

IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
A. D. 1990

(Civil)
Suit No. 42 of 1989

BETWEEN:

PEDRO MC CORDIE JONES	PLAINTIFF
AND	
SYLVIA BROWNE	DEFENDANT

Before The Honourable Mr. Justice Lloyd G. Williams, Q.C.
(IN COURT)

Appearances: Sir Probyn Inniss and Angela Inniss for the Plaintiff
Henry Browne for the Defendant and afterwards Hesketh Benjamin

1990, March 21, 22 and 23

J U D G M E N T

WILLIAMS, J.

At the outset of the hearing Dr. Browne appeared for the Defendant but during the trial he withdrew from the case with leave of the Court and Mr. Benjamin took over the conduct of the case on behalf of the defendant.

By a writ and statement of claim filed on the 23rd day of February, 1989 the plaintiff sought the following reliefs against the defendant.

1. A declaration that the defendant is not entitled to occupy the plaintiff's land or the dwelling house thereon.
2. Possession of the said land and dwelling house and

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damages.

By a defence filed on the 16th day of May, 1989 the defendant stated -

1. That at all material times she was and is the beneficial owner of the house and undivided equity in the land on which the said house is placed.
2. In the alternative she occupied the said property on the authority of a licence coupled with a grant and
3. That irrespective of whom the property was vested in it was subject to her interest and or licence in same.

By her Will dated the 12th day of March, 1977 Amy Hanley devised her land and the wall-house thereon situated at Market Street, Basseterre, St. Kitts to Beryl Ursula Virgil and Pedro Mc Cordie Jones for their own use and benefit absolutely provided that William Browne, the husband of the defendant, who was then living in the said wall-house, had a life interest only therein.

Amy Hanley died on the 6th day of January, 1980 without having altered or revoked her said Will which was duly proved by the Executors therein named on the 24th of September, 1980 and a grant of probate of her estate was issued.

By deed of disclaimer dated the 15th day of July, 1988, one of the two devisees Beryl Ursula Virgil, disclaimed all estate and interest in the aforesaid land and property at Market Street in favour of her son Pedro Mc Cordie Jones the plaintiff in this suit.

By a deed of assent dated the 15th day of July, 1988 the Executors of the Will of Amy Hanley vested in Pedro Mc Cordie Jones the said land and dwelling house mentioned herein.

By letter dated the 21st day of July, 1988 the plaintiff through his Solicitors requested that the defendant deliver up possession of the said dwelling house in which the defendant resides but to date the defendant has not complied with the said request; hence the present proceedings.

The case for the plaintiff is that Amy Hanley is his great great

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Aunt and that he and his mother Beryl Virgil took care of her financially and otherwise before and up to her death.

He said he knew William Browne, and knew him to be residing on the land in question in a concrete structure approximately 20 feet by 12 feet up to the time of his death. That William Browne was a carpenter and carried on his trade on the said premises in the said building. That William Browne later got married to the defendant and that after his death in November, 1982 the defendant continued to live in the said concrete structure on the said land. He contends that the defendant has no right or interest to the land in question or the building thereon and that he has requested her to vacate the said premises but to date without success.

He says it is his intention to develop the said property by constructing a two-storey building thereon, the lower floor for commercial purposes and the upper floor for residence, but that due to the failure of the defendant to vacate the said premises he is unable to put his plans into effect.

Beryl Virgil gave evidence on behalf of the plaintiff, she stated that she knew Veronica Holder mother of Amy Hanley. That Veronica Holder died in June, 1956 and that Veronica had purchased the land in question from William Browne, husband of the defendant in 1947 for the sum of £53.

She says Veronica Holder, Amy Hanley, William Browne and herself are all relatives. That there were two buildings on the land in question a wooden building in which Veronica and Amy lived and a wall structure in which William Browne carried on his carpentry business. That at first William Browne lived in the wooden building with Veronica and Amy but after he got married to the defendant he fixed up the wall building and went to reside in a portion of it and carried on his carpentry business in the remainder of the said building, but since the death of Amy the wooden building has been torn down.

She stated that William Browne used to pay a small sum of money for rental to show that he did not own the building.

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The case for the defendant is that she and William Browne were married on the 4th January, 1968, and that after marriage they lived in a wall house on the premises in question. That before marriage this wall house was a mere shed in which her husband carried on his carpentry business but when they decided to get married he broke down the shed and constructed the wall house. That the wall house was built with her money and that of her deceased husband. She said that in her presence Amy told William that he could fix the workshop and live in it. She stated that since the death of her husband she has expended money for repairs and improvements to the wall building.

One of the difficulties in this case is that Amy Hanley and William Browne the two persons who were directly concerned and involved in the arrangements between them are no longer with us due to their death and so the Court is deprived of important bits of evidence that only both or either of them could provide.

I am inclined to the view that the wall building had already been constructed, but that when William decided to get married, with the permission of Amy and at his own expenses he did certain improvements to the building to make it habitable and comfortable, and I so find. However there is no evidence as to the amount he expended in so doing.

A number of authorities were cited but in my view they are not of assistance to the defendant. The case of Inwards and Others v. Baker (1965) 1 A.E.R. p. 446 is not on all fours with the case before me.

In Baker's case a father encouraged his son to build a bungalow on the father's land at the son's expense. Some time after the death of the father the trustees of the father's will sought to obtain possession of same, but the court held that the son was entitled to remain in occupation of the bungalow as against the trustee.

In Baker's case there was an equity created between son and father. In the case before me there may have been an equity between William and Amy but there is certainly no equity between the defendant and Amy or her successors in title.

Quite apart from any equity however Amy by her Will had

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permitted William to reside in the said wall-house until his death. She had thereby granted him a licence to remain on the property during his lifetime. It was a privilege that was personal to him and not transferable to his wife. He was entitled to occupation of the wall-house until his death and no more.

In my judgment even if an equity had been created between Amy and William by William expending money to improve the wall building at her invitation that equity would have been sufficiently satisfied by him living in the said building for so many years without being required to pay rent, or if he did, merely to pay a pepper-corn rental so to speak. He certainly paid no rent from January, 1980 when Amy died until his death in November, 1982.

William died intestate, in my judgment at his death he had no rights in the said land or building thereon that was capable of being transfer to his wife. If indeed if he had an equity it was an equity in persona so to speak, it was an equitable estoppel which would be enforceable by him against Amy and her successors in title but it was not capable of being transferred by William on his death to his beneficiaries.

There is no evidence as to how much money was expended by the defendant after the death of her husband on the wall-house by way of repairs or improvements. In any event she has lived in the said house for over twenty years rent free and in my judgment any expenditure which she made was for her own benefit and comfort and she has been more than amply compensated for same by not being required to pay rent during those many years. Certainly not since 1982.

The plaintiff in his evidence did indicate that he would consider \$300.00 per month to be a reasonable rental for the said building, he did however state that he had never requested rent from the defendant. I do not consider that this is a matter which is being seriously pursued, in any event there is no claim in the pleadings for rent.

I do not agree with the submission of Counsel for the defendant that the defendant has any equitable or any rights to the said building or the land in question. In my judgment the defendant has no legal estate or interest in the land or the wall house

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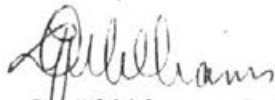
I view the position of the defendant with great sympathy bearing in mind her advanced age and the fact that she operates a shop in a portion of the said wall building from which she earns her livelihood, but regrettably I can see no legal ground on which I can make a finding on her behalf.

In my view taking all the circumstances into consideration a reasonable time ought to be allowed the defendant to find alternative accommodation.

Judgment for the plaintiff on the claim.

It is ordered as follows:-

1. It is declared that the defendant is not entitled to occupy the plaintiff's land or the dwelling house thereon.
2. The defendant is to deliver up possession of the said dwelling house to the plaintiff not later than the 31st day of October, 1990.
3. Costs to the plaintiff to be agreed or taxed.


L. G. Williams, Q.C.
Puisne Judge

3rd July, 1990