ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 2 OF 1998

BETWEEN:

HENRY MILLINGTON

Plaintiff

and

DORETHA STEVEN

Defendant

Appearances:
Mr Olin Dennie for the Plaintiff
Mr Colin Williams for the Defendant

2000: July 12, 13, 18

JUDGMENT

[1] MITCHELL, J: This was a land dispute between two neighbours over an alleged encroachment.

[2] The pleadings had begun by the issue on 5 January 1998 out of the Registry of the Supreme Court of a specially endorsed writ. The claim was that the Plaintiff had acquired by deed No 1176 of 1963 a parcel of land some "3 roods and 24 poles" in extent at Teshier Road in the town of Layou in St Vincent. The complaint was that on or about the 16 December 1995 the Defendant had begun to erect a wooden toilet partly on the Plaintiff's land. She had refused to remove it despite demands by the Plaintiff. The Plaintiff claimed a declaration that he owned the land, an injunction to restrain the Defendant from building on it, an order for her to remove the wooden structure she has built on it, damages for the trespass, and his costs.

[3] By her Defence filed on 10 February 1998, the Defendant claimed that the Plaintiff's deed No 1176 of 1963 did not refer to any land complained about in the Statement of Claim. She denied having erected any structure on the Plaintiff's land. By the Reply filed on 25 March 1998, the Plaintiff joined issue with the Defence and claimed that the Defendant was estopped from denying the Plaintiff's ownership and possession of the parcel of land described in his deed No 1176 of 1963. On 6 November 1998, an order for discovery was made on the Summons for Directions. No lists of documents were ever filed by either party as ordered. One of the orders on the Summons for Directions was that a plan of the *locus quo* be receivable in evidence. The Request for Hearing was filed on 4 May 1999, and the case has been ready for hearing ever since.

[4] At the trial, the court heard evidence from the Plaintiff and, on his behalf, from his lady friend who lives with him, Vashti Williams, and also from the surveyor, McArthur Robertson. This last witness put in evidence his survey and a report of his findings concerning the disputed area. Besides the Defendant, her husband Oswald Steven gave evidence for the defence.

[5] The facts as I find them are as follows. Rutland Vale Estate used to fill almost the entire valley on the Leeward coast of St Vincent, at the mouth of which valley the town of Layou was and is situate. The Plaintiff is an elderly man of 78 years who has now retired to his hometown of Layou after over 30 years of work abroad. He went away to work in about the year 1966. Before he went away, he acquired from the owners of the Rutland Vale Estate by deed at various times some 3 parcels of land. One of the parcels of land was acquired by deed No 1176 of 1963. No evidence has been produced by either party concerning he other two parcels of land. Some 4 or 5 years ago, the Plaintiff built his present home on the parcel of land to the south of the parcel occupied by the Defendant, her husband and family. He lives there now with Vashti Williams. He says that it is the parcel he acquired by deed No 1176 of 1963. The Defendant denies that.

[6] The parcel of land acquired by deed No 1176 of 1963 was a part of open estate lands, as appears from the description in the Schedule to the deed. To the north of the parcel of land occupied by the Plaintiff, between the town of Layou and the Plaintiff's land, the Central Planning and Housing Authority had acquired land. The Central Housing and Planning Authority was a government agency, a department of the government of St Vincent and the Grenadines. The Housing and Land Development Corporation has now replaced that Authority. In the year 1976, all the assets and liabilities of the Central Housing and Planning Authority were transferred to the Housing and Land Development Corporation. This is a statutory corporation set up by an Act of the Legislature of St Vincent and the Grenadines. Its object is to plan and develop housing and land for residential and community purposes.

[7] During the 1960s, the parents of the Defendant had lived in a wattle and daub house on the parcel of Central Planning and Housing Authority land located immediately to the north of the parcel now occupied by the Plaintiff. At some stage, the government put in a street that extended from lower down in Layou up to both the parcel occupied by the Defendant and the parcel occupied by the Plaintiff. That street is Teshier Street. The parents of the Defendant had no apparent right to occupy the parcel of land owned by the Central Planning and Housing Authority, and, as was suggested, they may have been squatting on the land. In the year 1965, the Plaintiff was born in that wattle and daub house. Some years later, her grandmother, who lived in a board house further down the same Teshier Street, died. The grandmother left her house to the Defendant's mother. The mother and father and their children, including the Defendant, left the wattle and daub house on the parcel of Central Planning and Housing Authority land they were living on, and moved to the grandmother's board house. The Defendant had lived there with her mother and father until about the year 1993.

[8] The parents of the Defendant had built a pit latrine to serve the occupants of their wattle and daub house that they had placed on the land of the Central Planning and Housing Authority. The Plaintiff testified that they had built the pit latrine just over the boundary line between them and him and on his land. The evidence of the Plaintiff is that before he went away from St Vincent in about 1966 he made the Defendant's parents tear down and remove the trespassing pit latrine. The evidence of the Defendant is that the pit latrine had not been torn down in 1966 as alleged by the Plaintiff. It had remained there until it and the wattle and daub house it had served fell down from disuse sometime after they ceased to be used by her family, after the family had moved to the grandmother's house. The more likely version that I believe to be true is that of the Defendant. The Plaintiff may well have quarrelled with the parents of the Defendant over the location of the pit latrine, but he went away shortly after the time he is speaking of and he lived away from St Vincent for many years. His knowledge of what actually happened to the pit latrine is not likely to be as accurate as the Defendant's.

