

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
IN THE ESTATE OF ORMOND CYRIL FORDE DECEASED
1984 No. 336

BETWEEN

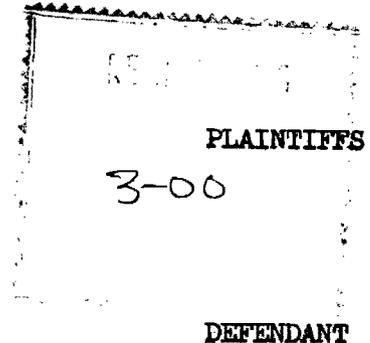
OLIVENE ELIZABETH LAYNE of Kingstown Park

and

CHARLES GIDEON HUGGINS of Cane Garden

and

RUBY HYACINTH FORDE of Kingstown



Mr. Andrew Cummings for the Plaintiff

Mr. G.R. Sylvester Q.C., Mr. Mark Williams with him for the defendant.

Mr. Adrian Saunders appears for the defendant on the date of this Judgment in place and stead of Messrs Sylvester and Williams.

(December 1, 1987: January 18, 1988: May 28, 1990)

JUDGMENT

SATROHAN SINGH J.

This is a claim by the Plaintiffs as Executors named in the last will and testament dated October 1st, 1983 of Ormond Cyril Forde who died on December 21, 1983 that the Court shall pronounce for the force and validity of the said will in solemn form of law, the defendant having entered a caveat and appeared to the warning thereto as the widow and last relict of the deceased and one of the persons entitled to share in the estate of the said deceased in the event of an intestacy.

By way of ~~defence~~ the defendant alleges that the execution of the will was procured by the undue influence of the first named plaintiff which made the deceased not a free agent and the will not a product of his own volition but a will procured by the artifice of the plaintiff. The defence further

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pleads that at the time of the execution of the said will the deceased did not know and approve of its contents thereof, that the will was the product of the first named plaintiff who did not properly explain it to the deceased who did not himself read it. Alternatively, the defence pleads that the deceased memory and understanding were impaired from the influence of drugs and excruciating pain and he was unable to understand the nature of the making of the will or its effect. The defence also pleads that during the lifetime of the deceased he bought and sold properties and led the defendant to believe that the properties were invested with a partnership character and that her proprietary rights and interest in the on going property dealings will be safe guarded, that he would make ample provisions for the defendant's share and interest in the accumulated wealth in the will and the defendant to her detriment took no legal steps during the deceased lifetime to obtain her share and interest in her own name and that the plaintiffs are estopped from denying that the character of the properties which form the estate of the deceased have been altered and they now hold same as trustees for the defendant. Alternatively, the defendant contends that the sum of \$15,000 left in the will bears no relationship to the value of the defendant's share and interest in the estate of the deceased and that the Court is entitled in addition to have regard to the provision which the defendant might reasonably have expected to receive if the marriage had ended in divorce.

The defendant therefore counterclaims for:

1. A declaration that the defendant is entitled in her own right to a one half share of the properties which form the estate of the deceased or such other share to the Court seems fit.
2. That the Court shall pronounce against the alleged will propounded by the plaintiffs.

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3. An enquiry as to the extent of the entire estate of the deceased and which portions or part thereof form the estate of the deceased on an intestancy and who are the beneficiaries thereof.
4. That the Court shall grant the defendant Letters of Administration of the Estate of the said deceased.
5. That provision be made for the costs.

The Plaintiffs in their reply and defence to the counterclaim deny the allegation of undue influence or that the deceased did not know or approve the contents of the will and pleads that if for any reason this will is not entitled to probate then one of two previous wills made by the deceased naming the said plaintiffs as executors would be entitled to probate i.e. the will dated July 12, 1983 in the alternative the will dated August 23, 1982. The reply also pleads that the deceased and defendant lived separate and apart for upwards of 25 years prior to his death and that the defendant at no time during the lifetime of the deceased either during cohabitation or thereafter put forward any claim to a share or interest in such wealth as the deceased may have accumulated during his lifetime and as such the plaintiffs contend that the defendant has been guilty of prolonged, inordinate and inexcusable delay in seeking the relief claimed in the counterclaim whereby the deceased and/or the plaintiffs have acted to his and/or their prejudice and have otherwise been prejudiced, alternatively, the claim (if any) of the defendant is barred by the Statute of Limitations 1623. The reply further contends that the provision (if any) which the defendant might reasonably have expected to receive if the marriage had ended in divorce is irrelevant to these proceedings.

