

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV1992/0316

BETWEEN:
CYRIL EVANS

FIRST CLAIMANT

and

JENNIFER ABBOTT
ALBERT PLATO
SHIRLEY LAYNE JONES

FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT

Appearances:

Mr. Stephen Williams with Ms. Sheena Williams for the Claimant
Mr. Carlyle Dougan Q.C. for the First Defendant
Mr. Joseph Delves for the Second and Third Defendants

2018: February 6
September 3

JUDGMENT

- [1] **Byer, J.:** This case was one of the unfortunate casualties of the inherent back log of cases within this jurisdiction. This claim was filed as a Writ of Summons in 1992, taking some 26 years to come to trial.
- [2] As a result, the parties in the proceedings and in particular the defendants were unavailable either through ill health, disappearance or senility.
- [3] The defendants were therefore put to a severe disadvantage in that they could not be called and minus any appropriate application with the requisite background information, the witness statements could not be relied on.
- [4] The matter therefore proceeded to trial on the Amended Statement of Claim and Defence, and Counterclaim filed by the parties and the paucity of evidence on both sides.
- [5] At the conclusion of the trial, it became clear to the Court that despite Counsel for the defendant's hesitation to agree to a survey plan being done to shed light as to whether in fact the claimants and defendants were claiming the same parcel of land, this Court made an order on the 28th February

2018 for the Chief Surveyor, Mr. Keith Francis to conduct a survey of the land the subject matter of this action as contained in the deeds relied upon by both parties, namely 570 of 1981 for the claimant and 209 of 1992 by the defendants.

- [6] The Court had further ordered that the same was to be produced by the 13th April 2018; it was not however received until July 2018 thus the late production of the decision in this matter.
- [7] By that report, Mr. Francis categorically stated that land stated in 209/1992 the deed of the defendants, forms part of the land contained in 570/1981 the claimant's Deed.
- [8] Therefore, in this Court's mind the issue of whether the claimant and defendants were claiming the same land has been laid to rest and this Court will therefore in this decision only address its mind to who is in fact the owner of this one parcel of land.
- [9] In order to get a sense of how this arises, it is imperative that some background be given to the genesis of this claim.
- [10] At this juncture, I need to make a comment in this regard. In light of the fact that this matter was of some vintage, it would have been useful to the Court to get some considerable assistance from Counsel on both sides. This was however lacking and the Court has had to rely on pleadings excruciatingly vague and the evidence of two witnesses relied on at trial.
- [11] Be that as it may, the claimant's case was simply this: in 1980, his uncle one James Constance agreed to give him a parcel of land at Calliaqua. Thus, by Deed Number 486 of 1981; the said James Constance registered a parcel of land measuring 3750 square feet in his name and then conveyed the same to the claimant by Deed of Gift Number 570 of 1981. The land was subject to the life interests of the said James Constance, his wife Iris and their daughter Estina who was given permission to keep a chattel house on the land.
- [12] James Constance died in 1986. The second defendant commenced a relationship with the said Estina and would live with her in the chattel house on the land. Estina passed away in January 1990. After the death of Estina, the said Iris having administered the Estate of her late husband James and in her capacity as Administratrix and beneficiary conveyed the parcel of land at Calliaqua to which she had been entitled under the will of her late husband.
- [13] This parcel of land described as 3200 square feet formed the subject matter of Deed Number 209 of 1992. It is this parcel of land that the surveyor Mr. Keith Francis has found, forms part of the parcel which had already been conveyed to the claimant in 1980.
- [14] The second defendant believing that he was in fact entitled to a separate and distinct parcel of land placed the first named defendant as tenant into the house that had belonged to Estina.
- [15] By 1992, the claimant had filed this claim seeking a declaration of ownership among other reliefs including damages for trespass.

- [16] During the currency of the proceedings the Second defendant, knowing full well that the proceedings were instituted sold the property to the third defendant, who then mortgaged the same to lending institutions who are not parties to the proceedings.
- [17] The claimant therefore has prayed of this Court a declaration that he is the fee simple owner of the property, recovery of possession, damages for trespass and payment of all monies owed to the lending institutions and releases there from.
- [18] While the defendants sought by Counterclaim the sum of \$80,000.00 as their equitable interest in the property and for damages for libel.
- [19] As indicated the only evidence that was led on behalf of the defendants was in relation to whether the land was the same lot of land, that having been settled now by the report which the court is minded to accept, there was no evidence on the value of the house that was built by the second defendant nor was there any evidence on the issue of libel. This Court therefore dismisses the Counterclaim.
- [20] Therefore, in this Court's mind the sole issue, must now be, whose deed should be recognized as giving proper title to the said land.

Deed 570/1981 versus Deed 209/1992

- [21] It was again very unfortunate that Counsel for both parties, did not think that it was incumbent on them to assist the Court in this regard to any great extent.
- [22] That being said, in examining this issue one must first and foremost look at the law that governs the issue of competing claims to title. I do not accept the submission by Counsel for the defendants that since the basis of the deed to the claimant was possessory title by way of a statutory declaration that the *"Claimant has absolutely no title to either the land he claims to own or to the land set out in the vesting deed. His deed, a deed of gift cannot confer title since the donor had no title."*¹
- [23] Indeed, it has long been accepted in the law that statutory declarations are self serving and of little utility in creating title, however it is in this Court's mind that any such sweeping statement of the law as against all statutory declarations in all circumstances would be largely incorrect.
- [24] In fact, this Court is of the opinion that where one party claims ownership of land by actual physical possession and another party claims the land by virtue of a statutory declaration in their own favour of the same parcel of land, that it is then that it can be said whether the title of the one in possession can be defeated by the party who has executed the statutory declaration in their favour.
- [25] In the instant case, both the claimant and (although that fact seems to have been forgotten by the defendant) defendant, base their title on the possession of the land by the said James Constance deceased. In fact, whereas the Deed 570/1981 states the basis of the seisin of the donor was

¹ Defendants Closing Submissions filed 9th February 2018 per paragraph 14.

specifically possession of over 40 years (by reference to the Deed 486/1981 which specifically speaks to that period of possession) the Deed 209/1992 only speaks to the deceased having been seised.

- [26] That being said additionally and more importantly in this Court's mind must be the application of the doctrine "*prior tempore potior jure*"— prior in date, preferable in right. In the learned text **Stair Memorial Encyclopedia** it is stated this way "*the applicable rule in competitions of title is the rule of first completion – the party who is first to complete her right being the party who prevails*".²
- [27] The law governing the registration of deeds in Saint Vincent and the Grenadines is the Registration of Documents Act.³
- [28] Under Section 5 thereof, the following is to be noted: "*every document relating to real estate required to be registered under this Act **shall** on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate*".
- [29] It is therefore clear that both 570/1981 and 209/1992 are both documents relating to real estate and it cannot be more clearly stated that at Section 5(1) which codifies the common law provision, that the first in time takes priority.
- [30] This Court does not accept that the Deed 570/1981 is defective in the manner suggested by the defendants and it accepts that the law is clear that it having been registered first in time that it must be valid and would have stood as title to the world. I therefore find that the claimant is entitled to the declaration sought regarding ownership of the parcel of land under 570/1981.
- [31] It was indeed unfortunate that the second defendant did not heed that and further complicated matters by purporting to divest himself of the property when he knew the same was in litigation and the third defendant having gotten notice since 1994 not only charged the property in 1994 but then again in 2006.
- [32] As regards, the claim that the claimant is statute barred from taking action or somehow waived his right to take action, the fault of this matter taking 26 years to come to trial cannot be laid at the feet of the claimant. He did what he was supposed to and filed action as soon as the issue of possession arose. The actions of the defendant having not been stopped by injunction or other interim remedies were not properly ventilated at trial and this Court cannot speculate on the same.
- [33] Additionally, the claimant would be entitled to damages for trespass, the defendants having wrongfully entered onto the land and remaining there for the duration of this litigation. Again no assistance having been rendered by Counsel for the parties in this regard, I decline to make an order at this stage. The claimant will be free to make the appropriate application for such damages

² Volume 18 Paragraph 13

³ Chapter 132 Revised Edition

if he so wishes before the Master. However, I do wish to state that he may wish to consider that the second defendant does have a building on the land which is now a fixture on the same and to which the claimant is now entitled.

IT IS HEREBY ORDERED AS FOLLOWS:

ORDER

1. It is declared that the claimant is the fee simple owner of all that lot piece or parcel of land described in the schedule to Deed No.570 of 1981.
2. The claimant is entitled to possession of the same.
3. Damages for trespass to be assessed by the Master upon application of the claimant if he so desires within 21 days of today's date.
4. That releases be obtained from the National Commercial Bank and the First Caribbean International Bank in relation to the Mortgages 2523 of 1994 and 1490 of 2006.
5. The Counterclaim stands dismissed.
6. Prescribed costs to the claimant on an unvalued claim pursuant to Part 65.5(b).

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar