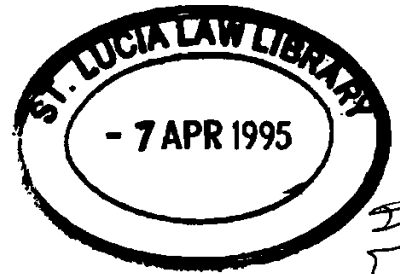


1) injunction
2) trespass
land

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No.219B of 1993

Between:

- (1) JOSEPH BADEN ALLAIN
- (2) PATRICIA-ANN ALLAIN

Plaintiffs

vs

JOHN LAMONTAGNE

Defendant

Mr Patrick Straughn for the Plaintiffs

Mr Owen Edgar for the Defendant

1994: December 12
1995: March 03

J U D G M E N T

d' Auvergne, J.

By a writ of summons endorsed with a statement of claim filed on April 16, 1993 the Plaintiffs sought the following relief:

- (a) An order of injunction ad interim to restrain the Defendant by himself, his servants, agents or otherwise from further entering into the Plaintiffs' said lands or any part thereof until final determination of this suit.
- (b) General damages for trespass.
- (c) An order of injunction forever restraining the Defendant by himself, his servants and/or agents or otherwise from entering upon and/or remaining on the said lands of the Plaintiffs or any part thereof.
- (d) The cost thereof.

ALLAIN, BADEN
V
JOHN LAMONTAGNE

Simultaneously the Plaintiffs filed an application for an injunction under Order 29, Rule 1 of the Rules of the Supreme Court; that application was supported by an affidavit of the first Plaintiff and on April 28, 1993 the Defendant filed his affidavit in reply.

Patrick Straughn, the Solicitor for the Plaintiffs filed a further affidavit in reply on May 11, 1993.

On May 12, the Defendant filed his defence denying all the allegations in the statement of claim and stating that he has been in occupation and cultivating his family lands of which he is an heir for the past thirty (30) years.

On that same date an order of the High Court was made by Matthew J that licensed Land Surveyor Allan Hippolyte attend Court on June 2, 1993 with his documents and plans of the lands situate at Morne Ta Bac, Soufriere dated December 5, 1981 and September 3, 1992 respectively.

On May 28, 1993 Patrick Felix a labourer employed by the Plaintiffs filed an additional affidavit on behalf of the Plaintiffs.

On June 2, 1993 Matthew J., heard the application for the injunction and on June 9, gave an order which reads as follows:

"That the Defendant be restrained and an injunction is granted restraining him whether by himself or his servants or agents or otherwise from allowing his sheep to trespass upon the Plaintiff's cultivation on the land situate at Morne Tabac in the quarter of Soufriere referred to in these proceedings.

Cost of this application to be reserved."

This matter was set down for trial for December 12, 1994 and was heard on that date. At the trial the first Plaintiff, his employee Patrick Felix and Licensed Land Surveyor Allan Hippolyte gave evidence on behalf of the Plaintiffs and the Defendant gave evidence on his own behalf.

The first Plaintiff, a Barrister-at-Law gave evidence that he and his wife the second Plaintiff owned three-and-a-half (3½) acres of land in the quarter of Soufriere called 'Quatre Chemin', that the land was bought in two portions, and was surveyed by Surveyors Chastanet and Hippolyte. He tendered as exhibits two Deeds of Sale.

I pause here to note that Quatre Chemin and Morne Ta Bac is one and the same area.

The Plaintiff told the Court that the Defendant's land adjoined his on the northern side and that they have always had problems; that he spent quite a bit of money in purchasing anthurian lilies, carrots and cabbage, paid men to plant and care them, but they disappeared, that the leaves of the other permanent crops on the land were being constantly nibbled at; that an increasing supply of sheep and goat droppings was constantly found on the land though he did not own nor keep any animals on the land.

He said that on one occasion he noticed that fire had been set to the southern portion of his land and that he had not given permission to anyone to do so, not even the three (3) men that he employed weekly on the land.

The Plaintiff told the Court that he was unable to quantify the damage done to the land though he had spent quite a bit of money cultivating the land. He said that before buying the land he informed the Defendant that he would be his adjoining

neighbour and hoped that they would be good neighbours but that the Defendant "*adopted a belligerent attitude*" and informed him that his parents (defendant's) wanted to buy the land from the vendors, whereupon the Plaintiff told the Defendant that he himself had many years in which he could have purchased the land if he so desired.

The evidence shows that the Plaintiff and the Defendant are not on friendly terms and that they never discussed the happenings on the land but that on June 9, 1993 the Plaintiff secured an injunction against the Defendant which I have already stated.

Under cross examination the first Plaintiff reiterated that the Plaintiffs bought an undivided half portion of one carre of land at Morne Tabac from Mathurine Larcher in 1991 and in 1992 bought the other undivided half portion of the said one carre of the same Morne Tabac from Marie Cornelia Williams the mother of the first Plaintiff, who had bought that undivided half ($\frac{1}{2}$) carre the previous year from the same vendor Mathurine Larcher.

A map sheet of lands in the area registered as Block 0233B was shown to the Plaintiff and he pointed out and said that he purchased and occupies Parcel 3 on the said map sheet, that Parcel 2 belongs to the Defendant and that he had no reason to believe that the wrong Parcel, i.e. Parcel 3 had been allocated to him since the boundaries of his land were showed to him. He also told the Court that he was not aware that Mr Chastanet who did the physical survey of his lands was not a licenced Land Surveyor until about 18 months ago.

He concluded his evidence by stating that he had never seen the Defendant enter his land neither did he ever see him felling or burning any trees on the land.

Patrick Felix said that he has been employed as a labourer on the lands of the Plaintiff for the past two years and that he was aware that the Defendant was an adjoining owner of the land in question for he has seen him working on that land.

This witness said that he saw the Defendant enter upon the lands belonging to the Plaintiff, cleared, burnt and cultivated a portion; that he informed him of his encroachment but that the Defendant replied by insulting him and informing him that he had no land. He concluded his examination in chief by informing the Court that the Defendant on a daily basis tie only one of his 12 sheep leaving 11 loose to roam and that they enter Plaintiff's land and cause damage.

Under cross examination the witness told the Court that he was illiterate, that he knew the Defendant very well, he worked for his father; that the Defendant was the one who assisted the Surveyor to establish the boundaries of the land in question viz 0233B Parcel 3.

The last witness for the Plaintiffs was Surveyor Allan Hippolyte. He told the Court that he carried out two surveys in the area; that he personally surveyed for the Defendant and later his associates surveyed for Mr Allain. He identified his survey plan of July 1981 and which was lodged on December 17, 1981. He further pointed where his survey plan would fit on the map sheet of the area and said that part of the area pointed out on the map plan as 0233B is the land he surveyed for the Defendant.

When re-examined he said that according to the Land Registry map the whole of the area known as Block 3 belongs to Mr Allain.

John Lamontagne gave evidence that he was a farmer who had been on the land in question for over 30 years, that he is one of the heirs of Rodolph Lamontagne who had purchased the land on June 7, 1960.

He exhibited his father Rodolph Lamontagne Deed of Sale, a lodged plan dated December 5, 1981 by the above mentioned surveyor recorded as S595.

He told the Court that he has been in continuous peaceful occupation of the lands for over 30 years, that after his father's death he took out letters of administration and a vesting deed which transferred the property to him, his brothers and sisters.

I pause here to note that Defendant's land is registered in the Land Registry as 0233B3, Block 2 while the Plaintiff's land is recorded as 0233B, Block 3.

It is significant to note as well that Defendant's Deed of Sale is for one (1) carre of land but the lodged plan is for two (2) acres.

Defendant concluded his examination in chief by asking that 0233B, Block 3 should be recorded in his name.

Under cross examination, Defendant told the Court that there is a pond on his land, which is Block 3 though recorded at the Land Registry as belonging to the Plaintiffs and that he was asking the Court to have the register rectified since the Plaintiffs are occupying the wrong piece of land.

He admitted to knowing both the first Plaintiff and the witness, the latter having worked for his father but denied having insulted him.

ARGUMENTS

Learned Counsel for the Defendant argued that this was a simple case. He contended that the first Plaintiff was unable to connect the Defendant with the third paragraph of his statement of claim in which he said,

"From on or about 12th April, 1993 and up to the date hereof the Defendant, by himself his servants and/or agents, without the authority or consent of the Plaintiffs or of anyone thereto duly authorized did:

- (i) enter upon the said lands of the Plaintiffs;*
- (ii) cut down and burn trees growing thereon*

whereby the Plaintiffs suffered loss and damage" nor was Peter Felix able to state the date of the trespass, all he knew was that it was a Wednesday.

Counsel contended that the Defendant's father bought the land in 1960; that the Defendant was and is in occupation of the said lands for over 30 years. Defendant had his land surveyed in 1981, after land was transferred to the heirs after his father's death.

He argued that it was easy to see that there is a mistake and that only the Court has the power to correct the mistake and he quoted Section 96 of Land Registration Act 1984.

"Where any person claims to have acquired a servitude by prescription he may apply to the Registrar for registration thereof, and the Registrar, on being satisfied as to the claim and subject to such notices, advertisement and conditions as the Registrar may direct, shall register the servitude as an encumbrance on the register of the land affected and also in the property register of the land which benefits."

He further contended that the Defendant had a registered document of his land and a lodged plan of survey as compared to the Plaintiff whose survey plan was not lodged moreover that the Defendant had been on the land for over 30 years and he quoted Section 2103A of the Civil Code which reads as follows:

"Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court."

Learned Counsel concluded his address by urging the Court to dismiss the Plaintiffs' claim since they failed to establish the allegations in the statement of claim and that a mistake had been made when their land was registered as 0233B, Parcel No.3 since the Defendant was owner in possession of that parcel of land.

Learned Counsel for the Plaintiff argued that the land is registered at the Land Registry in the name of the Plaintiffs and therefore when the Defendant entered upon that piece of land without the permission or consent of the Plaintiffs he had trespassed on the land; and though it is true that the first Plaintiff could not say that he ever saw the Defendant enter or in occupation of his lands, his witness Patrick Felix most emphatically said that he saw the Defendant enter, cleared, burnt and cultivate a portion of the land. He concluded by urging the Court to note that the Defendant had not pleaded that the land register at the Land Registry should be rectified.

CONCLUSION

As I see it the parties before the Court both have title deeds that are recorded in the Land Registry, the Plaintiffs are recorded as owners of Parcel 0233B 3 and the Defendant as 0233B 2.

The Defendant has a lodged plan of survey dated December 5, 1981 for 2.00 acres whereas the Plaintiffs have an unlodged plan drawn on September 3, 1992 for 1.40 carres or 3.47 acres of land.

The Licensed Land Surveyor Allan Hippolyte whose name appears on both plans told the Court that while he personally did the survey for the Defendant one of his associates did the physical survey for the Plaintiffs.

This Surveyor said in evidence that "Parcel 3 belongs to Mr Allain" I pause here to note that this Surveyor had already given evidence before Matthew J on June 2, 1993 with regard to this same matter when he dealt with the interlocutory injunction. So it is to be accepted this witness is fully aware of the effect of his pronouncement.

As I have pointed out earlier the Defendant's deed is for one carre of land at Morne Tac yet in 1981 when the land was surveyed the surveyor recorded 2 acres considerably less than what he is alleged to have bought. This in my opinion means that the Defendant was and is still unaware of the boundaries of his land and therefore occupies land which is not his; moreover Patrick Felix who worked for Defendant's father told us so.

There is no doubt in my mind that Patrick Felix is an honest, though illiterate witness. He knows the land owned by the Defendant, he worked on the land with Defendant's father and

that the Defendant assisted the Surveyor in defining and identifying the boundaries of the Plaintiffs' land.

I believe the first Plaintiff when he said he discussed his intended purchase of the land with the Defendant and the hostile attitude the Defendant developed towards him since the purchase.

A perusal of the two Deeds of Sale of the Plaintiffs and that of the Defendant shows that the schedule is the same in all the deeds; a portion of land (according to the amount bought) to be dismembered from a larger portion and the boundaries are the same.

While it is true that the Defendant has a lodged plan and the Plaintiffs' plan is not lodged; *"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."* (Section 23 of Land Registration Act 1984).

The Plaintiffs are registered as the absolute owners of 0233B Parcel 3 in the registration quarter of Soufriere and the Defendant of 0233B Parcel 2, therefore the Defendant must abide by this and have Parcel 2 surveyed if he wants to ascertain the amount of land he owns and have his boundaries defined.

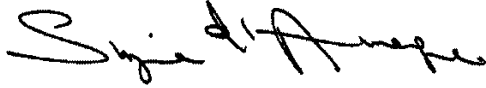
The fact that the Defendant has been on the land for over 30 years is only one of the requirements for a prescriptive title and this is not the position under review in this matter.

I find that the Plaintiffs have made out their case and my order is as follows: ~~order~~

- (1) That the injunction granted by Matthew J on June 9, 1994 is hereby made perpetual.

(2) General damages for trespass in sum of \$500.00 to be paid by the defendant to the Plaintiffs.

(3) Costs to the Plaintiffs to be agreed or otherwise taxed.



**SUZIE d'AUVERGNE
PUISNE JUDGE**