

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

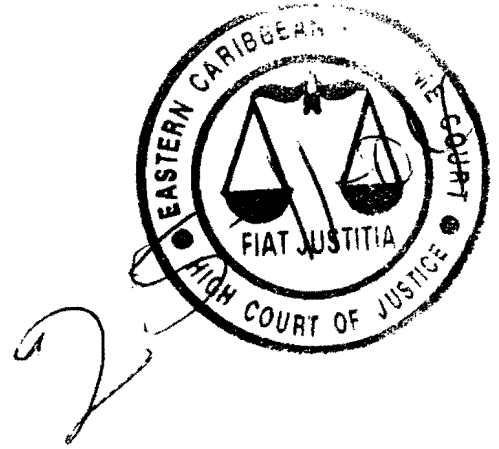
CLAIM NO. 31 OF 2003

BETWEEN:

CLARIBELLE CONNEL
(by her duly Constituted
Attorney on Record
Marissa Creese)
Claimant

and

TRELDON CONNELL
Defendant



Appearances:

Mr. Richard Williams and Ms. Roxanne Knights for the Claimant.
Mr. Olin Dennie for the Defendant

2004: May 19
November 25

JUDGMENT

- [1] **Bruce-Lyle, J:** By a statement of claim filed on the 29th day of January, 2003, the claimant Claribelle Connell by her duly constituted attorney on record Marissa Creese, claims that she is the widow of Selwyn Connell who died intestate on the 27th May, 1976, and that for most of the marriage the Claimant and the deceased lived in the Matrimonial home at Barrouallie.

- [2] The Claimant now seeks a declaration that she is entitled to possession of the said matrimonial home, and also seeks an injunction to restrain the defendant who is the son of the deceased Selwyn Connell by a previous liaison before his marriage to the claimant, and who has been occupying the said property since the 28th July, 2002, when the claimant claims she was forced to leave the said property, from trespassing on the said property.
- [3] In his defence, the defendant Trelton Connell averred that the said property never formed part of the estate of his father Selwyn Connell; and that during his lifetime Selwyn Connell gave him, Trelton Connell his share in the said property which he claimed was purchased in 1973 by Selwyn Connell and his (the defendant's) mother Imore Caesar, also deceased.
- [4] The defendant went further to state in his defence that his father and mother had a common-law relationship which produced three children including himself Trelton Connell; the other two being Grenfell Connell, and Allison Connell. The defendant further stated that in 1943 he went to live in the said house with his father who was then married to the claimant, until he, Trelton, went to England to pursue studies at University. He denied ever threatening Marissa Creese with a cutlass on 28th July, 2002, forcing the claimant to leave the said property.

CASE FOR CLAIMANT

- [5] At the trial, Marissa Creese who was the duly constituted Attorney on record for the claimant, who is also deceased, gave evidence by way of a signed witness

statement dated 21st October, 2003. In that statement Ms. Creese stated that since the death of Selwyn Connell, the husband of Claribelle Connell the claimant, she Claribelle had been in sole possession of the said property for which she took out a possessory title dated 11th March, 1994, and being registration number 673 of 1994.

[6] Under cross-examination this witness was referred to paragraph 3 of the said possessory title exhibited by the claimant. This paragraph referred to the said property in issue as being formerly owned by Selwyn Connell. Under further cross-examination this witness was referred to the Index of Record Number 30 of 1985 filed in court with respect to the application by the claimant on the 15th March, 1985, for a grant of Letters of Administration in the estate of Selwyn Connell, deceased.

[7] Having read the said document, this witness admitted that when the claimant applied for Letters of Administration in the estate of Selwyn Connell her deceased husband on 15th March, 1985, she had stated then that she was administering for all of the estate of Selwyn Connell and which did not include the property in issue in this case. The said document did include, however, information pertaining to a lot of land at Middle Street, Barrouallie.

[8] Upon being shown another document Deed Number 639 of 1950, which is a deed evidencing ownership of another parcel of land at Barrouallie by Selwyn Connell, this witness again admitted that this parcel of land was not included by Claribelle

Connell in her application for Letters of Administration in the estate of Selwyn Connell. It is interesting at this state to note that the Letters of Administration were applied for on 15th March, 1985. Nine years later the claimant took out possessory title Deed Number 673 of 1994 for the property in issue, in this case.

