

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO: 86 OF 1994

BETWEEN:

VERA SMART

PLAINTIFF

AND

JEFFREY CADOGAN A.K.A.

JEFFREY MC DOWALL

DEFENDANT

Mr A. F. Williams for the plaintiff

Mr R.T.L.V. Browne for the defendant

[July 3, 1998]
[September 28, 1998] - Delivered

JUDGMENT

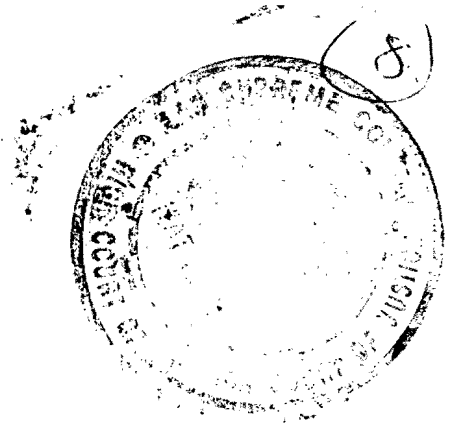
BAPTISTE J.

The plaintiff claims to be the owner in possession of a parcel of land described in Deed of Gift No. 146 of 1993 on which said land the defendant has trespassed. The plaintiff is therefore seeking declaratory and injunctive relief, damages and further or other relief.

The defendant in his defence claims that the land in question constitutes part of the estate of Edward Mc Dowall (Edward) who died on 29th December, 1992. Further at the time of the purported execution of the Deed of Gift, Edward lacked the capacity to do so. The plaintiff's deed is therefore invalid.

The defendant in his counterclaim claims that the plaintiff is not the fee simple owner and is not entitled to possession of the said parcel of land. The defendant seeks an order for the cancellation of the plaintiff's deed, injunctive and declaratory reliefs, damages for trespass and further or other relief.

The facts are that on the 23rd day of December, 1992, Edward who was the uncle of the plaintiff and father of the defendant executed a Deed of Gift No. 146 of 1993 in favour of the plaintiff. The land comprised therein originally formed part of Edward's estate, and forms the subject matter of the present



dispute. The land was cultivated by the plaintiff and later by the defendant. (The deed was admitted in evidence as exhibit V.S.2).

Edward lived at the plaintiff's home for about two months before he died on the 29th of December, 1992. During and before the time that Edward lived there, the plaintiff looked after his needs. At the time of the execution of the Deed of Gift, Edward was blind and incapacitated. He made his mark on the deed. This mark was witnessed by one William Hendren Huggins among others.

This is a claim in trespass. The law is that trespass is actionable at the suit of the person in possession of land. Proof of ownership is prima facie proof of possession, unless there is evidence that another person is in possession, but if there is a dispute as to which of two persons is in possession, the presumption is that the person having title to the land is in possession. I hold therefore that the plaintiff is in possession of the land.

The defendant seeks to challenge the plaintiff's possession by impugning the validity of her deed. The contention being that the deed was not properly executed as it was not executed in accordance with the Illiterate Protection Act Chapter 223 of the Laws of St. Vincent and the Grenadines. Learned counsel for the defendant submitted that there is no evidence that Mr Huggins was a justice of the peace. Further, Mr Huggins did not sign in his capacity of a justice of the peace. Counsel referred to Sections 3,4 and 5 of the Act.

The evidence from Mr Huggins which stands uncontroverted and whose credibility I find to be untainted is that he is a justice of the peace. Mr Huggins stated that he took the oath of office at Government House and in the absence of correspondence revoking his appointment, he considers himself to be a justice of the peace. I accept the evidence of Mr Huggins that he is a justice of peace.

The question as to whether or not Mr Huggins was a justice of the peace is important when one considers Section 4 (1) of the Act. The section states:

"No document shall be valid as against an illiterate person, unless it shall be signed by him in the presence of an official attestor and attested by the official attestor."

Section 3 of the Act states who are official attestors. Included therein are justices of the peace. Counsel also submitted that Mr Huggins did not sign in his capacity as a justice of the peace. It is clear from the evidence of Mr Huggins

that he was a long time close personal friend of Edward. They grew up together as boys, both left to work in the Netherlands Antilles. Later they returned to St. Vincent and continued their close friendship.

In cross examination, Mr Huggins stated that he witnessed the document believing he was a justice of the peace.

While it is true that there is no indication on the document as to the capacity in which Mr Huggins attested or to be more precise that Mr Huggins attested as an official attestor, the accepted evidence is that he was a justice of the peace. A justice of peace is an official attestor. I therefore, hold that Edward, who was an illiterate person for the purposes of the Act, signed the deed in the presence of an official attestor who attested to it.

Section 4, subsection 2 of the Act states:

"Before the document is signed by the illiterate person the official attestor shall explain it to him and shall refuse to attest it unless the illiterate person appears to understand its contents."

I am satisfied on the evidence that the provisions of the subsection were adhered to by Mr Huggins, in that Mr Huggins, before the mark was made explained the document to Edward who understood its contents. Mr Huggins also made a statutory declaration to that effect.

No particular form of attestation is prescribed by the Act. On page 2 of the deed, below the mark of Edward and alongside the signature of Mr Huggins, it is stated:

"The contents of this document was read over to Edward Lawrence Cadogan a.k.a. Edward Lawrence Mc Dowall and he appeared perfectly to understand same and made his mark in my presence."

This I hold to be a sufficient and valid attestation for the purposes of the Act.

Section 4, subsection 3 states:

"The attestation of an official attestor shall be conclusive evidence that the illiterate person understood and approved the contents of the documents before signing it."

Learned counsel for the defendant submitted that there was no evidence of a request from Mr Edward as required by Section 5 of the Act. The evidence led, in my view, does not support that contention.

The defendant in his evidence stated inter alia, that his father made a will of which Mr Dougan QC was executor and he (the defendant) was one of the beneficiaries thereunder.

He said in cross examination:

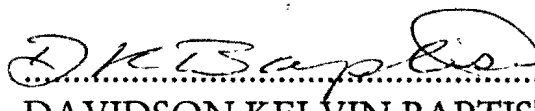
"..... it is my father's land. I always went there. The will gave me permission to go on the land."

No will was however produced in evidence, nor was a reason advanced for its non production. I will not place any reliance on that evidence. I hold that there is no merit in the defendant's defence and counterclaim.

In conclusion I hold that the plaintiff's deed is valid and the plaintiff has proven her case in trespass against the defendant. Judgment is entered for the plaintiff on her claim and the defendant's counterclaim is dismissed.

It is ordered that:

- (1) A declaration is granted that the plaintiff is the fee simple owner and entitled to possession of the parcel of land set out in Deed of Gift No: 146 of 1993.
- (2) An injunction is granted restraining the defendant whether by himself his servants and or agents or otherwise howsoever from entering crossing or remaining on the said parcel of land.
- (3) The defendant pays the plaintiff \$500.00 in damages.
- (4) The defendant's counterclaim is dismissed with costs.
- (5) The defendant to pay costs to be taxed if not agreed.


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DAVIDSON KELVIN BAPTISTE
High Court Judge (Ag.)