

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 8 of 1989

BETWEEN:

NELLIA VITALIS SE 053

- Appellant

and

WALLACE DOMINGO SANCHEZ

- Respondent

Before: The Honourable Mr. Justice Bishop - Chief Justice (Acting)
The Honourable Mr. Justice Moe
The Honourable Miss Justice Joseph (Acting)

Appearances: D. Theodore for the Appellant
M. Gordon for the Respondent

1990: Jan. 29,
May 28.

JUDGMENT

BISHOP, C.J. (Acting)

Nellia Vitalis has appealed against the decision of the Land Adjudication Tribunal which upheld the Adjudication Officer's award of 78 acres, 1 rood, 23 perches of land known as Anse Cochon Estate in the Quarter of Anse La Raye, to Wallace Sanchez with absolute title.

The pertinent facts were as follows:

In 1849 Louis Common, then owner of the Anse Cochon Estate executed a Deed of Sale in Favour of the following 7 persons: Amanda Ephraim, Anne Rose Eloide Vitalis, Hortensia Vitalis and the minors Ulric Vitalis, Arthur Vitalis, Gustave Vitalis and Angele Zelie Vitalis. This deed was registered on the 30th September 1938.

Gustave Vitalis died intestate around the 23rd January 1917, leaving as his sole heir-at-law Vitalis Vitalis, who later disposed of his share.

Between the 16th December 1938 and 15th January 1939, at the instance of Vitalis Vitalis, the portion of Anse Cochon Estate was surveyed. A certified copy of the Plan of Survey was recorded on the 3rd April 1939. It showed the Estate to be 78 acres, 1 rood, 23 perches.

/On the 13th.....

On the 13th October 1945, Vitalis Vitalis made a will in which he named his wife Marie Alexandrine Vitalis (nee Conac) as Executrix. He made a number of bequests including that of one-quarter share of Anse Cochon to his daughter Nellia Vitalis, the appellant, and he also stated: "Subject to the foregoing bequests, I give devise and bequeath to my same dear wife....all property movable and immovable and wherever situate, hereby constituting my said wife my sole universal and residuary legatee and devisee".

Almost 15 years later - on the 27th July 1959 - Vitalis Vitalis issued a receipt to Wallace D. Sanchez, the respondent, that showed on the face of it that the latter had paid to the former, the sum of \$960.00 "on account of the purchase price of a portion of the Anse Cochon Estate comprising seventy-eight acres, one rood and twenty-three perches..... in the Quarter of Anse La Raye which portion of land is set out in Deed of Sale registered in Vol. 84 No. 50278 and described in Plan of Survey by C. Belizaire, land surveyor, dated 3rd April 1939, which said portion of land I have this day sold and delivered to him with the consent of the other heirs".

At the 27th July 1959, Vitalis Vitalis was lawfully entitled to an undivided one-half share of the Anse Cochon Estate ("found on survey by Clive Belizaire.....dated 3rd April 1939....to comprise an area of 78 acres, 1 rood, 23 perches" - see paragraph 4 of the Deed of Declaration by Clive Gustave, dated 28th November 1959).

On the 14th August 1959, Vitalis Vitalis died testate.

On the 28th November 1959, a Deed of Declaration by Clive Gustave of an immovable property passing in the succession of the seven persons named in the Deed of 1849 was executed before a Notary Royal. It was registered on 1st December 1959. In that Deed, Clive Gustave referred to the Deed of Sale of 1849 (see above) and declared not only what Vitalis Vitalis was lawfully entitled to, but also that Evans Vitalis was so entitled to one-sixth share, Antoine Vitalis, Marie Anastasie Fletcher and Mathurin Manna! each to one-eighteenth share, and Philomene Joseph, Sylviane Gustave, Estephane Alcee and Eucharis Reynold each to a one-twenty-fourth share in the Anse Cochon Estate ("the Estate"). The schedule to the Deed of Declaration made it clear that it was the 78 acres, 1 rood and 23 perches as found by the survey dated 3rd April 1939.

/On the 5th....

On the 5th December 1959, a Deed of Sale was executed between Marie Anastasie Fletcher, Philomene Joseph, Sylviane Gustave, Estephane Alcee (by her agent Ethel Joseph "who promises to obtain a ratification whereof se portant forte") Eucharis Reynold (by her agent Clive Gustave "who promises to obtain a ratification whereof se portant forte") Mathurin Menal and Antoine Vitalis (by his agent Marie Anastasie Fletcher "who promises to obtain a ratification of the presents se portante forte"), as the Vendors, and Wallace Domingo Sanchez as Purchaser. According to the Deed, the Vendors thereby sold and conveyed free and clear of all encumbrances unto the Purchaser thereof accepting the immovable property, that is, five-sixths share undivided in and to the portion of Anse Cochon Estate, found on survey by Clive Belizaire dated 3rd April 1939 to comprise 78 acres, 1 rood, 23 perches.

