

1) right of way
2) Declaration of Title: Title is properly
3) Defendant to be
4) Damages
5) ...
6) ...



SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No.253 of 1989

Between:

MARIE PHILOMENE PAUL

Plaintiff

vs

- (1) CELIA JOSEPH
- (2) SIMON JOSEPH
- (3) One MARCIE

Defendants

Mr W Hinkson for the Plaintiff

Mr A Arthur for the Defendants

1995 : March 24
April 04

JUDGMENT

d'Auvergne, J.

By a writ of summons indorsed with a statement of claim dated June 20, 1989 and filed on July 28, 1989 the Plaintiff sought the following relief.

- 1) A declaration that the Plaintiff is entitled to her land with the boundaries as described in her Deed of Sale including the right of way.
- 2) An order that a surveyor be appointed to survey the Plaintiff's land and to report to the Court.
- 3) An injunction to restrain the Defendants whether by themselves or by their servants or their agents or otherwise from entering or trespassing upon the Plaintiff's land.
- 4) An order that the second named Defendant forthwith pull down and remove the concrete platform and pillars on the said parcels of land.

PAUL,
MARIE
PHILOMENE
CELIA
JOSEPH

- 5) An order that the third named Defendant pull down and remove the wooden shack erected on the said parcel of land.
- 6) Special Damage of \$7,305.00.
- 7) Damages
- 8) Costs
- 9) Further or other relief.

On August 23, 1989 a summons for an interlocutory injunction supported by an affidavit was filed. On January 10, 1990 the order of injunction was filed (and on February 13, 1992 an amendment to include a penal clause omitted in the said Court order of injunction was filed).

The order reads as follows:

It is hereby ordered:

"That the second-named Defendant be restrained whether by himself or his servants or agents or otherwise from continuing to build a concrete structure on a portion of land in dispute situate at Cabishe, near Babonneau in the quarter of Castries.

That an expert in the person of Allan J Hippolyte licensed land Surveyor be appointed to view the said portion of land and report to the Court.

The costs be the costs in the cause."

On the 26th day of January 1990 a defence was filed on behalf of the three Defendants.

A summary of the facts pleaded in the defence is summarized as follows:

The Defendants admitted that the Plaintiff owns two contiguous parcels of land at Cabishe, Babonneau sold to her by their parents. They further admitted that the vendors placed the Plaintiff in possession of the

unsurveyed two parcels of land. They admitted executing a Deed of Sale in favour of the Plaintiff but denied any trespass upon the Plaintiff's lands.

They admitted that a survey was carried out and lodged at the Lands and Survey Department and that the Plaintiff had received 22,448 sq feet of land in accordance with the amount of land conveyed to her in the said Deed of Sale.

The second Defendant denied that the foundation for the building stated in the Plaintiff's statement of claim was partially on the Plaintiff's portion of land and that he damaged the Plaintiff's mango trees, avocado trees, pineapple plants, banana and dasheen plants to the value of \$7,305.00.

The matter was heard on March 24, 1995 and at the trial the Plaintiff gave evidence on her own behalf and called licensed Land Surveyor Allan Hippolyte as a witness whereas Cecila Joseph a sister of the first and second Defendants gave evidence on behalf of the said Defendants.

The Plaintiff told the Court that she was a speculator by profession, who about eight years ago bought two contiguous pieces of land measuring 17,000 sq feet of land 'more or less' and five thousand 5,000 sq feet of land respectively, from the mother of the two Defendants; that the land was not surveyed but the vendor pointed out her boundaries to her and that she immediately entered into possession; that some time after the death of the vendor the first Defendant executed a Deed of Sale in her favour, conveying the amount of land mentioned above, viz 17,000 sq feet 'more or less' and 5,000 sq feet.

She said that a few years after receiving her title she employed licensed Land Surveyor Jerome Joseph to survey her portion of land; but that from the commencement of the

physical survey the said surveyor refused to adhere to the boundary marks that she showed him, whereupon she disassociated herself from the survey and never completed payment of the said survey. Nevertheless that survey was completed as plan C7142B and she tendered it as an exhibit.

