

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUITS NOS. 371 OF 1995 & 73 OF 1997 CONSOLIDATED

BETWEEN:

CLARA EDWARDS

Plaintiff

V

EGERTON RICHARDS

Defendant

and

CLARA EDWARDS

Plaintiff

V

WILLIAM BILL MITCHELL

RONALD MOWATT

ANTHONY ROBERTS

ALBERT MURRAY

LEVI THOMAS also known as LEROY JOSEPH

Defendants

Appearances:

Mr. Othneil Sylvester Q.C for the Plaintiff, Miss Nicole Sylvester with him.
Mrs. J. A. Roberts-Antoine for the Defendants.

1999: September 21, 22, 23, 29,
October 14,15,22
November 2,

[Delivered – 2000: May 8]

JUDGMENT

[1] **ADAMS, J:** The plaintiff is an elderly woman having testified to being 82 years old. She brought two actions against the defendants both

actions alleging in substance trespass to her land; for convenience, the two suits were consolidated by the consent of Counsel for the purpose of the trial.

[2] The plaintiff's evidence relating to her legal relationship with the land in question was partly explained when she swore that "I went into possession of the land in 1973. I worked the land after taking possession. I mean I planted crops; peas and corn and cassava and other things. Two years ago I stopped working because they pull up the land Apart from growing crops on the land I had taken a surveyor to cut out two acres and 33 poles of land for me. I used to pay tax for about 15 years. I got receipts for those payments. These are the receipts starting with the year 1973 up to 1992." She put in evidence a bundle of receipts purporting to be for land and house tax paid by Anna Bonadie through the plaintiff Clara Edwards. The receipts put in evidence, were it turned out, for the period 1975 – 1992.

[3] Anna Bonadie in whose name the receipts were made out was, the plaintiff admitted, at one time owner of the land part of which was being now claimed by the plaintiff. The land was situated in Lower Questelles in this State. Anna Bonadie had died in 1966, on September 6.

[4] The document which the plaintiff put into evidence to bolster her claim to a possessory title was dated 18th April 1994. In that document described therein as "a deed of possession" the plaintiff swore **inter alia** that since 1973 she had occupied the land described in the deed; that it had formerly been owned by Anna Bonadie; that since 1973 she had occupied the said land paying no rent nor giving any portion of the crops thereof to anyone, having paid all relevant taxes and rates

concerning same; that she was unaware that anyone other than herself was making any claim to the land.

[5] The plaintiff put into evidence a plan prepared by a surveyor, Dave Fredericks and lodged in the Lands and Surveys Department on 6th April 1994.

[6] The question must now be asked whether the plaintiff, Clara Edwards had by her evidence and that of the witnesses called on her behalf, succeeded in making out the case that she was a person entitled by virtue of her relationship with the land to the relief she seeks in her two suits.

[7] In answering the question I should state categorically that apart from what could be described as momentary and insignificant lapses, which I would attribute to old age, I found the evidence of the plaintiff to be cogent, and generally impressive and found no reason to challenge her integrity as a witness. Based upon the integrity of the evidence of the plaintiff Clara Edwards and the surveyors, I made the following findings of fact:

(a) The land which had belonged to Anna Bonadie when she died in September of 1966 and which she had devised absolutely to Neville Mowatt did not include the land in dispute. This fact is borne out by Deed no. 413 of 1972 and plans A416 and A389. The evidence given by David Frederick and Sebastian Alexander is to this effect.

(b) The plaintiff took possession of the land in dispute in 1973 and remained on the land until now, and in 1995 with the

assistance of her daughter Hestina Edwards she fenced the land. The daughter Hestina swore that "it cost \$1,500.00 to fence the land i.e. labour, the wire cost me \$20,784.04 cents".

- (c) The land which the plaintiff claims by virtue of the deed of possession No. 413 of 1972 was in fact trespassed upon by the defendants in the way described by the plaintiff, Clara Edwards and her daughter Hestina and in particular evidence by Clara in the first place and then later by her daughter Hestina in the two following paragraphs as follows:

"There is no fence now around the land Richards said if he did not get the land he would shoot me. I said to him "is an old lady like me you going to shoot"? I saw Richards take away the wire in a jeep. The jeep was a red jeep ...Nobody made any claim on the land while I was there. About 2 years ago Mr. Mowatt came and claim the land. He told me the land is his and he had a bulldozer. The whole village came out to watch. Before two years ago no one had come on my land to do anything."

"My mother and I fenced the land in dispute. I used wire steel poles, cement and some sand. It cost \$1,500.00 to fence the land i.e. labour. The wire cost me \$20, 784.04 cents. The second day after I had put up my fence Mr. Richards came around with two men in an open truck 2o'clock in the morning. He clipped the wire and he rolled it up and called his men from where they were standing and I saw them lift the wire up, put it in the truck I saw him (Richards) come back the next day and took away the

balance of the wire. I made a report to the police and they came He came and was driving on the land with a red jeep. I stood up in front of the jeep. He said he would run me over with his jeep. He pulled the gate with his hands and I got out of the way“I visited St. Vincent in 1998. I saw Mr. Richards in the company of three men; one of them was running a line; one was digging. Mr. Richards was supervising. I confronted the men in the presence of Richards and he said “work. I am not afraid of any judge or lawyer.....”

- [8] In relation to the plaintiff's allegation of trespass, the second named defendant in Suit No. 73 of 1997 i.e. Ronald Mowatt admitted that “it is correct to say the land which Clara Edwards is now claiming was bulldozed for a road by my brother and me.”
- [9] This defendant Ronald Mowatt also made the significant admission to the effect that he was in no position to dispute the crux of the plaintiff's case i.e. that the disputed land which she occupied was not part of lot 57 which was what had been devised to Neville Mowatt father of the mother of the defendant Ronald Mowatt, and which the latter was claiming as part of the Bonadie Estate.

In that regard this is what he had to say. “I do not know if Clara Edwards' land is part of Lot 57”. If land in dispute being claimed by Clara were not part of Lot 57 then the defendant Mowatt would be making a baseless claim to the land which I find was distinctly and exclusively occupied by Clara Edwards the plaintiff.

- [10] In my view the evidence led by Clara Edwards and her daughter Hestina as to the presence on the land in issue of the second named defendant Ronald Mowatt, undoubtedly made him a trespasser when he was in the circumstances of this case found on the said land.
- [11] The same conclusion must be arrived at in relation to the defendant Richards whose denial of the evidence pointing to his presence on the land in dispute, and his activity thereon, the Court unflinchingly rejects.
- [12] Reference must now be made to the evidence relating to trespass by the remaining defendants William Mitchell, Anthony Roberts, Albert Murray and Levy Thomas in that order.
- [13] The evidence against William Mitchell pointed to trespass on his part. The evidence emerged from the witness Errol Mars who testified that the occasion was one on which Ronald Mowatt and William Mitchell were together on the disputed land. According to the witness "I was going to chain a sheep. Mowatt told me to get off the land. I told him "no". He said the land was his. I told him that the land was Miss Edwards' and lawyer Mitchell was telling Mowatt to get the man (that's me) to hell off the land". The defendant Mowatt further testified that Mitchell gave him a cutlass on this occasion to defend himself. Clara Edwards testified to seeing Mitchell on her land on one occasion.
- [14] The defendant Anthony Roberts denied the trespass alleged against him but I preferred to rely on the evidence of Errol Mars who swore that "I got to know Anthony Roberts when I saw him on Clara Edwards' land. I saw Albert Murray the same time. I saw them pulling up cassava, potato and corn. They trim the place and light it a fire. I know Levy Thomas (aka Joseph) a long time.....

- [15] Little was said by the plaintiff and her witnesses about the defendants Albert Murray but Errol Mars swore that he saw Anthony Roberts the third named defendant and Albert Murray the fourth named defendant “pulling up corn, cassava and potato. They trim the place and light it a fire”. I accepted this evidence of the witness Errol Mars and found the defendant Murray to have trespassed on the plaintiff’s land.
- [16] I accepted the evidence once again of Errol Mars in relation to the fifth defendant Levy Thomas also known as Levi Joseph. Mars spoke of seeing Joseph “putting up a house on Clara Edwards’ land” Hestina Edwards confirmed this when she said “ I was in here six months ago. I confronted two men on that visit doing constructing. They were constructing a building..... I spoke to Levi Joseph and he pulled a machete on me. I took away the machete and we had a fight. Levi Joseph had tools on that occasion and I seized them. I gave the tools to the police.”
- [17] In my view the evidence preponderated in favour of the plaintiff Edwards making all the defendants jointly and severally liable for trespass committed on her land. The evidence led me to the conclusion that the ingredients of the tort of trespass were present and in accordance with the passage from Halsburys Laws of England cited by Junior Counsel for the plaintiff those ingredients were, an entry upon the land of the plaintiff without the requisite permission, and which land was in the exclusive possession of the plaintiff who had evidently entered upon that land with the intention of possessing it, as she the plaintiff swore, for the purpose of growing crops so she could feed herself.
- [18] Furthermore there was no evidence which in my view indicated that any of the defendants had any right to possession, superior to that of the plaintiff. Indeed the second named defendant Ronald Mowatt sought to make a

claim through one Neville Mowatt deceased, but that claim in my opinion was defeated by the evidence of the two surveyors in the case that the land being claimed by the plaintiff was not the land which had descended to Neville Mowatt, nor was it a part thereof i.e. not a part of lot 57 which is what Neville Mowatt had passed on to the mother of the second named defendant Ronald Mowatt. Ronald Mowatt himself as I pointed out earlier in this judgment swore in relation to the land in dispute that he did not know whether that land was part of lot 57 which had been passed on to his mother and which he was probably expecting to inherit.

[19] Having indicated above that I find all the defendants, jointly and severally liable in trespass I order the following remedies:-

1. A declaration that the defendants whether by themselves their servants or agents are not entitled to enter or cross the plaintiff's land situate at Questelles in the State of Saint Vincent and the Grenadines consisting of 2 acres, 33 poles and shown on Plan A 416 (C.E. 2).
2. An injunction, (permanent of course), restraining the defendants and each of them whether by themselves or their respective servants or agents or otherwise howsoever from entering or crossing the plaintiff's said land and destroying anything thereon.
3. Special damages of \$22,284.04 against the defendant Egerton Richards being the cost of the wire removed by him from the plaintiff's land, and labour in erecting it.
4. Special damages of \$1,650.00 for trees destroyed.
5. General damages in the sum of Ten Thousand dollars.

[20] The counterclaim of the first defendant Egerton Richards is dismissed.

[21] Costs are to be paid by the defendants to the plaintiff to be taxed if not agreed.

Odel Adams
High Court Judge