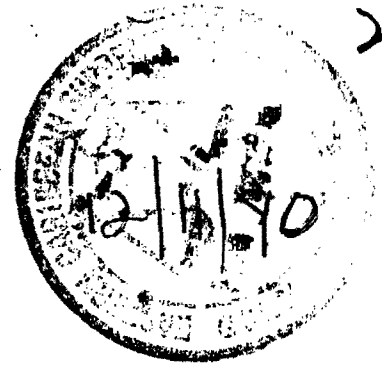


IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
(CIVIL)
A.D. 1990



SUIT NO. 437 of 1988

BETWEEN:

NATHANIEL OTTLEY

PLAINTIFF

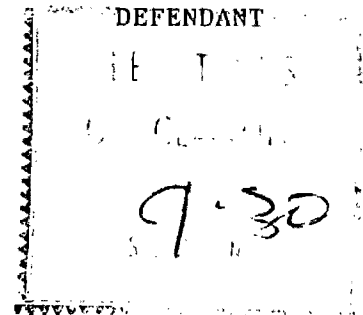
AND

DANIEL ANDREWS

DEFENDANT

Mr. V. Cuffy for the Plaintiff

Mrs. K. Bacchus-Gill for the Defendant.



1990: November 5 and 12.

JUDGMENT

MATTHEW J.

The Plaintiff commenced proceedings against the Defendant on October 7, 1988 claiming possession of a portion of land from the Defendant and other associated relief.

The Defendant entered appearance on October 18, 1988 and filed a defence and counterclaim on November 10, 1988 denying possession of the Plaintiff's land and asking for a declaration that he is the owner of the land on which his father's house is situated and injunctive relief against the Plaintiff.

The case was set down for trial on March 31, 1989.

The Plaintiff claims a portion of land by deed of sale no. 603 of 1985 executed on March 11, 1985 between his father Esau Thomas and himself. The extent of the land is 1 rood and the boundaries show that on the East the land is bounded by lands of Vincent Andrews, the father of the Defendant and the person from whom he claims.

Plaintiff also tendered in evidence deed 891 of 1982 whereby his father Esau Thomas made a declaration to the effect that he had purchased the land from Stanley Prescott on November 16, 1950.

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The Plaintiff stated that Vincent Andrews simply placed his house on his land. The Plaintiff has not produced any plan to identify the extent of land he has in his possession. He states under cross-examination that one rood contains three lots of land and he has in his possession 13/4 lots and the Defendant has 1 1/2 lots of his land.

Plaintiff stated that he never lived with his father but whenever he visited from time to time his father and Vincent Andrews were "always fighting concerning the land." This statement I would observe is quite vague.

The Plaintiff's only witness was Ray Mc Fee on whose evidence much reliance was placed by learned Counsel for Plaintiff. Mc Fee's evidence is to the effect that Vincent Andrews first rented the place on which his house is presently located and was chased away to Belmont after a bailiff broke down the house and put it on the road and sometime after Vincent Andrews replaced the house on the said location. He also said that Esau Thomas the subsequent owner of the land fought with Vincent Andrews over breadfruits. Although Mc Fee gave evidence in chief quite straight forward when he was being cross-examined he displayed a certain hostility or hesitancy which affects the weight of his evidence. He could not give the Court any idea of the year about which he was giving evidence. He did not even know whether the matters occurred last year.

The Defendant stated that he was born in December 1956 on the land and in the same house which, though badly delapidated, is still on the land. He said he does not get along with Ray Mc Fee who is related to him. He stated that he never knew the house to be moved from its location or that anybody was claiming the land until he got the Plaintiff's letter in 1987. The Defendant stated he received the land from his father who in turn received it from his mother. He tendered in evidence deed 2465/1974 executed on December 30, 1974 whereby Vincent Andrews declared that he had been in uninterrupted possession of land containing two lots more or less for a period of twenty years more or less. The Defendant stated that there is a row of white draggon that separates his land from a vacant piece of land adjoining the Plaintiff's land.

When Defendant was cross-examined he stated that from the time he was born till he got married five years ago he lived in that house. The

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Defendant denied that the Plaintiff ever barred the road to deny him access. The Defendant was supported by his half-sister Viola Rivierre who was born in 1933. She stated that she lived in the house with her stepfather Vincent Andrews from the time she was 10 until she was 21 years old and she never heard any dispute over her stepfather's land before the present action. She said she knew the Plaintiff's father Esau Thomas who lived next to her stepfather.

The burden of proof is on the Plaintiff to establish that the land occupied by the Defendant is his property. He has not produced any plan of survey and there is nothing in his deed to identify the land on the ground. When he was first cross-examined he said he had no knowledge that Vincent Andrews had land next to his until he was shown his deed and he accepted Vincent borders with his land on the East. Plaintiff admitted that Defendant was born in the particular house. He himself gave no evidence that the house ever left there. Ray Mc Fee cannot help with the date when he said he saw the house was moved.

I believe the Defendant and Viola Rivierre that Mc Fee is not on good terms with the Defendant. I do not believe Mc Fee is a truthful witness and I reject his evidence that he saw Vincent Andrews' house broken and put on the side of the road or that Vincent and Esau fought over breadfruits or the row of white draggons.

I do not believe the Plaintiff that he ever dug the Defendant's road whatever may be the value of this bit of evidence. I formed a favourable impression of Viola Rivierre and I believe her that she lived in that house in or about 1943 even though by 1974 Vincent Andrews was declaring he was in undisturbed possession for about 20 years more or less.

I find therefore that from about 1954 Plaintiff or his predecessor in title had not taken any effective action to gain possession from the Defendant or his predecessor in title until Plaintiff caused a letter to be written to the Defendant in 1987,

I believe too that from the time he was born in 1956 till the year of his marriage in 1985 the Defendant lived on the land and he saw no evidence of a claim of ownership to the land which he has inherited from his father.

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So Plaintiff has not on a balance of probabilities established that he or his father was ever in possession of the Defendant's land or that the portion of land the Defendant occupies was ever in his conveyance.

I find that the Defendant and his predecessor in title have been in undisturbed possession of that land for over thirty years before the 1987 letter which preceeded this action.

The Plaintiff's suit is accordingly dismissed and I declare that the portion of land on which the Defendant's house was located is his property.

The Plaintiff is to pay the costs of this action to be taxed, if not agreed.


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A.N.J. MATTHEW
PUISNE JUDGE