



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2013

CLAIM NO. MNIHCV2010/0021

BETWEEN:

Sarah Joanna Drew Gerald-

Administratrix of the Estate of Earnest Gerald (deceased)

Claimant

and

Claude Gerald, Executor of the Estate of Jane Louisa Gerald

1st Defendant

Registrar of Lands

2nd Defendant

Hon. Attorney General

3rd Defendant

APPEARANCES:

Mr. David Brandt for the Claimant

Mr. Claude Gerald first Defendant in person

Ms. Amelia Daley and Mrs. Sheree Jemmotte-Rodney for the 2nd and 3rd
Defendants

2013: September 20
2013: November 05

JUDGMENT

[1] **REDHEAD J. (ag):** The Claimant is the aunt of the first named defendant.

The Claimant was the daughter of Ernest Gerald and Jane Louisa Gerald.

They both had four children. The Claimant's mother was her eldest sister.

She lived in Curacao. The Claimant's father Ernest Gerald, inherited lands at Baker Hill from his father; Richard Alexander Gerald who made a will dated 11th August 1948. George Silcote was named as Executor of the will. However, George Silcote who died intestate on 20th May 1966, did not complete administration of the estate of the deceased.

[2] On 28th January 1969 Letters of Administration were granted to Ernest Gerald "the lawful son and one of the beneficiaries named in the last will and testament of the said deceased."

[3] The Statement of Claim alleges that the Claimant was and is the Administratrix of the Estate of Ernest Gerald who died intestate on 18th January 1970, having been granted Letters of Administration to his estate.

[4] The Claimant alleges that prior to his death Ernest Gerald owned and was in possession of a parcel of land now legally described as Block 13/18 Parcel 55 in the St. Peters Registration Section by inheritance from his father Richard Alexander Gerald.

[5] Ernest Gerald was married to Jane Louisa Gerald. After the said marriage and prior to his death the said land was occupied by Ernest Gerald and his wife Jane Louisa Gerald and then their children of the marriage. After the death of Ernest Gerald, Jane Louisa Gerald and their three children of the marriage continued to occupy the said land. After the death of Ernest Gerald in 1970, his wife Jane Louisa Gerald, in 2002 **Jane Louisa Gerald** applied for and was registered as the absolute owner of the property.

[6] Jane Louisa Gerald died on the 16th December, 2005. During her lifetime Jane Louisa Gerald purported to make a will appointing Claude Gerald, her grandson, as Executor of the will.

[7] The First Defendant obtained probate of the will and was appointed executor of the estate.

[8] Learned Counsel, Mr. Brandt submits that Ernest Gerald owned the Land absolutely at the time of his death. He died without making a will i.e. he died intestate. Learned Counsel contends that Ernest Gerald having died intestate the land in question formed part of his residuary estate which devolved upon his widow, Jane Louisa Gerald with a life interest and their children pursuant to **Section 4(1) [a] (ii)**¹ of the Intestate Act of Montserrat. Which provides as follows:-

“ 4[1] The residue estate of an intestate should be distributed in the manner or be held on the trusts mentioned in this section, namely [i] if the intestate leaves issue, upon Trusts, as to the half for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate; and, as to the effect of the other half, on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the life time of the surviving husband or wife, of the intestate then upon trust for the husband or wife during the residue of “his or her life”.

[9] Mr. Brandt Learned Counsel, for the Claimant argues that subject to the life interest of Jane Louisa Gerald, by Section 5 of the Intestate Act the surviving children of Ernest Gerald and June Louisa Gerald were entitled to one half of

¹ Cap 03.04 Intestate Estates Act

the land on reaching the age of 21 years and the other half, (i) Upon the death of Louisa Gerald.

[10] He contends that all of the children of Jane Louisa Gerald are above 21 years of age, therefore the ownership of the land should vest in the surviving children jointly and absolutely.

[11] Section 5 provides as follows:

“ 5(1) where under this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts of the intestate, the same should be held upon the following trusts, namely (a) in trust, in equal shares if more than one, for all or any of the children or child of the intestate living at the death of the intestate, who attains the age of 21 years or marry under the age, and all or any of the issue living at the death of the intestate who attains the age of 21 years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees.”

[12] I refer to Section 135² for completeness:

135(1) “ The ownership of land may be acquired by peaceable open and uninterrupted possession without permission of any person lawfully entitled to such possession for the same period as that which under the Limitation Act would be required to bar an action for recovery of the same land in the same circumstance between the same parties.”

² Registered Land Act (AD 08.01)

[13] Sarah Louisa Joana Drew made, application for prescriptive title as surviving joint tenant.

[14] **Clause 3 of the Last Will and Testament** of Jane Louisa Gerald provides as follows:

“ I devise to my grandson, the said Claude Gerald of Brades, Montserrat, the land together with dwelling house thereon, on which I currently reside at Brades Montserrat and any other real property in which I may be interested whether as proprietor or otherwise, howsoever that interest has arisen or may hereafter arise, whether under any will or intestacy.”

[15] Mr. Brandt argues, “ The said will on the face of it, was not duly executed according to the will Acts of Montserrat because the said Jane Louisa Gerald was totally blind, at the date of the making of the will. Therefore the will has no legal effect.”

[16] I make the observation that no evidence was produced to support Mr. Brandt’s assertion that Jane Louisa Gerald was blind at the date of the making of the will. I am not aware that being totally blind, by itself would make a person incapable of making a will.

[17] In Skeleton arguments on behalf of the Second and Third defendants, Learned Counsel, Jamiel Greenaway contends: “On June 30th, 2000 an application was made by Jane Louisa Gerald to be registered as the absolute owner of Block 13/18 Parcel 40 amended by handwriting to Block 13/18 Parcel (55) by virtue of acquisition by prescription.

[18] In support of the application two affidavits were filed and sworn to by Richard Weeks, the other by Simeon Fenton Richard Weekes in his affidavit swore among other things that he was born at Dyer Piece Cudjoe Head Montserrat on 15th May 1920. He is well acquainted with Jane Louisa Gerald, having known her for upward of sixty years. He swore that he knows the land situate at Baker Hill more particularly described as Parcel 40, Block 13/18.

[19] Simeon Fenton swore in his affidavit that he was born in Brades on the 9th day of December, 1916. He has been residing at Brades for the past 84 years. He is well acquainted with Jane Louisa Gerald for upwards of sixty years. He knows the land situate at Bakers Hill more particularly described as Parcel 40 Block 13/8.

[20] Mr. Brandt in his Skeleton arguments points out that on the 8th June 2000 application was filed on behalf of Jane Louisa Gerald claiming possession of the property described as 13/18/40. The said application has a hand written amendment with initials to read 13/18/55 St. Peters Registration Section (the land).

[21] Mr. Brandt contends that no one knows who made the amendment. He argues that title to land was granted by the Registrar of Lands by prescription upon the basis of two imperfect affidavits filed in support of the application.

[22] This submission, in my view, must be correct and unanswerable. The two deponents- Simeon Fenton and Richard Weekes swore that the applicant, Jane Louisa Gerald lived on the land Parcel 40 Block 13/18 with her late husband until they separated on his death in 1969. She took possession of the

land and lived in a dwelling house thereon for several years. The applicant remained in possession and control of the land (to this day, 25th January 2000).

[23] Richard Weekes' affidavit. Simeon Fenton's affidavit was of the same effect i.e. the occupation and possession by the Claimant, Jane Louisa Gerald was in relation to Parcel 40 Block 13/8. This to, my mind, had nothing to do with parcel 55. In other words the affidavits of the two deponents were in support of a transfer of parcel 40 not parcel 55. Mr. Christopher Gerald who was the acting Registrar of Land gave evidence on behalf of the 3rd and 4th defendants. His substantive post was Assistant Registrar of Lands for about 12 years.

[24] He was referred to the affidavits of Simeon Fenton and Richard Weekes. He said in cross-examination that the application was in support of a non-existing parcel of land. " I could not have registered it because property was not in existence." Having regard to that evidence this should bring an end to this matter because the Claimant Jane Louisa Gerald, could not have obtained legal title to Parcel 55 Block 13/18.

[25] However, there are important issues in this matter which must be addressed. The issue of adverse possession being one such issue.

[26] Mr. Brandt learned counsel for the Claimant argues that the affidavits are not in compliance with **section 135³** and that in order for the Registrar of Lands to grant a possessory title to Jane Louisa Gerald. The following conditions must be fulfilled:

³ Registration Act

- (i) Possession must be open, peaceful and adverse
- (ii) Factual possession must be accompanied by animus possendi, this is an intention to enjoy the land to the exclusion of all others.

[27] He contends that possession by Jane Louisa Gerald could not be adverse for she was the wife of the owner who predeceased her.

[28] Jane Louisa Gerald was the wife of Ernest Gerald who died intestate according to the laws of intestate succession. She was entitled to a life interest in one half of the intestate's property. Adverse possession is against the interest of the owner's property. One cannot acquire an interest by adverse possession of one's own proprietary interests. Learned Counsel Mr. Brandt refers to **Riley v Braithwaite** ⁴.

[29] I address now the purported device to Claude Gerald by Jane Louisa Gerald. Jane Louisa Gerald made a will on the 2th January 2000 in which she purported to devise to Claude Gerald the land in question. At that date all the children were surviving children of Ernest Gerald and Jane Louisa Gerald and had attained the age of 21 years.

[30] In conclusion the application of the Claimant is granted. In my judgment the purported transfer of title in parcel 13/18/55 to Jane Louisa Gerald by prescription was invalid. The purported device in her will was invalid and could not take effect because Jane Louisa Gerald did not have title and therefore could not give title to the first named defendant Claude Gerald-Quod nemo dat non habet.

⁴ [1974] WIR 66

[31] The Registrar of Lands is hereby directed by virtue of **Section 140⁵** to rectify the title to land in respect of Parcel 13/18/55 St. Peters Registration section by placing the name Sarah Joanna Drew-Gerald as owner in place of the name Jane Louisa Gerald on the ground of mistake.

[32] Costs to the Claimant to be paid by the first named defendant, Claude Gerald to be assessed on Prescribed costs basis.



Albert Redhead

High Court Judge

⁵ Registered Land Act