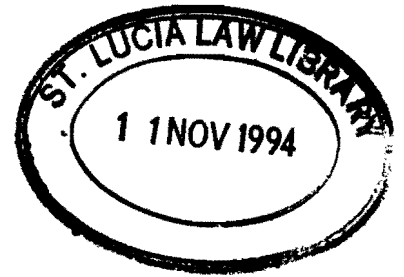


SAINT LUCIA



IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No.491 of 1994

Between:

STANLEY MARAJ-MALAYKHAN
Duly appointed Attorney of
Thomas Lovett Juliet

Plaintiff

vs

GREGORY THOMAS

Defendant

Mr Marcus P Foster for Plaintiff

Mr Mario Michel for Defendant

1994: July 24
September 28

JUDGMENT

d'Auvergne, J.

On July 7, 1994 the Plaintiff applied Ex Parte by affidavit for injunctive relief in those terms:

"That I humbly crave this Honourable Court's indulgence to grant an injunction stopping Mr Gregory Thomas, by himself, servants and or agents from any further construction until the determination of this matter in a Court of Law."

The usual undertaking as to damages was given.

On the said date an order was given which reads as follows:

- 1) That the Defendant be restrained by himself his servants or agents from continuing any construction whatsoever on the property described as Block 1052B, Parcel No 580.
- 2) That the Defendant, his servants or agents be restrained from trespassing on the said property until further order.

A Penal Notice to the Defendant was also inserted.

I pause here to note that there was no returnable date as is expected on an order of that type.

This application was heard one lunch-time during the heavy June Assizes. The urgency of the situation urged the Court to hear the matter and through inadvertence the returnable date was omitted.

By summons and affidavit filed on the 12th day of July 1994 the Defendant applied to the Court under Order 32 Rule 6 of the Rules of the supreme Court 1970, that the said Order of July 7, 1994 be set aside.

The Plaintiff filed an affidavit in reply on July 19, 1994 and on July 20, 1994 the matter was heard.

In order to appreciate the arguments I now state a summary of the facts.

The Plaintiff is the duly appointed Attorney of Thomas Juliet who he states is the legitimate son of Alfred and Elsie Juliet; that on April 10, 1970 Alfred Juliet appointed Morgianna Sebastien (nee Juliet) by Deed of Deposit of Power of Attorney to be his attorney in relation to all the property he possessed.

Morgianna Sebastien also called Francis Sebastien on April 21, 1970 took out Letters of Declaration of Succession (as Attorney of Alfred Juliet) of all the immovable properties passing on the death of Alfred Juliet's father the late Eliazar Robert Juliet.

On December 23, 1970 Anita Baptiste also called Anita Jn Baptiste, the niece of Alfred Juliet deposited at the Saint Lucia Registry a document which constituted a gift of property to both herself Anita Baptiste and Alfred Juliet's sister Francis Sebastien also called Morgianna Sebastien. That document conveying the gift of property was sworn before a Notary Public one William Turner in the State of New York and is dated July 10, 1968.

Alfred Juliet died on August 4, 1971.

On June 19, 1990 a deed of partition between Francis Sebastien also called Morgianna Sebastien and one Julietta Louis was registered at the Land Registry in which the parcel of land described in that second schedule of that deed of partition comprising of 1.43 acres or 0.58 hectares was noted as belonging exclusively to Francis Sebastien. Eight days later on June 27, 1990 Morgianna Sebastien also called Francis Sebastien sold that said portion of land to Agatha Sonson who in turn on November 22, 1993 sold it to Gregory Thomas the Defendant. This parcel of land is registered in the Land Registry as Parcel 1052B 580 in the registration quarter of Gros-Islet.

At the Ex Parte hearing on July 7, 1994 Counsel for the Plaintiff told the Court that the Plaintiff as Attorney for Thomas Juliet, the rightful heir of Alfred Juliet had written to the Defendant in October 1993 requesting him to cease the working of, clearing and construction he had commenced on his (Thomas Juliet's) land. The Defendant ceased his operations but commenced again, this time at a very rapid rate. Once more another letter was sent requesting that the Defendant stop work but instead the Defendant and his workers worked from dawn to twilight and even told Counsel for the Plaintiff, that no judge or lawyer could stop him from doing what he had started.

Counsel told the Court that because of the urgency of the situation since the Defendant was accelerating the construction with such

speed and fearing a concrete structure would be completed within a short time he had no alternative but to apply under Order 29 Rule 2.

Having listened to Counsel and following the general principles in respect of interlocutory injunctions and having accepted Counsel's argument that there was a serious question to be tried, and that he had a good arguable claim to the right he sought to protect, I granted the interlocutory injunction in the form stated at the commencement of this judgment.

At the hearing of the summons to set aside the order of July 7, 1994, Learned Counsel for the Defendant gave the entire history of the portion of land in question and the Court became enlightened as to the various transactions that had taken place with regard to the said portion of land.

Counsel pointed out many paragraphs of the first affidavit of the Plaintiff which he said were misleading to the Court and gave reasons why he said so. He contended that Gregory Thomas was the absolute owner in title of the said portion of land registered as 1052B 580.

Counsel asked the Court to note the strange affidavit in reply where the Attorney for the Plaintiff states that he undertakes to be personally liable in damages if an adversarial award was made.

He urged the Court to discharge the order of injunction with costs to the Defendant.

Counsel for the Plaintiff gave the Court a ball by ball commentary of what took place when and after the order of injunction was served on the Defendant.

He then pointed out to the Court that the sequence of the transactions with regard to the land in question appeared irregular. He pointed out that the land according to the documents had already been donated to Morgianna Sebastien also known as Francis Sebastien in 1968 (deposited in December 1970) yet she deposited a Power of Attorney to her from Alfred Juliet in April 1970 (with regard to the same property). He quoted various articles of the Civil Code of Saint Lucia which dealt with gifts inter vivos and concluded that the gift donated to Morgianna Sebastien was null and void; therefore the land could only have been sold by Power of Attorney which was no longer a valid document on June 27, 1990 since Albert Juliet died in 1971, consequently Morgianna Sebastien had no power to sell by Power of Attorney the property of a dead man.

In reply Learned Counsel for the Defendant argued that the maxim 'delay defeats equity' would apply to the Plaintiff who was now trying to claim the land twenty-three years after the death of his father and concluded that by Section 23 of the Land Registration

Act 1984 the absolute title of the land in question was now vested in the Defendant.

CONCLUSIONS

Since the object of an interlocutory or interim injunction is to maintain the status quo pending the trial of matters in dispute, or to stay further injury, it therefore follows that I must be satisfied that this is a clear case for the Courts to interfere to preserve property without awaiting for the right to be finally established.

Halsbury's Laws of England, Fourth Edition, Volume 4, Paragraph 953 at Page 537 the author states:

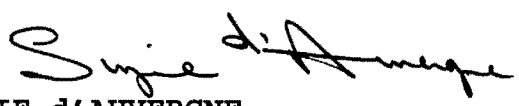
"However, where there is no doubt as to legal rights an interlocutory injunction will be granted."

Having heard both Counsel I cannot say that I am satisfied that the Plaintiff does indeed have a good arguable claim to the right he states that he seeks to protect.

Therefore I shall set aside the order of injunction granted on the 7th day of July 1994 and accordingly my order is as follows:

Injunction granted on July 7, 1994 is hereby discharged 

Costs to be agreed or otherwise taxed.


SUZIE d'AUVERGNE
PUISNE JUDGE