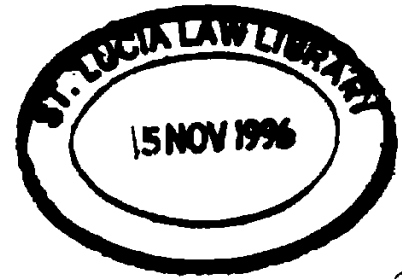


SAINT LUCIA

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



Suit No. 408 of 1996

BETWEEN:

- 1. ANDREW JUSTIN
- 2. CECILIA JUSTIN

Plaintiffs

and

PHILOMEN JUSTIN

Defendant

Mr. M. P. St. Catherine for Plaintiffs
Mr. P. Husbands Q.C. for Defendant

1996: July 10 and 17

J U D G M E N T

MATTHEW J. (In Chambers).

On May 21, 1996 the Plaintiffs filed a writ of summons against the Defendant asking for possession of land with a wooden house thereon at Rose Hill, Castries, damages for trespass, a mandatory injunction, a prohibitory injunction and costs.

On the same day they took out a summons asking for a prohibitory injunction against the Defendant. The summons was supported by a joint affidavit of the Plaintiffs.

In that affidavit they alleged that by a conveyance dated January 9, 1981 made between Julius Williams and themselves a portion of land with a wooden house on it situated at Rose Hill, Castries was conveyed to them.

They exhibited the deed of conveyance and a copy of the land register which gave them absolute title to the land as of October 17, 1987.

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They stated that in or about 1985 with the assistance of the Defendant the wooden house was renovated and the Defendant, being the sister of Andrew Austin, was permitted to live in the house rent free, as she was in need of a place to reside.

They stated that on or about November 1995 they visited the property and noticed that the Defendant had commenced construction of a concrete building over and around the wooden house. They said they objected and informed the Defendant that she was trespassing and that she should cease the construction.

They stated that the Defendant had not ceased but has continued in the further construction of the house and so they have resorted to these proceedings.

The Defendant entered an appearance on June 12, 1996 and filed an affidavit in opposition on July 1, 1996. In that affidavit the Defendant stated that the house and land were sold to the Plaintiffs on the understanding that the property would be subsequently conveyed to her.

She said that she began renting the property from Williams since 1961 and she was allowed to occupy it without paying any rent on condition that she took care of the property and the land adjoining it which belonged to Williams.

She said the consideration of \$8,000 for the property took into account all she had done in repairing and maintaining the property.

Let me interject that no where in the deed is this allegation stated nor the fact that there was some understanding to subsequently convey the property to the Defendant.

She said it was never the intention of Williams to sell the property to the Plaintiffs for themselves and in support of that

she submitted a document headed "TO WHOM IT MAY CONCERN". This document was dated January 15, 1981 which means it was made after the execution of the deed of sale.

It is not even in the form of an affidavit.

The Defendant alleged that she repaired the house and it is not in the original condition that it was when purchased by the Plaintiffs.

The Defendant denied the fact that she is constructing a concrete building on the land.

She said it is still her desire to refund to the Plaintiffs the monies they have spent in obtaining the property.

In paragraph 14 she speaks of a proposal made to her brother Andrew Justin which is extraneous and irrelevant to these proceedings.

In their submissions both Counsel referred to the case of AMERICAN CYANAMID CO. v. ETHICON LTD. 1975 1 AER page 504 and the principles there enunciated. I shall therefore seek to apply those principles in the decision I am about to arrive at.

Learned Counsel for the Defendant in addition referred to the following:

1. Article 372 of the Civil Code;
2. Halsbury's Laws of England, Fourth Edition, Volume 24, paragraphs 853, 857 and 858.
3. WILLIAMS v. CANADIAN BANK OF COMMERCE TRUST CO. (1979) 36 W.I.R. 111.
4. GARDEN COTTAGE FOODS LTD. v. MILK MARKETING BOARD 1983 2 AER 770 H.L.

I shall refer to these authorities only where it is necessary so to do.

This application is really to prevent the Defendant from building a concrete structure on the Plaintiffs' land. It seems to me that the thrust of the Defendant's claim is to her entitlement to a chattel house which she may have renovated. I believe her reliance on Article 372 of the Civil Code is in this regard. Putting it at its highest if she succeeds in maintaining that the house is hers, she can have it at the end of the day and carry it away. But that could never give her a right to place a concrete structure over the land.

If as she states in paragraphs 10 and 12 of her affidavit that she is not building any concrete structure what is her worry? I believe she is worried because she is in fact building a wall structure over and around the chattel house.

As I said earlier the Plaintiffs' deed dated January 9, 1981 says nothing about the qualification implied by the document "TO WHOM IT MAY CONCERN" purportedly from Julius Williams. That bit of paper made after the deed of sale can in my view never override the provisions of the deed.

And of what use would be ownership of property with title absolute in accordance with Section 23 of the Land Registration Act if that entitlement could be affected by documents of doubtful origin or effect.

The Plaintiffs bought the property on January 9, 1981 but in July 1986, more than fifteen years after the sale the Defendant says it is still her desire to refund the Plaintiffs the monies they spent in obtaining the property. Assuming that her claim is of substance when will that desire be fulfilled? In the year 2050?

I refer to the United Kingdom Supreme Court Practice 1979, paragraphs 29/1/11 et seq. I am of the view that there is on the issues before me a serious question to be tried. It relates to the ownership and/or trespass to land.

I find too in accordance with paragraph 29/1/5 of the same text that damages are not the proper remedy because the Plaintiffs' land which they hold by registered title may be affected by a concrete structure built by the Defendant.

Learned Counsel for the Defendant submitted that damages would be appropriate and fully compensatory. He said further that compensation is ascertainable.

I have said in previous decisions that the Court must not only be concerned with ascertainability of compensation but also with ability to pay. My authority for that has been premised on a passage found in the said Supreme Court Practice 1979. It states in paragraph 29/1/11A in part -

"In considering the balance of convenience whether to grant or to refuse the interlocutory injunction, the governing principle is whether the plaintiff would be adequately compensated by an award of damages which the defendant would be in a financial position to pay."

I am happy to see that principle stated in the House of Lords decision cited by learned Counsel for the Defendant.

In GARDEN COTTAGE FOODS LTD. v. MILK MARKETING BOARD 1983 2 AER 770 the House of Lords reversed the decision of the Court of Appeal and agreed with the Judge at first instance that no order of injunction would be made because damages would be an adequate remedy. The way the learned Judge put it was that damages would be an adequate remedy since they could be easily assessed and the Milk

Marketing Board would be able to pay them if the plaintiff succeeded at the trial.

On the facts of this case even if damages could be easily assessed it certainly has not been demonstrated that the Defendant here would be in a position to pay them. On the contrary, the material before me is that the Defendant is paralysed and I saw her in Court and do not disagree, and further in her affidavit there is mention of her dependency on others to pay for the property for her.

The Plaintiffs have shown that they have a prima facie case. They have good documentary title to the land and the balance of convenience lies in granting the injunction.

My order is that -

1. Upon the Plaintiffs granting the usual undertaking as to damages, the Defendant is restrained and an order is made restraining the Defendant whether by herself or her agents or servants or any of them or otherwise until judgment in this action from constructing or continuing to construct a concrete dwelling house on the land which is the subject matter of this suit situated at Rose Hill in the city of Castries.
2. Costs of these proceedings to be that of the Plaintiffs in any event to be agreed or taxed.

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A.N.J. MATTHEW
Puisne Judge