

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

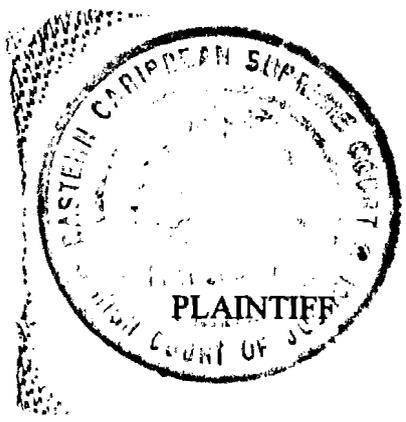
SUIT NO.: 128 of 1992

BETWEEN: YVONNE RICHARDSON

V

ASHLEY CASTELLO

DEFENDANT



A Williams Esq for the Plaintiff
TLV Brown Esq for the Defendant

Mitchell J

JUDGMENT

This is a claim for possession of a dwelling house and property at Caruth Village in the State of St Vincent and the Grenadines, mesne profits, an injunction, and damages for trespass. By a Writ of Summons issued out of the Registry of the Supreme Court on 12th March 1992 the Plaintiff claims that she became the owner of the property on 15th August 1989 by a Deed of Assent in her favour. She claims that one Desmond Richardson was a tenant of the house and that she had to take him to court in suit 507 of 1990 to recover possession. That the Defendant unlawfully went into occupation of the Plaintiff's said house in November 1990 after Desmond Richardson gave up possession. That the Defendant has cut down banana and other fruit trees planted on her land. That she has given him notice to deliver up peaceful possession of her house, but that he refuses to do so.

The Defence as filed on 30th December 1992 is that the Defendant is the son of Patrick Richardson, deceased (hereinafter the Deceased), and that the Plaintiff had wrongfully sought to dispossess and disinherit the Defendant to his entitlement in his father's estate. He claims that he is entitled to an interest in the property in question, and lived on the premises with his father and lived there even after his death. He counterclaims for a declaration as to his entitlement to an interest in the property in dispute, and for a revocation of the grant of Letters of Administration obtained by the Plaintiff in the estate of the deceased, or alternatively to an amendment to the grant to reflect the Defendant's entitlement and interest in the property.

The Reply filed on 12th January 1993 is to the effect that the Plaintiff is one of the children of the Deceased, and has lawfully obtained a grant of Letters of Administration. The reply further is that the other persons entitled to the estate of the deceased transferred their share in the estate of their Deceased father to the Plaintiff. The other matters alleged by the Defendant are denied.

The matter came up for hearing on 9th May 1997 and was adjourned to and concluded on 2nd July 1997.

The facts as I find them are as follows. The Deceased had never married, but had some 10 children by various women in the Mesopotamia Valley. Vivian Thomas claims to have 5 of them, Adelle Castello claims she has 2, Millicent Burnet has 1, and there is 1 other. The Plaintiff is one of Vivian Thomas' children for the deceased. The Defendant claims to be one of Adelle Castello's children for the deceased. Vivian Thomas gave evidence for the Plaintiff. Ashley Castello the Defendant gave evidence together with his mother Adelle Castello and Sylvia John a half sister by Millicent Burnett. The Deceased died leaving a small lot of land with a 2 room house on it in the year 1994. At the time he died he was in court with his daughter the Plaintiff in a dispute of some sort over the same lot of land. The Plaintiff some years before had purchased the neighbouring lot of land from the Deceased, but he retained the lot on which he lived until he died. When he died none of his children or women were living with him. He died alone, leaving as his only asset the lot of land and the house on it. His sister came from Trinidad for the funeral and put one Patrick Desmond in the house paying her rent. The Plaintiff and 2 of her siblings apparently made an application under the Status of Children Act and had the High Court declare that the Deceased was their father. With this declaration the Plaintiff was able to apply to the High Court for a Grant of Letters of Administration to the Estate of the Deceased in 1987. In applying for the Grant she swore that the Deceased died a widower leaving her and her two sisters Marvan and Eula surviving him. She obtained a Grant in the year 1989. Based on this Grant the Plaintiff had her 2 consenting siblings execute a Deed of Assent vesting the property in dispute in her on 15 August 1989. Armed with her Deed, the Plaintiff served a notice on Patrick Desmond who afterwards quit the property. At that point the Defendant went into occupation of the property and has refused to leave claiming an interest in it. The Defendant and his siblings claiming to be the children of the Deceased have made an application to the High Court to be declared children of the Deceased. That would entitle them to an interest in the property of the Deceased. The Defendant's paternity application was filed only after the case for the Plaintiff was closed, and has not yet been determined. The Plaintiff has brought her action to enforce her Deed.

