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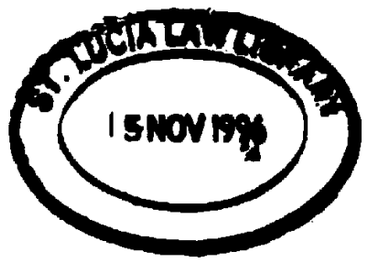

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996

Suit No. 805(b) of 1995

BETWEEN:

PETER PAUL DARIUS
AUGUSTIN DARIUS

Applicants

and

MARY AMBROISE
FLAVIUS DARIUS

Respondents

Mr. A. Arthur for Applicants
Mr. O. Larcher for Respondents

1996: July 4 and 17

J U D G M E N T

MATTHEW J. (In Chambers).

Section 86 of the Land Registration Act permits any person who claims any unregistrable interest whatsoever in land to lodge a caution with the Registrar forbidding the registration of dispositions of the land concerned.

It would appear that acting under that provision the Respondents on January 9, 1995 filed cautions against four parcels of land - Block 1251B parcels 696, 697, 703 and 707 - in which the Applicants have an interest.

On December 12, 1995 the Applicants acting under Section 88 1 of the said Act filed a summons to remove the cautions.

The application was supported by a joint affidavit of the Applicants, filed on the same day as the summons.

In their affidavit the Applicants claim to be the lawful heirs of Isidore Darius, and that the parcels of land in question were

adjudicated upon during the Land Registration and Titling Project in 1984.

They allege that the parcels of land were originally one piece of property owned by their father, Isidore Darius.

They allege that the interest of Passionise Ambroise, from whom Mary Ambroise claims, was sold to their father by deed of sale dated October 15, 1960; and that their father obtained a 3/5 share of the original property which consisted of 3 7 10 carres by a declaration of the succession of the estate of their great grand uncles, Delice Jean Baptiste, Aimable Jean Baptiste and St. Prix Jean Baptiste dated May 24, 1972.

They further allege that the Respondents had never before the filing of their cautions claimed an interest in the land.

Attached to their affidavit were several exhibits, and more exhibits were tendered at the hearing on their behalf marked "A" to "J".

The Respondents filed an affidavit in response on April 11, 1996 and at the heading of that affidavit they sought to introduce three other Respondents. I shall say something about that later on.

In their affidavit they admit that they were the two Parties who placed the caution on the land and that they have an interest in those lands as well as other lands.

They allege that it is misleading to say that Passionise sold her interest to Isidore Darius and that Isidore obtained three fifths of the original property.

They allege that they made a claim to the property before the Land Adjudicators on October 15, 1985.

The Respondents by a chart which was of much assistance to the Court sought to show the family tree and I do not think the Applicants challenged the accuracy of it in any way. Besides their chart the Respondents submitted exhibits marked "K" and "L" and others numbered I to XII(c).

In paragraph 7 of their affidavit they sought to show how they acquired their interests in the property.

As stated earlier, Mary claims her interest from her mother, Passionise Ambroise who died on May 29, 1961. Flavius Darius is the brother of Isidore Darius, both of them fathered by Darius Felix who died some time before September 3, 1961 when his Will was admitted to probate.

Darius Felix was the brother of Passionise Ambroise.

The land was formerly owned by Betsy Martin who purchased it from Aurelien LaCorbiniere on June 13, 1868 retaining a usufruct in it and the remainder to her five children - Dolcie, Felix, Aimable, Uerile and St. Prix.

Passionise and Darius were the children of Felix. Apparently the other four children of Betsy did not produce any off spring.

The Respondents have arrived at the quantum of their interests by an arithmetical calculation.

They demonstrate that because Betsy Martin had five children Felix became entitled to 1/5 share of 3 7/10 carres. The other 4/5 is not accounted for. Then they say if Felix had four children - Darius, Sonson, Passionise and Rosana - each became entitled to a 1/20 share.

They claim that since Sonson and Rosana died intestate Darius and Passionise were each enriched by an additional 1/20th share.

The Respondents state in their chart on page 2:

> "On the death of Sonson Felix the share of Darius, Passionise and Rosana increased to 1/5 of 3 7/10 or 34,383 square feet".

This deduction baffles me for Felix's four children together were said to own 1/5 share of 3 7/10 carres. So how is it on one's death the share of the three others have increased to the same 1/5 of 3 7/10 carres.

Now Darius Felix donated to his son Isidore on October 15, 1960 all his rights and interests in an undivided one fifteenth share in three carres and seven tenths of land. That is what the deed says. The Respondents by their mathematical calculation show that Darius Felix was in fact entitled to more than one fifteenth share of 3 7/10 carres and therefore the balance belongs to his heirs, presumably Isidore and Flavius.

A similar deduction is made in respect of the sale by Passionise Ambroise to Isidore of all her rights, title and interest in her one fifteenth share of 3 7/10 carres of the land. They say she was entitled to more than one fifteenth share and the balance passes to her daughter Mary.

The Respondents on that basis calculate that each of them is entitled to an amount of land containing 27, 192 square feet, being the balance which their predecessors did not dispose of.

There are certain flaws in this mathematical calculation. First of all because Betsy Martin's deed of 1868 states that she purchased 3 7/10 carres of land, it does not necessarily follow that the exact amount of land is in fact on the ground and therefore one can calculate to such mathematical exactitude the amount of square feet

of land which could pass to great grand children more than one hundred years afterwards.

I say this in the light of a statement made by Land Adjudicator J.M.F. White in his decision of May 12, 1986. In the second paragraph of the judgment he said:

> "On the ground there is approximately two and eight tenths of a carre."

Secondly, on page 2 of the Respondents' chart they credit Sonson with a 1/20th share of the original property. But in a declaration of succession by Darius Felix of the succession of his father, Felix Ned, who died on September 3, 1915, paragraph 2 recognized that Sonson had died on November 4, 1915 intestate and without lawful issue and his share devolved upon his brother and his sisters.

According to the Respondents' chart it is seen that the brother was Darius Felix and the sisters were Passionise Ambroise and Rosana St. Juste. This explains how in later deeds it is mentioned that Darius and Passionise became entitled to a 1/15th share. If Felix Ned was entitled to a 1/5th share when that one fifth is divided by three, each would become entitled to 1/15th. There is no documentary basis for the children of Felix Ned ever becoming entitled to a 1/20th share.

Thirdly, the calculation is faulty when it says that if you subtract 34,383.36 square feet from 51,755 square feet the remainder is 27,192 square feet. I am not going to do the correct subtraction for the Respondents.

Now Rosana died on August 11, 1935 and Passionise on October 6, 1960 obtained a declaration of succession of her estate which indicates that her 1/15th share was divided equally between her surviving brother and sister, that is, Darius Felix and the said

Passionise Ambroise. So it is possible to say that each of them were enriched by an additional 1/30th share. Since Passionise only disposed of her 1/15th share to Isidore in 1960 technically a 1/30th share could be said to pass to Mary, the daughter of Passionise.

Of course there could be an argument as to whether or not Passionise intended to convey all her interest in the land to Isidore on October 15, 1960. She may not have considered or even remembered that 25 years before she obtained half of her sister's interest.

Similarly it could be argued whether or not Darius intended to convey all his interest in the land to Isidore when he made the donation on the said October 15, 1960.

Flavius could not in any case be entitled to a full 1/30th share as this would have to be divided between himself and Isidore. So technically the most he could be entitled to was a 1/60th share.

So even on the arguments of Counsel for the Respondents, the Respondents would be entitled to much smaller portions of land than what is calculated on the charts.

Quite apart from the interpretation of the deed of sale and the deed of donation referred to above the reality of the situation is that in the Designation and Vesting Deed in respect of the estate of Passionise Ambroise, Mary evidently did not seriously regard that her mother owned any part of the land which is the subject matter of this dispute for that was not included in the schedule of the document made on February 6, 1962.

I said a little earlier that I would say something about the proper Parties to this case. The Applicants took proceedings against Mary Ambroise and Flavius Darius.

Surely these two Respondents cannot add more Respondents to this suit of their own accord. That is not provided for by Order 15 of the Rules of the Supreme Court and the added Parties are not in any way necessary for the disposition of this matter.

I therefore strike from these proceedings the Heirs of Davidson Ambroise, Agnes Arlain and Belvina Ambroise Emmanuel.

The Land Adjudicator, J M.F. White, adjudicated upon the land which is the subject matter of this dispute and it appears, according to the Adjudication Record which was tendered in evidence as Exhibit "C" that after making awards to Charles Joseph Alexander, Violet Isidore and Alpheus Isidore he gave to the heirs of Isidore Darius 11/15 of the remaining share and the other 4/15 to the Crown.

Learned Counsel for the Applicants stated that when the Applicants submitted their documents before the Land Adjudicator, one such document was a declaration of succession by Isidore Darius dated May 24, 1972 and registered on May 25, 1972 in Volume 125A No. 98673.

Now this document relates to the succession of three of the children of Betsy Martin, namely:

Dolcie Jean Baptiste;

Aimable Jean Baptiste; and

St. Prix Jean Baptiste.

On the basis of that the Applicants claimed to be the owner of a three-fifths share in the property consisting of [illegible] parres.

I am not sure why this should be so when the three persons named above are equally the grand uncles of the Respondents.

But this is the same perennial question that arises in this Court. The document was executed more than 24 years ago and acted upon by the Land Adjudicator over ten years ago. The Respondents did not challenge it. They did not appeal the findings of the Land Adjudicator.

After the adjudication by Mr. White there seems to have been another issue concerning the same land. This time the dispute was between the Applicants and Fitz Mark concerning a boundary line. The Applicants failed before the Land Adjudicator.

It is interesting to note that in that dispute concerning the land which Flavius Darius now says he has an interest in, he was a witness on behalf of the other side. He was not even a Party in the case. This was around 1986 to 1987. The decision of the Tribunal was dated August 19, 1987.

This goes to confirm the fact that Flavius Darius showed no interest in the land at the time of the adjudication process and did not at any time put in a claim. At paragraph 6 of their joint affidavit the Respondents say they put in a claim on October 15, 1985.

An exhibit "L" in this respect refers only to Mary Ambroise and the document by the Respondents marked "XI" and dated December 14, 1989 is clearly no evidence of a claim made in October 1985.

The Respondents must not only show that they put in a claim. If they did they ought to have followed up on it.

The Land Adjudication Act has detailed provisions to ensure that the Adjudication Record is properly published and there are provisions for correction and petitions to be made.

These provisions are to ensure that aggrieved Parties have their

grievances attended to.

I cannot help but come to the conclusion that the Respondents showed no interest in the land during the Land Titling Project.

Mary Ambroise did not consider she had any such interest as early as 1962 when she executed the designation and vesting deed.

Flavius Darius as late as 1987 never showed any interest in the land which was in dispute save that of somebody who knew where a certain boundary line ran.

It is also not so clear why the Tribunal on August 19, granted to the Heirs of Isidore Darius the 4/15 share of the land which the Adjudicator had vested in the Crown when it found it was the land of Delice Jean Baptiste who was equally related to Mary Ambroise and Flavius Darius. Presumably it was because the Heirs of Isidore Darius were the only ones who claimed the land.

The Respondents by their affidavit and documents are attempting to trace their entitlements or interests from as far back as 1961. Mary's mother, Passionise died on May 29, 1961 and the Will of Darius Felix was admitted to probate by none other than Flavius Ambroise on September 23, 1961.

In my view and consistent with my earlier decisions the Respondents raised matters which should have been put before the Land Adjudication Officers when they deliberated over disputes in respect of the registration of land in Saint Lucia. That was the whole purpose of the system.

They are attempting to make this Court an appeal tribunal over the decisions of the Land Tribunal and I have consistently said that is not the case. They are attempting to take this Court on an

excursio[illegible] events which they ought to ha[illegible] with at [illegible] time.

Learned Counsel for the Respondents has submitted that the Respondents have filed suit 48 of 1995 against the Applicants. I have not seen this case file and in any case I cannot here adjudicate upon it.

The Applicants have raised a question of prescription citing Article 2070 of the Civil Code which may have to be determined upon a proper trial.

Having regard to the submissions and documents presented in these proceedings I am not persuaded that the Respondents are entitled to retain the cautions on the parcels of land in which the Applicants have an interest and I therefore order that they be removed forthwith with costs to the Applicants to be agreed or taxed.

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A.N.J. MATTHEW
Puisne Judge