When this matter came up for hearing on April 8th, 1986 learned Queen's Counsel for the defendant informed the Court that he was not pursuing the defence allegations against the validity of the will pleaded by the plaintiff and that he will only be pursuing the claim mentioned in the counterclaim that

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the defendant is entitled in her own right to a one half share of the properties which formed the estate of the deceased or such other share as the Court seems fit. The matter was then adjourned for the defendant's evidence to be taken on deposition by the Registrar. The hearing proper resumed before this Court on December 1st, 1987 at which time the plaintiff closed its case without leading any evidence. The defence led two witnesses Kenneth Earl Forde, the son of the deceased and the defendant and the defendant's niece Nestor DaSilva, in addition to the evidence of the defendant on the depositions.

After the evidence of Kenneth Earl Forde was finished and before the evidence of Nestor DaSilva was taken Q.C. Sylvester for the defence closed the case for the defence. Mr. Cummings for the Plaintiff was called upon to address the Court but he asked for an adjournment to do so as he had misplaced his notes. This was granted despite objections from Mr. Sylvester. Upon the hearing resuming some three days later Mr. Sylvester for the defence asked the Court's leave to reopen the defence to call one other witness Nestor DaSilva. Mr. Cummings then advised the Court that after mature consideration he was asking for leave for the plaintiffs to now testify. Neither party objected to each other's application and the Court made the order giving leave to the defendant to call one other witness and for the plaintiff to reopen their case and testify. The matter was then again adjourned for this purpose at the request of both parties.

On the resumption, and, after Learned Q.C. for the defence utilising his right under the aforesaid order to have defence witness Nestor DaSilva testify, and, after her testimony was completed and Mr. Cummings, in keeping with the said order sought to have the No. 1 Plaintiff testify, Mr. Sylvester objected on the ground that the Plaintiffs were now seeking to lead rebuttal testimony. I overruled the objection, not only because the order for the Plaintiff to testify was already made without objection and Counsel for the Defendant acted on it when he called his additional witness but also because this Court felt that

it could not have determined the real matter of controversy between the parties in this matter without hearing the evidence of the Plaintiffs. The order made by me for the Plaintiffs to testify was not an order for them to lead rebuttal evidence. The Court's order was in keeping with Mr. Cummings' application that having given the matter mature consideration he felt that the Plaintiff should testify. Additionally, the Defendants having abandoned their attack on the validity of the deceased will, what was really being heard was the counterclaim of the defendant whereby she was plaintiff and the plaintiffs are defendants.

For these reasons, in the interest of Justice and in the exercise of my Judicial discretion, I overruled Mr. Sylvester's submission and allowed the plaintiffs to testify.

Having seen and heard all the witnesses, while I find the evidence of the defendant and her witnesses to be somewhat coloured as a result, to my mind, of their obvious dislike of the No. 1 Plaintiff, I find the evidence of the No. 1 Plaintiff to be truthful. I found her to be the most impressive of all the witnesses who testified.

Taking the evidence as a whole I make these findings of facts.

Ormond Cyril Forde, now deceased, and the defendant were married to each other on Monday 30th May, 1938 and they lived together as man and wife until they were physically separated on or about 1961/1962 and the relationship ceased in 1963. This relationship began deteriorating in 1957/1958. The marriage produced five children ranging from ages 41 to 48 years old all of whom are now well settled with comfortable life styles.

The deceased also had a relationship with the No. 1 Plaintiff for over 20 years, a relationship that produced four children, the youngest being about 6 years old and the eldest about 23 years old. They are scrunting for liquid cash livelihood despite the fact that the deceased provided for them adequately by settling inter vivos on them and the No. 1 Plaintiff two properties at Kingstown Park, 23,000 shares in the Co-op Bank, 250 shares in Forde & Co. and

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cash \$30,000:

Ormond Cyril Forde died on December 21st, 1983 leaving a will in which he left all his wealth at death to the No. 1 Plaintiff and her children except \$15,000 which sum he bequeathed to the defendant. During his lifetime he settled no property on the defendant. Estate duty papers show deceased died of an estate worth \$274,215.

I find as a fact that when the deceased and the defendant were married the deceased came into the marriage with virtually nothing but I find him to be hard working, industrious, an intelligent man and someone who set out during this marriage not only to make something of himself but also to provide well for his family.

