



SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)
A.D. 1998

Suit No.234 of 1991

Between:

- (1) **VERONICA LOUIS** (born Bruno)
- (2) **DAVID LOUIS**
- (3) **IGNATIUS BRUNO**

Plaintiffs

VS

- (1) **RITA CHRISTOPHE** representing heirs of Emmanuel Ambroise (deceased)
- (2) **ANTHONY CHRISTOPHE** representing heirs of Ismael Christophe Ambroise (deceased)
- (3) **LORETTA CHRISTOPHE** representing heirs of Johannes Christophe Ambroise (deceased)
- (4) **ATKINSON AUGUSTIN** representing heirs of Louisiana Augustin (deceased)
- (5) **IGNATIUS BRUNO** representing heirs of Amasille Bruno (born Ambroise) deceased except the Plaintiffs
- (6) **AGNES ALBERT**
- (7) **JOSEPH ELOUANGE ASHTON** for heirs Isidore Louison (also known as Sonson Louison)

Defendants

Mr D Theodore for Plaintiffs and fifth Defendant
The first Defendant in person
Mr P Straughn for second Defendant
Miss C Combie for third Defendant
The fourth Defendant in person
Mr K Monplaisir, QC in association with Ms C Hinkson-Ouhla
for sixth Defendant
Mrs S Lewis for seventh Defendant

1995 : March	13
1995 : March	14
1996 : April	25
1997 : February	27
March	13
April	23
June	21
1998 : January	08

JUDGMENT

d'Auvergne J.

By a Writ of Summons filed with a Statement of Claim on the 24th day of
June, 1991 the Plaintiffs not wishing to remain in undivided ownership of

a property forming part of the Robert Estate, situate at Gros-Islet and registered in the Land Registry as 1252B 219 sought a partition order of the Court.

The said property comprising of 23 acres hereinafter referred to as the COMMON PROPERTY formerly belonged to one Michael Christophe Ambroise also known as Michael Christophe who died on the 15th day of March 1936 leaving five (5) surviving children as his lawful heirs namely:

- (1) Emmanuel Christophe Ambroise
- (2) Louisanne Augustin (born Christophe Ambroise)
- (3) Ismael Christophe ambroise
- (4) Johnannes Christophe Ambroise
- (5) Amazile Christophe Ambroise

On the 14th day of January, 1955 Amazile Christophe Ambroise made a last will and testament of which paragraph 4 reads as follows:

"I give to my niece Matilda Louis Bruno and her husband Nelson Louis Bruno in equal shares all the property real and personal moveable and immoveable which I may own . . ."

Matilda Louis Bruno is one of the nine lawful children of Johannes Christophe Ambroise and is therefore entitled to one forty-fifth (1/45) share of the COMMON PROPERTY, she died intestate on the 21st day of July, 1981 leaving as her heirs at law her following children the first named Plaintiff and Ignatius Bruno, the third named Plaintiff and who is also noted as the fifth named Defendant.

The above mentioned Nelson Louis Bruno also known as George Bruno died on the 29th day of September, 1988 leaving a last will and testament by which he left all his property moveable and immoveable (apart from

certain bequests of movable property) to

- (1) the first named Plaintiff his lawful daughter
- (2) David Louis the second Plaintiff.

The partition of the COMMON PROPERTY amongst the co-owners are as follows:-

- (1) The first and second mentioned Plaintiffs.
- (2) Ignatius Bruno, the third Plaintiff and the fifth Defendant representing remaining heirs of Amasille Christophe Ambroise.
- (3) Heirs of Emmanuel Christophe who are together entitled to 1/5 share.
- (4) Heirs of Johannes Christophe or Jonas Christophe (apart from Matilda Louis Bruno who devised her share to the first Plaintiff and Ignatius Bruno, the third named Plaintiff and the fifth named Defendant) are together entitled to an undivided one fifth (1/5) share.
- (5) Heirs of Ismael Christophe Ambroise, 1/5 share.
- (6) Heirs of Louisianna Augustin, 1/5 share.

On the 20th day of November, 1975 the heirs of Louisanna Augustin sold one carre or 3.2 acres of land from the COMMON PROPERTY to Agnes Albert the sixth Defendant who therefore becomes a co-owner entitled to two fifteenth (2/15) share of the property.

On the 22nd day of October, 1991 the fifth named Defendant consented to be joined as a Plaintiff.

On the 23rd day of October, 1991 the court ordered Licensed Land Surveyor Tennyson Gajadhar to view, value and draw up a plan showing the proposed partition of the COMMON PROPERTY amongst the co-owners which he did and submitted to the Court. Firstly, a plan and a report dated 17th August, 1992 and a further amended plan dated 23rd April, 1993.

A perusal of this case file will show that there are seven Defendants. There is no order on file nor was any order produced in Court to show that leave was ever granted to add the seventh Defendant but a Defence on behalf of the seventh Defendant Joseph Elounge Ashton dated 29th October, 1992 is headed and reads as follows:-

PURSUANT TO ORDER OF THE COURT

dated 13th June, 1992

This defendant claims to be an heir of Isidore Louison also known as Sonson Louison who purchased two portions of land measuring one carre each from Joseph Africa also known as Colot. The said parcels of land are registered in Volume 46 Nos. 16694 and 16695 respectively in the year 1889.

He claimed that those lands remained unsurveyed until 1991 when he commenced a survey and partition but was stopped by the Plaintiffs who are his adjoining neighbours on the southern portion of the land.

On the 12th November, 1992 the Plaintiffs filed a Summons supported by affidavit for Confirmation of Preliminary Plan. The said Summons reads as follows:

LET ALL PARTIES concerned attend before His Lordship a Judge in Chambers at the High Court of Justice, Supreme Court Building, Peynier Street, Castries, Saint Lucia on Wednesday the 2nd day of December, 1992 at 9 o'clock in the forenoon on the hearing of application by the Plaintiffs for an Order that:-

1. Neither the seventh-named Defendant nor the heirs of ISIDORE LOUISON nor any of them is a co-owner of any of the portions of land forming the subject-matter of this partition action which said portions of land are set out in paragraph 10 of the Statement of Claim.
2. The seventh-named Defendant be struck out as a Defendant in this action with costs to the other parties hereto.

3. The preliminary plan of the expert, Mr Tennyson Gajadhar, be confirmed subject to:-
 - (i) the continuation of the road reserve into the portion proposed to be allotted to the heirs of EMMANUEL CHRISTOPHE for a distance of 150 feet with a width of 22 feet (a total of 3,300 square feet);
 - (ii) the division of the remaining land (that is 23 acres less 3,300 square feet) be made equally among the 5 co-owners.
4. That the sixth-named Defendant, AGNES ALBERT is entitled to an undivided 4/30 share of the Robert Estate described in paragraphs (3) to (8) inclusive of the Schedule to the Statement of Claim.
- (5) That the said share of the sixth Defendant should be taken out from the share allotted to the Heirs of LOUISIANNA AUGUSTIN independently of this partition.
- (6) The expert do amend his preliminary plan as required at paragraph (3) above and lodge his amended plan and report thereon into Court within 60 days from the date hereof or within such other time.
- (7) All matters relating to further costs of this partition action be reserved.

This summons was supported by the affidavit of the first Plaintiff which in effect gave reasons for the requests sought in the summons.

Mr Jerome Joseph, Licensed Land Surveyor was employed to survey on behalf of the seventh-named Defendant which he did and filed a report.

After much delay the matter was first heard on the 13th of March, 1995 and Elizabeth James the first cousin of the seventh Defendant told the Court that the latter was claiming more land than he is entitled to and that the portion the seventh Defendant is claiming is called Borjot Lands belonging to the Christophes' and adjoins their lands. She said her grandfather Isidore Louison himself, showed her the boundaries and that Surveyor Gajadhar's survey was the correct one and that of Jerome

Joseph was incorrect.

Under cross examination she agreed that she was no longer on friendly terms with the seventh Defendant but said that she was the one when they were on friendly terms who showed him the boundaries of their land (inherited from their grandfather Isidore Louison). She insisted that Surveyor Jerome Joseph made a '*mistake*' when he ran the line at the top of the hill, the southern portion, since the boundary ran along "*the burnt immortelle tree*" and "*the Mango Long tree*" not the "*Mango-Elay tree which is about 12 feet away from the Mango Long tree. The Mango Elay is on the Borjot side.*"

The second and final witness for the Plaintiffs was Tennyson Gajadhar, Licensed Land Surveyor, told the Court that he presented a survey plan of the common property to the Court dated 17th August, 1992 and another plan dated 23rd April, 1993 after shifting boundaries between two of the common heirs.

He said that the land was pointed out to him by the second Plaintiff which was later confirmed by visible markings of the Land Registration and Titling Project (LRTP) and also two (2) iron pegs along the southern boundary of the Louison lands, the boundary in dispute. He had the seventh Defendant to physically point out what he alleged was his boundary which he did and "*I calculated . . . the area in dispute to be approximately two (2) acres.*"

The surveyor testified that his survey of the southern line of the seventh Defendant land which is the northern boundary of the COMMON PROPERTY is in conformity with the lodged Land Registration Map.

Ashton Xavier since deceased, gave evidence on his own behalf and confirmed that the COMMON PROPERTY was to the south of his grandfather's lands. He insisted that it was his mother who showed him the boundaries and in particular the southern boundary to their land, the boundary in dispute.

He said that he never had any dispute with that aforementioned boundary before. He told the Court that in 1985 the Ministry of Communications and Works in Saint Lucia cut off a road on his land and placed pegs in the "*middle of Sonson Louison's land . . . the nearest immotelle tree was*

about 60 to 70 feet away from the peg."

He said that in preparation for the Land Registration and Titling Project (LRTP) he cleared the boundaries to his land but the workers on the LRTP only *"followed the west and the north"* boundaries to his land and instead followed the instructions of the Borjot Family which resulted in *"Heirs of Sonson Lousion got two acres less."*

He exhibited the deeds for the Isidore Louison lands and survey plan of 1800 square feet on behalf of Anne Marie Roserie and Michael Polius. He said that it was the immortelle trees which demonstrated the ancient line (boundaries) *"it is these trees which indicate the boundary of the ancient line."* He however agreed that Gajadhar's survey of his southern boundary was consistent with LRTP.

Licensed Land Surveyor, Jerome Joseph gave evidence on behalf of the seventh Defendant. He said that he carried out a survey for the seventh Defendant and exhibited a sketch plan. He told the Court that he surveyed in accordance with the seventh Defendant's deeds who is entitled to 6.4 acres or 2 carres and that the Land Registration and Titling Project had demarcated an area of 5.44 acres .75 acres less than the amount stated in the deeds.

He said that he also measured the area between the line shown by the Christophe family, the COMMON PROPERTY and that of the seventh Defendant and it amounted to 1.37 acres.

The evidence disclosed that this witness worked with the Ministry of Communication and Works during the period when the acquisition survey for the cutting of the road mentioned earlier. He told the Court he had placed (in 1986) the more northerly two pegs to the two southern ones which he claims to be the southern boundary to the seventh Defendant's land.

Under cross examination he said that he saw the line established by Licensed Land Surveyor, Gajadhar but, *"I did not follow that line because I followed Mr Xavier's instructions . . . old burnt out immortelle stump . . . south of line established by Mr Gajadhar."* He agreed that there was a difference in his two exhibited sketched plans and said the reason is that when he did the plan for the road acquisition he had no plan to follow but

instructions from a man who is now blind and *"who did not really know the boundary"* whereas with regard to the second plan the boundaries were shown to him by the seventh Defendant.

He concluded his cross examination by agreeing with Counsel for the Plaintiffs and the fifth Defendant that if the plan drawn by him showing the seventh Defendant's land is accepted then it would not be in accordance with the Land Registration and Titling Project demarcation plan.

Senior Counsel for the 6th Defendant addressed the Court stating that this was a simple case of partition which was made complex by the seventh Defendant, an adjoining owner who wanted more land than he is entitled to. He urged the Court to accept the plan as exhibited by Gajadhar since the latter took into account a road which was in fact done by the last witness, Jerome Joseph on behalf of Communications and Works in the 1970s (evidence discloses that the road was constructed in 1986).

Counsel for the seventh Defendant argued that the ancestors of the seventh Defendant bought land as shown by Deed of Sale and that there has been no dispute for almost 100 years. She contended that it was because of progress and development, viz the building of the road along the flat terrain of the land that the dispute under consideration arose.

She rationalized surveyor's Jerome Joseph's evidence by stating that when Joseph placed pegs for the cutting of the road he did so on instructions from a man, now blind but that he did the proposed plan submitted upon instructions of the seventh Defendant and that he also followed the burnt out tree stump which Mrs James the witness for the Plaintiffs made reference to.

Learned Counsel urged the Court to sift out the evidence of Mrs James who disagreed with Gajadhar and later agreed with him.

Learned Counsel for the Plaintiffs argued that it made no sense for Mrs James to agree with the survey made by Gajadhar since she would lose land whereas to agree with Joseph she would gain hence the reason why she should be believed and her evidence accepted as credible. He stated that on oath she told the Court that she showed the boundaries of her family lands to the seventh Defendant and that the proposed plan of survey in particular the southern boundary is in conformity with what she always knew.

He contended that the land in question was demarcated by the Land Registration and Titling Project and that there was no appeal therefore the decision stands. He stressed that Gajadhar used the demarcation of the Land Registration and Titling Project as a guide whereas Jerome Joseph did not and told the court that he did not.

He argued that Gajadhar's plan of survey was in accordance with instructions issued to him by the court whereas Jerome Joseph was employed by the seventh Defendant and therefore would seek to justify the position advanced by the said seventh Defendant. He strongly urged the Court to accept the evidence of Gajadhar.

Miss Combie concurred with addresses of Messrs K Monplaisir and D Theodore.

CONCLUSION

This is a simple case which has suffered much hardship in its coming to trial and being determined based on the various interlocutory matters and adjournments granted.

The evidence of Jerome Joseph, Licensed Land Surveyor for the seventh Defendant leaves much to be desired.

He told the Court that he surveyed and lodged plan G 12147K dated 14th February, 1986 and lodged on the 28th day of February, 1986 exhibited in evidence as Exhibit J.J.2. Yet he tendered a proposed (J.J.1) plan showing a completely different boundary between the lands of the seventh Defendant and the COMMON PROPERTY and tendered an explanation for the difference which in my view is totally unacceptable.

Having heard the evidence of Elizabeth James, taking into consideration her various discrepancies I have accepted her evidence which is in conformity with the demarcation of the Land Registration and Titling Project and the proposed plan of Licensed Land Surveyor Gajadhar.

I pause here to note that the sixth Defendant Agnes Albert is entitled to 2/15 share of the said COMMON PROPERTY having bought from some of the heirs of Louisiana Augustin who are entitled to 4.6 acres. It appears from the evidence and pleadings that 0.13 acres of land in

excess was sold to her but this is not an issue under present consideration.

Therefore my order will be as follows:-

The corrected proposed plan of survey submitted with report dated 23rd day of April, 1993 by Licensed Land Surveyor Gajadhar is accepted and should be lodged by the 15th April, 1998.

The sixth Defendant Agnes Albert is entitled to 3.07 acres of the 4.60 acres allotted to Heirs of Louisanna Augustin.

The seventh Defendant is to pay costs to the Plaintiffs to be agreed or otherwise taxed.



SUZIE d'AUVERGNE
HIGH COURT JUDGE