

1) Injunctio.
2) Damages

3) Trespass
4) Right of way

5) Land



RUDOLPHE, PETER
V
THEODORE
GRANDERS

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit No. 245 of 1991

BETWEEN:

PETER PAUL RUDOLPHE

Plaintiff

and

1. THEODORE GRANDERSON
2. SYLVESTER JOSEPH
3. STEVEN JOSEPH
4. NICKIE JOSEPH

Defendant

Mr. M. Foster for the Plaintiff

Mr. E. Calderon for the Defendants

1995: April 3 and 6;
May 3.

J U D G M E N T

MATTHEW J.

On July 4, 1991 the Plaintiff filed a writ of summons indorsed with statement of claim asking for the following relief:

1. A perpetual injunction against the Defendants to discontinue trespassing on the Plaintiff's land;
2. Damages in the sum of \$400.00 for damage to the Plaintiff's fence;
3. General Damages for trespass;

4. Costs.

The Defendants entered appearance on October 11, 1991 and they filed a defence and counterclaim on December 16, 1991.

In their defence the Defendants denied that the Plaintiff constructed a road on his land. They also denied the trespass but alleged that the Plaintiff and the Defendants diverted an established right of way onto and from the Plaintiff's land whereon the Defendants and the public pass.

The fourth Defendant denied damage to the Plaintiff's fence.

In a counterclaim the Defendants ask that the Plaintiff reinstates the old right of way to its original state and to make it fit and usable. The Defendants also ask for a sum of \$5,400 being the cost of their labour and transportation in the construction of the said road.

A request for hearing was filed on May 12, 1992.

In his closing address learned Counsel for the Defendants submitted that the Defendants should succeed on their counterclaim as there was no defence to that counterclaim by the Plaintiff.

As regards the claim by the Defendants that the Plaintiff reinstates the old right of way to its original state, the

Defendants led no evidence in support of their allegation in paragraph 3 of the defence that the Defendants and the Plaintiff diverted an established right of way. The preponderance of the evidence is that the Plaintiff built a motorable road on his land with his own funds. In any case this is the evidence I believe.

As regards the claim for \$5,400 the Defendants did not lead evidence to substantiate the claim. The evidence of the Defendants is that they assisted Jane Charlery, the daughter of the Plaintiff, in the construction of the road. I do not believe Jane Charlery built any road. She could not produce a receipt to substantiate her expenses which in an affidavit filed on October 18, 1991 she put at the unbelievable sum of \$107,200.73.

So even though the Plaintiff did not file a defence to the counterclaim, that claim is not maintainable.

At the trial the Plaintiff gave evidence and called Tennyson Gajadhar, a licensed land surveyor, as his only witness. The first Defendant did not appear at the trial. Defendants 2, 3 and 4 gave evidence and they called Oliver Scott, a civil engineer, as a witness, and the Plaintiff's daughter, Jane Charlery, as the other witness.

The Plaintiff stated that he was the owner of 3 carres of land at Bellevue in the Quarter of Dennery and he tendered in evidence his

deed and a copy of his land certificate for parcel 1835B 16. He stated that about 1990 he built a motorable road on his land. He said Mr. Gregory Mongroo built that road for him and he tendered in evidence a receipt for \$1,625.00 which he said he paid Mongroo.

He said that when he was building the road he spoke to Defendant No. 3, the father of Defendant No. 4 and uncle of Defendant No. 2 and asked him for some help since the road would be useful to him to get to his land. He said Steven told him that he is not assisting since he does not want any road.

He said that before he built the road Defendants used a pedestrian path to get to their land and that the path was about 350 feet from his house. He said the road he built passed near to his house on his estate.

He said he called on Mr. Tennyson Gajadhar to visit his land in 1992. He tendered in evidence a copy of the map sheet showing his parcel No. 16 and the Defendants' parcel No. 2.

He said that Nickie Joseph damaged his fence which cost about \$175.00 to replace.

He said as soon as the motorable road was finished the Defendants began to use their vehicles on the road and they would leave their vehicles close to his house. He said before the motorable road was

constructed the Defendants did not pass close to his house.

The Plaintiff said he did not want the Defendants to use his road since they did not help him to build it.

When he was cross-examined he said that the last time he saw Steven Joseph on the land was when Mr. Gajadhar came to visit in 1992. He said Sylvester Joseph was on the land last year. He admitted that there is a public pedestrian right of way on his land but that was about 350 feet from his house.

He said the footpath was still there and is usable but since he built the road the Defendants have stopped using the footpath.

He said it was not true that he had put a fence across the footpath.

He said further -

"I asked Steven to help to build the road as a good neighbour for he could use it as well. He said he was not putting a cent. Yet up to last week Nickie was on the road".

Licensed land surveyor, Tennyson Gajadhar, said he knew parcel 1835B 16 and that he visited that land on March 20, 1992. He said that when he visited the site he saw a motorable road on the Plaintiff's property. He said he had a copy of the Registry Map

Sheet with him and he also observed a pedestrian right of way on the Plaintiff's land. He said that the pedestrian right of way was not blocked to his observation. When he was cross-examined he stated that there is an embankment of about 2 - 3 feet where the vehicular road meets the pedestrian road. He said the latter can be seen but since it was not utilized it is not so clear. He said he could not say there was a diversion from the pedestrian road on to the vehicular road. He further said he could not say it would be made difficult to continue to use the pedestrian road.

Oliver Scott said he undertook an assignment for Steven Joseph some time last year. He said he had to make an evaluation of existing tracks that serve two parcels of land belonging to the Plaintiff and Defendants. He said he found out that there was evidence that a series of footpaths existed and they were inter connected and they traversed both parcels of land.

He said on further examination of the footpaths, there was evidence that an attempt was made to debar persons from using the footpath because of a wire netting fence placed across it. He said because of the recent construction of the roadway an embankment was created on the Western side of the road which made the principal footpath impossible.

I wonder which is the principal footpath.

When he was cross-examined he said a footpath is not a right of way and there was no legality to a footpath. He was shown a copy of the Map Sheet and he said he could not say which was the Plaintiff's property. He said he did not use such a map to conduct his evaluation.

Steven Joseph stated that he occupied a portion of family land at Dennery although it was since 1985 that he left the area. He stated that at the present time there is a motorable road which ends by the Plaintiff's house. He said that they do not use the footpath any more because they now have a motorable road.

He said the Plaintiff did not construct the motorable road but that he changed the footpath even before the road was constructed. He said the Plaintiff had blocked the footpath. He denied that Plaintiff asked him to contribute to the construction of the road.

When he was cross-examined he said the footpath could not be used although he had not tried to use it.

Nickie Joseph stated that he did not travel to the Plaintiff's place on a vehicle before but he has done so after the road was cut. He said -

"Since he cut the motorable road we are using the motorable road. We are not using the old road because Plaintiff blocked the road with wire". He said that he knows the road was built

by Mr. and Mrs. Charlery and he assisted them with transportation to build it.

He said that when his van reaches on the Plaintiff's land it cannot go any further.

Sylvester Joseph stated that he has passed on the Plaintiff's land to go on his grandfather's land. He said Theodore Granderson and himself went on the land to work in bananas for Nickie Joseph. He said further -

"We go in a vehicle and when we reach a junction where the road ends on Mr. Rudolphe's land we go by foot to go on my father's land"

Before the road was made motorable I used to go on my grandfather's land. I used to travel by foot. I followed the footpath".

He said that at present they cannot use the footpath.

Jane Charlery said that she and her husband once occupied the Plaintiff's land before he gave her notice to quit.

She testified that she and her husband constructed a motorable road on the Plaintiff's land which led to his house. She said they got

assistance from Nickie Joseph to construct that road. She said the small road was used by everybody before they cut the vehicular road but everybody had stopped using the small road because there was a big road. She said further -

"If you decide not to use the main road I suppose you can still use the narrow road.

When she was cross-examined she said she did not swear to an affidavit that the road cost \$107,200.73. She said further -

"If somebody wants to use the narrow road he can use it. I do not see any way at all that a person can use it. That is because there is a lot of bush growing on it."

When she was re-examined she said -

"I had to cut the terrace of the old road to build the new road. That cutting of the terrace was one of the reasons why the old road was unusable".

It is not easy to comprehend what Jane Charlery is saying. She certainly seems to have a grievance against the Plaintiff who is her father.

The case turns essentially on the facts.

I find that it was the Plaintiff alone who built the motorable road and that the Defendants did not contribute in any way to the

construction. I believe Plaintiff asked Steven Joseph to contribute since he would be using the road to get to his farm and he flatly refused. I reject the evidence of Jane Charlery in this respect.

I find too that the Plaintiff never changed or diverted the original footpath.

I prefer the evidence of Gajadhar to that of Scott and I find that the footpath is not impassable. As was stated by Gajadhar the motorable road is different to the footpath.

It is my view that the Defendants are using the motorable road because it is more convenient to them to do so. A number of them said as much.

I reject the allegation that the Plaintiff blocked the footpath at any time.

I do not find that the Plaintiff has led evidence to the extent that I am satisfied that Defendant No. 1 committed any trespass. He was hardly mentioned by name.

I find that the Defendant Nickie Joseph did damage the Plaintiff's fence and for that he must pay \$200.00. Quite apart from that I find Defendants 2 - 4 liable in trespass and I award the Plaintiff

general damages in the sum of \$1,000.

My order therefore is as follows:-

1. Defendants 2 - 4 are to pay the Plaintiff general damages in the sum of \$1,000.00;
2. Defendant No. 4 is to pay the Plaintiff special damages of \$200.00;
3. The Defendants are restrained from trespassing on the Plaintiff's motorable road by foot or vehicle;
4. The Defendants are to pay the Plaintiff's costs to be taxed if not agreed.

A.N.J. Matthew

Puisne Judge