

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.370 OF 1989

BETWEEN:

INEZ REBECCA ISLES NEE BURKE

Plaintiff

and

**LILLIAN BURKE
NORMAN BURKE**

Defendants

Appearances:

Nicole Sylvester for the Plaintiff
Grafton Isaacs for the Defendant

2000: October 16, 17, 30

JUDGMENT

[1] **MITCHELL, J:** This was what would normally be a Probate Action. It was a dispute over the St Vincent estate of a person of St Vincent origin who had died in England leaving a Will that had been proved in England. The Plaintiff brought the action against her mother-in-law and brother-in-law concerning a Grant of Letters of Administration made by the St Vincent Registrar in favour of the 1st Defendant, and a deed of conveyance No 2224/1974 made by the 1st Defendant in favour of the 2nd Defendant. She asked the court for

- (1) a declaration that the deed of the 2nd Defendant No 2224 of 1974 was fraudulent;
- (2) a declaration that the 2nd Defendant is a trustee of the land for the beneficiaries of the estate of the Deceased;

- (3) a declaration that the Grant of Letters of Administration made to the 1st Defendant on 31st October 1974 and the deed No 2224 of 1974 amount to a fraud upon the beneficiaries of the estate of the deceased;
- (4) an order setting aside the Grant of Letters of Administration and the deed of conveyance;
- (5) damages;
- (6) further or other relief; and
- (7) costs.

[2] The Plaintiff, who had travelled from England where she resides for the trial, gave evidence on her own behalf and was cross-examined by counsel for the Defendants. The 1st Defendant had meanwhile died, and the 2nd Defendant had not come from England for the trial. This case was dealt with as a normal civil action. None of the provisions of **Order 53** of the **Rules of the Supreme Court** governing probate actions were complied with. I take notice of the notorious fact that no register of probate actions is maintained in St Vincent and the Grenadines and, for the past 30 years or more, all probate actions have been brought in the High Court as if they were normal civil actions and without any of the procedures normal in probate actions. I proceeded to deal with the matter accordingly.

[3] The facts as I find them are as follows. The Plaintiff is a Vincentian who went to live in the UK in the year 1964. She was married in Reading, England on 31st July 1971 to Desmond Eunias Burke (hereinafter called "the Deceased.") who was also a Vincentian. They had 6 children, 3 born in St Vincent and 3 in England. The dates of birth are not before the court, but from the evidence, they were likely all born before the marriage. After the marriage, the Plaintiff and the Deceased lived at the matrimonial home of 203 Southampton Street in Reading. This property is not in dispute. On 10 February 1970 the Deceased had acquired by a deed of conveyance a parcel of land at Queensbury Estate in St Vincent. This is the land in dispute. In October 1972, unhappy differences arose between the parties, and

the Plaintiff moved out of the matrimonial home. She subsequently moved back into the home, where her children were living, after her husband the Deceased became ill. On 10 April 1973, the Deceased died at the Battle Hospital in Reading. The Deceased left a Will dated 6th April 1973 or just 4 days before his death. By this Will he appointed two of his brothers, the 1st Defendant and Filford Rudolph Burke, to be the Executors and Trustees of his Will. He used a standard form of will purchased from a stationers, and in the space provided for special instructions to his Trustees, he made a general devise of all of his estate of whatsoever kind and wheresoever situate to his children in equal shares. The Plaintiff applied to the High Court in England under the provisions of the **Inheritance (Family Provision) Act 1938** for reasonable financial provision to be made for her out of the Estate. On 9th November 1979, a consent order was entered whereby the Executors and Trustees held the Estate upon trust as to 40% for the Plaintiff absolutely and as to the remaining 60% upon the trusts contained in the Will. The Plaintiff expressly accepted the above compromise

. . . in full and final satisfaction of her claim to a beneficial interest in the property known as 203 Southampton Street Reading and of her claim under the above-mentioned Act and of all other claims of whatsoever kind against the Testator's Estate.

- [4] Meanwhile, in St Vincent, the 1st Defendant on 13th August 1973 had applied through her solicitor Mr Grafton Isaacs to the High Court for a Grant of Letters of Administration as the "mother and relict" of the Deceased who, she claimed, had died in England intestate leaving him surviving the Plaintiff his wife and the 1st Defendant "his lawful mother and relict." In support of this application for a Grant, there was an affidavit put in evidence at the trial in which the 1st Defendant deposed that, prior to his death, the Deceased had on 10 April 1973, the date of death, sold to his brother Norman Burke, the 2nd Defendant, the lot of land in St Vincent for the sum of 209 pounds sterling. Because the Defendants gave no evidence, the alleged receipt for this transaction was not put in evidence. She

also deposed incorrectly that this was the only parcel of realty possessed by the Deceased at the date of his death. She also deposed that no minority interest arose in the estate of the Deceased, which was not true. For some undisclosed reason, on 10th October 1974 she swore another affidavit in support of her application. In this second affidavit, she deposed that one year before the death of the Deceased, the Plaintiff, his widow, had deserted him by leaving his home and taking her belongings together with his six children and went to live and cohabit with a man called John Lewis at some unknown address in Reading. There is no suggestion that this allegation was true. She further deposed that since the Plaintiff had deserted her husband, he had not seen her and her whereabouts were kept unknown, which I find was not true. She further deposed that before the Plaintiff had deserted the Deceased she had known of the sale of the parcel of land to the 2nd Defendant, which I find was not true. I accept the evidence of the Plaintiff that none of the above matters were true. She was not aware that her husband had sold the land in Queensbury to the 2nd Defendant. Her 6 children had not left the matrimonial home when she left it because of ill-treatment. Those children that resided in Reading had remained at the home with the father. She visited them frequently. One child resided in St Vincent with her mother and another resided with the 1st Defendant. She had returned to live in the matrimonial home after the Deceased took sick. She was living there when he went into hospital. She was living there when he died. She was the informant to the Registry of Deaths when he died. I am satisfied that the 2nd Defendant knew all the details of the Plaintiff, as he lived only 400 or 500 yards from where the Plaintiff and the Deceased lived in Reading. The 2nd Defendant visited the matrimonial home frequently before and after the death of the Deceased, and took the children out on weekends. Even if it were true that the 1st Defendant did not have the address and other details of the Plaintiff, which I do not believe was true, she could easily have got them from the 2nd Defendant. Almost everything the 1st Defendant swore in her Affidavits was false. These statements were, I find, cynically made because they are the statements that had to be made to get the Registrar to issue this Grant of Letters of Administration. It was in 1988, on a visit

back to St Vincent, that the Plaintiff discovered what the 1st and 2nd Defendants had done. She did not believe that the Deceased had really sold the land to the 2nd Defendant. She believed that the land in St Vincent should be subject to the Will of the deceased. That is clearly right. That was the effect of the consent order entered into by the Plaintiff and the 2nd Defendant and others on 9 November 1979. She believed that the transactions had been intended by the 2nd Defendant Executor to defraud the estate of the St Vincent property. I am satisfied that the transactions entered into in St Vincent by the 2nd Defendant relating to the lands of the Deceased were entirely fraudulent and should be set aside. The lands of the Deceased in St Vincent are subject to the Will of the Deceased dated 6 April 1973 as varied by the consent court order of 9 November 1979 in Suit 1974 B 5225 in the Chancery Division (Group A) in the United Kingdom.

- [5] There will be judgment for the Plaintiff for orders that
- (1) the Grant of Letters of Administration No 127 of 1974 be and is hereby cancelled;
 - (2) the deed of conveyance No 2224 of 1974 was void *ab initio* for fraud and is hereby cancelled;
 - (3) the lands the subject matter of conveyance No 2224 of 1974 remain vested in the estate of Desmond Burke, deceased;
 - (4) the Plaintiff is entitled to apply to the court by the authority of this order in the place of the Executors to reseal the Grant of Probate of 1st March 1974 as amended by the consent order of 9 November 1979 and, under the authority of the resealed Grant, paying all necessary death duties and other taxes, if any, due to the Government of St Vincent and the Grenadines, to hold the property for herself and her children in compliance with the said consent order.
 - (5) The Plaintiff is entitled to her costs to be paid personally by the 2nd Defendant to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge