

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 15 OF 1997

BETWEEN:

SYLVENA THOMAS

Plaintiff/Appellant

and

MARTIN LAVIA

Defendant/ Respondent

Before:

The Hon. Mr. C. M. Dennis Byron

Chief Justice [Ag.]

The Hon. Mr. Albert Redhead

Justice of Appeal

The Hon. Mr. Albert N. J. Matthew

Justice of Appeal [Ag.]

Appearances:

Mr. A. Williams for the Plaintiff/Appellant

Mr. R. Jack for the Defendant/Respondent

1998: March 26.

JUDGMENT

MATTHEW J.A. (A.G)

This is a case between blood relatives concerning a chattel house and lot at Owia in which Mitchell J. gave judgment for the Plaintiff in the sum of \$2,272.74 as special damages and \$5,000.00 as general damages.

The Plaintiff was not satisfied and she appealed against the judgment. The only ground of appeal is that the learned Judge erred in not making a declaratory order that the Appellant is owner of the lot of land on which the chattel house was located.

The Defendant also was not satisfied with the judgment and he cross appealed to set aside the monetary award to the Plaintiff.

We dealt with both matters together and two issues arise for consideration, namely, the question of adverse possession and damages.

[1] Adverse Possession. The submission put forward on behalf of the Plaintiff/Appellant was that she became owner of the land by virtue of the adverse possession of her predecessor or of her own possession. It appears that one Mr. Michael who seems to have been related to both Parties occupied the lot in question for some considerable number of years. He lived in a chattel house on the lot and it is not in dispute that he gave the house to the Plaintiff. The lot was part of certain estate lands which were later offered to the occupiers to purchase. There is some evidence that Mr. Michael was made such an offer to purchase as late as the 1970's but that he showed no interest. This was accepted by the learned trial Judge when he stated:

AHe was then an old man and not in a position to buy land. There is no evidence that he considered that the land was his by adverse possession. There is no evidence that he ever claimed title to the land he lived on.@

It is difficult to maintain a claim based on adverse possession by or on behalf of Mr. Michael in the circumstances. We must therefore consider the Appellant's possession commencing on Mr. Michael's death in 1977. It was submitted on her behalf that she remained in possession undisturbed until 1992. The evidence to support that is not conclusive. The Appellant stated that she lived at Owia. Her parents also lived at Owia. But there is evidence that she lived elsewhere with one Clifford. Strong support for the fact that she did not live on the premises in dispute is that the house was destroyed at night most presumably when no one was around.

So what possession did the Appellant enjoy? Her claim to adverse possession is not very convincing. The learned trial Judge had this to say:

believe Mr. Michael acquired no interest in the land while he lived, either from the previous estate owners or against the Defendant, and the Plaintiff acquired no interest after his death.@

He further went on to state:

A The Plaintiff and the Defendant had a mentally retarded cousin Mr. May whom the Plaintiff looked after. After the death of Mr. Michael the Plaintiff put Mr. May in Mr. Michael's house, and the Defendant permitted this to happen.@

I agree with the findings of the learned trial Judge. The Appellant therefore did not really occupy the land to her exclusive possession for a period of 15 years but was using it with the permission of the Respondent to some extent since she was looking after their mentally retarded cousin in the house which was located on the land.

The Appellant's claim to adverse possession of the disputed land is not made out.

2 Damages: Although one may have a rightful claim to the ownership of a portion of land that does not entitle him to break down any structure that may be on such land without giving the necessary notice and/or taking proper legal action and this is especially so when the structure was there with the permission or consent of the owner of the land.

So following a decision of this Court in this jurisdiction, the trial Judge was correct to award damages to the Appellant. However we believe that the amount awarded was too high. We allow a sum for the cost of materials lost and an amount for the aggravation suffered by the Appellant. We substitute for the amount awarded by the learned trial Judge the amount of \$5,272.74.

We make no order as to costs.

ALBERT N. J. MATTHEW
Justice of Appeal [Ag.]

I Concur.

C. M .DENNIS BYRON
Chief Justice [Ag.]

I Concur

ALBERT REDHEAD
Justice of Appeal