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SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 372 of 1994

BETWEEN: ISAAC S. DANIEL PLAINTIFF

V

CARLTON STEWART 1ST DEFENDANT
ANTHONY STEWART 2ND DEFENDANT
MILTON STEWART 3RD DEFENDANT

G Bollers Esq for the Plaintiff
S Commissiong Esq for the Defendant

Mitchell J

JUDGMENT

This case was commenced by a Writ of Summons issued out of the Registry of the Supreme Court on 25 August 1994. The Plaintiff asks for a declaration that he is the owner of a 7,871 sq ft piece of land in Union Island, and for an injunction, damages and costs. By a Defence served and filed on 13 December 1994 the Defendants claim that Millicent Stewart (hereinafter Millicent) is the owner of the land due to adverse possession in excess of 12 years. The case has been ready for hearing since the Request for Hearing was filed on 10 February 1995. It came up for hearing on 21 July 1997 and lasted half a day. At the close of the case I gave judgment for the Defendants and said that I would reduce my reasons to writing and I do so now.

The facts are as follows. Isaac Daniel (hereinafter Isaac) died in 1957 leaving a Will of 1955 disposing in 3 devises of his real property at Garden Field in Union Island. In this Will he left one acre for his grandson the Plaintiff (hereinafter the Plaintiff), one acre for his son Murrell Daniel (hereinafter Murrell), and 2 rods and 38 poles for his wife Elizabeth Daniel (hereinafter Elizabeth).

Elizabeth's niece was Millicent, and she was cared for in her old age by Millicent. Elizabeth did not leave a will when she died in 1961, but her interest in the old chattel house and portion of land on which it stood was taken over by Millicent after Elizabeth died. Millicent put tenants in the old house and collected and kept the rent for the house. She occupied and farmed the land on which the house stood, Elizabeth's portion of the estate of Isaac. Murrell meanwhile lived in Barbados. He sold out his land to the Stewarts shortly after he inherited, and played no further part in the saga.

The Plaintiff has lived abroad, first in Trinidad and then in the USA, since the year 1950. He is presently 68 years old and visits his home island regularly. In the year 1972 Isaac's Will was probated and a Grant of Probate was made to its Executor Paul Wilson (hereinafter the Executor). The Plaintiff claimed his acre and marked it out and occupied it. The area he occupied was not surveyed, and in the event turned out to be fractionally smaller than a full acre. He had the Executor give him a deed in 1972 for the share he had marked out and occupied. He never occupied the disputed land because it was in Elizabeth's portion under the will, and he had already claimed and fenced his portion. In 1992 he for the first time had a survey done of his portion. He now discovered that it was some 7,871 sq ft short of the acre mentioned in the will. His devise as claimed by him 20 years previously in 1972 was by now long fenced in, and separated from the rest of Isaac's estate by public roads. He appears to have instructed the surveyor to cross the 20 highway, that separated his land from Elizabeth's land, and go onto Elizabeth's land. On his instructions the surveyors in 1992 surveyed and partitioned off 7,871 sq ft of the land across the road. Until that date he had never sought to go on this land across the road or to claim any of it as his. Since Elizabeth's death in 1961 this area had been occupied by Millicent and the Defendants her family.

Millicent is the 72 year old mother and grandmother of the Defendants. She and her family had been occupying undisturbed by anyone since 1961 the land and old chattel house of her deceased aunt Elizabeth and uncle Isaac. Millicent had taken care of Elizabeth in her old age after Isaac's passing. She had borne the expenses of Elizabeth's funeral in 1961. She had taken over undisputed possession of Elizabeth's devised share of the land of Isaac. The Plaintiff's 1992 fence around the disputed 7,871 disputed lot was taken down by the Defendants. They informed the Plaintiff that the land was Millicent's. They told him they were taking the fence down on the instructions of Millicent. The Plaintiff ignored them and rebuilt the fence around the 7,871 sq ft plot. In 1994 the Plaintiff had the Executor give him a second deed No 2748 of 1994. This deed was for this additional 7,871 sq ft portion of land. The land is expressed in the deed to be part of his devise under the Will. The Plaintiff then issued the writ in this case. In 1995 he came back home and stayed for 12 months, during which time he constructed a building on the disputed lot. He did not await the outcome of this case before embarking on such a risky venture. He built the house within the disputed enclosed area. He has also in 1994 apparently persuaded Millicent's tenant of his grandfather's old chattel house to stop paying rent to Millicent.

The Plaintiff in this case has trespassed onto and built on land that never belonged to him and that he never had a shadow of a claim to. He asks for a declaration against the persons who have peacefully occupied the land undisturbed since 1961. His only excuse for his conduct is that the land he has enclosed is needed to make a full acre to complete and fill up his devise from his grandfather, Isaac. In order to consolidate his claim he has built a structure on the land. He should have taken legal advice before setting out on such a rash course of conduct. The land in dispute is not his. He had no right to go onto Millicent's lands and survey off a part to make up

his acre. The part he fenced in 1992 and built on in 1995 never belonged to him. It belonged to Elizabeth and has belonged to Millicent since 1973 by virtue of her adverse possession since 1961. His deed is worthless. His case is dismissed. Costs to the Plaintiff to be taxed if not agreed.

ID Mitchell QC
High Court Judge (Ag)
July 28th 1997