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SAINT LUCIA

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

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15 NOV 1996

Suit No. 705 of 1995

BETWEEN:

LESLIE REGINALD CLARKE
Executor of the Estate of
Reginald Clarke

Plaintiff

and

1. TROY DALPHINIS
2. CECILIA FRANCIS

Defendants

Mr. M. Foster for Plaintiff
Mr. H. Deterville for Defendant No. 1

1996: January 10 and 16

JUDGMENT

MATTHEW J. (In Chambers).

On October 5, 1995 the Plaintiff filed a writ of summons indorsed with statement of claim asking for, among other things, a declaratory order that the Plaintiff is owner of 87.381 acres of land, a portion of Point de Caille estate and an injunction restraining the Defendants, their agents and/or servants from entering upon and/or remaining upon a disputed portion of the land.

The first Defendant entered appearance on October 24, 1995 and on the same day by summons applied to strike out the Plaintiff's claim against him under Order 18 Rule 19 of the Rules of the Supreme Court and also under the inherent jurisdiction of the Court on the ground that the Plaintiff's claim discloses no reasonable cause of action against the first Defendant.

In the course of his submissions learned Counsel for the first Defendant went through the Plaintiff's statement of claim and submitted that no allegation was made against the first Defendant

to lead to a grant of the prayer in the statement of claim.

Learned Counsel for the Plaintiff in reply stated that this was a case against the first Defendant in his capacity as agent of the second Defendant and he knew of no rule that says one cannot sue a principal and an agent.

I should point out here that the writ does not show on its face that the first Defendant is being sued as agent of the second Defendant and the statement of claim does not in fact say so either. The reference to an agency in previous proceedings before the Land Adjudicator does not amount to a pleading that Troy Dalphinis is agent in this suit.

Counsel referred to paragraph 18/19/5 of the United Kingdom Supreme Court Practice and said the important thing is where there is some evidence against a person the Court has no power to strike out the action.

The paragraph states:

> "So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a Judge or a Jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out."

I accept the authority of the law cited by learned Counsel for the Plaintiff. It is however, necessary to look at the statement of claim to determine if there is a cause of action or whether it raises some question fit to be decided by the Court.

In brief the statement of claim discloses that Reginald Clarke deceased was owner of a portion of land at Point de Caille containing 87.381 acre which later was declared by the Court to be correctly 72.04 acres and the Defendants challenged successfully the Plaintiff's rights to the Southern portion before the Land

Adjudicator and as a result the Second Defendant was recorded as owner of approximately 5 acres of the Plaintiff's land.

The Plaintiff then attempted to appeal against the Land Adjudicator's decision and failed to do so for whatever the reason before the Land Tribunal Appeals Board became functus officio

That being the state of the proceedings the Plaintiff now seeks a declaration that he is owner of 87.381 acres of the said lands.

Leaving aside for the decision of the trial Judge as to whether or not this action has merit the real issue in the pleadings is whether the decision of the Land Adjudicator becomes nugatory because the Plaintiff could not have his appeal heard. The Plaintiff is no doubt asking that the land awarded to Cecilia Francis, the Second Defendant, be given back to him.

In a sense Troy Dalphinis, the First Defendant, is not material to that decision. He is not personally affected in any way and at first I was attracted by the submissions of learned Counsel for the first Defendant.

However, the Plaintiff is really asking the Court to set aside the decision of the Land Adjudicator which the first Defendant was instrumental in obtaining. For that reason I would say that the first Defendant is not so alien to the present proceedings as would warrant me to strike his name off the writ of summons.

I would therefore refuse the application of the first Defendant but I would not say it is a frivolous application.

I would therefore make no order as to costs.

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A.N.J. MATTHEW
Puisne Judge