About four months after the Deed of Declaration by Clive Gustave was registered, the will of Vitalis Vitalis was admitted to probate in the Supreme Court of the Windward Islands and Leeward Islands.

On the 13th August 1960, Marie Alexandrine Vitalis, in her capacity as sole Executrix of the Estate of the late Vitalis Vitalis, executed a Vesting Deed whereby Nellia Vitalis acquired shares in certain properties in Anse La Raye, exclusive of the Anse Cochon Estate. Indeed, this Estate was not mentioned at all in that Deed.

On the 5th July 1966, Wallace Domingo Sanchez deposited with a Notary Royal, the receipt dated 27th July 1959 (supra) and the Deed of Deposit was recorded on the 6th July 1966 in Vol. 119a No. 82352.

On the 10th October 1970, a Deed of Sale was executed between Evans Vitalis, Yvonne Teresa de Moss (born Vitalis), Lucie Vitalis as the Vendors, and Wallace Domingo Sanchez, as Purchaser, whereby the Vendors, and Wallace Domingo Sanchez, as Purchaser, whereby the Vendors sold and conveyed free and clear of all encumbrances to the Purchaser, an undivided one-sixth share in and to the said Anse Cochon Estate, "of which the purchaser already owns an undivided five-sixth share".

So much for the pertinent and unchallenged facts.

/Learned Counsel.....

Learned Counsel for the parties agreed that the issues in this appeal were (1) whether Wallace Sanchez had acquired a good title to the whole or any portion of Anse Cochon Estate under (a) the receipt dated 27th July 1959 or (b) at the death of Vitalis Vitalis or (c) the Deed of Sale dated 5th December 1959 or (d) Deed of Sale dated 10th October 1970? (2) assuming that the title of Wallace Sanchez was defective, whether the said Wallace Sanchez had prescribed the whole or any portion of the Anse Cochon Estate.

Learned Counsel for the appellant sought to argue that the receipt purported to sell and convey to Wallace Sanchez a portion of land and that, at the 27th July 1959, Vitalis Vitalis did not have a registered title to the land in question. This Court intimated that it held the view that the document under consideration was no more than a receipt which referred to and identified the subject-matter of the part payment of \$960.00. In my view, learned Counsel then properly moved on to other aspects of the appeal.

As to the Deed of Sale to Wallace Doringo Sanchez, dated 5th December 1959 and recorded on the 15th of that month, Mr. Theodore submitted that this Deed was a nullity in so far as it purported to convey to Wallace Sanchez "any share of Vitalis Vitalis in the land in question, because neither of the vendors was or is a beneficiary under the last will and testament of the said Vitalis Vitalis dated 13th October 1945, probate of which was registered on 23rd April 1960". Counsel cited Articles 1397 and 1398 of the Civil Code and submitted that it was clear that in that Deed of 5th December 1959, the Vendors purported to sell the undivided one-half share of Vitalis Vitalis at a time when it did not belong to them; that on the death of Vitalis Vitalis on 14th August 1959, his property "devolved to and became vested in his personal representative his wife, Marie Alexandrine Vitalis", who was named sole Executrix in his will. Counsel contended that the "purported Vendors never became owners of the Anse Cochon Estate".

Mr. Theodore also posed the question: whether prescription could afford assistance to the respondent to enable him to acquire the undivided half share of Vitalis Vitalis? He answered in the negative, contending that this was the only proper response upon reading Article 2115 of the Civil Code. The Article reads:

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

/Counsel contended...

Counsel contended that "informality" should be given its ordinary dictionary meaning, that is to say, according to the Shorter Oxford English Dictionary (3rd Edition), "not done or made according to a regular or prescribed form; unofficial, irregular; and, he submitted, lack of a title constituted an informality which prohibited the respondent from prescribing the half share of Vitalis Vitalis.

With respect to the Deed of 10th October 1970, learned Counsel for the appellant submitted that it only conveyed the one-sixth share of Evans Vitalis.

