

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 12 of 1982

BETWEEN:

NORDERICK HIPPOLYTE

- Plaintiff/Appellant

and

RENESS HIPPOLYTE

STEPHEN JULES

MAXIUS TOUSSAINT

JOSEPH FELIX

- Defendants/Respondents

Before: The Honourable Sir Neville Peterkin - Chief Justice
The Honourable Mr. Justice Berridge
The Honourable Mr. Justice Robotham

Appearances: H. Deterville for the Appellant
K. Monplaisir and M. Lorne for the Respondents

1982: October 21, 22,
1983: February 1.

JUDGMENT

BERRIDGE, J.A.

This is an appeal from the decision of Glasgow, J. dismissing the appellant's claim, inter alia, for a declaration that he is the owner of a portion of land consisting of one half carre situate in the Quarter of Soufriere.

The grounds of appeal are:-

- (1) The learned trial Judge erred in law in holding that the plaintiff had not proved the title of Denise Laurencin had been registered when this was not an issue in the action.
- (2) The learned trial Judge erred in law in holding that it was not for the Defendants to prove that Denise Laurencin title was not registered.

/Terrence.....

Terrence Jules was the husband of the mother of the plaintiff, Mathurine Jules nee Hippolyte. Terrence Jules purchased $\frac{1}{2}$ acre land (hereinafter referred to as the land in dispute) from Denise Laurencin from whom he obtained two receipts dated 2nd November, 1918 and 8th November, 1919, respectively.

Terrence predeceased his wife and the appellant was granted Letters of Administration and Probate respectively of the estate of his step father and mother. Both those documents were produced in evidence at the trial together with a Designation and Vesting Deed relative to the immovable property passing under the will of Mathurine Jules.

Learned Counsel for the appellant while conceding that the forementioned receipts were not, per se, sufficient to pass title to the appellant, contended that the Vesting Deed was capable of so doing.

Counsel further submitted that the issue of registration adumbrated by Art. 1980 of the Civil Code (Ch 242) was never raised at the trial. He accordingly submitted that the respondents were precluded from raising it in the light of R.S.C. Ord. 18, r.8 which sets out the matters which should be specifically pleaded and that the onus was upon the respondents to prove that the appellants title was not registered. In any event Counsel urged that Art. 2112 of the Civil Code put the matter beyond doubt in that the appellant was in effective possession of the land in dispute for a period upwards of 10 years.

In support of his argument Counsel cited the case of North Western Salt Co. Ltd. v. Electrolytic Alkali Co. Ltd. [1914] A.C. 461 H.L. This was a case of Restraint of Trade in which it was held that having regard to the form of pleadings, the surrounding circumstances could not be looked at for the purpose of determining the illegality of the agreement and that the agreement was not ex facie illegal. I am of the view, however, that this case is distinguishable from the case under review.

/It is.....

It is convenient at this stage to set out the provisions of Art. 1980 which deserves to be reproduced in full -

"1980. (Subst. 10-1904). All acts inver vivos, conveying the ownership, nuda proprietas or usufruct of an immovable must be registered at length or by an abstract hereinafter called a memorial.

In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property or received an onerous gift of it from the same vendor or donor for a valuable consideration and whose title is registered.

Every conveyance by will of the ownership, nuda proprietas or usufruct of an immovable must be registered either at length or by memorial, with a declaration of the date of the death of the testator and the designation of the immovable.

The transmission of the ownership, nuda proprietas or usufruct of an immovable by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death, and the designation of the immovable.

Provided always that all acts inter vivos purporting to convey the ownership, nuda proprietas or usufruct of an immovable shall be null and void, unless prior to the execution of such acts the title of the person or persons purporting to make such conveyance shall have been registered; but this proviso shall not annul or render void any act whereby the Crown purports to make any such conveyance, or in any manner whatsoever affect any right of the Crown."

Paragraph 1 of the Defence asserts that the plaintiff has no rights or interests in the said lands and goes on to give reasons for this assertion. Learned Counsel for the respondents submitted that this paragraph indicated immediately that the question of title was in issue. I agree.

Paragraph 2 of the Defence states that the defendants have been in possession of the disputed land for not less than 117 years, a statement conceded by Counsel for the respondents to be an obvious exaggeration, but the learned trial Judge not only held that the appellant, at the time of the trial, was not and never had been in possession of the land in dispute but he obviously accepted the evidence of the respondents some of whom occupied the disputed land for various uninterrupted periods as well as the evidence of Antoine Felix (against whom the case was withdrawn) whose evidence given on behalf of the first-named defendant was in contradistinction to that of

/the....

the appellant.

The Vesting Deed which was an exhibit at the trial did not form part of the record but a copy was made available to the Court through the kind courtesy of Counsel. On page 2 of the Deed one of the three documents of title on which the appellant relied is a Deed of Deposit by Noderick Hippolyte of receipt given by Denise Laurencin to Terrence Jules executed before Hilford Deterville, Notary Royal, on the 17th December, 1976 and registered on the 7th January, 1977 in Vol. 130a No. 114 887. In my view the document does not satisfy the provisions of Art. 1980 in that it does not indicate how Denise Laurencin obtained possession of the land in dispute and the evidence as accepted by the learned trial Judge does not enable the appellant to invoke to his aid Art. 2112 of the Civil Code which provides for prescriptive ownership of a corporeal immovable acquired in good faith by effective possession over a period of ten years and upwards.

Finally, I share the view of the learned trial Judge that the onus is not on the respondents to prove that the title of Denise Laurencin was not registered.

In the light of the foregoing I would dismiss the appeal with costs here and in the Court below.

N.A. BERRIDGE,
Justice of Appeal

I agree.

L.L. ROBOTHAM,
Justice of Appeal.

I also agree.

N.A. PETERKIN,
Chief Justice.