During his working life he started out as a Solicitor's Clerk working with his brother, Solicitor Oliver Forde. He was also the Secretary to the Employees Association and for the latter part of his working life Manager of the St. Vincent Co-op Bank until he retired handing the reins of the Bank over to his son Kenneth Earle Forde. At one time he was involved in three jobs at one time. The deceased also did the business of buying and selling properties on a day to day basis from loans promoted by St. Vincent Co-op Bank and Barclays Bank. The Defendant from the outset has always been a school teacher with her own private school and presently runs such a school, though not herself teaching, the teaching now being done by two assistants. She lives in her own two storeyed property which she inherited. Her son Kenneth Forde, her only child living in St. Vincent with her, all the others being overseas, buys her groceries. She is 74 years old. The facts from which these findings are made are not disputed.

The defendant lays claim to a half share of all the property comprising the deceased estate at death on the basis of her alleged contribution towards the wealth of the marriage. But, during his address to this Court Mr. Sylvester advised the Court that the defendant would be satisfied if she is given the Indian Bay property only. She testified as to this contribution and called
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as her witnesses her son Kenneth and her niece Nestor DaSilva. Their evidence on this aspect even though challenged by the Plaintiff have not been contradicted and I find as a fact that this defendant took care of her children, not only from monies given to her by the deceased but also income she received from rents from the Middle Street property. I find as a fact that the deceased was the breadwinner in the family but he was assisted by the defendant. I find as a fact that both the deceased and the defendant "did their own thing" but that when they did so it was for the benefit of the marriage even though the deceased did his own secretly. I also find as a fact that the deceased during his lifetime told the defendant that the Indian Bay property would be hers.

The Court was not given an opportunity to see and hear the defendant, her evidence having been given on deposition. However, an analysis of her evidence seems to suggest that whatever contribution she made to this marriage she did not do so in cash directly but by helping the family with, inter alia, food and clothing. Taking her evidence as a whole this Court finds itself with the task of quantifying her alleged contribution to this marriage with no proper or cogent evidence upon which to so do with any mathematical accuracy.

An interesting feature in this case is that there was complete break up of the marriage since 1963 and the deceased died in 1983, this defendant is saying she is entitled to a $\frac{1}{2}$ share of the deceased wealth including the Indian Bay Property, why did she sleep on her rights, this case was not brought until 1986. Could it be that she never recognised she had those rights and it was only when she recognised that by the deceased will his concubine was benefitting more than his lawful wife from the estate she decided to create some sort of turmoil. It is interesting to remember that her pleadings which she subsequently abandoned actually challenged the validity of the deceased will on the grounds that it was procured by the undue influence and artifice of the Plaintiff when the evidence discloses that it was witnessed by two friends of the defendant's son Kenneth Forde and chosen by the said Kenneth Forde. In these circumstances this Court

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must be wary in its approach the evidence of this witness.

However, I can well see the force of the Plaintiff's arguments on this aspect of the defendant sleeping on her rights in relation to the deceased inter vivos dispositions to the No. 1 Plaintiff. But, in relation to his dispositions in his will, the Court will have to bear in mind that no where in the evidence does it appear that the deceased and this defendant ever contemplated divorce proceedings in relation to their marriage and it was only after the deceased started making his different wills thereby effectively cutting out this defendant from his remaining assets that the defendant reacted through her son Kenneth Forde. My view from this observation is that the defendant, despite the very long separation, was content in awaiting her fate in the deceased will and having gotten the adverse reaction she then decided to act. I do not find this to be unreasonable behaviour at least not in relation to the deceased dispositions in his will. What is significant though is that her reaction through her son Kenneth Forde was only in relation to the Indian Bay property.

If the deceased did tell her that she was to get the Indian Bay property that statement is not unequivocal and does not necessarily mean that he was recognising any contribution on her part to the marriage. Indeed, the deceased subsequent actions when he made the will in this case proves to the contrary and if it were the case that contribution was the determining factor in the deceased mind when he was distributing his property in his will then the will is telling us that he was recognising a contribution worth \$15,000 from his wife and this was since his first will in 1982. This is silent testimony which this Court must look at to assist this Court to come to a just conclusion in this matter.

The evidence to my mind paints a picture of the deceased to be from the outset, an intelligent, industrious, hard working go getter and provider always holding more than one job at a time and someone who knew what he was about and how to get it done and despite the evidence of his son Kenneth Forde, the only

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reasonable inference that can be drawn from the limited evidence in this case is that he was the breadwinner of not only of his wife and children but also of the Plaintiff and her children with him.

I find as a fact that during his lifetime the deceased made three different wills and that the thread of consistency in all of them was the deceased desire that his wife should only get \$15,000 out of his wealth.

With respect of the Indian Bay Property which is really the bone of contention in this matter, when I take the evidence as a whole, I find as a fact that the deceased was telling both his wife and the No. 1 Plaintiff at different times that the property belongs to each separately without each other knowing he was telling the other so. I accept Kenneth Forde's evidence and find as a fact that in July, 1983 he confronted the deceased with his last will then and enquired how he could leave Indian Bay to the No. 1 Plaintiff when he promised it to the defendant and the deceased replied that he will change his will to accommodate that promise. I also find as a fact that after Kenneth Forde left the deceased had the No. 1 Plaintiff type a fresh will, the will in this matter with instructions not to give the defendant Indian Bay but to now add her name to her children's name as the beneficiary for this property. I make these findings most hesitantly, the deceased not being here to testify, but having seen and heard the witnesses I can find no reason to disbelieve either side.

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LAW

The Law in this matter is not in dispute that the Court has to look at the respective contribution of the parties to the wealth of the marriage and also the intention of the parties at the time the different properties were being acquired as is evidenced by the parties respective contributions.

Petit v. Petit (1969) 2AER 388

Gissing v. Gissing (1970) 2 AER 280

I agree with the submission of Mr. Sylvester that this claim must not be treated as a claim against a dead man's estate but as a claim by a cestue-que-trust against a trustee.

Re:M (1968) P 174.

Both sides referred to several other authorities but the legal position not being in dispute I would only be indulging in prolixity if I were to do an analysis of them here.

The question remaining then, what was the contribution of this defendant to this marriage.

I have already mentioned what the defendant thought was her contribution. The deceased cannot be here to personally give me his views. My view is that the silent testimony in the will tells me that the deceased when he made that will was recognising that the defendant made a contribution to the wealth of the marriage which contribution he was quantifying at \$15,000. However, my finding from the evidence that he did tell her that the Indian Bay Property was hers, tells me that at least at that stage he recognised her contribution to be as valuable as the Indian Bay Property. Also, when Kenneth Forde's evidence is taken into consideration I find also that the defendant through Kenneth Forde was recognising her contribution to the marriage to be as valuable as the Indian Property.

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At the close of the addresses, the Court felt that for it to arrive at a proper decision there needed to be evidence to show what comprised the assets of the deceased estate at death. Both lawyers agreed to this and by Order of Court dated January 19, 1988 the Registrar was ordered to carry out this inquiry. It was also agreed by both sides that the result of such inquiry be treated as evidence in the case, for consideration by the Court in the determination of the issues raised.

Unfortunately for the parties and Court, at least three Registrars passed through that office since the Order was made and the report was only finally submitted on May 16th, 1990.

That report shows the overall total value of the deceased estate at \$861,550.25. The property comprised in this estate are as follows:

1. Property at Kingstown Park with Cottage dwelling house and candy factory area 28,308 sq.ft and valued at \$254,532:
2. Property at Lower Kingstown Park with dwelling house, area 6,128 sq.ft. valued at \$84,993.25.
3. Property at Middle Street area 2,271.2 sq.ft. with a two floor building value \$366,003:
4. The Villa/Indian Bay Beach property area 7,891 sq.ft. with infrastructure and cottage dwelling house valued at \$156,022:

The Court has also seen the Estate Duty file relative to the deceased estate.

From a consideration of all the evidence and all the circumstances in this case this Court is of the view that a just solution to this problem is to give the defendant the Indian Bay Property in addition to the \$15,000 in the will.

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I am not satisfied that what is disclosed in the Registrar's report are the true assets of the deceased estate at death. The evidence shows some of those assets to have already been disposed by the deceased during lifetime.

The end result of all of this is that the Plaintiffs will get all the assets of the deceased estate as disclosed in the evidence except the \$15,000: bequeathed to the defendant in the deceased will and the Indian Bay Property. I can find no merit in the Plaintiff's plea in their reply of the Statute of Limitations.

In the event, on the Plaintiff's claim, the Court pronounces for the force and validity of the deceased will in solemn form.

On the defendant's counterclaim the Court grants:

1. A declaration that the defendant is entitled in her own right to the Indian Bay Property which forms part of the estate of the deceased as well the bequest of \$15,000:
2. The Executors of the will of deceased are ordered to convey the aforementioned property to the defendant forthwith failing which the Registrar is ordered so to do.
3. In the exercise of this Court's Judicial discretion each party will bear his or her own costs on the claim and the counterclaim.

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Satoharu Hiji
 SUPREME COURT JUDGE