

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1B OF 1990

BETWEEN:

JOSEPH ST.ROSE

Appellant

and

BRICE LAFITTE

Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Byron J.A.
The Honourable Miss Justice M. Joseph J.A.(Ag.)

Appearances: Mr. K.A.P. Monplaisir Q.C and Miss Downes for the
Appellant
Mr.L. Riviere for the Respondent

1991: November 6th and 7th
1992: January 27th.

J U D G M E N T

FLOISSAC C.J.

This is an appeal against a judgment which Matthew J. delivered on the 29th November 1989. By that judgment, the learned judge declared that the respondent is the owner of 13 acres or 5.3 hectares more or less of the Canaries Estate situate in the quarter of Soufriere in Saint Lucia and shown on Plan and Report of survey executed by A.J.Hippolyte, licensed land surveyor on the 14th January 1986 as Plan S626K Record No.4 of 1986. The learned judge also made perpetual the order of injunction dated 27th July 1988 against the appellant and awarded damages in the sum of \$10,000.00 in favour of the respondent and against the appellant.

At the trial, the respondent claimed ownership of the 13 acres of land (the larger portion of land) by virtue of a notarial Deed of Sale by James William Watt Mitchell (deceased Mitchell) to the respondent. That deed was executed on the 21st June 1967 and was recorded in the Saint Lucia Office of Deeds and Mortgages on the 23rd June 1967 in Vol.107 No.85449.

In his statement of claim, the appellant claimed ownership of

5.5 acres more or less of land (the disputed parcel of land) by virtue of a notarial Deed of Sale by Dorothy Mitchell (widow and successor-in-title of the respondent's vendor, deceased Mitchell) to the appellant. That deed was executed on the 28th January 1974 and was recorded in the Saint Lucia Office of Deeds and Mortgages on the 5th February 1974 in Vol.114 No.105188.

In the course of the trial, the Court appointed Mr. Wendell Phillips (a licensed land surveyor) to resurvey the respondent's land. Mr. Phillips concluded in his report and the learned judge found as a fact that the disputed parcel of land formed part of the larger portion of land sold to the respondent. As a result of Mr. Phillips' report and in view of the provisions of Article 1973 of the Civil Code of Saint Lucia, the appellant realised that he could not rely solely on his Deed of Sale as title to the disputed parcel of land. That Article 1973 provides that:

"When two or more persons receive deeds of conveyance of a property from the same grantor he who first registers his deed has the preference."

The appellant was therefore forced to resort to Article 2112 of the Civil Code of Saint Lucia which provides that:

"He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years."

The learned judge held that for two reasons, the appellant could not invoke Article 2112. Firstly, the appellant's title was totally void. Secondly, the appellant did not acquire the disputed parcel of land in good faith.

The nullity of the appellant's title

The learned judge said: "Article 2115 of the Civil Code states that 'a title which is null by reason of informality cannot serve as a ground for prescription by ten years'. A fortiori a title which is totally void cannot serve as a ground for prescription by ten years." I regret that I do not agree with that statement and

the implications thereof.

The interpretation of the articles, words and phrases of the Civil Code is the ascertainment of the meanings which the legislature intended those articles, words and phrases should bear. The legislative intention is an inference drawn from the primary meanings of those articles, words and phrases with such modifications to those meanings as may be necessary to make them consistent with the codal or statutory context. The codal or statutory context comprises every other article, word and phrase in the Code and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention. The surrounding circumstances include the evident object of the series of articles to which the article under construction belongs and the fact that the interpretation of an article, word or phrase in its primary sense would result in manifest absurdity.

The evident object of Articles 2112 to 2118 of the Civil Code under the caption "Prescription by subsequent purchasers" is to protect a subsequent purchaser who acquired land (i.e. entered into prescriptive possession of land as owner thereof) in good faith under a void written title and continued in prescriptive possession for at least 10 years. The protection is against a previous purchaser or owner who has a valid legal title to the land.

Articles 2112 to 2118 presuppose that the subsequent purchaser's title is void by reason of the invalidating principle "Nemo dat quod non habet". This invalidating principle is enshrined in Article 1397 of the Code which provides that:

"The sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles. The buyer may recover damages from the seller, if he were ignorant that the thing sold did not belong to the seller."

It is because the subsequent purchaser's title is void that he needs the protection granted by Article 2112. If the subsequent purchaser's title is valid, there is no need for him to rely on Article 2112 or prescriptive possession.

Articles 2112 to 2118 also presuppose that the subsequent purchaser's title is void only by reason of the invalidating principle. These articles are evidently not intended to be applicable to a case where the subsequent purchaser's title is in a form which renders it incapable of conferring ownership and would have been void for this purpose even if the vendor were the legal owner of the land which he purported to sell to the subsequent purchaser.

These presuppositions are necessary implications without which Articles 2112 to 2118 would be absurd and would produce results which the legislature could not conceivably have intended. Implicit in these articles are principles expressed and explained in the following articles of the Civil Code of Louisiana (which has been called "the most perfect child of the civil law"):-

- (1) **Article 3478:** "He who acquires an immovable in good faith and by just title prescribes it in ten years...."
- (2) **Article 3483:** "To be able to acquire by the species of prescription mentioned in this paragraph, a legal and transferable title of ownership in the possessor is necessary; this is what is called in law a just title."
- (3) **Article 3484:** "By the term **just title**, in cases of prescription, we do not understand that which the possessor may have derived from the true owner, for then no true prescription would be necessary, but a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property."
- (4) **Article 3485:** "And in this case, by the phrase, transfer the ownership of the property, we understand not such a title, as shall have really transferred the ownership of the property, but a title which by its nature, would have been sufficient to transfer the ownership of the property, provided it had been derived from the real owners, such as a sale, exchange, legacy or donation.

Thus, prescription could not be acquired under a title resulting from a lease or loan, because these contracts do not transfer the ownership of the property."
- (5) **Article 3486:** "It is necessary besides: (1) That the title be valid in point of form; for if the possession commenced by a title void in that respect, it cannot serve as a foundation for prescription."

In my opinion, different meanings were not intended to be assigned to the words "written title" (appearing in the Civil Code of Saint Lucia), "translatory title" (appearing in the Civil Code

of Quebec) and "just title" (appearing in the Civil Code of Louisiana). These interchangeable words were all intended to express or imply the same principles of civil law. That which is implicit in the words used in the Civil Codes of Saint Lucia and Quebec is no more and no less than that which is explicit in the words used and explained in the Civil Code of Louisiana.

I therefore hold that a subsequent purchaser's title is null by reason of informality within the meaning of Article 2115 of the Civil Code of Saint Lucia, if the title is void not merely because the vendor had no right to transfer ownership of the land to the subsequent purchaser but because, by reason of its nature or form, the title was legally incapable of transferring such ownership.

In this case, the appellant's title was not null by reason of informality. The title was a registered notarial Deed of Sale which would have been effective to transfer the disputed parcel of land to the appellant, if the vendor was the owner of the land at the time of the execution of the Deed of sale. The appellant was therefore not precluded by Article 2115 from invoking Article 2112.

The appellant's good or bad faith

Article 2112 applies only to a subsequent purchaser who acquired land in good faith. Article 367 of the Civil Code provides that:

"A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolutive cause which puts an end to it are unknown to him. Such good faith ceases only from the moment that these defects or the resolutive cause are made known to him by proceedings at law."

According to Article 367, ignorance is the procreator of good faith. In the context of the acquisition of land, the words "good faith" are descriptive of a state of mind which has long been juridically equated to honest belief. Therefore, in the case of a subsequent purchaser of land, "good faith" means the purchaser's honest belief that his title was valid and effective for the purpose of transferring the ownership of the land to him and that

he had become the owner of the land by virtue of his title.

According to Article 2066 of the Civil Code: "good faith is always presumed. He who alleges bad faith must prove it." If ignorance is explicitly the procreator of good faith or honest belief, knowledge (which is the antonym of ignorance) is implicitly the procreator of bad faith or disbelief.

The onus was therefore on the respondent to rebut the codal or statutory presumption of good faith by proving (on balance of probabilities) that the appellant acquired the disputed parcel of land in bad faith in that he knew that Dorothy Mitchell had no right or did not believe that Dorothy Mitchell had the right to sell the disputed parcel of land to him.

The learned judge imputed such knowledge and resulting bad faith to the appellant and did so by reason of the prior registration of the respondent's previous Deed of Sale. The learned judge said:

"Moreover from June 21, 1967, the Defendant's deed with the description of the land was registered and that was notice to all the world that the Defendant was claiming the land to be his. In my judgment the Plaintiff cannot under these circumstances say that he acquired in good faith."

In my judgment, the prior registration of the title of the previous purchaser or owner is not a sufficient ground for imputing knowledge and bad faith in rebuttal of the presumption of ignorance and good faith prescribed by Article 2066. The protection granted to a subsequent purchaser by Articles 2112 to 2118 is against a previous purchaser or owner whose title was duly registered before the title of the subsequent purchaser. If the subsequent purchaser's title was registered before the title of the previous purchaser or owner, the subsequent purchaser is protected by Article 1973 and has no need to resort to Articles 2112 to 2118. If the presumption of ignorance and good faith can be rebutted by knowledge and bad faith imputed solely on the ground of the prior registration of the title of the previous purchaser or owner, the

I therefore endorse the learned judge's conclusion that the appellant did not acquire the disputed parcel of land in good faith and therefore cannot claim ownership thereof by prescription under Article 2112 of the Civil Code of Saint Lucia.

For this reason, I would dismiss the appeal with costs to the respondent.

BYRON J.A.

This is an appeal against an order of Matthew J in which he declared that the respondent was the owner of 13 acres of land as contained in a plan of survey drawn by A.J.Hippolyte on January 14, 1986, awarded \$10,000.00 damages for trespass and made ancillary injunctive orders.

The appellant contends that the judge ought to have declared him owner of 5 1/2 acres of the said portion of land on the basis that he had acquired it in good faith under a written title and had prescribed the ownership of it over a period of ten years under the provisions of article 2112 of the Civil Code.

His submissions briefly put were that the judge was wrong to:

- i) impute knowledge to the appellant that the respondent had prior ownership of the land,
- ii) to rule that the respondent's registered deed constituted notice to the appellant that the respondent was claiming the land to be his,
- iii) to hold that the appellant's title was wholly void and could not serve as a basis for prescription under Article 2112.

The Background Facts

On June 21st 1967 the Respondent purchased a parcel of land at Canaries from the late James Mitchell. The deed which evidenced

this sale was registered on 23rd June 1967. The property sold was described as

"approximately 10 acres" and as being "bounded on the North and West by Cliffs of the Canaries Estate, South by lands of Heirs George Albertini, East by Ravine Duval Stream".

On January 28th 1974 the Appellant purchased 5 1/2 acres of land from Dorothy Mitchell the widow of James Mitchell. This sale was evidenced by a deed registered on 5th February 1974. The property sold in this deed was described as -

"On the North by the Canaries Valley Road, on the South by a cliff, on the East by Ravine Duval (near a bridge) and on the West by Canaries Estate or howsoever otherwise the same may be bounded."

The judge found that prior to the purchase, the appellant had commenced occupying the land in 1971.

In 1985 a survey done by Licensed land Surveyor Alan Hippolyte on behalf of the respondent established that the 5 1/2 acres described in the appellant's deed was part of the land described in the respondent's deed.

The appellant then commenced these proceedings. I think that the pleadings are an important part of the background to this case because the case that was pleaded was far different to that which was argued on this appeal. Nowhere in the pleadings was there any allegation that the appellant had acquired a title by prescription.

The relief for which the appellant prayed was a declaration that the boundary line established between the parties in 1973 be the division between their respective lands.

During the proceedings the court appointed Licensed Land Surveyor Wendell Phillips to survey the appellant's land taking into account the respective titles of the parties. Mr. Phillips report was filed before any viva voce evidence was adduced.

In relation to that report the judge found that -

" Mr. Phillips stated quite clearly that the land sold to the appellant formed part of the land sold earlier to the Respondent. I accept that to be a fact."

The appellant did not produce evidence of the alleged survey of 1973 nor did he adduce any evidence of the establishment of any boundary line between the land he was claiming and the respondent's land.

On this issue the Judge found that -

"The evidence suggests that the appellant has not up to this day conducted any survey of the land he bought".

It was clear that the appellant was unable to prove the case that he had pleaded because the evidence that the land that he was claiming had been previously sold to the respondent was uncontroverted.

It was in his closing address that the counsel for the appellant made legal submissions in relation to prescription in rebuttal of Article 1973 of the Civil Code which states -

"When two or more persons receive deeds of conveyance of a property from the same grantor he who first registers his deed has the preference."

Despite the way in which it arose, the judge, nonetheless, considered the issue of prescription. He rejected the argument, however, because in his view the appellant had not acquired the property in good faith under a written title.

The relevant provision is set out in Article 2112 of the Civil Code:

"He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years."

Written Title

Article 2115 of the Civil Code states:

"A title which is void for informality cannot serve as a ground for prescription by ten years."

