

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO: 12 OF 1998

BETWEEN:

**CATHERINE JACK (Administratrix
of the Estate of Codrington Richard
Westmore John)**

Appellant

and

EMERY W. ROBERTSON

Respondent

BEFORE:

The Hon. Mr. C.M. Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Albert N.J. Matthew

Chief Justice
Justice of Appeal
Justice of Appeal (Ag)

APPEARANCES:

Ms. M. Commissiong for the Appellant
Mr. O.R. Sylvester Q.C. and Miss N. Sylvester for the Respondent

1999: July 20

JUDGMENT

MATTHEW J.A. (Ag)

This appeal concerns a portion of land in excess of 38 acres purchased by a solicitor from a vendor who was alleged to be his client at the time of purchase some time in 1976.

The Respondent who is the solicitor in question holds a deed in respect of that portion of land executed on April 1, 1976 but not registered until twenty years later on August 22, 1996.

From the pleadings filed both sides agree that the Respondent entered possession of the land in 1976 and began to cultivate it and carry out development works there. It would appear that as from June 12, 1998 and on several other dates

thereafter the Appellant or her servants or agents began entering on the lands, clearing certain areas, cutting down certain fruit trees and planting others.

In July 1998 the Respondent by summons and supporting affidavit successfully applied to the High Court for an ex parte interlocutory injunction restraining the Appellant from entering the land. The summons was made returnable for September 25, 1998.

On that day both sides appeared by learned Queens Counsel and at the end of the arguments the learned Judge reserved his decision but the interlocutory order was made to continue. The decision was delivered on September 30, 1998 to the same effect. The learned Judge then ordered that the ex parte interlocutory injunction granted on July 22, 1998 was to remain in force and effect until the trial of the action or until further order.

The Appellant filed notice of appeal on October 13, 1998. Before this Court she obtained an amendment of the grounds of appeal to delete ground no. (1) and to add another ground that the learned Judge failed to deal with the question of urgency when he heard the ex parte application for the grant of the interlocutory injunction.

Learned Counsel for the Appellant made submissions pertaining to -

- (1) principles of urgency in ex parte applications for interlocutory injunctions;
- (2) non-disclosure of material facts; and
- (3) priority in the registration of deeds.

Counsel referred to a number of authorities in support of her submissions.

While recognizing the correctness of the legal principles stated we thought that the appeal was not against an ex parte interlocutory injunction. We like the learned Judge felt that there remained important issues to be decided at the trial like the legality of the sale between the solicitor and his client, and the priority of deeds. There is also the issue of fraud raised on the pleadings which challenges the validity of the Appellant's deed.

We perceive that the real issue here is to maintain the status quo until the trial. We are not adjudicating on the rights of the Parties at this time. The learned Judge by his judgment asked the Parties to wait until the trial for the determination of their rights, but in the meantime he allowed the Party who had been in "uninterrupted exclusive and continuous possession for the past twenty-two years" to continue to remain in possession and he restrained the Appellant and her servants or agents from interfering with that possession.

We agree with the learned Judge and the order that he made and we accordingly dismiss the appeal with costs to the Respondent to be taxed if not agreed.

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A.N.J. MATTHEW
Justice of Appeal (Ag.)

I Concur

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C.M.D. BYRON
Chief Justice

I Concur

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A.J. REDHEAD
Justice of Appeal