SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO. 242 OF 1983

BETWEEN:

MILTON ROBERTS PLAINTIFF

AND

ANGELLA GEORGE
NATHANIEL THOMAS DEFENDANTS

O. R Sylvester Esq. QC. and Ms Nicole Sylvester for the plaintiff.
C.D. Dougan Esq. QC. and Ms. Andrea Young for the defendants

20th October, 25th November, 1997
Delivered 9th December, 1997

JUDGMENT

BAPTISTE J.

This is a case in trespass brought by the plaintiff wherein it is alleged that on or about the 21st of September, 1983, the defendants, their servants and agents wrongfully entered the plaintiff's land and cut down four mahogany trees and damaged thirteen growing mahogany trees whereby the plaintiff suffered loss and damage. Being aggrieved, the plaintiff has approached the court seeking damages, injunctive relief and further or other relief.

Wendel Roberts, the son of Milton Roberts deceased, who was substituted as plaintiff in this suit, tendered in evidence a certified copy of Deed No. 2202 of 1983 (Exhibit WR 1) dated 13th October 1930. The parties to the Deed being Samuel George as Vendor and Milton Roberts as purchaser. By this Deed the vendor conveyed to Milton Roberts two parcels of land situated at Lowmans. The land was butted and bounded on or towards the north by a road, on or towards the south and east by lands of the vendor and on or towards the west by lands of Nickie Jackson.

Wendel Roberts testified that his father overlooked the land with a passion and the land was like restricted area. As far as possible no one could go on the land in particular, to deplete mahogany trees. He further stated that on September 21, 1983 he saw people on the land cutting trees. They cut four large mahogany trees. That was strange to him for no one trespassed the land. The persons on the land said they were sent by Angella George, the first-named defendant. The trees

were cut by Nathaniel Thomas, the second named defendant. The trees were sawed into boards and removed. The plaintiff also deposed to further cuttings of trees in 1984 and 1996.

According to the plaintiff he got married in 1973 and in that year his father sent wood cutters to cut trees to make some furniture as a wedding gift to him.

In cross examination the plaintiff deposed that he knew the land that belonged to Samuel George and that his father bought two lots from Samuel George. The plaintiff revealed that he did not know the size of the lots. The lots were not surveyed and none of his father's land was actually surveyed.

It must be remembered that we are dealing with a case in trespass. The question which comes to mind is how then does the plaintiff know that the land from which the trees were cut belonged to his father or was in the possession of his father. When the plaintiff was re-examined he said:

> "The two lots of land which belong to my father is readily identifiable because they are in bush covered with mahogany trees. The surrounding land is basically clear."

At the close of the case for the plaintiff learned Queen's Counsel Mr. Dougan submitted as follows:

1. The plaintiff has failed to make a case in the court for the defendant to answer.

2. The one witness has not established the plaintiff's case to make court hold on a balance of probabilities that the defendant trespassed on the land.

3. The land described in the plaintiff's deed is a land with two lots. Court cannot say if those lands were two small lots. The sole witness was unable to tell the court the size of his father's land. Hence he is unable to tell court that any mahogany trees were cut from his father's land.

4. One would have thought that the plaintiff would have had his surveyor. This is essential. A surveyor should be brought to state that the land was the land of the deceased plaintiff.

5. An action in trespass is an action against possession. This is a case in ownership also, not merely in trespass.

Other submissions were made by learned Queen's counsel to which I need not refer now.

The law is that trespass to land consists in any unjustifiable intrusion by one person upon land in the possession of another. The tort of trespass to land operates to protect interests in the possession of property and the right to immediate possession thereof. Consequently, a claim in tort to assert such an interest will commonly raise questions of title to property.

Both counsel in their addresses were in favour of a survey being done. It was ordered that a survey of the land should be done. The survey was indeed done by Colin Alexander a licenced land surveyor. Mr. Alexander testified that the land of Milton Roberts deceased was 7,501 square feet in area. During his observations approximately eight trees were noted to be previously felled, ranging in girth size of between 1 foot to 4 feet most of which were mahogany trees. He explained that the land had mostly mahogany trees and that the land was in bush except for the cut trees. An area was cleared because of the cut trees..

Learned Queen's Counsel Mr. Dougan sought to obtain from the surveyor evidence as to how long ago the trees were cut. After saying he did not know, when a year was suggested to him he said " in my opinion the trees were cut maybe a year ago."

Does the evidence of the surveyor lead to the conclusion or support the case for the plaintiff that on September 21, 1983 the second named defendant at the instance of the first named defendant trespassed the land and cut four large mahogany trees? If the trees were cut a year ago, that would not advance the case for the plaintiff for we are dealing with a matter occurring in September 1983. At its highest the evidence of the surveyor is supportive of the case for the plaintiff in so far as he explained that the land of Milton Roberts deceased had mostly mahogany trees, that the land was in bush except for the cut trees and an area was cleared because of the cut trees. This piece of evidence is consistent with what the plaintiff said when he was examined in chief and in re-examination.

The defendants were not called to give evidence. Deed No. 1016 of 1997 was tendered through the plaintiff as exhibit "WR 2". This deed was made between Daniel George and Angella Stewart, his intended wife. In the deed Daniel conveyed to Angella a parcel of land in Lowmans Hill being one and a half (1 1/2) acres in area, bounded on the north by the Leeward Highway and the public road, on the south by a gutter, on the east by lands in the possession of Wanford Sutherland and Ephraim Hackett on the west by lands in the possession of Wilton Roberts and one Allen and Cleve Warner.

The plaintiff deposed in cross examination that he knew the land of Angella George at Lowmans but did not know the quantity.

In answer to a question from learned Queen's Counsel Mr. Dougan, in cross-examination. the surveyor stated : "I did not measure the lands of Angella George. Those lands appear to be fairly expansive most of the land was in bush."

In re-examination by learned Queen's Counsel Mr. Sylvester he said; "I would not know the extent of Angella George land."

The deed indicates that the land is 1 1/2 acres in area. There is no evidence that mahogany trees are planted on the land. The court will have to find on a balance of probabilities that the plaintiff has made out his case against the defendants.

> "The standard of proof required in civil cases is generally expressed as proof on the balance of probabilities. If the evidence is such that the tribunal can say, 'we think it more probable than not,' the burden is discharged, but if the probabilities are equal it is not." (See Phipson on Evidence 14th edition paragraph 4-38, page 78.

I have carefully considered the evidence of the plaintiff and the surveyor. I find the evidence of the surveyor to be materially confirmatory of that of the plaintiff. On the evidence I hold that it is more probable than not that the trees were cut on the land of the plaintiff. I accept the evidence of the plaintiff that on the 21st September, 1983 the second-named defendant at the instance of the first named defendant trespassed upon the plaintiff's land and cut four large mahogany trees.

The plaintiff put his special damages at $1,200.00, one mahogany tree being $300.00. Learned Queen's Counsel, Mr. Dougan submitted that the plaintiff could not tell the court how he came by the valuation of the trees. No agricultural tariff was seen and the plaintiff was putting a guess figure.

The plaintiff's evidence in examination in chief was: "I am claiming the value of the trees. The value is $1,200.00. One tree is $300.00 EC." In cross examination he said: "I did not check the agricultural tariff in 1983. I did not measure the trees..."

It is trite law that special damage must be pleaded, particularised and proved strictly. Since the burden of proof is on the injured party the defendant is under no obligation to call evidence in rebuttal. It appears to me that, adopting the submission of the respondent in the case of *Grant v Motilal (1988) 43 WIR 372* at 375: "the essential issue ... was whether the quality of the evidence was such as to satisfy the undoubted rule with respect to a claim for special damage. The evidence adduced had to be reliable and on an ascertainable basis."

Is the evidence of valuation so unreliable that the claim for special damage should be dismissed? It appears to me that the evidence of special damage was not really challenged. What was explored by learned Queen's Counsel was its probative value. The evidence of the plaintiff was uncontradicted. Further I do not consider him to be a witness who lacks credibility. In the circumstances of the case, I hold that the plaintiff has established his entitlement to the special damage claimed of $1,200.00.

A person in trespass is entitled to recover damages even though he has sustained no actual loss. If a trespasser cuts down and removes ornamental timber, the owner may in an action for trespass recover the value of the trees when standing. (See Clerk and Lindsell on Torts 17th edition paragraph 17-64, page 872). In the instant case, the plaintiff puts the value of the trees at $1,200.00

Apart from the trespass in 1983, the plaintiff also alleges a trespass in 1984 and one in 1996. In the circumstances an injunction would be in order.

I enter judgment for the plaintiff and make the following orders:

1. The defendants are to pay the plaintiff the sum of $1,200.00 in special damages and $1,200.00 in general damages.

2. An injunction is granted to restrain the defendants whether by themselves or by their servants or agents or otherwise howsoever from entering the plaintiffs land and cutting down the plaintiff's trees or from doing or exercising any acts of ownership thereon.

3. Defendants to pay cost to be taxed if not agreed.

Davidson Kelvin Baptiste
High Court Judge (Ag.)