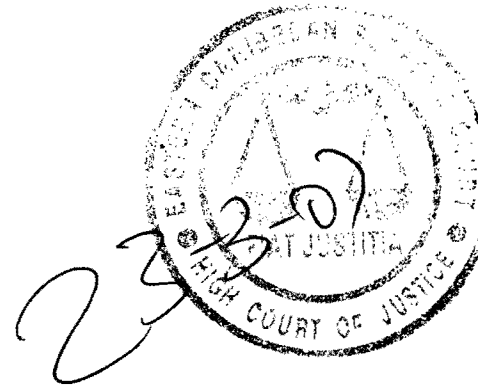


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 363 OF 2002



BETWEEN:

SELWYN OLLIVIERRE

Claimant

V

ROSE-CLARE MARCELLA LEWIS DUNBAR

Defendant

Appearances:

Mrs. A. Johnson for the Claimant

Mr. R. Marks for the Defendant

2007: March 15, 16 & 23

JUDGMENT

- [1] **MATTHEW J (Ag.):** This is a dispute as to ownership of a portion of land situated at Bridgetown between the grandson and the great grand niece of Annie Ollivierre who died on April 25, 1961 leaving the portion of land to her daughter, Millicent Ollivierre. Millicent Ollivierre who died on May 8, 2002 was the mother of the Claimant and the grand aunt of the Defendant.
- [2] The issue surrounds a deed of gift purportedly made by Millicent to the Defendant at the Chambers of Saunders and Huggins on August 30, 1995 purportedly in the presence of Millicent Ollivierre, the Claimant, the Defendant, Frederick Ollivierre, Augustin Ledger who was the legal clerk and the Notary, Mr. Adrian Saunders as he then was.
- [3] It is necessary to trace the family tree. Annie Ollivierre had two daughters, namely, Millicent and Esmie. Millicent was the mother of the Claimant who fathered a son Joel

Grant, also known as Joel Ollivierre. Joel is now deceased. Esmie was the mother of Wilbert Lewis who is the father of the Defendant.

PLEADINGS

- [4] On August 22, 2002 the Claimant filed a statement of claim. He alleged that Annie Ollivierre had a portion of land containing two lots which she bequeathed to Millicent and that he constructed a concrete structure on one lot for his mother and for himself when he would visit from England.
- [5] He stated that it was decided that Millicent would give the Defendant one lot of land and leave the other lot for the Claimant as he had already built a house on it or for the Claimant's son.
- [6] He stated that Millicent by deed of gift dated August 30, 1995 and registered as No. 326 of 1998 gave the Defendant, not one of the two lots which she owned but, both lots. The Claimant states that this was an inadvertent error stemming from the preparation of the deed which error was missed by all including those present at the attestation of the deed and by the donor herself.
- [7] The Claimant therefore requested:
- (a) An order that the deed of gift be rectified;
 - (b) General Damages;
 - (c) Special Damages to property of \$25,000.00;
 - (d) Special Damages for loss of use;
 - (e) Further or other relief; and
 - (f) Costs.
- [8] The Defendant filed her defence on May 29, 2003 in which she stated that the intention of Millicent was to convey the property exactly as described in deed No. 326 of 1998.

- [9] The Defendant stated that Millicent was illiterate and the contents of the deed of gift were read over to her by the Notary Public who placed his seal, signed, dated the document and certified that he read the contents of the deed to Millicent who seemed to have perfectly understood the same and placed her mark to the document.
- [10] The Defendant further alleged that the Claimant had indicated that he had no intention of returning to the jurisdiction to live and he knew and understood that Millicent intended to give her entire inheritance to the Defendant.

EVIDENCE

- [11] At the trial the Claimant gave evidence and called two witnesses; Frederick Ollivierre who was the Executor of the Will of Annie Ollivierre and who signed the deed of gift; and Minerva Grant, at one time, the Claimant's lover. The Defendant gave evidence but called no witnesses.
- [12] In his witness statement the Claimant stated that it was always his mother's intention that as he was her only child and as he had expended so much money on the house, that she would leave the house and the land on which it stood to his son, Joel Grant, who grew up with his mother, Millicent.
- [13] He stated that some time in 1995 he and others attended the Chambers of Saunders and Huggins. At the Chambers during a conversation Millicent insisted that the lot with the house on it was for Noel and the other lot was for the Defendant. That conversation was heard by the solicitor's clerk, Mr. Ledger. He said the clerk pointed to a spot on the paper for his mother to sign and she put an "X". Mr. Frederick Ollivierre was then asked to sign and he did so after saying he could not read the document as he did not have his glasses.
- [14] The Claimant stated that all of this took place in the solicitor's outer office. He said they did not go into the Chambers of Mr. Saunders or any other solicitor and after his mother put the "X" and Mr. Ollivierre put his signature on the paper, they all left.