- [9] In her evidence-in-chief this witness Marissa Creese tendered in evidence an order of the Court pertaining to one Geoffrey Creese, the executor of the estate of Claribelle Connell who was substituted as the claimant in this action as a consequence of the death of Claribelle Connell on 1st January, 2004, and a copy of a will whereby Claribelle Connell purported to devise the said property to the Watchtower Bible and Tract Society. These documents were put in evidence by consent. I hold at this stage that they really had no relevance to the resolution of this case.

DEFENDANT'S CASE

- [10] On the 23rd of January, 2004, the defendant filed a witness statement in the matter. This was deemed his evidence-in-chief at trial. In that statement Trelton Connell stated that the property in issue was purchased by his mother, Imore Caesar, deceased, from one Catherine Johnson. He further stated that his father Selwyn Connell, his mother Imore Caesar with whom his father had a common law relationship, and his two brothers and himself lived on the said property upon which his mother had built a house.

- [11] Trelton Connell further stated that on attaining the age of 22 years he left home to attend the University of the West Indies and then he proceeded to England on getting a job, where he resided for many years before his return to St. Vincent. He stated also that during his sojourn in England he visited home from time to time and stayed in this same property in issue with his father and step-mother Claribelle Connell, the claimant. He said on these periodic visits he would do repairs to the said property from his own pocket or resources as it was always established that the claimant only had a life interest in the property, and that thereafter he would become the absolute owner.
- [12] Trelton Connell was shown the index to the record number 30 of 1985 with respect to the application for Letters of Administration in the estate of his deceased father Selwyn Connell by Claribelle Connell, the claimant, and was referred to Schedule D of the Estate Duty Affidavit of Accounts for the Commissioner wherein the claimant had sworn to an affidavit on 15th March, 1985, and had stated therein that the said Trelton Connell is entitled to two-thirds share in another property at Barrouallie which she claimed formed part of the estate of Selwyn Connell.
- [13] Under cross-examination by learned counsel for the claimant, the defendant stood firmly to his position as earlier stated in his evidence-in-chief, which was that Claribelle Connell only had a life interest in the said property in issue. He also reiterated the fact that after he left St. Vincent, he did return home from time to time to visit his father and step-mother, and that even after the death of his father

whenever he came home to visit he would stay in the same house with his step-mother Claribelle Connell. He said when his father Selwyn died; he had owned a property called the Salvatory Building at Barrouallie by way of Deed Number 639 of 1950. He said on his father's death, this building was given to him and is currently rented by him to the National Commercial Bank. This property he said was also never included by the claimant when she applied for Letters of Administration in the estate of his father Selwyn Connell because the claimant knew or was aware that the said property did not form part of his estate.

[14] The main issue to be determined in this case is essentially one of fact and that is whether the property in issue was owned by Claribelle Connell the claimant, or whether she only had a life interest in same when one examines her conduct when she applied for Letters of Administration in the estate of Selwyn Connell and did not include the said property in issue.

[15] It must not be forgotten that in a civil trial the claimant has to prove his or her case on a balance of probabilities, having regard to the totality of the evidence. From the evidence adduced in this case and from submissions from learned counsel for the defendant, I hold that the property in question did not form part of the estate of Selwyn Connell, deceased. The claimant's failure to include this property when she applied for Letters of Administration in the estate of Selwyn Connell, having stated in Possessory Title Number 673 of 1994 that the said property was owned by Selwyn Connell defies logic.

