

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT 456 NO. OF 1999

BETWEEN:

JEAN MATTHEWS

1st Plaintiff

CASSITA GLASGOW

2nd Plaintiff

and

GODSON WARRICAN

Defendant

Appearances:

Arthur Williams for the Plaintiffs

Joseph Delves for the Defendant

2001: May 2, 3, 8, 15, and 24

JUDGMENT

[1] MITCHELL, J: This was a claim brought by the Plaintiffs against the Defendant for nuisance.

[2] The Plaintiffs are sisters. They have lived for many years on their family land in the village of Biabou in the Island of St Vincent. The house of the 1st Plaintiff is constructed about 20 feet to the north of the dry ravine that runs through the Plaintiff's family land. The 2nd Plaintiff is in the process of completing her house on the south side of the dry ravine. The dry ravine used to run in a more or less straight line from east to west through the family lands of the Plaintiffs. The Defendant's mother has her lands to the east of the Plaintiffs. The ravine continued on from the lands of the Plaintiffs in a more or less straight line through

the land of the Defendant's mother. The land of the Defendant's mother lying to the east of the Plaintiffs is downhill and upwind of the land of the Plaintiffs. Both lands slope slightly to the east, so that during the rainy season the water flows downhill along the normally dry ravine from the west to the east. The Defendant has built a block-making plant on the south of the ravine as it runs through his mother's land. His plant is a mere 10 or 20 feet from the house of the 2nd Plaintiff. The 2nd Plaintiff's house is immediately adjacent to the Defendant's plant on the south side of the dry ravine. The block-making plant is about 30' from the house of the 1st Plaintiff, which is diagonally across the ravine from the plant of the Defendant. Both Plaintiffs are to the west of or downwind from the Defendant's block-making plant.

- [3] The Plaintiffs make two complaints against the Defendant's use of his mother's land. The first complaint is that the cement dust and the noise of the cement mixer and block-making machine operating so close to their houses interfere with the enjoyment of their homes. The second and quite separate complaint is that the Defendant has built a stone wall across the dry ravine at right angles to the flow of water at the point where the dry ravine leaves the lands of the Plaintiffs and enters the lands of the Defendant's mother. This stone wall has diverted the flow of the water down the ravine that occurs during the rainy season. The reason the Defendant did this was in order to extend the workspace of his block-making plant. The claim of the Plaintiffs is that this interrupted flow is causing the water that rushes down the dry ravine in the rainy season to damage the yard of the 1st Plaintiff's house. The Defendant denies that he has interrupted the flow of the water. He testified that where the water presently runs in the rainy season outside his stone wall is the correct and original watercourse. Indeed, at the trial he raised the claim that it was the 1st Plaintiff who had extended her yard outwards into the dry ravine. His testimony was that it was she who had caused the dog-leg in the dry ravine. It was she who was responsible for any damage caused by the flow of water. He denied that his use of his mother's land as the location of his block-making plant was unreasonable.

[4] The court visited the locus and observed the various features of the lands described by the witnesses in their testimony. The facts as I find them are as follows. An observation of the course of the ravine, to the west up the slope beyond the Plaintiffs and to the east beyond the Defendant's mother, made it immediately obvious that it was the Defendant who had interrupted the natural flow of the water. I am satisfied that the Defendant was not truthful when he testified otherwise. He deliberately extended the yard of his block-making plant over the natural watercourse in the north-west corner of his site. He did so by the construction of a massive stone wall across the natural water-course. He did this in order to extend his workspace by the 5 or 6 feet necessary to square off the site that his factory was on. He then ran a length of wall along the north of his factory site down the length of the dry ravine in order to keep the water away from his plant. He backfilled the space he had enclosed with the wall in order to create a level work space. Most of the year the ravine is dry and no harm is caused. In the rainy season when there are heavy rains in the mountains, torrents of water will occasionally gush down the dry ravine. When this torrent of water collides with the Defendant's wall, it is thrown back onto the 1st Plaintiff's bank as it struggles to find a way around the obstacle. The court has no hesitation in finding that this is a very serious nuisance created by the Defendant. During the last rainy season, the rushing water caused obvious erosion to the bank near to the 1st Plaintiff's house. The court is satisfied that the Defendant took the risk of offending his neighbours because he was anxious to conduct a profitable business from the site.

[5] The court observed the site of the block-making factory and its proximity upwind from the Plaintiffs. The factory was not in operation at 4.30 pm on the day of the visit; however, the court has no hesitation in accepting the evidence of the Plaintiffs that whenever the plant is in operation quantities of cement dust and sand are blown onto the yards and houses of the Plaintiffs making it very difficult for them to enjoy their properties. The 2nd Plaintiff's house appeared to be covered in a film of cement dust and when completed would clearly be

uninhabitable if this state of affairs was allowed to continue. This was no industrial site that the Plaintiffs had chosen to come to live in. This was a quiet residential village site that the Defendant had chosen to erect his factory in. The court is satisfied that the use of the land by the Defendant is unreasonable and constitutes a nuisance to his neighbours.

[6] The order of the court will be

- (1) that the Defendant is not entitled to operate a block-making plant on his mother's land to the annoyance of the Plaintiffs;
- (2) an injunction is granted restraining the Defendant whether by himself his servants and or agents or howsoever from operating a cement plant on his mother's land to the annoyance of the Plaintiffs;
- (3) the Defendant is ordered to remove the portion of wall in the ravine that affects and alters the course of the water;
- (4) general damages are awarded in the sum of EC\$10,000.00 to the 1st Plaintiff for the damage to her land caused by the diverted water;
- (5) there will be general damages in the sum of EC\$5,000.00 for the interference of the 1st Plaintiff's enjoyment of her property by the past operation of the cement plant;
- (6) There will be nominal damages of EC\$500.00 to the 2nd Plaintiff for the nuisance caused to her by the operations of the cement plant right next to her almost completed house;

(7) both Plaintiffs are entitled to their costs, to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge