

SAINT LUCIA

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



SULL NO. 246 OF 1996

BETWEEN:

FLORA OCTAVE

Plaintiff

and

FRANCIS SULAL

Defendant

Mr. P. Husbands Q.C. for Plaintiff
Mr. O. Larcher for Defendant

1996: July 19 and 31

J U D G M E N T

MATTHEW J. (In Chambers).

On March 20, 1996 the Plaintiff filed a writ of summons indorsed with statement of claim asking for the following relief:

- (a) damages for trespass;
- (b) an injunction restraining the Defendant from entering or remaining upon a portion of land marked "e"; and
- (c) costs.

In his statement of claim the Plaintiff alleged that she is owner of a portion of land marked "e" on a plan and agreement for partition and she referred in that context to a deed of sale registered in Volume 86, No. 51755 and an order of the Court made on January 18, 1995.

The deed referred to is dated September 28, 1936 and it records a sale of 24 acres of land more or less of the "Jeannette Clare" lands from Antoine Batou to Agnes Mangal and her six children, one of whom is said to be the Plaintiff.

The order of the Court states that the plan of partition survey by Earl Cenac, licensed and surveyor, dated November 11, 1985 in respect of a portion of land at "Jeannette Clare", Marc, in the Quarter of Castries be adopted.

In evidence there is such a plan of survey with divisions and one such division or parcel is marked "e".

The Defendant entered appearance on May 9, 1996.

On the same day of the issue of the writ of summons the Plaintiff applied for an interlocutory injunction against the Defendant in respect of parcel "e". That summons was supported by an affidavit filed on the said March 20, 1996. At paragraph 3 of that summons the Plaintiff alleged that she had sold her interest in the property to Edward Barnard by a deed registered in Volume 100 B No. 72571 and in paragraph 4 she cited:

"That portion of land is now shown to be portion E on the said survey, the lot apportioned to me marked 'e'."

I confess not being able to understand paragraph 4. And in this context I ask when and where it is or was shown the portion of land to be "E".

In evidence there is a deed dated August 21, 1961 and registered in Volume 100 B No. 72571 recording a sale by Flora Octave to Edward Barnard of "all the vendor's rights, title and interest being an undivided one seventh share in and to contiguous portion of land consisting of twenty-four acres more or less of the 'Jeannette Clare' lands."

On May 10, 1996, the Plaintiff filed another affidavit purportedly in support of the application for injunction. In paragraph 3 of this later affidavit, she says "I sold part of my interest in the said property to Edward Barnard by deed registered in Volume 100 B

No. 72571."

This affidavit is different to the first which is still subsisting. Two words, "part of", are inserted in paragraph 3 of the later affidavit. The allegation is not true for Deed No. 72571 does not say she sold part of her interest.

In paragraph 4 of the later affidavit she alleges that the parcel marked "e" is now registered as Block and parcel 1042 B 192.

In evidence was tendered a land register document which indicates that Francis Sulal, the Defendant, and his wife Janie Sulal were given absolute title to parcel no. 1042 B 192 from July 14, 1987, the first registration.

The two affidavits of the Plaintiff allege that the Defendant is occupying land which belongs to the Plaintiff.

In her affidavits, the Plaintiff alleges that by deed registered in Volume No. 114 No. 107850 Edward Barnard and Ada Barnard purported to sell to Francis Sulal a portion of undivided land. The allegation is again untrue.

I have seen the deed referred to and it is dated October 29, 1974. It records a sale by the Barnards of a lot of land measuring 4356 square feet, not a sale of undivided land.

As the Plaintiff alleges in the next paragraph of her affidavit the land sold was defined with boundaries, the Northern boundary being the Marc river.

So clearly paragraph 6 and 7 of both of the affidavits of the Plaintiff are inconsistent.

The Plaintiff says the land which the Defendant presently occupies

is not the portion of land sold to him by Edward Barnard.

In support of the application for injunction the Plaintiff refers to suit 87 of 1987 in which she says she was granted an injunction against the Defendant in respect of the said parcel of land "e" and the Defendant has disregarded the order of the Court.

I have not been shown a copy of the order for what it is worth.

The Defendant filed an affidavit in answer on July 18, 1996. In that affidavit he stated that he bought a parcel of land from the Barnards on October 29, 1974 to be dismembered from the "Jeannette Clare" lands. I have already said that the deed in question says no such thing. He said after he purchased he built a wooden house on that land. The Defendant seems to acknowledge that the lands were undivided when he bought but he says after the partition his vendor and another told him he was occupying what turns out to be parcel "K" and his vendor who had bought all the rights of the Plaintiff put him on little "e" where he has had absolute title since 1987 and where he built a concrete structure without any interruption several years ago.

Learned Counsel for the Plaintiff submitted that the Defendant was not occupying the property sold to him and that is shown by the deed of sale dated October 29, 1974. Counsel does admit that nowhere in the deed does it say the Defendant bought undivided land.

Counsel referred again to the subsisting injunction against the Defendant restraining him from going on to the portion of land in question.

Counsel submitted that whoever sold to the Defendant could not sell him a specific portion of land.

Counsel referred to the following authorities:

1. Civil Appeal No. 2 of 1975 Caesar Dolar v. Martin Lee
June 14, 1976.
2. Ulysses v. Estephane, Magisterial Civil Appeal 4 of
1975, June 14, 1976.
3. Clerk and Lindsell on Torts, Seventeenth edition,
paragraph 17 - 23.
4. Halsbury's Laws of England, Fourth edition, Volume 39,
paragraph 529.

Learned Counsel for the Defendant submitted that at the date of hearing the Defendant has a document in the land Registry in his name since 1987. Counsel said that the Plaintiff has no locus standi for she had sold all her interests in the land to Edward Barnard who in turn sold a portion to the Defendant. Counsel admitted that Defendant was on "K" before he was asked to move to "e".

Counsel referred to Section 23 of the Land Registration Act. Counsel also submitted that Defendant had bought in good faith before any deed of correction.

I need to say something about the deed of correction and in passing to say that I am not bound by any decision of another Judge of the High Court.

On May 12, 1991 there was a deed of correction which sought to correct the deed of sale dated August 21, 1961 between Flora Octave and Edward Barnard. The later deed sought to change the Schedule of the earlier one and to replace it with:

"All the vendor's rights, title and interest being an undivided one sixth share in and to a portion of land comprising sixteen acres of land dismembered from the 'Jeannette Clare' lands."

I think I should set out the Schedule in the earlier deed to see the impact. The earlier deed had the Schedule as follows:

"All the vendor's rights, title and interest being an undivided one seventh share in and to contiguous portion of land consisting of twenty four acres more or less of the 'Jeannette Clare' lands."

At paragraph 3 of her initial affidavit the Plaintiff stated:

"I sold my interest in the said property to Edward Barnard et al by deed registered in Volume 100 B No. 72571."

This affidavit is still subsisting. That statement as I have observed is not a mere slip that can be corrected by an affidavit made several weeks later to indicate that she only sold part of her interest. The said deed at Volume 100 B No. 72571 states that she sold all her rights, title and interest.

And even after thirty years later on May 12, 1991 when the Plaintiff sought to correct the earlier deed the correction did not say that it was part of her interest that she sold.

So on the pleadings, I am not at all sure that the Plaintiff has any interest to protect or that she has locus standi in these proceedings.

Let me say something about this so called deed of correction. When the alleged corrected deed was first made on August 21, 1961 before the Notary Royal it stated that Flora Octave, the vendor. and Edward Barnard, the purchaser, appeared before the said Notary. The document indicated that Flora Octave and Edward Barnard as well as the Notary Royal signed on the original.

The deed of correction starts similarly indicating that Flora Octave and Edward Barnard appeared before the said Notary on May 12, 1991. But the two persons who signed on the original were M. Octave who on the front of the document is said to be the same Flora Octave and the Notary.

On the face of the deed of correction it appears that the purchaser never agreed to the change or the correction of the first deed. Can it really be contended that after a vendor has sold land to a purchaser, thirty years later the vendor can unilaterally change the deed of sale agreed upon by himself and the purchaser? That document is suspect. I refuse to act upon it. It is a falsehood.

As I said before Barnard did not purport to sell undivided land to Sulal and the deed of sale states that he sold 4356 square feet of land which had a specific boundary.

It appears that, and this has been conceded by learned Counsel for the Defendant, the location of the land would have been where "K" is on the partition plan of Earl Cenac.

At paragraph 6 of his affidavit Sulal gives the circumstances as to how he left parcel "K" and went to parcel "e".

His allegation has not been challenged. There is no later affidavit in this matter. The Defendant said he went on parcel "e" and during the land registration and titling project he claimed the land and he was granted absolute title. That is in paragraph 14 of his affidavit and that too has not been nor can it be denied.

Let me say something about the alleged injunction ordered against the Defendant in suit 87 of 1987. From the records no such order was exhibited. What was exhibited was an amended writ of summons. But this is of no moment. If there is in fact an order or injunction in existence against the Defendant which he has

disregarded is this a reason why on different issues I must grant an injunction? I would imagine if the Plaintiff is convinced that the Defendant is in contempt of Court he would be advised as to the next steps. But in my view, it would be wrong to append an order made in a different suit to proceedings in the later suit to lend support to the later claim.

I think I have referred to the summons for the interlocutory injunction which was filed on March 20, 1996. When one looks at the words it appears that the Plaintiff is seeking protection from one who has begun to enter or is threatening to enter her land.

But the facts reveal that the person sought to be enjoined is not beginning to enter or threatening to enter the Plaintiff's land. The Defendant has absolute title, the highest form of ownership under the law, in respect of the land as early as July 14, 1987 and has been there without disturbance until these proceedings.

What the Plaintiff is really asking for is a determination as to the correct ownership of parcel "e". I believe the effect of a finding in favour of the Plaintiff on the interlocutory application would be virtually to decide the main issue on affidavit evidence.

I think learned Counsel for the Plaintiff has introduced a consideration of Article 372 of the Civil Code which deals with compensation. Surely, this is a matter that would have to be vindicated at a full hearing of the case.

I have already commented on the deed of correction but even assuming it were valid besides the mathematical calculation involved in finding the difference between one seventh of 24 and one sixth of sixteen I am not sure of the full effect of the correction in terms of boundaries.

I am not persuaded that the Plaintiff can show or has shown that she has a real chance of success at the full hearing of the case. In my view the balance of convenience dictates that I refuse to grant the application.

I therefore dismiss the interlocutory summons with costs of \$300.00 to the Defendant.

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A.N.J. MATTHEW
Puisne Judge