

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 1042 OF 1998

BETWEEN:

CORNEIL JN BAPTISTE

Plaintiff

and

(1) GONZAGUE RICHARD
(2) MARIE MADELEINE JOSEPH

Defendants

Appearances:

Ms. V. Georgis Taylor for the Plaintiff.

Ms Isabella O. Shillingford for the Defendants.

1999: November 15
2000: January 27

JUDGMENT

[1] HARIPRASHAD-CHARLES J. [Ag.]: On 2nd day of November 1998, the Plaintiff filed a Writ of Summons with Statement of Claim attached claiming damages from and an Injunction against the Defendants.

[2] Simultaneously, the Plaintiff made an ex parte application to the Court seeking an Injunction against No. 1 Defendant and three other Defendants who are no longer parties in this suit.

- [3] On 20th day of November 1998, Mitchell J. [ag.] granted an ex parte injunction: -
- (a) restraining the Defendants whether by themselves, their servants or agents or otherwise from:
 - (i) Entering and remaining on the property of the Plaintiff located at Praslin in the Quarter of Micoud and registered at the Land Registry as Block 1631B Parcel 65.
 - (ii) From building on the aforementioned property.
 - (b) That the Defendants be made to remove any dwelling or part of the dwelling house constructed on the property of the Plaintiff.
- [4] On 27th day of October 1999, the Plaintiff filed a Summons to amend the Writ of Summons filed on 2nd day of November 1998 by deleting from the said Writ the second, third and fourth-named Defendants and adding as a second Defendant to the said Writ of Summons and Statement of Claim the name, Marie Madeleine Joseph. This Order was granted on 2nd day of November 1999.
- [5] The Plaintiff now seeks an Order for an Injunction against the Defendants in the following terms:
- (a) Restraining the Defendants whether by themselves, their servants or agents or otherwise from:
 - (i) Entering and remaining on the property of the Plaintiff located at Praslin in the Quarter of Micoud and registered at the Land Registry as Block 1631 B Parcel 65.
 - (ii) From building on the aforementioned property.
 - (b) That the Defendants be made to remove any dwelling or part of a dwelling house constructed on the property of the Plaintiff.

(c) That the Defendants whether by themselves, their servants or agents or otherwise be restrained from threatening, harassing or in any other way interfering with the Plaintiff.

[6] The evidence of the Plaintiff is that he is the registered owner of a parcel of land situated at Praslin, in the Quarter of Micoud and registered in the Land Registry as Block 1631 B Parcel 65. There was documentary evidence to substantiate this contention.

[7] The Plaintiff further submitted that, some four years ago, the Defendants have trespassed and constructed a wooden dwelling house on his land. And despite repeated requests to break down the house, the Defendants have failed to do so. He further stated that while he was hospitalized, the Defendants, and in particular, the second-named Defendant commenced the construction of a wall dwelling house to the North and front of his property, where it bounds the road reserve. In other words, the Plaintiff alleges that the Defendants have trespassed on his property.

[8] The Defendants, on the other hand are alleging ownership of the land. They based their claim on a Deed of Partition and Vesting Deed executed on 30th day of June 1981. In a nutshell, the Defendants are saying that by virtue of the aforementioned documents, Peter Joseph aka Pierre Joseph wrongly sold property that did not belong to him.

[9] An analysis of the evidence in this matter revealed that the Plaintiff is not only seeking an interlocutory Injunction but also a mandatory Injunction that the Defendants be made to remove any dwelling or part of a dwelling house constructed on the property of the Plaintiff.

[10] It is premature for me to determine the mandatory relief sought as this can only be made on a determination of the case on its merits. I propose however to deal with the application for the interlocutory injunction, as indeed this was the only issue that Counsel for the Plaintiff alluded to. The purpose of an interlocutory injunction is to preserve the *status quo* until the rights of the parties have been determined in an action. The principles to be applied in applications for interlocutory injunctions have been authoritatively explained by Lord Diplock in the case of **American Cyanamid Co. v Ethicon Limited** [1975] 1 All E. R. 504. At page 510, Lord Diplock had this to say:

" The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are questions to be dealt with at the trial...So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought."

[11] Learned Counsel for the Plaintiff substantiated her arguments for the grant of the interlocutory injunction by referring to the Land Registration Act of 1984. According to her, the Land Registration Act is the only legislation that determines ownership of property with regards to registered lands in Saint Lucia. In support of her assertion, Counsel referred to the case of **Bertillia Ennis v Phyllis Barras et al** [Civil Suit No. 760 of 1995] [unreported] emanating from this jurisdiction. At page 11 - 12 of his judgment, Mitchell J. [ag.] had this to say:

" A deed of sale is today no more than a form of transfer, to be discarded by the Registrar pursuant to section 70 in due course. Since the Land Registration Project in Saint Lucia in the mid 1980's the only evidence of

title is the Land Register. The consequence of the above provision at section 3 of the LRA is that deeds are no longer title documents in Saint Lucia. The deed is today a document of some significance only for the period of time that it takes to walk it around from the Notary's office to the Land Registry to register it. Once it has been used to effect registered title in the name of the purchaser, it is spent. At that point it is of historical value only, and may after an appropriate period of time be destroyed by the Registrar. No purchaser is required to go behind the register to check on the contents or form of the deed that caused some person to be registered as proprietor of a parcel."

- [12] Ms. Taylor also cited the case of *Racoon Limited v Harris Turnbull* [Privy Council Appeal No. 33 of 1995]. Lord Jauncey of Tullichettle delivering the Judgment of the Court relying on *Frazer v Walker* [1967] A.C. 569 stated at page 5 of the Judgment:

" A purchaser in good faith at auction whose title was thereafter registered was held entitled to found on his registered title in proceedings for possession against the other joint proprietor."

- [13] However, an analysis of this aspect of the law would in my view go into the merits of the case and thus should be avoided: see: *American Cyanamid Co. v Ethicon Limited* [supra] and *Series 5 Software Ltd v Clarke and others* [1996] 1 All E.R.853.

- [14] Learned Counsel for the Defendants, Ms Isabella Shillingford maintained that the Defendants are the rightful owners of the land and that Pierre Joseph had no registered title to the land. Ms. Shillingford further argued that the land was never surveyed and partitioned. Learned Counsel urged the Court to adopt the principles which the court should bear in mind when deciding to grant interlocutory relief and cited the cases of *American Cyanamid Co. v Ethicon Limited* [supra] and *Series 5 Software Ltd v Clarke and others* [supra] as good authorities.

- [15] Returning to the instant case, it cannot be doubted that the affidavit evidence as well as the submissions of both Counsel shows that there are serious issues to be

tried. The Plaintiff as well as the Defendants are claiming ownership of the land. I am not unmindful of the fact that the allegations suggest that the Plaintiff is the registered owner but the Defendants are also contending Pierre Joseph's old property that he did not own. To consider these matters at this stage would in my view go into the merits of the case, something which, relying on the authorities cited [supra], I am admonished to avoid.

[16] Having determined that there is a serious issue to be tried, I now have to determine where the balance of convenience lies. The most compelling argument advanced by Counsel for the Plaintiff, Ms Taylor is that, if it is proven that the Plaintiff has been wronged, damages would not be a sufficient remedy. In the words of Lord Diplock in the *American Cyanamid* case [supra] "If damages would be adequate remedy and the Defendant would be in a financial position to pay them, no interlocutory injunction should be granted, however strong the plaintiff's claim appears to be at this stage."

[17] In all the circumstances, I find no difficulty in concluding that the balance of convenience dictates that the *status quo* ought to be maintained until the rights of all parties have been determined.

[18] The Order of Court therefore is that upon the Plaintiff giving an undertaking as to damages; an interlocutory injunction is granted:

(a) Restraining the Defendants whether by themselves, their servants or agents or otherwise from:

- (i) Entering and remaining on the property of the Plaintiff located at Praslin in the Quarter of Micoud and registered at the Land Registry as Block 1631 B Parcel 65.
- (ii) Building on the aforementioned property.
- (iii) Threatening, harassing or in any other way interfering with the Plaintiff.

- (b) That the injunction is to remain in force pending the trial of the action.
- (c) That the matter is to be given a speedy hearing.

Indra Hariprashad-Charles
High Court Judge [ag.]