

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
CIVIL SUIT NO. 46 OF 1993

BETWEEN:

PATRICIA CREESE

Plaintiff

and

CHARLES CARDINAL LESLIE
CHRISSEY LESLIE

Defendants

Appearances:

Mr. Douglas Williams for the Plaintiff
Mr. Arthur Williams for the Defendants

1999: December 12
February 11, 2000

JUDGMENT

- [1] **ADAMS, J:** The Plaintiff by her statement of claim seeks an order that:
- (a) “the defendant do forthwith pull down and remove a wall structure intended to be a dwelling house being constructed by the defendant their servants or agents on the Plaintiff’s land situate at Belmont Bequia.”
 - (b) Damages for trespass
 - © Further or other relief.

- [2] It is not in dispute that the Plaintiff was and remains the owner of a parcel of land in Belmont Bequia, and which ownership is evidenced by a Deed of Conveyance bearing the Registration Number given it by the Supreme Court Registry, i.e 303 of 1971.
- [3] Nor is it in dispute that the first named Defendant Charles Cardinal Leslie was and remains the owner of an adjoining parcel of land as evidenced by a Deed of Conveyance bearing the Registration Number given by the Supreme Court Registry i.e 3329 of 1989.
- [4] The evidence given on behalf of the parties to the action led indisputably to the conclusion that their respective parcels of land were each derived from the same root of title; in this regard the Plaintiff testified without challenge that the land relating to Deed 303 of 1971 was given to her mother by her grandmother.
- [5] Similarly the evidence showed that the defendants predecessors had bought a portion of the very land of which the Plaintiff's was a part from one Conrad Wallace who had bought from the Plaintiff's grandmother.
- [6] The witness McArthur Robertson was called at the instance of the Plaintiff. He said that he had received instructions to conduct a survey of land owned by the Plaintiff – He said that before doing so he saw the Deed of the Plaintiff, which bore Registration Number 303 of 1971.
- [7] McArthur Robertson further testified that he visited the first named defendant and informed him about the survey that was to be carried out - The first named Defendant did not attend the survey but the second named Defendant did – apparently on behalf of his brother the first named Defendant.

[8] This witness Robertson was not as helpful to the Plaintiff's case as she would certainly have wished - I hasten to add that the surveyor may well have been honest, while his evidence may have compromised the Plaintiff's chances of success – for the following reasons:

- (1) In the first place the surveyor Robertson testified that the land which he surveyed at the instance of the Plaintiff, and the acreage of such land referred to in the corresponding Deed was not an acre as represented by the Deed; he swore that the acreage was 32,081 sq. feet, that is 11,479 sq. feet short of an acre.
- (2) In the second place the surveyor Robertson swore that:
“the only land I surveyed is shown in Plan GR 502 ie. Exhibit PC 6 showing 14000 sq. ft. I surveyed all that at the instance of Patricia Creese. Sebastian Alexander surveyed land shown in plan 501, Exhibit P.C 7 at instance of Leslie showing 18,081 sq. ft and is shown on the Deed 3329 of 1989 belonging to the first named defendant – Charles Cardinal Leslie.”
- (3) There was a hint of ambiguity from the statement made by the surveyor Robertson when he said:
“I would say that the Leslies would be encroaching on land of the Plaintiffs because of the description given to the Plaintiff's land in Deed 303 of 1971.” In my view he was not positively asserting that there was an encroachment by the defendants – but suggesting its possibility based only on the description on the deed- the deed he had already said was inaccurate in its statement of acreage.

- (4) The tenor of the Plaintiff's evidence did not "bring the cows home" for her; that she knew little of the land is evident from such statements in the witness box as:

"I don't know if defendants have been working the piece of land they bought (i.e) from 1970 up to today". 1970 would have been a material year in the light of the defendants proposition of adverse possession. "I never worked the land. I last visited the land in 1981."

In addition her case was weakened when she accepted that the first Defendant Cardinal Leslie had built a house in 1970 on the land given to her by her mother and brother; she went on to say that would be the very land in respect of which the first named Defendant holds the Deed 3329 of 1989. It was the very land her grandmother had sold to Conrad Wallace and which was adjoining her land and admittedly in the ownership of the first named defendant.

- (5) The Plaintiff's case in my view suffered considerably from the fact that the surveyor called on her behalf admitted that whereas her Deed 303 of 1971 suggested that it was an acre of land that had been given to her, his survey indicated it was much less than that amount. Exactly what quantum of land does she really own or possess? The answer to that question baffles the Court.
- (6) In the end the Court is left uncertain as to whether the Plaintiff does enjoy the exclusive possession upon which by law she must erect her allegation of trespass, and holds the view, that the balance of probabilities is in favour of the defendants.

- (7) There remains to be dealt with the contention of Counsel for the Defence that the Plaintiff is estopped from bringing this action since the Limitation Act by its provisions operates against her.
- (8) Section 19 of the Limitation Act Cap.90 of the Laws of Saint Vincent and the Grenadines provides that subject to Section 20:
“at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) - the title of that person to the land shall be extinguished” – Section (20) is not relevant to this case as it applies to settled land and land subject to a trust for sale.
- (9) It was the submission of Mr. Williams for the Defendants that the title of Patricia Creese, the Plaintiff, was affected by the provisions of Section 19, that her title to the portion of land subject matter of this case was extinguished, and not having been in possession her allegations of trespass in this case must necessarily fail.

I agree with the contention of Counsel in this regard.

- (10) In the premises the action for trespass brought by the Plaintiff must fail or for that additional reason.

The action is dismissed and costs shall be paid by the Plaintiff to the defendants to be taxed if not agreed.

Odel Adams
High Court Judge