

GRENADA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 24 OF 1998

BETWEEN:

1. CHARLES MC INTYRE
2. CALIVIGNY GARDENS INC.
(BY ORDER DATED 3/7/98)

Plaintiffs

and

1. LAWRENCE SAMUEL
2. LLEWELLYN JOSEPH
(BY ORDER DATED 3/7/98)

Defendants

Appearances:

Mr. J. Bristol for Plaintiffs.
Mr. A. Bernadine for First-named Defendant.
Dr. F. Alexis for Second-named Defendant.

2001: January 23
February 08

JUDGMENT

[1] **ST. PAUL, J.:** On 23rd January, 1998 the Plaintiffs filed a Writ of Summons claiming:

1. A declaration that the Defendants are not entitled to enter or cross the Plaintiff's land at Calivigny in the parish of St. David in the State of Grenada.
2. An injunction to restrain the First-named Defendant whether by himself or by his servants or agents or otherwise howsoever from entering or crossing the Second-named Plaintiff's said land.
3. Damages.
4. Further or other relief.

[2] On 28th July, 1998 the Second-named Defendant filed a Defence. The Second-named Defendant further counterclaims and asks for damages, further or other relief and costs.

[3] Counsel on both sides agree that the first question to be determined by the Court is the existence or non-existence of the alleged road.

[4] I am of the view that if the Court should find that no such road as alleged exists or the existence of such a road is in doubt, there will be no need to go on to consider the lengthy but well argued points of law put forward by Counsel on both sides.

THE PLAINTIFFS' EVIDENCE

[5] Charles Mc Intyre said in evidence:

'I know Llewellyn Joseph. He has lands to the east of my lands. I purchased from the Grenada Sugar Factory. His land is in boundary with my lands. Where Lawrence Samuel lives is not in boundary with my lands I met with Harry Ogilvie, the Land Surveyor and Mr. Samuel at Calivigny. The purpose of the meeting was to meet with him to point out our boundaries and to advise Mr. Samuel that he did not have access or passageway through my lands. That was necessary because Mr. Samuel had started to build a road on my land. At that meeting Mr. Ogilvie pointed out the boundaries to him (Mr. Samuel) and advised him that there was no access to our land When I bought the property in 1966 I saw no sign of any road between that land and Mr. Joseph's land. I saw no sign of any footpath along the boundary. The land was overgrown with briar and Cat paw. I spent 4-5 years with one man trying to clear it. There was briar and Cat paw between my land and Mr. Joseph's land... . Apart from Mr. Samuel attempting to put the road I have never seen anyone using the boundary along with Mr. Joseph as a footpath or a road... . I have never seen Llewellyn Joseph on any part of my property using it as a

road or a footpath... . To the east of Mr. Joseph's property there were some tracks. I think there is a road there."

- [6] Henry Ogilvie, who has been a land surveyor for 46 years, said that when he visited the property with Charles Mc Intyre and Lawrence Samuel on 29th September 1997, Mr. Samuel showed him a piece of land he bought. That land was not in boundary with Charles Mc Intyre land. He went on to say:

"Mr. Samuel said he had a road. He indicated on the ground on the Mc Intyre land where that road should be. I saw no indication of a road there... . There was no road between Mc Intyre and Joseph... . There is no road on that boundary with Mc Intyre... . On the eastern side there is a road. I have driven along that road once or twice. It is motorable. That road runs from the Westerhall main road. It goes pass Llewellyn Joseph property and ends further down. It is not a through road... . I did on one occasion try to drive to Lawrence Samuel's house. I had to trespass to get there. I had to pass through somebody's land. I approached from the south... . Along the western boundary I see no road. There is a road at the south which seems to end at Mc Intyre boundary. This is the same road referred to in the plan of Lawrence Samuel attached to Exhibit "H.O.1"... . There is no road showing how one gets to the sea from the land. There is no beach down there... . On the Mc Intyre plan the right of way end on the north... ."

- [7] When showed Exhibit "H.O.1" he said:

"I see to the north "Allowed Right of Way." In my opinion it begins from the Calivigny main road. It is the only access from the Calivigny main road. That road ends at the Mc Intyre property... . I did not see wheel marks or a clear area or a footpath to indicate a road along the boundary with Mc Intyre and Joseph."

- [8] Raymond Millet, a licensed Land Surveyor of some 45 years, said when shown Exhibit "C.M.1":

"I see a plan on that deed. I prepared that plan. When I prepared that plan in 1965 I did not notice any road along the eastern boundary leading to the sea... . There was no road on the Mc Intyre property when I went to do the survey... . On the plan "C.M.1" there is no allowed road on Frederica Bubb's western boundary. There is no road linking up to the allowed road leading on to the north of Mr. Mc Intyre property. There is no allowed road to the western boundary of Llewellyn Joseph property... . In "C.M.1" plan the road comes right up to station 18 and stops there. It stops there, giving access to Mc Intyre property. The road ends at the northern boundary in a straight line... . Frederica's boundary and Mc Intyre boundary continue on the side of each other along stations 17 – 18... . I put in an "allowed road" on Bubb plan because the Bubb family told me there was a road there. I saw no indication of an allowed road. One cannot access the Frederica Bubb property from the allowed right of way without gaining access through Mc Intyre property... . If one is coming along the allowed right of way to the Mc Intyre property from north to south and before one gets to Mc Intyre property one turns left one can access the Bubb's property."

[9] Michael Mc Intyre said:

"I live at Westerhall, St. David's. I own my own house for the last 30 years. I acquired that property from my father Charles Mc Intyre. Llewellyn Joseph owns lands in boundary with my father. ... There was never a road on the eastern side of the property. It was heavily bushed in Cats paw. There were occasions I had to ask Llewellyn Joseph to move his cows that came over to our property."

EVIDENCE FOR THE DEFENCE

[10] Earl Gladstone Rouse said in evidence:

"I know Mc Intyre to have lands near Baquai Moi. There is a road from Baquai Moi from Calivigny main road. Motor vehicles use that road. Mc

Intyre use that same road to get to his land. That road goes straight along down to the sea. Motor vehicles can go straight down to the sea on that road. Motor vehicles has been using that road down to the sea for about 50 years. Prior to those years there was a road down to the sea.The last time I went down that road was about two or so years ago. I did not seek permission to use that road ”

[11] When shown Exhibit “C.M.1” he said:

“The road will be on the east of the estate. The road is alongside points 14, 15, 16, 17 and right down to 18. I see an allowed right of way on that plan. That road continues from Calivigny main road and right down to the sea.”

[12] Under cross-examination he said:

“I know exactly where the boundary is between Baquai Moi land and the land now belonging to Mc Intyre. The road goes down to the sea on the east of the estate land The line on the plan from point 18 to point 13 is the road. That line is not the Mc Intyre boundary line. Mc Intyre boundary is on the other side of the line from point 18 to point 13.”

[13] Lawrence Samuel said in evidence,

“I bought the land in 1991 from Llewellyn Joseph. I have been enjoying the benefit of the land since 1991. I went to that land about once a month since I bought it. I went there driving by jeep. I commenced building on the land in 1998. I used a bulldozer to excavate the land.”

[14] Ivy Joseph said in evidence that the Second-named Defendant is her husband. He owns lands at Baquai Moi, Calivigny, St. David's. To the west is Mc Intyre land. Down to the south is the sea. To get to the sea from her husband's land one will have to come from Calivigny main road, go up an allowed road and get to the Bubb's land first and then to Llewellyn land (the Second-named Defendant)

and go down the same road to the sea. According to her, that road has been there since she was a little girl in about 1940.

[15] Under cross-examination she said:

“There was a road in Baquai Moi. It is a road up to now between Mc Intyre and Llewellyn Joseph. I know the road went down to the sea because I used to go down there with Llewellyn. The last time I walked down that road to the sea was before my husband sold land to Clouden. Mr. Clouden bought from Llewellyn Joseph in April 1991.”

[16] The evidence given by both experienced surveyors is that they found no indication of an allowed or any road on the Mc Intyre's property. Charles Mc Intyre saw no road on the property when he bought from the Grenada Sugar Factory in 1966. The place was covered in bush such as briar and Cats' paw. Neither Pastor Bubb nor Mr. Robinson gave any evidence of the alleged allowed road. What is more, Mr. Rouse said the alleged road is to the east of the Mc Intyre's property. He further said the alleged road is shown by the line between Station 18 to Station 13 on Exhibit "C.M.1". He claims that line to be the road which he knows to be the boundary and Mc Intyre property is to the left of that line which is the road.

[17] I am of the view that the evidence of the Defendants supports the claim of the Plaintiffs. There is no evidence of any road on the Mc Intyre's property.

[18] I accordingly give judgment for the Plaintiffs with costs to be agreed or taxed. I make no order for damages.

[19] The Defendants' Counterclaim is dismissed without costs.

L. K. St. Paul, C.B.E.
High Court Judge