I find from the evidence that it was notorious in the village of Caruth that the 2 children, Ashley the Defendant and Jean, were the Deceased's 2 children born of Adelle Castello. There was an abundance of evidence that paternity was admitted by the Deceased during his lifetime. They were born in his house, with the assistance of midwives, in the days before children were born in the Hospital. He brought them up and they lived with him until their mother left the Deceased when the Defendant was about 10 years old. The Defendant and his siblings and his witnesses are unable to read and write. The Plaintiff is a Nurse, and is better educated. She knew her rights, or at any rate was able to find them out, while the Defendant and his siblings did not know theirs or find them out.

Plaintiff's counsel submits that the pleading and the evidence reveal that though the Defendant had the writ served on him since 1992 he waited until after the case for the Plaintiff was closed in May 1997 to commence to make his application to the Court for his paternity to be determined. The law provides for children born out of wedlock to take steps to ensure they are not discriminated against. But they must take those steps set out in the statute before they can be legally counted as an unmarried man's children. The Defendant cannot come now and claim to be a child in court in this case. The case must be determined on the evidence before the court at the time of the trial. Counsel for the Defendant in reply to the argument of counsel for the Plaintiff submits that the Plaintiff is not caught by surprise, as the Plaintiff knew from the Defence served on her and filed in the case that the Defendant claimed rights as a child. He further submits that the Plaintiff perjured herself in her Affidavit in support of her application for the Grant when she swore that there were no other children of the Deceased entitled. He urges the Court to exercise its power to revoke the Grant and to declare the Deed of Assent void.

The long title of Cap 180, the Status of Children Act, is An Act to remove the legal disabilities of children born out of wedlock and to provide for matters connected therewith. Section 3 provides that all children have equal status irrespective of whether or not the mother and father are married. Section 5 places a duty on persons applying for administration or distribution of the estate of a deceased to make honest enquiries as to the existence of any person who could claim an interest in the estate. Section 7 provides that after 1st July 1980 the relationship of father and child shall, for any purpose related to succession to property be recognized, if the paternity was admitted by the father during his lifetime. Section 10 does provide that any person who alleges that the relationship of father and child exists between himself and any other person may apply in the prescribed manner to the High Court for a Declaration of Paternity, and the court may make such a declaration. I do not find that section 10 places a restriction on the entitlement of children so that only those born out of wedlock who have obtained a section 10 Declaration are entitled to a share in the estate. I find that the law provides that the administrator must make due enquiry, and all the children have a right to share. If the Administrator has any doubt proper enquiry, advertisement and, if necessary, the protection of a court order or directions should be sought before any distribution takes place. I find that in this case the Plaintiff did not discharge the duties placed by the law on her as the Administratrix of her father's estate, and that she has not acted correctly in vesting the property in herself beneficially.

I give judgment for the Defendant, the Grant of Letters of Administration No 75 of 1989 in favour of the Plaintiff is revoked, and the Deed of Assent No 3403 of 1989 in favour of the Plaintiff is declared void. The Defendant is to have his costs, to be taxed if not agreed.


 ID Mitchell QC
 High Court Judge (Ag)
 14 June 1997
 July.