SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 8 of 1977

BETWEEN: RAYMOND FLOOD - Defendant/Appellant

Vs.

JAMES FLOOD - Plaintiff/Respondent

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Berridge (Acting)

Appearances: Appellant in person

K. Monplaisir, Esq. for Respondent

1978; May 22 & 23

J U D G M E N T

DAVIS, C.J.:

This is an appeal against the judgment of Mr. Justice Renwick in which he ordered the Defendant/Appellant to deliver up posses- to the Plaintiff/Respondent of the 2 portions of land, registered in Vol.109, No. 911333; to render an account of the profits earned out of the cultivation of the said land; to pay damages in the sum of $1,000, and to pay the costs of the action to be taxed.

There are several grounds of appeal but I do not intend to go into them in any detail because, in my view, this appeal turns on a question of fact, that is to say, whether the Learned Trial Judge was right in the conclusions to which he arrived, having regard to the evidence which he had before him.

To put it briefly, the story of the plaintiff was, that

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his father rented certain lands at Cannelles in the Quarter of Micoud from one Arthur Barnard, where he lived with his wife and children until his death. He died in the year 1945, leaving his widow and 8 children, and it will appear that after his death things became very bad financially for the family.

At that time, three of the children were at work including the Plaintiff who was then a mechanic. The Defendant/Appellant who was a school teacher earned a very small sum, I believe in the region of 10/- per month, and his twin sister who was also a pupil teacher earned about the same sum. Indeed, it would appear that things were so bad that the widow was put on poor relief and that she continued to receive poor relief until 1947 when the Plaintiff/Respondent joined the Police Force. At this stage, according to the Plaintiff/Respondent, he became the bread-winner of the family and he not only supported his mother but he contributed to the maintenance and education of the younger children of the family.

In the year 1953, he saw an advertisement in the Voice newspaper that the owners of Cannelles Estate were selling portions of that Estate. He spoke with his mother about it and according to him, she said she had no money, Raymond had no money, and in fact she was not interested in owning this dry land. She did not wish to live in the bush. People who were living in the towns were better off and it was her intention to move into the town of Micoud. He said he told her that he would buy the land because on his retirement from the Force he would wish to live in the country. Accordingly, he negotiated with the owners to purchase not only the land which his father rented but it will appear, another portion adjacent to that land; and as a result of these negotiations he purchased the land at Desruisseaux from Denis

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Barnard for $624. He said that the entire sum which he paid for the land was his money. He gave evidence as to how he came by this sum - that he got it from his savings; that he paid the purchase price in two instalments, and he produced in evidence receipts showing when and how the purchase price was paid.

In 1956, according to him, the Defendant/Appellant came to him and told him "Brother, please allow me to work your land because I am idle and I do not want to fall. I asked him what is it he wants? He said Brother I would like to cultivate the land but I have no money." He said this conversation took place at his mother's home, or their mother's home at Desruisseaux and that he gave the Defendant/Appellant the sum of $100 to buy banana plants to be planted on the land. He went on to say he furnished other monies for the development of the land; he gave money for coconut plants. He told the Court how those plants were transported to the land; he gave the name of Mr. J. Baptiste who apparently was the owner of the truck which transported the plants to the land; then he said he gave $400 for digging drains on the land; and later his brother Raymond came back to him and asked for money to buy fertilizer. On that occasion, he gave him $500. Then later again there was talk about hiring a tractor to cut roads on the land and he gave the brother $1,000 to pay for the tractor hire. He said that he and his brother then came to an agreement; that the brother would supply his labour for the development of the land and that they would share the profits - to use his own term - half/half. He said that the brother never shared the profits with him; and despite repeated requests culminating in a letter which he wrote to him in 1973 about his share of the profits, the position remained as it was until the issue of the Writ in this action.

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It appears that the Plaintiff/Respondent encountered certain difficulties in getting the land surveyed, and as a result of this he did not obtain a Deed to the land for some years after the purchase but he eventually got his Deed in 1969, and according to him, he took it to his mother's place, showed it to her, and in his and her presence, the Defendant/Appellant read the Deed. The mother expressed joy, according to the Plaintiff, that he had got the Deed and that the bad Indians that had been trespassing on the land would no longer be able to do so. The Deed was put in as an exhibit in the Court below, so was the receipt from the surveyor who surveyed the land.

As against this evidence, the Defendant/Appellant gave his version as to what happened regarding the purchase of the land. He said that when the family heard that the lands were to be sold there was a family meeting; that the Plaintiff was sent for because he was loved and respected, because he was the head of the family and they discussed the question of the purchase of the land, and there and then it was decided that those members who could, would contribute towards the purchase price, and that when the Plaintiff left he took away, I think he said, $200 which the other members of the family had contributed. That in all the other members of the family, or the members of the family excluding the Plaintiff, contributed $600. It would appear then, by a simple exercise in arithmetic, that the only sum which was contributed by the Plaintiff/Respondent was $24. In so far as the development of the land is concerned, the Defendant/Appellant deposed that not only did he supply labour, but also that every cent that went into the development of the land came from him. He was the one who got the banana plants. He was the one who got the coconut plants. He was the one who got the fertilizer.