- [15] In his witness statement the Claimant alleged that the Defendant removed the roof of the building that was on the property and he had to expend \$25,000 for materials and labour to repair it.
- [16] Under cross-examination, the Claimant admitted that he was present when the deed was executed and no deed was executed in his favor. He said when the deed was executed his mother was partly blind, partly deaf and was not able to read nor write. He said the document was never read to his mother.
- [17] He said he never told his mother that he had no intention to return to live in St. Vincent. He said he had a good relationship with his mother up to the end and was not acting out of malice.
- [18] Under re-examination he stated that his mother was bawling saying Joel had no where to go after she learnt that Marcella had broken down the roof of the house.
- [19] Frederick Ollivierre stated that Millicent told him she wanted to give Marcella one lot of land and the other lot was to go to Joel Grant who lived much of his life with Millicent.
- [20] He said he went to the lawyer's office with Selwyn and Marcella. At the lawyer's office they met an Indian chap operating a computer. Millicent then stated she wanted to give Marcella one lot and Joel one lot. They asked him to sign but he did not have his glasses and he asked them to direct him where to sign. He said he did not read the document put to him. He said he is surprised to hear Marcella claiming the entire portion of Millicent's land.
- [21] Under cross-examination he stated that Selwyn is his cousin and they are good friends. He could not remember when Millicent told him she would give Marcella one lot and Joel the other lot.

- [22] Minerva Grant stated that she heard Millicent say that Marcella asked her for a spot of land to build a house and that Millicent decided to give her one lot.
- [23] She said it was not until the Defendant took off the roof to the building on the property that Millicent found out that the deed she had signed was for all the land and Millicent began to cry that Joel had no where to live.
- [24] Under cross-examination she reiterated that she used to go to bathe and clean Millicent three or four times a week and the Claimant paid her for those services. She denied that her evidence was to help the Claimant.
- [25] In her witness statement the Defendant stated that she enjoyed a close relationship with Millicent Ollivierre who came to live with her parents and was cared for until her death.
- [26] She stated that on August 30, 1995 she visited the law offices of Saunders and Huggins in the presence of Frederick Ollivierre and the Claimant. Also present was the legal clerk, Augustin Ledger.
- [27] She stated that Millicent was illiterate so the contents of the deed of gift were explained to her. The schedule was read carefully and loud to her in the presence of all the persons referred to above and Millicent made her mark on the deed of gift.
- [28] She said all that was done by and in the presence of Notary Public and Solicitor, Adrian Saunders, who placed his seal, dated and signed the document. She said during the lifetime of Millicent Ollivierre there was never any report of an error in relation to the deed which was registered three years later.
- [29] Under cross-examination the Defendant stated that she grew up with Millicent being as a mother to her and Millicent was never considered as a domestic in her father's house. She said Millicent took care of everybody in the house.

- [30] She said it was the Claimant who took Millicent to the lawyer's office where Mr. Saunders read the entire deed. She said she met Joyce, the Claimant's daughter, in the house and she told Joyce she must get her own home. Thereafter she removed the roof from the house.
- [31] The Defendant stated that the relationship between the Claimant and his mother was one of constant "fighting".
- [32] When she was re-examined the Defendant stated that Millicent came to live at her mother's house when she was a little girl. In 1984 her mother died of cancer and thereafter Millicent was like a mother to her. She said she did not prepare the deed or conspire with the lawyers to defraud Millicent.

LEGAL SUBMISSIONS

- [33] Learned Counsel for the Defendant submitted that the crux of the matter is the intention of Millicent Ollivierre, and that intention is expressed in the deed of gift which is clear and revealed no irregularity.
- [34] Counsel submitted, at its highest, the evidence of the Claimant and his two witnesses who are his close friends was that Millicent at one time expressed an intention to give one lot of her land to Joel. But as Counsel said people change their minds as to the disposition of their property all the time.
- [35] Counsel stated that the evidence tendered by the Claimant and his witnesses were not cogent enough to go behind the contents of deed No. 326 of 1998.
- [36] Counsel referred to the Illiterates Protection Act, Chapter 223 of the Laws of Saint Vincent and the Grenadines and in particular to Section 4 and said the deed which was executed complied with the provisions of the section.