In addition to the issues earlier mentioned as agreed to by Counsel, Mr. Theodore argued as a ground of appeal, that there was no evidence or no sufficient evidence of the ouster of the appellant from the said land, or of abandonment of it by the appellant or her heirs; and, in Counsel's view, that being so, the Land Adjudication Tribunal was not in a position to reach the conclusion that Wallace Sanchez had prescribed.

Mr. Theodore also submitted that the Deed of Sale of 5th December was a nullity in so far as it related to the shares of Estephane Alcee, Eucharist Reynold and Antoine Vitalis since the Deed showed that these 3 Vendors were represented by agents "who promised to obtain ratification of these presents se portant forte". The Deed of Declaration showed their respective shares which amounted in the aggregate to a five-thirty-sixth share in the Estate. Counsel contended that no authority was produced to show that the persons named could act as agents for the purpose of selling the shares of the principals. Counsel cited the "Comment" appearing on page 27 of the 13th Edition of Bowstead on Agency, and referred to POWELL V. LONDON & PROVINCIAL BANK (1803) 2 Ch. 555 at page 563. He argued that there was no appointment of the agents, and, in his words "even failing authorisation by the principals the would-be agents could only be saved, as it were, by ratification by their would-be principals, by Deed"; and since there was no ratification, "the conveyances se portant forte were conveyances without authority and consent of the owners of the land so conveyed and to that extent they were a nullity". Mr. Theodore invited us to find that so far as the five-thirty-sixth share of the Vendors was concerned, the Deed of 5th December 1959 was a nullity; and on its most favourable reading could only have conveyed a seven-thirty-sixth share, that is to say, the shares of Philomene Joseph, Sylviane Gustave, Marie Anastasie Fletcher, and

/Mathurin J.....

Mathurin Menal. So that Wallace D. Sanchez would be entitled to a seven-thirty-sixth share in Anse Cochon Estate, and he could not prescribe five-thirty-sixth share by virtue of the provisions of Article 2112 Civil Code.

Briefly then, according to Counsel, Wallace Sanchez would be entitled, at best, to a thirteen-thirty-sixth share; and he asked this Court to order accordingly. In addition, Nellia Vitalis was entitled to a one-quarter share under the will of Vitalis Vitalis, and Marie Alexandrine Vitalis was entitled to the remainder of the Estate; and this Court should so declare or order.

Learned Counsel for the respondent submitted that (1) the Deed of Sale dated 5th December 1959 was, on the fact of it, regular, showing a sale and conveyance for a consideration, and the root title of the property sold. Further, it was an authentic writing under the Civil Code, and a notarial instrument, (2) accepting that a vendor may not sell that which does not belong to him, it would raise the question whether Article 2112 Civil Code did not apply. The Article states:

"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 ten years."

Mr. Gordon also submitted that (a) the word "informality" used in Article 2115 Civil Code (supra) must be interpreted in the light of the fact that it appears in an Article under Chapter Fourth (The Mode and Formalities of Registration) in Book Eighteenth (Registration of Real Rights) of the Civil Code; and (b) under Article 1142 Civil Code, as an authentic writing, the Deed of Sale may be set aside upon an improbation in the manner provided in the Code of Civil Procedure, and IN NO OTHER MANNER. This Article remained unaffected by the Land Adjudication Act 1984, and until the Deed was "improbated", it stood as an authentic writing.

Counsel contended that in 1959, when Vitalis Vitalis executed the receipt, he was the owner of a half share of the Estate, although his title had not been registered. Thus, he was owner of what he sold.

With respect to the evidence of ouster from and abandonment of the land, Mr. Gordon referred to the fact that under the will of

/Vitalis....

Vitalis Vitalis (made in 1948) the testator left a one-quarter share in the Estate to Nellie Vitalis. He died in August 1959, and the Executrix administered his estate. Then, in due course, she vested certain properties in Nellie Vitalis. Anse Cochon Estate was not one of those vested. In the view of learned Counsel, when the Executrix made the Vesting Deed, she knew well that the land at Anse Cochon had been sold by her husband Vitalis Vitalis. Counsel posed the question: Way, in 25 years, has Nellie Vitalis not questioned the whereabouts of the interest in Anse Cochon? He gave this answer: because she knew she did not have any interest in the Estate.

Counsel relied upon the following passage from the decision of the Adjudication Officer, with which the Land Adjudication Tribunal expressed agreement and which it quoted in its own decision -

"The evidence given during the hearing showed that Vitalis Vitalis was in possession of the Anse Cochon Estate prior to 1959. After 1959 the evidence of effective possession by Nellie Vitalis is very thin. Seraphin was supposedly put in charge of the estate and if he was in charge, then how could W. Sanchez have three successive overseers, harvest coconuts, plant bananas and run cattle on this estate without Nellie Vitalis objecting. She did not object as she was not in possession. The testimony of the various witnesses clearly showed that W.D. Sanchez was in effective possession and still is to this day."

