

IN THE COURT OF APPEAL

SAINT LUCIA

Civil Appeal No. 1 of 1972

Between: MARY PRESIDENT Plaintiff/Appellant
 and
 LOUISA LEWIS Defendant/Respondent

Before: The Honourable the Acting Chief Justice
 The Honourable Mr. Justice St. Bernard
 The Honourable Mr. Justice Bishop (Ag.)

J. Raynold for Appellant
Primrose A. Belman for Respondent

1972, September 3

JUDGMENT

LEWIS, C.J. (Ag.)

This is an appeal from the judgment of Mr. Justice Peterkin dated May 31, 1972 in which he made an order dismissing the plaintiff/appellant's claim for possession of certain premises situate at Anse-La-Raye.

The plaintiff/appellant in her declaration averred that she was the owner of a lot of land with a dwelling house thereon situate at Mole Street in the village of Anse-La-Raye and that she obtained this property from one Francillia Francis on August 12, 1968, by a deed of sale which is registered in Vol. 108, No. 88649.

The other material allegation in the declaration is that the defendant/respondent is in wrongful possession of the said lot of land notwithstanding that a notice to quit was served on her to give up possession of the said land not later than May 1, 1970. The defence admitted that the plaintiff/appellant was the holder of a deed of sale for the said land, but denied that it conferred any title to the land on the plaintiff/appellant for the following reasons:

(a) "The defendant/respondent acquired the land by prescriptive title having been in uninterrupted peaceable, public and unequivocal possession of the same as proprietor for over
/30 years

30 years, and (b) the plaintiff's vendor, Francillia Francis falsely declared in the document by which the said vendor claimed to derive title that she, the vendor was solely entitled to the said property."

It is admitted that the plaintiff/appellant purchased the property in question from one Francillia Francis who claimed it through her brother Herrance Francis. He had purchased it in the year 1924 from Gabriel Michel Staney. Two days before the sale to the plaintiff/appellant, Francillia Francis made a declaration of the immoveable property passing on the death of her brother Herrance Francis that he had died intestate on or about the 15th June, 1951 leaving her as his heir-at-law and that his succession devolved upon her. After the appellant had purchased the property she informed the respondent of the fact that she was the purchaser, and gave her notice to quit.

The appellant's vendor Francillia Francis is now dead so her evidence is not available. The appellant in her evidence stated that she had never seen Francillia Francis living on the property but had met the respondent living there when she purchased it. She said also, that she did not know that the respondent was claiming the land as her own, or that anyone was in occupation of the property when she purchased it from Francillia Francis. In relation to Francillia Francis the evidence of the appellant is as follows:-

"The person I bought from is dead. She was not living on the land when I bought. She had left there already. I have never seen her living there. When I bought I met the defendant living there."

So quite obviously the appellant cannot say that Francillia had already left the land because she had never seen her living there, and she does not know whether she ever lived on the land. The appellant also stated in her evidence;

"The defendant said that they had given her the thing herself. Francillia's brother had bought the property. He is Herrance Francis.

/ I

I bought from Francillia. She can claim it. She could not get defendant off the land because she never attempted. After I bought I went to Court with them.

I did not know that they were claiming the land as their own. When I bought I did not know that there was anyone in occupation."

That is all the evidence which the appellant adduced and the judge, in my opinion rightly described her case as being starved of evidence. On the other hand Louisa Lewis said that Herrance her brother went away from St. Lucia some 42 years ago, and that she was in occupation of the house and land since his death. In cross-examination she said:

"He gave me this property 42 years ago. I pay the house tax on his name. I am ignorant and don't know what to do. I have never paid rent to anyone for the house and land."

This was in the year 1930. Herrance Francis left St. Lucia about one month after giving the property to his sister and her husband. His wife had died before he left. She stated that her brother Herrance never told her husband and herself to live in the house for him, that is to say he did not leave them as agents, to take care of the house. He gave it to them. She added:

"Before he gave us the house I used to pay rent to him. After he gave us the house I never paid any rent."

The respondent stated that her brother gave her the property in the presence of witnesses, and she called the witness Edison Henry, a man of 66 years old who knew Herrance since he was 21 years of age. He said he lived in the same yard where the respondent and her brother lived. His home was "next door" to them. Herrance, he said, left St. Lucia and went overseas, and he does not know if he is alive or dead. He left St. Lucia about 42 years ago, but before he left he saw him with the respondent and her husband. In relation to the transaction he uses these words:

/Herrance

"Herrance called me from my home. He told me he was delivering the spot to the defendant and her husband. I still live in the same place."

Then in cross-examination he said:-

"He told them to remain in the house. He gave it to them. He said he was going and was giving up the house to them. I don't know if he gave them a deed."

Another witness, Johnson Desir, said that he missed Herrance Francis from Anse-La-Raye where he and Francis had always lived. He missed him from the village since about 1930, that since Herrance left, the respondent had been living in the house in which Herrance had formerly lived. She lived there with her husband. He said he also knew Francillia Francis, and she had never lived on that land. In cross-examination he stated that since he knew the defendant/respondent she had been living there, that is on the land in question. She was living there when Herrance was on the land and since Herrance left she continued to live there.

The evidence established to the trial judge's satisfaction that the respondent had been in continuous and uninterrupted possession for the statutory period and he held that she had acquired title by long possession. He said this:

"I accept the evidence of the defendant. It is supported by her two witnesses Edison Henry and Johnson Desir. I believe them all to be witnesses of truth. The plaintiff's case on the other hand is starved of evidence and she has said very little herself to enlighten the Court. The sum total of the evidence is that for a period of 40 years, namely, from the day on which Herrance Francis abandoned and discontinued his possession of it in 1930, the defendant has been in actual possession of the property and has occupied it up to this day. She has had adverse possession which until the plaintiff's recent claim has gone unchallenged and undisturbed. In my view it would work an injustice to the defendant if any one were allowed after an interval of so great a time, to commence proceedings for recovery of possession against her."

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In other words the learned judge said in effect that pursuant to the laws of St. Lucia since a title may be acquired by prescription, and as the respondent has been in possession for the prescribed period she acquired a title to the premises by prescription. Section 2103 A of the law of Civil Code reads:-

"2103A. Title to immovable property, or to any servitude or other right connected therewith may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court."

Since the respondent, as it was held, has been in possession for 30 years and upwards, she would acquire the title by prescription and could apply to the Supreme Court for a declaration of title. I am therefore of the opinion that the judgment of the trial judge was right and the appeal is accordingly dismissed with costs.

P. Cecil Lewis
CHIEF JUSTICE (Ag.)

ST. BERNARD, J.A.

I agree.

E.L. St. Bernard
JUSTICE OF APPEAL

BISHOP, J.A. (Ag.)

I agree.

Eric H.A. Bishop
JUSTICE OF APPEAL (Ag.)