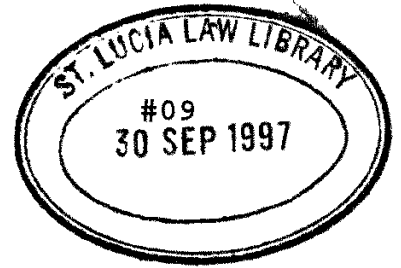


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. 451 of 1995

BETWEEN:

PHILOMENE DETERVILLE

Plaintiff

and

MATHILDA DETERVILLE

Defendant

Mr. W. Hinkson for Plaintiff
Mr. M. Francois for Defendant

1996: January 24;
February 9.

J U D G M E N T

MATTHEW J. (In Chambers).

On June 29, 1995 the Plaintiff filed what she referred to as a petition to order an inquisition purportedly under Articles 289(2) and 291(1) and (2) of the Civil Code.

The petition was supported by an affidavit of the Plaintiff filed on the same day. In that affidavit she stated she is the youngest of eleven children of her mother, the Defendant, who was then 88 years old. She stated that she had been occupying a four bedroom house with her mother but from January 1994 her mother had moved out of the house and was occupying a small house nearby with a 45 year old blind man.

She complained that the blind man has considerable influence over her mother and the management of her mother's personal affairs and as a result her mother has rejected the love and influence of her children. She further stated that the relationship has resulted in the withdrawal of funds in the Royal Bank of Canada from an account jointly held by her mother and herself.

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V
MATHILDA DETERVILLE

She complained that her mother had used those funds to help to build a house on her companion's family lands.

She said she feared that her mother's instability has put her investment in peril and that if her mother did not disassociate with her companion both the mother and herself would lose their property.

She said she viewed with disgust that her mother at 88 years, ten years after her husband's death, should cohabit with a much younger man who is blind and unable to help her and for those reasons she was asking the Court to appoint her as curator of the property of her mother and to make an order that she maintains her mother and that the Court should also eject the male companion from the house.

On November 15, 1995 the Defendant filed an affidavit in reply. In that affidavit she stated that it was an act of charity which caused her to admit the blind man into her home. She said she occupies the house with the blind man because the Plaintiff has threatened to hurt the blind man and to burn down the small house.

She denied undue influence and stated that she had complete control over the management of her affairs.

She denied that the Plaintiff had a share in the house which was built jointly by herself and her husband and she denied that she cohabited or slept with the blind man.

Antoine Louison, the blind man, also swore to an affidavit filed on November 15, 1995. He said that he was in the process of constructing a dwelling house for him to live in on his family land which bounds with the property of the Defendant.

He said he asked the Defendant to rent a small house near by for him and the Defendant replied that she would not rent to him but

would allow him to live there free of rent until the completion of his house.

He denied that he has any influence over the Defendant or that he cohabits or has ever cohabited with the Defendant.

Both Counsel made factual submissions which were contained in their affidavits.

Learned Counsel for the Plaintiff in answer to me said that he was bringing the action by virtue of Articles 285(1) and (2); 291(1) and (2) of the Civil Code. In the petition it was stated that Article 289(2) was also material.

I think I should set out the articles of the Civil Code on which the Plaintiff relies.

Article 285 (1) and (2) are as follows:

"(1) It shall be lawful for the Supreme Court or any Judge thereof, on petition supported by affidavit to order an inquisition whether a person is of unsound mind and incapable of managing himself and his affairs.

(2) All such petitions shall be addressed to a Judge of the Supreme Court, and shall contain a specification of unsoundness of mind."

Article 289(2) is as follows:

"(2) If upon such inquisition it appears that the person alleged to be of unsound mind is of unsound mind, so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself, or to others, it may be so specially found and certified.

Articles 291 (1) and (2) are as follows:

"(1) Where upon an inquisition the Court or Judge finds that the person who is the subject of the inquisition is of unsound mind, the Judge may make an order for the appointment of a curator to the person and property of the person so found to be of unsound mind, and every such order shall take effect from the date thereof.

(2) Where upon the inquisition it is specially found or certified that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Judge may make such orders as he thinks fit for the appointment of a curator of the property of the person of unsound mind and its management, including all proper provisions for the maintenance of the person of unsound mind, but it shall not be necessary, unless in the discretion of the Judge it appears proper to do so, to make any order as to the custody or curatorship of the person of unsound mind."

I have taken time to set down the provisions of the Code relied upon. They all fall within Chapter Second of Book Tenth of the Civil Code. Chapter Second is headed "Inquisition as to unsoundness of mind". Every paragraph cited above contains the words unsound mind or similar words.

I have also set out in much detail what is contained in the affidavits. I certainly have some sympathy for the Plaintiff. I think her real concern is the embarrassment caused by the present situation. But can it really be said that this case pertains to the unsoundness of mind of the Defendant? It seems to me that from all that has been said she is of very sound mind and she has attended Court on every occasion this matter was called when for

one reason or another both Counsel could not deal with the matter.

Learned Counsel for the Plaintiff no doubt wanted to bring the matter to Court but could not find an appropriate manner to do so and simply appended the articles of the Code to the petition without examining their relevance. Counsel ought not to do that.

Maternal love and affection or any kind of love cannot be imposed by Courts of law. Such experiences are derived from a higher order in which Courts are powerless.

The petition must be dismissed with costs of \$250.00 to the Defendant.

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A.N.J. MATTHEW
Puisne Judge