In addition to reliance on that passage, Counsel urged that there was no evidence which could be regarded as supporting the contentions of learned Counsel for the appellant.

Mr. Gordon agreed with the passage referred to in Bowstead on Agency (13th Edition) but, he submitted, it rendered no assistance on the point raised on behalf of the appellant. Counsel pointed out that the parties to the instant appeal were Nellie Vitalis and Wallace Sanchez, and asked: What privity is there between Nellie Vitalis and the three principals named in the Deed of Sale of 5th December 1959, as acting through agents se portant forte? Learned Counsel submitted that for the Court to deal with the issue as to whether or not the agents had authority and consent to act would be to go beyond what it was invited to decide and involve persons not before the Court. Additionally, he submitted that only the principals (and they were not now before the Court) could complain if the agents (not before the Court) did not act for them as stated in the Deed.

/In so far...

In so far as the receipt of 27th July 1959 was concerned the Land Adjudication Tribunal stated ".....the receipt was merely provisional. It witnessed a part payment on account of the purchase price and went on to provide 'Balance \$1440.00 payable on completion of Title Deed and Deed of Sale'....." I have already pointed out that Mr. Theodore did not pursue his contention that it was or purported to be a conveyance. In any event, in my view, it was no more than a receipt.

Then the Tribunal went on to express the view that "the respondent held effective possession by virtue of the subsequent Deed of Sale rather than on the receipt".

The Deed of Sale dated 5th December 1959 indicated that 3 of the persons named as Vendors acted therein and were represented by individual agents who promised to obtain ratification of the presents se portant forte. In my view, there was absolutely no obligation in law for the persons named as agents to provide authority for so acting. In addition, it was not open to the appellant to challenge their status in the transaction or indeed to do so in the manner attempted. I agree with Counsel for the respondent that it was and is an authentic writing. As such, it could be impugned and set aside as false in whole or in part, in accordance with the Code of Civil Procedure and in no other manner. As I understand it, any party to a suit may proceed by imprecation against any notarial document produced by the opposite party (Article 173, Civil Code of Procedure). Here, it is undisputed that the appellant took no such step against the Deed of Sale dated 5th December 1959. It therefore remained, as it stood, as complete proof between the parties to it, their heirs and legal representatives, of the obligations contained in it. I also agree with learned Counsel for the respondent that only the principals were in a position to challenge the authority or consent of the agents who were named in the Deed to act for them.

On the basis of what was submitted, I would hold that the Deed of 5th December 1959 was not a nullity in so far as the shares of Estephane Alcee, Eucharist Reynold and Antoine Vitalis are concerned.

The Land Adjudication Tribunal, in its decision also stated:

"Three of the seven vendors to the Deed of Sale sold "se portant forte". They signed by their lawful Agents who promised to obtain ratification but have failed to keep their promises. In the

/view of.....

view of the Tribunal, only the principal of the Agent can upset the Deed. It cannot be by some third party with whom there is no privity. The Deed as witnessed, satisfies the requirements of a written title for the purposes of Article 2112."

I have already quoted Article 2112 Civil Code. The Tribunal's decision continued, after citing Article 2066 Civil Code, on the presumption of good faith, thus:

"In our view, the appellant has failed to show any bad faith on the part of the respondent. He has acquired this property in good faith under a written title and has been in effective possession in virtue of such title after 1959 and still is to this day."

As I understood the arguments on this appeal, it was not in dispute that in July 1959 Vitalis Vitalis owned a half share of Anse Cochon. True enough his title was not then registered. However, he could sell what he owned. Again, Wallace Domingo Sanchez acquired the property described in the Schedule to the Deed of 5th December 1959 in good faith, and under a written title. There was no evidence to the contrary. Consequently, his ownership would be prescribed and he would liberate himself from the servitudes, charges and hypothecs on the property by an effective possession in virtue of such title during 10 years (Article 2112). What did the evidence establish following December 1959? I have quoted earlier from the decision of the Land Adjudication Tribunal to show what acts Sanchez performed and I agree with its view that the Adjudicator said that he regarded the evidence of Nellia Vitalis as unreliable. The Tribunal then noted:

"The Adjudicator went on to find as a fact that the evidence showed clearly that Sanchez was in effective possession after 1959 and still is today. The Tribunal would agree as we think that there was ample evidence to permit of such a finding....."

Nothing has been urged or brought to our attention on which we could, in my view, properly differ from the Land Adjudication Tribunal in its assessment of the evidence.

In so far as Article 2115 Civil Code was concerned, it seemed clear that the word "informality" had to be interpreted in the light of the context in which it was used. Book Eighteenth of the Civil Code deals with the registration of real rights, and Chapter Fourth thereunder concerns the mode and formalities of registration. This chapter explains that registration is effected

/at length....

at length or by memorial (Article 2021) and sections I and II thereof deal fully with these forms of effecting registration. It is unnecessary, in my view, to expand in detail what the provisions thereunder stipulate. I am of the opinion that "informality" as used in Article 2115 Civil Code means not in keeping with any one or more of the formalities of registration as provided for by the relevant part of the Code. With respect, I do not agree with Mr. Theodore that in the instant case there was an informality in the lack of title. The title acquired under the Deed of Sale of 5th December 1959 could not be said to be null by reason of informality.

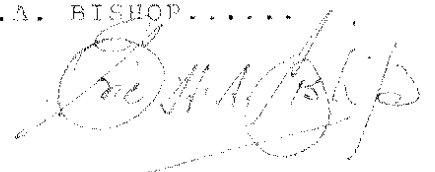
As I pointed out earlier, Mr. Theodore conceded that the Deed of Sale of 5th December 1959 could have conveyed the shares of Marie Alexandrine Vitalis, Philomene Joseph, Sylviane Gustav, and Mathurin Menal. I am satisfied that the Deed did properly convey their shares to Wallace Domingo Sanchez.

It did not appear from the Record before us that the Land Adjudication Tribunal was asked to consider any aspect of the Vesting Deed or of the failure on the part of the Executrix of the Estate of the late Vitalis Vitalis to vest in Nellia Vitalis the one-quarter share devised in the Will of 1945. Nor does it seem clear that any of the grounds of appeal from the decision of the Land Adjudication Tribunal is directly concerned with the vesting of the property in Nellia Vitalis. Be that as it may, it is, in my view, the most reasonable inference from the relevant facts and circumstances, that when Marie Alexandrine Vitalis administered the estate of her late husband, there was no share in Anse Cochon which could be vested in Nellia Vitalis according to his Will made some 15 years earlier. Vitalis Vitalis had already disposed of his share in that Estate and the Executrix was probably aware of the sale of his share and of that of the seven Vendors.

Finally, the Deed of Sale of 10th October 1970 showed that Wallace Domingo Sanchez acquired an undivided one-sixth share in Anse Cochon Estate. Mr. Theodore conceded that it was the one-sixth share of Evans Vitalis.

I am satisfied that for the reasons given above, the appeal must fail, and should stand dismissed.

/E.H.A. BISHOP.....



E.H.A. BISHOP,
Chief Justice (Acting)

JOSEPH, Monica, JWA: (Acting)

This is an appeal against a decision of the Land Adjudication Tribunal dated 16th February, 1989, in which the Tribunal affirmed the decision of the Adjudicator who had awarded to the respondent Lase Cochon Estate (the Estate) comprising 78 acres 1 rood and 23 perches of land with absolute title.

On 25th October, 1949, Louis Common executed a Deed of Sale of the Estate in favour of seven (7) persons who were Amanda Ephraim, Anne Rose Elodie Vitalis, Hortensia Vitalis, Ulric Vitalis, Arthur Vitalis, Gustave Vitalis and Angela Vitalis, which Deed was registered on 30th September, 1938, No. 50278 in Vol. 84.

On 3rd April, 1939, a survey of the Estate was conducted at the instance of Vitalis Vitalis. On 13th October, 1945, Vitalis Vitalis made a notorial Will under which he devised to his daughter, Nellia Vitalis the appellant, one quarter share of the Estate, naming his wife, Marie Alexandrina Vitalis, sole residuary legatee.

On 27th July 1959, Vitalis Vitalis, who owned an undivided $\frac{1}{4}$ share of the Estate, sold a portion of the Estate to Wallace D. Sanchez, the respondent, and issued a receipt which evidenced payment of the sum of \$960.00 on account of the purchase price. Sylvian Gustave and Philomen Joseph, who, at the date of this receipt, owned an undivided $\frac{1}{4}$ share of the Estate, signed the receipt signifying their consent to the sale.

On the date shown on the receipt, i.e. 27th July, 1959, Vitalis Vitalis' title had not been registered. Vitalis Vitalis died testate on 14th August, 1959. Under his will, the executor Marie Alexandrina Vitalis (the Personal Representative) took a usufruct of the Estate jointly with a child named Eloide who, at the time, was seven (7) years old.

/On 28th.....

On 28th November, 1959, Clive Gustave executed a Declaration of Immovable Property passing in the succession of Amanda Ephraim and the other persons named in the Deed of 25th October 1849.

According to this Declaration the Estate devolved on Vitalis Vitalis as to $\frac{1}{2}$ share; Evans Vitalis $\frac{1}{6}$ share; Antoine Vitalis, Marie Anastasie Fletcher and Mathurin Menal, each as to $\frac{1}{18}$ share; Philomene Joseph, Sylviane Gustave, Estephane Alcee and Eucharis Reynold each as to $\frac{1}{24}$ share.

On 5th December, 1959, some four (4) months after the death of Vitalis Vitalis, the shares of these persons were sold to the respondent, as appears from Deed registered as No. 69359 in Vol. 99 on 15th December, 1959.

Vendors Marie A. Fletcher, Philomene Joseph, Sylviane Gustave and Mathurin Menal, whose shares totaled $\frac{7}{36}$, signed this Deed. The other vendors, whose shares totalled $\frac{5}{36}$, were represented by agents who signed on their behalf.

On 23rd April, 1960, the will of Vitalis Vitalis was admitted to probate, and on 13th August, 1960, the Personal Representative executed a vesting deed conveying property to Nellia Vitalis. In this vesting deed no mention was made of a vesting in the appellant of a quarter share of the Estate.

On 10th October, 1970, Evans Wilbert Vitalis, Yvonne Teresa de Moss and Lucie Vitalis sold to the respondent an undivided $\frac{1}{6}$ share of the Estate. Prior to this sale Yvonne de Moss and Lucie Vitalis had no registered title.

The first ground of appeal was that the Deed of Sale to Wallace Domingo Sanchez dated 5th December, 1959, by reason of Article 1397 of the Civil Code, a nullity in so far as it purports to convey to the respondent any share of Vitalis Vitalis in the land in question, because neither of the Vendors was or is a beneficiary under the last Will and Testament of the said Vitalis Vitalis dated 13th October, 1945, probate of which was registered on 23rd April, 1960.

Counsel's argument was that when the vendors purported to sell this undivided $\frac{1}{6}$ share of Vitalis Vitalis, the share did not belong to them: consequently, the sale was null and of no effect. He cited Article 1397 of the Civil Code which enacts:

/"the sale.....

"the sale of a thing which does not belong to the seller is null".

I agree with Counsel's submission and hold that the Deed was ineffective to convey the $\frac{1}{2}$ share owned by Vitalis Vitalis to the respondent.

second

The/ground of appeal was that by virtue of Article 2115 of the Civil Code, a title by prescription of the share of Vitalis in the land, under Article 2112 of the Civil Code, cannot arise in favour of the respondent under the Deed.

Counsel's submission under this ground of appeal was that as the title is null by reason of informality, i.e. an ineffective Deed, then Article 2115 prohibits prescription and the respondent cannot acquire the half share of Vitalis Vitalis by prescription. Article 2115 reads:

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

He submitted that the word "informality" should be given the ordinary meaning of the Shorter Oxford English Dictionary 3rd Ed. i.e. irregular or not done or made according to a regular or prescribed form.

It was Counsel for the appellant's contention that the respondent is unable to obtain Vitalis Vitalis' share by prescription as the vendors had no title to pass to him.

He urged upon the Court that the absence of a title constituted an informality within the meaning of the word in Article 2115, which informality prohibits prescription. Further, he argued that for a person to obtain land by prescription their written title must be a good title.

Counsel for the respondent advanced the argument that a person holding a good title has no need to prescribe as that title is sufficient to establish ownership.

He argued that where a title was not good then ten (10) years possession of land would be sufficient to establish ownership.

Counsel for the respondent contended that the Deed of December 1959, is an authentic writing, being a notarial document, that under Article 1141 of the Civil Code an authentic writing provides complete proof between the parties to it, their heirs and legal representatives.

/He submitted.....

He submitted that an authentic writing cannot be impugned in the manner Counsel for the appellant was attempting to impugn it, but that, under Article 1142, an authentic writing can be impugned and set aside as false in whole or in part upon an improbation in the manner provided in the Code of Civil Procedure and in no other manner. (emphasis is mine). I accept that there is a procedure for impugning this authentic writing.

