disputed deeds - Expert Evidence – Rules 32.2 and 32.4(2) of the*

Civil Procedure Rules (Revised Edition) 2023 – Whether the learned judge erred in determining that the expert witness was not competent or qualified to make a diagnosis of the mental condition of the deceased – Whether the learned judge erred in principle in dismissing the medical evidence adduced by the expert – Whether the learned judge erred in principle by taking into account or giving too much weight to irrelevant considerations – Whether the learned judge erred in concluding that the claim was statute barred – Doctrine of proprietary estoppel

By order of the court dated 21st November 2013, the appellant was appointed the administratrix of the estate of Lloyd Bibby, her late husband. On 7th April 2014, the appellant as administratrix of the estate of Lloyd Bibby deceased, brought a claim in the High Court against the respondents (the defendants in the court below) seeking the following reliefs: (a) revocation of Deed of Gift dated 15th June 1995 registered as No. 4051/1995 made between Lloyd Bibby as donor and his wife Princess Bibby (the appellant) as donee by which Lloyd Bibby conveyed 5,000 square feet of his land to this wife, the appellant; (b) a declaration that the 5,000 square feet of land contained in the schedule to Deed No. 4051/1995 belongs to Lloyd Bibby deceased; (c) cancellation of Deed of Gift dated 15th June 1995 registered as No. 4052/1995 purportedly made from the appellant to the 1st named respondent, Anthony Constantine, by which the appellant (in her personal capacity) conveyed the identical 5,000 square feet of land to the 1st respondent (“the disputed land”). These two deeds (No. 4051/1995 and No. 4052/1995) were prepared by the same Attorney-at-law, Mr. Theodore Browne, and the execution of both deeds by the respective parties was witnessed by Ms. Marlene Edwards.

The appellant pleaded that she and the deceased did not know what they were signing, claiming that she was led to believe that the document constituted permission for the 1st respondent to relocate abroad. The appellant’s pleaded case was that the conveyance of the disputed land belonging to Lloyd Bibby by Deed No. 4051/1995 to the appellant, was procured by fraud and, accordingly, the appellant sought a declaration that the said Deed was void. The appellant also pleaded that her late husband had refused to give her son, the 1st respondent, permission to build a house on part of his land. She further alleged that the 1st respondent nevertheless proceeded to construct a wooden house on the disputed land, which he later converted to a wall house. It was also the appellant’s pleaded case that the deceased was senile when he signed Deed No. 4051/1995, and thus the said deed was not his own act.

It was also pleaded by the appellant that the 1st respondent subsequently disposed of the disputed land by Deed of Gift dated 24th November 2010 registered as No. 3996/2010 to his two children, Kelly-Ann Constantine and Jimmy Constantine (the 2nd and 3rd respondents) and vesting in himself, and his wife (the 4th named respondent) a life interest in the said disputed land. It was only after a dispute arose in 2005 (after the death of Lloyd Bibby) between the appellant’s daughter and the 1st respondent over the building of a second house on the disputed land, and the 1st respondent informing her that he had a deed for the said land, that the appellant’s daughter was prompted to conduct searches at the Registry in the capital Kingstown. It was then discovered that Deed of Gift No. 4051/1995 had been purportedly executed by Lloyd Bibby (deceased) conveying the said land to the appellant and Deed No. 4052/1995 executed by the appellant conveying the identical piece of land to the 1st respondent.

In their defence and counterclaim, the respondents denied many of the factual allegations in the Statement of Claim. Specifically, the allegations and particulars of fraud were denied. In the defence, the respondents deny that Lloyd Bibby was ever senile. It was asserted that up to the time of his death he was still aware of his surroundings and maintained his mental faculties. It was pleaded that Deed of Gift No. 4051/1995 was not procured by fraud as alleged in the Statement of Claim but was executed as prescribed by the Laws of Saint Vincent and the Grenadines. It was asserted further that Lloyd Bibby had given instructions to his solicitor, Mr. Theodore Browne, for the preparation of the two Deeds of Gift (Nos. 4051/1995 and 4052/1995) in respect of the disputed land; and that Lloyd Bibby and the appellant were fully aware and had full knowledge and understanding of what he was signing. The respondents also pleaded and relied on the provisions of the **Limitation Act** asserting that the claim was statute barred it having not been filed within the stipulated 12 year period and cannot now be entertained by the court.

By way of the counterclaim, the respondents (as defendants) averred that since about the 1960's the 1st respondent has been residing on a portion of the land described in the Deed No. 1433/1986 (referred to as "the family land") along with his mother, the appellant, and his stepfather, Lloyd Bibby (deceased), and it is on the said land that he has continued to reside up to the date of the trial.

It was also pleaded in the counterclaim that by virtue of Deed of Gift No. 4052/1995, the 1st respondent became vested in fee simple absolute of the said hereditaments therein which is in extent 5,000 square feet; which land he had later, by Deed of Gift No. 3996/2010, conveyed to his two children as beneficial owners, subject to the life interest of himself and his wife. Additionally, it was pleaded that it was always the intention of Lloyd Bibby (deceased) that the said disputed land be vested in the 1st respondent and that the appellant is estopped or precluded from bringing the claim against the respondents.

Accordingly, the respondents counterclaimed for: (i) a declaration that the 2nd and 3rd respondents are the beneficial owners of the land described in Deed No. 3996/2010 subject to the life interest therein of the 1st and 4th respondents; (ii) an injunction restraining the appellant from trespassing or otherwise interfering with the respondents' possession of the said land; (iii) an order that any structure unlawfully erected on the said land be removed and/or destroyed at the expense of the appellant; and (iv) costs and further or other relief.

At the trial, the 1st respondent argued that he had relied on the promise by the deceased that the land belonged to him and had acted to his detriment, accordingly, it would be unfair and unconscionable for the deceased's estate to seek to resile from his promise; and that the appellant was estopped from bringing the claim.

By judgment dated 6th July 2016, the learned trial judge dismissed the appellant's claim in the court below with costs to the respondents. In the judgment, the learned judge identified the following issues arising for her consideration: (1) whether the respondents had secured the execution of Deed of Gift No. 4051/1995 from Lloyd Bibby through fraud and if so, to what remedy is the appellant entitled as administratrix of Lloyd Bibby's estate; (2) whether the appellant's claim as administratrix of Lloyd Bibby's estate is statute-barred; (3) whether the appellant as administratrix of Lloyd Bibby's estate is estopped from bringing the claim; (4) whether any or all of the respondents own an interest in the subject property; and

(5) if so, whether the appellant as administratrix of the estate of the deceased has encroached on the property of the respondents.

The learned trial judge found that the respondents are the beneficial and legal owners of the disputed property conveyed to them by Deed of Gift No. 3996/2010. The learned trial judge made no order to setting aside the Deeds of Gift No. 4051 and No. 4052 of 1995, finding that the evidence of the expert witness, Dr. Miriam Francis-Sheridan, could not be relied upon in proving fraud on the part of the respondents on the basis that she lacked the requisite expertise to opine on the mental state of Lloyd Bibby when he executed Deed of Gift No. 4051/1995. The learned trial judge found that the evidence of the respondents' witness, Jimmy Constantine, with respect of the mental state of the deceased at the relevant time more credible, including that he had observed the deceased doing the 'Monkey Dance', and relied on this evidence in coming to her decision that Lloyd Bibby had the mental capacity to enter into Deed No. 4051/1995 and that he understood what he was doing in conveying the disputed land to his wife, the appellant, and by her onward to the 1st respondent.

The learned trial judge also found that the appellant's claim in the court below was statute-barred under section 17 of the Limitation Act, having been filed outside of the 12-year limitation period prescribed in that section for bringing a claim for recovery of possession of land. The learned trial judge determined that the 1st respondent was entitled to avail himself of the protection of the equitable doctrine of proprietary estoppel, having found that the 1st respondent had relied on the deceased Mr. Lloyd Bibby's assurances and promises that he could build his house on a part of the land, to his detriment and, accordingly, it would be unconscionable, inequitable and unjust to require him to vacate the disputed lands.

By notice of appeal filed on 11th December 2023, the appellant appealed against the decision of the learned trial judge relying on 10 grounds of appeal. The determination of the appeal hinged on certain key grounds. These are: grounds 3, 4 and 5 which challenge the learned judge's rejection of the expert medical evidence and, if incorrect, the consequences of the rejection or non-reliance on that evidence on the judge's conclusions as to the mental capacity of Lloyd Bibby at the time when he executed Deed of Gift No 4051/1995, and whether that deed is null and void; ground 8 which deals with whether the claim seeking to recover possession of the disputed land from the respondents is statute barred and; grounds 9 and 10 which deal with the judge's findings on the doctrine of proprietary estoppel. The notice of appeal also contended that the learned trial judge made certain erroneous findings at paragraphs 32, 34, 48 and 58 of the judgment in coming to her decision.

Held: allowing the appeal in part, declaring that Deed of Gift No. 4051/1995, Deed of Gift No. 4052/1995 and Deed of Gift No. 3996/2010 are null and void and of no legal effect, and making the orders at paragraph 68 of the judgment that:

1. In giving judgment after a trial, a judge is required to deal with the respective cases of the parties as pleaded and the evidence as presented at trial. The trial judge's conclusions as to the veracity and failure of the appellant's pleaded case of fraud against or involving the lawyer Mr. Theodore Browne, and Ms. Marlene Edwards who witnessed the execution of Deeds of Gift Nos. 4051/1995 and 4052/1995 and the allegation that they were somehow complicit in coercing the deceased into signing Deed of Gift No. 4051/1995 conveying his land to the appellant, is based on her assessment of the deficiency in the pleaded case, and the absence or tenuous

nature of the evidence adduced by the appellant in support of these very serious allegations. These findings were available to the trial judge on the pleaded case for the appellant and on the evidence adduced at the trial, and it would have been surprising if the court had found otherwise. The pleadings of fraud were at best vague and in some respects contradictory, and the evidence in support tenuous at best and far from compelling. This state of affairs was further exacerbated by the fact that serious allegations of fraud and collusion had been made against Mr. Browne and Ms. Edwards, neither of whom had been made a party to the proceedings or summoned by the appellant to give evidence as to their respective roles and actions leading up to and on the day of signing by the deceased Lloyd Bibby of Deed No 4051/1995 conveying his land to his wife, and Deed No. 4051/1995 by which the appellant purported to transfer or to convey the said land on to the 1st respondent.

2. On the pleaded cases, the subject matter requiring expert evidence was the mental capacity of Lloyd Bibby before and at the time of his execution of Deed No. 4051/1995, more specifically whether he suffered from the neurological syndrome of dementia, and whether an individual diagnosed with such a condition is mentally capable of understanding the nature and effect of signing a deed of gift of his real property. There can be no question that this is an area in which, having regard to the claim in the instant matter, expert testimony is not only permissible, but reasonably required to resolve the proceedings justly between the parties. A person lacking the appropriate medical and diagnostic experience in this area would not be able to form a sound judgment as to whether a person suffered from dementia. Furthermore, the knowledge on neurological disorders/syndromes can be categorised as a reliable body of knowledge or experience upon which a qualified expert witness, such as a medical doctor, can provide reliable evidence and which would render his/her opinion of assistance to the court.

John Oliver Dyrud v Palmavon Jasmin Webster et al AXAHCVP2021/0010 (delivered 27th April 2022, unreported) followed; **R v Bonython** (1984) 38 SASR 45 applied.

3. Dr. Francis-Sheridan had the requisite expertise and qualifications as a medical practitioner and as someone who had the benefit of examining Lloyd Bibby in her capacity as a registered medical doctor in St. Vincent and the Grenadines over a period of some years before and up to June 1995 when he executed Deed No. 4051/1995, to provide expert evidence as to his mental capacity and ability to understand and appreciate what he was being asked or required to sign. Also, having previously diagnosed Lloyd Bibby as suffering from senility or dementia, it was manifest that Dr. Francis-Sheridan was well-suited to render an opinion as to his mental capacity and ability to understand and to enter into significant legal transactions and documents. This much was fully recognised by the learned judge when making the order for Dr. Francis-Sheridan to give expert evidence at the trial as to the mental condition and capacity of Lloyd Bibby at the time when he signed Deed of Gift No. 4051/1995.

4. The trial judge was erred as a matter of principle in dismissing and in not relying on the expert evidence of Dr. Francis-Sheridan. The trial judge got it wrong when she felt that she was unable to conclude from Dr. Francis-Sheridan's medical report about Lloyd Bibby and from the related information before the court, that Dr. Francis-Sheridan had the relevant expertise to express an opinion on the mental capacity of the deceased at the time when he executed Deed of Gift No. 4051/1995. The reasons given by the trial judge for not relying on the doctor's expert evidence were without proper justification. Hence, the trial judge's finding that reliance on the expert report of Dr. Francis-Sheridan at the trial to decide issues related to the mental capacity of the deceased Lloyd Bibby would be prejudicial to the respondents, I was plainly wrong. It is also clear that having so erred, the learned judge fell into further error by preferring the evidence of the respondents' witnesses as to the mental state of the deceased at the relevant time over the evidence of Dr. Francis-Sheridan. Furthermore, the trial judge at paragraphs 51 and 58 erred in relying heavily on the testimony of Jimmy Constantine, the 3rd respondent, in determining the mental capacity of the deceased and, in particular, her reliance on his evidence that he had seen Lloyd Bibby do the 'Monkey Dance'. There was therefore no proper justification or foundation to the trial judge's findings at paragraphs 51 and 58 of the judgment, and her rejection of the evidence of Dr. Francis-Sheridan. Accordingly, her conclusions as to the mental state and capacity of Lloyd Bibby, deceased, ought to be set aside as being speculative and erroneous.

Rule 32.2 and 32.4 (2) of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** applied; **Leslie Phillip v Kyron Williams** GDAHCVAP2023/0010 (delivered 26th March 2025, unreported); **Medical Registration Act** Cap 227 of the Revised Laws of Saint Vincent and the Grenadines; **Mental Health Act** Cap 294 of the Revised Laws of Saint Vincent and the Grenadines.

5. Had the trial judge accorded appropriate weight to the report and opinion of Dr. Francis-Sheridan as to the mental state of the deceased Lloyd Bibby leading up to and at the time of his execution of Deed of Gift No. 4051/1995 and, in particular, the doctor's diagnosis and conclusion that he suffered from dementia, she would or ought to have found, on a balance of probabilities, that he lacked the mental capacity at the relevant time to have understood what he was doing or was being called upon to do with his property by entering into and executing Deed of Gift No. 4051/1995 conveying his property to his wife (the representative appellant), for onward conveyance to the true benefactor of that transaction, the 1st respondent, Anthony Constantine. Accordingly, Deed No. 4051/1995 is void and of no effect and must be set aside. The effect of this finding is that there was no lawful conveyance or gift of the disputed land from Lloyd Bibby to his wife, the appellant, by virtue of Deed of Gift No. 4051/1995. It follows that the appellant, Princess Bibby, would not have lawfully or effectively gained title to the said land such that she could lawfully convey title to the 1st respondent Anthony Constantine by Deed No. 4052/1995. It also follows that Deed No. 4052/1995 is of no legal effect since it could not lawfully convey title in fee simple of the disputed property to the 1st respondent, as the appellant Princess bibby had not acquired title thereto in fee simple or as beneficially

owner at the time she executed that Deed of Gift. Additionally, the conveyance of the disputed land by the 1st respondent to his two children (the 2nd and 3rd respondents) in fee simple by Deed No. 3996/2010 is likewise null and void and of no effect.

6. For there to have been a presumption of undue influence in the circumstances of this case, the appellant must have established that a relationship of influence existed between the deceased and the appellant and the 1st respondent. Having found that the learned trial judge was wrong not to have accepted the evidence of Dr. Francis-Sheridan as to the mental capacity of Lloyd Bibby, and that the judge ought to have found that the deceased suffered from dementia at the material time and that he did not possess the mental capacity to enter into and to execute Deed of Gift No. 4051/1995, it is difficult to see how these facts fit a case of presumed influence. Presumed influence or a presumption of undue influence, applies to a situation where the person alleging undue influence is relying on an evidential presumption based upon some existing relationship between the party executing the document and the party said to be exercising undue influence. No relationship of the type giving rise to such an evidential presumption existed between the deceased Lloyd Bibby and the 1st respondent

Della Vallery Nolan nee Jude v Diane Jude and another [2024] UKPC 22 followed.

7. The law concerning limitation of actions in a claim for recovery of possession of land in Saint Vincent and the Grenadines is set out in section 17 of the **Limitation Act**. The appellant, in claiming fraud on the part of the respondents, sought to invoke section 32 of the **Limitation Act** in support of her case that time began to run from 2005 being the year in which she had first discovered the conveyance by Deed of Gift of the disputed property to the 1st respondent. However, the appellant cannot rely on section 32 of the **Limitation Act** as she did not meet the threshold for claiming fraud or concealed fraud in this case. Therefore, the appellant's claim, to the extent that it sought recovery of possession of the land occupied and lived on by the 1st respondent and his family, is caught by section 17 of the **Limitation Act**. Accordingly, the time at which the cause of action accrued was not postponed by the operation of section 32 of the Act.

The Limitation Act Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines applied; **East Caribbean Flour Mills Limited v Ormiston Ken Boyea** SVGHCVAP2006/0012 (delivered 16th July 2007, unreported) followed.

8. In the Claim Form and Statement of Claim in this matter, the appellant did not seek an order for recovery of possession of the disputed land. Nonetheless, the evidence is clear and uncontradicted, that from 1991 the 1st respondent had built a house on the disputed land which he and his family occupied and continued to occupy up to the date of the trial. In any event, had paragraph 2 of Part 1 of the **Limitation Act** been applicable and the cause of action accrued upon the death of Lloyd Bibby on

14th May 1997, it would have been statute barred under section 17 of the **Limitation Act**. Likewise, if paragraph 2 of Part 1 was not applicable, the cause of action would have accrued from the date when the 1st respondent entered into possession of the disputed land on or about 1991 and is therefore statute barred. Further, if the cause of action accrued when Deeds of Gift No. 4051/1995 and No. 4052/1995 were executed, it was also statute barred. Therefore, whichever of these scenarios are applicable, the appellant's action to dispossess the 1st respondent from that portion of the the disputed property upon which he had built his home and lived with his family, to the extent that such a claim was made, is statute-barred.

The Limitation Act Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines applied.

9. There is no basis upon which this Court ought to disturb the trial judge's findings at paragraph 77 of the judgment that the deceased, Lloyd Bibby, made a promise to the 1st respondent that he could build his house on a portion of the disputed land below his (Lloyd Bibby's) existing house and that he could live there with his family and would become the owner of that land. There is also no basis upon which to disturb the judge's finding that the 1st respondent acted to his detriment on the basis of that promise by expending considerable resources in constructing the family home on the land, first of wood and later of concrete, and that he has lived there in that house for over 3 decades. A repudiation of the deceased's promise to the 1st respondent would in the circumstances be wholly unconscionable. The 1st respondent's actions amounted to detrimental reliance and therefore the appellant, as the administratrix, is estopped from reneging on that promise. The value of the promise must be equivalent to the 1st respondent's detrimental reliance on it. In these circumstances, the detrimental reliance is represented by the construction of the house as it is the physical manifestation of the 1st respondent's years of hard work and sacrifice. Accordingly, on this basis, the 1st respondent is declared the owner of that portion of the disputed property on which his house is affixed, limited to the physical space and dimensions occupied by the house, and a small area around the house for ingress and egress by foot.

Theresa Henry & Marie Ann Mitchell v Calixtus Henry [2010] UKPC 3 applied;
Guest and another v Guest [2022] UKSC 27 applied.

10. The finding of the trial judge at paragraph 79 of the judgment that the 2nd, 3rd and 4th respondents are the beneficial and legal owners of the disputed property must be set aside. Any transfer of title or declaration of beneficial and legal ownership in favour of the 2nd, 3rd and 4th respondents would be disproportionate and wrong as a matter of principle, as it would exceed the value of the promise made by Mr. Lloyd Bibby to the 1st respondent. The respondents have not established that it was the intention of the deceased, Lloyd Bibby, for the 1st respondent's wife and his two children to also become the owners of the land upon which his house was built. To grant entitlement to the 2nd, 3rd and 4th respondents would go beyond the requirement of doing justice between the parties.

11. As to the area or dimensions of the portion of the disputed land occupied or in the possession of the 1st respondent as his family dwelling-house, it is necessary to determine the precise measurements of that entitlement for the purpose of making an order that the said land is owned legally and beneficially by the 1st respondent. In this regard, the exhibits tendered into evidence were of little assistance. Furthermore, given the conflicting submissions of the parties on this issue, an independent survey must be carried out by a licensed land surveyor to, first, conclusively determine what area of the disputed land the 1st respondent's house actually occupies and second, to survey and demarcate the boundaries between the property to which the 1st respondent is entitled, and the remaining property that is owned by the estate of Lloyd Bibby, deceased. It is so ordered.

JUDGMENT

- [1] **FARARA JA [AG.]:** This is an appeal against the judgment of a learned judge of the High Court in the state of Saint Vincent and the Grenadines dated 6th July 2016 dismissing the appellant's (the claimant in the court below) claim as administratrix of the estate of Mr. Lloyd Bibby deceased ("Lloyd Bibby" or "the deceased").

