

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO. 2000/0028

BETWEEN

RONISE LERICHE
ANNA ZILMA POLEON
EUGENIE POLEON
LUCRETIA POLEON

Claimants

AND

PIERRE POLEON
HEIRS OF ABRAHAM MARIS ALEXANDER
HEIRS OF PAULINESE POLEON
JOSEPH POLEON
BENOIT POLEON
ROSALINA POLEON

Defendants

Appearances:

Mr. Vern Gill for the Claimants
Mrs. Lydia Faisal for the Defendants

.....
2007: October 25
November 5
November 29
2008: March 31
April 16
.....

JUDGMENT

Mason J

- [1] This action began in January 2000 as a non-contentious claim for the partition of a portion of land to which all of the parties were equally entitled.
- [2] This land had originally been the property of George Poleon, brother of the fourth and fifth Defendants and uncle of the Claimants and first Defendant. When George died, a single man, in 1982, the fourth Defendant as his eldest sibling, applied for and was granted Letters of Administration to his estate. The fourth Defendant then vested the property in favour of all the heirs of George Poleon as a consequence of which the land became jointly owned by all of the parties to this action – Claimants and Defendants alike.
- [3] In addition to an order for partition, the Claimants sought an order for the appointment of an expert to view, value and subdivide the land as well as an order for the payment of the expert's fees by the co-owners in proportion to their respective shares.
- [4] On 16th June 2004 the court granted an order appointing a named person as the licensed Land Surveyor to, inter alia, produce a proposal plan of partition. Due to the failure of the Surveyor to expeditiously produce a plan of partition, the court appointed a replacement.
- [5] In his report produced on 11th August 2005, that second surveyor provided two (2) sketches – labelled option A and option B respectively – showing proposed allocations. It was proposed by the surveyor that Lot 6 – the subject of the present dispute – should be allocated to the heirs of Vincent Poleon (the Claimants) because of “previous physical occupation (farming) and common history by residents”. Vincent Poleon was the father of the Claimants and first Defendant and brother of the fourth and fifth Defendants.

[6] Before a consent order could be approved by the court, the fourth and fifth Defendants objected to the proposed allocation on the ground that at the time of the survey, the surveyor had not consulted with them and more importantly, at the time of the survey, that it was the fifth Defendant, and not the first Claimant as she claimed, who was in actual occupation of Lot 6. The fourth and fifth Defendants contended that Lot 6 should therefore be allocated to the fifth Defendant.

[7] As a consequence evidence was led by the two (2) sides in order for the court to determine which of the parties – the first Claimant or the fifth Defendant - was in actual occupation and therefore to whom Lot 6 should be allocated.

Evidence

[8] It was the evidence of the fifth Defendant that he went to England in 1961 returning 10 years later in 1971. He returned to England again – 1976 coming back each year until 1988. He returned permanently in 2002/2003.

[9] Under cross examination he admitted knowing that his brother George owned the property, that he had been in a common law relationship with the first Claimant's witness and that George and his woman had lived together and operated a shop on the land. He denied knowing whether they had children. He stated that after George died, things changed somewhat, the land became his and he wanted to build his house there, that in 1988 he caused four (4) pillars to be built for the construction of his house but when he discovered that permission had to be obtained in order to build a house, he ceased construction and

did nothing further. He denied that it was George who had built the pillars. He stated that when he took over the land he planted crops and while he was in England he rented out the land and that each year on his return to St. Lucia he could harvest the crops.

[10] His brother, the fourth Defendant, essentially supported the fifth Defendant's version of events. He asserted in addition that the Claimants had never been in occupation of Lot 6 nor had they even planted any crops there. He claimed that the fifth Defendant had begun to occupy that land from the 1970's and had cultivated bananas there. He continued that when his brother went to England and had rented the land, it was he who collected the rents on behalf of his brother.

[11] The second witness for the fifth Defendant was not particularly helpful – he maintained that as a 21/22 year old mason some 24/25 years ago he had been contracted by the fifth Defendant to build the pillars but could neither remember the date he built them nor how much he was paid.

[12] For her part, the Claimant gave evidence that from about 1967 her uncle George and his common law wife (her witness) lived on and operated a shop on Lot 6 and also planted crops there, that as the area developed, they decided to build outside toilet facilities to accommodate their cock fighting activities and to this end they engaged the services of a builder who constructed some columns but George died before construction of the facilities could be completed. She stated that after George's death, the fourth and fifth Defendants formally transferred the shop to George's common law wife. She denied that the fifth Defendant occupied the land from the 1970's and that it was she who had cleared that land

and planted crops. She claimed that the fifth Defendant “only showed up” on the land around 2004 and started planting and in the process made his niece who had been living there vacate the land so he could occupy it.

[13] Under cross examination she admitted going to St. Croix in 1974 for six (6) months, returning there again some ten (10) years later, that she gave birth to a child there, that her husband used to go there for work, that he had had a permanent job there and that he receives a pension from there. She however denied herself having lived there with her husband.

[14] She denied being “good friends” or being “close” to her witness, stating that they only “greet each other”. She also denied wanting to fight her uncles for the land because she wanted to sell it to her witness or that there had been a plot by herself, her witness and the surveyor for the land to be sold to her witness. She admitted that she no longer had any crops on the land but that this was because her uncle took it over from 2004 and when the surveyor came she did not want any trouble so the fifth Defendant harvested what she had planted.

[15] The witness for the first Claimant reiterated most of what the Claimant had stated in her evidence in chief. Under cross examination she declared that if the fourth and fifth Defendants were prepared to sell her the land on which she operated her shop she would be willing to purchase it but that she had never told the surveyor that she wanted to buy it because while he was doing his job he never came to her shop. She was adamant that it was George and his friends who had built the pillars and not the fifth Defendant, although

she could not remember the year they had been built. She admitted to being “good friends” with the first Claimant. She again maintained that it was the first Claimant who had cleared the land and planted crops, but stated however that it was in 1983 that was the last time she had seen the first Claimant on the land.

Findings

[16] It is my considered opinion that construction of the pillars by whomsoever is not pivotal to the determination of the allocation although if they were found to have been constructed by the fifth Defendant this would give more weight to his claim for allocation than would a determination of construction by George give to the first Claimant's claim. I therefore make no finding with respect to the pillars.

[17] In my view in light of the fact that this is a request for determination of family property in which the alternative option, that of sale, is not specifically desired by either party, resolution ought to be gauged by evidence of occupation and any expressed or displayed interest or passion in owning the land.

[18] Having had the opportunity and benefit of regarding and listening to the parties, I found that there was some degree of fabrication on both sides of the divide.

[19] I do not accept that the fifth Defendant was in occupation from the 1970's because it was his own admission that George and his common law wife lived on the land and operated their shop there until George died in 1982 and that it was after that that he claimed the land as his. By the same token I can accept that the first Claimant could have gone onto the

land in 1983 after George's death and cleared it and planted crops. I also believed that the fifth Defendant by going onto the land and planting and harvesting gave notice to all of his interest and intent and was perhaps regarded as having some measure of proprietorship and authority.

[20] When an altercation arose in 1984 between George's wife (the first Claimant's witness) and the fourth Defendant, the witness wrote a letter of complaint to the fifth Defendant who was in England at the time and he instructed her to disregard the fourth Defendant and continue her reaping of crops.

[21] I did not detect any real passion for ownership of the disputed land by the first Claimant as I saw expressed by the fifth Defendant. She never openly manifested any interest – whether in evidence in chief or in cross examination - in personally owning the land. According to her she cleared the land in 1983 and planted crops but appears to have abandoned it after that, especially if her witness is to be believed i.e that the last time she had seen the first Claimant on the land was 1983. There was also no evidence to support the Claimants' "previous physical occupation (farming)" as alluded to by the land surveyor. It is the first Claimant's evidence that when some 20 years later, the surveyor came to survey the land, she gave way to the fifth Defendant because she did not want any trouble. She has advanced no cogent reason nor any reason at all in fact why the land should not be allocated to the fifth Defendant.

[22] In the premises I am of the view that it was the fifth Defendant who was in effective and actual occupation of Lot. 6, and it is for this reason that in my judgment, Lot 6 should be allocated to the fifth Defendant and I so order.

ORDER

That Lot 6 be allocated to fifth Defendant.

Each party to bear his own costs.

SANDRA MASON QC

High Court Judge