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SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 13 of 1988

BETWEEN:

CARLOS C.K. DUSAUZAY
MARY MOSES
LAURENCIA G. SOUTHWELL
ANTONIA HAMILTON

- Appellants

and

TONY BORIEL
JOSEPH BORIEL

- Respondents

Before: The Honourable Sir Lasclles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: P. Foster for the Appellants
T. Cozier for the Respondents

1989: May 18,
Oct. 23.

JUDGMENT

MOE, J.A.

This appeal is against the award of some 200 acres of land at Cannelles in the Anse Ger section of the Quarter of Micoud to the respondents. The appellants based their claim on a Deed of Sale by Charles Bernard Reginald Dusauzay to them (Vol. 113 No. 104494, 26th November, 1973) and its Root of Title, a Declaration of Succession by the said Charles Bernard Reginald Dusauzay of Magdeleine Marie Hermanice Dusauzay (Vol. 125a No. 99015, 29th June, 1972). The respondents claim was based on a Deed of Sale and Adjudication on 8th December, 1887 (Vol. 45, No. 15942), a Deed of Sale and Adjudication on 17th February, 1923 (Vol. 76, No. 43401) and a succession of Deeds of Sale down to and including those to the respondents.

The Land Adjudication Tribunal found that the land concerned fell within the Sheriff's sales of 1887 and 1923 and held that its ownership could not have been so declared as it was in the Declaration of Succession by Charles Reginald Dusauzay in 1972.

Counsel for the appellants conceded that the documents of title on which they had relied were not valid. He however relied

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now on Article 2112 of the Civil Code which provides:-

"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."

Counsel's submission was that the appellants had acquired the land in good faith under a written title and there was evidence that the appellants were in possession of the land concerned for more than 10 years. They had therefore satisfied the requirements of Article 2112 and ought to have been awarded the land.

Counsel for the respondent pointed to three requirements to be fulfilled under Article 2112, namely:-

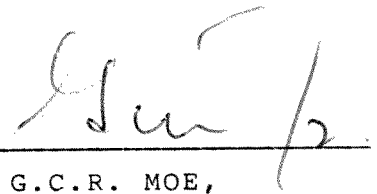
- (1) one must acquire under a written title;
- (2) one must acquire in good faith; and
- (3) one must have effective possession for 10 years.

He contended that under the first requirement the property must belong to the person who purports to pass it and the appellant did not fulfil this requirement. That under the second requirement, the appellants could not have been in good faith when they would have had or be deemed to have had Notice of the Judicial Sales.

As required by the Civil Code the Sheriff's Sales were registered and are to be found in Vols. 45 and 76 as above stated. The appellant must be held to be affected by notice of those sales thus making them aware that the Declaration of Succession by Charles Dusauzay in 1972 was invalid and so provided no root or basis for the Deed of Sale to the appellants. In such circumstances the appellants cannot be said to have been acquiring in good faith under a title which he was aware was invalid. On this ground alone the appeal fails. There is no need to consider whether the appellant established effective possession.

I would dismiss the appeal and affirm the decision of the Land Adjudication Tribunal.

/G.C.R.....



G.C.R. MOE,
Justice of Appeal



L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of appeal.