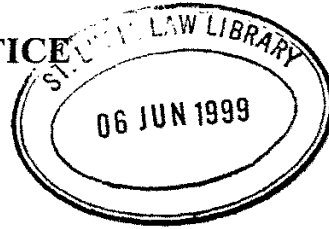


+ fraud, land: ownership
land: possession.

SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)



No: 1066 of 1997

Between:

LEON CHERRY

- Plaintiff

vs

BENOIT LERICHE

- Defendant

Appearances:

Mr. M. Maraj for Plaintiff

Mrs. P. Nelson for Defendants

1999: May 7th
June 2nd

JUDGMENT

d'Auvergne J. (In Chambers)

By summons supported by affidavit (noted on page 2) filed on the 21st day of January 1999 the Plaintiff sought to amend his endorsed statement of claim on writ of summons filed on the 19th of December, 1997.

He deponed that the Defendant purchased in his own name not only the property at Mongiraud being parcels No. 1254B 946 and 947 which is the issue in that action but also to include a property at La Bourne purchased by the Defendant on the 10th of August, 1979 being parcel 1652B 28, as part of the Plaintiff's claim. The amended statement of claim was attached to summons and exhibited at the hearing.

Affidavit:

I, **LEON CHERRY** of La Clery in the vicinity of the City of Castries, Retired Construction Worker do **MAKE OATH** and say as follows:

1. I am the Plaintiff in the said suit and the Defendant is my brother.
2. The issue in this case relates to a claim by me against my brother, for two portions of land situate at Morne Giraud in the Quarter of Gros Islet registered in the Land Registry as Parcels Nos. 1254B 946 and 947 for the Registration Quarter of Gros Islet.
3. The allegation in the said Suit is that I gave my brother the Defendant herein, a Power of Attorney on or about 1st March, 1983 to administer my affairs in St. Lucia. On or about 19th December, 1983 and 9th April, 1984 I made direct payments to the Vendor Altonato Richelieu in Trinidad where she resided with US\$1,000 and TT\$42,000 and the balance given to the Defendant to pay the Vendor to settle the purchase price of EC\$90,000.
4. The Defendant purchased the property in his own name on 28th May, 1985.
5. The present amendment is being sought to include Parcel No. 1652B 28 registered in the Land Registry for the Registration Quarter of Dauphin which the Defendant purchased in his own name from monies which I gave him to purchase on my behalf.
6. Between the years 1979 and 1983, I lived in Alberta, Canada but came to St. Lucia from time to time on holiday.
7. During one of these holiday periods prior to 1979, the Defendant showed me a piece of land which I now identify as Parcel No. 1652B 28 which he informed me was up for sale. I saw that this land was fit for farming

particularly animal farming so I decided to purchase it and gave my brother monies to do so.

- 8. This land he purchased in his own name. I have seen the Deed of Sale which is exhibited hereto and marked LC1 and the Certificate of Registration which is also exhibited hereto and marked LC2.*
- 9. I am therefore applying to this Honourable Court to allow me to amend the Statement of Claim to reflect my claim in accordance with the facts set forth in the previous paragraphs as this land is mine*

The amendment under consideration is a new paragraph numbered nine (9) and reads as follows: "That the Plaintiff on further examination discovered that a property comprising an area of 7 acres 2 roads situate at La Bourne in the quarter of Gros Islet was purchased in the name of the Defendant with monies given personally by the Plaintiff to the Defendant for the purchase of the said property. This land is registered in the Land Registry for the registration quarter of Gros Islet as Parcel No. 1652B 28.

Learned Counsel for Defendant vehemently objected to the granting of the amendment stating that an amendment was only granted to clarify issue or issues and quoted from the Rules of the Supreme Court 1993 Edition Volume 1 Paragraph 371.

She said that the matter had been set down for hearing and that since the amendment was a new issue leave should not be granted.

She argued that the subject matter of the amendment is now prescribed and quoted Saint Lucian cases: Civil Appeal No. 2 of 1975

Civil Appeal No. 120 of 1989

Civil Appeal 1B of 1990

She said that unlike the Limitation Act of England, in St. Lucia, with prescription a judge had no discretion.

She contented that the amendment requested would cause injustice to the Defendant if allowed, since in essence, it concerns a fraudulent preparation of a deed of sale purchased on the 10th day of August, 1979 though there was no mention of the actual document that was fraudulently prepared.

Learned Counsel for the applicant argued that the granting of the amendment would not cause any injustice to the Defendant and urged the Court to grant the application.

CONCLUSION:

It is trite law that any error or mistake unless fraudulent, will be allowed to be corrected by the Court if it can be done without injustice though it must be remembered that there is a clear difference between allowing amendments to clarify the issues in dispute and those that provide ~~distinct~~ defence or claim to be raised for the first time.

The subject matter of this case is that the Defendant who is the brother of the Plaintiff acted fraudulently in the purchase of two pieces of land namely 1254B 946 and 947 in the registration quarter of Gros Islet. The amendment being sought is the inclusion of another property at La Bourne purchased on the 10th of August, 1979 registered as parcel No. 1652B 28 in the same registration quarter of Gros Islet.

This new claim in my judgment is "so germane to, and so connected with, the original cause of action, that it would be a denial of Justice" if leave to add it were refused.

In my view it is not an introduction of an allegation of fraud for the first time. The Plaintiff has already stated in his Statement of Claim that the Defendant acted fraudulently with the purchase of the other property mentioned earlier.

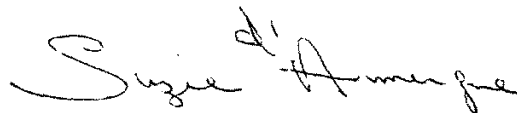
This Summons concerns an amendment, a new paragraph, and one must keep within the ambit of the application.

As I see it Learned Counsel for the Defendant is premature with her arguments on prescriptive title since the substantive case is yet to be argued.

I must state, however, that proper care must be taken in the preparation of the various applications which are filed in the Court, for in this case yet another amendment, which could have been pleaded and applied for, in this application, will of necessity become the subject of a further application.

My order is as follows:

- 1) That the application is granted as prayed.
- 2) That the Plaintiff be and is hereby granted leave to amend the Statement of Claim to include the new paragraph numbered nine (9).
- 3) That costs be Costs in the Cause.



.....
SUZIE d'AUVERGNE
High Court Judge