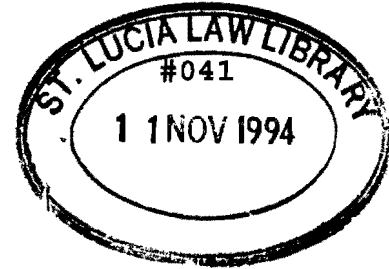


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994



Suit No. 427 of 1994

BETWEEN:

JOSEPH FELIX

Plaintiff

and

CATHERINE JULES

Defendant

APPEARANCES:

Mr. M. Foster for Plaintiff

Mr A. George for Defendant

1994: October 26;
November 9.

JUDGMENT

MATTHEW J. (In Chambers)

On June 15, 1994 the Plaintiff filed an ex-parte summons for interlocutory injunction against the Defendant. The summons was stated as being authorized under Articles 841 and 850 of the Code of Civil Procedure.

The summons was supported by an affidavit of the Plaintiff filed on

the same day. The Defendant was served with the summons and affidavit on August 15, 1994.

The matter came before the Court on September 21, 1994 and was adjourned to September 28, 1994. On that day I ordered that the Defendant be served for her appearance on October 26, 1994. On October 25, 1994 the Defendant filed an affidavit in reply.

When the matter came up for hearing on October 26, 1994 learned Counsel for the Defendant submitted that there was a procedural irregularity in the proceedings. Counsel stated that the matter was brought under Articles 841 and 850 of the Code of Civil Procedure but Article 841 required that the application be made by petition and the application in these proceedings was made by summons. Counsel also submitted that no undertaking was given by the Plaintiff as required by Article 842. Counsel further observed that if the true intention was to apply for an injunction under Order 29 of the Rules of the Supreme Court there was still a defect in the proceedings for no writ of summons has been issued in this matter.

In his reply learned Counsel for the Plaintiff conceded that there was an error on the face of his application for the intention was to apply for an interlocutory injunction under Order 29 and not an injunction by virtue of the Articles of the Code of Civil Procedure. Counsel further submitted that it was not mandatory to

file a writ before the grant of an injunction and an undertaking as to damages was also not mandatory.

Order 29 Article 1(3) states that the Plaintiff may not make an application for interlocutory injunction before the issue of the writ of summons except where the case is one of urgency. The summons was filed on June 15, 1994 and did not get a hearing before September, 1994. There was more than adequate time within which to file the writ. And even then the subject matter of the case cannot be said to be one that required urgent attention.

The Plaintiff concedes the error in stating the action to be brought under the Articles of the Code of Civil Procedure and in effect asks to amend his documents to say that the matter was being brought under Order 29 of the Rules of the Supreme Court. Applications under that Order require the Plaintiff to give an undertaking as to damages. Plaintiff replies by saying this is not mandatory as the Court of its own can cause an undertaking to be given. The Court must not be expected to take the initiative in these matters. Page 479 of the 1979 United Kingdom Supreme Court Practice states that an undertaking by the Plaintiff as to damages ought to be given on every interlocutory injunction. The Plaintiff in this suit did not even attempt to give an oral undertaking as to damages.

So the application for injunction is defective in at least two

respects.

I have however considered the application on its merits. **Paragraph 1** of the affidavit of Joseph Felix states he is the owner of an undivided one carre of land but it says a deed was made in his favour. He said the land is registered as **BLOCK 0235B Parcel 18**. The documents referred to in this paragraph are not attached so as to elucidate the matter. In **paragraph 2** he says the Defendant is the grand daughter of his aunt who is a co-heir of the remainder of the portion of land of which his land is a dismemberment. I do not follow this since he said in the first paragraph he is owner of an undivided one carre of land. In **paragraph 3** he alleges that the Defendant entered on his portion of land.

In her affidavit in reply dated October 25, 1994 the Defendant stated that the portion of land **0235B 18** is undivided land in which her mother has an interest together with Florent Heliodore and the Plaintiff. She also alleged in **paragraph 4** of her affidavit that about 4 years ago she requested a piece of the said parcel of land from the Plaintiff who is her grand uncle and the Plaintiff gave her permission to build her house on the said land.

It is my view that the land in question is undivided and both the Plaintiff and the Defendant may have some interest in the land. It is my further view that since the land is undivided one co-heir cannot maintain an action in trespass against another. For this

purpose the children of a co-heir who are on the land with the permission of the co-heir is in the same position as the co-heir.

The Plaintiff should have filed his writ by now and he must give the necessary undertaking as to damages if he is to obtain the grant of an injunction.

I believe the Plaintiff did give the Defendant permission to build the house on the land in question. I believe too the Defendant did behave in a disorderly manner and used obscene and threatening language to the Plaintiff.

If the Plaintiff were to file his writ and give the undertaking as to damages I would order that the Defendant be restrained from assaulting, molesting, harassing, threatening or otherwise interfering with the Plaintiff or his household.

There shall be no order as to costs.

A.N.J. MATTHEW
Puisne Judge