

SAINT VINCENT.

-IN THE COURT OF APPEAL-

Civil Appeal No. 4 of 1974.

BETWEEN:

SAMUEL RICHARDS GREENAWAY	-APPELLANT
vs	
GORDON SAMUEL	-RESPONDENT

BEFORE: The Honourable the Chief Justice (Ag.)  
 The Honourable Mr. Justice St. Bernard  
 The Honourable Mr. Justice Peterkin (Ag.)

E. F. Adams for Appellant  
 C. D. Dougan for Respondent

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 1974, September, 17  
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JUDGMENT.

ST. BERNARD J.A.

This appeal arises out of a claim for damages for breach of covenant for a good title and quiet enjoyment in a deed of conveyance dated the 14th June, 1968, and also for damages for loss incurred in the cultivation of the land granted by the said deed.

The facts of the case are quite brief and may be summarized as follows:-

The respondent in 1961 consented to a court order in which he granted to his wife an acre of land. That acre

of land at the time had a house on it. This grant of land was as a result of divorce proceedings between the husband and the wife. The proceedings were numbered, Suit No.4/61. On the 22nd August, 1963, a plan of the land to which he had consented to grant to his wife was made under the order of the court of the 21st May, 1963.

Nothing more seems to have been done in respect of that land until / the 14th June 1968 when the respondent sold the land to the appellant for \$900. In my view the husband constituted himself a trustee for his wife in respect of that parcel of land. The legal estate was in him but the beneficial ownership passed to the wife.

The respondent in a conveyance dated 14th June, 1968, covenanted that he had a good title to the land and he further covenanted for quiet enjoyment. The appellant entered the land and cultivated part of it, and in 1970, the wife of the respondent entered and took possession of the land. As a result the appellant was ousted from possession of the land and these proceedings were instituted.

The trial judge found as a fact that the land on the plan and the land granted and covenanted for in the deed of 14th June, 1968, was one and the same. He stated: "as I see it the land referred to in the deed of 14th June, 1968, and in the plan of 22/10/63 and in the Court Order of 21/5/63 is one and the same. In that order the Court ordered that a survey be made of land belonging to the

defendant pending a final order and that not more than one acre should be so surveyed. It is true that the plan calls for one acre three poles but in the foregoing circumstances I am not prepared to accept that as affecting the issue before me."

The learned trial judge then went on to state that he was in considerable doubt as to whether the land conveyed was the land as the house was not marked on the plan. In my view since the land is the same land the fact that the dwelling house was not marked on the plan is not of importance. The order referred to the dwelling house to indicate the portion of land which was to be surveyed. What is of importance in this case are the boundaries of the land. The boundaries are one and the same, and it appears unreasonable to say that because the dwelling house was not marked on the plan there is considerable doubt as to the identity of the land.

Counsel for the respondent submitted that this Court should abide by the judgment of the lower court because the appellant said that the land he sold was other land not the land on which there was the dwelling house. In my view ~~that~~ submission is unacceptable. The finding that the land is one and the same is a question of fact. It is clear that the respondent having granted the land to his wife sold it without disclosing that fact to the appellant. I would

set aside the judgment in the lower court and order that judgment be entered for the plaintiff for \$900. There is evidence of some cultivation on the land which is assessed at one hundred and twenty dollars as special damage.

Judgment will be entered for the sum of One thousand and twenty dollars (\$1,020.00) with costs here and in the court below.

Appeal allowed.

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E. L. St. Bernard  
Justice of Appeal

I agree.

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P.C. Lewis  
Chief Justice (Ag.)

I agree.

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N.A. Peterkin  
Justice of Appeal (Ag.).