ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 343 OF 1995

BETWEEN:

CELESTINA ADAMS

Plaintiff

and

COREEN FRANKLYN

Defendant

Appearances:
Olin Dennie for the Plaintiff
Arthur Williams for the Defendant

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2000: November 20, 22, 27, December 12
2001: January 25, April 11
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JUDGMENT

[1] MITCHELL, J: This was a land dispute in Union Island, one of the Grenadines of the State of St Vincent and the Grenadines. It involved two disputed entitlements: one, the Plaintiff's claim that she was entirely entitled as survivor under a joint tenancy where the co-owner had died; and, the other, the Defendant's claim for damages for forcible eviction when she had lawfully been in possession of the disputed premises, and for the co-ownership to be declared to have been a tenancy in common and not a joint tenancy, so that, on the death of her husband the decease co-owner, she had become entitled to administrate for his half share of the disputed property.

[2] The suit began by a specially endorsed writ issued at the request of the Plaintiff on 23 August 1995. By the Statement of Claim endorsed on the Writ, she claimed

that in the year 1969 she and one Benson Charles had become the joint tenants of a parcel of land at Clifton in Union Island; that she and Benson Charles had shared a common-law relationship until the year 1975; that during 1978 she had commenced construction of a house on the parcel of land; that she had occupied the house with her children up until the year 1981 when she had emigrated to Canada leaving Junior Alexander as caretaker of the house; that the Defendant had sometime thereafter married Benson Charles; that in about the year 1988 the Defendant and her husband had prevailed upon Thelma Jones, the sister of the Plaintiff who was then in charge of the Plaintiff's house at Clifton, to permit the Defendant and her husband to occupy the house until they could find alternative accommodation; that they had occupied the house; that, after the death of Benson Charles, Thelma Jones had requested the Defendant to leave the house; that the Defendant had refused to quit; and, the Plaintiff claimed a declaration that she was entitled to quiet enjoyment of the house, recovery of possession, damages, and costs.

[3] By the Defence and Counterclaim filed on 5 December 1995, the Defendant claimed that the land had been held by the Plaintiff and Benson Charles as tenants in common; that the dwelling house on the land had been built by the joint efforts of the Plaintiff and Benson Charles; that the Defendant and Benson Charles had lived in the house until his death on 28 January 1995; and the Defendant claimed a declaration that the deed No 13 of 1969 had created a tenancy in common; and a declaration that the parcel of land was owned jointly [sic] by the Plaintiff and Benson Charles.

[4] By the Reply and Defence to Counterclaim filed on 16 January 1996, the Plaintiff denied that the parcel of land had been held by the Plaintiff and Benson Charles as tenants in common; or, that Benson Charles had contributed to the construction of the house on the land; or, that the Defendant and Benson Charles had occupied the house after their marriage. The Request for Hearing was filed on 25 March 1996, and thereafter the matter was ready for hearing.

[5] On 4 November 1999, pursuant to an order of the Court of 2 November 1999, the Defendant filed an Amended Defence and Counterclaim. By it, she made the new claim that she had been in occupation of the disputed property until 12 July 1996; that on that day the Plaintiff accompanied by 5 other persons had entered the property and destroyed 4 windows and removed the roof of the building; that the Defendant had been forced to move from the house and rent premises elsewhere; and she claimed special and general damages.

[6] By an Amended Reply and Defence to Counterclaim, the Plaintiff denied that on 12 July 1996 she had visited the premises, entered the building, and destroyed the windows and removed the roof as claimed.

[7] On 16 June 2000, the Defendant with leave of the Court filed a Re-amended Defence and Counterclaim setting out particulars of the special damage claimed to have been suffered by the Defendant as a result of the damage allegedly done to the building by the Plaintiff.

[8] The matter came on for hearing on 20 November 2000, at which time both counsel for the Plaintiff and his client were absent from the Courtroom. Counsel for the Defendant complained that the matter had been listed for trial, and that his client had come especially from Union Island for the trial. He requested that the matter be heard in the absence of the Plaintiff if necessary. An adjournment was out of the question, but the Court stood the matter down until 1.30 pm to dispose of the other matter pending for that day, and to give counsel for the Plaintiff an opportunity to appear with his client. At 1.30 pm, counsel for the Plaintiff appeared without his client. Counsel for the Defendant indicated that his client was present and ready to proceed. Counsel for the Plaintiff stated that his client had to come from Canada, while her witnesses lived in Union Island, and that none of them had arrived in St Vincent for the trial. The Court indicated to counsel that it was not minded to grant a further adjournment. Counsel for the Defendant requested that

he might proceed with his client's witnesses on her Counterclaim, as those witnesses had travelled from Union Island at great inconvenience. There are many litigants in our islands who to better themselves have been obliged to emigrate from their homeland. The Court bends over backwards in order to do justice between the parties in such circumstances, particularly when the litigation that the parties are involved in is old, and the parties have previously suffered many inconveniences due to adjournments. The Court ordered that the case would begin with the Counterclaim, and defence to the Plaintiff's claim. The Plaintiff was left to take her chances that all the Defendant's evidence would be taken and the matter might be concluded before the Plaintiff could arrive in St Vincent.

[9] The trial began with the Defendant Coreen Franklyn taking the witness box to give evidence in support of her Counterclaim and her Defence to the claim of the Plaintiff. She put in evidence a number of documents as exhibits, and she was supported by her eyewitness Elrick Roberts. At the end of the afternoon of the first day of trial, the Defendant's testimony in support of her Counterclaim and her Defence to the Plaintiff's Claim had been given. Due to the lateness of the hour, the matter was adjourned to 22 November 2000 to be continued, subject to any prior fixtures for that date. On 22 November, counsel for the Plaintiff appeared and stated that his client the Plaintiff was not yet present, but that her attorney of record was then present in court. He requested leave to put the Plaintiff's case. Counsel for the Defendant stated that he had no objection to that procedure. Thelma Jones, the sister of the Plaintiff, and her attorney of record, gave her testimony and was cross-examined.

[10] At the conclusion of the testimony of Thelma Jones, counsel for the Plaintiff stated that he had two more witnesses who were still not then present at the Courthouse. One was in Union Island, while the Plaintiff was due to arrive in St Vincent from Canada over the weekend. He asked that the matter be adjourned to permit his client to give her evidence. Counsel for the Defendant objected, pointing out that

this was a most unusual procedure. The Court ruled that the matter would stand adjourned to 27 November at 1.30 pm to give the Plaintiff a final opportunity to be present in the Courtroom and for the matter to be concluded one way or the other.

[11] On 27 November at the appointed time, the Plaintiff appeared with her witness, her sister from Union Island. Counsel for the Defendant stated that he had no objection to them giving their testimony at that stage. He applied for a minor amendment to his Counterclaim which was not objected to by counsel for the Plaintiff, and which was granted. The Plaintiff and her witness both testified and were cross-examined by counsel for the Defendant. They were the last witnesses to give evidence in the case. The facts as I find them are as follows.

[12] Celestina Adams, the Plaintiff, is a native of Union Island, but presently lives in Canada. The Plaintiff used in the 1950s, 1960s and 1970s to live in Union Island with Benson Charles, who was also a native of Union Island. The Plaintiff and Benson Charles had got together when they both worked at the resort on another neighbouring island now called Palm Island. She had 5 children for him. The children were born in March 1958, July 1969, October 1970, September 1973, and May 1976. By a deed of indenture dated 7 January 1969 the Plaintiff and Benson Charles became the co-owners of a lot of land measuring 50 feet X 100 feet at the town of Clifton in Union Island. The deed was put in evidence. It recites no title of the Vendor, but merely states that the vendor is seized of the land and sells it to both purchasers for $350.00. The deed did not condescend to particularise whether the co-purchasers, the Plaintiff and Benson Charles, held the land either jointly or as tenants in common. The Vendor merely stated in the deed that he

> . . . doth hereby Grant and Assure unto the Purchasers their heirs and assigns ALL THAT Lot piece or parcel of land mentioned and described in the Schedule hereto AND ALL THE ESTATE right title interest claim and demand whatsoever of the Vendor unto and upon the said premises and every part thereof TO HAVE AND TO HOLD THE hereditaments and

premises hereby granted or expressed so to be Unto and To the Use of the Purchasers their heirs and assigns forever . . .

