11 DEC 1996

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No. 637 of 1995

Between:

JOHN VERNON PREVOST

- Plaintiff

and

JOSEPH SERAPHINE
MARY SERAPHINE
BAGO SERAPHINE

- Defendants

Mrs. C. Malaykhan for Plaintiff
Mr. L. Theophilius for First Defendant

1996: April 26th
May 17th

JUDGMENT

d'Auvergne J.

By a writ of Summons indorsed with a Statement of Claim filed on the 8th September, 1995 the Plaintiff claimed against the Defendant the following:

1. An injunction to restrain the Defendants by themselves, their servants or agents or otherwise howsoever from remaining on the said land or cultivating gardens, erecting sheds or making coal thereon or in any other way interfering with the said land.

2. Damages for trespassing.

3. Damages for use and occupation.

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4. Further and Other relief.

5. Costs hereof.

On that same day, namely 8th September, 1995 the Plaintiff filed a Summons supported by an Affidavit which reads as follows:

1. The Defendants be restrained whether by themselves, their servants or agents or otherwise howsoever from remaining on the Plaintiff's land situate at Theodorine, in the Quarter of Anse La Raye, and registered as Block No. 0239B Parcel No. 8 or from cultivating gardens, erecting sheds or making coal thereon or in any other way interfering with the said land;

2. That the Plaintiff be awarded the cost of this application.

The Affidavit deposed to by the Plaintiff mentioned earlier reads as follows:

AFFIDAVIT

I, **JOHN VERNON PREVOST** of Hospital Road, in the city of Castries, in the State of Saint Lucia, Automotive Technician, make oath and say as follows:

1. I am the Plaintiff herein.

2. That I am the owner and entitled to possession of a parcel of land situate at Theodorine, in the Quarter of Anse La Raye, in the State of Saint Lucia which is registered as Block No. 0239B Parcel No. 8, as appears by Deed of Sale executed on the 13th day of March, 1992 and registered at the Land Registry as Instrument No. 1031/92, a copy of which is exhibited hereto and marked "J.V.P 1".

3. That the Defendants have wrongly entered my land aforesaid

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and have wrongly taken possession of the same and have thereby trespassed and are still trespassing thereon in that they have done and continue to do the following:

(1) the first-named Defendant is cultivating a cassava garden on my land;

(11) the second-named Defendant has erected a shed on my land and she is also cultivating a garden thereon;

(111) the third-named Defendant has cleared a portion of my land and has a coal pit thereon in which he makes coals.

4. That I verily believe that the Defendants threaten and intend unless restrained by this Honourable Court, to continue to remain in wrongful possession of my land and to trespass thereon.

5. In the circumstances, I humbly urge this Honourable Court to grant an injunction in the terms prayed for in the summons filed herewith.

6. I hereby undertake to pay the Defendants any damages which they may suffer should this injunction be wrongly granted.

An **Affidavit of Service** on file shows that the writ of Summons and Affidavit was served on the three Defendants on the 6th day of October, 1995.

On the 18th October, 1995 the matter was adjourned to 6th December, 1995. On that date **Matthew J.** in Chambers ordered "the Defendant to file and serve Affidavit within fourteen (14) days."

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On the 19th December, 1995 an appearance was entered on behalf of the first-named Defendant.

On the 20th of December, 1995 the following documents were filed on behalf of the first Defendant **Defence and Counterclaim** and **Affidavit in Reply.** I have reproduced the latter document in its entirety.

AFFIDAVIT IN REPLY

I, **JOSEPH SERAPHINE** of Theodorine in the Quarter of Anse La Raye in the State of Saint Lucia make oath and say as follows:

1. That I am the first-named Defendant herein.

2. That by an agreement of sale dated the 15th day of September, 1924 my Grandmother Seraphine Victoire for the sum of Eight (8) pounds became the owner in possession of two carres of land situate Theodorine in Anse La Raye as aforesaid the same being purchased from Louis African a true copy of which is exhibited hereto and marked "J.S.1"

3. That I was born on the land in question and at all material times for upwards of 30 years prior to the commencement of these proceedings had the undisturbed possession of the land in question and have exercised acts of ownership over the same.

4. That I live on the above-mentioned two carres of land with my daughter **MARY SERAPHINE** and my son **BAGO SERAPHINE,** the second and first-named Defendants herein respectively mentioned.

5. That I am the uncle of **JOHN VERNON PREVOST** who is the Plaintiff in this matter.

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6. That when the Plaintiff by a Deed of Sale executed of the 13th day of March, 1992 and registered in the Land Registry as Instrument No. 1031/92, purportedly purchased a parcel of land measuring 23.26 acres and situate at Theodorine in the Quarter of Anse La Raye, he knew or ought to have known that included in this undivided parcel of land was the two (2) carres of land of which I have been peaceable and uninterrupted possession for upwards of 30 years prior to the commencement of these proceedings.

7. That the Plaintiff knew or ought to have known that I along with my two children **MARY** and **BAGO SERAPHINE** as aforesaid live in a wooden house which is erected on the property in question and that I used the land for agricultural purposes.

8. That I verily believe that the application of the Plaintiff is not made bona fide for the purpose of obtaining an injunction, and I respectfully submit that if it be decided that my said acts were wrongful, that the case is not one in which an injunction should be granted as the Plaintiff could be adequately compensated in damages.

This application was heard on the 26th day of April, 1996, in Chambers and the matter was reserved.

ARGUMENTS

Learned Counsel for the Plaintiff reiterated the Plaintiff's Affidavit and produced a Deed of Sale dated thirteenth day of March, 1992. She also argued that the Plaintiff denies paragraph three (3) and four (4) of the first Defendant's Affidavit in Reply and stated that the Defendants came unto the land after the purchase of the land by him.

I pause here to note that the Plaintiff has not filed a further Affidavit denying the allegations made by the first Defendant in

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his Affidavit and therefore all such fresh evidence will not be considered.

Counsel stressed that the Plaintiff purchased the land in question from persons who had acquired the land through prescription and that before any declaration of ownership is granted by the Court with regard to thirty (30) years uninterrupted occupation the requirement of gazetted notice had to be satisfied.
She concluded that this being so the first Defendant could not now claim thirty (30) years prescriptive title to the property and urged the Court to grant the injunctive relief as prayed.

Learned Counsel for the first Defendant contended that "He who comes to Equity must come with clean hands."

He argued that paragraph two (2) of the first Defendant's Affidavit lays down the basis for his claim and that he was resisting the grant of the injunction requested and tendered a receipt for a parcel of land comprising of two carres at Theodorine in the Quarter of Anse La Raye purchased by Seraphine Victoire, who the Plaintiff claims is his grandmother, from Louis African dated 15th September, 1924.

He reiterated the Affidavit of the first Defendant and tendered as an exhibit the Baptismal book of Plaintiff's children which showed that his son Stephen was recorded as being born at Theodorine on the 24th December, 1954.

Learned Counsel stressed that the Plaintiff was the nephew of the Defendant in question and that the latter was well aware of his (defendant's) occupation of the two carres of the land in question where he lived and continues to live with his two children the second and third Defendants.

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CONCLUSIONS

In my considered judgment, bearing in mind the guidelines laid down by **Lord Diplock in the American Cyanamid Co v Ethicon Ltd (1957) AC 396**, there is a serious question to be tried and moreover damages would be an adequate remedy should it later be found that the defendants are trespassers.

Moreover, it is my view that the 'status quo' should be maintained until trial, when the substantive case will be heard on its merits.

My Order is therefore as follows:

The order of the injunction sought is refused.

There will be no order as to Costs.

.....
SUZIE d'AUVERGNE
PUISNE JUDGE

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