

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.229 OF 1981

BETWEEN:

MARY LEWIS
(Executrix of Ronald Parris, Deceased)

Plaintiff

and

THEOPHILUS BOWENS
HILDRED BOWENS
BERNICE BOWENS

Defendants

Consolidated with
CIVIL SUIT NO 357 OF 1989

MARY LEWIS
(Executrix of Ronald Parris, Deceased)

Plaintiff

and

DORIS WRIGHT
The Widow of CAROL WRIGHT, Deceased
JEAN BROWN

Defendants

Appearances:

Mr OR Sylvester QC CMG, Ms N Sylvester with him, for the Plaintiff
Mr S Commissiong, Ms M Commissiong with him, for the Defendants

1999: October 11, November 8,9,10
2000: February 8,17

JUDGMENT

- [1] **MITCHELL, J:** These proceedings involve land at Questelles in St Vincent. The proceedings have a long history. They go back to issues originally ventilated in suits 66/1978, 67/1978, 68/1978, and 188/1978. At that time, judgments in default were entered for Mary Lewis. The Court of Appeal in suit CA 12/1984 set aside those default judgments and ordered a retrial. Some of the parties to the above suits having died, no retrial came off. Instead, suit 229/1981, which dealt substantially with the same issues, proceeded to trial. That matter was consolidated with suit 357/1989 on 31 July 1998 by order of Baptiste J on the basis that they both involved common questions of law and fact. During the course of the trial, some of the pleadings were located on and retrieved from a related file, suit 434/1992.
- [2] Several matters were canvassed in submissions at the conclusion of the trial. Some of the submissions appeared to go outside of the evidence adduced before the court. It is as well to set out the allegations that were pleaded by the various parties, and to see what facts were proved through the evidence.
- [3] In suit 229/1981, the original Plaintiff Ronald Parris by a specially endorsed writ issued on 29 September 1981 claimed to be the owner in possession by deed of the disputed land. On 5 September 1981 the Defendants had damaged his pea trees and a mango tree. He asked for a declaration and an injunction against them and, by amendment at the trial, special damages of \$1,140.00. The original Plaintiff was replaced after his death by his Executrix, Mary Lewis.
- [4] By their amended defence and counterclaim in suit 229/1981 filed on 16 October 1990, the Defendants denied that the original Plaintiff was in possession of the land. He had not been an "innocent" purchaser for value. He was at all times aware of the invalidity of Mary Lewis' title. Mary Lewis' Grant of Letters of Administration to the estate of Augustus Charles was fraudulently obtained. Mary Lewis' brother, David Charles, claiming to be heir at law to Augustus Charles, had

given her a power of attorney to enable her to apply for Letters of Administration to the estate of Augustus Charles. In fact, David Charles and Mary Lewis were illegitimate. Their father Augustus Charles had never married their mother, Caroline Parris. One Ormond Charles was the eldest son and real heir at law of Augustus Charles. David Charles could not have appointed Mary Lewis to apply for Letters of Administration. The original Plaintiff had purported to purchase the disputed property while the earlier law suits, which were concerned with challenging the claim of Mary Lewis to the disputed land, were pending. The Defendants counterclaimed that their father Alvin Charles and his father before him, Ormond Charles, had occupied the land since 1949. Alvin Charles had acquired title under the Real Property Limitation Act. He had got a possessory deed in 1972. The Defendant counterclaimed for declarations that Ronald Parris had no claim to the land; that David Charles was never the heir at law of Augustus Charles; that power of attorney No 53 of 1977 was null and void; that the Grant of Letters of Administration No 157 of 1977 was null and void; that Ronald Parris was not a purchaser for value without notice; that deed No 1952 of 1981 was null and void; that Ronald Parris was never the owner in possession of the disputed land; and for orders that deed No 1952 of 1981 be cancelled; and that Grant of Letters of Administration No 157 of 1977 be cancelled.

