

GRENADE:

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 of 1976

BETWEEN: NECKLES GANGADEEN -Defendant/Appellant

and

ANNA GANGADEEN - Plaintiff/Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: L. Noel for Appellant

L. Hosten for Respondent and
Mrs. M. Bullock with him.

1976, Sept. 29, 30 and

J U D G M E N T

PETERKIN, J.A.

This an appeal against the Judgment of Nedd, J. granting an interlocutory injunction restraining the Appellant from entering a lot of land situate at Concord in the Parish of St. John, being the subject matter of an action for trespass. The order for the injunction was made conditional on the Respondent giving the usual undertaking as to damages. The facts and circumstances put before the learned Judge in Chambers were by affidavit, and are as follows:-

The late Joseph Gangadeen owned two lots of land situate at Concord. One lot contained about 20 acres. The second lot called the "Homestead" is the subject matter of the instant action. It contained about 4 acres. In or about the year 1953 Joseph Gangadeen divided the 20 acre lot among his children and gave them deeds of gift in respect thereof. Around that same period he caused the 4 acre lot called the "Homestead" to be transferred from his name on the tax roll to that of his wife Angelina. He however retained the title deed on his name. It is thought that he continued

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to live there with his wife until his death in 1962. He died intestate. After his death the wife Angelina continued to occupy the property. Her daughter Anna, the Plaintiff/Respondent, lived with her. They continued to occupy the property until the year 1973, and on 19th April, 1973, Angelina conveyed to the Plaintiff/Respondent 3 acres, 2 roods and 33 poles of this land.

In the meantime, the Defendant/Appellant obtained letters of administration to the estate of his deceased father Joseph Gangadeen on 11th April, 1974. Angelina died in or about June 1974.

By the law of Grenada, on the death of a husband intestate, a surviving spouse takes $\frac{1}{2}$ of his estate, the remaining $\frac{1}{2}$ being divided equally among the surviving issue.

The Plaintiff/Respondent filed her writ of summons for trespass against the Defendant/Appellant on 20/9/74, and on 17/10/74 she applied by summons to the Judge in Chambers for an interim injunction pending the trial of her action.

Counsel for the Defendant/Appellant has submitted, inter alia, that the affidavits have disclosed no serious issue to be tried, and that the interim injunction should therefore be discharged.

Counsel for the Plaintiff/Respondent on the other hand has urged the Court to sustain the interim injunction on the ground that a question of title emerges for the trial Judge, namely, whether the property passed to the wife Angelina or remained in the estate of Joseph Gangadeen.

A review of the learning on the question of the granting or otherwise of an interim injunction is to be found in the recent case of American Cyanamid Vs. Ethicon Ltd. 1975, 1 A.E.R. 396. After dealing with the history on the subject, and after reviewing the past authority on the matter Lord Diplock states as follows at page 408:-

/"So.....

"So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

I have no desire to prejudice the trial of the action by commenting one way or the other on the law involved. Suffice it to say that on the facts and circumstances as disclosed by the affidavits before the learned Judge I do not think that there was any serious issue to be tried and so my view is that there was nothing on which he could exercise his discretion in a Judicial manner.

Accordingly, I would allow the appeal and discharge the interim injunction, with costs to the Appellant.

(N.A. Peterkin)
JUSTICE OF APPEAL

ST. BERNARD, J.A.

I have had the opportunity of reading beforehand the judgment of Peterkin, J.A. and I agree that the appeal should be allowed and that the injunction should be discharged with costs.

(E.L. St. Bernard)
JUSTICE OF APPEAL