The claim

- [2] By order of the court dated 21st November 2013, the appellant was appointed as the administratrix of the estate of Lloyd Bibby, her late husband. By Claim Form and Statement of Claim filed on 7th April 2014, the appellant brought a claim in the High Court against the respondents (the defendants in the court below) as administratrix of the estate of Lloyd Bibby seeking the following reliefs: (a) revocation of Deed of Gift dated 15th June 1995 registered as No. 4051/1995 made by Lloyd Bibby as donor and his wife Princess Bibby (the appellant) as donee; (b) a declaration that the 5,000 square feet of land contained in the schedule to Deed No. 4051/1995 belongs to Lloyd Bibby deceased; (c) cancellation of Deed of Gift dated 15th June 1995 registered as No. 4052/1995 purportedly made from the claimant (the appellant) to the 1st named defendant (1st respondent) Anthony Constantine. By Deed No. 4052/1995, the appellant purported to convey the identical 5,000 square feet of land ("the disputed land") the subject of Deed No. 4051/1995, from the appellant to the 1st respondent. As pleaded it is this same 5,000 square feet of land on which the 1st respondent had constructed his house, first out of wood and later a wall structure. These two deeds

were prepared by attorney-at-law Mr. Theodore Browne and witnessed by Ms. Marlene Edwards.

- [3] The appellant pleaded that she and the deceased did not know what they were signing, claiming that she was led to believe that the document constituted permission for the 1st respondent to relocate abroad. The appellant's pleaded case was that the conveyance of the disputed land belonging to Lloyd Bibby by Deed No. 4051/1995 to the appellant was procured by fraud and, accordingly, the appellant asked the court below to have the said Deed declared void. Particulars of fraud were set out at paragraph 16 of the Statement of Claim. The appellant also pleaded that her late husband had refused to give her son, the 1st respondent, permission to build a house on part of his land. She further alleged that the 1st respondent nevertheless proceeded to construct a wooden house on the disputed land which he then later converted to a wall house. It was also the appellant's pleaded case that the deceased was senile when he signed Deed No. 4051/1995 and thus was not his own act.
- [4] It was also pleaded by the appellant that the 1st respondent subsequently disposed of the disputed land by Deed of Gift dated 24th November 2010 registered as No. 3996/2010 to his two children, Kelly-Ann Constantine and Jimmy Constantine (the 2nd and 3rd respondents) and vested himself and his wife (the 4th named respondent) with a life interest in the said disputed land. It was only after a dispute arose in 2005 after the death of Lloyd Bibby between the appellant's daughter and the 1st respondent over a second house built on the disputed land, and the 1st respondent informing her that he had a deed for the said land which led to searches being done by the appellant's daughter at the Registry in Kingstown, that it was discovered that Deed of Gift No. 4051/1995 had been purportedly executed by Lloyd Bibby (deceased) to the appellant and Deed No. 4052/1995 executed by the appellant to the 1st respondent.
- [5] At paragraph 16 (i) of the Statement of Claim, the appellant averred that *'the purported signature of Lloyd Bibby, deceased on Deed of Gift No. 4051/1995 was not the act of the said deceased as at the material time he was non compos mentis and had been*

forced to sign by an adult female brought to their home by the 1st respondent. At the trial, the appellant claimed that the 1st respondent asked her and the deceased to sign two documents which they had done for the stated purpose of facilitating him migrating to Tortola in the British Virgin Islands.

[6] The respondents filed a defence and counterclaim in the said action on 27th May 2014 by which they denied many of the factual allegations in the Statement of Claim. Specifically, the allegations and particulars of fraud were denied in the defence. In the defence, the respondents deny that Lloyd Bibby was ever senile and assert that up to the time of his death he was still aware of his surroundings and maintained his mental faculties.¹ It was pleaded that Deed of Gift No. 4051/1995 was not procured by fraud as alleged in the Statement of Claim and was executed as prescribed by the Laws of Saint Vincent and the Grenadines. It was asserted further that Lloyd Bibby had given instructions to his solicitor Mr. Theodore L.V. Browne for the preparation of Deeds of Gift in respect of the disputed land; and that Lloyd Bibby and the appellant were fully aware and had full knowledge and understanding of what he was signing. At paragraph 14(i) the respondents pleaded and relied on the provisions of the **Limitation Act**² and asserted that the claim would have been statute barred it having not been filed within the stipulated 12 year period and cannot now be entertained by the court.

[7] By way of the counterclaim the respondents (as defendants) averred that since about the 1960's the 1st respondent had been residing on a portion of the land described in the Deed registered as No. 1433/1986 (referred to as "the family land") along with his mother (the appellant) and his stepfather, Lloyd Bibby (deceased) which he has continued to reside thereon to date. It was pleaded at paragraphs 21, 22, 23 and 24 of the counterclaim that:

"21. In or about 1981, the 1st defendant (1st respondent) approached his stepfather, Lloyd Bibby (deceased) and requested a portion of the said family land on which Lloyd Bibby (deceased) had built his house so as to construct his own house to which Lloyd Bibby (deceased) insisted that the 1st defendant take a portion of the said family land below his house to construct his house thereon.

¹ Paragraph 8 of the defence.

² Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines.

22. The 1st defendant (1st respondent) acting on the promise of his stepfather, Lloyd Bibby (deceased) that he, the 1st defendant was being given the said disputed land, constructed a wooden/board house on the said disputed land and to which the said Lloyd Bibby (deceased) had always acknowledged that the said disputed land belonged to the 1st defendant.

23. In or about 1981 when the 1st defendant married the 4th defendant, Melvina Constantine, the 1st defendant moved out of the family house and moved into the wooden/board house that he had constructed on the said disputed land below the family house.

24. In the ensuing years, the 1st defendant has carried out extensive renovations to transform his once wooden/board house into a modernized concrete/wall house and which he has over the years made additions and/or improvements to his house.”

[8] It was also pleaded in the counterclaim that by virtue of Deed of Gift No. 4052/1995, the 1st respondent became vested in fee simple absolute of the said hereditaments therein and which is in extent 5,000 square feet³; which land he had later, by Deed of Gift No. 3996/2010, conveyed to his two children as beneficial owners, subject to the life interest of himself and his wife. It was pleaded that it was always the intention of Lloyd Bibby (deceased) that the said disputed land be vested in the 1st respondent and that the appellant (claimant) is estopped or precluded from bringing the claim against the respondents.

[9] Accordingly, the respondents sought: (i) a declaration that the 2nd and 3rd respondents are the beneficial owners of the land described in Deed No. 3996/2010 subject to the life interest therein of the 1st and 4th respondents; (ii) an injunction restraining the appellant from trespassing or otherwise interfering with the respondents’ possession of the said land; (iii) an order that any structure unlawfully erected on the said land be removed and/or destroyed at the expense of the appellant; and (iv) costs and further or other relief.

³ Paragraph 25 of the counterclaim.

- [10] At the trial, the 1st respondent argued that he had relied on the promise by the deceased that the land belonged to him and had acted to his detriment, accordingly, it would be unfair and unconscionable for his estate to seek to resile from the promise; and that the appellant was estopped from bringing the claim. The respondents further claimed that the appellant's claim in the court below was statute barred having not been brought within the 12-year period under the **Limitation Act**.

The decision in the court below

- [11] The issues which arose before the learned trial judge were: (1) whether the respondents had secured the execution of Deed of Gift No. 4051/1995 from Lloyd Bibby through fraud and if so, to what remedy is the appellant entitled as administratrix of Lloyd Bibby's estate; (2) whether the appellant's claim as administratrix of Lloyd Bibby's estate is statute-barred; (3) whether the appellant as administratrix of Lloyd Bibby's estate is estopped from bringing the claim; (4) whether any or all of the respondents own an interest in the subject property; and (5) if so, whether the appellant as administratrix of the estate of the deceased has encroached on the property of the respondents.
- [12] By judgment dated 6th July 2016, the learned trial judge dismissed the appellant's claim in the court below with costs to the respondents. The learned trial judge found that the respondents are the beneficial and legal owners of the property in question as conveyed to them by Deed of Gift No. 3996/2010. The learned trial judge made no order to set aside the Deeds of Gift No. 4051 and No. 4052 of 1995, finding that the evidence of the expert witness Dr. Miriam Francis-Sheridan could not be relied upon in proving fraud on the part of the respondents on the basis that she lacked the requisite expertise. The learned trial judge further found that the evidence of the respondents' witnesses in respect of the mental state of the deceased at the relevant time was more credible and thus sought to rely on it in coming to her decision.

The learned trial judge also found that the appellant's claim in the court below was statute-barred, having been filed outside of the 12-year limitation period as per section 17 of the **Limitation Act**. The learned trial judge also determined that the 1st

respondent, was entitled to the protection of the equitable doctrine of proprietary estoppel, having found that the 1st respondent relied on the deceased, Mr. Lloyd Bibby's, assurances to his detriment and it would thereby be unconscionable, inequitable and unjust to require him to vacate the disputed land.

The grounds of appeal

[13] By notice of appeal filed on 11th December 2023, the appellant appeals against the decision of the learned trial judge on 10 grounds set out at paragraph 3 of the notice of appeal. I shall deal with each of the ten grounds *seriatim*, some together. It is also asserted that the learned trial judge made certain erroneous findings at paragraphs 32, 34, 48 and 58 of the judgment in coming to her decision. The appellant challenges 7 findings of law, each of which will be addressed when considering the various pertinent grounds of appeal.

[14] However, in my view, grounds 3, 4 and 5 dealing with the learned judge's rejection of the expert medical evidence and, if incorrect, the consequences of the rejection or non-reliance on the judge's conclusions and findings as to the mental capacity of Lloyd Bibby at the time when he executed Deed of Gift No. 4051/1995 and whether that deed is null and void; ground 8 dealing with whether the claim seeking to recover possession of the disputed land from the respondents is statute barred; and grounds 9 and 10 dealing with the judge's findings on the doctrine of proprietary estoppel, are decisive of this appeal.

Power of the Court in reviewing findings of fact of a trial judge

[15] Before proceeding to consider the grounds of appeal, I will briefly address the power of an appellate court in reviewing the findings of fact of a trial judge, the law for which is well-settled. Counsel for the appellant, at paragraph 8 of her Skeleton Arguments filed on 15th December 2023, rightly referred to the judgment of this Court in **East Pine Management Limited v Tawney Assets Ltd et al**⁴ as authority for the following principle which is highlighted in the headnote of that judgment:

⁴ BVIHCVAP2012/0035 (delivered 24th March 2014, unreported).

“An appellate court will not impeach the findings of facts by a judge in the first instance that saw and heard witnesses give evidence, except in certain very limited circumstances. Where a trial judge misdirects himself and draws erroneous inferences from the facts, an appellate court is in as good a position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts. The learned trial judge had the advantage of seeing and hearing the witnesses give their testimony.”

Ground 1 – Whether the learned trial judge misdirected herself on the facts in finding that the appellant made serious allegations of fraud or misconduct against Attorney Theodore Browne and one Marlene Edwards.

Ground 2 – Whether there was a material irregularity and the learned trial judge erred in principle in not allowing the allegation to be put to the 1st respondent that he had instructed Mr. Theodore Browne, Attorney-at-law to prepare the disputed deeds, then concluded in the judgment that such an incident did not occur because it was not put to the said 1st respondent.

[16] Grounds 1 and 2 may conveniently be dealt with together. The appellant in her Skeleton Arguments contended that it was erroneous for the learned trial judge at paragraph 34 of the judgment to determine that it was the appellant who made serious allegations of fraud or misconduct against Ms. Marlene Edwards and that this conclusion greatly prejudiced the appellant for failing to call Ms. Edwards as a witness to answer.⁵ The appellant also alleges that the learned trial judge misdirected herself at paragraph 32 of the judgment in the court below by erroneously concluding that the appellant alleged fraud against Mr. Theodore Browne, Attorney-at-law and that he should have been called to answer.⁶ Counsel also contended that it was an erroneous finding of fact by the learned trial judge at paragraph 32 that it was not put to the 1st respondent that he or his agent instructed Mr. Browne to prepare the Deeds when in fact such question was asked but was not allowed by the learned trial judge.⁷

[17] The respondents in their Skeleton Arguments in reply filed on 10th January 2025 contended that there was no misdirection by the learned trial judge of allegations of fraud made against Ms. Edwards nor Mr. Browne. It was averred that at paragraph 36

⁵ Skeleton Arguments on appeal, paragraph 9 (i) a. and b.

⁶ Skeleton Arguments on appeal, paragraph 9 (ii)a.

⁷ Skeleton Arguments on appeal, paragraph 9 (ii)b.

of the judgment in the court below, the learned trial judge indicated that the appellant did not make any allegations of fraud against Mr. Browne or Ms. Edwards, but that such allegations arise as a natural implication of the allegations made against the 1st respondent.⁸

- [18] During the oral hearing on 13th February 2025, counsel for the appellant disagreed with the respondents on the findings of fact in relation to the implication of Ms. Marlene Edwards and Mr. Theodore Browne. Counsel submitted that the appellant made no assertions in respect of the two named parties and that the appellant and the deceased gave no instructions to Mr. Browne to prepare any deed on their behalf. Counsel argued that it was the respondents who introduced the name 'Marlene Edwards' at the trial. On this ground, counsel contended that the respondents ought to have brought Mr. Browne and Ms. Edwards as witnesses to assert their version of the facts on the basis of the principle of 'he who asserts must prove' and that the evidential burden had shifted to the respondents. During the hearing, counsel for the respondents continued to advance the argument put forth in their Skeleton Argument that there was no allegation of fraud against Mr. Browne and Ms. Edwards and because of such an omission the appellant's case is substantially hindered.

Power of the Court in reviewing findings of fact of a trial judge

- [19] In the judgment in the court below, the learned trial judge noted that the appellant's pleaded case is that 'an unnamed female' (presumably Ms. Marlene Edwards) coerced the deceased into signing Deed of Gift No. 4051/1995. The judge also stated that the appellant alleged that the 1st respondent (Anthony Constantine) colluded with lawyer Theodore Browne to prepare transfers of the land from the deceased to his wife the appellant and from the appellant to himself; and that the 1st respondent colluded with the unknown female to coerce the deceased to sign Deed of Gift No. 4051/1995 transferring his property to the appellant against his will at a time when the deceased Lloyd Bibby was senile and unable to fully understand and know what he was signing.

⁸ Skeleton Arguments in Reply, page 3.

This account is a synopsis of the particulars of fraud pleaded at sub-paragraphs (a) to (i) at paragraph 16 of the Statement of Claim.

[20] At paragraph 32 of the judgment the trial judge recorded that the appellant had not pursued the first allegation at sub-paragraph (1) of paragraph 31, that is, that the 1st respondent had conspired (implicitly) with lawyer Mr. Browne to prepare the two Deeds transferring the deceased's land first from himself to the appellant and then second from the appellant to the 1st respondent. The learned judge lamented that neither the unknown female (presumptively Ms. Marlene Edwards the attesting witness to Deed of Gift No. 4051/1995) nor lawyer Mr. Theodore Browne was not called as a witness or joined as a defendant in the trial.⁹ The judge remarked that the 'fact that no allegations of fraud have been made against the preparer of the documents or the attesting witness is startling, having regard to the import and effect of the allegations of fraud actually made', and also that both Mr. Browne and Ms. Edwards 'are implicated in the alleged undue influence.' For these reasons, the judge was of the view that their absence as parties or witnesses in the case leaves gaps in the narrative.¹⁰ Accordingly, she characterised the allegations made against both Mr. Browne and Ms. Edwards as 'veiled aspersions', and that no substantive allegations of collusion between the 1st respondent and either of them to deceive the deceased or coerce him into signing Deed No. 4051/1995 were made, without which 'the alleged coercion stands on its own as an act totally unconnected to the preparation of the deeds. Moreover, the judge concluded that there was no evidence upon which to conclude that Mr. Browne was connected to any plot to deceive or coerce Mr. Bibby into signing a deed to transfer land to his wife and ultimately to the 1st respondent.

[21] In relation to Ms. Edwards, the learned judge recorded that no motive had been advanced as to why she would assist the 1st respondent in perpetuating the alleged fraud on the deceased; that any such finding that this took place would require the court to find that the appellant and Ms. Edwards acted in concert in coercing the deceased

⁹ Paragraph 32 of the judgment below.

¹⁰ Ibid at paragraph 36.

to sign Deed No. 4051/1995. The judge held that the court ought not to make such an adverse finding against Ms. Edwards 'in circumstances where she was not given an opportunity to defend herself', and to do so would be to act on the testimony of one witness, that is, the appellant and to conclude that the deceased was overpowered by Ms. Edwards and that he did not comprehend what was happening as he was *non compos mentis* as alleged.¹¹

[22] In my view, the learned trial judge's conclusions as to the veracity of the appellant's pleaded case of fraud against or involving Ms. Edwards and/or Mr. Browne and them being somehow complicit in coercing the deceased into signing Deed of Gift No. 4051/1995 conveying his land to the 1st respondent, is based on her assessment of the pleaded case and the absence or tenuous nature of the evidence adduced by the appellant in support of these very serious allegations, and the court being unable to reach or to make any such conclusions of collusion or coercion involving as knowing participants or perpetrators Ms. Edwards and or Mr. Browne. The learned judge was required to deal with the cases and the evidence as presented. Thus, she clearly noted that neither the appellant nor the 1st respondent sought to call either Ms. Edwards or Mr. Browne and to put those kinds of probative questions to them concerning the very serious allegations being made against them relative to the preparation and signing of Deed of Gift No. 4051/1995 and Deed of Gift No. 4052/1995.

[23] Further, those findings were available to the learned judge on the pleaded case for the appellant and on the evidence adduced at the trial, and it would have been surprising if the court had found otherwise. The pleadings of fraud were at best vague and in some respects contradictory. The evidence in support was certainly tenuous at best and far from compelling. This situation was certainly not helped by the fact that serious allegations of fraud and collusion had been made against Ms. Edwards and Mr. Browne neither of whom had been summoned by the appellant to give evidence as to their respective roles and actions leading up to and on the day of signing by the deceased of Deed No. 4051/1995 conveying his land to his wife, and Deed No. 4052/1995 by

¹¹ Ibid at paragraph 38.

which the appellant purported to transfer or to convey the said land on to the 1st respondent. The learned judge only raised this matter to make clear that it would not be appropriate in the circumstances for the court below to address any allegation made by the appellant in respect of an identified person or party without that person's or party's presence in the proceedings to put forward a defence. Accordingly, grounds 1 and 2 fail.

Ground 3 – Whether the learned trial judge erred in law in determining that the expert witness, Dr. Francis-Sheridan was not competent or qualified to make a diagnosis of the mental condition of the deceased in circumstances where the Mental Health Act Cap. 294 of the Laws of St. Vincent and the Grenadines recognises the recommendations and qualifications of such a medical practitioner.

Ground 4 – Whether the learned trial judge erred in principle in wholly dismissing the medical evidence adduced by the expert in the form of the witness statement with exhibit, an expert report, response to written questions of the defendants and viva voce evidence which provided information on the mental health of the deceased at the material time, the reasons for the diagnosis, the causes of senility/dementia and its effects and erroneously took into account irrelevant considerations or assumptions based on one's own hypothesis.

Ground 5 – Whether the learned trial judge erred in law in determining that the medical report of the expert witness was prejudicial to the respondents in circumstances where the said report was without challenge tendered into evidence and contained information relevant to issues arising in the pleadings.

[24] A common thread connects grounds 3, 4 and 5 which, therefore, may conveniently be dealt with together. Counsel for the appellant contends that the learned trial judge was wrong to have dismissed the expert evidence of Dr. Miriam Francis-Sheridan. In the judgment in the court below, the learned trial judge found that Dr. Francis-Sheridan lacked the requisite expertise to express an opinion on matters regarding the mental capacity of the deceased and that to do so would be extremely prejudicial to the respondents.¹²

¹² Paragraph 48 of the Judgment below.

- [25] In Dr. Francis-Sheridan’s witness statement on page 115, she stated that she had observed the deceased from February 1993 to December 1995, during which time he had behaviour problems, agitations and was ‘wandering aimlessly around the house’. She further stated that he had to be guarded closely as he would plaster the area with his own stool and displayed other cognitive problems such as confusion, memory loss and poor concentration. She also stated that the deceased needed aid with all the activities of daily living. Dr. Francis-Sheridan concluded that the deceased had progressed to the final stage of senility.¹³

Law and Analysis

- [26] The necessary starting point is the court’s power to grant permission to a party to rely on expert evidence at the trial. Rules 32.2 and 32.4(2) of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** (“the CPR”) provide respectively:

“General duty of court and of parties

32.2 Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.’

Way in which expert’s duty to court is to be carried out

32.4 (1) ...

(2) An expert witness must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within the witness’ expertise.”

- [27] Further, the Court’s power to admit or exclude expert evidence is provided in **CPR** 32.6(1) and (2) which state:

“Court’s power to restrict expert evidence

32.6 (1) A party may not call an expert witness or put in the report of an expert witness without the court’s permission.

(2) The general rule is that the court’s permission is to be given at a case management conference.”

- [28] In **Leslie Phillip v Kyron Williams**,¹⁴ this Court aptly expounded the above provisions at paragraphs 31 and 32:

“[31] **CPR 32.2** is unambiguous. It stipulates that only expert evidence that is ‘reasonably required to resolve the proceedings justly’ will be permitted in civil proceedings. It follows that a judicial officer faced with an application for leave

¹³ Witness Statement of Miriam Francis-Sheridan, page 119.

¹⁴ GDAHCVAP2023/0010 (delivered 26th March 2025, unreported).

to permit a witness to provide expert opinion must satisfy himself or herself that such evidence is reasonably required to justly resolve the proceedings. **CPR 32.4(2)** addresses the content of such expert evidence and makes it pellucid that subjective, biased opinions outside the expert witness' expertise is inadmissible and can form no part of the expert witness' testimony. These two sub-rules make clear that a decision of whether to permit an expert to present expert testimony is one of admissibility of expert evidence.

[32] **CPR 32.6** touches and concerns the question of whether expert evidence is necessary for resolving the proceedings and to a certain extent and in a general sense what kind of expert evidence is relevant and admissible towards that end. It seems to me that the more precise issue of what specific expert evidence would be admissible can only be decided when an expert report is prepared and is being produced at trial. It is only at that point that the full considerations of relevance can be entertained. In my opinion such an exercise can be conducted only by the trial judge who will have to marshal the material facts, the issues and the law. I am fortified in this position by the dictum of Blenman JA in **Joseph W. Horsford v Geoffrey Croft**.¹⁵

[29] As to the admissibility of expert evidence, this Court in **John Oliver Dyrud v Palmavon Jasmin Webster et al**¹⁶ adopted the approach of the English Supreme Court in the case of **Kennedy v Cordia (Services) LLP**¹⁷ which agreed with the formulation of the South Australian Court in the case of **R v Bonython**:¹⁸

"Before admitting the opinion of a witness into evidence as expert testimony, the judge must consider and decide two questions. The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This first question may be divided into two parts: (a) whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge and experience in the area, and (b) whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organized or recognized to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court. The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court."

¹⁵ ANUHCVP2014/0006 (delivered 22nd October 2014, unreported).

¹⁶ AXAHCVP2021/0010 (delivered 27th April 2022, unreported).

¹⁷ [2016] 1 WLR 597 at paragraph 43.

¹⁸ (1984) 38 SASR 45.

[30] In **Leslie Phillip**, this Court highlighted the essence of the principles in the following manner:

“[36] In essence, in deciding whether to grant leave to adduce expert testimony a judicial officer must determine firstly, whether the subject matter is one about which expert evidence is admissible. This necessitates consideration of whether a person untrained, inexperienced or unskilled in that area would be able to arrive at a sound judgment without the testimony of an expert in the field and whether there exists a sufficiently established, reliable, organised and recognised ‘body of knowledge or experience’ in that discipline on which reliance can be placed in arriving at a just conclusion. Secondly, the court must be satisfied that the proposed expert witness possesses the requisite skills, knowledge or experience in the specialist area to enable him to provide the court with a useful opinion on the subject matter of the dispute.”¹⁹

[31] In the case at bar, by order dated 11th November 2015, the learned judge granted an application by the appellant and appointed Dr. Miriam Francis-Sheridan, an expert witness to give evidence regarding the health of the late Lloyd Bibby, including his mental health in relation to the period under which she treated him. This order was made, the learned judge having accepted that the **Medical Registration Act**²⁰ and the **Mental Health Act**²¹ ‘taken together recognise the capacity of a registered medical practitioner to treat and diagnose persons suffering from mental health illness. Nothing in either Act suggests otherwise.’ By the terms of the said order, Dr. Francis-Sheridan was required to file a written report in accordance with Part 32 of **Civil Procedure Rules 2000** to be served on the respondents who may address questions to her by a certain date. Furthermore, the appellant was to ‘ensure that Dr. Francis-Sheridan was informed of her duty to the court as stipulated in **CPR** Part 32. What transpired thereafter is that a witness statement of Dr. Francis-Sheridan was filed on 4th May 2015. Annexed thereto is a written report dated 12th August 1999 prepared by Dr. Francis-Sheridan summarising her clinical observations, her diagnosis of senility in 1994, and her treatment of Mr. Lloyd Bibby both at the Calliaqua District Clinic and subsequently at his home during the period of February 1993 to December 1995 when Dr. Francis-Sheridan ceased to work at the said clinic. This was the expert evidence which fell to

¹⁹ GDAHCVAP2023/0010 (delivered 26th March 2025, unreported) at paragraph 36.

²⁰ Cap 293 of the Revised Laws of Saint Vincent and The Grenadines.

²¹ Cap 294 of the Revised Laws of Saint Vincent and The Grenadines.

be assessed by the learned judge at the trial in determining the relevant question of fact as to the mental state and capacity of Mr. Lloyd Bibby when he signed Deed of Gift No. 4051/1995 on 15th June 1995 at his home on the said disputed land.

[32] The subject matter requiring expert evidence was that of mental capacity, specifically the neurological syndrome of dementia and whether an individual diagnosed with such a condition is mentally capable of understanding the nature and effect of signing a deed of gift. In determining the first question under the **Bonython** test, there can be no question in my view that this is an area in which, having regard to the claim in the instant matter, expert testimony is not only permissible but reasonably required to resolve the proceedings justly. As to whether a person inexperienced in the area of knowledge (such as the learned judge) would be able to form a sound judgment as to whether a person suffers from a neurological disorder such as dementia, the simple answer is no. There is also no question as to whether the knowledge on neurological disorders/syndromes can be categorised as a reliable body of knowledge or experience which an expert witness such as a medical doctor can provide reliable evidence and which would render his/her opinion of assistance to the court.

[33] Further, in the judgment of the court below the learned trial judge at paragraphs 39 to 41 recognised that Dr. Francis-Sheridan is a fully qualified medical practitioner under the **Medical Registration Act**, a graduate of St. George's University School of Medicine and has had over 27 years of experience as a physician involving the diagnosis of many health conditions.²² Her previous work with senile residents which included caring for loved ones suffering from dementia is also coupled with formal education in which she was trained to recognise and diagnose many mental conditions. With the foregoing, I find that there should be no question that Dr. Francis-Sheridan had acquired sufficient knowledge of the subject matter to render her opinion of value in resolving the issues before the court. Indeed, this much was fully recognised by the learned judge when making the order for Dr. Francis-Sheridan to give expert evidence

²² Paragraphs 39 and 40 of the Judgment below.

at the trial as to the mental condition and capacity of Lloyd Bibby at the time when he signed Deed of Gift No. 4051/1995.

[34] It is my view therefore that the learned trial judge was wrong as a matter of principle to dismiss the expert evidence of Dr. Francis-Sheridan. The learned trial judge was wrong when she felt that she was unable to conclude from Dr. Francis-Sheridan's medical report about Lloyd Bibby and from the related information before the court that the expert witness had the relevant expertise to express an opinion on the mental capacity of the deceased at the time when he executed Deed of Gift No. 4051/1995. Dr. Francis-Sheridan had the requisite expertise and qualifications as a medical practitioner and as someone who had the benefit of examining Lloyd Bibby in her capacity as a registered medical doctor in St. Vincent and the Grenadines over a period of some years before and up to June 1995 when he executed the said deed. Having diagnosed him as suffering from senility or dementia, it was manifest that she was well suited to render an opinion as to his mental capacity and ability to understand and to enter into significant legal transactions and documents. It is also clear that having so erred the learned judge fell into greater error by preferring the evidence of the respondents' witnesses as to the mental state of the deceased at the relevant time over the evidence of Dr. Francis-Sheridan. The reasons given by the learned trial judge for not relying on the expert evidence were both erroneous and without justification. Hence, the learned trial judge's finding that reliance on the expert report to decide issues related to the mental capacity of the deceased would be prejudicial to the respondents during the trial was plainly wrong.

[35] Furthermore, the learned trial judge at paragraphs 51 and 58 relied heavily on the testimony of Mr. Jimmy Constantine, the 3rd respondent, in determining the mental capacity of the deceased. At paragraph [50], the learned judge having considered Jimmy Constantine to be a witness of truth, went on to accept his testimony which she found to be 'riveting and compelling'. Of particular concern is the degree of importance which the learned judge placed in her analysis and conclusion as to Mr. Lloyd Bibby's sound mental state, on the evidence of Jimmy Constantine recounting that the

deceased had performed the 'monkey dance' for him at his request, and that he would laugh each time he did so. This led the learned judge to opine: 'This is not the behavior that one would associate with someone who is mentally incapacitated'. It goes without saying that neither Jimmy Constantine nor, respectfully, the learned judge (as she accepted) were possessed of any medical qualifications or experience which would have enabled either of them to reach any such medical conclusion or opinion as to the state and capacity of Lloyd Bibby, even if he did perform the 'monkey dance'. In short, none of this is necessarily indicative or conclusive of soundness of mind and the mental capacity to understand and enter into complex and major land transactions involving, in this instance, Mr. Lloyd Bibby, transferring ownership of his entire property in fee simple to his wife, the appellant, for her onward transfer to the 1st respondent. Indeed, there was no medical or other substantive foundation to the learned trial judge's finding at paragraphs 51 and 58 and therefore it was highly speculative and erroneous.

[36] Moreover, had the learned judge accorded appropriate weight to the expert report and opinion of Dr. Francis-Sheridan as to the mental state of the deceased leading up to and at the time of his execution of Deed of Gift No. 4051/1995 and, in particular, the doctor's diagnosis and conclusion that he suffered from dementia, she would have found, on a balance of probabilities, that he lacked the mental capacity at the relevant time to have understood what he was doing or was being called upon to do with his property by entering into and executing Deed of Gift No. 4051/1995. Accordingly, the said Deed No. 4051 of 1995 is void and of no effect and ought to be set aside. Accordingly, grounds 3, 4 and 5 are allowed.

[37] The effect of this finding is that there was no lawful conveyance or gift of the property to his wife, the appellant, by virtue of Deed of Gift No. 4051/1995 which is null and void. It follows that she would not have lawfully or effectively gained title to the property such that she could lawfully convey her title to the 1st respondent by virtue of Deed No. 4052/1995. It further follows that this second deed is also null and void. Further, the conveyance of the disputed property by the 1st respondent to himself, his wife and his

two children (the 2nd, 3rd and 4th respondents) by Deed No. 3996/2010 is likewise null and void and of no effect.

Ground 6 – The learned trial judge erred in fact in concluding that Princess Bibby and the deceased conspired to give the 1st respondent the disputed property at paragraph 58 of the judgment

[38] In her Skeleton Arguments, counsel for the appellant contends that the learned trial judge hypothesised at paragraphs 51 and 58 of the judgment in the court below where, upon accepting the testimony of Jimmy Constantine, she found that the performance of the ‘monkey dance’ by the deceased was indicative of his mental capacity and thus concluded that he was mentally present during the conversation in which the appellant related the transfer of the disputed property to the 1st respondent.²³ Further, counsel noted that the absence of any evidence to establish that the appellant gave instructions for the preparation of the Deed shows that she knew nothing about the Deed nor was she a willing participant.²⁴ Counsel also contends that the learned trial judge’s reference at paragraph 59 of the judgment to the lack of a forensics report on the signature of the deceased amounted to irrelevant considerations.²⁵

[39] The respondents in their Skeleton Arguments contend that the learned trial judge did not definitively find that the deceased and the appellant conspired to transfer the disputed land, stating that the learned trial judge was ‘merely speculating’ as evidenced by her use of the words ‘it seems’, ‘almost in a conspiratorial manner’ and ‘which suggested to me’.²⁶

²³ Skeleton Arguments on appeal, paragraph 12 (ii).

²⁴ Skeleton Arguments on appeal, paragraph 12 (iii).

²⁵ Skeleton Arguments on appeal, paragraph 12 (iv).

²⁶ Skeleton Arguments in reply, page 4-5.

Analysis

- [40] It is pellucid from a reading of the judgment that the learned trial judge did not ‘conclude’ that the appellant and the deceased had conspired to give the disputed land to the 1st respondent. Having reviewed the submissions of counsel, I am satisfied that the comments and findings of the learned trial judge at paragraphs 51 and 58 of the judgment of the court below as to the importance of an evaluation of Lloyd Bibby’s mental ability and capacity when he signed Deed No. 4051/1995 of the evidence of Jimmy Constantine that Lloyd Bibby had, at his request, performed the ‘monkey dance’, were careless, erroneous and speculative. However, the said comments do not represent any conclusion on the learned trial judge’s part that there was any conspiracy between the appellant and the deceased. Accordingly, ground 6 fails.

Ground 7 – The learned trial judge erred in principle in taking into account and/or giving too much weight to irrelevant considerations in concluding that the deceased was fully aware of the documents he was made to sign disposing of the disputed land to the 1st respondent

- [41] The appellant in her Skeleton Arguments filed on 15th December 2023 noted paragraph 30 of the judgment in the court below, wherein the learned trial judge dismissed the presumption of undue influence because the appellant did not allege a relationship of trust between the deceased and the 1st respondent. Counsel submits that the presumption of undue influence can arise simply by the relationship between the parties or the trust and confidence reposed in a party and that the mere familial relationship between the deceased, the appellant and the 1st respondent is sufficient to raise the presumption.²⁷ Counsel referred to Mr. Bibby’s medical diagnosis as senile at the material time as well as the testimony of the defendant’s witnesses that the deceased was ill at the time, in support of the contention that Mr. Bibby, the deceased, was suffering from some form of ailment at the time the Deed was executed.²⁸ The appellant avers that the learned trial judge failed to take into consideration the familial relationship between the parties to thoroughly appreciate the appellant’s cause of

²⁷ Skeleton arguments on appeal filed on 15th December 2023, page 10.

²⁸ Skeleton arguments on appeal filed on 15th December 2023, page 11.

action for undue influence and that the defendant led no or no sufficient evidence to conclude that there was no undue influence.²⁹

[42] The respondents on the other hand contend in their Skeleton Arguments that although a parent-child relationship is one where undue influence may be presumed, the presumption only applies in one direction, that is, the influence a parent has over his or her child but not vice versa. Counsel submitted that as such, the presumption does not arise in the instant case and accordingly the limb of presumed undue influence was rightly dismissed by the learned trial judge.

[43] At the 13th February 2025 hearing before this Court, the parties were instructed to file supplemental written submissions on the decision of the Privy Council in **Della Vallery Nolan nee Jude v Diane Jude and another**³⁰ regarding the state of the law on undue influence. Counsel for the appellant, in her submissions filed on 20th February 2025, contended that it cannot be said that the relationships of influence are closed or flows only in one direction as advanced by the respondents. Citing the case of **Nature Resorts Ltd v First Citizens Bank Ltd**³¹ at paragraph 18 as an authority, counsel noted that there are some relationships that can be established on the facts of the case while some are legally relationships of influence. Counsel averred that the fact of the transfer of the land being a 'three-party situation' signals that the 1st respondent was aware that the deceased was not of sound mind and thus sought to involve Princess Bibby as the 'medium/agent' to transfer the land from the deceased to the 1st respondent.

[44] Counsel for the respondents in their Supplemental Skeleton Submissions filed on 20th February 2025 submitted that the mere familial relationship as suggested by the appellant was not sufficient to raise the presumption of undue influence and that the respondents stand on its previous submissions on this point. Counsel submitted that it was for the appellant to show not only a relationship of influence, either established on

²⁹ Supra n.23.

³⁰ [2024] UKPC 22.

³¹ [2022] UKPC 10.

the facts or falling into one of the established categories, but also that the transaction was one that cannot be readily explicable on ordinary motives. Counsel contended that as it was not pleaded at the trial by the appellant, it is not open to the appellant to rely on this point on appeal. Counsel avers that although the Privy Council indicated that a relationship of trust and confidence can be established on the facts, this was not pleaded by the appellant and thus it is not open to the appellant to rely on this on appeal.

Law and Analysis

[45] I observe that had the learned judge given proper consideration and weight to the expert evidence of Dr. Francis-Sheridan as to the mental incapacity of Mr. Lloyd Bibby to execute and to enter into Deed of Gift No. 4051/1995, the issue of whether undue influence was exercised on him to sign the said deed would be of no moment. This notwithstanding, learned counsel have addressed this issue at some length in their submissions.

[46] I set out below the Privy Council's restatement of the law on undue influence as provided in **Della Vallery Nolan nee Jude v Diane Jude and another** at paragraph 22:

"22. The law on undue influence was rigorously and helpfully analysed by the House of Lords in the leading modern case of *Royal Bank of Scotland plc v Etridge (No 2)* [2001] UKHL 44, [2002] 2 AC 773 ("*Etridge*"). In *Nature Resorts Ltd v First Citizens Bank Ltd* [2022] UKPC 10, [2022] 1 WLR 2788 ("*Nature Resorts*"), on an appeal from Trinidad and Tobago, the Board (Lords Briggs and Burrows giving the judgment) recently summarised the modern law as laid down in *Etridge*. The Board therefore makes no excuse for citing what was said in *Nature Resorts* at paras 10 -13:

'10. Putting to one side illegitimate threats (which are nowadays better viewed as falling within the doctrine of duress: see *Times Travel (UK) Ltd v Pakistan International Airlines Corp* [2021] 3 WLR 727, paras 8-9 and 89-90) undue influence is concerned with a situation where, by reason of the relationship between them, one party (B) has such influence over the other (A) that A does not exercise a free judgment, independent of B, in relation to the making of a transaction between A and B (or, in a three-party situation, between A and a third party, C).

11. Ever since *Allcard v Skinner* (1887) 36 Ch D 145, it has been commonplace to divide undue influence into two categories: actual and presumed. But in *Etridge* the House of Lords made clear that undue influence is a single concept. It does not have two different forms. The correct analysis of the two categories is that they refer to different ways of *proving* undue influence. **Presumed undue influence refers to where the person alleging undue influence relies on an evidential presumption. Actual undue influence refers to where the person alleging undue influence relies on direct proof (of A's conduct ... which led to B not exercising a free and independent judgment).**

12. As *Etridge* also made clear, **there are two requirements for establishing the (rebuttable) presumption of undue influence. First, there must be a relationship of influence. This may be established on the facts. But in respect of some relationships there is what is commonly referred to as an irrebuttable legal presumption (but is more appropriately referred to as a legal rule) that the relationship is one of influence (but note not *undue influence*).** Examples of such relationships are doctor and patient (*Mitchell v Homfray* (1881) 8 QBD 587), spiritual adviser and follower (*Allcard v Skinner*), parent and young child (*Lancashire Loans Ltd v Black* [1934] 1 KB 380) and, of direct relevance to the facts of this case, solicitor and client (*Wright v Carter* [1903] 1 Ch 27). **The second requirement is that the transaction must not be readily explicable on ordinary motives.** The House of Lords preferred this test, which uses the words of Lindley LJ in *Allcard v Skinner*, to a test of whether the transaction was manifestly disadvantageous which had been put forward by Lord Scarman in *National Westminster Bank plc v Morgan* [1985] AC 686, 703-

707. **The underlying idea behind the test is that the nature and/or contents of the transaction must make one conclude, in the context of the relationship of influence, that, absent evidence to the contrary, undue influence has been exercised. ...**

13. **If those two requirements are satisfied, so that there is a presumption of undue influence, the burden of proof shifts and it is for the party seeking to uphold the transaction to rebut the presumption by showing that A was not acting under undue influence (ie that A exercised free and independent judgment) when entering into the transaction.** Although neither necessary nor conclusive, the main method of rebuttal is to show that A obtained the fully informed and competent independent advice of a qualified person, most obviously a lawyer: see *Inche Noriah v Shaik Allie Bin Omar* [1929] AC 127 and *Etridge*.⁷⁰ (Emphasis mine)

[47] I am guided by the dicta of the Privy Council stated above and apply to the instant case. For there to have been a presumption of undue influence in the circumstances, the appellant must have established that a relationship of influence existed between the deceased and the appellant and the 1st respondent. At the trial, Dr. Francis-Sheridan

was relied on by the appellant to provide expert evidence, which evidence was dismissed by the learned trial judge on the ground of her not having the relevant expertise to express an opinion on the mental capacity of the deceased.³² As I have found earlier in this judgment, the learned trial judge was indeed wrong in doing so and should have considered it and found that the deceased suffered from dementia at the material time and that he did not possess the mental capacity to enter into and to execute Deed of Gift No. 4051 of 1995. In light of this finding, it is difficult to see how these facts fit a case of presumed influence, which applies to a situation where the person alleging undue influence is relying on an evidential presumption based upon some existing relationship between the party executing the document and the party said to be exercising undue influence. No relationship of the type giving rise to such an evidential presumption existed between the deceased Lloyd Bibby and the 1st respondent. The simple fact is that the deceased Lloyd Bibby, by virtue of his mental state at the time as proven on a balance of probabilities by the evidence of Dr. Francis-Sheridan, lacked the capacity in law to exercise the independent judgment and decision making necessary when entering into the Deed of Gift No. 4051/1995 of real property to the appellant, which deed was a precursor to the appellant executing Deed of Gift No. 4052/1995 of the same property on the same day to the 1st respondent.

[48] These facts regarding the mental condition of the deceased at the relevant time are, in my view, sufficient to establish that Deed No.4051/1995 is void and must be set aside. In my opinion, the claim as framed sought to advance a case of actual undue influence and not one of a presumption of influence leading to a finding of undue influence.

[49] Counsel for the respondents sought to rely on his initial submission that the mere familial relationship was not sufficient to raise the presumption of undue influence. Unfortunately, counsel for the respondents, in his supplemental submissions, did not go on to make any argument to rebut the presumption of undue influence as a failsafe in the event that the presumption is found to have existed, as has been the case. In this regard, the 1st respondent has not discharged the evidential burden on the

³² Paragraph 48 of the Judgment below.

respondents in rebutting the presumption of undue influence. However, this Court having found that Mr. Lloyd Bibby, at the material time, lacked the mental capacity in law to transfer his interest in the disputed land to his wife, the learned judge was wrong to have found that he was fully aware of what documents he was signing and that he intended to transfer the property to the 1st respondent having had it transferred first to his wife, the appellant. For these reasons ground 7 is allowed.

Ground 8 – The learned trial judge erred in law in concluding that the appellant’s claim was statute barred as the limitation period began to run from the time that the estate of the deceased should have commenced administration of the said estate.

- [50] In the judgment in the court below, the learned trial judge found that the appellant’s claim as the representative of the deceased became statute barred by 15th May 2010, just short of four years prior to the institution of her claim in the High Court.³³ In the appellant’s skeleton arguments filed on 15th December 2023, counsel averred that section 32 of the **Limitation Act**³⁴ allows the period of limitation to run from the time of discovery of the fraud. As the appellant argued that she did not discover the fraud until 2005, counsel for the appellant maintains that the 2014 institution of the claim was well within the requisite statutory period. In the respondents’ Skeleton Arguments filed on 10th January 2025, they considered that the learned trial judge was entitled to hold that more than 12 years had passed since the facts of the alleged fraud and as such, the claim was indeed statute barred on this cause of action.

Law and Analysis

- [51] The law concerning limitation of actions in a claim for recovery of land in Saint Vincent and the Grenadines is contained in section 17 of the **Limitation Act**, which provides as follows:

“17. Time limit for actions to recover land

- (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of**

³³ Paragraph 68 of the Judgment below.

³⁴ Cap. 129 of the Laws of Saint Vincent and the Grenadines.

action accrued to him or, if it first accrued to some person through whom he claims, to that person.

(2) Subject to the following provisions of this section where—

- (a) the estate or interest claimed was an estate or interest in reversion or remainder or any future estate or interest and the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and
- (b) the person entitled to the preceding estate or interest (not being a term of years absolute) was not in possession of the land on that date,

no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

(3) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(4) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

(5) Part I of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned.

(6) Part II of the Schedule contains provisions modifying the provision of this section in their application to actions brought by, or by a person claiming through, the Crown.” [Emphasis mine]

The applicable paragraph of Part I of the Schedule reads as follows:

“2. Where any person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person-

(a) was on the date of his death in possession of the land or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged; and

(b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death.” [Emphasis mine]

Further, section 32 (1) of the **Limitation Act** reads as follows:

“32. Postponement of limitation period in case of fraud, concealment or mistake

(1) Subject to subsection (3), where in the case of any action for which a period of limitation is prescribed by this Act, either-

(a) the action is based upon the fraud of the defendant;

(b) any fact relevant to the plaintiffs right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

References in this subsection to the defendant include references to the defendant's legal practitioner or agent and to any person through whom the defendant claims and his legal practitioner or agent.

[52] The appellant, in claiming fraud on the part of the respondents, seeks to invoke section 32 of the **Limitation Act** in support of her claim that time began to run from 2005 as this was the year in which she had learned of the conveyance by deed of gift of the disputed land to the 1st respondent, that is, the alleged fraud. In the judgment in the court below, the learned trial judge at paragraph 22 found that no allegation of actual or constructive fraud had been made against any of the 2nd, 3rd and 4th respondents and, accordingly, they were not liable to the estate of the deceased for fraud. Having

considered the assertions of actual fraud made by the appellant against the 1st respondent, the learned judge concluded at paragraph 27 that the appellant had failed to prove that Anthony Constantine or anyone else made a false representation to Lloyd Bibby thereby inducing him and intending him to act on it. Furthermore, the pleadings contained no specific particulars of deceit and are wholly inadequate in that regard. The claim for deceit against the 1st respondent was accordingly dismissed. As to the claim of constructive fraud (undue influence) against the 1st respondent, the learned judge also dismissed this claim at paragraph 62 of the judgment. This Court has upheld the judge's dismissal of the allegations of fraud, actual or constructive made against the 1st respondent.

[53] It is apt at this juncture to recite the long and well settled principle regarding allegations of fraud. In **East Caribbean Flour Mills Limited v Ormiston Ken Boyea**³⁵ at paragraph 39, this Court referred to the House of Lords case of **Three Rivers 19 District Council v Bank of England (No. 3)**³⁶ which contained the following statement by Lord Hope of Craighead:

“51. On the other hand it is clear that as a general rule; the more serious the allegation of misconduct, the greater is the need for particulars to be given which explains the basis for the allegations. This is especially so where the allegation being made is of bad faith or dishonesty. The point is well established by authority in the case of fraud.”

Lord Hope went on to say:

“55. ... As the Earl of Halsbury LC said in *Bullivant v Attorney General for Victoria* [1901] AC 196 at 202 where it is intended that there be an allegation that a fraud has been committed, you must allege it and you must prove it. We are concerned at this stage with what must be alleged. A party is not entitled to a finding of fraud if the pleader does not allege fraud directly and the facts on which he relies are equivocal. So too with dishonesty. If there is no specific allegation of dishonesty it is not open to the Court to make a finding to that effect if the facts pleaded are consistent with conduct which is not dishonest such as negligence. As Miller LJ said in *Armitage v Nurse* (1997) 2 AER p. 705 at 715 “it is not necessary to use the word “fraud” or “dishonesty if the facts which make the conduct fraudulent are pleaded but this will not do if language used is equivocal (see *Belmont Finance Corporation Ltd v Williams Furniture Limited*

³⁵ SVGHCVP2006/0012 (delivered 16th July 2007, unreported).

³⁶ [2001] UKHL 16 at paragraphs 51 and 55.

(1979) 1 AER p 118 at 311). In that case it was unclear from the pleadings whether dishonesty was being alleged. As the facts referred to might have inferred dishonesty but were consistent with innocence, the allegation of fraud, dishonesty or bad faith must be supported by particulars: The other party is entitled to notice of the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself must be struck out.”

[54] Applying the above dictum, I agree with the learned trial judge’s findings at paragraphs 22 and 62 of her judgment in the court below. The appellant simply cannot rely on section 32 of the **Limitation Act** as she has not met the threshold for claiming fraud in this case. It is my view therefore that the appellant’s claim is caught by section 17 of the **Limitation Act** and the time at which the cause of action accrued is not affected by section 32 of the **Act**. This leaves the question of when the cause of action actually accrued. The respondents argue that paragraph 2 of Schedule I which establishes that time began to run from the date of death of the deceased is the applicable provision for determining when time began to run in the instant matter. It is submitted that since the deceased’s date of death was 14th May 1997, the limitation period would have expired prior to the institution of the appellant’s claim in the High Court in 2014 and the cause of action for possession of the disputed land was statute barred. The learned judge seemed not to have fully accepted that this was the correct position. She concluded at paragraph 67 that having found that the appellant and her deceased husband Lloyd Bibby knew what they were signing when they executed Deeds of Gift Nos. 4051/1995 and 4052/1995, Mr. Bibby’s cause of action arose in 1995 or at the very latest on his death in May 1997. In my view it is questionable whether paragraph 2 of Part 1 of the **Act** applies in the instant matter, in particular the provisions of sub-paragraph (a) which is conjoint with sub-paragraph (b). In this matter, the deceased Lloyd Bibby was not on the date of his death in possession of the land. It was, on the evidence, the 1st respondent who was in possession since about 1991 and not the deceased.

[55] Moreover, from the Claim Form and Statement of Claim filed on 7th April 2014 in this matter, the appellant as administratrix of the estate of Lloyd Bibby did not seek recovery of possession of the land. Nonetheless, the evidence is clear and uncontradicted, that from 1991 the 1st respondent had built a house on the disputed land which he and his

family occupied and continued to occupy up to the date of the trial. In any event, had paragraph 2 of Part 1 been applicable and the cause of action accrued upon the death of Lloyd Bibby on 14th May 1997, it would have been statute barred under section 17 of the **Limitation Act**. Likewise, if paragraph 2 of Part 1 was not applicable, the cause of action would have accrued from the date when the 1st respondent entered into possession of the disputed land on or about 1991, and therefore statute barred. And finally on this issue, if the cause of action accrued when the deeds were executed, it was also statute barred. Therefore, whichever of these scenarios are applicable, the appellant's action to dispossess the 1st respondent from the disputed property to the extent that such a claim was made, is indeed statute-barred. Accordingly, ground 8 fails.

Ground 9 – The learned trial judge erred in law in concluding that the doctrine of proprietary estoppel applied to the 1st respondent in circumstances where his title to land was founded on the disputed deed of gift.

Ground 10 – The learned trial judge erred in fact and in law in finding that the respondents are the legal and beneficial owners of the disputed land.

[56] Again, these two grounds can conveniently be dealt with together. At paragraph 77 of the judgment in the court below, the learned trial judge found that the deceased made a promise to the 1st respondent that he would be entitled to live on the disputed land and own the said land. The learned trial judge found that the 1st respondent expending considerable resources to construct his family home meant that he had acted to his detriment.³⁷ In the appellant's supplemental submissions filed on 20th February 2025, counsel submitted that the learned trial judge did not weigh the advantages and disadvantages of reliance on the assurance as there were no comparisons/weighing exercise provided in the judgment. Counsel submits that if such was done then the advantages would outweigh the disadvantages.³⁸ Counsel also submitted that there was inadequate material in the pleadings or evidence to support a finding of proprietary estoppel.

³⁷ Paragraph 77 of the Judgment below.

³⁸ Further skeleton arguments on appeal, page 2.

[57] At the oral hearing on 13th February, 2025 counsel for the respondents submitted that the purpose of the Court of Equity is to resolve particular legal issues such as the issue which has arisen in the instant case and that the appellant's attempt to vitiate the promise made by the deceased Mr. Lloyd Bibby to the 1st respondent, which promise would have already been fulfilled, is contrary to the intention of the Court of Equity in creating the equitable doctrine of proprietary estoppel. Further, counsel submitted that the learned trial judge sought to use the principles of proprietary estoppel to restrain the estate of the deceased from now reneging on that promise. Counsel noted that there is no case law preventing a court from applying the principles of equity and in particular the principles of proprietary estoppel especially when the promise has been executed and followed through.

Law and Analysis

[58] In the Privy Council decision in **Theresa Henry & Marie Ann Mitchell v Calixtus Henry**,³⁹ the Board at paragraph 37 cited the case of **Gillett v Holt**⁴⁰ in which Walker LJ (as he then was), discussed the nature of the doctrine of proprietary estoppel and the general underlying principles. The court proceeded to cite the following dicta of the learned justice:

“... although the judgment is, for convenience, divided into several sections with headings which give a rough indication of the subject matter, it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a ‘mutual understanding’ may depend on how the other elements are formulated and understood. Moreover, the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.”⁴¹

The learned Lord Justice also had this to say under the heading of ‘Detriment’:

“Both sides agree that the element of detriment is an essential ingredient of proprietary estoppel. There is one passage in the judgment of Lord Denning

³⁹ [2010] UKPC 3.