Counsel further submitted that the informality referred to must be looked at in the context of the provisions appearing on p. 615 of the Code Ch. 4 "Mode and Formalities of Registration".

Counsel argued that on its face the Deed is regular and that, in applying Article 2115, it is necessary to consider Article 2112 of the Code which reads:

"He who acquires a corporeal immovable in good faith under a written title, proscribes 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."

As I understand his submission, Counsel for the respondent was inviting the Court to hold that Article 2115, which enacts that there can be no 10 year prescription if a title is null by reason of informality, does not supercede Article 2112, but that a person acquiring land in good faith under a written title - even where the title is defective - may become owner of the land if he is in possession of the land for 10 years.

The question of bad faith on the part of the respondent has not been advanced.

To appreciate what the word "informality" means in the Civil Code, I am of the view that it is essential to look at the scheme of the Code. Ch. 4 under the rubric "Mode and Formalities of Registration" sets out the manner in which registration is to be effected i.e., at length or by memorial.

If the formalities of registration or the procedure set out is not followed then, under Article 2115, that title is null by reason of that informality.

However, in my opinion, Article 2115 cannot be read in isolation of Article 2112. The latter Article contains what I refer to as a "protection" provision in that, in certain circumstances, prescription for 10 years is sufficient to establish ownership.

/Support for....

Support for this interpretation may be found on a reading of Article 2008 which provides that a conveyance of a privileged or hypothecary claim must be registered and a duplicate of the certificate of registration with a copy of the transfer given to the debtor.

That article enacts that if these "formalities are not observed the conveyance or transfer is without effect against subsequent transferees who have conformed to the above requirements".

I interpret the article to mean that subsequent transferees who have fulfilled the requirements outlined in the Article may acquire title where the formalities as set out in the article are not observed in respect of an earlier transfer. That earlier transfer is without effect as against the subsequent transferees.

In other words, a subsequent transferee who fails to comply with the requirements i.e., does not register or does not supply a copy of registration and transfer to the debtor is not protected; but a subsequent transferee who complies with the requirements is protected, and an earlier conveyance not complying with the formalities is of no effect against that subsequent transferee. The scheme of this Article is that it protects a subsequent transferee who complies with the requirements.

The effect of Article 2112 is the same. This article provides protection for a person who acquires land in good faith and who is in possession of that land. The article operates as a shield, protecting the title of such a person. So where a person acquires land in good faith under a written title (not necessarily a good title) and that person has been in possession for 10 years then, under Article 2112, ownership of the land may be obtained by prescription.

In this case, the Tribunal found as a fact that Vitalis Vitalis was in possession of the estate prior to 1959: that after 1959 the respondent was in effective possession to "this day", and that the respondent has acquired the estate by prescription. I agree with the finding of the Tribunal and this ground of appeal fails.

Filed were grounds that -

- a) The receipt by Vitalis Vitalis dated 27th July, 1952, being an act inter vivos which purported to convey the land to the respondent is a nullity since, in contravention of Article 1980

- /of the....

of the Civil Code, the title of Vitalis Vitalis to the land had not been registered prior to his execution of the receipt.

- b) Consequently, by virtue of Article 2115 of the Civil Code, a title by prescription under Article 2112 of the Civil Code cannot arise in favour of the respondent under the receipt.

Counsel for the appellant conceded that the receipt dated 27th July, 1959, did not convey any property but merely evidenced payment of money. The question of the effect of Articles 2112 and 2115 as a claim for title by prescription does not therefore arise.

A third ground of appeal was that there was no evidence or no sufficient evidence of the ouster of the appellant from the land or of its abandonment by her or her heirs.

Counsel for the appellant argued that there was never an assertion of an ouster of the appellant by anyone and that there was no evidence of abandonment of the estate by the appellant. The Tribunal, he contended, was not in a position to conclude that there was prescription by the respondent.

Counsel for the respondent's counter to this argument was to invite the Court to consider all the evidence, commencing with the documentary evidence, and to draw the conclusion that ownership of the estate never passed to the appellant and that therefore the question of ouster of the appellant from the land or abandonment of the land by the appellant does not arise.

Vitalis Vitalis, counsel submitted, bequeathed 1/4 share of the estate to the respondent. However, the Personal Representative administered her husband's estate and vested the property in the beneficiaries as directed in the will.

The Personal Representative dealt with the bequests including the vesting of the Anse La Raye estate but ignored the Anse Cochon estate. He posed the question: Could it be that she forgot to vest the share of an estate comprising 78 acres of land?

It must be, he argued, that the Personal Representative made no mention of the 1/4 share of Vitalis Vitalis because she knew that the land had been sold by the testator. He pointed out that for 25 years the appellant did nothing to claim the share of the estate. He submitted that all these facts point in one direction: that the appellant knew she did not have an interest in the estate.

/The vesting./ . .

The Vesting Deed, which is dated 13th August, 1960, recites that the personal representative is finally administering the succession of the testator and that the legatee i.e., the appellant, has requested her to hand over to and vest in her all her rights in the property described in the Schedule to the Vesting Deed. The estate is not mentioned in that Schedule.

I adopt Counsel for the respondent's observations. If the appellant had considered that she was entitled to a share of the estate would she not have made a claim at the time of the Vesting Deed in 1960 and certainly before the passage of 25 years? The fact that she did not raises the inescapable conclusion that she knew that she is not entitled to a share of the estate.

It is not a question of ouster of or abandonment by the appellant as ouster or abandonment connotes that the appellant was, at a point in time, in possession of the estate. The Tribunal found that the appellant was never in possession of the estate and was never the owner of the estate. This ground of appeal fails.

The fourth ground -

- a) The Tribunal erred in holding that the Deed of Sale (being executed Se portant Fort on the part of three of the Vendors and being unratified) is a written title, within the meaning of Article 2112 of the Civil Code, capable of supporting under Article 2112 of the Civil Code, the prescription of the shares of the vendors who sold Se portant Sort.
- b) The Tribunal should have found that the conveyances Se portant Fort were in effect conveyances without the authority or consent of the owners of the land so conveyed and that, to that extent, they were null and void and that pursuant to Article 2115 of the Civil Code, no title by prescription could be founded upon them under Article 2112 of the Civil Code.

It was Counsel for the appellant's contention that as there was no evidence of authority given to the three persons who executed the Deed of 1959 and who purported to sell shares, that the Deed is a nullity in so far as it related to the shares, and that no title by prescription could be found under the Deed as this is prohibited by Article 2112.

Counsel argued that, failing authorisation by the principals, in law, the acts of these persons could only be saved by ratification by the principals by Deed and that there was no evidence of such ratification.

/Counsel....

Counsel submitted that the Deed of December, 1959, on its most favourable interpretation, could have conveyed only a 7/36 share to the respondent and is a nullity so far as the shares of Estaphan Alcee, Eucharis Reynold and Antoine Vitalis - who together held a 5/36 share - were concerned, in as much as those who purported to act as agents had not been authorised by the owners to sell their shares.

He cited the case Mayor, Alderman and Citizens of Oxford v Crown (1893) 3 Ch. p.535 at p.539 which restates the law that an agent signing a deed on behalf of his principal must be authorised under seal to do so or the agent's act must be ratified by a document under seal.

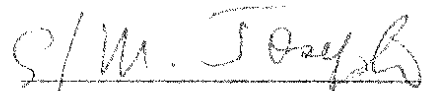
Counsel also submitted that the Tribunal should have held that the unauthorised conveyances are null and void and that prescription under Article 2112 could not be acquired as, under Article 2115, a title that is a nullity cannot serve as a ground for prescription by 10 years.

Counsel for the respondent, while agreeing that the law had been correctly stated by Counsel for the appellant submitted, that in the instant case, there is no privity between the respondent and the three principals and that the appellant had no standing before the Court. To adjudicate on this ground, he argued, would be to involve persons who are not before the Court.

In replying, Counsel for the appellant submitted that Counsel for the respondent's argument on the question of privity did not affect the points he had made with respect to failure of the owners to ratify the agents' act.

I agree with the submission of Counsel for the respondent. In law, the appellant cannot challenge the authority of the three agents to sign the deed as she is a stranger to the agreement made between the owners of the land and the three persons who signed as agents. This ground of appeal therefore fails.

For the reasons given, the appeal is dismissed with costs to the respondent.

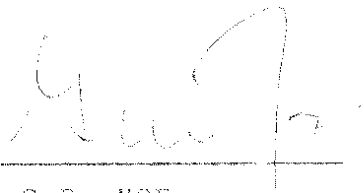


MONICA JOSEPH,
Justice of Appeal (Acting)

/G.C.R. MOE.....

G.C.R. MOF, J.A.

I agree that the appeal must be dismissed.



G.C.R. MOF,
Justice of Appeal.