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He was the one who paid for the digging of the drains. He was the one who paid for cutting the roads. He did everything. There was never any idea of an agreement between himself and his brother James as to the sharing of profits. Indeed, as far as he was concerned, it was family land, and that if James were to share at all it would appear that he would share only to the extent of his contribution to the purchase price of the land.

The mother of both James and Raymond gave evidence. And so far as the issues in the case were concerned, the only value of that evidence lies in the statement that the other members of the family contributed $600 in all towards the purchase of the land. She did admit, however, that she received poor relief after her husband's death.

It will be seen then that the Judge was faced with two stories which were diametrically opposed. He had to make up his mind which story to believe; and in his judgment, he made certain findings. He found that the plaintiff and the Plaintiff alone provided the purchase price for the land. He found that the Plaintiff and the Plaintiff alone paid the fee for the survey of the land. He found that the Plaintiff supplied all the monies which went into the development of the land including the sum of money for cutting roads and for digging drains. He found that there was an agreement between the Plaintiff/Respondent and the Defendant/Appellant to share the profits from the working of the land half/half. And he also found that the Defendant/Appellant had become well-off - owns land, houses and motor vehicles all of which were acquired as a result of the proceeds which he earned from the land at Cannelles.

The Defendant/Appellant argued the appeal in person and

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he has asked this Court to say that the Learned Trial Judge was wrong in coming to those findings of fact because there were certain conflicts in the Plaintiff's evidence, and I suppose what he implied was that no Judge, applying his mind to the facts of the case, could reasonably have made those findings. He further argued that the Judge ought to have made the Plaintiff produce documents to show how and where he obtained the money to purchase the lands and to develop it. But my answer to that argument is this: The Plaintiff gave certain details. He told the Court how he got the money to purchase the land. He told the Court about loans which he got from the Cooperative Bank and from the Insurance Company to enable him to develop the land. In other words, he had put his case on the line.

The Defendant/Appellant could easily have checked that story. He could quite easily have got a witness from the Bank to say either that the Plaintiff did not have an account with them or if he did have an account at that particular date, the amount in the account was so small that there could be no question of his having $480 which is the first payment he made towards the purchase price of the land. As to the loans from the Bank, there must be somebody there who could have said that it was not true. As to the loans from the Insurance Company, the same thing could have been done. But that step was not taken, so that the Judge had two conflicting stories and he had to make up his mind which one to believe, and he believed the version given by the Plaintiff. What then is the position of this Court in circumstances such as we find in this case? What is the position of this Court? For the answer I can do no better than read a passage from the case of Powell v. Streatham Manor Nursing Home reported in 1935 Appeal Cases, page 243. I read from the judgment of Viscount Sankey L.C.:

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> "What then should be the attitude of the Court of Appeal towards the judgment arrived at in the Court below under such circumstances as the present? It is perfectly true that an appeal is by way of rehearing, but it must not be forgotten that the Court of Appeal does not rehear the witnesses. It only reads the evidence and rehears the counsel. Neither is it a reseeing Court. There are different meanings to be attached to the word "rehearing." For example, the rehearing at Quarter Sessions is a perfect rehearing because, although it may be the defendant who is appealing, the complainant starts again and has to make out his case and call his witnesses. The matter is rather different in the case of an appeal to the Court of Appeal. There the onus is upon the appellant to satisfy the Court that his appeal should be allowed. There have been a very large number of cases in which the law on this subject had been canvassed and laid down. There is a difference between the manner in which the Court of Appeal deals with a judgment after a trial before a judge alone and a verdict after a trial before a judge and jury. On an appeal against a judgment of a judge sitting alone, the Court of Appeal will not set aside the judgement unless the appellant satisfies the Court that the judge was wrong and that his decision ought to have been the other way. Where there has been a conflict of evidence the Court of Appeal will have special regard to the fact that the judge saw the witnesses."

And then he refers to the case of Clarke v. Edinburgh Tramways Co., in which Lord Shaw had said:

> "When a judge hears and sees witnesses and makes a conclusion or inference with regard to what is the weight on balance of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the Judge makes any observation with

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> regard to credibility or not. I can of course quite understand a Court of Appeal that says that it will not interfere in a case in which the Judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them, and does not believe another."

I would respectfully adopt those passages as part of my judgment and conclude that having regard to the facts in the case, it is in my view, quite impossible to say that the Learned Judge was wrong in coming to the conclusion he arrived at in favour of the Plaintiff/Respondent. In the result, I would dismiss the appeal with costs to be taxed.

(Sir Maurice Davis)
CHIEF JUSTICE

I agree.

(N.A. Peterkin)
JUSTICE OF APPEAL

I also agree.

(N.A. Berridge)
JUSTICE OF APPEAL (ACTING)