

(1) Land (2) Heirs (3) Registration of title (4) Ownership
4) Rectification of Land Register

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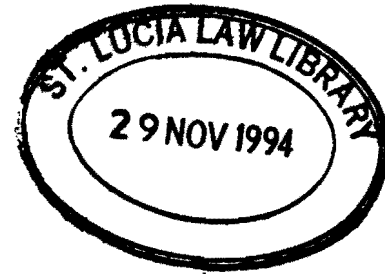
File 22

#043

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. 488 of 1991



BETWEEN:

FREDERICK PROSPERE

Plaintiff

and

1. THOMAS WALCOTT, Executor of
Joseph Felecien, deceased;
2. HORACE AUGUSTIN SYLVESTRE,
on behalf of his mother,
Bernadette Sylvestre;
3. SYLVESTRE FELICIEN; and
4. JOSEPH ANDREW FELICIEN,
Administrator of Mary
Felicien, deceased

Defendants

APPEARANCES:

Mr. P. Bledman for Plaintiff.
Mr. M. Michel for Defendants Nos. 1 and 4.
Mr. D. Theodore for Defendants Nos. 2 and 3.

1994: October 28;
November 8, 10 and 17.

JUDGMENT

MATTHEW J.

Phillip Montoute deceased owned several portions of land in his

lifetime. Upon his death he had three surviving sons; Edmund, Ernest and Rene. The three sons became entitled to a one-third share of all his lands. This case pertains to lands which formed a portion of Beausejour estate and in particular to a portion measuring 19.48 acres.

The Plaintiff claims to have bought the one-third share of Rene in all his father's lands. The Plaintiff is alleging that the portion of land measuring 19.48 acres rightly belongs to the heirs of Phillip Montoute and therefore the Defendants who are registered with provisional title to the said portion of land have deprived him of approximately 6.49 acres of land.

The Plaintiff's statement of claim filed on December 6, 1991 was originally issued against four Defendants three of whom were deceased long before 1991. As the case began to unfold I substituted the proper Defendants to the case. In his statement of claim the Plaintiff claimed the following remedies:-

- (1) For a declaration that the area of land measuring 7.50 hectares or 19.48 acres dismembered from the Beausejour Estate in the Quarter of Gros Islet as shown on plan of Survey G.I. 941 record No. 250/76 is the property of the Heirs Phillip Montoute and not prescribed by the Defendants.

- (2) A Declaration that the Plaintiff is entitled to a 1/3 share of the said portion of land having purchased from Edmund Montoute one of the heirs of Phillip Montoute.
- (3) An Order under S.98 (1) of the Land Registration Act for the Rectification of the Land Register in respect of Parcel No. 4966/89 by deleting the names of Joseph Felicien, Bernadette Sylvestre, Sylvestre Felicien and Mary Felicien and replacing them by Heirs Ernest Montoute, Heirs Rene Montoute and the Plaintiff Frederick Prospere.
- (4) An Order for the issuance of a Certificate granting absolute Title to the Plaintiff of his 1/3 share of the remaining lands of Phillip Montoute, that is to say, 12.8 acres.
- (5) Such other directions as the Court may deem fit.
- (6) The Costs hereof.

The first and fourth Defendants entered appearances on July 7, 1992 and December 27, 1991 respectively. The second and third Defendants entered appearances on June 30, 1992 and June 26, 1992 respectively.

Defendants 1 and 4 filed their joint defence on July 7, 1992. In their defence, besides a general denial of the Plaintiff's claim in paragraph 14, they set up a defence of prescription.

On July 8, 1992 Defendants 2 and 3 filed a joint defence and they also set up a defence of prescription. All the Defendants alleged that they would rely on the fact that they were awarded title under the land registration system.

The second and third Defendants also counterclaimed. In their counterclaim, among other things, they asked for a declaration that the Plaintiff is not entitled to the land claimed by him in the action or to any part thereof; and for an order that the Defendants be entered in the land register as absolute owners of the land claimed by the Plaintiff.

A request for hearing was filed by the Plaintiff on December 3, 1992.

At the hearing the Plaintiff gave evidence on oath and called Charles Quinlan as his only witness. Thomas Walcott and Sylvestre Felicien gave evidence on oath and the only witness for the defence was Adrien Felicien who is a sister of Sylvestre Felicien and also of Joseph Felicien and Mary Felicien now deceased.

