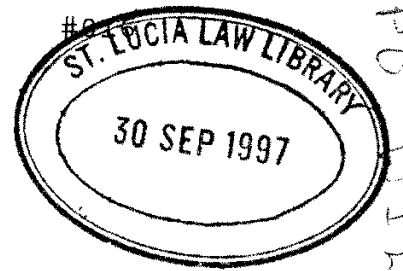


SAINT LUCIA

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



POPO WILLIAM

Suit No. 153 of 1996

BETWEEN:

WILLIAM JOSEPH POPO as
Personal Representative of
EVANIE POPO

Plaintiff

and

- 1. VERNON PAUL
- 2. FRANCIS PAUL
- 3. LAWRENCE PAUL

Defendants

Miss C. Hinkson for Plaintiff
Defendants In Person

1996: April 24;
May 8.

J U D G M E N T

MATTHEW J. (In Chambers).

On February 15, 1996 the Plaintiff filed a writ of summons indorsed with statement of claim in which he alleged that he is the Personal Representative of his deceased mother, Evanie Popo, who was the registered owner of a portion of land, parcel No. 1247B 45, in the Registration Quarter of Castries.

He alleged that in or about November 1995 the Defendants wrongfully entered on that land and built a galvanized structure which they use as a garage.

He alleged that on Thursday January 11, 1996 the Defendants threatened Anthony Eleuthere on that land and that Anthony had his permission to enter the land.

The Plaintiff asked for damages for trespass, an order of

S.

W T KINCH
PAUL

injunction and costs.

On the same day the Plaintiff took out a summons asking for interlocutory relief. The summons was supported by affidavits of the Plaintiff and Eleuthere.

In his affidavit Eleuthere complained that the Defendants threatened him by Francis putting his hands in his face and telling him not to put his foot on the land and one Iron using words to him and Vernon taking a piece of wood to strike him.

The Defendants were served with the interlocutory summons and supporting affidavits on March 5, 1996.

They have not made any replies to the affidavits and they came to Court unrepresented. At the hearing Vernon Paul had nothing to say. Francis Paul and Lawrence Paul stated that the garage is on their mother's land.

Lawrence Paul said he did not know if the Plaintiff has land but he knows that he lives on land close to his mother's land.

It seems clear to me that this is a dispute which would necessitate the services of a licensed land surveyor. Although the Plaintiff may be entitled to the portion of land, parcel No. 1247B 45, he has not demonstrated to me that the galvanized structure is on that portion of land. Both parties are claiming that the garage is located on their land. How can a Court determine that matter with confidence by just hearing their respective views?

Now this structure was built on the land about November 1995 according to the Plaintiff. He then took no objections. It was only after the dispute between Eleuthere and the Paul brothers that he instituted this action. In my judgment the real issue that needs urgent attention is the situation between Eleuthere and the

Pauls.

As regards the grant of an interlocutory injunction I have regard to the classic case of AMERICAN CYANAMID v. ETHICON LTD 1975 A.C. 396 and to the analysis of the principles found at pages 471 and 472 of the United Kingdom Supreme Court Practice 1979.

I am satisfied that there is a serious question to be tried and that the application is not frivolous or vexatious and therefore I go on to consider whether the balance of convenience lies in favour of granting or refusing the relief sought.

In suit 187 of 1995 between BARBARA KIDDELL and WINDJAMMER CO. LTD. delivered on May 31, 1995 I also considered the case of American Cyanamid and asked the question whether the Applicant had established that she had an arguable claim to the right to put up an electric post on the land in question. I referred to:

SMITH v. INNER LONDON EDUCATION AUTHORITY 1978 1 AER 411 and SISKINA v. DISTOS COMPANIA NAVIERA SA. 1979 A.C. 240 and found that the Applicant had not established the right and consequently I refused the application for an injunction.

In my judgment the Plaintiff here has not established that he has a good arguable claim to the right he seeks to protect. I refuse to grant the injunction sought. But I think I should ensure that there is tranquillity between Eleuthere and the Pauls.

And so I order

1. That the Defendants be restrained and an order of injunction is granted restraining the Defendants whether by themselves or by their servants, or agents or otherwise from threatening, abusing, assaulting or in any way interfering with Anthony Eleuthere's use of the land until after the trial of this action or until further order.

2. There shall be no order as to costs.

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A. N. J. MATTHEW
Puisne Judge