

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.373 of 1990
[consolidated with SUITS NO.372
of 1990 and NO.374 of 1990]

BETWEEN:

CECILIA JALIM

Plaintiff

and

(1) JULIETTA LEON
(2) DIDAS MATHURIN

Defendants

AND

CECILIA JALIM

Plaintiff

and

CLAUDIA LEON

AND

Defendant

CECILIA JALIM

Plaintiff

and

LAURENCE LEON

Defendant

Appearances:

Mr. Kenneth Monplaisir, Q.C., with him Mr. Deale Lee for the Plaintiff.
Mr. Owen Edgar for Defendant, Juliet Leon. Other Defendants present and unrepresented.
Mr. Lorenzo Williams for Defendant, Didas Mathurin.

2000: July 24
September 18

JUDGMENT

- [1] **HARIPRASHAD-CHARLES J:** This is yet another dispute *en famille* concerning land and while it is clothed in antiquity, the issue to be decided is relatively simple. The principal issue is whether or not the portion of land in dispute which was conveyed to Julietta Leon by Deed of Donation was erroneously surveyed.
- [2] The facts of the matter are simple. It concerned a piece of land comprising 2,400 sq. ft. which relates to the succession of Bibiane Jean Paul a.k.a. Bibiane Justin.
- [3] By Deed of Donation executed on the 17th day of May 1978 and registered in Volume 118 No. 120370 on the 31st day of May 1978, Bibiane Jean Paul conveyed a portion of land measuring 2,400 sq. ft. dismembered from a larger portion of two carres situate at "Chaubourg" in the Quarter of Gros Islet to Claudia Girard, the mother of Julietta Leon
- [4] It is evident from Vesting Deed dated 22nd day of September 1989 and registered on 3rd day of October 1989 in the Land Registry as Instrument No. 4778/89 and Parcel No. 1449B 40 that the succession of Bibiane Jean Paul gave an undivided one third share in a portion of land comprising two carres being a dismemberment of the "Chaubourg" lands to Jeanine Justine.
- [5] It is not disputed by the Plaintiff that the Defendant, Julietta Leon is entitled to 2,400 sq. ft. of land being a dismemberment of the "Chaubourg" lands. What is however disputed is her occupancy of Parcel No. 1449B 41.
- [6] The Plaintiff contended that the portion of land which was conveyed to Claudia Girard was erroneously surveyed by Licensed Land Surveyor, Didas Mathurin with the result being that Claudia Girard and her successors got wrongly located parcel of land and as such, Julietta Leon and the other Defendants are occupying the wrong portion of land.

- [7] Learned Queen's Counsel for the Plaintiff, Mr. Kenneth Monplaisir, Q.C. submitted that the land was undivided and after the partition, it was given to three persons. He argued that there is no evidence to show whether the other heirs acquiesced to the partition and, according to him, that is the gravamen of the Plaintiff's case. Learned Queen's Counsel contended that the fact that the heirs did not approve or acquiesce to the partition was a fatal defect in the survey.
- [8] Counsel reiterated that the Plaintiff has admitted that the Defendant, Julietta Leon is entitled to 2400 sq. ft. of land but her contention is that the portion of land which was conveyed to Julietta Leon was the wrong portion of land. The Plaintiff based her argument on the fact that Bibiane Justin and not Jeanine Justin was the grandmother of Claudia Girard.
- [9] From that perspective, the Plaintiff alleged there had been an error or mistake in the Land Register.
- [10] Both Mr. Lorenzo Williams and Mr. Owen Edgar, Counsel appearing for the Defendants vociferously argued that the Licensed Land Surveyor, Mr. Didas Mathurin partitioned the land in accordance with the Deed of Donation. They further argued that the Plaintiff has failed to prove that the survey was improperly done.
- [11] Mr. Williams fortified his submissions by reference to Articles 1141 and 1142 of the Civil Code and stated that the Surveyor acted on a notarial document. He argued that if the Plaintiff is challenging the Notarial Deed of Donation, then the proper proceedings before the Court should have been by improbation.
- [12] Both Counsel urged the Court to find that the Plaintiff is the absolute owner of Parcel No. 1449B 40 and that the Defendant, Julietta Leon is the owner of Parcel No. 1449B 41. They implored the Court not to interfere with the Land Register for neither mistake nor fraud has been established.

CONCLUSION

[13] The matter was heard on the basis of submissions advanced by Counsel and viva voce evidence led by the Plaintiff as well as by the Defendants, Julietta Leon and Didas Mathurin. The other two Defendants, namely, Claudia Leon and Laurence Leon did not testify as they are claiming title through their sister, Julietta Leon.

[14] This is a civil case wherein the standard of proof is based on a balance of probabilities. Examining the facts presented to this Court, I was much more impressed with the demeanour and evidence given by the Defendants. They impressed me as witnesses of truth. I believed the Licensed Land Surveyor, Didas Mathurin when he stated that he followed the Deed of Donation in the conduct of the survey. He was forthright in giving evidence.

[15] The evidence of the Plaintiff left much to be desired. She contradicted her own evidence and at a particular point, she was not even sure what she came to Court for. Under cross-examination by Mr. Edgar, she stated:

“There is nobody occupying that spot at the moment. They are occupying another piece of land.”

[16] I did not agree with Learned Queen’s Counsel that the other heirs did not approve or acquiesce to the Survey. While there is some discrepancy in the evidence as to whether or not the Plaintiff was present when the survey was conducted, her own evidence revealed as follows:

“I was present when the Surveyor came to survey. I did not raise any objection because the Surveyor did it well. About seven to eight months after the Surveyor gave me the survey plan, I raised an objection. I told him that I was not satisfied with the Survey Plan. When I got the plan, I realized that the Survey was not good. It was the spot that was taken off my land that makes the survey not good. I do not know if the heirs of Bibiane Justine nor Norbert Justin objected to the survey. I was present at the survey. I did not hear Jeanine Justin objecting to the Survey.”

[17] I am of the view that the Plaintiff as well as the other heirs were present or were represented when the Survey was conducted.

[18] While I found great force in the submissions advanced by Learned Queen's Counsel for the Plaintiff, I am however persuaded by the arguments presented on behalf of the Defendants. I am satisfied that Mr. Didas Mathurin conducted the survey in accordance with the Deed of Donation.

[19] In the premises, the Plaintiff's claim is hereby dismissed. Costs to the Defendants to be taxed if not agreed.

Indra Hariprashad-Charles
High Court Judge