

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 12 of 1990

BETWEEN:

ANGELLA CENAC - Appellant
and
CONRAD DARIAH - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron

Appearances: D. Theodore for the Appellant
A. Richelieu for the Respondent

1991: Jan. 29,
May 27

JUDGMENT

MOE, J.A.

This appeal concerns the ownership of and right to possession to one and a half carres of land which form a portion of two carres formerly part of the Ve Fournier Estate in the Quarter of Anse-la-Rave. The appellant claims ownership by virtue of succession of the estate of her mother Phyllote Fanus who died on 6th June, 1960, having succeeded to the estate of Francis Jean or Fanus Auguste and Marie Elizabeth. The appellant alleges trespass and damage by the respondent who has taken possession of the one and a half carres since 1964. The respondent claims ownership of that portion of the land by virtue of the following:

- (1) Sale of one-half carre of the land from the said Phyllote Fanus to the respondent and seven other persons as evidenced by a Deed of Sale dated 23rd June, 1958.
- (2) Sale of five-eighth share in the half carre just mentioned to the respondent by Deed dated 10th February, 1981.
- (3) Sale of one-eighth share in the said one-half carre by Dennis Dariah to the respondent by Deed dated 7th August, 1981.

/(4) Sale of.....

- (4) Sale of one-carre of the land from Leona Fanus et al to the respondent as evidenced by a Deed of Sale dated 27th January, 1964. The respondent says that Leona Fanus and the other vendors in the Deed of Sale are the heirs-at-law of Leon Fanus who was a legitimate son of Fanus Auguste and entitled to one-half share in his estate.

The learned Judge took the view that the Deed of the 23rd June, 1958 and that of the 27th January, 1964 cannot be challenged and the set of Deeds listed effectively transferred the one-half and the carre respectively to the respondent. Consequently he could not be held to be a trespasser.

The burden of the appellant's appeal is a challenge of the decision that the Deeds of Sale of 1958 and 1964 were effective to transfer any interests in the land in dispute.

The relevant portion of the 1958 Deed reads:-

"Between Fyotte Auguste commonly known as Fyotte Fanus of Anse-la-Raye.....(hereinafter called the vendor) of the one part

AND I, CONRAD DARIAH FORMERLY OF Anse-la-Raye aforesaid but now absent from the Colony, 2. Gabriel Dariah, 3. St. George Dariah, 4. Emmanuel Dariah, 5. Denis Dariah, 6. Cynthia Dariah, 7. Joachim Dariah, 8. Magdalene Dariah, all of Anse-la-Raye aforesaid, acting herein and represented by their agent Edmona Dariah of Anse-la-Raye aforesaid (hereinafter called the Purchasers) of the other part

WITNESSETH that in consideration of the sum of ONE HUNDRED AND TWENTY-FOUR DOLLARS AND EIGHTY CENTS paid at the execution hereof by the purchasers to the vendor (receipt whereof the vendor hereby acknowledges) the vendor hereby sells and conveys free and clear of all encumbrances unto the purchasers thereof accepting the immovable property described in the Schedule hereto

TO HOLD the same unto the purchasers absolutely with immediate possession."

On the question of the effectiveness of that 1958 Deed the first of the appellant's complaints was that the learned Judge erred in coming to the conclusion that the Deed was made by Edmona Dariah because she signed it in the face of the Deed which clearly shows that she purported to act as agent. To me there are some semantics in this complaint here which do not take us anywhere. The conclusion that the Deed or Contract was made by Edmona is not faulty

/because it....

because it is a fact that she made it as agent for someone else. Further the fact that a person signs a document or enters into a contract as agent for another does not by itself lead to the ineffectiveness of the document or transaction.

However the appellant also complained that there was no evidence or sufficient evidence that Edmona Dariah was expressly empowered to execute the Deed as agent. This Court in *Nellie Vitalis v Sanchez*, Civil Appeal No. 8 of 1989 has ruled that only the parties to a Deed may challenge the authority of the agent named in the Deed to act for them.

A third ground of complaint was that the Judge erred in not declaring the Deed to be null due to the non-intervention of the minor's tutors, or void at least in so far as the minors are concerned. There was evidence that at the date of the Deed some of the persons for whom Edmona Dariah declared she was acting were minors. Reference was made to Article 941 of the Civil Code which provides:-

"Contracts by minors for the purchase, alienation or incumbrance of immoveable property, if made without the intervention of their tutors are null."

Counsel's submission was that on the face of the Deed, Edmona Dariah was not the tutor of the minors. He contended that there was no evidence that the father was dead.

By section 217(1) of the Civil Code Tutorships are of three kinds, namely -

- (a) those appointed by the Court
- (b) those appointed by the father or mother in accordance with Article 219 and
- (c) the legal tutorship of the surviving father or mother.

Section 218(1) provides "on the death of the father of a minor the mother, if surviving, shall, subject to the provisions of the Code, be tutor of the minor, either alone or jointly with any tutor appointed by the father. When no tutor has been appointed by the father or if the tutor appointed by the father is dead or refuses to act, the Court may if it thinks fit appoint a tutor to act jointly with the mother."

To the appellant's statement of claim alleging ownership of the land the respondent in his defence set up his claim of ownership to the land by virtue of inter alia the 1959 Deed. It was the appellant who alleged....

who alleged the invalidity of that Deed by virtue of the non-intervention of the tutor. It was therefore incumbent on the appellant to establish that case, that is that the circumstances were such that the mother did not properly function as tutor. It was not for the respondent in addition to producing his deed to establish that at the date of the Deed the father was dead and the mother therefore rightly acted as tutor.

There was no evidence before the Court that the father of the minors was still alive at the date of the Deed so that the Court could come to the conclusion that the mother Edmona ought not to have acted as tutor but rather the father. In my view the appellant did not successfully challenge the Deed before the trial Judge on this ground and must also fail before this Court.

But even if there was a finding that the Deed does not evidence any valid contract between Phytte Fanus and Edmona Dariah on behalf of the minors it would in my view still evidence an effective contract between Phytte Fanus and Edmona Dariah on behalf of the respondent and the others not minors for the sale of the one-half carre for the sum of \$124.80 which purchase price has been paid. On this basis the appellant cannot say that the one-half carre was not transferred from Phytte Fanus to the respondent and those not minors.

The appellant challenges the transfer of the one carre to the respondent by the 1964 Deed in this way. She says Leon Fanus, to whose estate et al succeeded, was not a legitimate son of Francis Jean or Fanus Auguste and thus not able to share his estate with Phytte Fanus. The learned Judge found that Leon Fanus was a legitimate son of Fanus Auguste and Marie Elizabeth. The appellant says there was no evidence or sufficient evidence that this was so.

There was in evidence:- (1) A certificate of the marriage of Francis Jean and Marie Elizabeth on 1st March, 1897,. It contained the statement:-

"By this marriage were legitimated two children:
Iliam aged 5 years and Antoinise aged 3 years."

(2) a Deed of Correction dated 23rd January, 1964 made by Leona Fanus et al, the vendors on the 1964 Deed. They declared that a Declaration of Succession made by Phytte Fanus on 27th May, 1958 was erroneous in that it purports to show that Fyotte Auguste was the sole heir-at-law of Fanus Auguste and stated that Fanus Auguste in fact left as heirs-at-law Fyotte Auguste and Leon Fanus (Auguste) a child of the said Fanus Auguste who had been legitimated by the subsequent marriage of the said Fanus Auguste.

/(3) A certificate.....

(3) A certificate of the marriage of Leon Fanus to Eunise Alexander on 17th April, 1928. Opposite the column Full names of Father (only if Bridegroom is legitimate) is inserted the name of Leon Fanus.

The appellant gave oral evidence that Leon Fanus was the child of Marie Elizabeth but he was not the child of Marie Elizabeth's husband. On the other hand the respondent's oral evidence was that Leon Fanus' father was Fanus Auguste. That he the respondent, was young when Leon got married.

Counsel for the appellant submitted that the learned Judge's finding on the evidence that Leon was the legitimate son of Fanus was unreasonable, that the only reasonable conclusion is that two children were legitimated by Fanus' marriage to Marie Elizabeth. He pointed to the inaccuracy of the respondent's evidence that he was young at the date of Leon's marriage since according to his own evidence of his age, he would not have been born at the date of Leon's marriage. He adverted to the self-serving nature of the declaration in the Deed of Correction by Leona Fanus et al but he relied most heavily on the fact that the marriage certificate of Fanus Auguste referred to only two persons as legitimated by this marriage to Marie Elizabeth and did not name Leon Fanus. Respondent's Counsel drew attention to the fact that Leon's marriage certificate states that three persons were legitimated and gives the name of only one, thus showing that there could be errors or omissions in the drawing up of the relevant documents. It was therefore for the trial Judge to deduce from the evidence before him what was the position.

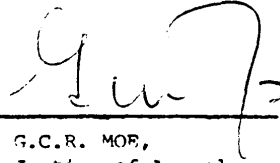
Whether Leon Fanus was a legitimate son of Fanus Auguste was a question of fact for the trial Judge. As this Court has ruled in *Edwards v Buxton* 30 W.I.R. 82 it will only disturb a Judge's decision on facts where there was no evidence at all or only a scintilla of evidence to support it.

The record shows that the learned Judge acted on the marriage certificate of Leon Fanus. He stated "The marriage certificate of Leon Fanus shows that he was legitimate because his father's name was there inserted and the form clearly states that the full name of the father is inserted only if the bridegroom is legitimate".

There was therefore evidence before the trial Judge on which he could come to his conclusion and on the state of the evidence it is not an unreasonable one. I would not interfere.

/The result....

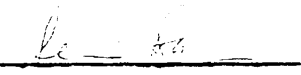
The result is I would dismiss the appeal with costs to the respondent.



G.C.R. MOE,
Justice of Appeal



L.L. ROBOTHAM,
Chief Justice



C.M.D. BYRON,
Justice of Appeal.