

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 22 of 1987

BETWEEN:

HEIRS OF AUGUSTE BISCETTE - Appellants
and
LAWRENCE BISCETTE - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: D. Theodore for the Appellants
M. Gordon for the Respondent

1988; Jan. 27
May 9.

JUDGMENT

MOE, J.A.

This appeal is from the decision of the Land Adjudication Tribunal which affirmed the award by the Land Adjudicator of around ten acres of land situated at Des Etages Estate at Micoud to Francis and Albina Seaman with absolute Title.

Auguste Biscette in 1939 made application to the Crown to purchase the land concerned which was approved at a purchase price of £10. He paid £2 towards the purchase price on 30th April 1940. A survey was carried out and completed on 2nd November 1940. Auguste died on 12th April 1941. Subsequent payments were made in respect of the land; on 29th April 1942 £2; on 29th September 1942 a survey fee of 6/-. The Commissioner of Crown Lands states that the land was transferred to Lawrence Biscette by letter dated 12th March 1945. £6 was paid on 1st May 1945 and a Grant fee of 7/3. Lawrence obtained receipts in respect of the purchase of the land and when he left for Guyana in 1946 he passed the receipts on to Margaret Dornelly. In 1952 Margaret forwarded the receipts to the Commissioner of Crown Lands and obtained a Crown Grant of the lands dated 20th March 1952 made out in favour of Lawrence Biscette.

Lawrence Biscette returned to St. Lucia in 1976 at which time Margaret Dornelly and various members of the family were occupying portions of the land. A contentious situation developed over the use and occupation of the land and in December 1977 Margaret Dornelly filed High Court action No. 476 of 1977 seeking a Declaration that the Crown Grant was null and void. This

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action was never pursued and was allowed to lapse.

By Deed of Sale dated 1st June 1984 and registered on 6th June 1984, in Volume 124, No: 144395, Lawrence Biscette sold the land to Francis and Albina Seaman. The Title stated in the Schedule to the Deed is the Crown Grant.

There was a point made although not strenuously argued that there was a difference of opinion as to who made the payments for the land after Auguste's death. Margaret Dornelly said she did whereas Lawrence Biscette said he did. The Land Adjudicator accepted Lawrence's account and the Land Adjudication Tribunal did not disturb his decision. In accordance with our role in relation to questions of fact I can find no reason to disturb the findings of fact in this matter.

The appellants do not impugn or improbate the Crown Grant to Lawrence but claim there is a beneficial interest in the appellants subject to which the Crown Grant must be read. It is submitted that when Auguste made the first payment of £2 a trust was created between him and the Crown under which he had a beneficial interest in the land. Counsel referred to Halsbury's 3rd Edition, Vol. 34, para. 484. It was submitted further that on his death, the beneficial interest devolved to his Personal Representative who held it on trust for Auguste's heirs, the appellants and the respondent. That Lawrence therefore held the land in trust for the other heirs and the Seamans who purchased in 1984 from Lawrence would be deemed to have had notice of the interest of the appellants because Margaret Dornelly was in possession of the land when they bought and was renting land to people.

The respondent says if Margaret did have a beneficial interest from 1941, then her right was prescribed by 1984 when the Seamans bought. Even starting from 1952 when Lawrence acquired the land her right was prescribed away by 1982.

The paragraph in Halsbury's, Vol. 34 (supra) to which Counsel referred commences as follows:-

"An agreement for the sale of land, of which specific performance can be ordered operates as an alienation by the vendor of his beneficial interest in the property."

Later it is stated:

"As regards the land, he becomes, as between himself and the purchaser constructively a trustee to be indemnified by the purchaser against the liabilities of the trust property; and the purchaser becomes beneficial owner with the right to dispose of the property by sale, mortgage or otherwise, and to devise it by Will, while on his death intestate it

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devolves on his legal personal representatives, who holds it, subject to the requirements of administration, on trust of sale and for distribution of the net proceeds among the persons entitled on intestacy."

In order for the propositions contained in the paragraph to be applicable in the instant case, the appellants must show that Auguste was in a position to obtain specific performance of the agreement for the sale of the land. It seems to me the nature of the trust on which the appellants seek to rely can only be regarded as qualified. The authorities show that until the purchase money is paid and the vendor is bound to convey the full relation of trustee and cestui que trust is not established to relate back to the date of the formation of the contract. The position is clearly set out in *Ridout v Fowler* (1904) 1 Ch. 658 at p 661:

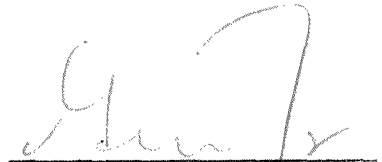
"Now the rights of vendor and purchaser have been explained so often that it is sufficient to refer to what Lord Hatherley says in *Shaw v. Foster* (2), where, quoting from his own decision (3), he says: 'It is quite true that authorities may be cited as establishing the proposition that the relation of trustee and cestui que trust does, in a certain sense, exist between vendor and purchaser: that is to say, when a man agrees to sell his estate he is trustee of the legal estate for the person who has purchased it, as soon as the contract is completed, but not before'. That was in reference to the actual conveyance. The expression used by Sir Thomas Plumer in *Wall v. Bright* (4), which has, I think, been just read by the noble and learned Lord who preceded me, is this: 'The vendor, therefore, is not a mere trustee; he is in progress towards it, and finally becomes such when the money is paid, and when he is bound to convey'." James L.J. puts it perhaps more clearly in *Rayner v. Preston*. (5) He says: "I agree that it is not accurate to call the relation between the vendor and purchaser of an estate under a contract while the contract is in fieri the relation of trustee and cestui que trust. But that is because it is uncertain whether the contract will or will not be performed, and the character in which the parties stand to one another remains in suspense as long as the contract is in fieri. But when the contract is performed by actual conveyance, or performed in everything but the more formal act of sealing the engrossed deeds, then that completion relates back to the contract, and it is thereby ascertained that the relation was throughout that of trustee and cestui que trust. that is to say, it is ascertained that while the legal estate was in the vendor, the beneficial or equitable interest was wholly in the purchaser. And that, in my opinion, is the correct definition of a trust estate."

The result is that at Auguste's death, he had not acquired any beneficial interest in the property which would have devolved. No other


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basis for an interest in the land on the part of the Heirs was urged. We are therefore left with the position that after Auguste's death, on payment of certain sums of money, the Crown Grant was made to Lawrence Biscette. The wording of the Grant clearly indicates that the Crown regarded Lawrence Biscette as the purchaser.

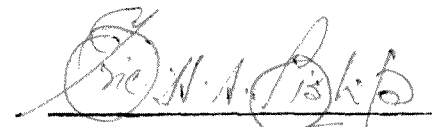
The Crown Grant not having been impugned nor improbated, the Title to the land in the name of Lawrence Biscette stands. I would dismiss the appeal and affirm the decision of the Tribunal. The respondent to have his costs.



G.C.R. MOE,
Justice of Appeal



L.L. ROBOTHAM,
Chief Justice



E.H.A. BISHOP,
Justice of Appeal.