It is vital in most cases of co-ownership, and it was vital in this case, to know whether the co-purchasers had purchased as owners in common or as joint owners. If they had purchased as joint owners, and if the Defendant had not otherwise acquired an interest in the property, then, the Plaintiff would have every right to give her a notice to quit and to bring and to prosecute legal proceedings to have her evicted. If the co-purchasers had acquired as tenants in common, then the Defendant would as wife, along with the children of Benson Charles, have succeeded as heirs to the legal interest in the property of Benson Charles. The Plaintiff would have had no right to give her a notice to quit and to bring legal proceedings to have her evicted. Another type of legal proceeding would, in the event of disagreement, been necessary to sort out the shares in the property properly belonging to each interested person. The deed had, thus, been very incompetently drafted.

[13] Benson Charles and the Plaintiff, despite their long and fruitful relationship, had never married. The Plaintiff testified that they lived in a common law relationship up until the year 1976 when they separated. She testified that she had paid for the land entirely by herself, and only put Benson Charles' name on the deed for it after they had had the 5 children, and in case anything should happen to her. We know that the deed states that it was executed on 7 January 1969, when she had had only the first child for Benson Charles, and not all five children as she testified. She also stated that she had built the house entirely out of her own funds after she and Benson Charles had separated. She denied that she and Benson Charles had ever lived in the house together before they separated. She was corroborated in this by her sister Thelma Jones, and, in a confused sort of way, by her nephew Kenville Adams. There is no reason to doubt her on this. The preponderance of the evidence is, however, that the construction of the house began and was mainly accomplished before the relationship between the Plaintiff and Benson Charles

ended. The Plaintiff's sister Thelma Jones, against interest, confirms this. The house was clearly built during the period when the Plaintiff and Benson Charles were living together, whether at the Plaintiff's mother's two bed-room house as the Plaintiff testified, or at their own three bedroom house in dispute, as urged by the Defendant. It seems most unlikely that the house was built by the Plaintiff entirely by herself, without any financial or other assistance from Benson Charles, as she testified. She and Benson Charles had taken the title to the property together; they were living in what the Plaintiff claims was a common law relationship; they did not have a home of their own; they were having their babies together; they lived and worked together. Why would they not build their house together? I am satisfied that Benson Charles and the Plaintiff contributed equally to the construction of the house. The evidence seems to be clear, however, that Benson Charles never lived in the house in dispute before he separated from the Plaintiff and later married the Defendant in 1984. The main reason for this is that the construction of the house was not completely finished at the date when the relationship between the Plaintiff and Benson Charles broke down. When Benson Charles and the Plaintiff parted, he preferred to rent another apartment to live in, rather than to move into the incomplete house in which he and the Plaintiff held joint interests. I am satisfied that the house was incomplete and unoccupied both before and after the time when the Plaintiff emigrated to Canada and upto the date when Benson Charles and the Defendant began to occupy it.

[14] The Defendant is a native of the neighbouring island of Bequia, but has been living on Union Island for many years. Once Benson Charles married the Defendant in 1984, he moved with her into the house in dispute. He and the Defendant repaired the house and made it habitable. I am satisfied that the Defendant and Benson Charles went into occupation of the house sometime after the marriage in 1984 and before the Plaintiff's sister Thelma Jones returned to Union Island in the year 1988. I do not believe that they moved into the house with Thelma Jones' permission after she returned to live in Union Island. The house remained essentially incomplete even upto and after the death of Benson Charles in the year

1995. The photographs in evidence show that even up to 12 July 1996, the date of the incident of which the Defendant complains, the exterior of the building had never been painted. During all that period, from 1984 to 1995, the Plaintiff was content to remain in Canada and for Benson Charles and the Defendant to remain in occupation of the house in Union Island without paying any rent and without her making any demands of any kind on them as the occupants of the house. No greater acknowledgment of the right of Benson Charles to occupy the house, short of one in writing, can be imagined.