[9] In about the year 1993, while the Defendant was living with her parents in the home of her grandmother, she began to have a family of her own. Her parents appear to have permitted her to build a home for her family on a part of the parcel of Central Planning and Housing Authority land that they had previously made their own. They have also apparently permitted a sister of the Defendant to build her home on the same parcel of land. The Defendant had been born on this parcel of land, and knew it from her childhood. She does not as yet own her portion of the parcel of land. She has commenced negotiations to acquire title to it, but is awaiting action by the officers of the Corporation.

[10] The town of Layou has grown in size over the years from what it was in the early 1960s. It has now spread to the south and east of its original location and has engulfed the Plaintiff's parcel of land and other parts of what used to be Rutland Vale Estate. It is now considered by all the parties that both the land of the Plaintiff and the adjoining parcel of Central Planning and Housing Authority land to

the north on which the Defendant lives are presently situate in and a part of the town of Layou. The deed held by the Plaintiff, as we have seen, describes the Plaintiff's parcel of land as being "part of the Rutland Vale Estate . . ." The Defendant, knowing only the town of Layou and Teshier Street, was confused. She considered that Rutland Vale Estate was something else than the town of Layou. She did not believe that the deed in question could be for the parcel of land in question. Hence the defence she had raised and which is summarised at paragraph [3] above.

[11] The Defendant had further reason to be suspicious of the Plaintiff's deed. It described the Plaintiff's parcel of land as "bound on the north by lands in the possession of Randolph Hazelwood and on the south by lands belonging to the Central Housing and Planning Authority . . . ." She was aware that the parcel of land occupied by the Plaintiff was actually bound on the south by lands in the possession of Randolph Hazelwood and on the north by the lands of he Central Housing and Planning Authority, the lands on which her house is now built as previously described. Hence her defence in this case, that the Plaintiff's deed No 1176 of 1963 does not refer to the land on which he is complaining the alleged trespass occurred. Land titles in St Vincent and the Grenadines are based on the antiquated system of common-law deeds. This system has now been abandoned in most of the States of our jurisdiction and replaced by a Torrens-based system of surveyed and registered titles, but not so yet in St Vincent. These deeds do not require a survey to be done before they are prepared, executed, and registered in the Registry of Deeds. The common practice among conveyancers in St Vincent, as has become apparent from countless land disputes that have come before this court for determination, and as the surveyor also specifically testified, is to take the description of the land in question from the client without any attempt to check or verify the boundaries as given to him by the client. It is perfectly normal for the cardinal points to be confused in the description of the parcel of land found in the Schedule to the deed. It is commonplace for the incorrect persons to be named as occupying the lands on the north, south, east or west of the parcel of land being

described in the Schedule to a deed. The parcel of land in this case was bound on the north, not the south as the deed says, by the lands of the Central Housing and Planning Authority. Randolph Hazelwood occupied the south, and not the north as the deed has it, of the Plaintiff's parcel of land. There is no suggestion in the evidence that the Plaintiff has another parcel of land that better fits the description of the land conveyed to him by the deed in evidence. I accept the evidence of the Plaintiff and of the surveyor that, despite the misdescription of the cardinal points in the Schedule to the deed, the deed No 1176 of 1963 is the deed for the parcel of land in question occupied by the Plaintiff and situate to the south of the land occupied by the Defendant.

[12] The Defendant also disputed the boundary mark found by the surveyor on the Plaintiff's parcel of land. The suggestion was that it had been recently placed in the spot it is in by the Plaintiff. I accept the evidence of the surveyor, however, that the boundaries of the Plaintiff's parcel of land are physically well demarcated on all sides on the ground, though no perimeter survey has ever been done of the parcel of land of the Plaintiff. The Defendant has never found any boundary marks for her parcel of land. She does not know where her boundary marks are. I accept that, by contrast, the Plaintiff has always known where his boundary marks given to him at the time of his deed were. The Defendant built her toilet where it is not because she knew where her boundary line was but because that was where it was located many years ago when her parents lived on that spot. It may well, as the Defendant claims, have been there from the time of the occupation of that parcel by her parents in the 1960s. The trespass of her parents on the land of the Plaintiff in the 1960s does not justify her new trespass now. The Defendant has constructed her toilet over on the land of the Plaintiff without his permission and in spite of his protests. She will have to dig a new toilet somewhere else on her land and replace the land of the Plaintiff to the state it was in prior to her trespass.

[13] The Plaintiff is entitled to the remedies he seeks. He is given

(1) a declaration that he is the fee simple owner of the portion of land in dispute being part of the land held by him by deed No 1176 of 1963;

(2) an injunction to restrain the Defendant whether by herself, her servants and/or agents or howsoever otherwise from building, constructing, or erecting any structure on the Plaintiff's said land;

(3) an order that she forthwith pull down and remove the present wooden structure and /or building on the Plaintiff's said lands;

(4) nominal damages of $500.00 for the trespass;

(5) his costs of the action to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge