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SAINT LUCIA

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

SUIT NO: 406 of 1992

Between:

1. MARTINUS JN PHILLIP
2. JOAN JN PHILLIP

PLAINTIFFS

AND

MATTHEW DENIS

DEFENDANT

1997: JANUARY 30
FEBRUARY 6 AND 12
1998: APRIL 9 AND 20

JUDGMENT

Appearances:

Mr D Theodore for Plaintiffs

Mr L Riviere for Defendant

d'Auvergne, J

By a Writ of Summons indorsed with a Statement of claim filed on the 21st day of September, 1992 the Plaintiffs claimed against the Defendant the following:-

(1) A declaration that the said staircase is situated on premises belonging to the Plaintiffs.

(2) An injunction ad interim and perpetual, restraining the Defendant, whether by himself, his servants, agents or otherwise from demolishing, or continuing to demolish the said staircase and from hindering the Plaintiff's access over the said staircase.

(3) Damages.

(4) Costs.

The following day an appearance was entered on behalf of the Defendant.

I pause here to note that before the filing of the above mentioned Writ, an application for an Ex Parte Order of Injunction supported by an Affidavit of the first named Plaintiff was filed, heard and granted on the 24th day of August, 1992. That Order granted was entered on the following day and it reads as follows:-

> *"1. That the defendant be restrained and an injunction be hereby granted restraining him, whether by himself, his servants or agents, from:-*
>
> *(1) demolishing or continuing to demolish the wooden staircase adjoining the Plaintiffs' premises at Block 0031 C 626*
>
> *(2) hindering the Plaintiffs' access over the said staircase to the Plaintiffs' premises and in particular that the Defendant do unlock the metal gate erected by him until the determination of the suit to be filed by the Plaintiffs on or before 21st September, 1992.*
>
> *(3) that this matter is returnable on 23rd September, 1992.*

On the 23rd day of September, 1992 the returnable date set for the hearing of the Ex Parte Injunction granted on the 24th day of August, 1992 after arguments by both Counsel. It was ordered -

> *"that the injunction granted herein by order dated 24th August, 1992 against the Defendant Matthew Denis should be and is hereby continued inforce until the determination of this suit."*

That Order was entered on the 3rd of November, 1992 and on the 6th of November, 1992 a defence was filed on behalf of the Defendant.

On the 29th day of April, 1993 **Notice of Motion for Committal for Contempt of Court** was filed against the Defendant. The Motion supported by an affidavit of the first Plaintiff, was heard on the 18th day of May, 1993 and the order granted was

> *"That the Defendant be fined $500.00 to be paid by 31st May, 1993, in default 2 weeks in imprisonment provided that the Defendant shall not be obliged to pay the said fine so long as he opens the metal gate adjoining the Plaintiff's premises at Parcel 0031 C 626 by 12:00 p.m. on Wednesday 19th May, 1993 and keeps it open until the determination of this suit."*

A request for hearing was filed on the 5th day of November, 1993 and after many adjournments, to facilitate the Defendant in some form or other, the matter was part heard on the 30th day of January, 1997 and completed on the 6th day of February, 1997.

On the 12th day of February, 1997 the court visited the *Locus in quo* and the matter was adjourned to the 10th day of March, 1997 for addresses.

Once more, after many adjournments on behalf of the Defendant the matter was finalized on the 9th day of April, 1998 with judgment reserved.

FACTS OF THE CASE

The Plaintiffs became the owners in possession of Block 0031 C Parcel 626 in the Registration Quarter of Soufriere on the 26th day of May, 1988 and the Defendant of the adjoining piece of land known as Block 0031 C Parcel 627 on the 26th day of August, 1988.

From the evidence it appears that the parties had peaceful occupation of their respective properties until 23rd day of July, 1992 when the Defendant erected a metal gate across the said staircase on which he placed a locked padlock. On that very day the Plaintiff caused a letter to be served on the Defendant requesting the removal of the said gate within seven (7) days upon receipt of the letter.

The Plaintiffs alleged that instead of removing the said gate the Defendant commenced the demolition of the said staircase.

In order to appreciate the enfolding of the facts of the case, it is important that the history of the facts be set down in sequence.

The Plaintiffs' property was formerly owned by the Soufriere Town Council who sold to Thelma Hennecart (who in turn sold to the Plaintiffs) on the 18th of August, 1960. The schedule to Thelma Hennecart's deed of sale reads as follows:-

> *"A lot of land comprising an area of One thousand six hundred and eighteen square feet more or less situate at Bay Street in the Town of Soufriere, the said lot being set out and bounded as follows:- North by an area used as a Bus Stand, South by a lot and building formerly the Soufriere Police Station, East by Bay Street and West by Lower Bay Street. Together with the building erected thereon formerly used as a Post Office and all other the appurtenances and dependencies thereof, including especially the wooden staircase formerly used as a common entrance to the upper storey of the said building hereby sold and to the said former Police Station."*

It is significant to note the words "*all other the appurtenances and dependencies thereof, including especially the wooden staircase formerly used as a common entrance to the upper storey of the said building hereby sold and to the said former Police Station.*"

The identical Schedule noted above is to be found in the deed of sale by Thelma Hennecart to the Plaintiffs, whereas the Schedule to the Defendant's deed only states the usual "*together with the building erected thereon and all other the appurtenances and dependencies thereof.*"

As stated earlier an injunction was granted to the Plaintiffs against the defendant demanding that the said iron gate remain open until the determination of the case.

The Plaintiffs alleged and evidence was led which showed that the said staircase was interfered with and that it was no longer a wooden staircase but now comprises of wood and wall and that the latter portion mentioned constitutes an encroachment on their property.

The first Plaintiff gave evidence that he had suffered damage from the loss of rental of his property; that on the many occasions that he has taken a prospective tenant to view the property, the Defendant would come out of his house and say in the presence of the prospective tenant *"I am tired of telling you this step does not belong to you, you are walking on the steps as if they are yours. I will injure you."*

He told the court that his last tenant terminated a monthly lease of $3,000.00 monthly on the 23rd of September, 1994.

The Defendant commenced his evidence by insisting that he knew the boundaries to his property and that while it was true that he installed the said iron gate and placed a locked padlock on it, he did so while the Plaintiffs' predecessor was still the owner of the adjoining property, that he gave a key to the said predecessor Thelma Hennecart and later on, to Colin Tennant, the Plaintiff's tenant.

The Defendant further told the court that his house was and still is a wall structure to which he made some alterations such as removing wooden parts and replacing them with concrete but he denied making alterations which prevented one of the Plaintiffs' doors from opening from the outside. He vociferously denied that the door in question ever opened unto the outside but that it always opened unto the inside.

ARGUMENTS

Learned Counsel for the Defendant submitted that the Defendant was only asking for what was stated in his deed of sale, namely, *"and all other the appurtenances and dependencies thereof"* and that the use of the wooden stairs or staircase was and is nothing but an appurtenance or dependencies.

He argued that the Plaintiffs' had only acquired by the purchase of their property the right to the use of the staircase not the staircase itself.

He cited the meaning of an appurtenances from **Stroud's Judicial Dictionary 2nd Edition** and from **Lister v Pickford** (34 L J Ch. 582; 34 Bea. 576) where Romilly, M. R. reiterated that "Land cannot be appurtenant to land" and that the word Appurtenances includes incorporeal hereditaments, such as rights of way, of common . . ."

He said that both parties used the right of way before the Defendant restricted the use of the staircase.

He also said that the right to the staircase was specifically stated in the Plaintiffs' deed of sale but should be implied in that of the Defendant.

Learned Counsel for the Plaintiffs submitted that if the court accepted the submission of Learned Counsel for the Defendant then the court should grant the Plaintiffs what they seek in the Statement of Claim save and except the first claim (noted earlier).

He urged the court to note that the extension to the Defendant's premises constituted a continuing hinderance to the use of the Plaintiffs' property and that the staircase was specifically mentioned in the Plaintiffs' deed as part of the property sold to the Plaintiff.

He stressed that the *Eusden Generis* rule does not apply, neither was any evidence led to show the subject matter was prescribed, or there was a servitude over the staircase.

He contended that the use of the staircase should not be considered as an overriding interest since there was no evidence led by either the Defendant or his predecessors in title; that there was no survey to assist the court to arrive at a conclusion as to what portion of land (that of the Plaintiffs or that of the Defendant) that the staircase was constructed and still stands.

CONCLUSION

Having visited the site and from the evidence led, it is clear that the two properties were formerly one property which was later divided, sold and resold; at first the parties lived in harmony but after the erection of the iron gate with locked padlock, disharmony stepped in.

In **Evans v Angell (1858) 26 Beav 202 Romilly, M.R., at 205** stated that -

> *"The word 'appurtenances' have a distinct and definite meaning, and though it may be enlarged by the context, yet the burden of proof lies on those who so contend.*
>
> ***Prima Facie**, it imparts nothing more than what is strictly appertaining to the subject-matter of the demise or grant, and which would, in truth pass without being specially mentioned."*

In **Lister v Pickford (1865), 34 Beav 576 Romilly, M.R. at page 580** again said -

> *"It is settled by the earliest authority, repeated without contradiction to the latest, that land cannot be appurtenant to land. The word 'appurtenances' includes all the incorporeal hereditaments attached to the land granted or demised such as rights-of-way, of common, or piscary, and the like, but it does not include lands in addition to that granted."*

Thelma Hennecart the predecessor in title to the property owned by the Plaintiffs sold exactly what she bought and processed to the Plaintiffs; that the schedule to that deed of sale reads *"and all other the appurtenances and dependencies thereof including especially the wooden staircase formerly used as a common entrance to the upper storey of the said building hereby sold . . ."*

The schedule to the Defendant's deed of sale simply states "together with the building erected thereon and all other appurtenances and dependencies thereof."

As I see it, the appurtenance the wooden staircase is specifically mentioned in the Plaintiffs' deed of sale but is not in that of the defendant.

On my visit to the site I saw that the wooden staircase was and is essential to the gaining of access to both properties but more so to that of the Plaintiffs since it is not only the "common entrance" as stated in the Plaintiffs' deed of sale but in fact the entrance to the property. The Defendant has an alternative entrance.

The authorities clearly show that an appurtenance need not be specifically mentioned for it to pass with the conveyance or devise. In my considered judgment the appurtenance of the wooden staircase does in fact pass unto the property owned by the Defendant.

There is no doubt that the Defendant has done alternations to his property which hinders the full enjoyment of the appurtenance of the wooden staircase by the Plaintiffs as they were accustomed to. In fact the Plaintiffs owned their property, albeit a matter of months, before the Defendant and would definitely be capable of discerning the extent of the obstruction, or hinderance placed by the Defendant on their enjoyment of the said appurtenance.

I find it impossible to make a declaration that the staircase is situated on premises belonging to the Plaintiffs since neither parties tendered any survey plans which could assist me in arriving at such a conclusion. The Plaintiffs tendered a plan which showed the two (2) properties as two (2) continuous portions of land on Bay Street in the Town of Soufriere Lot A owned by the Plaintiffs as the old Post Office and Lot B owned by the Defendant as the Old Police Station.

There is no doubt in my mind that the Plaintiffs' have suffered damage from the hindering by the Defendant of their free access over the said staircase but not the specific damages that the Plaintiffs seem to be claiming from the evidence.

My order is therefore as follows:-

Both the Plaintiffs and the Defendant are entitled to the free use and access over the wooden staircase.

That the Defendant do break down the concrete extension placed by him thus allowing the Plaintiffs to enjoy free use and access over the wooden staircase and the proper opening of the Plaintiffs' door which opens unto the staircase.

That the injunction granted by order of the court dated 24th August, 1992 and confirmed on the 3rd of November, 1992 against the Defendant Matthew Denis is hereby made perpetual.

Defendant is to pay $5,000.00 to the Plaintiffs as general damages and costs to the Plaintiffs to be agreed or otherwise taxed.

SUZIE d'AUVERGNE
HIGH COURT JUDGE