Frederick Prospere stated that he purchased all the rights and

interests of Edmund Montoute and he tendered in evidence a deed of deposit of a document purporting to be a receipt by Edmund Montoute and a deed of sale by Edmund Montoute to himself in support. He stated that out of a portion of land containing 36 acres, a smaller portion of 18 acres was removed by Joseph Felicien deceased.

He tendered a deed of sale indicating that Phillip Montoute on January 30, 1934 had sold to Nemorin Felicien, the father of the real Defendants, 5 2/3 carres of land more or less and he alleged that the land sold came from the portion of land containing the 36 acres.

I should like to depart from this testimony of Frederick Prospere to say something about the phrase "**more or less**". Experience has shown that the phrase means exactly what it says. In the early days when surveys were rarer than now a vendor would normally sell a portion of land from a distance, simply looking at the land and estimate that it was 10 acres more or less for example. It was never a surprise that when the land sold was actually surveyed it contained 25 acres. It was hardly even found to be 8 acres.

Prospere also tendered a plan of survey dated December 19, 1921 in respect of a portion of land containing 38 acres 0 roods and 2 perches. The plan indicates that it was done at the instance of Nemorin Felicien and that the survey was carried out on October 3, 1912 and February 4, 1921.

The Plaintiff's case is that the portion of land sold by Phillip Montoute to Nemorin Felicien was the Western half of the land indicated by the 1921 survey. But of course no plan was actually drawn or found consistent with the 1934 purchase.

On the 1921 plan of survey there are some vertical broken lines indicating a division of the land in almost two equal halves. There is no indication that the lines were placed there by the surveyor. The evidence of the Plaintiff is that in 1978 Joseph Felicien took him to see the land and told him that the Western half was Joseph's land and the Eastern half as well as land to the North of the plan was land belonging to Phillip Montoute.

Prosperre tendered two plans drawn by Gerald Guard, licensed land surveyor, in July 1976 which in effect divided the land in the plan drawn by Adrien Monplaisir, land surveyor, on December 19, 1921.

Prosperre also tendered the survey reports in respect of the 1976 surveys. He stated that the two surveys were done at the instance of Joseph Felicien deceased. He stated that Joseph attempted to get title by prescription to the Eastern portion of the land but he failed. He stated that he made a claim for his 1/3 share of all Phillip Montoute's land before the land adjudicators but they did not entertain his claim; but the heirs of Nemorin Felicien obtained provisional title to the Eastern portion of the land demarcated on the 1921 plan of survey.

The Plaintiff asked the Court in effect to cancel the provisional title of the Defendants and declare that the land which measures 19.48 acres is the property of the heirs of Phillip Montoute so that he can obtain his one-third share of that land.

When he was cross-examined by Mr Michel he said he had looked at Mr Guard's reports and had seen where it stated that the survey began on September 26, 1973 for Joseph Felicien, also called Emmanuel Felicien or Mr Mann. He stated also that he had seen where it was stated that the survey was being carried out for the purposes of prescription. He further agreed that Joseph Felicien had filed a petition for prescription in the High Court in 1978 and the other heirs of Nemorin Felicien opposed it on the ground that it should have been a claim for all the heirs of Nemorin Felicien. He said he would not agree that it was when all the heirs of Nemorin Felicien claimed the land before the land adjudicators that they obtained title by long possession; but he admitted he said that during the land registration project the heirs of Nemorin Felicien applied and they obtained title.

It was put to him that Joseph Felicien never told him that the Western portion of the land belonged to the Feliciens and the Eastern portion belonged to Phillip Montoute. He replied that Joseph Felicien did tell him so.

He said that when his claim was not accepted he did not appeal to

the Land Adjudication Tribunal and from the time the land adjudicators turned him down he did nothing.

He was also cross-examined by Mr. Theodore along the same lines and it is unnecessary to restate the same replies. However he told Mr. Theodore that on the same day the land adjudicators rejected his claim, they did not accept his claim forms and so he left them on their desk and went away. He repeated his evidence of what Mr. Mann had told him in 1978 and said that was so even though Mr. Mann had begun to take steps to prescribe from as early as 1973. It was put to him that he was taking advantage of the death of Mann Felicien because he knows Mann is not able to come to contradict him. He replied that was not the case.

It will be observed that by paragraph 9 of his statement of claim the Plaintiff alleged that in 1977 by High Court Petition No. 388 of 1977 Joseph Felicien claimed an area of 19.48 acres of the Beausejour land on the grounds that he had been in possession of the lands as undisturbed owner for over thirty years.

