

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 202 OF 2005

BETWEEN:

BEATRIX GUMBS

Claimant

V

LLOYD SAMUEL

Defendant

Appearances:

Mr. S.E. Commissiong for the Claimant

Mr. S. Raymond-Cadette for the Defendant

2008: April 30;
May 16.

JUDGMENT

[1] **MATTHEW J. (Ag.):** On April 22, 2005 the Claimant issued a claim against the Defendant asking for the following relief:

- (1) A declaration that the Claimant is owner of the parcel of land set out and described in Deed No. 2031 of 2001 and described in the schedule;
- (2) Damages for trespass;
- (3) Any other relief as to the Court may seem just; and
- (4) Costs.

PLEADINGS

[2] In her statement of claim the Claimant alleged that she is the owner of a parcel of land situated at Queensbury in the State of Saint Vincent concerning 1 ½ acres more or less but it does not appear that the portion of land has been surveyed.

- [3] She stated that on April 18, 2005 the Defendant entered upon her land with a group of three men and ordered them to remove the Claimant's animals from the land and thereafter to burn the vegetation with toxic chemicals.
- [4] She stated the Defendant picked up the pump himself and began to spray the land with the chemicals in complete defiance of her husband, John Gumbs.
- [5] She stated that her husband gave her the parcel of land as a gift by virtue of Deed No. 2031 of 2001. She said that immediately before the donation John Gumbs had been in undisputed occupation of the land for at least 12 years.
- [6] The Defendant filed his defence on May 23, 2005. The Defendant denied the ownership of the Claimant to the parcel of land. He said the owner is Grenville Ballah, who is presently in the United States of America, by virtue of Deed No. 893 of 1990 and by letter dated April 21, 2005 Ballah had given him authority to cultivate the land.
- [7] He said John Gumbs had continually trespassed on the parcel of land by passing on it and grazing his animals and some time in 1995 one Calvert Samuel who was then in charge of the land had occasion for solicitors to write to John Gumbs warning him of his infractions.
- [8] He stated that on April 18, 2005 he entered the land of Grenville Ballah and began clearing it for cultivation as was customary. It is difficult to see how the Defendant could be cultivating the land as customary on April 18, 2005 when he himself said he got authority from Grenville Ballah on April 21, 2005 to cultivate the parcel of land.
- [9] He said that he entered the parcel of land described in title deed 893 of 1990 with his workmen and continued to clear his lands for cultivation.
- [10] The Defendant alleged that "this said parcel of land was challenged in the Court and in March 1990, the Court awarded the parcel of land to Mr. Grenville Ballah who

subsequently put the Defendant in possession with Mr. Calvert Samuel having power to control.

- [11] The Defendant alleged that the Claimant is actually questioning the power of the Court and besides being warned by Calvert Samuel, the Claimant and her husband "would likely have had knowledge that the said land was actually granted to Grenville Ballah by the Court in 1990 as Vermont is a small community where facts as these are knowledgeable to the locals."
- [12] For a moment when I read the defence I was under the impression that the Court made an order against John Gumbs in respect of the land and in an effort to avoid the order he transferred the land to his wife. This appears not to have been the case as the evidence will show.
- [13] Even the defence indicates that there was no order made against Gumbs as the Defendant alleged that the Claimant and her husband would most probably know of the Order because the place where the land is located is a small community. This smacks of uncertainty in the pleading.
- [14] I see more uncertainty in the defence when the Defendant pleads: "The Defendant is in possession of a parcel of land consisting of 3 acres which may have included that parcel as described in the Claimant's title deed 2031 of 2001." Is the Defendant saying he is not sure that the 1 ½ acre parcel of land claimed by the Claimant is within the 3 acres given to Ballah by Deed 893 of 1990?

EVIDENCE

- [15] The Claimant gave evidence and called as witnesses John Gumbs, Gladstone Gould, and Princess Gould. The Defendant gave evidence but called no witnesses.

- [16] Beatrix Gumbs filed her witness statement on March 20, 2006. She gave direct evidence that she saw the Defendant commit various acts of trespass on her land. When she was cross-examined she stated that she did not know Randolph Ballah but her parcel of land is bounded on one side by Randolph Ballah.
- [17] She said she met her husband with the land before they got married, that was about 1981 to 1982. She said she had never heard of Grenville Ballah or Daswell Gumbs.
- [18] She said she got to know the Defendant when he came on her land on April 18, 2005. He had a spray can with gramoxone and he sprayed the vegetation which subsequently got burnt.
- [19] She was shown Deed No. 893 of 1990 and said she knew of no Court Order made in respect of that particular parcel of land.
- [20] Upon re-examination she stated she was not able to reap the produce from the vegetation after the Defendant had sprayed them and got them brown.
- [21] John Gumbs stated that before he gave his wife the land about six years ago, he had been in undisputed possession of it for 26 years and had cultivated that portion of land in bananas, plantains, tannias, eddoes, potatoes and green vegetables.
- [22] He said on April 18, 2005 he saw a group of three men on his land and asked them why they had loosed his animals which were on his land. They spoke to him. He said the men had spray cans filled with gramoxone and proceeded to spray his vegetation.
- [23] One of them used a cell phone and within minutes the Defendant arrived in a black jeep. A conversation ensued after which the Defendant took up a spray can himself and began spraying the vegetation.

- [24] He stated that up to three years ago the Defendant resided overseas but he, John Gumbs, had always lived at Vermont.
- [25] When he was cross-examined he said he knows Grenville Ballah whom he thinks is in the U.S.A. He also knows Randolph Ballah who has been working a portion of land next to his wife's land.
- [26] He said he never at any time heard that Randolph Ballah was working the land for somebody else. He did not know Randolph was engaged by Grenville. He described how he entered on his wife's land which was vacant at the time.
- [27] He said he knows Daswell Gumbs to whom he is related but did not know that the parcel of land in dispute was purchased by Daswell Gumbs. He never heard Dazwell Gumbs owned land in Queensbury.
- [28] He said he went on the land in 1979 and nobody ever challenged his occupation up to 2005. He said he had no knowledge that there was litigation about that parcel of land in 1990.
- [29] He said he knows of no Court Order, No. 96 of 1990, and did not know that the Registrar of the High Court was ordered to convey that land.
- [30] Gladstone Gould stated that he first began to work the lands for John Gumbs some time in 1985. He planted various crops on the land and Gumbs paid him wages. He said he never saw the Defendant or his employees come on the land.
- [31] He said he knows for a fact that the Defendant was living in Saint Vincent for at least two years before April 2005 and not once did he come on the land owned by the Claimant to make any claim to it. Gladstone was not cross-examined.

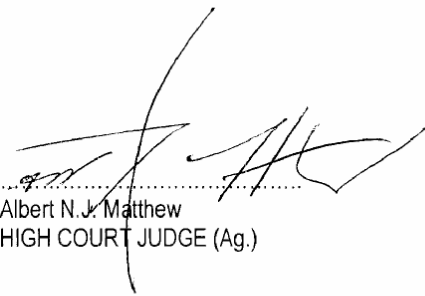
- [32] Princess Gould stated that she was in fact employed on the land about 10 years before these proceedings by John Gumbs.
- [33] She said that on April 19, 2005 whilst working on the land the Defendant arrived with four men. The Defendant told her to get off the land because it belongs to him. He pulled up four rows of vines she had already planted. His men did the same. She then proceeded to the home of the Gumbs to make a report.
- [34] When she was cross-examined she stated that she knew the Defendant as a boy growing up who later went abroad with his stepmother. She said she never saw him on the land before April 18, 2005.
- [35] The Defendant filed his witness statement on February 8, 2006. He said he lives in Vermont and that on April 21, 2005 he was granted permission by his brother, Grenville Ballah of Vermont but presently residing in the U.S.A., to occupy and cultivate a parcel of land consisting of 3 acres situated at Vermont.
- [36] He said Grenville Ballah showed his title deed 893 of 1990 issued to him by the Registrar of the High Court of Saint Vincent and the Grenadines.
- [37] He stated that John Gumbs had continuously breached the Court Order despite being warned not to do so. He said he began to clear the land for cultivation when John Gumbs trespassed and interrupted his workers.
- [38] Upon cross-examination he stated he was 57 years old and had traveled abroad in 1972 and returned to Saint Vincent for good on September 11, 2003.
- [39] He stated that Mr. Gumbs had land all about but he had gone on the 3 acres portion. He denied that he had sprayed any land.

CONCLUSIONS

- [40] The documents before the Court reveal that Daswell Gumbs sold about 3 acres of land to Grenville Ballah before Daswell died on July 14, 1987. Daswell had not got time to execute the deed of sale so the Court Order was made that the Registrar convey the land to Grenville Ballah.
- [41] Gumbs had a title to the land, No. 1476 of 1977, but there appears to be no date of sale from Gumbs to Ballah. Survey Plan A2/133 drawn by C.E.R. Williams, licensed land surveyor, which is lodged, describes the land.
- [42] In respect of the location of the land in dispute it is sometimes described as being in Vermont and at other times as being in Queensbury.
- [43] The oral evidence of the Claimant and her witnesses were much more convincing than that of the Defendant. The Defendant in his oral evidence did not support what he said or what was said for him in the witness statement. His case was stronger on the written version.
- [44] The Claimant and her witnesses clearly established possession for over 26 years without interruption save on April 18, 2005 when the controversy arose. On that basis the Claimant should succeed in her action.
- [45] The Defendant did not produce any evidence to counteract this. He said he did not own the land but got permission from the owner on April 21, 2005. So it appears the incident took place at least three days before he obtained authorization.
- [46] The Defendant is not in a position to challenge the Claimant's continuous possession. Under cross-examination he said he traveled to the United States of America in 1972 and although he came back to Saint Vincent and the Grenadines a couple of times he only returned permanently on September 11, 2003.

- [47] Still under cross-examination he said he cultivated the land only in 2005, presumably after he got his authorization. It is clear the Defendant is a stranger to the land.
- [48] The biggest hurdle for the Defendant in this case is that he is relying on a deed from the Registrar of the High Court to Grenville Ballah, that is Deed No. 893 of 1990, and did not , or could not, identify the land referred to in that deed. In other words he could not relate the deed to the land covered by the deed.
- [49] I attempted to do so and found that nothing in the boundaries of both deeds, that is the Claimant's and the Defendant's deeds, could clearly establish that the land in Deed No. 2031 is part of the land covered by Deed No. 893 of 1990. To describe a boundary by "a road" does not say very much.
- [50] The land covered by Deed No. 2031 of 2001 is not surveyed as I have indicated earlier and the boundaries are not even described as East, West, North or South. But the land covered by Deed No. 893 of 1990 was surveyed by C.E.R. Williams, licensed land surveyor, and was approved and lodged in the office of the Lands and Surveys on July 22, 1977.
- [51] While the burden of proof is not upon the Defendant to show that the Claimant is not the rightful owner, when once the Claimant and his witnesses had given plausible and substantial and uncontroverted evidence of her possession, the Defendant to counteract that evidence, could and should, have asked a surveyor to relate the Claimant's land to what is contained in the lodged survey.
- [52] I said earlier the oral testimony of the Defendant did not live up to what was written. In the last paragraph of the first page and the first paragraph of the second page of his witness statement, the Defendant stated that John Gumbs had breached the Court Order. The evidence revealed nothing of the kind.

- [53] Again it was said that John Gumbs, "despite being warned not to do so, trespassed on the land." The evidence in Court is far short of that insinuation.
- [54] In the next paragraph of his witness statement the Defendant said John Gumbs defied the Court Order of 1990 and proceeded to transfer the land to his wife in 2001. How could one defy a Court Order of which he is unaware?
- [55] The defence cannot be maintained. I find the Defendant trespassed on the Claimant's land on April 18, 2005 and subsequently did damage to the Claimant's crops.
- [56] The Claimant attempted to prove the amount of her loss by submitting a "To Whom It May Concern" certificate from the Ministry of Agriculture dated May 10, 2005 indicating that he lost crops to the amount of \$7,340.00.
- [57] Am I missing something here? Have the rules of evidence been changed to prove special damages? I reject the document in toto.
- [58] I award the Claimant general damages for trespass in the amount of \$5,000.00 and costs in the amount of \$3,500.00.



Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)