The judge ruled that the appellant's deed was void because the vendor had already sold the same land to the respondent and therefore it was incapable of serving as a ground for prescription by ten years.

I agree with Counsel for the appellant that this ruling was wrong. In my judgment the concept of being void for informality in Article 2115 cannot be equated with the concept of being void because the vendor had no title to convey.

There is nothing in the article or the code which indicates that every deed which is void in the sense that it is incapable of conveying title is void for informality. It would seem that informality is only one type of nullity. In this case the defect of the appellant's deed was that the vendor did not have any title to convey. The deed was in the form of a deed of sale and it conformed to the due process of registration. There was no defect of formality alleged. The deed was in a form which was capable of conveying ownership if the vendor had any to convey.

The purpose of Article 2112 must be to protect a purchaser in good faith who is in possession as owner for over ten years, where his title is defective. There would be no need for prescribing ownership unless there was a defect in the written title of the person in possession. This article would be meaningless if it did not operate to protect a purchaser, who in good faith acquired land from a vendor, where the written title issued failed to convey ownership because, for example, as in this case, a predecessor in title had already divested himself of the land.

In my view the appellant's deed was a written title which was

not void for informality and which would be a basis for the ten year period of prescription if the land was acquired in good faith.

Good Faith

The evidence which was uncontroverted and accepted by the judge was that the appellant occupied the land he was claiming from 1971 and that he had a registered deed from February 1974. In other words he was in possession for more than 10 years prior to the issue of the instant proceedings.

The judge found that the appellant had not acquired in good faith because he knew that the respondent was claiming the land in question and that the respondent's deed with the description was registered constituting notice of his claims.

Argument was addressed on the meaning of Good Faith. Counsel for the appellant referred to article 367 of Civil Code which defines good faith in relation to the right of accession in respect of what is produced by a thing.

"A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolatory cause which puts an end to it are unknown to him. Such faith ceases only from the moment that these defects are made known to him by proceedings at law."

In dealing with this concept it is important to bear in mind that by Article 2066:

"Good faith is always presumed. He who alleges bad faith must prove it."

This is the only definition of "Good Faith" in the Civil Code and counsel for the appellant submitted that good faith in Article 2112 bears same meaning as defined in Article 367.

He advocated that good faith is the certainty in the belief that the person in possession owned the property claimed and was to be imputed from the fact that he has his own title and the absence of knowledge of anyone else's title. He argued that in this case the boundaries of the land were uncertain and that the knowledge that the appellant had was that the respondent's land abounded his.

He argued that knowledge that the defendant owned the land in dispute should not be implied from the registration of the respondent's deed.

In my judgment a person would not be in good faith for the purposes of Article 2112 if he knew or ought to have known from all the circumstances of the case that the land he was purchasing belonged to someone else.

There was abundant evidence to support the judge's finding that the appellant fell short of the level of ignorance of the facts which could give rise to a finding that he acquired in good faith.

In his evidence the appellant stated -

"I know the respondent has land at Canaries. I bound with him. He is higher than me. I had been on the land for about 16-17 years when I bought the land. I know I took a surveyor to survey my land. Brice Lafitte's surveyor did a survey close to my land. I objected to the survey but he still continued. I told the surveyor not to touch my land. I do not know if the survey was finished."

In my judgment the appellant's prayer in the statement of claim and his false testimony as to the 1973 survey supports the conclusion that in 1973, prior to his acquisition of the land, the appellant had knowledge of the respondent's ownership of the land in question.

I was not impressed with the argument of counsel that the appellant did not know the extent of the respondent's land because of vagueness in the description of the boundaries in the deed. On my reading of the deed it did not seem to give rise to any difficulty. Neither of the surveyors Hippolyte or Phillips failed to understand the description of the deed and there was no evidence adduced to support the argument of uncertainty.

In my view the testimony of the appellant evinces an attitude of bad faith in his refusal to allow the respondent's surveyor to

do his work despite his admission that the respondent was an adjoining land owner. If in fact the appellant did not know the true extent of the respondent's land it does not seem consistent with any notion of good faith that he could rely on that lack of knowledge when by his own admission he contributed to his own ignorance by behavior any one would consider to be an unreasonable and wrongful interference with the right of an adjoining land owner to survey his land.

Further a perusal of the appellant's deed reveals that the respondent is not described as an adjoining land owner. No evidence was adduced to explain that omission. This raises a serious question as to the consistency and therefore the truthfulness of the appellant. What conclusions of fact should be drawn? Certainly if the description on the deed did not conform to instructions given by the appellant in so obvious a manner he ought to have noticed. It seems to me that since the description of the appellant's deed fails to conform to his oral evidence and pleadings on this issue it is a factor which could be taken into account in determining the issue of good faith because it points to a lack of honesty with the court. It is a factor which supports the judge's conclusion that the appellant knew that the respondent was the owner of the land in dispute.

One of the judge's findings of fact was that -

"I believe the respondent that in 1973 when he came to St. Lucia from England he went straight to the appellant to speak to him about the occupation of his land and the appellant threatened to chop up the respondent."

It was argued that from that time the character of the respondent's possession took on the aspect of violence and was not the peaceable possession which could be the basis of prescription. In my opinion this finding also negatives good faith because it points to the appellant's refusal to discuss or consider the extent of the respondent's land, or even to an intention to take it by force.

With regard to the appellant's contention that the judge was wrong to rule that the registration of the respondent's deed was notice of his ownership and therefore negatived good faith my judgment is that on the facts of this case where it was clear that the appellant had all the information which should cause any purchaser in good faith to check the extent of the respondent's land the existence of the deed demonstrates that the appellant either failed to do this or intentionally took the land with intention to dispossess the respondent.

There was evidence to indicate that the appellant may have been motivated by such positive bad faith. In his evidence the respondent said that he met the appellant at his nephew's home in London before and after he bought the land in 1967. He said

"Appellant told me 'Little boy where you get so much money to buy so much land'. He told me I am a fool; he will go down and make the white man sell certain of the lands to him. I told him that Mitchell had sold the land to me already. I did discuss the land with him in England. I discussed the boundaries with St. Rose."

The judge did not make any finding on that evidence but I am satisfied that taking the case as a whole there was justification for finding that the appellant did not acquire the land in good faith.

The appellant also urged that the judge erred in that he did not apply the provisions of Article 372 to this case. This is the provision which gives protection to a possessor of land for the value of improvements. However this argument never got off the ground because the pleadings did not make any claims under this head and there was absolutely no evidence on the record from which any findings of fact could be made. In any event the finding that the appellant was not in good faith would have affected this claim because the section commences -

"When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor."

Counsel also complained that the damages were punitive and

that the extent of the damages were enlarged by the laches of the respondent. Again there was no factual basis for a consideration of these arguments. The only evidence on record was that the appellant lost \$6000.00 per annum from the appellant's occupation. The judge awarded damages of \$10,000.00. This sum was to cover damages for the trespass from 1971 to 1985 as well as compensation for the losses suffered by the respondent as a result of an interim injunction granted against him in 1985 and which was only discharged by the judgment appealed against. I think that the damages are fair and moderate and I can see no reason to interfere.

I would dismiss the appeal with costs.

MONICA JOSEPH J.A. (Acting)

The facts have been stated in the previous judgments.

The appellant appeals against the decision of the trial judge delivered on 29th November 1989, dismissing the appellant's suit in which he claimed 5 1/2 acres of land at Canaries Estate, (the disputed land) and declaring that the respondent is the owner of an area of land measuring 13 acres as contained in the plan of survey drawn by A.J.Hippolyte on January 14, 1986, on the following grounds:

- (1) The learned trial judge erred in concluding that the appellant did not acquire his land in good faith and consequently rejecting the submission that the ownership had been prescribed in accordance with Article 2112 of the Civil Code of St.Lucia.
- (2) There was no evidence or no sufficient evidence to award damages to the Respondent in the sum of \$10,000 or at all.
- (3) The decision is against the weight of the evidence.

It is worthy of note that the relief sought in the appellant's statement of claim was for a declaration that the boundary line established between the parties in 1973 be the division line between their respective lands. The claim did not include a declaration of acquisition of title by prescription. The question

of prescription arose before the trial judge and he found that, as the appellant had not acquired the disputed land in good faith, the claim of prescription failed. The issue, therefore, is whether the appellant acquired the land in good faith.

It was Counsel's submission that Article 2112 of the Civil Code of St. Lucia (the text of which is set out in the previous judgments) is the same as Article 2251 of the Civil Code of Quebec, and Counsel referred the Court to 1960 McGill Journal Vol.7 page 6 - article written by George A. Rosenberg who discussed the concept of good faith.

In submitting that there was good faith on the part of the appellant, Counsel for the appellant defined good faith as an honest belief by the person in possession of property that he owns the property, which good faith is presumed. (See Article 2066 of the Civil Code). In this case, Counsel contended, the appellant's knowledge was limited to the fact that the respondent's land adjoined his, that the boundaries and the identity of the land were uncertain.

On the other hand, Counsel for the respondent referred the Court to Essays on Civil Code - Elements of Prescription - written by a Mr. Monplaisir which outlines the elements required for prescription, one element being the application of the subjective test in the acquisition of property in good faith. He argued that, in applying this subjective test, all the circumstances surrounding the acquisition of the property are to be taken into account.

Counsel submitted that effective possession must be peaceable, public, unequivocal and continuous and that certainly one of these ingredients was missing in that the learned judge found that in 1973 the respondent met the appellant on the disputed land and the latter threatened to chop him.

To determine whether there was good faith on the part of the appellant to bring him within Article 2112, it is necessary to consider the evidence and finding of facts made by the trial judge.

The judge found that the respondent, while residing in England, purchased approximately ten acres of land from James Mitchell on 21st June, 1967, and holds a deed of sale which was registered on 21st June, 1967.

The judge made this finding:

"I believe the defendant that in 1973 when he came to St. Lucia from England he went straight to the plaintiff to speak to him about the occupation of his land and the plaintiff threatened to chop up the defendant."

So in 1973 the appellant was aware that the respondent was laying claim to the disputed land. On 28th January, 1974, with this knowledge, the appellant purchased the disputed land from a Dorothy Mitchell. It would seem that the appellant made no effort to ascertain, e.g. by conducting a search or making inquiries, whether or not the respondent had documentary title.

The trial judge was right in imputing knowledge by the appellant of prior ownership by the respondent. The appellant's conduct suggested one of two things: either he knew of the prior ownership of the respondent, or that there were circumstances that caused him to think that there might be a claim of prior ownership. Otherwise why the issue of a threat when the respondent approached him to discuss occupation of the disputed land?

Can it be said that there was good faith on the part of the appellant in 1974? The answer seems to be in the negative as in 1973 he had cause to chase the respondent from the disputed land for the reason given earlier. So that even if he was in possession from 1974 to 1985, a period of eleven years, good faith was lacking.

By operation of law, registration of the respondent's deed

constitutes notice to all the world and a subsequent registration of a deed for the same parcel of land would rank after the first registration. This is in tune with Article 1973 of the Code which is as follows:

" When two or more persons receive deeds of conveyance of a property from the same grantor he who first registers his deed has the preference."

However, the fact that the respondent's deed was registered prior to the registration of the appellant's deed does not by itself constitute bad faith on the part of the appellant. Something more is required to fix the lack of good faith, e.g., if there was evidence that the appellant had carried out a search and had ascertained that the respondent's deed was registered or that he had actual knowledge of the existence of a registered deed.

It was Counsel for the appellant's contention that the trial judge ought not to have held that a title which is totally void cannot serve as a ground for prescription by ten years, and in support he cited Article 2115 of the Civil Code and *Vitalis v Sanchez St.Lucia C.A 8/1989*. Article 2115 reads:

"A title which is null by reason of informality cannot serve as a ground for prescription by ten years."

From reading and on reflecting on the Learned Chief Justice's judgment I agree with the Learned Chief Justice's interpretation that "informality" in this case relates to a situation where a subsequent purchaser's title cannot lawfully transfer ownership of land to him, that is, where the document purporting to transfer title cannot legally do so.

The appellant's title, in its form - a registered deed of sale - was capable of transferring ownership to the appellant if the vendor had had a proper title to pass and is not null or void by informality. In view of this interpretation, prescription is possible after the passage of ten years but for the fact that, in this case, the appellant lacked the good faith required in Article 2112.

Counsel cited Article 372 of the Civil Code as authority for his argument that the appellant ought to receive damages or compensation for improvements he made to the disputed land. This article protects a possessor in good faith of land who incurs expenditure in the improvement of land. As the appellant lacks good faith he is not entitled to the protection provided by the Article.

The uncontroverted evidence of the respondent was that he would have earned about \$6,000.00 a year from the use of the land from 1971 when the appellant came on the land. There is therefore no sufficient reason advanced for interfering with the award of damages of \$10,000.00 by the trial judge for use and occupation of the respondent's land.

I agree that the appeal be dismissed with costs to the respondent.



V.F. FLOISSAC
Chief Justice



C.M.D. BYROM
Justice of Appeal



MONICA JOSEPH
Justice of Appeal (Acting)