- [5] The original Plaintiff replied on 23 April 1991 by denying that he was the brother of Mary Lewis or that he had sat in court throughout the earlier proceedings. He claimed that for 35 years prior to his purchase, Mary Lewis, her mother, and father Augustus Charles, had occupied the land. The Defendants had always asserted that their title was by virtue of Alvin Charles' possessory deed of 1972 and were estopped by deeds No 1425 of 1972 and No 976 of 1975. The Defendants were estopped by deed from claiming that the land in dispute was the land of Ormond Charles. If Jonathan Galley or Theophilus Charles (claimed by Alvin Charles in his deed of 1972 to have been the original owners of the land in dispute) had ever owned the land in dispute, their titles had been extinguished by the possession of Mary Lewis, and before her of her father and mother.

[6] In suit 357/1989, the original Plaintiff claimed to be in possession of the land described in his deed No 1952 of 1981. The Defendants were trespassing on it, and he claimed a declaration, an injunction and damages. He was in this suit also replaced as Plaintiff after his death by his executrix, Mary Lewis. By his Defence and Counterclaim, the original 1st Defendant, Carol Wright, raised similar defences to those raised by the Defendants in suit 229/81. The Defendants also counterclaimed in similar terms to the counterclaim in suit 229/1981. The Defendants claimed declarations, an order canceling Grant No157 of 1977, and an account from the Plaintiff for the rents and profits from the part of the land in dispute that he has been wrongfully occupying since 1981. Carol Wright, the original 1st Defendant in suit 357/1989 having died, Joseph J ordered his personal representative to replace him. That is how Doris Wright comes to be a party. The original Plaintiff next filed his Reply and Defence to Counterclaim in similar terms to the reply and defence to counterclaim in suit 229/1981.

[7] The following witnesses who remain alive gave evidence at the trial: for the Plaintiff, Mary Lewis and her neighbour Culie Peters; and for the Defendants, Jean Brown, Bernice Brown, Theophilus Charles, and Carmen Charles. Additionally, a large bundle of exhibits was put in mainly by consent. Both counsel greatly assisted the court in the manner in which they prepared and presented their submissions on the law and the facts.

[8] The exhibits that were before the court included:

(1) Crown Grant of 22 December 1923 in favour of Augustus Charles of Questelles;

(2) Indenture No.1952 of 1981 of Ronald Parris;

(3) Declaration of Possessory Title No.1425 of 1972 of Alvin Charles of Questelles;

(4) Deed No.2344 of 1978 of Leon Barker;

(5) Deed No.626 of 1978 of Albert Hewett;

- (6) Letter of 24 October 1975 from Mr Sylvester for Mary Lewis to Cardon Brown;
- (7) Letter of 12 April 1976 from Mr Sylvester for Mary Lewis to Cardon Brown;
- (8) Ronald Parris' Death Certificate of 16 December 1995;
- (9) Ruling of Cenac J dated 18 November 1993;
- (10) Augustus Charles' Death Certificate of 30 September 1943;
- (11) David Charles/Parris' Birth Certificate of 19 November 1919;
- (12) Mary Charles/Parris' Birth Certificate of 19 October 1926;
- (13) Alvin Charles and Carmen Bowens' Marriage Certificate of 15 January 1968;
- (14) Alvin Charles' Death Certificate of 20 January 1973;
- (15) Grant No 53 of 1975 to the Estate of Alvin Charles;
- (16) Deed of Assent No 309 of 1995 from Carmen Charles of the lands of Alvin Charles to the heirs;
- (17) Deed No 64 of 1976 of Amos Brown;
- (18) George Wright's Death Certificate of 26 February 1991;
- (19) Grant No 174 of 1995 to the Estate of George Wright aka Carol Wright;
- (20) Deed of Assent No 580 of 1999 from Doris Wright to heirs of George/Carol Wright;
- (21) Deed No 976 of 1975 of Jean Brown and Cardon Brown together with Deed No 246 of 1991 from Cardon Brown to Jean Brown;
- (22) Grant No.157 of 1977 to the Estate of Augustus Charles;
- (23) Order of Singh J dated 25 March 1987 declaring suit 68/1978 abated;
- (24) Certificate of Order of the Court of Appeal in suit CA 12/1984 allowing the appeal and remitting High Court Suit 68/1978 for retrial;
- (25) Record in suits 67/1978, 68/1978, 188/1978 [only for the purpose of cross-examination of Mary Lewis on contradictory statements];
- (26) Deed No 246 of 1991 from Jean Brown to herself in trust.

