

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

Civil Suit No. 628 of 1995

GONZAGUE REMY
MARIE EUGENE

[acting herein for the Heirs of REMICE REMY
also known as JN. REMICE REMY, GERMAIS
JEAN REMY and REMISSE REMY and his wife
LEONNA REMY also known as LEONISE REMY]

and

CYRILLA MATHURIN

Appearances:

Mrs. Shirley M. Lewis for the Plaintiffs

Mrs. Esther Greene-Ernest for the Defendant

1999: September 24, 29
 October 6

JUDGMENT

HARIPRASHAD-CHARLES J. [Ag.]

This is a dispute en famille concerning land in which the Plaintiffs claims from the Defendant a portion of land at Laborie measuring one acre and registered in the Land Registry as Block 0823B Parcel No. 79. Parcel No. 79 comprises 5.5 Hectares of land .The Plaintiffs' claim is based on the ground of sole and undisturbed possession for in excess of thirty years. In a nutshell, the Plaintiffs are claiming Prescriptive Rights. Prior to this claim, the Plaintiffs had alleged that they were the lawful heirs of the Deceased, Remice Remy and his wife, Leonna Remy and they as well as the Defendant were entitled to equal shares of the properties of the Deceased. The latter claim was subsequently withdrawn and or discontinued when it became evident that the

Plaintiffs could not succeed on this claim due to illegitimacy.

The chronology of events in this matter is significantly important. Thus, I have attempted to encapsulate.

By a Writ of Summons indorsed with Statement of Claim and filed on 7th September 1995 the Plaintiffs alleged that they along with the Defendant are lawful heirs of Remice Remy and his wife, Leonna Remy who were owners of certain lands situate at Laborie and registered in the Land Registry for the Registration Quarter of Laborie as Block and Parcel Nos.: 0622B 8, 0622B 73 and 0823B 79 . They claim equal shares in the aforesaid lands, registered in the sole name of the Defendant. The Plaintiffs alleged in their Statement of Claim that the Defendant by Deed of Declaration of Succession dated 9th January 1982 and registered on 21st January 1982 incorrectly declared that the deceased Remice Remy and his wife had three children when in fact, they had nine children. They further alleged that the Defendant incorrectly stated in a Declaration dated 10th June 1992 and registered in the Land Registry as Instrument No. 2220/92 that her mother, Felicite Remy was the sole heir to the said lands.

On 24th March 1996, an Appearance was entered for the Defendant and on 23rd April 1996, she filed a Defence and Counterclaim. In her Defence, the Defendant denies the Plaintiffs' ownership of the lands and counterclaims as follows:

- (1) An order that the Plaintiffs are not proper parties to this action in that they are not lawful heirs of the Deceased nor are they equipped to claim as administrators of the Deceased's Estate.
- (2) A Declaration that the Defendant is properly registered as owner of three parcels of land namely:
 - Block 0622B Parcel No. 8
 - Block 0622B Parcel No. 73
 - Block 0823B Parcel No. 79
- (3) An Order that the Plaintiffs, their servants and or agents do vacate the lands of the Defendant forthwith.
- (4) A perpetual injunction restraining the Plaintiffs, their servants and

or agents from coming or occupying or any other way interfering with the Defendant's occupation and possession of the said properties.

(5) Costs.

By Summons filed on 23rd July 1996 the Defendant sought an Order:

- (1) that trial of a preliminary issue to determine as a matter of law whether the Plaintiffs have any legal standing in this cause of action and
- (2) that the matter be stayed pending the determination of the preliminary issue.

This summons was supported by an affidavit of the Defendant reinforcing the point that her mother, Felicite Emmanuel nee Remy a.k.a. Letiticia Remy was the only child of Remice Remy also known as Jn Renice Remy who died testate leaving her as the lawful heir, all other children having died intestate without lawful issue.

On 11th December 1996, Counsel for the Plaintiffs, Mrs. Shirley Lewis, filed a Notice of Discontinuance of the action against the Defendant while the Summons to determine the preliminary issue, filed on 23rd July 1996 was still pending before the Court.

On the said date, Matthew J. (as he then was) heard the preliminary issue Summons and the following order was recorded:

- (1) That the summons filed on 23rd July 1996 be withdrawn.
- (2) That the matter proceeds in the normal course on the Counterclaim.

Pursuant to Order 19 Rule 7(1) of the Rules of the Supreme Court 1970, the Defendant on 27th January 1997 filed a Summons for Judgment in Default of Defence to Counterclaim on the ground that some nine months has elapsed and no Defence to her Counterclaim has been filed. This was supported by an affidavit of even date. Three months henceforth, while this Summons was still before the Court, the Defendant filed a supplementary affidavit in which she deposed that one of the servants and or agents of the

Plaintiffs, namely Gilbert Remy has commenced the construction of a concrete structure on the parcel of land known as Block 0823B Parcel No. 79. The Defendant in her affidavit sought an interlocutory injunction from the Court. On 27th May, 1998 Phillips J. [ag.] granted the injunction prayed for by restraining the Plaintiffs, their servants or agents from extending their cultivations and from building on the parcel of land known as Block 0823B Parcel No. 79 until after the trial of this action or until further order.

