

SAINT LUCIA

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



Suit No. 171 of 1996

BETWEEN:

ANNIE JAMES
by her attorney Francisca Oscar
Petitioner

and

1. **CUTHBERT JAMES**
2. **AGATHA JAMES**
3. **VIDA JAMES**
Respondents

Mrs. S. Lewis for Petitioner
Mr. R. Frederick for Respondents

1996: May 8 and 10.

J U D G M E N T

MATTHEW J. (In Chambers).

On February 28, 1996 Annie James filed a petition against the Respondents by virtue of Article 841 of the Code of Civil Procedure asking to issue an order of injunction against the Respondents to cease their trespass and interference to certain community property comprising land forming part of Block and Parcel No. 1828B 11 and the three bedroom house situated on it.

Besides the injunction the petition asks for five other relief and costs.

Article 841 of the Code of Civil Procedure is as follows:

"The application for a writ of injunction is made by petition to the Supreme Court or Judge, supported by affidavit setting forth the facts of the case and containing the necessary conditions. It may be granted unconditionally, or upon such

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terms as the Court or Judge may think fit".

Indeed Articles 841 to 852 are all found under Section V of Chapter Fourth which is headed "INJUNCTIONS". Nothing in these articles authorise the declarations and other orders sought by the Petitioner in this petition. And learned Counsel for the Petitioner herself observed during her submissions that "strictly speaking some of the matters in the petition are for the substantive matter." I shall therefore ignore them as being inappropriate for these proceedings except that I shall refer to them in support of my conclusion, and direct my attention only to the grant or refusal of the order of injunction.

It ought to be said here that the Petitioner is the former wife of the first Respondent, Cuthbert James, and the other two Respondents are the mother and sister of the first Respondent respectively. So I note the order of injunction is against one of the Parties who has an interest in the property of which he may be part owner. Indeed one of the exhibits to the affidavit of the Petitioner's attorney is a deed which states that on April 14, 1975 the second Respondent sold to the first Respondent a lot of land comprising 3,600 square feet for \$2,000 cash.

In support of the petition were affidavits filed by Francisca Oscar on February 28, 1996; by Joseph James, a building contractor, filed on April 25, 1996; and by Marylen Joseph filed on April 25, 1996.

As exhibits to the affidavit of Francisca Oscar were a deed of deposit of her power of attorney dated February 8, 1996; a certificate of marriage between Cuthbert James and Annie James which states that their marriage took place on May 31, 1972; a final decree of dissolution of the marriage dated August 24, 1993; and a separation and property settlement agreement dated June 17, 1993 and referred to and incorporated in the final decree of dissolution.

On April 18, 1996 Vida James and Agatha James each filed an affidavit in answer to the petition; and on April 24, 1996 Cuthbert James also filed two affidavits in answer to the said petition.

The relevant part of the separation and property settlement agreement is as follows:

"B. St. Lucia property interests. Whatever interests or claims either party has to real estate, structures, or any and all proceeds, interests, or claims in St. Lucia shall be determined in that jurisdiction."

So the provision is not really helpful as determining whether in fact the Parties have or had real property in Saint Lucia or what settlement agreement they had in respect of such property.

There is on record a deed of sale made between Agarth James and Cuthbert James in respect of the sale of a portion of land. That deed was executed on April 14, 1975 which was after the celebration of the marriage between Cuthbert James and Annie James. If this deed is valid, presumably, the incidence of legal community would arise to give the Petitioner an interest in the land. And if in fact the two Parties built a house on that land it would become the property of the community.

In her petition the Petitioner stated that in 1979 she and the first Respondent built a three bedroom house on the land valued at \$150,000.00. In her affidavit Francisca Oscar stated that she rented the house to Gertrude Actil on behalf of her sister, the Petitioner, for \$500 a month from November 1995 who paid her up to April 1996.

She said in December 1995 the second and third Respondents informed the tenant that the first Respondent had passed the house over to them and that she should leave the house and if she did not leave they would remove the roof of the house; but strangely enough, she

said that on November 13, 1995 she visited the house and saw two men on the house removing the roof.

These affidavits are dangerous things.

Francisca said she discovered subsequently that the land on which the house is located was registered in the name of Agatha James even though Agatha was asked to claim it for the community during the land adjudication process.

She said the 3,600 square feet of land purchased by the 1975 deed has not been surveyed and forms part of a larger portion measuring 13,000 square feet of land registered in the name of Agatha James as Block and Parcel No. 1828B 11.

She said that Agatha James purported to donate the house to Vida James by deed of donation dated November 9, 1995 and registered in the Land Registry on November 14, 1995. She gave an undertaking as to damages.

In his affidavit Joseph James stated that in 1979 he met Cuthbert and Annie James at Micoud and they took him to a site which they described as their land and said they wished him to build a house for them. He said he subsequently constructed the house and he did so in a period of about four months. Mr. Frederick criticizes this affidavit because it was filed after the proceedings began. I do not see why that in itself should affect the authenticity of the affidavit. It may have been thought necessary because in one of his affidavits filed a day earlier Cuthbert James said he knew that his mother in 1979 commenced the erection of a wall house on the land.

Marylen Joseph, a teacher and cousin of Annie James, said that she had collected rental for that house for the Petitioner and that she always knew from about 1979 that the house and land belonged to

Cuthbert James and Annie James.

In her answer, Vida James stated that she is 32 years old and has always known her mother to be the owner of a parcel of land registered as Block 1828B 11. She said her mother built a house on the property in 1979 and the house was at one time rented to Corporal Dexter Alfred of the Royal Saint Lucia Police Force. She said Corporal Alfred vacated the house in November 1995 and thereafter she embarked upon repairing the roof of the house at a cost of approximately \$45,000.00.

She denied vehemently that any rent was paid to Francisca Oscar by Gertrude Actil up to April 1996 since she commenced repairs to the roof in December last.

She said that she knows and verily believes that Annie James is acting out of spite, envy and jealousy.

She said that she had never known her mother to have sold land to her brother and indeed her brother told her he never bought any land from her mother.

On April 18, 1996 Agatha James filed an affidavit in answer in which she denied selling any land to her son, Cuthbert James. She said she built a house on the land valued at \$150,000 and she denied that Cuthbert James and Annie James had asked her to claim land on their behalf.

Cuthbert James filed two affidavits in answer on April 24, 1996. They are quite similar. In the first one he said he believes his mother Agatha James to be the sole owner of two parcels of land in the village of Micoud. He said in April 1975 his mother offered to sell him a property but he declined because his wife did not get along with his mother. He said Annie James is well aware that he has no interest in the property in question and she is only

harassing his mother through the legal process to get at him.

In the second affidavit he reiterated that in 1975 he was not in Saint Lucia and never bought or instructed any one to buy land on his behalf from his mother. He said he has always known his mother to be absolute owner of the two portions of land at Micoud and that in 1979 she commenced the erection of a wall house on the land from some of the monies he sent her for maintenance. He denied that he ever asked his mother to claim any land for him when the authorities of the Land Registration and Titling Project requested persons to do so.

I do not believe Francisca Oscar that she or her sister rented the house from November 1995 and was paid rental up to April 1996. I do not believe the Petitioner was ever in possession of the house.

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. As I stated earlier there may be evidence of the Petitioner's community interest in the land purchased in 1975 and no matter what Vida James, Agatha James or Cuthbert James say, there is a deed which was effected between Agatha James and Cuthbert James before John George Melvin Compton, Notary Royal, on April 14, 1975.

Mr. Frederick says both vendor and purchaser agree there was no sale but they may have a common interest to protect. They may want to resist any claim of the Petitioner. He also criticizes the deed for in the schedule the title does not refer to Agatha's 1966 or 1970 deed but to the same reference found in the 1966 and 1970 deeds.

He further states that in 1980, five years after the alleged sale to Cuthbert James Agatha, James mortgaged her two pieces of land to the Saint Lucia Cooperative Bank Ltd. and there is no reference to the 1975 sale.

It is interesting to note that in all these transactions, namely:

- (a) Sale by Annie Duncan to Agatha James September 5, 1966;
- (b) Sale by Annie Duncan to Agatha James September 19, 1970;
- (c) Sale by Agatha James to Cuthbert James April 14, 1975;
- (d) Hypothecay obligation by Agatha James in favour of Saint Lucia Cooperative Bank November 21, 1980; there is the same Notary Royal.

Be that as it may, I find 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.

The property in question, as indicated, is not partitioned and it is a small part of a larger portion which was registered in the name of Agatha James and donated to Vida James towards the end of last year. Mr. Frederick in response to my question admitted that the property is registered in the name of Vida James today.

This feature is perhaps the reason for tacking on to the application for an order of injunction requests for partition, for declaration of ownership of 3600 square feet of land, for declaration of ownership of the house, and in effect asking me to change the land register. The Petitioner is asking me to chase out the registered proprietor of a large portion of land from a small bit of the land in which the Petitioner has at most a half share.

I would not readily accede to this. The Petitioner must pursue the appropriate action for the remedies she seeks.

In my judgment the Petitioner has not established that she has a good arguable claim to the right she seeks to protect.

It is my further view that damages would be adequate to compensate the Petitioner for any rights she may have. The building is still there and a fortiori, the land.

In the additional relief requested by the Petitioner, after all the partition and declarations sought, she asked for an order that she be paid her half share of the community property. So here again is another reason why she should seek appropriate relief elsewhere.

According to the United Kingdom Supreme Court Practice 1979 at paragraph 29/1/6:

"The very first principle of injunction law is that you do not obtain injunctions for actionable wrongs for which damages are the proper remedy."

The application for injunction is refused with costs of \$300.00 to the Respondents.

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A.N.J. MATTHEW
Puisne Judge