

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 345 of 2002

BETWEEN:

MONIQUE STANLEY
MORALIS STANLEY
MOKETO STANLEY

Claimants

V

KENNETH COTTLE
VEROL BROWN

Defendants

Appearances:

Miss N. Sylvester and Miss P. Knights for the Claimants
Mr. M. Malcolm for Defendant No. 1

2008: June 25;
September 22.

JUDGMENT

[1] **MATTHEW J. (Ag.):** On August 8, 2002 the Claimants filed a claim form asking for the following relief:

- (1) A declaration that the Claimants are entitled to possession of a parcel of land at Chauncey which they alleged belonged to their deceased father, Robert Cottle;
- (2) Possession of the said land which is described in Deed of Assent, No. 205 of 2002 and Statutory Declaration, No. 2446 of 1999;
- (3) Damages for use and occupation or mesne profits from the date of the trespass until possession is given up;
- (4) An injunction to restrain the Defendants from trespassing on the said land and property; and
- (5) Costs.

- [2] In their statement of claim they alleged that they are the children of Robert Cottle, deceased, who died intestate on July 24, 1999 and who at the date of his death was seised of an estate in fee simple absolute by virtue of a statutory declaration registered as No. 2446 of 1999.
- [3] On September 15, 2000 the Claimants caused a notice to be published in the Vincentian newspaper of the intended application for declaration that they were the children of Robert Cottle deceased and inviting objections to the said declaration to be submitted to the Registrar of the High Court.
- [4] A declaration was duly made to the effect that the Claimants are the children of Robert Cottle deceased.
- [5] They alleged that on November 28, 2001, Letters of Administration of the Estate of Robert Cottle was granted to Monique Stanley, the eldest of the three Claimants, who made all the necessary funeral arrangements for the burial of the Deceased.
- [6] They alleged that when the Deceased died the first Claimant was on business in the USA and returned to Saint Vincent on July 28, 1999 and found the Defendants had taken possession of their father's property. The Defendants are the brothers of the Deceased.
- [7] The First Claimant caused a solicitor's letter dated August 9, 1999 to be sent to the Defendants to deliver the property to the Claimants. The Defendants failed and/or refused to hand over the keys to the said property.
- [8] The Claimants caused another letter dated March 8, 2002 to be sent to the First Defendant requesting him to deliver up possession to the Claimants but to no avail.

- [9] Subsequently the Claimants through their solicitors received a letter from the First Defendant stating that he has absolute title to the property and will not and cannot vacate the property.
- [10] On October 18, 2002 the First Defendant filed a defence and counterclaim. He stated that the Deceased Robert Cottle died on the premises which was owned by him having been in occupation for over thirty years to the knowledge of the Claimants.
- [11] There was no separate defence from the counterclaim as in the normal practice and it is very doubtful whether in fact there was a counterclaim.
- [12] On December 5, 2002 the Defendant filed another document headed Counterclaim where in paragraph 1 he stated that he repeats paragraphs 1 to 13 of his earlier documents filed on October 18, 2002 and goes on to trace the history of the land from one Edna Joseph to Mabel Cottle, the mother of Robert and the Defendants.
- [13] The Defendant stated that he and Robert Cottle continued to run a shop after their brother, Rupert Jack, had moved out of the shop and the disputed land, and while the Defendant was at work as a mechanic at Cable and Wireless, Robert used to manage the shop.
- [14] Defendant alleges that the possessory title of Robert Cottle bearing No. 2446 of 1999 is dated May 16, 1995 but registered in 1999, but does not say of what moment is that.
- [15] He also alleged that the Claimants and the deceased Robert Cottle were not on speaking terms during the latter's lifetime, but does not suggest what should arise from that.
- [16] He also alleged that the Deceased was a tailor who earned very little in his business and it was he who financed the building and development of the property.
- [17] He said it was his mother who gave him the property in question but died without rectifying the necessary legal implications.

- [18] The Claimants filed a reply and defence to the counterclaim on January 29, 2003 but nothing new comes out of that.

EVIDENCE

- [19] At the trial Monique Stanley and Annette Gaymes gave evidence for the Claimants and Kenneth Cottle, Janice Cottle and Joseph Gould gave evidence for the First Defendant. The Second Defendant did not take part in the trial.

