



SAINT LUCIA

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

Suit No. 177 of 1996

BETWEEN:

1. PAUL BOLAND
2. BRENDA BOLAND

Petitioners

and

1. EVARISTE AMBROSE
2. CHRISTINE GEORGE

Respondents

Mrs. V. Barnard for Petitioners
Mr. P. Straughn for Respondents

1996: June 7;
July 31;
August 1.

J U D G M E N T

MATTHEW J. (In Chambers).

On March 1, 1996 the Petitioners applied under Articles 841 et seq of the Code of Civil Procedure for a grant of injunction to restrain the Respondents from obstructing or threatening to obstruct their access over a portion of land which leads to their property registered as parcel 1456B 59.

The petition was supported by a joint affidavit of the Petitioners. As exhibits they tendered their land registration certificate for parcel 59 as well as the land certificate of the Respondents for parcel 303. Also exhibited in evidence was the map sheet for Block 1456B which contains parcels 59 and 303.

The Petitioners also exhibited their deed of sale by Dunstan Joseph and Esther Monrose to the Petitioners.

The map sheet shows that parcel 59 is bounded as follows:

North: A large parcel described as 593R;

South: Parcel 303 and an unmarked portion of land;

East: Parcel 300;

West: Parcel 53.

In short the contention of the Petitioners is that they are entitled to a right of way from their parcel 59 over the unmarked portion of land to a road which is probably parcel 61. In fact the Petitioners go further and say that the unmarked portion is part of parcel 61.

In his affidavit in reply dated May 29, 1996 the first Respondent, whom the Second Respondent says handles all her business dealings including the property concerned, admits that on Monday 4th September, 1995 he and/or the Second Respondent erected a fence across the entire access road to the Petitioners' parcel of land totally obstructing the Petitioners' access to their building. The first Respondent denied that the access road claimed by the Applicants is part of parcel 61. But he claims that the unmarked portion of land over which the access road runs is part of parcel 303.

The Respondents submitted exhibits in support of their contention. One of the exhibits is a survey plan drawn by Neville Crane, licensed land surveyor, on August 8, 1975. This plan I should observe was drawn long before the Land Registration and Titling Project. I did not find it helpful.

They also tendered some earlier deeds than that of the Petitioners with a view to showing that the access road was not always there. In one deed dated September 28, 1978 from Severine James to Ivan James the boundaries of a portion of land comprising 9, 999 square feet did not refer to an access road.

In a later deed by Ivan James to Dunstan Joseph and Esther Monrose on December 9, 1985 the same piece of land had similar boundaries save that mention is made of the access road.

The deed of the Petitioners have identical boundaries to the deed dated December 9, 1985.

The contention of the Respondents is that the unmarked portion of land on the map sheet is theirs and is really part of parcel 303.

On the face of the document that contention is difficult to maintain. The official map sheet seems to have a parcel of land in the shape of an oblong. There is a definite division of that parcel of land from North to South down the middle or a little more Westerly than centre. The Eastern Section is clearly marked 303. The Westerly Section is unmarked but the Respondents maintain they are the owners of the Westerly Section.

As a precautionary measure before I gave a decision after the matter was heard on June 7, I asked for a report from the Chief Surveyor as to the extent of parcels 303 and 61. In his short reply the surveyor gave the number of square feet in each parcel but he submitted a plan of the area and the plan would seem to indicate that there is some roadway to the West of parcel 303 so that it appears that the unmarked portion of the map sheet is some roadway and does not form part of parcel 303.

One of the submissions of the Respondents is that Dunstan Joseph who sold to the Petitioners is a licensed land surveyor and he committed certain breaches of contract and trust and altered the boundaries of the land of the second Respondent. If they are correct it would appear that official recognition of these breaches have taken place.

I am not here determining the ownership of the unmarked portion of

the land. If the Respondents claim that area it seems to me that unless the register is altered their claim will be futile.

The balance of convenience dictates that in the meantime the Petitioners must have access from the roadway at parcel 61 over the unmarked portion of land to their own parcel of land, Number 59.

My order is that -

1. Upon the Petitioners giving the usual undertaking as to damages which may be incurred by the issue of this injunction it is ordered that the Respondents be restrained whether by themselves, their agents or servants from obstructing or threatening to obstruct in any manner whatsoever the Petitioners' access from the road over the unmarked portion of land to their own parcel No. 59 until further order.

2. The Respondents shall pay the Petitioners' costs in the sum of \$300.00.

.....
A.N.J. MATTHEW
Puisne Judge