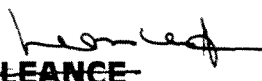


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE (CIVIL) A.D. 1999

CASE NO. 586/1992

BETWEEN

CUTHBERT LEANCE 

PLAINTIFF

and

ELUTA DUPRES

DEFENDANT

Appearances

Mr A Arthur for Plaintiff
Mr M Francois for Defendant

1996: March 15th
1998: September 23rd
1999: February 9th

JUDGMENT

d'Auvergne J

The Plaintiff is the Son of the Defendant who is the owner of a portion of land viz 8 Acres, 3 Rods and 32 Perches situate at Mabouya Valley quarter of Dennery which she acquired from James Henry Boodhoo by virtue of the latter's Last Will and Testament dated 21st April 1947 and admitted to probate on the 4th April 1964 and registered on the 11th idem in Volume 117a No.71437.

The Plaintiff claims that the Defendant permitted him to build on her land noted above a Concrete Structure valued at \$75,000.00 and also consented to his cultivating crops on the land valued at \$66,419.00 and therefore he filed a writ claiming against the Defendant the sum of \$75,000.00 for the said Concrete Structure and for \$66,419.00 for crops

planted on the said piece of land.

General damages

Interest thereon

Costs.

At the trial the Plaintiff said that he constructed a concrete house on the said land in 1976 with his own income and took a loan to cultivate bananas on the land.

He said that he received a Notice to quit from the Defendant in 1991/92 but he is still in occupation of the house and land despite a magistrate ordering him to leave, that infact he had appealed the decision and is awaiting a date.

Under cross examination, he assured the Court that

Hurricane Allen had not caused any damage to his crops and that they were still all intact;

the said house was built by him first as a refreshment house and later converted by him into a dwelling house;

he has not planted any new crop but was only reaping the proceeds.

Rural Constable and Building Contractor Edmund Phillip gave evidence on behalf of the Plaintiff and told the Court that the valuation for the house and crops were made by him in 1991 and again on the 4th February 1996.

Eluta Dupres gave evidence on her own behalf and said that she was 78 years old and a retired farmer of Grand Riviere Dennery; that she had three children of whom the Plaintiff was the eldest, that the land

in question was willed to her by her deceased Common Law-Husband James Henry Boodhoo the father of her other son and daughter.

She exhibited the Last Will and Testament of James Henry Boodhoo, the designation of the property willed and a plan of the said property.

The Defendant gave the Court a history ^{of} her adult life story. She said that when the Plaintiff was 11 months old she left her mother's house and commenced living in concubinage with the deceased James Henry Boodhoo. She took the Plaintiff to live with them and provided for him, that when he was 17 years old he left for Barbados where he spent seven years and how she continued to provide for him by shipping food stuffs and items ^{for} ~~for~~ clothing to him on a regular basis that he returned to St Lucia in order to attend his sister's wedding.

She further said that she provided him with board and lodge, whereupon the Plaintiff informed her that he would not be returning to Barbados and suggested that the two of them started a business, that she took her own monies acquired from the proceeds of her crops planted on the land, took a loan from the St Lucia Co-operative Bank and monies received from her second son in St Croix ^{Croix} and with the help of her son in law and brother erected a building which she later open as a shop stocked with goods and appointed the Plaintiff manager of the said business.

She told the Court that "he used all the goods and the profit, was always at a Bon Temps, result the business flopped."

She insisted that the Plaintiff never worked on the construction of the shop but on the lands and was paid as every other worker.

The Defendant agreed that she gave the Plaintiff permission to cultivate one acre of land as she did towards her other children but denied most vehemently that she gave written permission as was exhibited by the Plaintiff.

She said that she had filed a Notice to Quit and took legal action against the Plaintiff, that he was ordered to leave the land within 6 months but to date remains on the land, that Hurricane Allen destroyed his former banana plantation which he has replanted and that he cultivates the land daily.

She concluded her examination in chief by stating that there was a dance hall attached to the said shop and after the collapse of the business "he placed partitions for the rooms and now lives there with his wife and children" for over 20 years despite three notices to quit. She also said that the house in question is in dire need of repairs.

Under cross examination the Defendant conceded that the Plaintiff constructed a balcony to the house after receiving notices to quit but the partitions were constructed from her material she had placed at the house for safe keeping.

Arguments

Learned Counsel for the Defendant did not address the Court stating that it was a factual matter. Learned Counsel for the Plaintiff quoted **Article 1544 of the Civil Code.**

Conclusion

Article 1544 of the Civil code Chapter 242 provides -

"The lessee has a right to remove before the expiration of the lease, improvements and additions which he has made; provided he leaves the property in the state in which he received it; nevertheless, if the improvements or additions he incorporated with the thing leased, with nails, lime, or cement, the leaser may retain them on paying the value."

This above quoted article in my opinion does not apply to the facts of this case since the Plaintiff is a tenant at sufferance who has been given several notices and even a Court order to quit the land and house, but who refuses to leave.

Article 372 of the Civil Code noted earlier provides.

When improvement have been made by a possessor with his own materials the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor....."

I accept the version of events as testified by the Defendant and I find the Plaintiff to be a possessor in bad faith. I believe her when she said "he built the balcony while we were going to Court."

I therefore dismiss the case and order the Plaintiff to leave the land and the house on or before the 1st day of May 1999.


SUZIE d'AUVERGNE
HIGH COURT JUDGE