ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.172 OF 1996

BETWEEN:

HENRY WILLIAMS

Plaintiff

and

ELAINE DA BREO
BASIL CORNWELL
NORMA CORNWELL

Defendants

Appearances:
Graham Bollers for the Plaintiff
Moet Malcolm for the Defendants

2000: September, 28, October 25

JUDGMENT

[1] MITCHELL, J: This was a land dispute involving the existence of an alleged 8 ft right of way.

[2] By a statement of claim endorsed on a writ issued on 14 May 1996 the Plaintiff claimed that he was in possession of a lot of land consisting of 7,000 sq ft by virtue of a deed of gift dated 5th August 1987 registered as No 2318 of 1987; the 1st Defendant's property was separated from that of the Plaintiff by an 8 ft road; there had always been an 8 ft wide right of way separating the two properties; in or about the year 1991 the Defendants had unlawfully constructed a concrete wall within the 8 ft road obstructing the Plaintiff. The Plaintiff claimed a mandatory injunction ordering the Defendants to remove the wall; a further injunction restraining them from erecting a wall obstructing the Plaintiff; damages; further

relief; and costs. By a defence filed late by consent, the 2nd and 3rd Defendants claimed that the wall had been built about 12 years previously; that the right of way was a track; that the Plaintiff had never complained when the wall was built some time in the 1980s; and that the wall was built on land owned by the 3rd Defendant's son. By a reply to the defence of the 2nd and 3rd Defendants, the Plaintiff says that the wall was erected in the road and not on land owned by the son of the 3rd defendant; and further that it had been erected in 1991 and not in the 1980s as alleged in the defence.

[3] At the commencement of the trial both counsel addressed the court to the effect that there was only one issue in the case, and that was whether or not the right of way was a track or foot path or an 8ft road. The trial was by consent restricted to evidence on this issue. Counsel for the Plaintiff stated that he had only two witnesses, the Plaintiff and the 1st Defendant. Counsel for the 2nd and 3rd Defendants asked for an adjournment so that the 1st Defendant who was the sister of the 2nd Defendant could get counsel. The court did not accede to the request for an adjournment, particularly as it did not appear that the 1st Defendant was the one requesting the adjournment. Counsel for the 2nd and 3rd Defendants was assured that if the 1st Defendant gave evidence for the Plaintiff, he would be permitted to crossexamine her.

[4] The Plaintiff gave evidence on his own behalf and he called the 1st Defendant to give evidence on his behalf. The 2nd and 3rd Defendants are husband and wife. They gave evidence on their behalf and called no witnesses. The only exhibits put in evidence were the 1976 deed of the 1st Defendant, the 1976 deed of Martha Williams, the mother and predecessor in title of the Plaintiff, and the 1987 deed of the Plaintiff. The court visited the locus in quo, and the various features of the road in dispute were pointed out by the parties to the court. The facts as I find them are as follows. All the land of the parties was originally owned by the Plaintiff's great grandmother and the 1st Defendant's grandmother, Louisa Dallas. Louisa Dallas died in the year 1933. The estate of Louisa Dallas was

administered by Martha Williams the mother of the Plaintiff and the sister of the 1st and 2nd Defendants some time after she obtained the Grant of Letters of Administration in the year 1974, as recited in the deeds of 1976. The Plaintiff is 58 years old and was born on the land. The 2nd Defendant is 80 years old and he also was born on the land. The access road to the home of the Plaintiff runs alongside the house of the 1st Defendant. The house of the Plaintiff and of the 2nd Defendant are constructed on the top of a ridge adjacent to each other, that of the Plaintiff being further along the ridge, so that the Plaintiff and his visitors have to pass alongside the house of the 2nd Defendant. The land of the 1st Defendant lies between the government road and the land of the 2nd Defendant. The access to the 2nd Defendant's house and the Plaintiff's house runs over the property of the 1st Defendant. The access runs along the very top of the ridge, the Plaintiff's house is at the end of the access and below the top of the ridge where the access is.