[15] The Plaintiff remained in Canada and made no demand on Benson Charles or the Defendant until after the death of Benson Charles on 28 January 1995. After the death of Benson Charles, she gave instructions to her sister Thelma Jones to take steps to have the Defendant evicted from the property. Thelma Jones appears to have demanded of the Defendant that she leave the premises. The Defendant in response had her lawyer write a letter to the Plaintiff dated 28 April 1995 complaining of the harassment of Thelma Jones, and asking to have the issue of the ownership of the property settled. In response, Thelma Jones acting as agent for the Plaintiff, had a notice to quit dated 6 May 1995 served on the Defendant. The Defendant not having vacated the property, Thelma Jones' next step in protecting her sister's interests was to have solicitors issue the writ in this suit on 23 August 1995 and to serve it on the Defendant.

[16] The Plaintiff returned to Union Island in about July 1996, a year after the issue of the writ. She discovered that the Defendant was still in occupation of the house. She did not wait for the lawsuit that she had had her sister Thelma Jones file on her behalf the year previously to take its course. Instead, on 12 August 1996, she attended with several family members at the house in question and took the law into her own hands. A large crowd gathered to watch as the Plaintiff and her family members proceeded to break the windows and to enter the house and to remove the galvanize sheeting from the roof of the building, thus forcing the Defendant out of the premises.

[17] When the mob descended on her home, the Defendant went to the Police Station at Clifton in Union Island for help. She testified only that the police did nothing to assist her. The Plaintiff's witnesses were adamant in denying the Defendant's version of events in relation to the police reaction to the incident. The witnesses for the Plaintiff are all agreed that one Officer Hinkson attended at the scene of the riot and proceeded to adjudicate on the spot on the Defendant's lack of a right to continue in the quiet possession of her home. According to them, he told the Plaintiff that he did not believe her, and that she had no right there. If there is one thing that the witnesses for the Plaintiff agree on it is that Officer Hinkson was on the scene while the Plaintiff's helpers were removing the galvanise sheeting from the roof and breaking the windows of the house that the Defendant had occupied for over a decade. If the evidence of the Plaintiff's witnesses is true, and it is to be noted that Officer Hinkson did not testify and had no opportunity to say whether the story of the witnesses for the Plaintiff was accurate, then it was a signal act of dereliction of duty on the part of Officer Hinkson, worthy of strong condemnation. The law of St Vincent on this point is as it has been for some hundreds of years throughout the Commonwealth. Once it comes to the attention of a police officer that a landlord or other property owner is about to take action forcibly to remove a person from the peaceful occupation of property which that person claims to occupy of right, it is the duty of that police officer to warn the person who is about to use illegal force to remove the other person in occupation. It is the further duty of the police officer, if a warning does not suffice, to bring all the force of the law to bear to prevent the forcible eviction of the person then in occupation. It is the function of the Courts of this State to adjudicate on who is the person with the right to occupy property, not anyone else. The Defendant had come to live in Union Island from the neighbouring Grenadine island of Bequia. She was not a native of Union Island. The Defendant was, to our insular notions, a foreigner to Union Island. Unlike the Plaintiff, she had, on the day in question, no crowd of supporters to back her up. It may, therefore, have been the easier and more popular step to allow the mob to proceed to destroy the roof and the windows of

the home of the Defendant than to perform his duty. That it was the easier course to follow helps us to understand what happened. But, it does not excuse the police officer who was allegedly present at the scene that day. The reason for the rule against forcible eviction is, as the Courts have repeatedly stated, that a Vincentian's home is his castle. He has the right to use force, lethal if necessary, to protect his home from persons threatening to invade it. It is the duty of the police officers present at a scene to prevent threatened breaches of the peace. At the time that the situation develops, the officer must take steps to ensure that there is no loss of life or limb as a result of the use of unauthorised force to evict a person alleged to be wrongfully in occupation of property. He must insist that the person complaining about the occupation instead bring the matter to court for adjudication. As it is, the Defendant did not use a gun or cutlass as she may well have been entitled to use. She instead allowed herself to be forced out of her home, in public, in the most humiliating of circumstances, to seek about in the rain, in the evening, for someone for help her to find alternative accommodation, and to rescue some of her possessions. She attempted to move herself and her possessions to alternative, hurriedly rented, accommodation. She testified that in addition to the indignity of the manner of her illegal forced removal from the premises of her late husband, she lost some of her possessions, and has had to pay rent that she would not otherwise have had to pay for accommodation.

