

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0153 / 2001

BETWEEN:

EDEN FRASER

Claimant

and

JOSIAH RODNEY

Defendant

Appearances:

Mr. Olin B. Dennie for the claimant

Mr. Arthur Williams for the defendant

2003: June 4, 10.

JUDGMENT

ALLEYNE J.

- [1] In 1960 Mr. Robert Bullock, who owned land at Fountain, St. Vincent, had a portion of his land surveyed in a subdivision plan into a number of lots, four of which, numbered 16, 17 and 18 (a double lot), he gave and conveyed by deed to his daughter Mrs. Eden Fraser. He also gave and conveyed by deed two lots, numbered 14 and 15, bounded with Mrs Fraser's lots, to another daughter, Christelin Bacchus. Christelin Bacchus in turn gave and conveyed her land by deed to her daughter Esther Rodney, wife of Josiah Rodney. Mrs Fraser, and Mrs. Rodney and her husband, each built residential houses on their respective lands.

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- [2] Mr. Bullock's subdivision plan provided for a 20 foot wide road between the lots on the higher portion of this sloping land, and the lots on the lower portion. Mrs. Fraser's lots and the Rodneys' lots were on the lower portion. Surface water would drain from the upper lots onto this road allowance, and in the absence of drainage, any water that was not absorbed into the soil would then inevitably wash onto and over the lower lots. The subdivision plan, sensibly in my view, made provision for a 3 foot drain between lots 16 and 17, the purpose of which, I believe, was to take surplus water off the road towards the drain on the Fountain Market public road.
- [3] Mrs. Fraser erected a wire fence around her land, which encroached some 5 feet onto the 20 foot road allowance, narrowing the road to about 15 feet. That road is the only motorable access to the Rodneys' land. It is a rough-cut dirt road which was allegedly cut by Mr. Rodney. There are no drains on either side of that road. The court had the advantage of visiting the site after a rain shower, and it was evident that water accumulates in depressions in the wheel tracks in the road and washes from those depressions onto Mrs. Fraser's land, in the area of the boundary between her land and the Rodneys' land.
- [4] The 3 foot drain shown on the subdivision plan does not exist, and it is a matter of dispute between the parties whether it ever did. It is not necessary to decide that issue.
- [5] Mrs. Fraser and her witnesses say that it rains, Mr. Rodney clears a drain on his boundary with the road and causes when the water to wash over her land from her northern to her southern boundary, causing erosion of the land in that area and undermining her southern boundary fence. Mr. Rodney, for his part, says that because the 3 foot drain was blocked by Mrs. Fraser, when it rains the water floods his property and enters his garage. As a result he erected a wall, which keeps the water off his property.

- [6] It was evident on the visit to the site that water flows off the road onto Mrs. Fraser's land. I do not doubt that water also flows onto the Rodneys' land, as Mr. Rodney alleged in his witness statement.
- [7] Whoever is or was responsible for constructing the infrastructure for the subdivision probably owes a duty to Mrs. Fraser and the Rodneys to provide for surface drainage from the road, probably via the 3 foot drain between lots 16 and 17. Probably because of the family relationships involved in this subdivision, this was never done. Mr. Rodney claims the right to divert water from the road off his land. He is entitled to do so, although not to deliberately turn it onto neighbouring land, as Mrs. Fraser claims he has done.
- [8] I am not persuaded that Mr. Rodney has deliberately directed water onto Mrs. Fraser's land. I believe that he has directed water off his land by building his wall, as a result of which the water follows its natural course and washes from the road over the land of Mrs. Fraser. Mr. Rodney is entitled to protect his land from the flow of surface drainage by taking reasonable steps, which he has done. This does not amount to trespass to the land of Mrs. Fraser as claimed by the writ and statement of claim in this action, and there will therefore be judgment for the defendant with costs of \$3,000.00.
- [9] At the commencement of the trial the parties requested that I enter a consent order that the defendant rebuild the wire fence on the claimant's property damaged in the course of the construction of the boundary wall. This consent order will form part of the court' order.

Brian G.K. Alleyne
High Court Judge

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