[9] The facts as I find them are as follows. The lands in dispute were originally owned by Augustus Charles by virtue of a Crown Grant dated 26 May 1923. At that time, the land measured four acres, three roods, twenty-nine poles. Augustus Charles sold some of the land before he died. He died on 20 December 1943 intestate. He

left surviving him a number of children born out of wedlock. Augustus Charles was never married. Mary Lewis, David Charles, and Samuel Charles, were born to Caroline Parris. Theophilus Charles aka Ormond Charles and Jonathan Galley may have been his children by other women. Caroline Parris died from drowning before Augustus Charles died. About 2 acres of the land originally acquired by the Crown Grant were left at the time of the death of Augustus Charles. At the time of his death, Mary Lewis was living on the land. After his death, while still a young woman, she went to live at Campden Park. Her brother David Charles emigrated, moving to Aruba. Her other brother Samuel Charles later went to live in Trinidad. Though she was no longer living on any of the land of her father, she continued to cultivate a portion of the land until she disposed of it.

[10] Mary Lewis received a Grant of Letters of Administration No 157 of 1977, as attorney for David Charles, her brother, who had emigrated to Aruba. In the filed documents David Charles claimed to be the heir at law of Augustus Charles. If David Charles' father was not married to his mother, as I find he was not, David Charles was not the heir at law to his father. After obtaining the Grant, Mary Lewis sold portions of Augustus Charles' property to various people in 1978. They built houses on the lands she sold them. There is no dispute concerning those lots of land. I believe that Mary Lewis had been cultivating those portions of the estate, and came to feel that she owned them. Other descendents of Augustus Charles appeared to occupy other parts of his estate.

[11] Theophilus Charles, and Jonathan Galley may have been two of the natural sons of Augustus Charles. Theophilus Charles and Jonathan Galley appear to have been occupying a portion of their father's estate from the time that he died in 1943. I believe the Plaintiff Mary Lewis that the lands in question were originally parts of the Crown Grant to Augustus Charles. Those same lands end up in 1972 in the possessory deed of Alvin Charles aka Alvin Galley. Alvin Charles was the natural son of Theophilus Charles. Theophilus Bowens, Hildred Bowens, and Bernice Bowens are the children of Alvin Charles by Carmen Bowens. They are the

Defendants in suit 229/1981. After Theophilus emigrated, his son Alvin Charles took possession of his land. He occupied Theophilus' portion of Augustus Charles' estate called the Charles Land. He cultivated the portion of Augustus Charles' estate called the Galley Land. He later married Carmen Charles and brought her to live on the Galley Land. His 9 children were brought up on the Galley Land and the Charles Land. He became entitled to the Galley Land and the Charles Land by long possession, having occupied them and cultivated them for many years. On 20 August 1972, Alvin Charles took out a possessory deed, No 1425 of 1972, to the land. Alvin Charles sold portions of the land to Carol Wright and other persons. He rented out other portions to strangers to the family. Carol Wright died on 26 February 1991. His widow Doris Wright took out Letters of Administration to his estate as Grant No 174 of 1995. Doris Wright is the 1st Defendant in suit 357/1989.

[12] On 20 January 1973, Alvin Charles died. His widow Carmen Charles obtained a Grant of Letters of Administration by Grant No 53 of 1975. She claimed in the application for the Grant that the extent of the land at this time was one and a half acres. She sold a portion of it to Cardon and Jean Brown by deed No 970 of 1975. Mary Lewis eventually sold a portion of the lands to her cousin Ronald Parris and gave him a deed in 1981. That is the land in dispute. After the divorce of the Browns, Jean Brown became the sole owner of the lot of land. That is how Jean Brown became a party to the action.

[13] It was only after the death of Alvin Charles on 20 January 1973, 33 years after the death of Augustus Charles, that Mary Lewis for the first time came back on the disputed land and claimed it as a part of the estate of Augustus Charles. This was the land for which in the meantime Alvin Charles had taken out the possessory deed No 425 of 1972. The children of Alvin Charles had not been cultivating the land after he died. When Mary Lewis visited the lands in 1973 after the death of Alvin Charles it may have appeared to her to be unclaimed land. She would have known that it had originally been part of her father's land purchased in the Crown

Grant. Mary Lewis began to assert a claim to the land. She successfully occupied a portion of the land at this time. She is still occupying it. This land that she is occupying is part of the lands purchased by Jean Brown and Carol Wright. Mary Lewis denied in evidence that she had known that Alvin Charles had been occupying and cultivating the disputed land during his lifetime. I find that very unlikely. She took some of the purchasers from Alvin Charles to speak to her lawyer. She told these purchasers from Alvin Charles that their deeds from Alvin were no good. She tried to persuade them to let her give them new deeds, as she had the legal title to the lands. From all the evidence, I am satisfied that the purpose of the Letters of Administration to the estate of Augustus Charles was to give Mary Lewis a right to claim the disputed land and to allow her to be able to give deeds to people who wanted to purchase, including some who had previously purchased from Alvin Charles. She has, since the commencement of these proceedings, and since the death of the original Plaintiff, apparently vested the land she sold to the original Plaintiff in herself.

[14] In Mary Lewis' pleadings, she asserted a claim to the lands in dispute by inheritance. She alleged that she and David Charles were the lawful children of Augustus Charles. She was cross-examined on this alleged marriage. She claimed to have attended the marriage some time in the 1930's. There was not a shred of evidence of the marriage. No marriage certificate could be found to exist. Other relatives denied the existence of the marriage. Mary Lewis' evidence in chief to the effect that she had attended the marriage was shown to be completely false when she was cross-examined. From the evidence, it became clear that the marriage had never taken place. David Charles was not the male heir of Augustus Charles. David Charles was not entitled to inherit the real estate of Augustus Charles. David Charles had no right to give Mary Lewis a power of attorney to apply on his behalf for a Grant of Letters of Administration to the estate of Augustus Charles. Mary Lewis had fabricated the entire story of the marriage of her mother and father to allow her to apply for Letters of Administration. The Grant was wrongfully obtained by Mary Lewis. When, therefore, she conveyed by

deed 1952 of 1981 to Ronald Parris the one and a quarter acres, the allegations of her legal entitlement found in that deed were false. The Plaintiff did not hold the legal title in the land and in question. She could not have conveyed it to Ronald Parris.

[15] The second limb of the Plaintiff's claim to the disputed land was long possession dating back to the possession of Augustus Charles, her mother Caroline Parris, and herself. For the reasons stated above, I am satisfied that Mary Lewis never occupied the lands in dispute until in 1973, after the death of Alvin Charles, she occupied a portion of the land of Alvin Charles that had been sold to Carol Wright. The claim to long possession fails.

[16] In view of the above findings, there will be judgment for the Defendants on their counterclaim as follows:

(1) The Defendants are granted the following declarations and orders to which they are entitled:

- (a) a declaration that the Plaintiff has no claim of right, interest, or title to the land forming the subject matter of these proceedings;
- (b) a declaration that neither the original Plaintiff nor Mary Lewis was ever the owner in possession of the lands which form the subject matter of these proceedings;
- (c) a declaration that deed No 1952 of 1981 is null, void and of no legal effect;
- (d) an order that Deed No 1952 of 1981 be cancelled;
- (e) the Plaintiff will pay Doris Wright nominal damages of \$500.00 for the trespass she has been committing to the land of Doris Wright.

(2) The Plaintiff is to pay the Defendants' costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge