

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 22 OF 2001

BETWEEN:

MARIE ADRURAL

Appellant

and

[1] VERONIQUE GEEAD
[2] ULINA JOSEPH
[3] ROMIEL DONAI
[4] LAWRENCE DONAI

Respondents

Before:

His Lordship, The Hon. Sir Dennis Byron
His Lordship, The Hon. Mr. Albert Redhead
His Lordship, The Hon. Mr. Ephraim Georges

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

Appearances:

Mr. Evans Calderon for the Appellant
Mr. Michael Gordon for the Respondents

2002: May 21; 22;
October 20.

JUDGMENT

The Appeal

[1] **BYRON, C.J.:** Four siblings of Mary Adrural had petitioned the Court for a Declaration of Title to land pursuant to the provisions of Article 2103A of The Civil Code Chapter 242 of the 1957 Revised Laws of Saint Lucia. They alleged that the land registered in Mary Adrural's name belonged to the heirs of their deceased mother Theresa Donai on the basis of prescription. Mary Adrural denied that their mother and her heirs had prescribed and alleged that her entitlement to the land

was based on purchase from their father Joseph Donaii. She denied knowing that anyone other than Joseph Donaii had ever claimed the land. The learned trial Judge found against her and ordered that the title be rectified to place ownership of the said lands in the heirs of Theresa Donaii and cancelled the registrations in favour of Mary Adrural and Joseph Donaii.

The background facts

- [2] The learned trial Judge made findings of fact. For as long any one in the case could remember the Desriviere family had been in occupation of land at Cabiche, Babonneau in the quarter of Castries. It admeasured approximately 1.8 hectares. Theresa Desriviere, a family member, was living there in that capacity when she married Joseph Donaii in the early 1930s. He came to live with her. It is clear that his occupation was with her permission as part of her family. The family remained in exclusive occupation of the land.
- [3] They had nine children who were born on the land between 1934 and 1957. There was a family house in which they lived. From time to time some of the children built houses for themselves and their children. Some of them cultivated the land. Some of their children's children built houses on the land. The property was occupied as a family holding in that manner. In 1980 Theresa Donaii died. Her estate has never been administered. Up to that time no documentary title had been obtained by anyone. The family occupation continued.
- [4] In 1984 the new regime for the registration of land ownership came into force and required people to register the land they claimed to own. Marie Adrural one the children of the family, told her siblings that she would register the land in the name of their father so that the land could ultimately be distributed to them all. In keeping with that representation, she entered a claim to the land in the name of Joseph Donaii. None of her siblings made any contrary claims to the land. On 3rd

December 1986, the land was registered as Block 1248B parcel 188 in the name of Joseph Donaii.

- [5] On 17th October 1988, Joseph signed a deed of sale for the entire parcel of land to Mary Adrural for the sum of \$10,000.00. Mary Adrural was subsequently registered as proprietor of the land as Block 1248B parcels 338 and 339. The learned trial Judge specifically commented that the purchase price was a fraction of the real value of the land and indicated that he accepted the evidence that in 1995, the land was valued at \$873,000.00.

The grounds of appeal

- [6] The appellant's contended that:
- [a] the decision is against the weight of the evidence;
 - [b] the learned trial Judge erred in basing his order on the inadequacy of the consideration for the sale;
 - [c] the respondents had acquiesced in the registration in favour of Joseph Donaii and should not be allowed to challenge it at this late stage;
 - [d] the learned trial Judge erred in making an order for the rectification of the land register under section 98 of the Land Registration Act of 1984;
 - [e] the undisputed registration of Joseph Donaii as registered proprietor established his right to ownership of the land;
 - [f] the learned trial Judge erred in fact and in law when he determined the case upon the basis of the respondents' prescriptive title; and
 - [g] section 28(g) of the Land Registration Act was inapplicable and the learned trial Judge erred in relying on it.

The evidence

- [7] Although the grounds of appeal included a challenge to the evidence, the conduct of the appeal did not place much emphasis on challenging the findings of fact. The

findings seemed to be clear and in accordance with the evidence that was adduced. There had been little controversy on the facts during the trial. In my view there was ample evidence to support the findings of the learned trial Judge. I did not consider that the decision was against the weight of the evidence.

The inadequacy of the consideration

- [8] Counsel for Mary Adrural complained that the learned trial Judge based his findings on the inadequacy of the sum of \$10 000.00 as a purchase price for the land. In my view this was irrelevant to the issue in the case. Even though the statement of law might have been accurate, the inadequacy of the consideration was not the reason for the decision. It seemed to me that since the defence had alleged that Mary Adrural had purchased in good faith it was desirable for the Judge to make findings on the related evidence. He made it clear that he found against that pleading and his reasoning process included observations on the inadequacy of the consideration. I do not think that any challenge could be made to the accuracy of the observation that the purchase price was a fraction of the value of the land. These findings were relevant for another reason. Although the case was not prosecuted on the basis of enforcing any equitable interests, the Judge made it clear that the equities were against Mary Adrural. But the pleadings did not base the claim on that basis and the Judge did not rely on these findings to support his decision.

Rectification

- [9] The argument of the appellant on rectification was so attractive that both Counsel agreed that the learned trial Judge had no jurisdiction to apply the powers of Section 98 of the Land Registration Act to rectify the land register in this case. I, too, had and still have no difficulty in agreeing with them.

- [10] Section 98 provides that the Court may order rectification where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake. Counsel for the appellant contended that there was settled authority that it was not open to use proceedings such as this to overrule any order made by the Adjudication Officer under the Land Adjudication Act in the process of the first registration of title under the Land Registration Act. The line of authority¹ does show that section 98 does not provide relief for fraud or mistake in the adjudication process. The cases referred to involved allegations of mistake or fraud in the adjudication process. The Court consistently held that the remedy of rectification could not be used as a substitute for the appellate procedures provided in the Land Adjudication Act.
- [11] I think that the point that should be emphasized is that section 98 deals with providing a remedy where the problem was with the registration process. This is not the section, which empowers the Court to make declarations regarding overriding interests under section 28. It is an adaptation of the equitable remedy of rectification. In my view rectification could have arisen if the case was conducted on the basis that there had been an arrangement for the land to be registered in the name of Joseph Donaii for the purpose of distribution to the children of the family. A process which resulted in his registration as absolute owner may have raised the issue of mistake or fraud in the registration process.
- [12] In this case however there was no allegation in the pleadings and no evidence was adduced to show that there was any fraud or mistake in the registration process. The learned trial Judge had made no findings of either fraud or mistake in the registration of the title. I have come to the conclusion that the Judge did not invoke the powers of section 98. He never alluded to section 98 in the reasons for his decision. He made no findings of the fact necessary for its application. His use

¹ **Thomas v Stoutt and Others** 55 WIR 112, **Heirs of Hamilton La Force v Attorney General of Castries and Lucy Adrien et al** Civil Appeal No.11 of 1993, **Skelton and Others v Skelton** [1986] 37 WIR 177 and **James Ronald Webster and Cleopatra Webster v Beryl St.Clair Flemming** (as personal representative of the estate of Samuel Henry Hodge, deceased) Civil Appeal No. 6 of 1993¹.

of the word “rectified” in my view was not attributable to section 98. It was used in an untechnical sense. The context makes his meaning clear. He was using the word to convey the meaning, to correct or put right. The particular relief which was claimed was;

“the petitioner therefore prays that the Court will issue a declaration of title in favour of the Petitioners and the other above-mentioned legitimate children of Theresa Donaii (nee Desriviere) ...”

The language of the learned trial Judge had the effect of making a declaration of title in favour of the heirs of Theresa Donaii in the terms of the prayer in the petition. The Land Registration Act clearly gave the Court power to make the order as will be seen when we examine Section 28 of the Act. While it was easy to agree with counsel for the appellant that section 98 did not provide the jurisdictional basis for the order, I hold that the Judge did not rely on those provisions to empower his decision.

Acquiescence

- [13] Counsel for the appellant also raised the issue of acquiescence. In this case the petition was filed some 9 years after the land was registered in the name of Joseph Donaii. He contended that it was too late for any objection to be raised. I have rejected this completely. The decision enforced the overriding interests of the heirs of Theresa Donaii in accordance with section 28 of the Land Registration Act. That section provides that registered ownership is subject to overriding interests. This section protects those interests without them being registered. The protection is against persons who became registered while they existed. In my view the concept of acquiescence cannot apply to overriding interests.

The effect of registration and overriding interests

- [14] The regime of the Registered Land Act is based upon the concept that the registration of any person with title shall vest in that person the absolute ownership

of that parcel of land. This is clearly expressed in the provisions of Sections 23 and 24 of the Act. However, the Act expressly creates certain exceptions to that rule. Section 28 refers to a number of those exceptions, which it describes as overriding interests. It prescribes that all registered land shall be subject to certain overriding interests. Paragraphs (f) and (g) of section 28 identify two of those overriding interests as;

- “(f) rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions or prescription; and
- (g) the rights of a person in actual occupation of the land.”

The findings of the learned trial Judge made the provisions of both paragraphs applicable to this case.

Limitation of actions and prescription

[15] In challenging the Judge's decision on the issue of prescription counsel for the appellant criticized the non-compliance of the respondents with sections 94-96 of the Land Registration Act. In my view although the criticisms were well founded they did not affect the case in any material way. Those sections are not what section 28(f) refers to as the laws relating to the limitation of actions and prescription. These provisions deal with the procedure, which may be utilized by any person who wishes to make a claim to the Registrar of Lands for registration of title claimed to have been acquired by positive prescription. In my view the laws referred to by section 28(f) are the provisions of the Nineteenth Book (Articles 2047-2132) of the Civil Code Chapter 242 that describe prescription as a means by which property may be acquired.

[16] Article 2103A stipulates the Court's jurisdiction to declare prescriptive title. It provides that title to immoveable property, may be acquired by sole and undisturbed possession for thirty years and empowers the Court to issue a declaration of title in regard to the property.

[17] One issue of law that was raised on these facts has to do with the question of the interest of Joseph Donaii. He came onto the land of his wife with her permission. Article 2067 of the Civil Code prescribes that "those who hold precariously the property of another cannot acquire it by prescription". Another issue has to do with the question of the entitlement of the heirs and successors of the Desriviere family and of Theresa Donaii. This is governed by article 2064 which states that:

"a successor by particular title may join to his possession that of him from whom his title is derived, in order to complete his prescription."

[18] Under these provisions the facts point to only one conclusion of law. The Desriviere family was in occupation of the land. Theresa Desriviere continued the occupation of her family. When Joseph Donaii married her, he came onto the land with her permission and could not acquire a title adverse to her or her family. His possession as her husband made it impossible for him to acquire a title adverse to her. When she died her heirs and successors, which included him, would have continued her possession as owner. Her heirs were entitled to be registered as the owner of the land. It is understandable that it may have been considered convenient to have the land registered in the name of their father, a living person whose interests ought not to have been contrary to theirs, to effect the distribution. The effect of s.28(f) of the Land Registration Act is that the registration in the name of Joseph Donaii was subject to the overriding interests acquired by limitation or prescription. It is clear from the evidence that the heirs of Theresa Donaii had acquired rights to the land by virtue of the laws of prescription and it was the duty of the learned trial Judge to make an order giving effect to them.

Persons in actual occupation

[19] Section 28 (g) specifically protects the rights of persons in actual occupation of the land. This provision protects the rights of those in occupation². It is therefore necessary to determine who is in actual occupation and to identify their rights. The

² **Ulina Jennifer George v Hilary Charlmagne** Civil Appeal No. 24 of 2001.

evidence indicated that the persons in actual occupation included some of the grandchildren of Theresa Donaii. They would not be protected by paragraph (f) as they were permissive occupiers of family land and could not prescribe for themselves. However, although they were not parties to the case, it is clear from the evidence that they were in actual occupation of the land and they would have rights to the extent of the value of their improvements to the land as set out in Articles 372 to 374 of the Civil Code. In addition, some of the heirs of the Theresa in actual occupation have improved the land by building homes and enjoy an area of occupation that is inconsistent with their entitlement as heirs of Theresa Donaii. Several of the persons included in this category are not parties to the case and the issues relevant to the quantification of their interests were not dealt with. It is therefore sufficient to mention that the registration of the heirs of Theresa Donaii as owner is subject to the interests of persons in actual occupation as provided by section 28(g).

Order

[20] I would therefore order that the appeal be dismissed. The order of the learned trial Judge is affirmed. The respondents are at liberty to enter the following judgment:

- [i] That the registration of title of Block 1248B parcel 188 and in the name of Joseph Donaii and subsequently parcels 338 and 339 in the name of Mary Adrurual be cancelled;
- [ii] That the heirs of Theresa Donaii are declared to be the registered absolute owners of the land in paragraph (i) above; and

[iii] That the appellant shall pay the respondents' costs in the sum of \$15,000.00 as agreed by Counsel.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]