

SAINT LUCIA



**IN THE HIGH COURT OF JUSTICE
(Civil)
A.D. 1998**

SUIT NO: 36 of 1968

Between:

**CARME MONTOUTE nee AMBROISE qua Executrix
of the Estate of DAVIDSON AMBROISE**

PLAINTIFF

AND

**(1) MARY AMBROISE
(2) AGNES ARLAIN
(3) BELVINA AMBROISE
(4) FRANKLIN AMBROISE
(5) PRESTON EVARISTE AMBROISE**

DEFENDANTS

1998: MAY 6th and 27th

Appearances:

Mrs Lewis for Applicant, Fifth Defendant
Mrs Barnard for the Plaintiff

JUDGMENT

d'Auvergne J.

This is a case clothed in antiquity having been filed on the 7th day of February, 1968. The former Plaintiff, Davidson Ambroise has died and on the 18th of February, 1998 an order was granted substituting Carme Montoute nee Ambroise qua Executrix of the Estate of Davidson Ambroise.

The application before me is a Summons dated 16th September, 1997 supported by Affidavit of Preston Ambrose filed 18th July, 1997, this identical Summons had been filed on the 18th July, 1997 and was adjourned and refiled on the 16th September, 1997.

The Summons reads as follows:-

"LET ALL PARTIES APPEAR before the Judge in Chambers at the High Court of Justice, Peynier Street, Castries in the Island of Saint Lucia on Wednesday the 22nd day of October, 1997 at 9:00 O'clock in the forenoon at the Hearing of an Application by Defendant No. 5 for an Interim Injunction to cease all surveying and intermeddling of the lands situate at Providence, Gros-Islet and the subject matter of this Suit until further Order of the Court."

The Affidavit of Preston Ambrose is reproduced in its entirety.

"I, PRESTON AMBROSE, Businessman of Massade, Gros-Islet in the Island of Saint Lucia being under oath state as follows:

- 1. I am an Heir to the Estate of HENSON AMBROSE who was an Heir to certain lands situate at Providence, Gros-Islet, registered in the Land Registry as Block and Parcel No. 1253B 80*
- 2. That the lands, the subject matter of this Suit were all before the Court and are still in an unsettled state*
- 3. Further, the Plaintiff in the Suit has died and I do not know who has been placed in charge of his Estate*
- 4. Defendant No. 2 has also died and I verily believe that Letters of Administration has not yet been taken out in her Estate, and/or no one has been appointed to look after her Estate*
- 5. Further, Defendant No. 1 is now old and cannot travel long distances over rugged lands to oversee any land dealings*
- 6. On or about 10th January 1997, I received news that a Survey was being carried out on the lands at Providence, Gros-Islet, and on making inquiries learnt that Licenced Land Survey Mr. Felicien was on that land carrying out a Survey, and on making enquiries of Defendant No. 1 who is my mother, I learnt that a Notice to Survey was served on her the day before the commencement of the Survey*
- 7. I gave instructions to my Solicitor to write to the Licenced Land Surveyor involved asking him that the proper notices be sent to all persons involved including me*
- 8. The Licenced Land Surveyor replied through his Solicitor that he intended to carry on with his Survey because this matter is not before the Courts*
- 9. The Licenced Land Surveyor duly carried on with his Survey on or about June 28th 1997 and once again without serving any notice to me. A visit to that land revealed that the land is ill-proportioned with all the flat land on one-side and the hilly land on another side*

10. *Whilst I am not interested in the lands at Providence, Gros-Islet remaining undivided, I wish to be informed of the name and address of the person in charge of the Estate of the Plaintiff who is now dead*
11. *I would therefore ask this Honourable Court to grant an Injunction to cause all surveying and meddling in the land at Providence, Gros-Islet to cease until all the Heirs and or owners of lands at Providence, Gros-Islet have been contacted and made aware of the developments which are happening in this matter*
12. *I believe that unless an Injunction is granted that no notice will be taken of my protest and that the cutting up and intermeddling in that land at Providence, Gros-Islet shall continue."*

On the 2nd December 1997 Affidavit in Reply to Affidavit of Preston Ambroise filed herein on 18th July 1997 was filed and reads:-

"I, CARME MONTOUTE nee AMBROISE of Cas-en-Bas in the Quarter of Gros-Islet do hereby make oath and say as follows:-

- (1) *That I am the Executrix of the Estate of the late Davidson Ambroise as appears by grant of Probate registered in Vol. 145a No. 167926.*
- (2) *That I have read the contents of the Affidavit of Preston Ambroise filed herein on 18th July, 1997 and wish to state as follows:-*
 - (a) *That I have no knowledge of Preston Ambroise is an heir to the estate of Henson Ambroise nor is Henson Ambroise an heir to lands situate at Providence, Gros Islet registered in the Land Registry as Block 1253B 80.*
 - (b) *That the said parcel of land registered in the Land Registry of Saint Lucia as Block 1253B 80 is registered in the name of the deceased Davidson Moses Ambroise, whose estate I am the Executrix. A copy of the land register pertaining to Block 1253B 80 is exhibited hereto and Marked "A". Davidson Ambroise purchased the aforesaid parcel of land under and by virtue of a Deed of Sale executed before Joseph Fernand LeGrand, Notary Royal on 28th January, 1947 which Deed of Sale registered in Vol. 87b No. 54902 a copy of which is exhibited hereto and marked "B".*
 - (c) *The said parcel of land registered as Block 1253B 80 is not the subject of any dispute between the Plaintiff and the Defendants herein.*
 - (d) *I admit that in January, 1997 I engaged the services of a Surveyor to survey the said parcel of land registered as Block 1253B 80 on behalf of myself and my sister in accordance with the terms of the Last Will and Testament of the said Davidson Ambroise, the Plaintiff herein.*

- (e) *Preston Ambroise has no interest whatsoever in Block 1253B 80 and I have therefore not paid heed to his solicitor's letter to stop the aforesaid survey.*
- (f) *I do not know of any boundary dispute existing between the Plaintiff and Preston Ambroise and indeed Block 1253B 80 is bounded by the lands of Theresa Richard (Parcel 501), Anne Marie Charles (Parcel 500), Samson Louis (Parcel 79), Samuel Felicien (Parcel 50), Passionise Ambroise (Parcel 81) and a Road.*
- (g) *As far as I know, the only dispute existing between Preston Ambroise and the Plaintiff concerns land at Massade in the Quarter of Gros Islet.*

Learned Counsel for the Applicant argued that the parcel of land at Providence that Licenced Land Surveyor Felicien had been carrying out a survey on about the 28th day of June, 1997 was the subject matter of this suit before the court and that he should be restrained from all surveying and intermeddling unless all the Defendants were present.

(I take it to mean at the survey).

She further argued that there was a court order dated the 5th day of June, 1985 whereby Surveyor Earl Cenac was appointed by consent (of the parties) to partition the lands between the parties and therefore all subsequent orders should be subject to that order.

Learned Counsel for the Respondent/Plaintiff argued that the order of the 5th of June, 1985 referred to lands at Massade, Gros-Islet and not to the parcel of land at Providence. She contended that Parcel 1253B 80 the piece of land that was surveyed by Surveyor Felicien was not subject to any dispute between the Plaintiff and the Defendant.

She exhibited a land register for parcel of land registered as 1253B 80 which is recorded in the name of Davidson Moses Ambroise with provisional title.

Counsel further exhibited on behalf of the Respondent a Deed of Sale dated 28th January, 1947 which describes the said piece of land "an undivided one half share in and to a portion of land comprising three carres of the "Providence" estate."

The said Deed further states that "the Vendor acquired her undivided one half share in and to the three carres of land by virtue of the community

property which existed between herself and her deceased husband the late Davis Ambroise.

Learned Counsel for the Applicant replied that the Applicant was an heir to the land that was surveyed by Licenced Land Surveyor Felicien, in June 1997.

CONCLUSION

The Applicant has stated by paragraph 3 of his affidavit that "the Plaintiff in this suit has died and I do not know who has been placed in charge of his Estate."

A perusal of the court file will show that there is on file a Summons to substitute Plaintiff dated 26th November, 1997 and filed on the 2nd of December, 1997, addressed to the Defendant and an Order dated 18th February and entered on the 11th March, 1998 which states that the Defendants were represented when the Order was made. Moreover, the Applicant has not exhibited any proof that he is an heir to Block and Parcel 1253B 80; whereas, the Respondent has shown that her father and former Plaintiff owned Parcel 1253B 80 that she was appointed Executrix of the Estate of the said Davidson Ambroise the former Plaintiff which was admitted to Probate and is registered in Volume 145A No. 167926.

THE LAW

Section 24 of the Land Registration Act No. 12 of St. Lucia 1984 which defines ownership with provisional title provides inter alia ". . . Such registration shall have the same effect as to registration of a person with absolute title."

The facts disclose that the Plaintiff is the owner with provisional title of the parcel of land situate at Providence and therefore as owner the Plaintiff is free to act with the land as she feels like.

It is also significant to note that there is no restriction noted in the register of that parcel of land 1253B 80.

MY ORDER IS AS FOLLOWS

- (1) The application for Injunctive Relief is dismissed.
- (2) Costs to the Plaintiff/Respondent to be agreed or otherwise taxed.



**SUZIE d'AUVERGNE
HIGH COURT JUDGE**