

IN THE HIGH COURT OF JUSTICE

(CIVIL)
A.D. 1996



Suit No.98 of 1994

Between:

- (1) CALLUM DE MYERS
- (2) CHRISTOPHER DE MYERS
- (3) CECILY DE MYERS
- (4) PAUL DE MYERS
- (5) LEO DE MYERS

Plaintiffs

vs

- (1) HENRY FERDINAND
- (2) ALBERTINE FERDINAND

Defendants

Mrs. P. Nelson for Plaintiffs

Mr. R. Frederick for Defendants

1996: July 12 and 19

JUDGMENT

WARRANTY, 1994.

On February 10, 1994 the Plaintiffs instituted a writ of summons indorsed with a statement of claim asking for a partition of certain property owned by themselves and the Defendants in undivided shares.

The Defendants entered appearance on February 24, 1994. The Defendants did not file a defence but there were lengthy interlocutory proceedings between the Parties.

At the trial it was not disputed that the Plaintiffs are entitled to five-sixths of the property and the Defendants to one-sixth.

Licensed Land Surveyor, Allan Hippolyte, submitted a report to the Court with an accompanying drawing of the proposed partition.

The dispute in this case is as to the location of the Defendants' property.

In his testimony before this Court Allan Hippolyte stated that there is a beach bordering part of the land, measuring a distance of 260 feet. He further said that the property rises from the Anse-La-Verdure river to a ridge, then falls back down to another river to the North. Mr Hippolyte was of the view that the area of or around the beach is the best part of the property and he realized that both Parties would want the beach area. He stated further:

"If a partition is made based on quantum the most adequate way is to give one Party one sixth of the beach front and the other Party five-sixths of the beach front."

Mr Hippolyte also stated that when he went to the area the Defendants were occupying the total beach front and he saw coconut trees, plantain and macamboe planted nearby. He saw a wooden house which was located quite close to the river but it did not fall within the Queen's chain.

He said he also saw a concrete slab on the ground, and it appears that his proposed plan of partition would interfere with that concrete slab.

Besides Hippolyte who gave evidence for the Plaintiffs, Callum De Myers and his mother, Cecily De Myers, gave evidence for the Plaintiff while both Defendants gave evidence.

From the totality of the evidence it seems clear to me that the Plaintiffs were not occupying the land on a daily basis. They did not intimate that they cultivated it or lived there even from time to time, say while visiting in a country house.

The Defendants on the other hand, as the surveyor found, which I believe, or at any rate one of them, was in daily occupation and that is why they were able to occupy the entire beach area.

The title of the Plaintiffs was based on several deeds which were admitted into evidence as C.M.1, C.M.2, C.M.3, C.M.4 and C.M.5 beginning from a sale by Vernon Augustin to Christopher De Myers on June 17, 1953 down to June 1, 1992 when there was a deed of correction to a vesting of assent on the estate of Leland De Myers to the Plaintiffs.

The Defendants' title which was admitted into evidence as C.M. 6 was based on a sale by Clerfand Laurencin to Ferguson Ferdinand of an undivided one-sixth share of 15 carres of the Esperance Estate in the Quarter of Anse-La-Raye.

The schedule to this deed states that the Northern boundary to the land is Ravine Chalon. In exhibit C.M. 11 which is a drawing by John E. Quinland between 1896 and 1897 Ravine Chalon appears to be far from the sea on the Eastern side of the drawing. This probably explains why licensed land surveyor, T.H. Shillingford, in 1969 placed the Heirs of Ferguson Ferdinand on the Eastern section of the land in dispute.

Land Surveyor, Allan Hippolyte, is correct when in his report to the Court dated April 6, 1995 he states that the description on Henry Ferdinand's deed of sale is very vague as no description is given. A one-sixth share of a portion of land cannot be defined.

As I said earlier the Parties have agreed that the Plaintiffs are entitled to ownership of five-sixths of the land while the Defendants are entitled to one-sixth. The quantum does not give rise to any difficulty but what is in issue is the location of the Defendants' one-sixth share.

When Surveyor Shillingford sought to locate the Ferdinands to the Eastern section in 1969 Henry Ferguson clearly objected as stated in the surveyor's report.

The present state of the facts is that the Defendants occupy all the beach front and I do not doubt that the Plaintiffs did not visit regularly or make use of their land.

According to surveyor Allan Hippolyte, a fair method of partition would be to give the Defendant one-sixth of the beach front because they are entitled to one-sixth of the approximately 58 acres of the land. Hippolyte paid no regard to the occupation of the Defendants.

Now it cannot be right since the beach area is the most valuable part of the land to allow the Defendants to retain the entire beach front as their Counsel submitted. And yet some equation must be found to pay some regard to the Defendants' occupation. I am however not persuaded that they have been there from 1942 as I would have expected Shillingford to say something to that effect.

I notice that despite Mr Frederick's attack on the inevitable bias in Christopher De Myers his proposed plan for sub-division, exhibit C.M.7, seems more favourable to the Defendants than the proposed plan of Allan Hippolyte admitted into evidence as A.H.4. The scale of both drawings is 1:2, 500 and it is abundantly clear that surveyor De Meyers gave a longer beach front to the Defendants which would in all probability encompass the Defendants' concrete slab. I am inclined to prefer the proposed plan made by Christopher De Myers rather than that made by Allan Hippolyte.

To take account of the Defendants' occupation and cultivation as well as the extent of the Plaintiffs' ownership I am going to order a sub-division of the land in order that the Defendants obtain one-third of the beach front and the Plaintiffs to obtain the remaining

two-thirds. I am going to ask Mr Allan Hippolyte to modify his drawing to that extent, the costs of which shall be borne by the Parties in equal shares and to report to the Court within six (6) weeks. In addition the Plaintiffs shall pay compensation to the Defendants for any crops lost as a result of the partition as learned Counsel for the Plaintiffs suggested in her closing address.

Further I shall order each Party to bear his own costs of these proceedings.

This matter will be adjourned to Chambers on October 2, 1996 to consider Mr Hippolyte's report and to set up the machinery for the valuation of the crops affected by the order of partition.

A.N.J. MATTHEW
PUISNE JUDGE