

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0454 / 1996

BETWEEN:

QUINTON TOBY

Claimant

and

**ALBERTINA GUY
ELVIS GARNET GUY
ONEL MARVETA GUY
DONALD GUY, TRUSTEE**

Defendants

IN CHAMBERS

Appearances:

Mr. Emery Robertson for claimant

Mr. Richard Williams and Miss Roxann Knights for the defendants.

2003:June 6, July 31

JUDGMENT

ALLEYNE J.

- [1] When this matter came on for hearing of an application for cancellation of a deed, Mr. Richard Williams, counsel for the defendants, made a preliminary objection based on written submissions filed by counsel.
- [2] The first ground of objection was that these proceedings were started not by originating process, but by an interlocutory application. The matter is confused by the fact that an action was initiated by Writ in 1999. Suit number 454 of 1996,

which was indeed initiated by a summons, was disposed of by order dated 3rd October 1997, filed 8th October 1997. Even earlier, in Suit number 147 of 1987, the court had made an order, after a hearing on 19th November 1987 in an action commenced by Writ, that the plaintiff in that action, Quinton Toby, is entitled, as against the defendant Albertina Guy, to a one-half share in the land the subject of deed No. 1610 of 1975.

- [3] It appears that there was an appeal against the order in suit number 454 of 1996, but not against the order in suit number 147 of 1987. That appeal is numbered 29 of 1997. The appeal was disposed of by a consent order made in December 1998, that the judgment be set aside and the matter be remitted to the High Court for hearing de novo.
- [4] It appears that nothing further happened in relation to that suit, but instead Quinton Toby, the plaintiff in both earlier suits, filed a further action, number 627 of 1999. That suit was initiated by Writ.
- [5] On the hearing of the appeal no reference was made to the preliminary issues now raised. The consent order was made without reference to any of these issues. It seems to me to be out of order that these issues be now, at this late stage, raised by a party who was party to the consent order. The preliminary objection is dismissed. The order of the Court of Appeal that the matter be tried de novo must now be complied with.

Brian G.K. Alleyne
High Court Judge