

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 29 OF 1989

BETWEEN:

FITZROY MAPP

PLAINTIFF

AND

CASSANDRA MAPP

DEFENDANT

Appearances:

Miss Zhing Horne for the Plaintiff

Mr. Emery Robertson for the Defendant

2000: January 10 and 11

JUDGMENT

- [1] ADAMS, J: The Plaintiff is the illegitimate son of the late Mr. Theophilus Mapp who died on the 29th February 1984.
- [2] The Plaintiff resides on the land which is involved in this case.
- [3] That land was conveyed to the Plaintiff by a deed of gift which was exhibited in the course of the trial.
- [4] The defendant is the sister of the Plaintiff, and they are both the illegitimate children of the late Theophilus Mapp.

- [5] The Plaintiff seeks in this action to have the defendant removed from the land, urging that she has been on the land as a licensee and that she must not have the land because of her behaviour towards him. He testified to having asked her on several occasions to leave the land, but without success.
- [6] The Plaintiff alleges that the defendant has damaged crops on the land which are his; he seeks damages for that loss, general damages for the trespass, and also injunctive relief.
- [7] I have found as a fact that at the time of the death of Theophilus Mapp the defendant did live in the house with him and took care of him. It is this fact that lies at the heart of the dispute since the defendant uses it to make her claim to a portion of the land and a house which is on it.
- [8] The defendant in her claim to the house and portion of land contends that the deed of gift by virtue of which the Plaintiff claims ownership of the entire land (including the portion on which the defendant lives) was subject to a condition that the Plaintiff provide maintenance for his father during the latter's life time. I found the evidence inadequate to bear this conclusion.
- [9] True it is that having found that the defendant was with her father caring him before his death, she may have had some moral claim to his property he left at death, but in my view that is all she was able to show.

[10] In addition to the contention that the gift was conditional, counsel for defence produced a will in evidence which sought to give the very land (subject of the deed of gift to the Plaintiff) to the defendant and another brother. That will, counsel for the defendant argued, would have defeated the claim made under the deed of gift by the Plaintiff. That in my view cannot be so. As counsel for the Plaintiff submitted, the will was dated 1974 and the deed of gift was executed in favour of the Plaintiff in 1982. Since the will would under law take effect on the death of the testator, any voluntary gift **inter vivos** of the property which complied with all the necessary formalities would take effect and at the same time supercede the will. The opposing argument of Counsel for the defendant in my view must fail. (See **Halsbury's Laws of England 4th Edition, Volume 50 paragraph 216.**)

[11] There is one final argument put forward by the defendant's counsel. He contended that in view of the length of time his client had been in possession of the lands (including the house she occupied.) she was now by adverse possession – entitled to own the property. In 1984 when her father died she would have been 17 years old (she testified to being 33 years at the time of the trial.) Against that background Miss Horne for the Plaintiff argued that in the first place the defendant for the purpose of adverse possession could not have enjoyed the running of time in her favour because she was a minor, and secondly seemed not to have possessed the “**animus possedendi**” having regard to her evidence that “the Plaintiff told me that he was going to give me the house in which my father had died because I deserved it

because of the help I had given my father". I accepted this evidence and against the total background of the case preferred to consider these words as indicative of the state of mind of the defendant rather than that of her brother the Plaintiff, on the question as to her right to the property.

[12] I regret in the circumstances of this case I must give judgment in favour of the Plaintiff (who seems to be bereft of any compassion for his sister's needs) but that is what in my view the law and evidence dictate.

[13] I award the Plaintiff nominal damages of \$50.00 for the damage done to his trees, and I order that the Defendant be restrained whether by herself or her servants or agents or otherwise from using the Plaintiffs said land and house at Calder; the operation of the injunction will be suspended until the 31st August 2000.

[14] Costs are awarded to the Plaintiff to be taxed if not agreed.



Odel Adams

High Court Judge

SYNOPSIS

- [1] The Plaintiff is an illegitimate child of Theophilus Mapp. By deed of gift from his father during the latter's lifetime he obtained a portion of land with a house on it.
- [2] The Defendant also an illegitimate child of Mapp, after their father's death made claim to the very land and house which the father had given the Plaintiff.
- [3] She made her claim on the basis of her long possession, by her contention that the deed had been conditional and the conditions had not been met, and further that a will found some years after her father's death purported to give the said property to her and another brother.
- [4] The Court found in favour of the Plaintiff, holding that long possession could not succeed as the period could only commence on the defendant ceasing to be a minor. The will could not supercede in effect the deed which had been made **inter vivos** and the evidence could not support the allegation that the deed had been subject to conditions.