

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.96 OF 1996

BETWEEN:

DAVID SHEEN

Plaintiff

and

DAVID GEORGE

Defendant

Appearances:

Paula David for the Plaintiff

Parnel Campbell, Cheryl McSheen with him, for the Defendant

2000: July, 17, 28, 31

JUDGMENT

[1] **MITCHELL, J:** This was a land dispute between father and son. It concerned a parcel of land at Largo Height in St Vincent, which the father claimed that his son had given to him and on which he had built his retirement home, but which his son was now refusing to convey into his name as promised.

[2] The case began with the issue of a specially endorsed Writ of Summons out of the Registry of the Supreme Court of St Vincent and the Grenadines on 29 February 1996. By the Statement of Claim, and the particulars of it subsequently delivered, the Plaintiff claimed that after spending 35 years in England, he had returned to St Vincent on 15 November 1993 and had stayed at the home at Old Montrose of the Defendant, his son, from February to May 1994. On about 8 May 1994, shortly before the Plaintiff returned to England, the Defendant had told the Plaintiff that he had a parcel of land at Largo Height. He had offered the parcel of land to the

Plaintiff as a gift. The Plaintiff had offered to purchase the parcel of land, but the Defendant had refused, replying that he would have to pay tax. The Plaintiff had agreed to accept the parcel of land, and the Defendant had agreed to build a house on it for the Plaintiff using the money of the Plaintiff. The Defendant on 14 June 1994 had entered into a contract with a building contractor to build the house for the Plaintiff. The Plaintiff had returned to the UK and had over a period of months sent money to a joint account opened in their names at Barclays Bank in St Vincent. The Defendant had withdrawn \$250,000.00 from the account and had built the house. On 27 January 1995, the Plaintiff had returned to St Vincent and moved into the house with his wife. In about March 1995, he had asked the Defendant for the promised deed. The Defendant had said he would not sign a deed for the land. At that time, the Plaintiff learned the land was mortgaged to a bank. In about June 1995, the Plaintiff had offered to pay the Defendant for the land. The Defendant had refused. The Defendant had now claimed that if the Plaintiff wanted the land, he must pay him \$47,000.00 for it. The Plaintiff claimed a declaration that he is the owner of the land; an order that the land be valued and that he pay the Defendant the market value of the land and the Defendant convey the land to him; alternatively, that the Defendant settle his indebtedness to the bank and convey the parcel to the Plaintiff.

- [3] By his Defence served and filed on 28 February 1997, the Defendant claimed that the oral agreement between himself and his father the Plaintiff was that he would permit his father to construct a dwelling house on the land. The money for the construction would be sent from England. He would supervise the construction. Upon completion of the house, his father and wife would live in it. After their deaths, the house would become the property solely of the Defendant. The Defendant had spent the agreed sum of \$180,000.00 from the money sent by the father on the construction of the house. He had accounted to his father for all the monies spent in the construction and otherwise sent to St Vincent. He denied that he had ever offered to sell the land to his father. His father had approached him with a proposal, but it was an attempt to renege on the agreement into which the

parties had entered. He had never entertained his father's new proposal. The Defendant counterclaimed for damages for having had his reputation and honour damaged by his father's published allegations and insinuations. He prayed for a declaration that he was the fee simple owner of the property and building, subject to the life interests of his father and his father's spouse.

[4] On 4 June 1997, the Plaintiff's Reply and Defence to Counterclaim was filed. The Plaintiff denied that there had ever been any agreement that upon the death of the Plaintiff and his spouse the land would go to the Defendant. The Plaintiff contended that there had been an oral contract for the transfer of the parcel of land from the Defendant to the Plaintiff, and that there had been sufficient part performance to render the agreement enforceable. The Request for Hearing was filed on 28 July 1997, and the case has been ready for trial ever since.

[5] The trial had previously commenced on 17 November 1998, but had been aborted in an unsuccessful attempt to settle the case. This trial *de novo* took place on 17 July 2000. At the resumed trial, the court heard from the Plaintiff himself. He was the only witness for his case. The court also heard from the Defendant and, supporting him, Stephen Matthias, the contractor who had built the house for the Plaintiff father on the parcel of the land of the Defendant son. I must express my gratitude to both counsel for the Plaintiff and for the Defendant who at the conclusion of the case produced extensive research into the legal principles governing the respective cases of their clients. This research was very useful in clarifying and setting the parameters of the legal issues that arise in this case. If I do not quote the cases it is only that I find that this case is essentially one of fact and not of law.

[6] The facts as I find them are as follows. The Plaintiff was a 79-year-old retired man at the time he gave his evidence. In 1993 he had come back to St Vincent for the first time after having lived and worked abroad for 35 years. He had actually started his travels away from St Vincent in the year 1942. But, he had been

permanently away from St Vincent from about the year 1958. Before he left St Vincent for good, he had fathered several children by different women. The Defendant was one of them. At the time of his evidence, the Defendant was 56 years of age. He was a taxi-driver and rental proprietor. The child had known the father only from a great distance. The Plaintiff had never denied that the Defendant was his son, but he had never supported him either. The Defendant's mother had herself emigrated from St Vincent to find work abroad when he was about 9 or 10 years of age. She had died abroad when he had been about 17 years of age. Between the ages of 10 and 50 he had not known either a father or a mother. The Defendant might be said to have been brought up virtually as an orphan. The Plaintiff had come back to St Vincent in 1993 on a six months' holiday. He was still not married, though he had been living with the same woman in England for over 30 years. He had gone to stay with his sister at Upper Edinboro, a suburb of Kingstown. The Defendant had learned that his father, whom he had not seen or heard from in over 35 years, was back in St Vincent. He had gone to visit him at his aunt's home. He had found that he got on well with his father, the Plaintiff. Eventually, at the Defendant's invitation, the Plaintiff moved into the Defendant's house at New Montrose, a neighbouring suburb of Kingstown. The Plaintiff had soon been joined from the UK at the home of the Defendant by his Jamaican lady friend of the previous 30-odd years. During his visit to St Vincent, and while staying at his son's home, the Plaintiff and his long-time lady friend had decided to get married. The Defendant had been one of the two witnesses at the marriage ceremony held at the Registry in Kingstown.

- [7] While on this 6 months vacation in St Vincent, the Plaintiff had decided that he and his wife would live out their retirement in St Vincent. They had decided to build their retirement home in this island. This is where the stories of the two parties diverge. The evidence of the Plaintiff concerning the circumstances surrounding the building of the house was essentially as set out in his Statement of Claim and the particulars subsequently delivered as described above. The evidence of the Defendant concerning the building of the house was essentially as set out in his

Defence described above. The Plaintiff's mind was clear, and he gave his evidence firmly, despite his age. The Defendant gave his evidence with equal firmness and conviction. Their evidence was about conversations that took place only some 6 or 7 years ago. Their recollections clashed as concretely as their pleadings did. They might as well have been speaking of two different series of conversations, for all the similarity there was between their narratives. One of them was not speaking the truth about the conversations that had led up to the building of the home on the parcel of land of the Defendant. There was nothing in writing that could assist the court in deciding which of them was telling the truth. The court looked for some independent corroborating evidence. The only witness in the case besides the two parties was the 53-year-old building contractor who had built the house, Stephen Matthias. He knew the Defendant and not the Plaintiff. The Defendant had recommended him to the Plaintiff to be the builder of the house. The Defendant knew him well enough to have visited him some time ago when he was ill in Hospital. By contrast, the Plaintiff still owed Stephen Matthias money on the construction of the house, which money the Plaintiff was refusing to pay. The evidence and the demeanour of Stephen Matthias had to be examined carefully, as he had every reason to favour the Defendant over the Plaintiff.

- [8] Stephen Matthias testified that he had heard the Plaintiff say repeatedly in his presence that the house was to be his and his wife's for their lives, and, after their deaths, it was to be inherited by the Defendant. This was the corroboration of one story or the other that the court was looking for. Stephen Matthias, despite the provisos above, appeared to the court to be an honest and sincere witness. His testimony was unshaken. His credibility shone through all his testimony. The court was grateful to him. He made it easy to know whom to believe. Having heard all the evidence, I am completely satisfied that what happened is more or less as related by the Defendant. There was no agreement for the gift of the land to the Plaintiff. There was no agreement for the sale of the land to the Plaintiff. There was an agreement for the gift of the dwelling house to the Defendant to take

effect on the deaths of both the Plaintiff and his wife. For some unexplained reason, the Plaintiff decided, after having had the building constructed, that he no longer wanted the building to go to the Defendant after his and his wife's deaths. He wanted to own the property outright. He approached his son, the Defendant, and asked to be given the land. When that failed, he offered to purchase the land. When that failed, he went to a solicitor with a concocted story about his son the Defendant having promised to give him the land on which his house had been built. The result was this suit.

[9] For the reasons given above, the claim of the Plaintiff is dismissed. The Defendant is entitled to some of the reliefs sought in his Counterclaim. He is granted:

- (1) a declaration that he is the fee simple owner of all that property described in the deed of conveyance dated 25 March 1975 and registered as No 502 of 1975 together with all buildings and erections thereon subject to life interests of David Sheen and his present spouse in the said property;
- (2) his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge