

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE (CIVIL)

Suit No.91 of 1993

Between:

JOAN CHEDDIE

- Plaintiff

vs

GLORIA MARTYR

- Defendant

Mrs. S. Lewis for Plaintiff
Mr. M. Wilson for Defendant

1996:	March	7
	December	10
1997:	January	22

JUDGMENT

d'Auvergne, J

The Plaintiff has brought this claim against the Defendant, stating that the Defendant has encroached upon, and is also preventing her from entering upon her land registered in the Land Registry as Block and Parcel No. 1827C 581; and that she is claiming the following:

- (1) Possession of the occupied portion of land.
- (2) An order from the Court that the Defendant removes the structure and materials from the Plaintiff's land forthwith.
- (3) An order that the Defendant, her servants or agents cease to interfere or hinder the Plaintiff, her servants or agents from entering onto those lands.
- (4) Damages
- (5) Costs

The Defendant on the other hand denies every allegation made in the Plaintiff's claim save that the Plaintiff is the registered owner of the mentioned piece of land.

On the 17th of March 1993 an injunction was granted by the High Court in favour of the Plaintiff and the Defendant was ordered not to place any further stones or other building material and domestic implements unto the Plaintiff's land and that she should remove those that were already there within two days.

At the trial the Plaintiff and Land Surveyor Joseph Alexander gave evidence on behalf of the Plaintiff whereas the Defendant alone gave evidence for the defence.

The Plaintiff told the Court that she is a St. Lucian who resides in London, England; that she is a pensioner who owns the property known as 57 Philadelphia Row Micoud which is registered at the Land Register as referred to earlier and exhibited the register for the said property. She said that her father bought the property and willed it to her by his last Will and testament and also exhibited the probate of her father's last Will and testament and his Deed of Sale dated 12th February, 1922 recorded in the Registry on 12th December, 1952.

It is my view that the Schedule of this Deed of Sale be reproduced in its entirety since it forms the crux of this matter and I quote:

"Schedule (Property adjudicated) Lot and building, Micoud Village

All that lot of land situate at the corner of French Row and Philadelphia Street in the Village of Micoud measuring 45 links along the said French Row which bounds it on the North, and ninety links along the said Philadelphia Street which bounds it on the West, bounded further on the East by the property of Jean Charles Benjamin and on the South by the property of Goodman Serieux, or howsoever else the same may be bounded.

Together with a wooden house erected thereon measuring 20 feet by 12 feet covered with shingles with all the appurtenances and dependencies thereof.

Title: Deed of Sale by Bernard Philip to the Defendant dated 15th September 1898 registered in Volume 57 No. 23139."

She said that she first knew the Defendant as a helper to her aunt, Theresa Cheddie, and of late as the owner of the wall house next to her property. She said that the Defendant has encroached unto her property since she knows the boundaries to her property which were shown to her by her father. She described the two properties the one owned by her and that of the Defendant. She told the Court that the former owners of the Defendant's property were her said aunt, Theresa Cheddie and her cousin Gildette Williams. She said and I quote:

"There was a fence between the two properties. It was a wooden fence. It was our gate. Infact there were two gates. We used ours and my aunt used hers."

She said that just before the death of her father in June 1959 she returned home with her two children and lived at the property till April 1965; that before leaving for England she leased the entire property to Mr. Valmont at a monthly rental of \$500EC as a lumber shop. The upstairs was used as living quarters for the individual in charge of the said lumber shop while the business was being carried on downstairs and this arrangement continued until the passing of Hurricane Allen (on the 3rd to the 4th of August, 1980) which severely damaged the building.

She returned to St. Lucia in 1983 and saw the building next door had extended to her property. As a result she had a conversation with Gildette Williams who she left in charge of her property and who was also co-owner of the house next door (which then extended to her property). She (Plaintiff) was dissatisfied with what

Gildette Williams told her, but she had to return to the United Kingdom and therefore had no alternative but to allow Gildette Williams to continue acting as her agent.

She again returned to St. Lucia in 1993 and found that the Defendant had further encroached so that she could not pass between the two properties. The 4 feet 6 inches walkway which she had built and which led to the wooden staircase to the top storey was no longer in existence and that there were many other alterations to her house and property. The most significant was an iron peg in front of the entrance to her premises and the use of her property as a warehouse; that she caused a letter to be written to the Defendant requesting the removal of her materials from her (Plaintiff's) premises but to no avail. So, she subsequently had to seek an order of injunction (referred to earlier) against the Defendant.

She further told the Court that she tried to settle the matter amicably, out of Court, but once more, this too, was in vain.

Under Cross Examination the Plaintiff said that her father showed her the boundaries to the property in about the years 1949-1950 and that when she left St. Lucia in 1965 she left an old man, Alexander George in charge of the leased property who had died before the passage of Hurricane Allen. She said it was thereafter she appointed Gildette Williams as her agent.

She said that she was unaware of a survey done by Surveyor Vernon Augustin in 1975, though there was a boundary dispute between Defendant and herself, hence the reason for the undemarcated boundary on her land register, which also shows that she has absolute title to her property.

Joseph Alexander, Licensed Land Surveyor said that as a result of a Court order he surveyed the property of the Plaintiff. He said

that he perused the Deeds of all the adjoining neighbours of the Plaintiff in particular that of the Defendant whose property was situated to the North of that of the Plaintiff. He read out the Schedule to the Defendant's Deed which reads as follows:

"All that lot of land situate in the Village of Micoud (in the swamp) in the said island of St. Lucia measuring seventy two links (72) by fifty-three (53) depth and bounded on the North by lot of Clarice Cyriac South by that of Josephine Carteau, East by that of Madam Labello and West by Victoria Street or howsoever otherwise the same may be bounded now known as Philadelphia Row formerly known as **The Swamp**. Together with all the appurtenances and dependencies thereof, including the wooden building erected thereof."

The witness said that after the perusal of the Deeds he proceeded to the site to verify the measurements by ground measurements and that he has produced plan dated 15th May, 1995 which he tendered as an exhibit. He said that he surveyed 1827C Parcel 580 which belongs to the Defendant and Parcel 581 which belongs to the Plaintiff.

He explained his plan to the Court and said:

"On that plan there is a wooden building with a wall extension owned by Defendant, that there is also an existing wall structure of a concrete building." He further explained that the Defendant "had two structures a wooden one with wall extension, then a gate and another structure being used as a kitchen and laundry room which is next to the old wall structure I mentioned previously, from the old structure there is a window and a door which are both barricaded and being used by Gloria Martyr."

He said he marked out the limit of occupation by the Defendant as A to B, where there is an iron peg which is situated in the middle of the old wall building which can be easily identified.

He said that he measured from point **B** to point **A** and also from the Northern boundary, lands belonging to heirs of Emmanuel Duncan and found 90 links. (It is to be noted that the measurements as stated in the Defendant's Deed and also at the Land Registry is 72 links).

This witness mentioned a plan given to him by Defendant while he was taking measurements. That is plan M.746 done at the instance of the Defendant but which the Plaintiff said she knew nothing about. It is significant to note that the words "no objections" are written on that plan. The Defendant confirmed she did not show that plan to the Land Adjudicators.

Joseph Alexander concluded his evidence by recommending that plan M.746 be cancelled and a new Survey plan be established to show the correct deed measurements for Gloria Martyr and the remainder of the lands to be surveyed for Joan Cheddie.

The Defendant told the Court that she resides at and is the owner of Block and Parcel 1827C 580 situate in the village of Micoud and exhibited her Deed of Sale and Survey plan M.746 lodged as 59/77 dated 2nd February 1977.

She agreed that there was a difference in the amount of land stated in her Deed of Sale and plan M.746 and said that the reason for the difference is because her predecessor in title had a conversation with Mr. Vernon Augustin the maker of plan M.746. She insisted that the land bought by her was from a gate that is marked as **B** on the plan submitted by Joseph Alexander to the end of the property; but also said: "that gate was used by Miss Joan Cheddie and people who worked at the exchange" (the exchange was housed in the Plaintiff's building).

ARGUMENTS

Learned Counsel for the Defendant submitted that this was a simple case of whether the Defendant's predecessor in title conveyed to Defendant what she in fact possessed. He said that the Defendant was a truthful person who acted on what was given to her by her Survey plan M.746 the maker of which seemed to have acted on what Defendant's predecessor in title, Theresa Cheddie told him.

Learned Counsel for the Plaintiff argued that Theresa Cheddie did not have any extra 14 feet to give to the Defendant and therefore plan of Survey M.746 is wrong. She contended that the Defendant was fully aware of her encroachment on the Plaintiff's land.

Learned Counsel urged the Court to accept the report and plan as submitted by Licensed Land Surveyor Joseph Alexander.

CONCLUSION

I agree with both Counsel that this is a simple case.

It is trite law that one can only convey what he or she possesses. The Deed of Sale by Gildette Williams and Theresa Cheddie to the Defendant conveys seventy-two (72) ^{links} by fifty-three (53) depth to the Defendant (schedule noted earlier) and therefore that is all the land the Defendant possesses.

I accept in its entirety the report and plan as presented by Joseph Alexander Licenced Surveyor dated 5th March 1996 and filed in the Registrar's Office on 4th March, 1996 which states:

"..... the lands claimed by the Defendant Gloria Martyr is in excess of lands that was purchased by Deed of Sale dated 25th and 28th February, 1972 the reason being:

- (a) By virtue of Deed measurements of 72 links or 47.52 feet along Philadelphia Row, as compared to Survey measurements of 61.5 feet taken from Plan M.746.

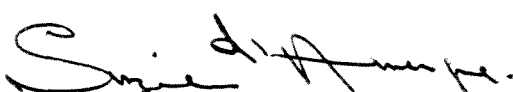
- (b) Information derived from the Land Registry Map sheet 1827C-580 and 581 shows measurements of 47.0 feet which is consistence with the Deed measurements.
- (c) The measurements of survey Plan M.746 complies with the original Deed dated 25th February, 1922 by the Sheriff to Felix Cheddie and not that of Deed dated 25th and 28th February, 1972 by Gildette and Theresa Cheddie to Gloria Martyr.
- (d) My recommendation is to cancel Plan M.746, because it does not represent the correct Deed measurements for Gloria Martyr. A new Survey Plan must then be establish, that would show the correct Deed measurements for Gloria Martyr and the remainder of lands to be surveyed for Joan Cheddie."

My Order is therefore as follows:

- (1) That the Plaintiff is the absolute owner of the portion of land occupied by the Defendant which is in excess of what is stated in her Deed of Sale.
- (2) That the Defendant do forthwith remove the structure and materials on that said portion of land.
- (3) That the Plaintiff is hereby granted a perpetual injunction restraining the Defendant from entering or remaining on that said portion of land.

Damages in the sum of \$3,000.00 to be paid by the Defendant to the Plaintiff.

Costs to be agreed or otherwise taxed.


SUZIE d'AUVERGNE
HIGH COURT JUDGE