

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV 0001/2006

BETWEEN:

CALIXTUS HENRY

Claimant

and

**(1) MARIE ANN MITCHEL
(2) THERESA HENRY**

Defendants

Appearances :

Mr. C. Foster for the Claimant

Mr. A. Alcide for the Defendant

2007: April 24;
May 21.

JUDGMENT

- [1] **COTTLE, J.:** The Claimant brought the present action seeking 2 declarations that he is entitled to an undivided half share in Block 0029B Parcel 23.

The Background

- [2] The Claimant is a 48 year old baker and farmer. He lives on the parcel in dispute and has done so since his early childhood. The parcel was jointly owned by Geraldine Pierre and her sister Etanise Prospere. Both are now deceased. Etanise Pierre left her half share to her children. The half share of Geraldine Pierre is now in dispute. During the lifetime of Geraldine Pierre, one Gladys Henry, the

grandmother of the Claimant was permitted to put a wooden house on the land. The Claimant lived there with his grandmother until her death. He continues to live there until today. In 1997 Geraldine Pierre executed a will before Mr. J. Baden Allain, Notary Royal. She left her share of the lands to the Claimant.

On August 8, 1999 Geraldine Pierre executed a deed of sale of the lands to the first Defendant. The deed was executed before Mr. Ira d'Auvergne Notary Royal.

The Claimant's case

- [3] The Claimant seeks to assert entitlement to the undivided half share of the lands formerly owned by Geraldine Pierre on 3 bases:
1. Proprietary Estoppel
 2. Adverse possession
 3. Improbation of the deed of sale
- [4] In his witness statement the Claimant swears that during her lifetime, Geraldine Pierre had promised him that her share of the land would be his if he cared for her until her death and cultivated the land and taken care of Geraldine Pierre until her death in 1999 at the age of 95. She died in his arms he further swears. Because he has relied on her promise and acted thereon to his detriment, the Claimant avers, he has thereby acquired an interest in the property.
- [5] In the alternative, the Claimant also contends that he has lived peacefully, continuously and without objection by Geraldine Pierre in circumstances where it was clear to all in the community that she intended to give to the Claimant her share in the land. The third pillar of the Claimant's case is that the deed should be improbated because as it was put in his statement of claim:

“At the time of the execution of the said deed of sale it was alleged that Geraldine Pierre was in a poor state of health and was unable to understand the content of any or any legal documents.”

The Defendant's case

- [6] The Defendants say that the deed of sale is valid. It was executed in due form before the Notary Royal and the first Defendant is now the registered proprietor of an undivided half share in the lands.

The facts

- [7] The witnesses were all cross examined on their witness statements. Having seen and heard them, I found the following facts:
1. The Claimant has been living on the lands continuously for more than 30 years
 2. Geraldine Pierre promised to leave the lands to the Claimant on her death
 3. The Claimant relied on that promise
 4. Geraldine Joseph sold her interest in the land to the first Defendant.

The issues

- [8] At the trial no evidence was led to suggest that at the time the deed was executed, Geraldine Pierre lacked the requisite mental capacity. In fact to the contrary the evidence depicted a woman who was firm, determined and able to make decisions about herself up to the time she decided that she should be moved from the

nursing home. The Claimant does not suggest that she was incapable of making such a decision. He says she sent to get him to take her out of the home and he abided by her instructions. This would have been after the deed of sale was executed although the Claimant was unaware of this.

There are no grounds to challenge the deed as having been executed when the donor was unable to understand what she was doing.

[9] The issue of adverse possession was not vigorously pursued by the Claimant. In my view was no chance of success on this ground. The Claimant lived on the land with his grandmother. She was put into possession by the owners. After her death the Claimant continued in possession but he did not do so as proprietor.

[10] Article 2057 of the Civil Code provides that for **“the purposes of prescription . . . possession . . . must be continuous and uninterrupted peaceful public unequivocal and as proprietor.”**

Clearly then the Claimant could not acquire any title to the lands by adverse possession as his possession was never as proprietor but with the consent of the true owner.

[11] Mr. Foster for the Claimant placed greatest reliance on the doctrine of proprietary estoppel. As noted above, the evidence in this case establishes that the Claimant had been induced to act as he did by the promises of the deceased. He relied on those promises.

[12] Unfortunately, I do not find that I can rule in favour of the Claimant. There are two reasons. Firstly, the Claimant cannot say that he has acted to his detriment. He has for decades resided rent free on land which belonged (in part) to the deceased). He testified that this has been the source of his livelihood in large measure. He has reaped the produce of the land. He was able to sell any surplus

and retain all proceeds of such sales. I find that far from having suffered detriment because of his reliance on the promises of the deceased, the Claimant positively benefited.

[13] But the second, more compelling reason is that the first Defendant is a purchaser for value of the lands. There is no suggestion that the first Defendant made any promises to the Claimant. By her purchase she has acquired the legal title to the property. She has been registered proprietor since 1999. I do not find that there are any grounds upon which this Court should disturb that legal title.

[14] In the circumstances, I decline to grant the Claimant the relief prayed for. The Claimant's case is dismissed. Costs are awarded to the Defendants in the sum of \$14,000.00.

BRIAN S. COTTLE
HIGH COURT JUDGE