The Plaintiff told the Court that she obtained a Court order which authorized Licensed Land Surveyor Allan Hippolyte to view the said property and report to the Court. He surveyed the land and she exhibited a plan and a report of a survey by Surveyor, Allan J Hippolyte. In his report and later in evidence he said that the boundaries of the survey were shown to him by the Plaintiff and that the Defendants objected to the survey on the ground that the Plaintiff had already surveyed her portion.

The cross examination of this witness disclosed that the Defendants are claiming a cedar tree to be one of the boundaries whereas the Plaintiff was adamant that, that boundary is a few feet away from the cedar tree and that she has been in occupation of the land within the boundaries as shown by her to both surveyors from the date of purchase.

Allan Hippolyte, Licensed Land Surveyor told the Court that he obeyed a Court order and viewed and surveyed a portion of land at Cabishe, Babonneau in the quarter of Castries. He told the Court that as he stated in his report (an exhibit which he identified) the boundaries were shown to him by the Plaintiff. He said, *"she showed me trees, a clump of guava trees on one side and something else on another. As a result of the survey I found a concrete house under construction on the western boundary The extent of the encroachment the eastern pillars of the house found themselves on the property I surveyed for Miss Marie Paul."*

Under cross examination he said that notices were served on all adjoining neighbours and that the first Defendant and another gentleman were present and objected to the survey. He said that he only discovered two (2) pegs placed by Licensed Land Surveyor Jerome Joseph shown as 55 and 50 on the latter's plan of survey. He concluded by stating that he believed he saw only 3 or 4 concrete pillars on the Plaintiff's land.

Cecilia Paul, a sister of the two Defendants said that she knew of the two surveys and was present at both, but was unable to show anything to Licensed Land Surveyor Hippolyte since "at that time he was only listening to one of the parties involved in the case, the Plaintiff so I was not able to tell him anything about the boundaries."

She further said, "I am aware and I was present when my mother showed the boundaries to the Plaintiff. I did not agree with what Mr Hippolyte showed on his plan. I disagreed because when my mother sold to her the boundaries which my mother showed her at the time were different from the ones she is showing now. On Hippolyte's plan to the western side when my mother was alive she never knew that that portion of land belonged to her."

This witness insisted that the cedar tree was one of the boundaries, "since my mother sold to the Plaintiff the boundary has always been a cedar tree. . . . My mother showed Miss Paul the cedar tree as the boundary. . . . All the other boundaries are wrong except the Babonneau public road, hence the reason for my objection to Hippolyte's plan."

Under cross examination this same witness said,

"I was present when my mother showed the boundaries to the Plaintiff. I did not walk with them she told me where they were."

She agreed that the Deed of Sale stated 17,000 sq feet 'more or less'. She concluded by informing the Court that the balance of the land belonged to her family.

In reply to the Court this witness categorically stated, "I was not there" when a Mr Dusauzay from the Development Bank and her mother showed the Plaintiff the boundaries of the land sold to her.

ARGUMENTS

Learned Counsel for the Defendants commenced his address by stating that this was a factual situation, and the question to be decided was whether the Plaintiff has encroached on the lands of the Defendants or not. He said that the Plaintiff could not have been in occupation of the lands she claims since the Defendant's predecessor in title was not then aware that, that particular portion of the land belonged to her. He said that both surveys demarcated more than 22,000 sq feet of land for the Plaintiff and that the survey of Jerome Joseph appears to be more accurate since it conveys 22,448 sq feet whereas the survey of Allan Hippolyte allocates 26,082 sq feet to the Plaintiff.

Learned Counsel for the Plaintiff urged the Court to note that the Defendants are still the owners of the remainder of the lands and that the phrase 'more or less' should be given its natural meaning and quoted case Civil Appeal No.7 of 1991 British Virgin Islands delivered by the Honourable Chief Justice Sir Vincent Floissac ELLEN LUCRETIA SKELTON, RONNIE WALSTON SKELTON AND JEFFREY MORRISON SKELTON (as Administrators of the Estate of Ellis Skelton, deceased) vs (1) CONROD MADURO AND OMAR HODGE (as Administrator of the Estate of Hogerth Maduro Sr deceased) (2) ALBERT FAHIE, ICENA VIOLAN FREEMAN AND ALLEGRAM PICKERING (as Administrators of the Estate of Emma Fahie neé Skelton, deceased).

CONCLUSION

In my judgment the question to be decided in this suit is whether the Plaintiff was shown the boundaries she claims the Defendants' predecessor in title showed and sold to her.

The witness who gave evidence on behalf of the Defendants and who claims to be a sister of the Defendants at first said she was present when her mother showed the Plaintiff her boundaries and later said that she was not present, but is aware of the boundaries her mother intended to show to the Plaintiff. This being the case, it is my view that on a balance of probabilities the preponderance of probabilities would fall to the Plaintiff since there is no evidence either to support the Plaintiff's case or to contradict what she has told the Court.

The Plaintiff further said that she entered into occupation soon after the boundaries were shown to her and the witness for the Defendants admitted that the Plaintiff is in occupation of the land within the boundaries she claims but that she gradually did so after the death of the witness's mother. If, as this same witness said her mother was not then the owner of that section of the land, then the logical conclusion is that the Plaintiff was gradually encroaching on someone else's land.

I pause here to note that no such evidence was led to substantiate this conclusion of fact. The evidence before the Court is that the remainder of the lands belongs to the Defendants.

The case quoted by Learned Counsel for the Plaintiff concerns the interpretation of the phrase "more or less." Both parties agree that the Plaintiff is entitled to 22,000 sq feet of land

'more or less'.

In the cited case the Learned Chief Justice said that in order to arrive at the meaning of the phrase '*more or less*' "*we should be guided by the basic principle that where a word or phrase appears in a written instrument (for example a statute, contract, deed, document or court order), the meaning of the word or phrase is derived from the intention of the author of the written instrument.*" He emphasized that the factual background should be taken into consideration.

To me, the factual background is that the 17,000 sq feet 'more or less' was an average in the mind of the vendor of the area of the land she sold to the Plaintiff.

Again, in my judgment, the boundaries of the land sold by the vendor to the Plaintiff should be accepted as what the Plaintiff, the only one present and who gave evidence has stated.

While I agree with Learned Counsel for the Defendants that the 22,448 sq feet as demarcated by Licensed Land Surveyor Jerome Joseph appears to be closer to the amount of square feet sold; based on the reasons stated above, I have no alternative but to accept the 26,082 sq feet as demarcated by Licensed Land surveyor Allan Hippolyte to be the correct amount - the amount intended to be conveyed by the vendor to the purchaser.

The Plaintiff requested that special damage in the sum of \$7,305 be paid to her. She pleaded the particulars of special damage but no evidence was led to substantiate this claim therefore it must fail.

With regard to the third Defendant and the removal of his wooden shack, once more no evidence was led to substantiate

the claim and this too must fail.

Based on my conclusions my order is there as follows:

- 1) That this Court declares that the Plaintiff is entitled to 26,082 sq feet of land as demarcated by Licensed Land Surveyor Allan Hippolyte dated January 16, 1992 including the right of way mentioned in the Plaintiff's Deed.
- 2) That a perpetual injunction be and is hereby granted restraining the Defendants whether by themselves, their servants or agents or whosoever otherwise from entering or trespassing upon the Plaintiff's lands.
- 3) That the second named Defendant do pull down and remove the concrete platform and pillars erected on the Plaintiff's parcel of land.
- 4) That the Defendants do pay costs to the Plaintiff to be agreed or otherwise taxed.

SUZIE d'AUVERGNE
PUISNE JUDGE