⁴⁰ [2001] Ch 210.

⁴¹ [2010] UKPC 3, page 225C-E.

MR in *Greasley v Cooke* ... which suggests that any action in reliance on an assurance is sufficient, whether or not the action is detrimental. In *Watts v Storey* [[1983] CAT 319] Dunn LJ (who was a party to the decision in *Greasley v Cooke*) explained Lord Denning MR's observations as follows:

'Nor, if that passage from Lord Denning MR's judgment is read as a whole, was he stating any new proposition of law. As the judge said, it matters not whether one talks in terms of detriment or whether one talks in terms of it being unjust or inequitable for the party giving the assurance to go back on it. It is difficult to envisage circumstances in which it would be inequitable for the party giving an assurance alleged to give rise to a proprietary estoppel, i.e. an estoppel concerned with the positive acquisition of rights and interests in the land of another, unless the person to whom the assurance was given had suffered some prejudice or detriment.'

The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.

.... Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded – that is, again, the essential test of unconscionability. The detriment alleged must be pleaded and proved."⁴²

[59] In the respondents' counterclaim filed on 27th May 2014, it provides that in or about 1981 the 1st respondent approached the deceased and requested a portion of the disputed land on which the deceased had built his house so as to construct his own house.⁴³ The 1st respondent contended that the deceased insisted that he take a portion of the said family land below his house to construct his own house thereon. The 1st respondent, acting on that promise, constructed a wooden/board house on the disputed property and moved in with his wife, the 4th respondent.⁴⁴

[60] Over the years, the 1st respondent carried out extensive renovations transforming his wooden/board house into a concrete/wall house and continued to make additions and

⁴² [2010] UKPC 3, page 232A-F.

⁴³ Counterclaim, paragraph 21.

⁴⁴ Counterclaim, paragraph 22.

improvements thereon.⁴⁵ On this basis the 1st respondent asserted that it was always the intention of the deceased that the disputed land be vested in him and thus the appellant was precluded from bringing the instant claim against the respondents.⁴⁶ The learned trial judge, in considering the facts presented by the 1st respondent, found that he had indeed acted to his detriment and therefore was entitled to avail himself of the protection of the equitable doctrine of proprietary estoppel.⁴⁷

[61] In **Theresa**, the Privy Council noted that in **Gillet** the detriment to the claimant lay in the fact that in reliance on the defendant's assurance he had deprived himself of the opportunity to better himself in other ways.⁴⁸ I so find this to be the case here. The 1st respondent during all those years of building and renovating the house on the disputed property could have invested that time, money and effort into other endeavours. Instead, for years on end he channeled his life's currencies towards having a home for him and his own family. The learned trial judge, having heard the evidence from the witnesses, believed the respondents and having found as a fact that the deceased agreed or promised that the 1st respondent would be given title to the area of the land which he occupied and lived with his family for several years and had built a house there, including a concrete portion, was rightly convinced that he did indeed act to his detriment by expending his own money on building the house there. The learned trial judge having recognised those toils as him earning the right to the protection of the equitable remedy of proprietary estoppel, there is no sound basis of law or fact upon which I can or ought to derogate from this finding. Accordingly, ground 9 fails.

[62] It must be noted however that a finding of proprietary estoppel does not operate to confer title to the land but only leads to a declaration in favour of the 1st respondent and him only. In this respect, the principle of proportionality is operative. In **Guest and another v Guest**,⁴⁹ the UK Supreme Court clarified the proper basis for awarding

⁴⁵ Counterclaim, paragraph 24.

⁴⁶ Counterclaim, paragraph 28.

⁴⁷ Paragraph 78 of the Judgment below.

⁴⁸ [2010] UKPC 3, paragraph 39.

⁴⁹ [2022] UKSC 27.

remedies in cases of proprietary estoppel. I note the dicta of Lord Briggs at paragraphs 74, 75 and 80:

“74. I consider that, in principle, the court’s normal approach should be as follows. The first stage (which is not in issue in this case) is to determine whether the promisor’s repudiation of his promise is, in the light of the promisee’s detrimental reliance upon it, unconscionable at all. It usually will be, but there may be circumstances (such as the promisor falling on hard times and needing to sell the property to pay his creditors, or to pay for expensive medical treatment or social care for himself or his wife) when it may not be.

75. The second (remedy) stage will normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to the promise. The promisee cannot (and probably would not) complain, for example, that his detrimental reliance had cost him more than the value of the promise, were it to be fully performed. But the court may have to listen to many other reasons from the promisor (or his executors) why something less than full performance will negate the unconscionability and therefore satisfy the equity.

80. In the end the court will have to consider its provisional remedy in the round, against all the relevant circumstances, and ask itself whether it would do justice between the parties, and whether it would cause injustice to third parties. The yardstick for that justice assessment will always be whether, if the promisor was to confer that proposed remedy upon the promisee, he would be acting unconscionably. “Minimum equity to do justice” means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative.” [Emphasis added]

[63] I am guided by the above dicta and apply to the case at bar. Applying the first stage, I find that a repudiation of the deceased’s promise to the 1st respondent would in the circumstances be wholly unconscionable. I have adequately set out in this judgment at paragraphs 60 and 61 above that the 1st respondent’s actions amounted to detrimental reliance and therefore the appellant as the administratrix is estopped from reneging on that promise. Applying the second stage, I find that the appropriate means of remedying the unconscionability is by upholding the promise made to the 1st respondent. Having agreed with the finding of the learned trial judge at paragraph 77 that the deceased, Mr. Lloyd Bibby, made a promise to the 1st respondent that he would not only be entitled to live on the disputed property but that he would also become the owner of it, I am of the view that the value of this promise must be equivalent to the 1st respondent’s detrimental reliance on it. In these circumstances, the detrimental reliance is

represented by the construction of the house as it is the physical manifestation of the 1st respondent's years of hard work and sacrifice. On this basis, I find it just that the 1st respondent be declared the owner of the portion of the disputed land on which his house is affixed, limited to the physical dimensions occupied by the house and a small area around the house for ingress and egress by foot.

[64] In respect of the learned trial judge's finding at paragraph 79 that the 2nd, 3rd and 4th respondents are the beneficial and legal owners of the disputed land, I do not agree. It is my view that any transfer of title or declaration of beneficial and legal ownership in favour of the 2nd, 3rd and 4th respondents would be disproportionate and wrong as a matter of principle, as it would exceed the value of the promise made by Mr. Lloyd Bibby to the 1st respondent. The respondents have not established that it was the intention of the deceased, Mr. Lloyd Bibby, for the 1st respondent's wife and his two children to also become the owners of the land. To grant entitlement to all of them would simply go beyond the requirement of doing justice between the parties. Consequently, the learned trial judge was wrong to have found that the 2nd, 3rd and 4th respondents were the beneficial and legal owners of the disputed land. Accordingly, ground 10 is allowed.

[65] I must at this final stage address the issue of the dimensions of the 1st respondent's property. During the 13th February hearing, counsel for the respondents contended that the extent of the land that was transferred by Deed of Gift No. 4052/1995 is not the entire land that was owned by the deceased.⁵⁰ The said Deed purported to transfer a total of 5,000 square feet of land from the appellant to the 1st respondent which the respondents allege to be a portion of a larger plot of land owned by the deceased under Deed of Gift No. 1433/1986. This would appear to be consistent with the respondents' pleaded case at paragraph 6(g) and (h) of the defence where reference is made to the permission or promise made by the deceased to the 1st respondent that he could construct his house on 'a portion of the said family land below his [Lloyd Bibby's] house thereon', and that the 1st respondent did construct his house on that said portion of the

⁵⁰ Counterclaim, paragraphs 18 and 25.

family land. It is also pleaded at paragraph 6(m) of the defence that Lloyd Bibby gave the disputed land to the 1st respondent 'since in or about 1981', on which the 1st respondent constructed his house and on which he and his family continue to reside. It is further pleaded by the respondents that in or about 1983, the 1st respondent started to construct a wall structure around the wooden/board structure he had previously built on the disputed land. The essence of this claim is repeated at paragraph 21 of the counterclaim for a declaration and injunction.

[66] However, counsel for the appellant averred in oral submissions that the portion which the respondents seek ownership of extends beyond the area on which the 1st respondent's house is affixed and represents the entirety of the property that is subject to the estate of the deceased.

[67] As I have found that the 1st respondent's entitlement is limited to the land area occupied by the physical dimensions of the house, it is necessary to determine the precise measurements of that entitlement for the purpose of making an order to this effect. In this regard, I find the exhibits tendered into evidence to be of little assistance. Given the conflicting submissions of the parties on this issue I find that an independent survey must be carried out by a licensed land surveyor to, first, conclusively determine whether the 1st respondent's house occupies the entirety of the disputed property and, if not, to, second, demarcate the boundaries between the property to which the 1st respondent is entitled and the remaining property that is subject to the estate of the deceased. It will be so ordered.

Disposition

[68] The appeal of the judgment and decision of the learned trial judge is allowed in part. Accordingly, I would make the following orders:

- (1) Deed of Gift No. 4051/1995, Deed of Gift No. 4052/1995 and Deed of Gift No. 3996/2010 are declared null and void and of no effect.
- (2) The appellant is estopped in equity from making any claim for recovery of the property on which the 1st respondent's house is affixed.

- (3) The 1st respondent is declared the owner or beneficiary of the area of the disputed property on which his dwelling-house is affixed.
- (4) The boundaries of the land area occupied by the 1st respondent's house are to be determined by an independent land survey to be conducted by a licensed land surveyor selected and engaged by the Registrar of the High Court in the State of Saint Vincent and the Grenadines at the sole expense of the 1st respondent, within 30 days of delivery of this judgment. The said survey shall be conducted and the survey plan prepared in accordance with the applicable laws and regulations. Upon completion of the said survey and authentication of the resulting survey plan by the competent authority, the appellant Princess Bibby, as administratrix of the estate of Lloyd Bibby deceased, shall, within 21 days of notification that the survey plan is completed and duly certified by the competent authority, execute a Deed of Conveyance conveying or transferring the designated plot or area of land on which the 1st respondent's house stands to the 1st respondent, Anthony Constantine, in fee simple. In the event that the appellant shall refuse or shall not execute the said Deed of Conveyance within the stipulated period, the Registrar of the High Court shall be authorised and empowered to execute the said Deed in the name and on behalf of the Estate of Lloyd Bibby deceased.
- (5) The order of the learned trial judge declaring Kelly-Ann Constantine, Jimmy Constantine and Melvina Constantine to be the beneficial and legal owners of the disputed property is set aside.
- (6) No order as to costs.

[69] Finally, permit me to thank learned counsel for the parties for their assistance to the Court.

I concur.

Vicki Ann Ellis
Justice of Appeal

I concur.

Trevor M. Ward
Justice of Appeal

By the Court

Chief Registrar