In the interim, a Reply to Defence and Counterclaim was filed pursuant to Order of the Court dated 2nd July, 1997. In that Reply, the Plaintiffs reiterated that their rights are equal to that of the Defendant's. Or alternatively, that they are entitled to one acre of land at Laborie registered in the Land Registry as Block and parcel No. 0823B 79. The second-named Plaintiff, Marie Eugene claimed this portion of land on the ground that she has been in sole and undisturbed possession for in excess of thirty years. The first-named Plaintiff, Gonzague Remy was silently omitted in this alternate claim. However, this irregularity was rectified in the Summons and supporting affidavit filed on 28th September, 1999.

The matter eventually came on for hearing on 24th September 1999. Once again, Counsel for the Plaintiffs, Mrs. Shirley Lewis made an application to withdraw the action. The application was granted. The matter then proceeded on the Defence and Counterclaim. Counsel for the Defendant subtly urged the Court to enter judgment for the Defendant in terms of paragraphs 3 and 4 of the Defendant's counterclaim. The Court, envisaging the hardship to be caused by the making of an order for vacation of the land, which has a concrete structure on it, urged both Counsel to see whether an amicable settlement could be reached. As a consequence, the matter was adjourned to 29th September, 1999 for decision.

On this day, the Court had to consider yet another application. By way of Summons filed on 28th September, 1999, the Plaintiffs sought an Order of the Court for a discontinuation of the suit pending the hearing of a Petition filed for Prescriptive Title. Suffice it to say, this was the third application by the

Plaintiffs to discontinue and or withdraw this very action. An affidavit purported to substantiate the Summons for a discontinuation of the suit was also filed. This affidavit however urged the Court to stay its decision pending the hearing of the Petition for Prescriptive Title; something quite different from what was sought in the Summons. Except for the bare assertion by the Plaintiffs that a Petition for Prescriptive Title has been filed, there was no documentary evidence to support this contention. Not even the Petition for Prescriptive Title which was allegedly filed on 28th September, 1999. It is noteworthy to emphasize that since 11th July, 1997, the alternate claim of prescription surfaced. Two years have passed and no other evidence, affidavit or otherwise was produced in respect of this claim.

Counsel for the Defendant, Mrs. Greene-Ernest opposed the application. She submitted that for the Plaintiffs to lay claim to the ownership of land by prescription, certain procedure has to be followed under section 5 of the Supreme Court - Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules, No. 7 of 1970. According to Counsel, it remains a mystery whether the Plaintiffs are petitioning under the Land Registration Act, No.12 of 1984 or under the Supreme Court - Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules [supra]. She further submitted that anyone could say that they have lived on land for 30 years but the requirements of sole and undisturbed possession of the property continuously for thirty years must be established. Counsel urged the Court to accept the evidence of the Defendant that the Plaintiffs, having realized that their initial claim could not succeed on the ground of illegitimacy; have now come before the Court under the guise of Prescription and they are estopped from so doing. I do not agree with Counsel on the issue of estoppel.

Since 11th July, 1997 when the second-named Plaintiff filed her Reply to Defence and Counterclaim, she stated that she has been in sole and undisturbed possession as owner for over thirty years. She further averred that besides having been born on the land, she lives on the land and has been doing so continuously. She also cultivates the land. The second-named

Plaintiff further declared that she has even given permission to her son to be on the land and he also lives on it. Like her, he plants his vegetables and bananas. From her evidence, her Deceased mother lived on the same land.

On the evidence, it is abundantly clear that the Plaintiffs were in occupation of the lands under a family arrangement and it could be inferred that the Plaintiffs were licensees and as such, incapable of deriving a title by prescription: see: **Edwards v Brathwaite [1978] 32 WIR 85** .

Since the Plaintiffs' possession of the land was, in effect by leave and licence; in those circumstances, the Plaintiffs cannot pray in aid of the provisions of Land Registration Act, No.12 of 1984 or under the Supreme Court - Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules [supra] so as to acquire a possessory title. The cases of **Callendar and Callendar v Dottin [1965] 8 WIR 429** and **Heslop v Burns [1974] 1 WLR 1241** are illustrative of this principle.

Counsel for the Plaintiffs, Mrs. Shirley Lewis urged the Court to grant a stay of proceedings. She argued trenchantly that there are compelling reasons to stay the proceedings but unfortunately, did not elaborate any of those reasons except to assert that a Petition for Prescription has been filed but not yet served. I find that Counsel has proffered no compelling reason or reasons sufficient to call upon the Court in its inherent jurisdiction or under the Rules of Court to stay the proceedings.

A stay of proceedings arises under an order of the Court which puts a stop or "stay" on the further conduct of the proceedings in that Court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the action taking place, where the Court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process.

In the instant matter, trial has already taken place. The Court heard both Counsel. If there was to be any more evidence to be adduced at the hearing, the Plaintiffs had ample time to do so. The Court reserved its

decision. By granting a stay of proceedings, the Court will be unable to give its decision in the matter which it has already heard. I cannot do so.

I accordingly dismiss the Plaintiffs' application for a stay of proceedings with Costs.

I declare that the Defendant is properly registered as the owner of three parcels of land namely:

Block 0622B Parcel No. 8
Block 0622B Parcel No. 73
Block 0823B Parcel no. 79

In the result, I order:

- (1) that the Plaintiffs, their servants and or agents do vacate the lands of the Defendant within 180 days hereof.
- (2) that a perpetual injunction be granted restraining the Plaintiffs, their servants and or agents from coming or occupying or in any other way interfering with the Defendant's occupation and possession of the said lands.
- (3) Costs to be taxed if not agreed.



INDRA HARIPRASHAD-CHARLES

High Court Judge [ag.]