SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. 208 of 1992

Between:
EX PARTE: THE ATTORNEY GENERAL OF ST. LUCIA

Plaintiff

v.

HILTON JOSEPH
FREDERICK PROSPERE

Respondents

Mr. P. Compton, Senior Crown Counsel for the Plaintiff
Mr. K. Monplaisir Q.C; for the 1st Respondent
Mr. P. Bledman for 2nd Respondent.

1995: April 5th
May 5.

J U D G M E N T

d'Auvergne J.

By a petition supported by an affidavit of Lester Martyr, Commissioner of Crown Lands, filed on the 13th April, 1992, the Petitioner sought a declaration from the Court that the immovable property registered in the Land Registry in the name of the Crown as Parcel 0838B2 be declared the property of the Crown.

On the 25th September 1992 an Order which was later advertised in the St. Lucia Gazette was granted by Matthew J. The Order reads as follows:

It is ordered that pursuant to Section 20 of the Crown Lands Ordinance, chapter 108 of the Revised Laws of St. Lucia, the Attorney General be at liberty to issue a summons to all persons claiming an interest in the land described in the Schedule hereto, to show cause why the said lands should not be declared to be the property of the Crown pursuant to Section 19 of the said Ordinance and to serve a summons upon each person referred to in the

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affidavit of the Commissioner of Crown Lands, as well as upon Frederick Prospere of Millet, Anse la Raye.

On the 25th November 1992 Hilton Joseph (the First Respondent) entered an appearance and on 10th December 1992 a claim was filed on his behalf.

On the 29th April 1993 an appearance was entered by Frederick Prospere (the Second Respondent) and on the 30th July 1993 a document 'Reply to Petition' was filed.

On 3rd December 1993 a request for hearing was filed.

I pause here to note that paragraph 2 of the petition list twelve occupants of the land including Hilton Joseph (First Respondent).

After two adjournments, the matter was heard on the 5th April, 1995.

At the hearing, Counsel for the First Respondent, Mr. K. Monplaisir, said that the case before the Court arose out of a summons issued in the St. Lucian Gazette on the 31st October, 1992 which stated that "all persons claiming an interest in the said lands are hereby required within one week from the date of the last publication of this summons, which is being published during a period of 6 months, to file an appearance", and as a result, the two Respondents before the Court filed their respective appearances and claims before the Court.

Learned counsel argued that the Claimants should not be given any relief, or obtain any judgment in their favour, since their claims were Res judicata.

He said, that the claims of both Respondents have been heard and decided upon, by the High Court and by the Court of Appeal.

He commenced with the judgment of the consolidated cases of Suit 255 of 1980, and 207 of 1981 heard by Justice Mitchel. Those cases concerned competing claims under 2103A of the Civil Code of Saint Lucia - Declaration of Title to immovable property. The Claimants were Hilton Joseph the First Respondent and St. Pierre Volney. St. Pierre Volney was the predecessor of Frederick Prospere; (the latter bought lands from the former). He said that the learned Judge refused to issue a declaration of title in favour of either claimant; consequently they both appealed against the decision; (Civil Appeals Nos. 5 and 6 of 1987).

On the 25th January 1988 the Court of Appeal gave its decision. Moe J. A. traced the history of the transactions of the land in question.

He noted that on the 14/1/1981 an Order was made by Glasgow J. declaring St. Pierre Volney (predecessor of Frederick Prospere), owner in title to the land; Soon after Hilton Joseph (First Respondent) filed a notice of motion to have the order set aside. Before the hearing of the motion, St. Pierre Volney died and Hubert Philip, the executor of his estate was added as a party. The Order was eventually set aside and Hilton Joseph was granted leave to enter an appearance and file his claim to Volney's petition.

On the 19th September, 1995 a Declaration of Title to the land was issued in favour of Hilton Joseph, that order was set aside on the 6th November 1985. Soon after Volney's petition and Hilton Joseph's claim (suits mentioned above) were heard and the learned Judge found that on the evidence led, that neither Hilton Joseph nor St. Pierre Volney could support a declaration of title by prescription for thirty years, their claims failed.

In support of his argument that the issue was Res Judicata, learned Counsel then quoted Halsbury's Law of England, 4th Edition Volume 16 at paragraph 1537, 1547 and 1550 -

1537 Parties estopped by a Judgment in Rem

The most important distinction between judgments in Rem and judgments in personam or inter partes is that whereas the latter are only binding as between the parties to them and those who are privy to them, the judgment in rem of a Court of competent 'jurisdiction is as regards persons domiciled and property situated within the jurisdiction of the Court pronouncing the judgment, conclusive against all the world in whatever it settles as to the status of the persons or property, or as to the right or title to the property and as to whatever disposition it makes of the property itself or of the proceeds of its sale. In other words all persons whether party to the proceeding or not are estopped from averring that the status of persons or things or the right or title to property, is other than the Court has by such a judgment declared or made it to be.

1547 Res Judicata as between co defendants

In order to create a Res judicata as between Co-defendants, three conditions are requisite (1) there must be a conflict of interest between the defendants concerned; (2) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims; and (3) the question between the defendants must have been finally decided.

1550 Estoppels must be mutual

The question of who may take advantage of an estoppel is in general governed by the rule that estoppels ought to be mutual. The only persons who can take advantage of an estoppel by record are those who, had the decision been the other way, would have been bound by it, that is to say, in case of a judgment inter partes or in persona, the parties and their prives.

It is not enough that the person against whom the estoppel is set up was party or privy to the judgment relied on; each party to the later proceeding must have been party or privy to the earlier one. It follows that the only people who can take advantage of an estoppel or those who claim or defend in the later proceeding in the same right as they, or those to whom they are privy, claimed or defended in the earlier.

Learned Counsel concluded his arguments by stating that based on the above, the question between the Respondents has been finally decided and the parties are bound by the decision of the Court of Appeal.

Learned counsel for the second named Respondent commenced his argument by agreeing that the Court was bound by the decision of the Court of Appeal but that the question decided by that Court was not who owned the land, but who did not own the land and that the second Defendant had never been a party to any of the actions mention; that he was claiming the land by virtue of a title deed under which he purchased from St. pierre Volney at the time the latter had a valid title, therefore he was a Bona Fide Purchaser for value and that with a valid title, he sold to various people.

He quoted articles 2112 and 2070 of the Civil Code of St. Lucia which reads as follows:

"He was acquires a corporeal immovable in good faith under a written title prescribes the ownership thereof and liberates himself from the servitudes, charges and hypothecs upon it by an effective possession in virtue of such title during ten years".

Article 2070 reads:

"Subsequent purchasers in good faith and for value either from a precarious or subordinate possessor, or from any other

person, may prescribe by ten years' possession against him who is the proprietor during such subordinate or precarious holding."

He contended that based ont he above the Second Respondent, Frederick Prospere had a right in possession.

He urged the Court to note that the Crown was claiming the property under Article 356 and which reads:

"All estates which are vacant and without an owner, and those of persons who die without representatives or whose succession is abandoned, belong to the Crown."

He argued that the land had an owner, that it was bought by Cherubin Mathurin in 1895, was subsequently sold in 1909 to Herman Charles who placed the father of the First Respondent on the land; that St. Pierre Volney got a prescriptive title and Prospere bought under that title therefore if there was any defect it was cured by Article 2112 of the Civil Code.

Learned Counsel for the Crown told the Court that he associated himself with the submission made by learned Counsel for the First Respondent though he agreed with learned Counsel for the Second Respondent that the matter decided by the Court of Appeal in support of the Judgment of Mitchel J. was not who owned the land but who did not own the land.

He urged the Court to note that there were no other claimants to the land in question but the two Respondents; that the last person who owned the land was Herman Charles and that no heirs or personal representatives of Herman Charles had claimed the land therefore it was natural to conclude that the succession of Herman Charles has been abandoned and therefore falls into the category of lands which Article 356 of the Civil Code refers to.

He said that it was significant to note that the application by the Crown is under Section 19 of the Crown Lands Ordinance Volume 2 of the Laws of St. Lucia requesting that persons claiming interest should show cause why the Crown should not acquire the land. Learned Counsel then repeated the history of the land quoted earlier by learned Counsel for the First Respondent. He stressed that St. Pierre Volney had no title to land and therefore Second Respondent could not have gained title. It was a case of mutual mistake since Volney could not convey and Prospere could not buy.

Belle vs. Lever Brothers

He quoted the case of **St. Rose vs. Lafitte** with reference to 10 year prescription. He concluded by making reference to Case 426 of 1987. **Frederick Prospere vs. Marcus Williams et al** "In that case on page 2 Byron J. as he then was said

> "The evidence is that nobody is registered as owner of this land".

Learned counsel for the Crown submitted that the land should be escheated to the Crown in accordance with Article 356 of the Civil Code as amended Sec. 14 of No. 4 of 1988. He said that it was clear from the cases quoted above that neither of the Respondents own the land in question.

Learned Counsel for the First Respondent replied by quoting Halsbury's laws of England Vol. 16 paragraphs 1609, 1610 and 1618.

Paragraph 1609 - the question whether a course of conduct negligent or otherwise, amounts to a representation, or is such that a reasonable man would take to be a representation meant to be acted on in a certain way must vary with each particular case.

1610 Agency by Estoppel.

1618 Effect of Silence or inactivity when duty to speak or act - In the absence of a duty to speak, mere silence or inaction is not such conduct as amounts to a representation.

He concluded by quoting St. Lucian case, Civil Appeal No. 20 of 1989 **Suzanna Isidore et al vs. Christopher George** in which the principle of Res Judicata was thoroughly dealt with.

Learned Counsel for the Second Respondent replied quoted Article 2114 of the Civil Code -

> "It is sufficient that the good faith of subsequent purchasers existed at the time of the purchase, even when their effective possession only commenced later.

CONCLUSION

Since learned Counsel for the First Respondent has conceded that the matter is Res Judicata against the First Respondent; and that an appearance was only entered in response to the advertisement by the Petitioner that all persons claiming an interest in the land should enter an appearance; my only remaining task is to decide whether the Second Respondent can be considered a lawful claimant to the land.

In **Frederick Prospere vs. Marcus Williams et al**. Byron J. as he then was, had this to say "on a study of the pleadings, therefore, the issue in this trial was whether the Plaintiff was the owner entitled to possession of the said 3 1/2 acre lot of land . . . . . The evidence is that nobody is registered as owner of this land".

I pause here to note that the Plaintiff in that case is the Second Respondent in this case.

In Civil Appeals Nos. 5 and 6 of 1987 which concerned two competing claims to the title of the said land by Hilton Joseph, First Respondent and St. pierre Volney, the predecessor of the Second Respondent, (the history of which has been noted) the Court of Appeal confirmed the decision of Mitchel J. who gave judgment that neither party was entitled to a declaration of ownership, title of the 13 acre lands situate at Anse la Raye.

Let us consider the submission that the Second Respondent purchased from St. Pierre Volney at the time when the latter had a valid title to land. A perusal of the history of the piece of land in dispute from the cases quoted clearly shows that St. Pierre Volney became owner in title to the said land on the 14th of January 1981 and by the 11th August 1981 barely seven months later the First Respondent gave notice of motion to have that order of 14th January 1981 set aside though the matter was finally decided in January 1987.

Counsel submitted that the Second Respondent bought during the period that St. Pierre Volney held a valid title since he bought on the 23rd July 1981.

It is not insignificant to note that by paragraph 4 of the Second Respondent's affidavit he states that the First Respondent previously claimed title to the said land by Deed of Declaration and ownership dated 30th January 1981 and registered on 30th idem in Vol. 134(a) No. 131369, fifteen days after the registration of St. Pierre Volney's Declaration of title. This, in my judgment indicates that the Second Respondent was aware or was presumed to have been aware that the First Respondent was claiming the land he was buying therefore he could not be said to have bought in good faith. The history of the land in issue shows that there is no dispute that the First Respondent has been on the land since 1929 and that it was only in 1981 he received notices to quit firstly in February from the Second Respondent's predecessor in title and in August from the Second Respondent himself. Based on the above, it therefore could not be said that the Second Respondent has been in effective possession of the said land for over 10 years.

Article 2112 of the Civil Code of St. Lucia provides that

> "He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges and hypothecs upon it by

an effective possession in virtue of such title during ten years".

In Civil Appeal 1B of 1990 **Joseph St. Rose vs. Brice Lafitte** the learned Chief Justice at Page 2 had this to say.

> "The evident object of Articles 2113 to 2118 of the Civil Code under the caption "Prescription by subsequent purchasers is to protect a subsequent purchaser who acquired land (i.e. entered - to prescriptive possession of land as owner thereof) in good faith under a void written title and continued in prescriptive possession for at least 10 years. The protection is against a previous purchaser or owner who has a valid legal title to the land.
>
> Articles 2112 to 2118 presuppose that the subsequent purchaser's title is void by reason of the invalidating principle Nemo dat quod nor habet".

By 1987 the High Court had declared that nobody is the registered owner of land in dispute and this was confirmed by the Court of Appeal in January 1988 i.e. that the First Respondent and the Second Respondent's predecessor in title had failed on their claims to ownership of the land; Consequently St. Pierre Volney could not sell the land which was not his to the Second Respondent. (Article 1397 of the Civil Code).

The decision in **St. Rose vs. Lafitte** makes it abundantly clear that "Article 2112 applies only to a subsequent purchaser who acquired land in good faith. Article 367 of the Civil Code provides that:

> A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolutory cause which puts an end to it are unknown to him. Such good faith ceases only from the moment that these defects

or the resolutory cause are made known to him by proceedings at law."

The learned Chief Justice goes on to state that according to Article 367 ignorance is the procreator of good faith. In the context of the acquisition of land, the words "good faith" are descriptive of a state of mind which has long been juridically equated to honest belief . . . . ." If ignorance is explicitly the procreator of good faith or honest belief, knowledge (which is the antonym of ignorance) is implicitly the procreator of "bad faith" or disbelief.

The inference to be drawn from the Second Respondent's conduct is that at the time when he bought from St. Pierre Volney in July 1981 he was aware that Hilton Joseph, the First Respondent had a Deed of Declaration to the land and that within a matter of 20 days of his purchasing the land, the First Respondent had petitioned the Court to set aside the Order of 14/1/1981 declaring St. Pierre Volney the owner of the land. Therefore taking all the surrounding Circumstances thereof, the Second Respondent acted in bad faith when he acted as owner of the land letting out lots to the occupants, the other persons mentioned in the petition (who did not claim title).

In my judgment the Second Respondent cannot successfully use Article 2112 of the Civil Code of St. Lucia.

It is also my view that the decision delivered on 12th January 1987 and confirmed on the 25th January 1988 is a judgment in Rem and therefore the matter is Res judicata against the Second Respondent.

I have observed that paragraph 14 of the Petition reads:

"The land was registered on August 27th 1987 in the Land Registry in the name of the Crown as Parcel No. 6838B2" therefore it remains in the name of the Crown since the claim

of both Respondents have failed.

My Order is as follows:

All that piece or parcel of land situate at Millet in the Quarter of Anse la Raye comprising of 12 acres one Rood and one decimal naught 2 perches (12 acres 1 Rood 1.0 perches) and bounded as follows:

North and West by the property of Mrs. Foster; South by the property of Cornwallis Biscette; and East by Ravine Millet on plan of survey by L. J. Alexander, Licensed Land Surveyor, dated 12th February 1976 and lodged at the office of the Commissioner of Crown Lands on the 11th March 1976 as Drawing. No. ALR873 Record No. 64/76 and registered at the Land Registry in the name of the Crown is in fact the property of the Crown.

There will be no Order as to costs.

SUZIE d'AUVERGNE

PUISNE JUDGE