The evidence of Quinlan made no impact and he was not cross-examined by either Counsel for the defence. All he said was that some time in 1987 he and Prospere went to visit a portion of land at Beausejour. For a start the difference in time of the visit between the Plaintiff and Quinlan is 9 years. He stated that Mr. Mann showed them different places and he gave a description of land

that is formed in an "L" shape and spoke of a Montoute. He also stated that Mann showed them an "L" shape land which belonged to Felicien and later he said Mann showed the "L" shape as belonging to Prospere. Nothing more need be said of Quinlan's evidence.

Thomas Walcott stated that he knows certain land in which the Feliciens have an interest. He said the extent of the land was 5 3/4 carres and 19 acres in two contiguous portions of land. He said he paid for the two surveys done by Gerald Guard. He said he first became familiar with the land from about 1970. At the time there was only one portion of land which was enclosed by a barbed wire fence and subsequently the enclosed land was divided into two portions. He stated that Joseph Felicien was at the time in occupation of the lands.

He stated that he was involved in the process of the claim by the Feliciens before the land adjudicators and he tendered in evidence the claim forms as well as the land certificate in respect of the disputed land. As indicated at the beginning of the judgment Walcott is the first Defendant by virtue of his grant of probate No. 10 of 1984, to the estate of Emmanuel Felicien deceased. He also tendered in evidence a copy of his grant.

Walcott also tendered in evidence a plan of survey drawn by licensed land surveyor, Girard, and dated October 28, 1957. The plan indicates that the survey was commenced on August 27 and

completed on August 31, 1957. It is in respect of a portion of land containing 21 acres 3 roods and 28.8 perches. It is stated to be a portion of the Beausejour estate being the vacant possession of Labrune Ferdinand.

On Monplaisir's plan surveyed in 1921 the adjacent owners on the Eastern side of the 38 acres 0 roods and 2 perches is given as land belonging to Labrune Ferdinand. It would appear that after Girard's 1957 survey the land became Crown lands and this explains the reason for Guard's 1976 survey giving the adjacent owners on the Eastern side of the Eastern half of the land on Monplaisir's plan as Crown Lands.

The adjacent owners on the Western side of the land surveyed by Girard in 1957 are the Heirs of Nemorin Felicien. It will be observed that of the many persons appearing at the 1957 survey was Rene Montoute, son of Phillip Montoute, and it is recorded that there were no objections to the survey.

When he was cross-examined by Mr. Bledman he stated that he did not know of anybody called St. Hill Joseph who is named as owner or occupier of the land immediately to the North of both of the 1976 surveys. He also admitted hearing the evidence of Sylvestre Felicien that there was a bit of property between his father's land and the Crown Lands which belonged to Phillip Montoute.

Adrien Felicien, also a daughter of Nemorin Felicien, stated that she was born on October 12, 1909 in St. Lucia. She stated that her father had land in Beausejour and she was familiar with that land. She said she left St. Lucia in 1926 to go to the Guyanas but before she left her father had already fenced the land with barbed wire where he kept pigs and sheep. She said that is the same piece of land she knows today as being owned by the Felicien family.

When she was cross-examined by Mr. Bledman she stated that she returned to St. Lucia in 1981. She said from the time she knows herself her father had the land. She said she knows it was Mondesire who surveyed her father's land.

Sylvestre Felicien, the third Defendant, aged 98 gave evidence in a clearer fashion than many persons, one quarter of his age. He was examined in chief extensively. I even thought it was too much. He stood the test. He stated that Joseph Felicien was his brother and Bernadette Sylvestre and Mary Felicien were his sisters and all three of them were already dead.

Let me observe that the land certificate which Mr. Walcott tendered in evidence states in the proprietorship section that Joseph Felicien, Bernadette Sylvestre, Sylvestre Felicien and Mary Felicien hold the land as trustees for sale. That no doubt was the reason why they were named as Defendants in this suit although as I have stated earlier at the time the action was commenced on

December 6, 1991 three of them were already dead.

Sylvestre Felicien stated that his father owned 10 carres of land at Beausejour and that his father bought the land from Phillip Montoute. He said Adrien Monplaisir surveyed the land for his father and he was present at the survey. He stated that after the survey his father fenced all around the land with barbed wire and kept cows loose on the land. He said when the posts for the fence became rotten they would replace them from time to time. He said he was not aware of his father's deed. He said that outside of his father's fenced land was a piece of land, not a very large piece, belonging to Phillip Montoute which faced Cap Estate.

He said nobody else came on the land within his father's fence. He said his father died in 1938 and after his father's death he was alone on the estate and he kept a few animals there, and repaired the fence when it fell down. He said he was there for a time but later Joseph, his brother, who was away from St. Lucia returned and as he had nothing to do he left the place for Joseph.

He stated that Joseph and a lady with whom he lived began to keep pigs on the land. He said they also planted bananas there and after wards they gave up the banana business and had a butcher's stall on the land.

It was stated in evidence by Quinlan that the land was not arable

lands which were ideal for crop cultivation. He said the land was not cultivated but was looking barren and the soil was sandy. He said there were no houses on the land. This is an important aspect for purposes of prescription.

He stated that after Joseph died nobody occupied the land but he could not say exactly for he was not there all the time. The probate shows that Joseph died on September 29, 1982. I should also point out that the first registration of title of the land in question was November 19, 1986.

Mr. Bledman did not spare him a formidable cross-examination. He did well. Under cross-examination he admitted that there was a piece of land between the land of his family and Government land on the Cap Estate side. He also said he did not remember any body called St. Hill Joseph in the area.

He was also cross-examined by Mr. Michel. When questioned he said that when the land was fenced by his father Phillip Montoute was still alive and was in Gros Islet. He said his father and Phillip Montoute had no dispute as to the area fenced and they in fact were good friends and died as such. He said the land was fenced and occupied by his family all the time and they had no problems with anyone over the land which they had fenced.

He stated that up to the time Emmanuel died he was still fixing

posts for the fence. He said that the area which was fenced is the same area that was surveyed by Adrien Monplaisir.

The Plaintiff is in effect proceeding under Section 98 (1) of the Land Registration Act. In fact in his prayer to his statement of claim he asked for an order under section 98 (1). The sub-section reads as follows:-

"Subject to the provisions of sub-section (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake".

He is attacking the provisional title granted to the Defendants. He has neither pleaded nor given any evidence as to any fraud on the part of the Defendants so presumably he is relying on a mistake.

In paragraph 12 of the statement of claim the Plaintiff pleaded that as a result of the misdescription of the occupier of the land on the Northern boundary of the prescribed land the heirs of Phillip Montoute were not served with notice of the intended survey nor were they notified of the petition for prescription. The same point is referred to at paragraph 13 (c) of the statement of claim. It will be noticed that the Defendants did not obtain title as a

.. result of any petition for prescription made under **Article 2103A** of
.. the Civil Code and the relevant rules.

It is not clear to me that there is a misdescription of the adjacent owners on the North of the prescribed lands. The relevant plan puts St. Hill Joseph to the North. Because Thomas Walcott and Sylvestre Felicien do not know of any one called St. Hill Joseph does not make the description wrong. And who says that in 1976 Phillip Montoute was the owner of land to the North. True he appears to have been the owner in 1921 and Rene Montoute appears to be the owner or occupier in 1957 but that does not mean the Montoutes remained owner or occupier in 1976 and that is so even if it is correct that there are no recorded sales of the land by Montoute. When lands are prescribed there is usually no document evincing sales.

The Plaintiff relies to a large extent on the evidence of Sylvestre Felicien to support an allegation that the Montoutes owned land to the East of the land purchased by Nemorin Felicien in 1934.

Sylvestre's evidence is not decisive as to the location of the land which he said Phillip Montoute owned just next to his father's land. When he gave evidence in chief he said the piece of land which Phillip Montoute owned next to his father faced Cap Estate. This would place the location to the North of the prescribed lands. When he was cross-examined by Mr. Bledman he placed the location

between his family land and the Government land on the Cap Estate side. A location between his family land and the Crown lands would place the piece of land to the East of the lands purchased by Felicien. This latter location is the correct one according to the Plaintiff. But even here the witness reiterates that it was on the Cap Estate side which I have said before is to the North of the prescribed lands.

It is true that the 1934 deed describes the Eastern boundary to be lands owned by Phillip Montoute. All that can be said from that is that at one point in time Montoute owned land to the East of the land purchased by Felicien. That description in the deed and even the testimony of Sylvestre Felicien could never mean that the lands in the Eastern half of the Monplaisir plan could never be prescribed at a later date.

In 1957 when Girard drew his plan of the vacant land he shows that it was the Feliciens and not the Montoutes who owned land to the West of the lands that were being claimed by the Crown and formerly owned by Labrune Ferdinand. As I stated Rene Montoute was present at the 1957 survey and made no objections. He did not say that the land to the West of those claimed by the Crown belonged to himself or his family.

In support of his claim Plaintiff also relies on the fact that Joseph Felicien told him in 1978 that the prescribed lands belonged

to the Montoutes. This statement would of course be inconsistent with Joseph's earlier actions. As early as 1973 Joseph had employed Guard to survey the land for the purposes of prescription and he followed this by a petition for prescription on his own behalf in the High Court in 1977. Yet a year later according to Prosperre he told a virtual stranger that the land he had been claiming for himself, as opposed to a claim for himself and family, belonged to another.

Mr. Theodore suggested to him that he was taking advantage of Joseph's demise to make that statement. Of course he denied the suggestion. But in my view this is a case where actions speak louder than words and there is no doubt in my mind that the Plaintiff is not speaking the truth in that context.

What I really believe is that Phillip Montoute sold a portion of land containing $5 \frac{2}{3}$ carres more or less to Nemorin Felicien. Nemorin occupied all the land shown in the plan drawn by Adrien Monplaisir. Joseph later found out that the land was much greater in extent than $5 \frac{2}{3}$ carres so he got a survey done to remove $5 \frac{2}{3}$ carres and apportion that area as the land pertaining to the deed and therefore belonging to the heirs of Nemorin Felicien including himself and the remainder he would claim as his own by long possession. His plan failed when other members of the family opposed his petition in the High Court.

The Defendants and particularly Sylvestre Felicien give credible evidence of long possession. Since 1921 or certainly by 1926 they had fenced the land surveyed by Adrien Monplaisir. There is evidence that they purchased in 1934. Assuming that the sale interrupted prescription it was still possible for them to prescribe after that date and both Mr. Theodore and Mr. Bledman agree on that. The provisional title was first recorded in 1986 so from 1956 for the latest time for prescription could begin to run.

So the evidence of the Plaintiff and his witness have done nothing to indicate that the Defendants could not have legally prescribed the ownership of the 19.48 acres. On the other hand the Defendants have given strong evidence to support their claim for prescription.

But the Defendants have not got to satisfy me of the quality of their acts which warranted adverse possession. They already have provisional title. It is the Plaintiff who must satisfy me of error or fraud on the part of the Defendants to cause my cancellation or amendment of the Defendants' title. This he has failed to do.

There is another issue. The Plaintiff claimed the land in issue before the land adjudicators and his claim was refused. He took no further action in the matter. In suit 287 of 1992 between PHILLIP BERNADINE V STANISLAUS MODESTE decided on September 23, 1993 the Plaintiff asked me to cancel a title made to the Defendant's

predecessor. I referred to SKELTON AND OTHERS V SKELTON (1986) 37 W.I.R. 177 in the course of my decision and I dismissed his action. Bernadine had failed to appeal against the decision of the Adjudication Officer within the specified time limit.

I followed SKELTON'S case in a later case No. 628 of 1992 between MAURICE DANTES V CECILE BIBIANA JOSEPH decided on June 1, 1994.

In both cases I stated that Skelton's case gives an idea of the kind of mistake that is contemplated.

The headnote of Skelton's case reads as follows:-

"The appeal procedure provided by section 140 of the Registered Land Ordinance was appropriate if the final decision of the Adjudication Officer was incorrectly recorded in the Land Register, but it was not appropriate where a challenge is made to findings of fact reached by the Adjudication Officer even though these were in effect embodied in an entry in the land Register. The correct procedure for an appeal in the latter circumstances was an appeal in accordance with the procedure under section 23 of the Land Adjudication Ordinance."

In the Dantes case I stated at page 11 that the procedure under **Section 98** of the Land Registration Act of St. Lucia is identical

to **Section 140** of the Registered Land Ordinance of Tortola.

The Plaintiff is in the same position as Phillip Bernadine and Maurice Dantes in the cases mentioned above.

The action is dismissed with costs to the Defendants to be agreed or taxed.

As regards the counterclaim I order that the Defendants be registered as absolute owners to the land indicated in the land certificate tendered by Thomas Walcott and in effect the land claimed by the Plaintiff.

A.N.J. MATTHEW
Puisne Judge