



SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1998**

Suit No. P 38 of 1995

BETWEEN:

BEVERLY CAMPBELL

Plaintiff

vs

**(1) RODERICK CLARKE
(2) RENE RAVANEAU
EXECUTORS OF THE WILL OF THE LATE
WALLACE DOMINGO SANCHEZ**

Defendants

Mrs C Hinkson Ouhla for Plaintiff
Mr M Gordon for Defendant

**1998: February 11
March 09**

J U D G M E N T

d'AUVERGNE, J

By Summons filed on the 28th July, 1997 the Plaintiff sought the following relief in the manner stated namely:

The deceased left property at Bisee, Castries as well as a three quarter residual share of the estate to The Wallace Sanchez Memorial Fund (No.2) Ltd. This company does not exist and the interpretation required from the court is whether in view of the non existence of the company the dispositions lapses and that these dispositions fall under an intestacy.

CAMPBELL, BEVERLY

V

RODERICK

CLARKE

et al

Accordingly the Plaintiff seeks an order:

- (a) To require the Defendants as Executors to vest the property in the name of the Plaintiff as sole heir at law as a result of this intestacy,
- (b) further or other relief and
- (c) that provisions may be made for costs of this application.

This summons was supported by the affidavit of Beverly Campbell filed on the said 28th July, 1997 which is hereby reproduced in its entirety.

AFFIDAVIT

I, BEVERELY CAMPBELL of L'Anse Road, Castries MAKE OATH and say as follows:-

1. I am the Plaintiff in this action.
2. The late WALLACE DOMINGO SANCHEZ (hereinafter referred to as THE DECEASED) who died on the 14th day of June, 1992 left a Last Will and Testament which was admitted to Probate on 2nd day of November, 1995.
3. In Clause 7 of the said Will THE DECEASED devised and bequeathed to WALLACE SANCHEZ MEMORIAL DEVELOPMENT FUND (NO.2) LIMITED a portion of land situate at Bisee, Castries.
4. The said DECEASED also devised and bequeathed as evidenced in Clause II of the said will all other properties moveable and immoveable real and personal wherever situate to the WALLACE SANCHEZ MEMORIAL DEVELOPMENT FUND (NO.2) LIMITED as to a three quarter share thus constituting it one of its residual legatees and devisees.
5. I have caused a search to be carried out in the Register of Companies and no such Company exists.
6. I have accordingly requested the Defendants as Executors of the said Will to vest all the properties which should have been vested in WALLACE SANCHEZ MEMORIAL DEVELOPMENT FUND (NO.2) LIMITED in my name as I am the sole legal heir to the Succession since I am advised and verily believe that the disposition of the properties unto the non existent WALLACE SANCHEZ MEMORIAL DEVELOPMENT FUND (NO.2) LIMITED has lapsed.
7. The Executors are reluctant to do so without the benefit of the determination of this Honourable Court as to my entitlement under

intestacy.

8. I therefore humbly pray for an Order in the terms set out in the Originating Summons.

On the 12th day of November, 1997 an appearance was entered on behalf of the Defendants.

The matter was heard on the 11th day of February, 1998 in chambers. Learned Counsel for the Plaintiff reiterated the facts in the application and the affidavit.

Learned Counsel for the Defendants informed the court that the defendants were not resisting the application and urged the court to note in particular Clauses 7 and 11 of the Will of Wallace Domingo Sanchez as exhibited.

CONCLUSION

Article 800 of the Civil Code of Saint Lucia provides as follows:

"The property of a deceased person which is not disposed of by Will, or concerning which the dispositions of his Will are wholly without effect, remains in his intestate succession, and passes to his lawful heirs."

Article 804 states:

"When legacies are in favour of several persons jointly, the lapsed share of any of the joint legatees accrues to the others.

Legacies are held to be so made when they are created by one and the same disposition and the testator has not assigned the share of each co-legatee in the thing bequeathed.

Directors given to divide the thing jointly disposed of into equal aliquot share, do not prevent accretion from taking place.

The legacy is also presumed to be made jointly when a thing which cannot be divided without deterioration is bequeathed by the same act to several persons separately.

The right to accretion as herein described in respect to legatees applies also to gifts inter vivos made in favour of several persons jointly, when some of the donees do not accept."

Clause 7 of the exhibited Will of Wallace Domingo Sanchez reads:

"I give devise and bequeath to the Wallace Sanchez Memorial Development Fund (No.2) Ltd a portion of land known as Lot 4 situate at Bisee aforesaid and registered in the Land Registry as Block and Parcel 1050B 538."

The Plaintiff's affidavit disclosed that after a search of the Register of Companies she is satisfied that no such company is in existence; that the defendants are not refuting this statement of fact. Therefore I find as a fact that **Wallace Sanchez Memorial Development Fund (NO.2) Ltd** does not exist and therefore this bequest lapses and falls in accordance with Article 800 of the Civil Code into the intestate succession of the testator and passes on to his lawful heirs.

Clause 11 of the above mention Will reads as follows:-

"I give devise and bequeath all other properties moveable and immovable real and personal wheresoever situate to the undermentioned the sums set out therein and in the following properties namely,

(1) The Wallace Sanchez Memorial Fund (No.2) Ltd and to a three-quarter share, and

(2) as to a one quarter share to the undermentioned four persons in equal shares viz,

- (1) Alicia Sanchez
- (2) Josephine Sanchez
- (3) Anthony Sanchez
- (4) Enedina Sanchez

and I constitute them my universal residuary legatees and devisees.

As I see it, the testator has assigned a specific portion of the property viz, three-quarter share to the said The Wallace Sanchez Memorial Fund (No.2) Limited and therefore Article 800 should apply.

In **Parry and Clarke (The law of Succession) at page 354** under the rubric '*Effect of Failure*' provides,

"A residuary gift which fails goes on intestacy. If a residuary gift in a Will fails completely the residuary estate goes on intestacy. Again if a gift of a share in the residuary estate fails, prima facie that share goes on intestacy."

In my judgment, based on the above both bequests made to Wallace Sanchez Memorial Development Fund (No.2) Limited, Clause 7 and Clause 11 of Wallace Domingo Sanchez's Will goes on intestacy and passes in this case to the Plaintiff, Beverly Campbell.

My order is therefore as follows:

That the Defendants, as Executors do vest the property in the name of Beverly Campbell as sole heir at law of Wallace Domingo Sanchez.

That there will be no order as to costs.



SUZIE d'AUVERGNE
HIGH COURT JUDGE