

SAINT LUCIA

11 DEC 1996

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Suit No. 397 of 1993

Between:

SEPTIME DALSOU

- Plaintiff

vs

VICTOR PAUL

- Defendant

Mr. B. J. Allain for Plaintiff
Mr. V. Gill for Defendant

1996: April 29th
December 4.

d'Auvergne, J

By a writ of Summons indorsed with a Statement of Claim dated the 25th June, 1993 and filed on the same day the Plaintiff sought the following:

- (1) A declaration that the Plaintiff as Administrator is the owner and legally entitled to the said parcel of land registered in the Land Registry as Parcel 1422B 73.
- (2) Possession of the part of the said portion of land of which the Defendant is in possession.
- (3) An order of injunction ad interim to restrain the Defendant by himself, his servants or agents or otherwise from entering or remaining on the Plaintiff's said lands or any part thereof until final determination of this Suit.

(4) General damages for trespass.

(5) The Costs hereof.

On that same day the Plaintiff also filed an application for an interim Injunction supported by an affidavit seeking an injunction to restrain the Defendant, his servants, agents lessees or otherwise from going upon, entering or remaining upon the lands of the Plaintiff.

On the 28th day of July 1993 an appearance was entered on behalf of the Defendant.

On that same day the Interim Injunction on behalf of the plaintiff was granted and it reads:

It is hereby ordered

upon the Plaintiff's undertaking as to damages:

(1) That the Defendant is restrained from continuing to build on the Plaintiff's land until further order.

(2) Return day to be 22nd September 1993.

On the 12th of August 1993 a defence and Counterclaim (one set of pleadings) was entered on behalf of the Defendant.

The Defendant's defence is that a portion of the land was sold to him by one of the heirs of Yvonne Dalsou namely Harold Dalsou and that the Plaintiff was well aware of that sale.

The Defendant's Counterclaim reads as follows:

(1) A declaration that he is the owner of the portion of land triangular in shape as per measurement stated on

his receipt.

- (2) An injunction to restrain the Plaintiff by himself, his Servants and/or agents from entering upon or remaining on the Defendant's land.
- (3) Damages for trespass.
- (4) The costs hereof.

On the 29th September 1993 the injunction granted on the 28th of July 1993 was ordered "to continue until the determination of the case of further order of the Court."

The matter came to trial on the 29th day of April 1996.

Learned Counsel for the Defendant told the Court that he was the new Solicitor for the Defendant and wished to make an amendment to paragraph 2 to the defence to insert after figures 1988 "on the direction of and with the full knowledge of the Plaintiff who is now estopped from ascertaining that the Defendant committed any breach which is denied as alleged or at all."

There was no objection to the amendment and it was granted.

The Plaintiff gave evidence on his own behalf and told the Court that he was one of the seven children of Yvonne Dalsou who owned a piece of land at Savannes, in the quarter of Vieux Fort, and which is registered as Parcel No. 1422B 73; that his mother died fourteen years (14) ago and on the 30th day of April 1993 he was granted Letters of Administration on her behalf and became Administrator of the piece of land in question. The Deed of Sale of the land in question, the register of the said Deed of Sale and the Letters of Administration were all exhibited.

He said that he had the land surveyed in 1993 and a plan of survey certified as a true copy dated 13th January 1993 known as record No. 23 of 1993 was also exhibited.

The Plaintiff told the Court that the Defendant was no stranger to him for he is a maternal relative whom he has known for over thirty years, that he, the Plaintiff lived in the United Kingdom for many years and returned to his home land St. Lucia in the year 1977 and it was about five years ago that he observed the Defendant on the land; that he approached the Defendant concerning his trespass, whereupon the latter told him that he had bought the land from his (Plaintiff's) brother Harold Dalsou and that no one could stop him from entering and remaining on the land.

The Plaintiff said that he was unaware of that sale to the Defendant by Harold Dalsou and that he himself never promised, at any time, to sell any land to the Defendant.

He further said that the land was undivided and that he wanted the Defendant off the land since he (Defendant) is a trouble maker and that if his brother Harold was selling his share, he, the Plaintiff would buy it so as to keep the land within the family.

Through the Cross Examination of the Plaintiff the Court became aware that after the death of Yvonne Dalsou (mentioned earlier) the relationship between the brothers, i.e. the Plaintiff and Harold Dalsou became estranged with the Defendant joining forces on behalf of Harold against the Plaintiff. The Plaintiff also told the Court that he saw the Defendant enter into the land built a plywood house and a concrete platform, a foundation for a second concrete structure.

The Defendant on the other hand gave evidence and said that the Plaintiff was his double first cousin (children of two sisters who married two brothers).

He further told the Court that he was the one who assisted his aunt Yvonne Dalsou when she was in the process of purchasing the lands at Savannes, and in return she sold to him a portion of the said land which he in turn sold to Thomas Collymore and Barry Poyotte. (Deeds of Sale exhibited).

He also told the Court that during the month of December 1988 he approached the Plaintiff to sell to him the Plaintiff's share in Parcel 1422B73 (Vieux Fort). Whereupon the Plaintiff told him that since he had children he would not be selling his portion but advised the Defendant to approach his brother Harold who was in the process of selling his share to one Rudolph St. Hill; that he acted upon the advice of the Plaintiff and purchased Harold's portion of Parcel 1422B 73 (Vieux Fort) and he tendered a receipt of the transaction as an exhibit.

He told the Court that he knew the extent of Harold's portion so after purchase he cleared the land and placed his dwelling house on the land. He said that soon after the Plaintiff began legal proceedings against him.

Under Cross Examination he told the Court that his aunt had no title to the land before her purchase in 1981.

Harold Dalsou confirmed the family relationship between the Plaintiff and the Defendant and his selling of his portion of Parcel 1422B 73 to the Defendant by receipt instead of by deed of sale since the land was not partitioned.

Under Cross Examination this witness insisted that he knew his portion of land since his mother had shown him what was to be his portion.

This witness was extensively questioned by the Court since there appeared to be many inconsistencies with regard the receipt tendered.

CONCLUSION

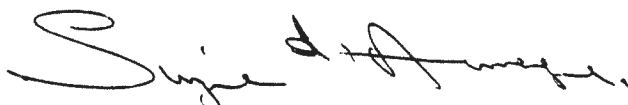
This is a simple case of one heir selling undivided land by receipt. On the 29th day of April 1996 I delivered a verbal judgment and advised the parties in terms of the order now being made. As stated earlier there is bad blood between the Plaintiff, his brother Harold and the Defendant, but I find as a fact that Defendant has a valid interest in the land, Parcel 1422B 73 quarter of Vieux Fort since he stepped into the shoes of Harold.

This being so I hereby declare that the Plaintiff is the Administrator of the portion of land at Savannes Estate Vieux Fort known as Parcel 1422B73 on behalf of:

Mary Anna Prince nee Paul
Benoit Paul
Victor Paul
Alexandrine Haynes nee Dalsou
Caulita Jankie nee Dalsou
Helen Tobierre nee Dalsou
Septime Dalsou

That the Interim Injunction granted to the Plaintiff restraining the Defendant from continuing to build on the said lands until the determination of the case is to continue until the land is partitioned or further order.

There will be no order as to Costs.



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SUZIE D'AUVERGNE
PUSINE JUDGE