

SAINT LUCIA

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

SUIT NO:146 of 1989

BETWEEN:

- (1) **DORIS MARTELLY** suing on behalf of himself and all the other lawful heirs of the said SAMUEL MARTELLY
- (2) **MARY MILDRED NILES** suing on behalf of herself and all the other lawful heirs of TRANQUILLIEN MARTELLY
- (3) **JOHN JACOB** suing on behalf of himself and all the other lawful heirs of GENEVIEUVE JACOB
- (4) **MARK WILSON** suing on behalf of himself and all the other lawful heirs of CONSTANCE WILSON
- (5) **ALPHONSE CARASCO** suing on behalf of himself and all the lawful heirs of LUCIENNE CARASCO
- (6) **CHARLES SERIEUX** suing on behalf of himself and all the other lawful heirs of LUCIANNA LA FORCE
- (7) **ROMAINE MC DIAMED** suing on behalf of himself and all the other heirs of ANTOINETTE ROSERIE
- (8) **ELIZABETH CHARLES** suing on behalf of herself and of all the other lawful heirs of AIMABLE ROSEMOND

PLAINTIFFS

and

- (1) **ALISON MARTELLY**
- (2) **AGDELINE MARTELLY**
- (3) **SIMON MARTELLY**

Sued herein on behalf of all the lawful heirs of SAVERY MARTELLY

DEFENDANTS

Mr Dexter O Theodore for the Plaintiffs

Mr Marcus Peter Foster for the Defendants

JUDGMENT

1998: OCTOBER 8

d'AUVERGNE, J

On the 19th day of December, 1989 the Plaintiffs filed a Writ of Summons against the defendants indorsed with a statement of claim which is hereby reproduced in its entirety.

STATEMENT OF CLAIM

1. The Plaintiff DORIS MARTELLY is one of the lawful heirs of Samuel Martelly and sues on behalf of himself and all the other lawful heirs of the said Samuel Martelly, deceased.
2. The Plaintiff, Mary Mildred Niles is one of the lawful heirs of Tranquillien Martelly and sues on behalf of herself and of all the other lawful heirs of the said Tranquillien Martelly, deceased.
3. The Plaintiff John Jacob is one of the lawful heirs of Genevieve Jacob (born Martelly) and sues on behalf of himself and of all the other lawful heirs of Genevieve Jacob (born Martelly), deceased.
4. The Plaintiff Mark Wilson is one of the lawful heirs of Constance Wilson (born Martelly) and sues on behalf of himself and of all the other lawful heirs of the said Constance Wilson (born Martelly), deceased.
5. The Plaintiff Alphonse Carasco is one of the lawful heirs of Lucienne Carasco (born Martelly) and ues on behalf of himself and of all the

other lawful heirs of the said Lucienne Carasco (born Martelly), deceased.

6. The Plaintiff Charles Serieux is one of the lawful heirs of the said Lucianna La Porte (born Martelly) and sues on behalf of himself and of all the other lawful heirs of Lucianna La Porte (born Martelly), deceased.
7. The Plaintiff Romain Mc Diamed is one of the lawful heirs of Antoinette Roserie (born Martelly) and sues on behalf of himself and of all the other lawful heirs of Antoinette Roserie (born Martelly) and sues on behalf of himself and of all the other lawful heirs of Antoinette Roserie (born Martelly), deceased.
8. The Plaintiff Elizabeth Charles is one of the lawful heirs of Aimable Rosemond (born Martelly) and on behalf of herself and of all the other lawful heirs of Aimable Rosemond (born Martelly), deceased.
9. The Third-named Defendant Simon Martelly is one of the lawful heirs of Savery Martelly and sued herein on behalf of himself and all the other lawful heirs of Savery Martelly, deceased.
10. The Defendants Alson Martelly and Magdeline Martelly are not lawful heirs of any of the co-owners nor are they lawful heirs of any of their respective lawful heirs.
11. However, in or around 1976 the Defendants wrongfully entered upon exclusive possession of the estate by growing crops upon the estate.
12. The Plaintiffs have not consented to nor authorised the said possession of the estate by the Defendants or any other person.
13. The Defendants refuse and have refused to discontinue possession of the estate.

14. The Plaintiffs say that the estate belongs to and is the property of all the lawful heirs of the co-owners.
15. As a result the Plaintiffs have been wrongfully disturbed in their possession of the estate and are prevented wrongfully from exercising their lawful rights over the estate.
16. The disputed area is recorded in Block 1831B Parcel 241 in the Land Register in the name of the Defendants.
17. The Third-named Defendant joined as Defendant in this suit because of his unwillingness to join therein as Plaintiff.

AND the Plaintiffs claim:

1. A declaration that the Plaintiffs are the co-owners in undivided shares of the estate and entitled to possession of the estate.
2. A declaration that the Defendants have no right title or interest in or over the estate.
3. Possession of the disputed area.
4. Mesne Profits.
5. An order authorising the Land Registratr to rectify the land register by deleting the name of the Defendants as owners of Block 1831B Parcel 241 and substituting therefor the names of the Plaintiffs as the true owners thereof.
6. That Block 1831B Parcel 241 be registered in the name of the Plaintiff.

7. Damages.
8. The costs hereof.

Dated this 19th day of December, 1989.

No appearance nor defence was entered on behalf of the Defendants.

On the 18th day of July 1990 the Plaintiffs filed a Summons for Judgment in default of Defence supported by an affidavit.

I am unable to discern from the file what happened except that on the 19th day of September 1990 the first day of the Michaelmas term the matter was adjourned to the 3rd day of October, 1990. Meanwhile, on the 26th day of September, 1990 a defence was filed on behalf of the defendants; that defence is also reproduced.

DEFENCE

The Defendants state:-

1. The statement of claim fails to disclose any status in the Plaintiffs DORIS MARTELLY and ELIZABETH CHARLES to institute proceedings herein and contend that their names should accordingly be struck out.
2. Paragraphs 2-9 of the Statement of Claim are admitted.
3. Paragraph 11 of the Statement of Claim is admitted, however the said Defendant, Alison Martelly states that he, is entitled, having purchased from the Plaintiffs' ascendants, to the said parcel of land.
4. In respect of paragraph 12 of the Statement of Claim the first named Defendant admits to being in exclusive possession of the said parcel

of land, but denies the said possession is wrongful and repeats paragraph 3 above.

5. Paragraphs 12, 15 and 16 of the Statement of Claim is denied and paragraph 3 above is repeated.
6. In respect of paragraph 14 of the Statement of Claim, the said Defendant ALISON MARTELLY admits and paragraph 3 above is repeated.
7. Paragraphs 17 and 18 of the Statement of Claim is admitted.
8. Save as herein specifically admitted, the defendants deny each and every material allegation in the Statement of Claim as if the same had been herein set out seriatim and specifically denied.

The defendants claim that the action be dismissed with costs.

On the 23rd day of November, 1990 a reply was filed and on 23rd of January, 1991 a request for hearing was also filed on behalf of the Plaintiffs.

The matter was eventually fixed for hearing for the 10th day of February, 1992 . Hereafter there were many adjournments at the instance of the Defendants who were ordered to pay costs to the Plaintiffs on many occasions.

The trial of this matter commenced on the 14th day of July, 1992, further evidence was received on the 15th day of January, 1993 and 13th February, 1995 and finally on the 24th day of November, 1997.

Finally after the various adjournments even to Saturdays but to no avail. Learned Counsel for the Plaintiffs beseeched the court to conclude the matter “since the evidence and pleadings are there.”

Facts

Charles Martelly and his wife Zoella Jn. Baptiste Albert had nine lawful children, viz, (1) Amable, (2) Tranquillin, (3) Savery, (4) Genevieve (wife of Nemorin Jacob) Constance (wife of Wilson Jean Baptiste) Adeline (wife of George Dessieu) Lucienne, Lucianna and Antoinette (wife of Henry Jules Roserie).

On the 22nd day of December, 1989 a Declaration of Succession was granted and registered setting out the properties of the deceased and their devolution unto the nine above named children who are represented in this action by the eight Plaintiffs and third Defendant.

One of the properties is “an estate in the quarter of Praslin called Le Point La Blennerie, consisting of six (6) carres” and the subject matter of this ancient case.

Romain Mc Diamed and Charles Serieux two of the elder members of the Martelly family gave evidence on behalf of the Plaintiffs. The Declaration of Succession mentioned above was tendered as an exhibit.

Romain Mc Diamed told the court that the Second Defendant was the wife of the First Defendant who was a relative but not a lawful heir.

Mc Diamed said that that while the Land Registration and Titling project was being coordinated in St. Lucia, particularly in the village of Micoud he “was unable to take care of that” so Simon Martelly the Third Defendant offered to process the claim for the land at La Pointe La Blennerie on behalf of Heirs of Charles Martelly; that it was long afterwards it was brought to his attention that the said land was registered as belonging to the First and Second Defendants as Block 183113 Parcel 241.

He informed the court at this juncture that Simon Martelly the 3rd Defendant was the uncle of the first Defendant.

Mc Diamed said that he immediately made a search at the Land Registry and after arming himself with (1) St. Lucia Land Acquisition Act Claim Form No 3 F-29 filled out in the name of Alson Martelly and the supporting Affidavit Form and Demarcation Certificate he convened a meeting of the Martelly family. The Affidavit attached to the claim form and Demarcation Certificate are reproduced.

ST. LUCIA
LAND ADJUDICATION ACT
AFFIDAVIT FORM

I, Alson Martelly of Mon Repos Quarter of Micoud, Mon Repos Post Office

Make oath and say as follows:

1. I am 50 years of age
2. I own a portion of land comprising of 19 Acs. 2 Rds. 34.1 Pchs. and is situate at La Bleunerie in the quarter of Micoud.
3. I bought the said land from heirs of Martelly in the year 1956 for the sum of Four Hundred and twenty dollars (\$420.00EC).
4. I started to work on the said land from 1956 and I planted crops mainly coconuts, etc. I also planted garden and also bananas.
5. I also have a fence on the said land where I have a few cows.

Sworn by Alson Martelly
At Dennery
This 16th day of September, 1985
Before me:

The said land is bounded as follows:
North by Ravine
South by Remainder of the same land
and George Heron
East by Kerby Monroe
West by Et Modest Lafallie

Magistrate/Commissioner for Oaths/J.P.

ST. LUCIA
LAND ADJUDICATION ACT

DEMARCATION CERTIFICATE

Section: La Point

Claim No.: 3F-29

Claimant: A. Alson and Magdeline Martelly

Location of Land: La Blennerie

Demarcator: Ferdinand Stanislaus Date: 21-1-86

Person Pointing out Land: Alson Martelly

Witness: Michael S. martelly, Francis Alexander, Balantine A. Brisfert, P. Sandiford, C. Biscette (driver)

Notes: A plan – seen

No Disputes

Title provisional long possess
From 31 December 1956
Owner – Alson Martelly ½ share
Magdalene Martelly ½ share

Resident ownership of this parcel is accepted by neighbours.

Subsequently, as a result of the above mentioned meeting of the Martelly family a legal letter was sent by a Corporal of Police to the first Defendant.

The said legal letter is hereby reproduced.

20th August, 1987

Mr. Alson Martelly
Mon Repos
Micoud

Dear Sir,
We act for the Heirs of Charles Martelly.

We are instructed that our clients are the owners of a parcel of land in the quarter of Praslin commonly called La Point consisting of about 30 carres.

We are instructed that you have caused the said parcel of land to be registered in the Land Registry as Block 2031B Parcel Number 241 in your name and the name of Madeleine Martelly.

We are further instructed that neither you nor Madeleine Martelly is a lawful heir of Charles Martelly.

Please indicate whether you would consent to the rectification of the Land Register to delete your name and that of Madeleine Martelly and substitute therefore the Heirs of Charles Martelly.

In the event that we should fail to hear from you by Friday 28th August, 1987 we shall be obliged to institute legal proceedings to obtain such a rectification.

You are hereby cautioned not to dispose of hypothecate, or otherwise deal with the said land until this matter has been resolved.

Yours faithfully,
CENAC & THEODORE
PER:

Signed: DEXTER V.O. THEODORE

cc: The Land Registrar

Under cross examination this witness denied that he "pointed out" the land to the first Defendant and admitted that at the meeting there was a general consensus that the land was sold too cheaply, viz \$420 E. C dollars for six (6) carres of land.

Charles Serieux told the Court that he lived out of St. Lucia for 1935 to 1979, that he was present at the meeting which disclosed that the first Defendant had registered the land in his name and that he was beseeching the Court to order that Block 1831 R Parcel 241 be registered in the name of the Plaintiffs.

The first Defendant gave evidence on his own behalf. He told the Court that he was a planter and owner in lawful possession of a piece of land registered as Block 1831 B Parcel 241 which was now in dispute. He stressed that he was in occupation of the land since 1956 after buying it for

\$420.00 subsequent to a meeting with the relatives, at which were present at least one representative of each heir, including Romain Mc Diamed. He said that he paid the purchase price to Mr. John Compton who gave him a receipt which the Land Registration Titling Project accepted.

He further told the Court that he had secured a mortgage on the land, that he had built a motorable road and under cross examination said,

“I am willing to leave the land on condition I get compensation” also,
“the point at the meeting is not that the land had not been sold to me at all but sold too cheaply.”

Learned Counsel for the Defendants informed the Court at an earlier hearing that he intended to call witnesses but after the many adjournments and the non appearance of Counsel or his client the Court decided to conclude the matter.

Conclusion

The Land Registration Act No. 12 of 1984 is an act to make provision for registration of land and for dealing in land so registered and for purposes connected therewith.

The dispute in this case centres around a piece of land in the registration quarter of Praslin, quarter of Micoud registered as Block 1831 B Parcel 241 which is registered in the names of the first and second Defendants.

It is to be noted that the said land was first registered on the 28th day of November, 1986 with provisional title.

Section 24 of the Land Registration Act 1984 provides as follows:

“Subject to the provisions of Section 27, the registration of any person as the proprietor with a provisional title of a parcel shall not affect or prejudice the enforcement of any right or interest adverse to or in derogative of the title of that proprietor arising before such date or under such instrument or in such other manner as is specified in the register of that

Section 98 states as follows:

- (1) *“Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.*
- (2) *The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”*

In Civil Appeal No. 11 of 1993 St. Lucia

Heirs of Hamilton La Force et al

vs

The Attorney General of Castries

Lucy Adrien

Leon Justin

Andrew St. Rose and

Elvina Deligny

Byron J. A., at page 4 clearly states the law with regards to rectification of the Land Register

“Rectification must also be distinguished from appeals under the Land Adjudication Act 1984.

The unequivocal intention of the legislature is evidenced by section 9[1] of the Land Registration Act 1984:

“The Land Register shall comprise a register in respect

parcel; but same as aforesaid, such registration shall have the same effect as to registration of a person with absolute title.”

Section 27 states:

“Every proprietor who has acquired land, a lease or hypothec by transfer without consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it, and subject also to the provisions of any law relating to bankruptcy and to the winding-up provisions of the Companies Ordinance, when registered shall in all respects have the same effect as a transfer for consideration.”

Charles Serieux on behalf of the Plaintiffs said:

“At the meeting in 1979 I heard Alison say that he purchased lands from the family and that he is occupying it. I replied that if he knows that he purchased land from the family. I know nothing about it and I do not believe he better go back and get his money to whoever he purchase from for I believe he purchase wrong.”

Romain Mc Diamed admitted that the first Defendant was in possession of the land and “even renting for some people who are cultivating bananas.”

In my judgment the above clearly indicates that the Plaintiffs were aware of the first Defendant’s possession and occupation of the land and of his proclaiming to have purchased it as far back as 1979, at least 19 years ago.

A perusal of demarcation certificate shows that the first Defendant acquired from long, possession, no dispute having been entered.

Section 98 of the said Land Registration Act provides the only method by which a court will order the cancellation of a first or subsequent registration.

of every parcel which has been adjudicated in accordance with the Land Adjudication Act”

Disputes as to the ownership of land were to be resolved in accordance with the Land Adjudication Act 1984 with appeals to the Land Adjudication Tribunal and the Court of Appeal within the specified times prescribed by section 24 of the Land Adjudication Act 1984 as amended by the Land Adjudication [Amendment] Act 1986.

It is already well settled that the jurisdiction to rectify the register of land is not be used as an indirect method of appeal against decisions taken under the Land Adjudication Act 1984, and that the term “mistake” in section 98[1] of the Land Registration Act 1984 does not include a failure to employ the appellate procedure laid down by the Land Adjudication Act 1984 as amended.”

There is no allegation of fraud or mistake in the pleadings and therefore the Court is restricted from even the considering of making any alterations in the Land Register.

I would therefore dismiss the case but based on the history of adjournments and the manner in which the Defendants treated the Court I would not order any costs.

Order

This action is dismissed.

No order as to costs.

**SUZIE d'AUVERGNE
HIGH COURT JUDGE**