[5] The house of the 2nd Defendant was built very close to the access to the Plaintiff. What the 2nd Defendant has done is to build a low wall, only about 15 feet long and 2 feet high with a hedge on the inside to provide some small amount of privacy. This low wall runs parallel to the building and about 10 feet distance from it. There is a drop of a foot or two to the house of the 2nd Defendant from the access to the Plaintiff which access runs along the highest part of the ridge. The wall serves two purposes; first, it ensures that anyone accessing the property of the Plaintiff must keep as far as the topography of the ridge will allow from the building of the 2nd Defendant; second, the low wall provides protection to the property of the 2nd Defendant by ensuring there will be no erosion from the use of the access and the heavy rainfall that must fall annually on the top of the mountain ridge. The question is, did he build the wall along his boundary as he claims, or did he seek to push users of the access as far as he could away from his home and restrict them to passing on foot instead of being able to approach the Plaintiff's home by vehicle, wrongfully reducing the right of way from its previous 8 ft to about 2 ft, as the Plaintiff claims. The answer to the question before the court

as to the dimensions of the disputed access to is best sought in the various deeds that the Administratrix gave to the parties. There would, thus, be no need for the court to try to distinguish between and prefer one side of the two conflicting recollections and memories of these related parties and neighbours.

[6] The Administratrix administered the estate in 1974, as we have seen. The Plaintiff says the partition of the lands took place long before the deeds, during the 1960s. That may well be true, as both parties have lived on their share of the family land since at least that time. The Plaintiff built his first house on his land in the 1960s, and his present concrete house in about the year 1987. The 2nd Defendant occupied the house of his grandmother, Louisa Dallas, after her death in 1933 and eventually replaced the original wooden building with his new concrete house in about the year 1991. As part of the process of administration, the Administratrix had had the land surveyed. Various steel pins were put down by the surveyor. They are still there on the land. There is a dirt road approximately 8-10 ft wide approaching the property of the two parties from where the tarmacked government road ends. That dirt road is about 50-60 ft long. Where it continues alongside the wall built by the 2nd Defendant in 1991, the width is reduced to the 2-3 ft about which the Plaintiff complains. There is no doubting that when the Plaintiff was building his present concrete house the road was 8 feet wide, the 2nd and 3rd Defendants do not deny that trucks were able to drive on it to deliver building material; they merely claim that the access was 4 feet wide and the trucks passed there with their permission.

[7] What do the deeds say? The deed of the 1st Defendant describes the eastern boundary of her portion of the land of her grandmother as an “8 feet road.” The 1st Defendant testified, and she was not challenged on this, that the land referred to in her deed includes the land occupied by the 2nd Defendant. The deed of the 1st Defendant is for the land on which the wall in dispute has been built. The deed of Martha Williams for her share of the family lands in the estate she was administering, mentions an 8 foot road as the western boundary. No plans are

attached to any of the deeds. I am satisfied that the 8 foot road mentioned in these 2 deeds is the 8 foot road in dispute. The Administratrix was vested with the legal right to set the boundaries and to provide for access when she was dividing up the estate. I am satisfied from the deeds that the road in dispute was as the Plaintiff described, an 8 foot road. The 2nd Defendant has, in an effort to improve the privacy and other amenities of his premises, wrongfully constricted the access road of the Plaintiff where it runs past his house to a width of some 2-3 feet. The Plaintiff is entitled to the reliefs he seeks.

[8] The Plaintiff is granted the mandatory injunction he seeks ordering the 2nd and 3rd Defendants to remove the wall and the hedge erected by them in the right of way of the Plaintiff. They are entitled to a reasonable time to make the necessary arrangements to remove the wall and hedge and to reconstruct the wall and replant the hedge if they wish, ensuring that they leave out a road of 8 feet in width for the use of the Plaintiff. If they do not remove the obstruction, the Plaintiff is entitled to remove it for them and they will be liable to him for the cost of removing it, to be assessed if not agreed. The Plaintiff is entitled to general damages for the obstruction over the past 9 years and for the inconvenience that he must have suffered. No sum has been suggested, and I set damages at the nominal sum of $1,000.00. The Plaintiff is also entitled to his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge