

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2014/0379

BETWEEN:

**ILISS LEWIS
(By her Lawful Attorney Judy Charles)**

Claimant

and

[1] EVERLINA MITCHELL

[2] VALERIE MITCHELL (substituted in place of Lennard Samuel by order dated 4th November 2021)

[3] SELWYN MITCHELL

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Sheriba Lewis for the Claimant

Mr. Michael Lindo for the Defendants

2022: November 22

ORAL RULING

[1] **ACTIE, J.:** By Power of Attorney, the claimant appointed her daughter Judy Charles as her lawful attorney and by Fixed Date Claim Form filed 13th August 2014, the claimant claims, inter alia:

- (1) A declaratory order that deeds pertaining to the occupation of the disputed premises situate at Maran in the parish of St. John by the defendants are void and ineffectual in law and that the same be set aside and struck out from the record of the Deeds and Land Registry of Grenada;
- (2) An order that the said deeds be cancelled and expunged from the records of the Deeds and Land Registry;
- (3) A declaration that the defendants are not entitled to enter or cross undivided lands situate at Maran in the parish of St. John;

- (4) General damages for trespass;
 - (5) Interest and Costs.
- [2] The claimant contends that she is the great-great-granddaughter of St. John Britton (hereafter “the deceased”), being the granddaughter of Jane Mitchell, and the daughter of Kenneth Joseph.
- [3] The deceased died on 30th July 1931, and at the time of his death was entitled to a lot of land situate at Maran, St. John (hereafter “the said land”). By Will dated 28th July 1931, the deceased devised two acres of the said land to his children and grandchildren, by bequeathing as follows:
- (1) To Irene Marshall, Hilda Marshall, Joseph Marshall and Lyris Marshall his dwelling house situate at “Cocoa” Douglaston lands, to share alike for their sole use and benefit;
 - (2) All that lot piece or parcel of land situate at Maran in the parish of St. John containing two acres to Thomas Britton, Marian Marshall, Christiana Benjamin, Smith Britton, Diana Mc Donald, Ethel Mitchell, Clemy Mitchell, Florrie Mitchell and Eliza Joseph to share alike; and to the children of Sarah Mitchell one share; and to Cornelius Britton one house spot seven rods square.
- [4] Probate of the deceased’s Will was granted on 5th February 1943.
- [5] The claimant states that Kenneth Joseph was the son of **Jane Mitchell**, and that Jane Mitchell was a beneficiary of the Will of the deceased.
- [6] The claimant avers that the said land devised in the Will has never been divided or partitioned and devised to the relevant beneficiaries.
- [7] The claimant contends that the defendants are not blood relatives of the deceased nor descendants of the deceased to the claimant’s knowledge and belief.
- [8] In or about the year 2010, the claimant became aware that the defendants were purporting rights of ownership over the said land and claimed that their entitlement stemmed from deeds allegedly made in 1979 and 1988.

[9] On or about 4th June 2014 and 5th June 2014, the claimant contends that the defendants caused the roof of one of the houses on the property to be removed. On or about 21st July 2014, the defendants commenced painting one of the properties on the undivided land in addition to repainting the main house and running electrical lines.

[10] The claimant states that the occupation of the said land by the predecessors in title of the defendants was as of right or with the permission of the personal representative of the deceased, and contends that the title deeds entitling the defendants' claim to the said land are a forgery, procured by fraudulent means or undue influence.

Defendants' case

[11] The defendants contend that Laura Mitchell, through whom they obtained title to a portion of the land in issue was a descendant of the deceased.

[12] The defendants state that Laura Mitchell's mother, Florence Mitchell, and her aunts Ethel Mitchell and Clemy Mitchell were in possession of their portions of the land as owners thereof for many years. The defendants aver that Laura Mitchell occupied and owned a portion of the land for more than 30 years until her death in 2010.

[13] The defendants assert that in or around the year 1943, Thomas Britton gave possession of the respective shares of the said land to the beneficiaries under the Will of the deceased. Further, by a Will made 19th September 1956, Christiana Benjamin devised her share of the said land to Florence Mitchell.

[14] Upon being given possession of their respective shares, Ethel Mitchell, Florence Mitchell and Clemy Mitchell took possession and exercised rights as owners. Under a deed made in 1979, Ethel Mitchell, Florence Mitchell and Clemy Mitchell conveyed their share in the said land to Laura Mitchell.

[15] The defendants contend that there are several other portions of land on the said land being occupied by families, and that the land which they occupy was estimated to be 13, 862 sq. ft.

- [16] The defendants contend that their acts of ownership over portions of the said land were proper, and that the deeds operated to convey all the rights, interests and title that Ethel, Florence and Clemy Mitchell had in the land possessed by Laura Mitchell.
- [17] The defendants contend that they have good relative title as against the claimant, and that the claimant's claim is barred by the provisions of the Limitation of Actions Act CAP 173.

Legal Analysis

Whether the Claimant is entitled to a portion of the land

- [18] There is no valid paper title that is relied on by the claimant. The claimant's sole basis for entitlement to a portion of the said land is a devise in the Will of the deceased.
- [19] Though a specific devise in a Will can, in some cases, form a good root of title¹, there is difficulty surrounding the devise relied on by the claimant.
- [20] The claimant's claim to ownership of a portion of the said land stems from Eliza Joseph, a named beneficiary in the Will of the deceased. It is the claimant's evidence that Eliza Joseph was also known as "Jane Mitchell", whom the claimant states is her grandmother. The court notes that there is no reference to "Jane Mitchell" in any of the documents relied on by the claimant, inclusive of the very death certificate of the Eliza Joseph.
- [21] The claimant further posits that Jane Mitchell, or Eliza Joseph, had one child, Kenneth Joseph, who is the father of the claimant. There are no documents which support this asserted relation.
- [22] The evidence before the court does not refer to Eliza Joseph or Jane Mitchell as owners of portions of the said land from which the claimant claims title. It is also the evidence that the estate of the deceased has not been administered or vested in the beneficiaries. Various beneficiaries of the estate of the deceased are living on the property in undivided ownership without a formal partition of the property.
- [23] The claimant's states that she is great-great granddaughter of St. John Britton who died testate on 30th July 1931. A grant of probate of St John Britton Will was granted 5th February 1943 with

¹ J T Farrand in Contract & Conveyance 4th Edn, Oyez Longman

Thomas Briton as Executor. The claimant states that executor of the estate never vested the property to the named beneficiaries neither has the property been partitioned in accordance with the testamentary dispositions of the said will.

[24] Michel JA in the Court of Appeal decision in **Eliza Thompson v Catherine Thompson** states²

“The entire ownership of the property comprised in the estate of a deceased person, both legal and equitable, which remains unadministered is in the deceased's legal personal representative for the purposes of administration.”

[25] Further, the Court of Appeal in **Thomson v Thompson** citing **Daphne Gumbs v Administrator of the Estate of James Fahie**³ states:

“Where an estate remains unadministered, no beneficiary has an interest in the estate's property, even in property which was specifically devised by will.”

[26] The claimant to claim title to the disputed land would have had to establish that St John Britton's (deceased) estate had been vested into the claimant's grandmother. The claimant's deceased grandmother's estate would then have had to be administered and vested in accordance with the provisions of the **Intestate Estates Act** and the **Real Estate Devolution Act** giving title to the claimant's father, whose estate would have had to be vested into the claimant to establish title and locus standi to pursue the said claim as owner.

[27] The claimant has failed to establish her entitlement to the specific area in dispute which she alleges forms part of her share entitlement from her father. It is the evidence that the purported beneficiaries of St. John Britton have been living in undivided occupation of the estate, unlike the claimant. The claimant by her own admission states that she has never been in possession or occupation of the disputed land. It is the evidence that the claimant has been residing out of the jurisdiction since the 1980's. The claimant at the trial acknowledged that a two-storey building presumably owned by Laura Mitchel is erected on the disputed property. The defendants assert that Laura Mitchel is the owner of the said building and has been in possession of the said land more than thirty (30) years.

[28] The court cannot make any determination on the pleaded facts as the claimant has not established any legal right to the property in dispute. The deceased estate has not been administered or vested

² GDAHCVAP 2021/0002

³ [2020] ECSCJ No. 86 (delivered 6th March 2020)

to establish the lineage that the claimant is asserting in her pleadings. The claimant has not provided any evidence to establish her share entitlement in the disputed property to maintain the action against the defendants. Accordingly, the claim stands dismissed with costs to the defendants.

ORDER

[29] For the foregoing reasons, it is hereby ordered and directed as follows:

- (i) The claimant's claim stands dismissed.
- (j) The claimant shall pay the defendants prescribed costs in the sum of \$7,500.00 pursuant to CPR 65.5(2)(b), within Sixty (60) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar