

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. 664 of 1993

Between:

- (1) EARDLEY ADOLPHUS GRAVESANDE, Administrator of the Estate of the late Nora Magdeleine Gravesande (also known as Nora Madeleine Gravesande), as appears by Letters of Administration granted by the High Court of Justice on the 29th day of September, 1981 and registered in Vol. 134a No. 134087 acting herein and represented by his duly appointed attorney William Weeks as appears by Power of Attorney registered in Vol. 138a No. 147108.

- (2) EARDLEY ADOLPHUS GRAVESANDE, acting herein and represented by his duly appointed attorney William Weeks as aforesaid.

- Plaintiffs

and

- (1) PETER PAUL SONSON.

- (2) OCTAVIA SONSON of the Morne in the Quarter of Castries.

- Defendants

Miss C. Greene for Plaintiffs
Mr. Vern Gill for Defendants

1995: January 10.
February 21.

JUDGMENT

d'Auvergne, J.

On the 1st of November 1993 the Plaintiffs filed a writ of Summons indorsed with a Statement of Claim seeking *inter alia* possession of a property purchased from Mary Edward consisting of house and land known as Lot 241 situate at the Morne and registered in Volume 119 No. 126123 at the office of Deeds and Mortgages. An appearance was entered on the 8th of November 1993, and a defence on the 23rd December 1993 on behalf of the defendants.

The defence is a general denial of the Plaintiffs' claim save that the defendants state that they purchased a portion of land (the same land) registered in Vol. 124 No. 144606 from Mary Edward and that they rely on the provisions of the Land Adjudication and Land Registration Acts to maintain the title to their land.

Before the commencement of the trial Counsel for the Plaintiffs sought an amendment which was granted; an insertion, a new paragraph seven (7) which reads as follows:

The defendants were mistakenly registered as the proprietors with absolute title of the said land and that the defendants had knowledge of the mistake and or caused or substantially contributed to the mistake by their action, neglect or default.

A further amendment was made to the prayer of the claim, an addition numbered 5 which reads as follows:

Rectification of the land register

At the trial only William Weeks gave evidence on behalf of the Plaintiffs and Octavia Sonson on behalf of the defendants William Weeks, a food technologist told the Court that he is the son of Nora Magdeleine Gravesande the deceased wife of Eardley Adolphus Gravesande and that he was the duly appointed attorney of the latter and tendered an exhibit to that effect.

He further exhibited Letters of Administration granted by the High Court of Justice on the 29th day of September 1981 and registered in Vol. 134a No. 134087 to Eardley Adolphus Gravesande. It is to be noted that Nora Magdeleine Gravesande is stated on that document, 'Letters of Administration' to have died 17 days before viz 12th September 1981.

A Deed of Sale dated 14th November 1979 from Mary Edward to Nora Magdeleine Gravesande, the schedule to which reads as follows:

"Commencing at a point on the Morne Development Housing Scheme forming the South-East corner of Lot No. 27 thence in a North East direction to the Castries Dennery High Road Azimuth 73 12' distance 110.8 thence along the said High Road in a North West direction Azimuth 338 26' distance 53.3 feet thence in a South West direction along the Ciceron Road, Azimuth 253 24' distance 105.3 feet thence in a South East direction Azimuth 164 12' distance 53.3 feet to the point of commencement. All on lot No. 241 is shown on plan of Survey by Surveyor O. Monplaisir dated 26th January 1965 and known as drawing No. C 3238 and comprising of 5780.4 sq feet."

The witness further told the Court that the Second Defendant was his first cousin, the daughter of Mary Edward mentioned earlier in the Deed of Sale as vendor and that the said Mary Edward was his mother's Sister.

He said that he was aware of a Deed of Sale made by Mary Edward to the defendants and tendered that Deed of Sale as an exhibit. He said that in the schedule to that Deed of Sale there was mention of a dwelling house and I quote "that dwelling house was built by my mother.

My mother died on the 12th September 1981. She had completed that house. It is a one storey wall house at the time of my mother's death. When my mother died the property was empty for about two years"

He said that in or about the year 1983 or 1984 on becoming aware of the Second Deed of Sale by Mary Edward to the defendants and after consultation with his step father, the latter constituted him his attorney. (Deposit of Power of Attorney dated 18th December 1984).

The witness said that he was unable to register the property because the said property was already registered in the name of the defendants. He further said and I quote, "I did not proceed earlier because of legal advice given and financial constraints was another reason."

He told the Court that he visited the property for the first time after his aunt, Mary Edward's death in 1993 and he observed the bottom floor of the building was being constructed so he filed this suit and obtained an injunction against the defendants in April 1994. He concluded his examination in chief by informing the Court that he visited the property after the granting of the injunction against the defendants and further observed that the construction works had not ceased but was almost "about three-quarter way finished".

Under Cross Examination the witness said "At the time my mother died a house had been built on that property by my mother... The house was completed at the time of my mother's death in 1981..... The house was closed after my mother's death for two or three years.... It is correct that between the period 1984 when I noticed the purchase and 1993 the filing of the case I did nothing but talking to lawyers."

He told the Court that he was unaware that a person could only act under Letters of Administration for one year only, unless the period was extended. He said that he never saw his cousin, the second defendant, in actual occupation of the property though he saw other people in occupation, nor did he ever speak to her about the property.

Octavia Sonson the Second Defendant and wife of the First Defendant confirmed the relationship between Mr. Weekes and her. She referred to a Deed of Sale which had already been exhibited by the Plaintiffs' witness as the document which gave her title to the

property in dispute. She exhibited a land register which showed that the defendants were the owners of the property with absolute title. She said that during the year 1984 she purchased an incomplete structure on the land and immediately took a loan, completed, furnished and rented the property.

She told the Court that she worked abroad and would live in part of the same house whenever she was in St. Lucia; that she returned to St. Lucia in the year 1993 and once more took loans in order to complete the bottom storey of the said house.

She further told the Court of the interim injunction granted in April 1994 restraining her and her husband from continuing the construction of the bottom floor of the said house until the trial or further order of the Court.

The defendant said that her mother and not Nora Gravesande commenced the construction of the house; that the structure at the time of purchase comprised only of four walls and a roof which were on pillars. She said and I quote, "I was not aware that my mother had sold the property. I bought thinking that my mother had title to the property."

Learned Counsel for the defendants submitted that William Weekes had no Locus Standi since his period of administration had expired.

He argued that the defendants purchased the property in 1984 and had it registered in the Land Registry in 1986 with no knowledge of prior claims.

He submitted that of the two witnesses who gave evidence the defendant was to be believed, that there was an incompleted house on the property at the time of purchase in 1984.

He emphasised the fact that the Plaintiffs witness said in

examination in Chief that he had seen the defendants and others "in occupation" of the house and under Cross Examination said that it was "in possession" that he knew of the Sale of the property to the defendants yet did nothing about it.

He quoted Section 8(1) of the Land Adjudication Act No. 11 of 1984 which states:

"Every person including the Crown claiming any land or interest in land within an adjudication section shall make his claim in the manner and within the period fixed by the notice given under Section 6."

Section 3(1) of the Land Registration Act No. 12 of 1984 which reads as follows:

"Except as otherwise provided in this Act no other law and no practice or procedure relating to land shall apply to land registered under this Act in so far as it is inconsistent with this Act."

He argued that the Plaintiffs neglected to use the machinery provided by the said Land Registration Act and then seek to be considered in light of Section 98 of the Act which reads as follows:

- (1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the

rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

He strenuously argued that there was no evidence to show that there was a mistake on the part of the defendants.

He quoted the St. Lucian case Suit 149 of 1991 (1) Maurice Leon Citronelle (2) Renee Adrienne Auguste vs Abel Wilson.

This was a case where the Defendant acquired property which had been donated from the vendor to his children. The Defendant paid valuable consideration, registered his claim and occupied that land for a number of years with the knowledge of the Plaintiff. It was held that 'delay defeats equity' and that the Defendant was entitled to the land.

He quoted Suit 628 of 1992 (St. Lucia case) Maurice Dantes vs Cecile Bibiana Joseph and Skelton V Skelton 37 WIR Page 177.

He argued that Civil Appeal No. 1 (b) of 1990 Joseph St. Rose vs Brice Lafitte had to be distinguished from the case under consideration.

Learned Counsel for the Plaintiffs submitted that with regard to the submission that the Plaintiff's witness had no locus standi that submission should have been taken at the close of the Plaintiffs' case.

She quoted Article 599(3) of the Civil Code of St. Lucia and said that this irregularity could always be rectified and quoted the case of Springer and Another vs Lalla and other 7 WIR Page 323 Cropper v Smith Vol. XXVL Chancery Division Page 700

Learned Counsel submitted that the Court should accept the evidence of William Weekes; that Nora Gravesande built the house in question since the Deed of Sale on behalf of Nora Gravesande dated 14th November 1979 makes no mention of a dwelling house but the Deed of Sale to the defendants dated 1st of June 1984 states "Together with the dwelling house erected thereon."

She argued that the Plaintiffs' witness should again be believed that the procedure for registering the property was already finalized hence the reason why the Deed of Sale of Nora Gravesande was not registered.

She urged the Court to accept the evidence of the Plaintiffs' witness that he delayed in taking action because after consultation with his lawyer he believed that his aunt would be faced with criminal charges and in the circumstances could not be said to have acted unreasonably.

She quoted Section 2112 of the Civil Code and the above mentioned case of Joseph St. Rose vs Brice Lafitte.

She made reference to Section 98(2) of the Land Registration Act No. 12 of 1984 and argued that the defendants had knowledge of the mistake of Mary Edwards or alternatively substantially contributed to the mistake through their neglect in ascertaining whether Mary Edward had title to transfer land to them. She quoted Article 1397 of the Code which provides that:

"The Sale of a thing which does not belong to the seller is null..... The buyer may recover damages from the seller if he were ignorant that the thing sold did not belong to the seller."

She concluded that the defendants were negligent in not conducting a proper search at the Registry of Deeds and Mortgages which would have revealed the prior registration of Nora Gravesande.

CONCLUSION

Article 599 (1) of the Civil Code provides that "Subject to the provisions of this Code, a personal representative shall administer the succession which by law devolved upon and vested in him and shall perform all his obligations with the least possible delay, and he shall thereafter, not later than one year from the date of the probate or letters of administration, distribute amongst the heirs or legatees, the property of the succession in accordance with the will of the deceased or the provisions of this Code relating to the devolution of successions.

(2) If the succession has been fully and finally administered within a shorter period than one year from the date of the probate or letters of administration, the personal representative shall be bound to hand over the residuary succession to the person entitled thereto without waiting for the expiration of the year.

(3) The Court or a Judge may extend the time for administering the succession beyond the year for such reasons as it or he may think sufficient.

On the 30th of September 1981 Letters of Administration were granted to Eardley Adolphus Gravesande and on the 18th of December 1984 a Power of Attorney in favour of William Weeks was deposited at the office of Deeds and Mortgages in St. Lucia.

Based on the above I find that William Weeks had Locus Standi to act on behalf of the Plaintiff. I accept the fact, that the Letters of Administration were granted in 1981 a lapse of almost fifteen years between the said grant of the Letters of Administration and the hearing of the case. This irregularity however, can be rectified at any time (Sub-Section (3) of Art 599 of the Civil Code). I also bear in mind the words of **Bowen L. J.** in **Cropper and Smith** noted earlier at page 700 and I quote "..... it

is a well established principle that the object of Courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct of their case."

Article 1973 of the Civil Code provides that:

"when two or more persons receive deeds of conveyance of a property from the same grantor he who first registers his deed has the preference."

Section 23 of the Land Registration Act No. 12 of 1984 states:

Subject to the provisions of sections 27 and 28 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject -

- (a) to the leases, hypothecs and other encumbrances and to the condition and restrictions, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register.

In Williams and Glyn's Bank Ltd v Boland

and another

Williams & Glyn's Bank Ltd v Brown 1980 I ALLER Page 408

It was held that the words "in actual occupation"..... were ordinary words of plain English and should be interpreted as such. Accordingly what was required was physical presence on the land; the word 'actual' was not intended to introduce any additional qualifications but merely emphasised that what was required was physical presence and not some entitlement in law."

I am of the view that the failure of Nora Gravesande duly appointed agent to have her interest registered as required under the Civil Code and the Land Registration Act is fatal to the Plaintiffs' claim, moreover the defendants are in 'actual occupation' of the premises. The Plaintiffs' witness under Cross Examination said and I quote "From 1984 onwards, I saw other people occupying that house and the defendants in occupation of the property..... It is correct to say that between the period 1984 when I noticed the purchase and 1993, the filing of the case I did nothing but talking to lawyers. I agree that this covers a span of nine years."

A plaintiff in equity is bound to prosecute his claim without undue delay, while it is true that equity does not fix a specific time but considers the circumstances of each case, a period of nine years from knowledge of the existence of the purchase of the said property by the defendants to the date of filing the writ is in my judgment to be regarded as undue delay.

Paragraph 1478 of Halsburys 4th Edition Volume 16 states:

Acquiescence as an element in laches.

The chief element in laches is acquiescence, and sometimes this has been described as the sole ground for creating a bar in equity by the lapse of time. Acquiescence implies that the person acquiescing is aware of his rights and is in a position to complain of an infringement of them.

Hence acquiescence depends on knowledge, capacity and freedom. As regards knowledge, persons cannot be said to acquiesce in the claims of others unless they are fully cognisant of their right to dispute them. Where a plaintiff is kept in ignorance of his cause of action through the defendant's fraud, time will only begin to run from the time when the plaintiff discovers the truth or ought reasonably to had done so. It is not necessary, however, that the plaintiff should have known the exact relief to which he was

entitled; it is enough that he knew the facts constituting his title to relief. As regards capacity, there is no acquiescence, and laches is not imputed, while the party is a minor or is mentally disordered. As regards freedom, a person does not acquiesce while he is subject to such circumstances of undue influence or other pressure as to deprive him of the ability to give a true consent, and laches is not imputed until he is released from the position in which he is placed by these circumstance.

Poverty, added to other circumstances, is a material ingredient in deciding whether laches is to be imputed to a vendor who seeks to avoid a sale, but by itself it does not prevent a waiver of a right.

It is of importance to note that "Poverty added to other circumstances" can only be used by a vendor.

Again, I am of the view that the entry on the Land Register of the Defendants as owners with absolute title of the parcel of land registered as 0647B29 in the registration quarter of Castries is not a mistake. The Plaintiff's attorney did not register the land as required by the Land Registration Act, did not take legal action as soon as he became aware of the defendants' registration as absolute owners, instead allowed nine years to elapse before seeking redress, never entered into possession despite the fact that the Deed of Sale to Nora Gravesande was executed in 1979 and she died in 1981. (It is to be noted that the Deed of Sale to the defendants was executed on the 1st day of June 1984 and Registered in the Land Registry on the 20th day of November 1986.

In my judgment the Plaintiffs' claim fails. The action is dismissed.

My order is as follows:

That the defendants are correctly recorded as the owners with

absolute title of the parcel of land registered as 0647B29 and that there be no rectification of the register.

That the interlocutory injunction granted on the 20th day of April 1994 is hereby discharged.

That the Plaintiffs do pay costs to the defendants to be agreed or otherwise taxed.



SUZIE d'AUVERGNE
PUISNE JUDGE