- [37] Learned Counsel for the Complainant submitted that it was every intent of Millicent Ollivierre to give one lot of her land to the Defendant and she did not expect the Defendant to take the two lots.
- [38] Counsel submitted that what the Defendant did was wrong and that is why she waited until three years after the execution of the deed to register it.
- [39] Counsel submitted that the Claimant did have a good relationship with his mother and this is why he took her to spend time in England on occasions.
- [40] Counsel submitted that Millicent could not be expected to disinherit her son who had constructed the modern house on the property, and the Claimant at no time said it was not his intention to return to the jurisdiction to live.
- [41] Counsel submitted that the execution of the deed was done in error and the mistake was made by the lawyer's office. Counsel asked that the matter be decided in favor of the Claimant with costs awarded to him.

CONCLUSIONS

- [42] The Claimant's case is that Millicent Ollivierre did not intend to convey all her property to the Defendant. The Claimant admits that Millicent signed the deed wanting to give the Defendant the lot of land without the building on it, but it was her intention to leave the other lot of land with the building on it, to the Claimant's son, Joel Grant, also known as, Joel Ollivierre.
- [43] The Claimant said that although the deed stated that its contents were read over by the Notary Public to Millicent, who was illiterate, and that she appeared to have perfectly understood what was read to her; that is not at all true.

- [44] In my judgment the Claimant has a mountain to get over. The deed appears quite clear and the Defendant stated that she did not know the Notary Public before the day that the deed was executed.
- [45] As regards the evidence presented all the witnesses have their own interests to serve: the Parties to the case, of course, and the Claimant's two witnesses who are or were both quite close to him.
- [46] I am inclined to believe that the Defendant is the more truthful Party. But even if the Claimant and his witnesses were to be believed they would only be stating what Millicent told them some time before she was taken to the lawyer's office and signed the deed. As learned Counsel for the Defendant submitted she could have changed her mind by the time she signed the deed.
- [47] The Claimant has his interest to serve in stating that the Notary Public was absent when Millicent put her mark to the deed, for if this is so, the deed would be rendered invalid. Likewise the Defendant has a similar interest in maintaining the fact that the Notary Public was present and read the contents to Millicent before she placed her mark. But why would Mr. Saunders, deliberately mislead us in this matter where he seemed to have no interest whatsoever save that of performing the normal and ordinary function of a legal practitioner? I am not convinced that he attempted or did mislead us.
- [48] The Court must be concerned with Millicent's intention at the time she signed the deed. The crucial factor is that Millicent quite clearly intended to make a gift to the Defendant. There is no such indication of a gift to the Claimant or to the Claimant's son. If that were so why didn't she make both gifts at the same time in the same deed?
- [49] I have been reading a 2005 publication concerning a man named Robert Bernard Douglas, the father of Sister Pat, who was well known in Saint Vincent before her tragic and untimely death. The author of that book is Sister Pat's older sister. She said that before her father married her mother he already had three sons born out of wedlock. R.B.D, as

he was popularly known, had 16 children with their mother and he had acknowledged at least five others born during the marriage. Evidently R.B.D. had an insatiable appetite for making children.

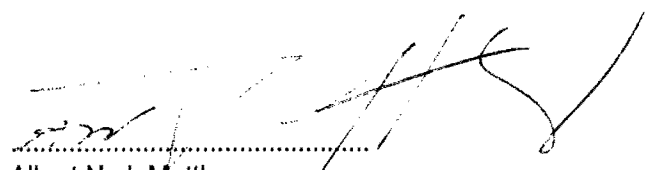
[50] But R.B.D was a hardworking man from very humble origin whose main tool was the cutlass and who loved the land. He acquired two or three large estates comprising several hundred acres. Now if R.B.D. had given thought to dividing his large acreage among his many children, errors would have been inevitable.

[51] But that is not the case with the holding of Millicent Ollivierre who intended to divide her small portion of land by one. She meant to give all to one Party and it is unlikely that there would be an error in the circumstances. The error alleged would not be only that Millicent intended to give one lot each to the Defendant and Joel, but also which of the two lots would go to the particular donee. That allegation is too far removed from the contents of the deed.

[52] Frederick Ollivierre in his witness statement dated September 3, 2003 said he was a 79 year old businessman. He said when he signed the deed he did not read it as he did not have his glasses. That is indeed strange for a businessman who was attending a solicitor's office for the sole purpose of signing a document.

[53] The Claimant is not able to surmount the mountain I referred to earlier. His testimony and that of his two witnesses are not credible.

[54] The case is dismissed and the Claimant is ordered to pay the Defendant her costs in the amount of \$3,500.00.



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