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SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 387 of 1993
224 of 1995
225 of 1995

BETWEEN: ILENE WARNER — PLAINTIFF

V

VIVIAN GEORGE — 1ST DEFENDANT
HUSKINS GITTENS — 2ND DEFENDANT
GWENNY JAMES — 3RD DEFENDANT

A Williams Esq for the Plaintiff
CV Glasgow Esq for the 1st Defendant
RTLV Browne Esq for the 2nd and 3rd Defendants

Mitchell J

JUDGMENT

This case involved a disputed right of way over adjoining agricultural lots. The first of these 3 consolidated actions was commenced by a Writ issued out of the Registry of the Supreme Court in St Vincent on 17 September 1993. A Defence and Counterclaim was served and filed on 27 July 1994. A Reply and Defence to Counterclaim was served and filed on 23 August 1994. The case has been ready for hearing since the Request for Hearing was filed on 6 January 1995. The case came up for hearing on 18 June 1997 when the Plaintiff and the 1st Defendant gave evidence. At that point the court became aware that the main issue was a disputed right of way passing from a main public road over a total of 3 parcels of land to the Plaintiff's agricultural land. The Plaintiff was in court in separate cases over this disputed right of way with all 3 landowners over whose land the alleged right of way passed. It seemed to the court inappropriate to deal with the earlier suit on its own, and to leave the other cases to be determined subsequently. It appeared to the court that it would be fairer to all parties to order a consolidation of all the suits. This would allow the determination of the rights of the parties in relation to the alleged right of way over all 3 parcels in one trial, rather than leaving the matters to be dealt with piecemeal. An order for consolidation was therefore made under Order 4 Rule 3 of the Rules of the Supreme Court 1971. The hearing of the 3 suits resumed on 25 July with all the parties before the court.

The facts as I find them are as follows. In the 1940s and 1950s the Punnetts of Diamond Estate dismembered and sold off some 9 agricultural lots of land at Enhams Pasture at Carapan Estate to farmers, including the 4 parties in these 3 suits or their predecessors in title. The lots varied in

size from between 1 and 5 acres. The lots were lined out in a row running from south to north up a slope. They were bound on the east by the bank of a stream and on the west by a road called in our case the Upper Road. There was a narrow riverbank called by the parties the Reserve Land between the stream and the lots. The Upper Road separated Enhams Village from Enhams Pasture. The land sloped down into the valley from the Upper Road on the west to the stream in the east. The land also sloped downhill from north to south. The stream ran down the eastern side of Enhams Pasture flowing from north to south. The southern edge of the Pasture was the public road running from Rivulet to Carapan. The northern edge of the Pasture was the forest. The lot 1, in the row at the bottom of the slope bounding on the main road, was the Gittens lot. Lot 2 up the slope was the James lot. Lot 3 was the George lot. Lot 4 was the Plaintiff's father's lot. The other lots of agricultural land at Enhams Pasture continued in a row up the hill bound on the east by the stream and on the west by the Upper Road. It was accepted that when the Pasture was originally divided up, a footpath (known to the parties as the Bottom Road) ran along the riverbank up the eastern boundaries of the several lots of land. That footpath would allow easy access over lots 1, 2, 3, and 4 to lot 5 and lots higher up the Pasture. Each of these lots sloped sharply to the stream on the east. The Upper Road gave access to the higher, western areas of the lots. The footpath gave access from the Carapan Road to the lower parts of the lots adjacent to the riverside on the east of each of the lots. If one approached the Pasture from New Enhams Village it would be somewhat inconvenient to climb up the Upper Road to access each lot and to climb down the lot to the lower or eastern part of the lot to work one's cultivation. The Plaintiff and her father before her from whom she acquired the lot lives at New Enhams Village, and was accustomed to using the footpath alongside the stream to get convenient access to her lot 4. It is the closing of this footpath that has given rise to these suits.

In 1943 when the Punnetts divided up Enhams Pasture into lots they provided access to the lots by way of the road known as the Upper Road. At that time all the plot owners lived higher up the Upper Road and found it convenient to access the lots by way of the Upper Road. A few years afterwards the entire village was relocated from Old Enhams Village to New Enhams Village lower down the Upper Road. The farmers began accessing their lots by the more convenient way of walking up the riverside, rather than by the old access route which was now roundabout, up the steep road, and entirely inconvenient. In 1943 a sketchy survey, using the technology available at the time, was done of Enhams Pasture showing the various lots and the roads and the stream. This survey plan was prepared by Charles F Richardson a licensed land surveyor. Some time later, in a different hand, a 20 foot wide right of way was added to the survey. This survey with the right of way shown on it is a registered survey, and a copy of it was put in evidence. We do not know who did the amendment to the survey or exactly when it was done or why it was done. It must have been done, I find, with some authority, or it would never have been allowed by the owners of the estate around, the Punnetts, to have been registered. We know that the survey was done for the Punnetts as it is referred to by the Vendor Arnold Morgan Punnett in the 1950 deed for lot 3 as a plan "dated the 23rd day of June 1943 and to be recorded

in the Registry." It is evident that as late as 7 years after Mr Richardson prepared the survey it was not yet registered. What weight or value to give to the right of way shown on the survey was the question for the court. Did the plan evidence an existing road or public right of way? No one argued that, and so that thought can be excluded. Was the right of way shown on the plan from the original date in 1943, or was it added later, and was the later date before or after the deeds to the parties? Did the plan evidence a right of way that was included in the deeds of the original purchasers of the lots so that the right of way was granted by the original deeds? That was the submission of the Plaintiff. Did it evidence a later, unauthorized insertion of a more recently created pathway that some unknown person had wrongfully inserted when no such right of way had been either reserved by the original vendor or granted by the purchasers? That was the submission of the Defendants.

When we look at the Deeds in evidence we find as follows. The Gittens deed to lot 1 has not been exhibited. The James deed No 216/1951 to lot 2 is dated 6 February 1950. The George deed No 719/1950 to lot 3 is dated 22 November 1950. The Warner deed No 281/1953 to lot 4 is dated 25 June 1953. The Plaintiff's deed No 1090/1991 to her share of lot 4 is dated 29 April 1991. The James deed to lot 2 describes the eastern boundary of lot 2 as bound "on the east by Carapan Estate." The George deed to lot 3 describes the eastern boundary of lot 3 as "reserve land part of Carapan estate." The Warner deed to lot 4 describes the eastern boundary of lot 4 as bound "on the east by Carapan estate." The Plaintiff obtained a portion of the Warner land lot 4 from her father in 1991. In her deed to her share of lot 4 her eastern boundary is described as "on the east by a road." When the Plaintiff had her deed of gift prepared from her father in 1991 she appears to have instructed the solicitor to describe the eastern boundary as "a road", the disputed right of way passing as the Plaintiff alleges along the eastern boundaries of lots 1, 2, 3, and along the east of her lot 4 northwards to lot 5. The Defendants protest this and claim that she misdescribed her eastern boundary.

The evidence concerning the right of way or Bottom Road as it is also called is highly confused. The plan is not conclusive and the deeds are not helpful. It is common ground among the witnesses that there used to be a track or Bottom Road up the east of the lots to lot 5 and perhaps beyond. The Defendants are united in saying that that right of way did not pass over their land, but ran along the reserve land of Carapan estate outside their eastern boundaries and along the riverbank. This conflicts with the disputed plan which shows the right of way inserted by an unknown hand running over their land and the Plaintiff's land to lot 5. I believe that the right of way always ran over their land to lot 5. I believe that the right of way began to be used before the deeds were made. The Defendants have accepted there was always a Bottom Road, they only question whether it passed on their land or on the Reserve Land. The present owner of lot 1 says he has given permission to the owners of lots 2 and 3 to pass over his land to get to their lots. He has refused permission to the Plaintiff the owner of part of lot 4 to pass over his lot. He says no one ever had that right, they used the Reserve Land. The owners of lots 2 and 3 have

testified against their interest that they acknowledge that they never had a right of way, but always passed over his land with his permission after the Bottom Road on the Reserve Land became washed away in parts. The Plaintiff says that as a little girl she accompanied her father walking up that right of way without asking permission of any one. She says that the right of way either existed at the time of the survey, as she does not agree that the right of way was inserted on the plan at a later date in a different hand, or her family acquired a prescriptive right to the right of way by many years of use. She also believes that the road actually constitutes the eastern boundary of the lots of land, as indeed she instructed the draughtsman to put in her own deed. I accept the evidence of Vivian George that the Bottom Road is used to this day by the Plaintiff's brother to access his share of lot 4. When the Plaintiff's brother used the right of way over the Defendants' lots he used it for the benefit of his father's land, which was only divided between the Plaintiff and her brother in 1991. I also accept her testimony that the Plaintiff's father never used any other access to lot 4 than the Bottom Road since he took up his land in 1953. I accept her testimony that there is supposed to be a common access to the east of all the lots, dating back to the time of the ownership of the Punnetts. The only question is was the Bottom Road to run on the land of the Defendants or on the Reserve Land of Carapan Estate?

The Plaintiff took over her share of her father's lot 4 in 1991. She started to clear the land and to work it in 1992 by hired labour. One day in 1992 the Plaintiff found that Vivian George had planted crops in the area she considered was the road. She spoke to Ms George who told her, "You come from England to look road here? You would have to go in the river." During 1992 and 1993 the Plaintiff walked over the cultivation of Vivian George to get to her garden lot. She had her solicitor write a letter to Ms George. By 1995 matters were getting serious. The owner of lot 1 fenced his land and completely blocked the path, except for those he permitted to pass. She had to abandon her cultivation, as the workers refused to get involved in the confusion over the right of way. The road to the west was too inconvenient to use. The Plaintiff had emigrated to the United Kingdom in 1963, and only came back to live in St Vincent in 1990, a period of 27 years. Her father is still alive but he is 95 years old and is not well. The Plaintiff's brother Rogers works his portion of lot 4. He was always and still is permitted by Vivian George and the other lot owners to pass along the Bottom Road without hindrance. The Bottom Road is still in use, the Defendants merely dispute the right of the Plaintiff to use it. They say she must pass in the Reserve Land, not on their land. But the evidence is that the Reserve Land is impassible in parts. Some of the Defendants say that parts of the Reserve Land where the Bottom Road used to be have collapsed into the stream, leaving the road impassible. Others say that the Bottom Road is still there, but can only be used with the permission of the Defendants. I find that because the Plaintiff has been away for a long time small jealousies have arisen between the Plaintiff and the Defendants. I do not believe that the Bottom Road has washed away. I do not believe that it was supposed to be on exclusively on Reserve Land outside the Defendant's boundaries. If this was so as bits of the Reserve Land have been washed away the parties presently using it would not have been able to do so. I do not find that prescription has run

against the Plaintiff. The Defendants have wrongfully refused to allow the Plaintiff to continue to use the Bottom Road. The Plaintiff has been prevented from cultivating the lower or riverside portion of her land as a result of the obstructions put in her way. I am not satisfied from the evidence that she has suffered substantial damage as a result of this trespass, and she is as a consequence entitled only to nominal damages.

I therefore give judgment for the Plaintiff as follows-

In suit 387 of 1993:

(a) a declaration that the Plaintiff is entitled to have free and uninterrupted access to her land at Carapan held by Deed 1090 of 1991 through the access road running from south to north over the eastern part of the Defendant's land held by Deed 719 of 1950

(b) an injunction to restrain the Defendant whether by herself her servants and or agents or otherwise howsoever from cultivating the access road or obstructing the said access road in any way as to prevent the Plaintiff from having free and uninterrupted access through the said road.

(c) damages of $500.00

(d) the counterclaim is dismissed

(e) the Plaintiff is to have her costs to be taxed if not agreed.

In suit 224 of 1995:

(a) a declaration that the Plaintiff is entitled to have free and uninterrupted access to her land at Carapan held by Deed 1090 of 1991 through the access road running from south to north over the eastern part of the Defendant's land shown on Survey G1729 dated 6 July 1995

(b) an injunction to restrain the Defendant whether by himself his servants and/or agents or otherwise howsoever from placing any barriers across the said access road or obstructing the said access road in any way and from preventing the Plaintiff from having free and uninterrupted access through the said land

(c) damages of $500.00

(d) her costs to be taxed if not agreed.

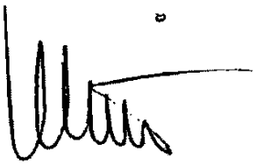
In suit 225 of 1995:

(a) a declaration that the Plaintiff is entitled to have free and uninterrupted access from the main road on the south through the access road on the east of the Defendant's land

(b) an injunction to restrain the Defendant whether by herself her servants and/or agents or otherwise howsoever from cultivating the access road or obstructing the said access road in any way as to prevent the Plaintiff from having free and uninterrupted access through the said road

(c) damages of $500.00

(d) her costs to be taxed if not agreed.



ID Mitchell, QC
High Court Judge (Ag)
31 July 1997