[18] The Plaintiff's witnesses made an effort to throw doubt on the Defendant's claim that the rain, that fell on the day that the roof had been removed, had damaged the Defendant's possessions. They denied that there had been any rain that evening. They denied that the Plaintiff's agents had burned some of the Defendant's possessions at the disputed property the following day. The Defendant and her witness had the presence of mind to take photographs of the damaged house and exposed furniture on the day in question. The photographs were put in evidence by the witness who took them. They show the extent of the damage to the roof and to the windows of the house in dispute. The photographs appear to me to show a dark and windy day. I have no difficulty in believing that

there followed later in the evening the rain that the Defendant testified to. Not only was there rain on the day of the removal of the roof, that damaged some of the furniture and equipment of the Plaintiff as she testified. I also accept the evidence of the Defendant that the Plaintiff and her friends attended at the premises the following day. They proceeded to burn the combustible possessions of the Defendant that she had not been able to remove from the premised the evening before, all as pleaded and testified to. I do not accept the story of the Plaintiff that the Defendant had been able safely to remove all of her possessions. Nor do I believe the Plaintiff's denial of the burning by her agents of the possessions of the Defendant. The Plaintiff felt that she was able with impunity to take the action that she took in forcibly evicting the Defendant, especially as she alleges with the support of the local police force behind her. I see no reason why she would have been inhibited in incinerating the Defendant's possessions that remained on the premises on the day after the Defendant had left them.

[19] Those items that the Plaintiff did not destroy, or that the rain did not damage, may well, as the Defendant suggested, have been stolen by other persons. That does not reduce the right of the Defendant to claim to be compensated for them by the Plaintiff. A property owner who uses illegal force to evict a person in lawful possession of the owner's property risks being charged with more damage than was actually directly inflicted by the owner on the complaining occupier. There may be other loss and damage suffered by the occupant that the property owner knows nothing about. That is the risk that a property owner who takes the law into his own hands faces. That is one more reason, if any is necessary, why a sensible property owner, no matter how annoyed and upset by the actions of the person lawfully occupying his property, is well advised not to take illegal action to force the occupant out of occupation. The Court is not going to delve minutely into the actual cause of the loss of each bangle and bracelet claimed to have been lost in a particular case. The property owner using illegal force will be deemed to have chosen to accept all the loss arising on a balance of probabilities directly from his illegal use of force. He will be made to compensate the tenant for that loss, in

addition to paying for the trespass committed. I am satisfied in this case that all the items claimed by the Defendant were actually lost directly or indirectly as a result of the illegal act of the Plaintiff and her agents.

[20] In the circumstances, the claims of the Plaintiff are dismissed. The Defendant is entitled on her Re-amended Defence and Counterclaim to some of the reliefs she asks. She asks that the property be valued, and that either the Plaintiff or the Defendant be given the option to purchase it. However, the court cannot easily enforce such an order, and it is not a proper order to be made. In any event, the right to do just what is requested, for co-owners to value property and to agree to have one purchase the interest of the other, is a natural incident of co-ownership and of the orders that are about to be made. The parties will be free, in any event, subject to the rights of other heirs of Benson Charles to share in the property, to do just what has been asked. There will be judgment for the Defendant for:

(a) a declaration that deed of conveyance No 13 of 1969 created a tenancy in common between Benson Charles and the Plaintiff;
(b) a declaration that the dwelling house on the property was owned in common in equal shares by Benson Charles and the Plaintiff;
(c) special damages payable by the Plaintiff to the Defendant of $31,370.00;
(d) general damages of $30,000.00;
(e) the costs of this action payable to the Defendant by the Plaintiff to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge