



SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996**

Suit No. 902 of 1996

BETWEEN:

1. JULIA MC DOWELL
2. LEA EDRIS MC DOWELL
3. EMILE MC DOWELL
4. EMILY MC DOWELL
5. JULIE MC DOWELL

Plaintiffs

and

MARY MONTOUTE

Defendant

Miss M. A. Valmont for Plaintiffs
Mr. L. Theophyllus for Defendant

1996: December 17 and 19.

J U D G M E N T

MATTHEW J.

By a writ of summons indorsed with statement of claim and filed on October 4, 1996 the Plaintiffs are claiming among other things that they have an interest in land which is registered as Block 1454 B Parcel 485 and are asking that the register be rectified.

On November 6, 1996 the Plaintiffs filed a summons asking for an application for injunction to restrain the Defendant from carrying out any survey on the land or any further dealings until the hearing of the action.

In support of the summons was a rather terse affidavit in which Julia Mathurin stated that she was reliably informed that the Defendant is about to subdivide the land and to sell lots.

The Plaintiffs appended several exhibits to their affidavit.

One such exhibit is a donation by Charles McDowell to the Defendant dated October 5, 1972 of the donor's undivided one half share in a portion of land originally 18 carres but subsequently reduced to 6 carres. Another exhibit of interest is a Court order dated March 31, 1982 by which 12.384 acres of land was allotted to the donor and donee mentioned above and a similar amount of 12.384 acres was allotted to Cynthia Hodge, Epiphane Hodge and Agres F. Hodge.

Something should be said of the background to this case.

Rose Judith McDowell who died on February 24, 1952 claims to have been the owner of 18 carres of land in the Quarter of Gros Islet which because of certain dismemberments had been reduced to 6 carres by the time of her death.

Rose had four children namely:

1. Josephine McDowell who died in 1951;
2. Charles McDowell who died in 1987;
3. Suzanna Hodge who died in 1971; and
4. Mayrod McDowell who moved to Venezuela in 1950 and has not been heard of since. She had no children and is presumed dead.

Josephine had a daughter called Anastasie McDowell who died in 1991 and the five Plaintiffs are her children.

The Defendant is the daughter of Charles McDowell.

The substance of the Plaintiffs' claim is that Charles McDowell made a donation of all the land which formed part of the testamentary disposition of Rose Judith McDowell to the Defendant alleged to be Charles' daughter to the exclusion of the Plaintiffs.

Now the Court order referred to above does not at all relate to the Plaintiffs and the order does not even describe the land. The Plaintiffs however alleged that the land referred to in the order is that which formed part of the testamentary disposition of Rose Judith McDowell and in paragraph 12 of the statement of claim they allege that the Court erred in awarding the land to Charles McDowell and Mary Montoute and should have awarded it to Charles McDowell on behalf of the heirs of Rose Judith McDowell.

It seems from paragraph 13 of the statement of claim that the land awarded by the Court subsequently became registered in the names of Charles McDowell and Mary Montoute and the Plaintiffs claim that was incorrectly done.

Learned Counsel for the Plaintiffs submitted that the application for injunction is to restrain the Defendant from selling any more of the land until the Court is able to determine the rightful share of the Plaintiffs.

Learned Counsel for the Defendant submitted that the application should not be entertained because the Plaintiffs do not have a prima facie case. Counsel submitted that this Court cannot exercise jurisdiction over an order of a Court of similar jurisdiction.

Counsel submitted that if the Plaintiffs were dissatisfied with the order of the Court made on March 31, 1982 they should have appealed to the Court of Appeal but by virtue of Rule 14 of the Court of Appeal Rules it is now too late to do so.

Counsel submitted that the Plaintiffs are barred after 14 years from instituting the cause of action.

Counsel also referred to Article 842 of the Code of Civil Procedure which states in part:

"but no injunction shall be granted unless the Plaintiff gives an undertaking or security to the satisfaction of the Court or Judge for the payment of damages which may be caused by the issuing of the writ."

Counsel submitted that no such undertaking had been given.

Counsel also referred to the **AMERICAN CYANAMID** case and stated that the burden of proving that damages would not be an adequate remedy was on the Plaintiffs and they had not discharged the burden.

Counsel also submitted that in 1984 various procedures or systems were put in place in Saint Lucia to permit parties with interests in land to raise those claims and there was no evidence that the Plaintiffs had taken the opportunities to do so.

Counsel invited the Court to apply Order 18 Rule 19 to strike out the claim of the Plaintiffs. Counsel submitted that the land is registered in the Defendant's name although he had no document to substantiate that.

Learned Counsel for the Plaintiffs had no response to the rather impressive submissions made by learned Counsel for the Defendant. The Plaintiffs seem to have an arguable claim to the right they assert. They are saying they are heirs of Rose Judith McDowell just as Charles McDowell and they should have shared in the balance of her estate.

Although the suit is formulated as though the Court made an error their claim is essentially against Charles McDowell and his donee, Mary Montoute. They are saying that whatever share the Court order gave to Charles McDowell, he ought to have held it for himself and themselves. So they are not in effect challenging the order of the Court.

Article 842 of the Code of Civil Procedure appears to be mandatory but as I have said before the proceedings under Article 841 et seq for a writ of injunction by petition is a substantive relief to be differentiated from an interlocutory injunction under Order 29 of the Rules of the Supreme Court which this application really is.

The proceedings under Order 29 also require an undertaking as to damages but it is not in such mandatory terms. Paragraph 29/1/20 of the United Kingdom Supreme Court Practice 1979 requires only that an undertaking as to damages ought to be given in every interlocutory injunction.

If the Plaintiffs have a triable action and an arguable claim to the land it cannot be right that I allow the land to be disposed of even though the Plaintiffs have not satisfied me that damages would not be an adequate remedy.

I think I should allow the Plaintiffs to have their action tried and to prevent the action becoming an exercise in futility in the event that the Defendant has sold all the land by the time of the trial, I shall exercise my discretion and grant the application sought.

My order is that upon the Plaintiffs giving a proper undertaking signed by them and/or their solicitor and filed in this Court within fifteen days I grant the order of injunction restraining the Defendant until the final determination of this action or until further order from selling, leasing or having any dealings with the land which is the subject matter of this suit.

There shall be no order as to costs.

.....
A. N. J. MATTHEW
High Court Judge