- [16] This omission on the part of the claimant lends support to the defendant's case that the said property was given to him by his father with the knowledge of the claimant who armed with that knowledge, therefore did not include same in her application for Letters of Administration in the estate of Selwyn Connell. It also goes further to support the defendants' contention that the claimant only had a life interest in the said property.
- [17] By extension I can safely hold also, that Possessory Deed Number 673 of 1994 which conflicts with the affidavits for Letters of Administration in the estate of Selwyn Connell on 15th March, 1985, does not and could not pass any interest in the said property to the claimant. Flowing from that proposition, I can safely hold that the claimant by her will dated 30th June, 1994, could not dispose of the property to which she was not entitled. The law has been very clear on the position that payment of land and house taxes which the claimant sates that she has paid, does not give the claimant any entitlement to the premises or property in question. See RICHARDSON v. LAW RENICE, 1966 10 WIR at 235.
- [18] Paragraphs H and I at page 238 clearly elucidate the above mentioned legal position – "some question was raised as to the meaning of rent as defined by S. 2. That section says that: "rent includes all annuities and periodical sums of money charged upon and payable out of any land."
- "The words which are vital in that definition are the words 'out of'. In other words, the fact that you pay money in respect of land in the sense that you pay rates does not mean that you are paying money out of the land. Put another way, rates are

not a yield from, but an imposition upon the land. They do not represent an income or profit; they are a charge or liability. They are not payable necessarily by an owner or even by an occupier; anybody who chooses to pay, officiously or otherwise, may do so and on its acceptance by the authority entitled to the rates whether the government or a local authority, a receipt is given for the payment in the name of the person who is recorded in the Rate Book as the owner of the land. But the fact that somebody's name appears as owner in the Rate Book does not in any sense mean that the person is the owner. The person whose name so appears may have died several years before, or may have been dispossessed, or may have alienated the land without the person who became its alienee having made the prescribed statutory return so as to have his or he name substituted as owner in the Rate Book. So, rates do not fall within the meaning of rent under his Ordinance at all." - Per Wooding C.J.

- [19] Upon weighing the evidence of the claimant and that of the defendant together with the documentary evidence supplied in this matter, I have no difficulty at all in finding that the claimant has not proved her case on a balance of probabilities. Her witness Marissa Creese, to my mind, was not always frank and candid in her evidence before this Court. This is borne out, in particular, by her evidence in cross-examination in relation to paragraph 6 of her witness statement which I found was conflicting and contradictory with respect to the defendant and his family occupying the said property.

[20] It was not in dispute that the defendant, Tredon Connell has been exercising acts of ownership with respect to the Salvatory Building which was owned by his father without any opposition from the claimant, Claribelle Connell during her lifetime. How does one reconcile this when juxtaposed to the situation in regard to the property in question?

[21] I take the position that this makes the Defendants evidence more credible, as the Salvatory Building which was owned by the Defendants father and not included in the application for Letters of Administration in 1985 has been in the possession of the defendant who continues to exercise acts of ownership of the said building. As a consequence the defendant contends that the claimant only had a life interest in the said property bearing in mind that the property the subject matter of this case was also not included in the application for Letters of Administration in the Estate of Selwyn Connell.

[22] These were three other witnesses' statements for the defendant's case by witnesses Stephen Derrick, William O'Garro, and Ernest Caesar. These witnesses did not avail themselves for cross-examination. Their evidence-in-chief was therefore not tested. To my mind this does not detract in any way from the defendant's case. I find the defendant's evidence on its own sustains his case.

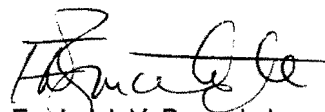
CONCLUSION

[23] Having regard to all the evidence adduced in this case, and on a balance of probabilities, I find that the claimant has not proved her case. I, therefore, dismiss her claim outright, and find for the defendant on his counterclaim as follows:-

- (1) It is declared by this Court that the property in question does not form part of the estate of Selwyn Connell, deceased.
- (2) It is declared that the claimant is not entitled to possession of the said property.
- (3) An injunction is hereby granted to the defendant restraining the claimant whether by herself, her servants or agents from trespassing on the said property or exercising any acts of ownership with respect to same.
- (4) It is declared by this Court that by virtue of a Deed of Settlement dated 17th day of January, 2003, the defendant is entitled to possession of the said property and is the fee simple owner of the said property and Possessory Deed Number 673 of 1994 is hereby cancelled.
- (5) The claimant will also pay the defendants costs in the sum of \$5,000.

[24] I also wish to state in this judgement that this Court received no submissions (written) as requested by the Court to be filed and exchanged by 26th of May 2004

and even up to the time of writing this judgement, from learned counsel for the claimant.



Frederick V. Bruce-Lyle
High Court Judge