- [20] In her witness statement Monique Stanley stated that her father was the sole owner of the parcel of land in question and he was granted a Statutory Declaration No. 2446 of 1999 to that effect.

- [21] She tendered in evidence a grant of Letters of Administration from the High Court of Justice to her as well as a Deed of Assent, No. 205 of 2002, whereby she and her siblings became the owners of the Estate of Robert Cottle, deceased.

- [22] She also tendered two letters written to the Defendant to deliver the property.

- [23] She was cross-examined extensively. Under cross-examination she stated that her uncles Verrol and Ken were occupying her father's house when she returned from the USA and they were airing out the house because of the circumstances in which her father died. She admitted her uncle Ken was working as a mechanic at Cable and Wireless.

- [24] When it was suggested to her that her father's land is bounding with the disputed land she said it was all one land with a stream running through.

- [25] When she was re-examined she said initially there was a very old board shop on the land but it is different today. The old board shop has been changed to one made of green heart and there is a wall structure below.

- [26] She said her father was found dead on the toilet seat four days later when he had begun to decay. He was found in the lower portion of the property in dispute. She said Uncle Ken had a garage across the street.
- [27] In answer to the Court she said Annette and her father built a wall structure below the shop for them to live in together with Annette's young son. The wooden shop had been on pillars and the wall structure was built underneath the shop.
- [28] Annette Gaymes said she was married to Robert Cottle on June 28, 1989 and they got divorced in June 1996.
- [29] She said when they got married the only structure on Robert's land was the wooden shop which was supported on wooden columns. There were also some pig pens on the land.
- [30] She said shortly after their marriage they made improvements to the said building and commenced work on the ground level under the shop. They built a kitchen, bedroom, toilet and bath of concrete and the cost was met by Robert and herself. She later received a loan from the National Commercial Bank to build cupboards and to obtain furniture and windows for their home. She used other monies she obtained to expand the home to add a sitting room and another bedroom
- [31] She stated that Robert and herself did further repairs to the shop making a partition to divide his tailoring business from the activities of the shop.
- [32] She said at no time did either of the Defendants live on these premises while she was there and at no time did Kenneth Cottle operate a business or was in any way connected to the day to day operations of the shop.
- [33] Under cross-examination she stated that when she got married she was working at the Kingstown Post Office. Robert was a tailor and was running a shop at Chauncey. She reiterated that Robert and herself built downstairs and it became their home.

- [34] She said it was not true that Kenneth and Robert began the construction of the kitchen. She said Kenneth would come across to the property but she never saw Kenneth do any thing in the shop while she and her husband lived together.
- [35] She said she and Robert got separated in 1995 and got divorced in 1996. Robert then lived by himself and her little son would go to see him.
- [36] She said further:
"I separated and that was it. I never went back. I took my clothes and my child's clothes , one bed and one dressing table. I left the other stuff."
- [37] In his witness statement Kenneth Cottle said Robert was his younger brother. He then traced the history of the land from Edna Joseph to his mother, Mabel Cottle. He said it was his brother Rupert Jack, deceased, who bought an old board shop and brought it on the land.
- [38] He said Rupert Jack then vacated the shop and himself and Robert Cottle began to operate the shop in the old wooden building on the disputed land.
- [39] They later broke down the old building and built a purple heart board structure on top of a wall lower storey on the said disputed land.
- [40] He said he knew nothing about Robert Cottle's possessory title. He said he has about 90 per centum of the property and would admit that both Robert and himself were in possession of the house and land.
- [41] The Defendant was cross-examined extensively. He admitted that the Claimants are the children of his brother, Robert Cottle deceased. He said it is no way that it is Robert and his wife who built up the property.

- [42] He said he was there when the Police broke down the property to get the Deceased Robert Cottle and at the time he had keys to the shop.
- [43] He said he gave his brother Robert money all the time for the property but he did not check the amount nor kept any record.
- [44] He admitted that he blocked the internal passage from the shop to the living quarters downstairs and that he is collecting rents for downstairs.
- [45] Janice Cottle said she is the lawfully wedded wife of the First Defendant and that they got married on August 25, 1973.
- [46] She said she knows that her husband and Robert occupied the disputed piece of land and used to plant peas, tomatoes and other crops on the land.
- [47] She said both of them constructed the building on the land and they both ran a liquor and provision shop upstairs of the property.
- [48] She said her husband and Robert used to share the profits from the shop; and she knows that the Claimants and their father never got along during his lifetime.
- [49] Under cross examination Janice Cottle said that Robert Cottle used to breed dogs and rear pigeons on the land. She said she used to be in the shop but did not put that in her witness statement.
- [50] She said when Robert died her husband opened the house with a key. Later she said she was not there when the place was opened. She said it was Robert and her husband who put the addition to the building which she came and met.
- [51] Joseph Gould stated that when Rupert Jack closed down the shop on the land Robert and Kenneth Cottle reopened it and they cultivated the piece of land around.

[52] He said he knew that Robert and Kenneth Cottle broke down the old structure and rebuilt the new one.

[53] Under cross-examination he stated that Robert and his wife lived downstairs on the premises and Robert had pigs on the land. He said Kenneth Cottle used to live on the premises with Robert while the wife was living there.

CONCLUSIONS:

[54] Verrol Browne did not take part in these proceedings although it was said he is in the island. It was suggested that he told the First Defendant he should not proceed with the case.

[55] There is no doubt in my mind that Robert Cottle deceased occupied the property. The witnesses for the defence testified that he had pigs on the land, that he bred dogs and reared pigeons on the land.

[56] The Claimants produced a statutory declaration in support of Robert's ownership of the land. Admittedly this is a self serving document that does not give undisputed title but it indicates the Deceased was at least laying claim to it.

[57] Learned Counsel for the Defendant has submitted that the document is bad for one reason or another, not the least being its late registration. In my judgment I find Robert was in sole occupation of the land quite apart from the statutory declaration.

[58] If I had any doubt about the validity of the claim of the Claimants, that was dissipated by the evidence of Annette Gaymes whom I consider to be a witness of truth.

[59] Gaymes has no interest in the proceedings and there is no reason to support Robert Cottle and/or his children. After a short marriage she left the matrimonial home laying no claim to

the efforts of her labour in constructing the wall structure of the building. She separated from her husband, took the clothes of her son and herself, a couple items of furniture, left and never turned back.

[60] I was impressed with this witness who had just come from the hospital and was under medication. I believe her that while she was at the home Kenneth Cottle took no part in the operations of the shop nor did he build any part of the building.

[61] There is no longer any issue as to the rights of the Claimants. The Defendant admitted in Court that they are his deceased brother's children. They are therefore entitled to his estate.

[62] At one time Kenneth Cottle claims to be the absolute owner, at another time he says he is 90 per cent owner. In my judgment he fails in either of those contentions.

[63] The First Defendant has a garage across the road to the property in dispute and has keys to the building, yet he stands by and allows the Police and/or others to break down the house to retrieve the body of his brother. I do not believe Kenneth Cottle had any access to the property as he claims and is simply a usurper who took advantage of the situation and imposed himself on the property to the exclusion of the rightful owners.

[64] I believe it is after the death of Robert that he sought to establish himself by stocking the place with drinks and renting the lower dwelling portion of the property.

[65] I enter judgment for the Claimants. One of the heads of relief sought is damages for use and occupation or mesne profits from the date of trespass, presumably July 28, 1999, about the time the property was entered to get the body of Robert Cottle, to the date until possession is given to the Claimants.

[66] I do not recall any figures being given to assist the Court in this regard and in her final submission on behalf of the Claimants Miss Knights simply asked that the Claimants be

granted the reliefs prayed for in their statement of claim and that the Defendants' counterclaim be dismissed with costs.

[67] I have no hesitation in dismissing the counterclaim of the First Defendant and to award costs to the Claimants in this action.

[68] My order is as follows:

1. I declare that the Claimants are entitled to the possession of the property in dispute.
2. I order the First Defendant to deliver possession of the land forthwith to the Claimants.
3. I order the First Defendant to pay to the Claimants \$8,000 for use and occupation of the land.
4. I make a restraining order against the First Defendant and I grant an injunction restraining him whether by himself, servants, workmen or agents howsoever from trespassing or remaining on the said property.
5. I order the Defendant to pay the Claimants costs in the amount of \$4,000.

.....
Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)
(August 9, 2008)