ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 402 OF 1996

BETWEEN:

CLIFTON ST HILL

Plaintiff

and

AUGUSTIN ST HILL

Defendant

Appearances:
Olin Dennie for the Plaintiff
Nicole Sylvester for the Defendant

2001: May 1, 3, 14, 21, 24

JUDGMENT

[1] MITCHELL, J: This case concerned the duties of an Administrator of the real estate of a Vincentian intestate towards the beneficiaries of that estate. The case commenced as an ordinary trespass action. It grew by a slow process of creep into an administration action.

[2] By a generally endorsed writ issued on 19 November 1996, the Plaintiff had originally sued the Defendant for a declaration that the Plaintiff was the owner of the land on which his house was built, and for an injunction to restrain the Defendant from trespassing on it. By his statement of claim filed on 18 April 1997, the Plaintiff claimed that he and the Defendant were brothers and the children of the late Utilda St Hill of Troumaca in the State of St Vincent and the Grenadines; that the deceased had been seized at the time of her death of 2 ½ acres of land at Belmont in St Vincent; that she had died leaving four persons, the two parties and

their two sisters, entitled to share in her estate; that the Plaintiff had obtained a Grant of Letters of Administration and had had a surveyor subdivide the land into 4 equal shares; that on 2nd January 1996 he had in his capacity of Administrator executed deeds of assent in favour of each beneficiary of a share of the land; and that in June 1996 the Defendant had returned from Trinidad where he had resided for years and had trespassed on the Plaintiff's lands.

[3] By a defence and counterclaim filed on 14 May 1997, the Defendant claimed that the Plaintiff had wrongfully included the Defendant's house in the estate of his mother; he denied that the deed of assent executed by the Plaintiff had given him a legal and beneficial interest in the land; he denied that the Plaintiff was the legal owner in possession of the land the Plaintiff had got from their mother; he claimed that he had previously built a dwelling house on the portion of the land given to him by the Plaintiff as his share of the estate which land had previously been given to him by his mother before she died and which was not therefore a part of the estate; he claimed that he was a tenant in common of all the lands which formed a part of the estate of his late mother until it was legally severed and partitioned; he denied the alleged acts of trespass, and in any event claimed that he had a legal interest in the land in question; and he counterclaimed that he had with the express permission of his mother built the house on her land prior to her death which land he was entitled to; that he had supplied the needs of his mother prior to her death and that the estate owed him the sum of $12,600.00; he claimed that the Plaintiff was not entitled unilaterally to execute deeds of assent or to appropriate to himself portions of the estate without the knowledge and concurrence of the beneficiaries; and he counterclaimed for a declaration that he was entitled to the house and its immediate curtilage, for the cancellation of the deeds of assent, and for an order that the Plaintiff properly account to the Defendant and carry out a proper administration.

[4] By a reply and defence to counterclaim, subsequently amended pursuant to a court order and filed on 7 February 2001, the Plaintiff denied that the dwelling

house in which the deceased had lived had been the property of the Defendant, and he claimed that the house had been built by the sister of the parties, Jacqueline Charles nee St Hill; he asserted that the survey plan had given an entitlement to each beneficiary of 2 roods and 15 poles of the deceased's land and that the deeds of assent had conveyed the legal and beneficial interests; he denied that the Defendant had ever cared for his mother, the deceased, or had built the dwelling house on a portion of land given to him by their mother; he asserted that each of the children was entitled to share equally, and that the Defendant had in fact got more than an equal share; he asserted that the deeds of assent having been executed, the Defendant had no right to go onto the lands that had once formed part of the estate of their mother; and he denied that the Defendant was entitled to claim for any monies that the Defendant had expended on his mother.

[5] By an amended reply to defence to counterclaim filed by leave of the court on 20 February 2001, the Defendant denied that the deed of assent as executed by the Plaintiff had conveyed the legal and beneficial interests in the parcel of land in dispute; he asserted that the Defendant had never joined in the execution of the deeds of assent, and that there had never been a deed of partition; and he claimed that the Plaintiff was not entitled to exclude him from any portion of the estate.

[6] There was an abundance of evidence from which the court could only conclude that there was nothing but bad blood between the Defendant and his brothers and sisters. For the purpose of determining the real issues in this case, the court finds the facts as follows. The deceased mother of the parties, Utilda St Hill, had during her lifetime owned a 2 ½ acre portion of land at Belmont. Prior to her death, her children had broken down her old chattel house and had constructed a wall house in its place for her use. Some of the materials and labour were provided by the Defendant. Some were provided by the Plaintiff. Some were provided by the sister Jacqueline. The house and the land in question was always the deceased's,

not the Defendant's. The deceased did not give any of her land either to the Plaintiff or to the Defendant. She had allowed the Plaintiff, who was the only one of her children living in St Vincent, to build his house on a portion of the land. The other children lived away and did not build any house on any portion of the land. All of her children contributed to her upkeep while she was alive. None of this assistance was intended to create an obligation for repayment binding on her estate. Her son, the Defendant, had for many years been living in Trinidad, where he is a Baptist preacher. Her daughter Marilyn Scott had also been living in Trinidad for many years. Her other daughter Jacqueline had been living away in the USA for many years. Only the Plaintiff lived in St Vincent, and, with the permission of his mother, on the family land. She died on 21 September 1992 without a will. At the time of her death, she was living in her house at Belmont with her granddaughter Norlene, the daughter of the Defendant. The Plaintiff applied to the court for, and on 11 September 1995 obtained, a Grant of Letters of Administration to the estate of his late mother. At all times he was represented by counsel, Mr Dennie. The Plaintiff retained a surveyor who cut up the estate into four equal lots. The lot the Plaintiff was to give himself was fractionally smaller than the other 3 lots. He proposed to give himself the lot with his house on it that he had previously built with the permission of his mother. The surveyor provided on the plan a space for a road to run to the furthest lot of land which would go to the Plaintiff's brother, the Defendant. He proposed to give his sister Marilyn the lot adjacent to him. He later acquired this lot from Marilyn, so that he now holds one half of the lands of his mother. The third lot he gave to his sister Jacqueline. The fourth lot, with the house of his mother on it and which had been occupied by the Defendant's daughter Norlene since she was a little child, he gave to his brother the Defendant. He did not reduce the size of the 4th lot when he allocated it to his brother to take into account the value of the house on it. He gave all the brother and sisters an equal share of the land. I have no reason, despite the suggestion of the Defendant to the contrary, to find that the lots of land are not equal in value. The Plaintiff did not charge his brother and sisters for their share of the cost of administering the estate. He appears himself to have absorbed all the legal and

administration costs. He may or may not have discussed the details of the administration with his sisters. They consented, in the event, to what he did. He certainly did not discuss the administration of their mother's estate with his brother the Defendant. He did not send to the Defendant in advance the proposal for distribution that had been prepared on his instructions by the surveyor. He did not attempt to secure the agreement of his brother to the scheme of distribution proposed by the surveyor. He simply went ahead and did what he thought was proper. He executed the deeds of assent to the four heirs, and registered them in the Registry of Deeds. He gave his sisters their copies of their deeds. There is some doubt as to whether he even sent his brother, the Defendant, a copy of his deed of assent to his portion. He says he did, but the Defendant denies ever having received any. If the Plaintiff had in fact sent the deed to the Defendant, I would have expected the Plaintiff to have been able to produce some evidence, perhaps a covering letter from him or his solicitor to the Defendant enclosing the deed. None was forthcoming. There is only his word that he sent the deed to the Defendant. I am prepared for the purposes of this judgment to find that relations were so bad that he never sent his brother any deed. He simply registered the deed of his brother, the Defendant, and permitted the Defendant's daughter to continue to live in the house that he had included in his brother's share of their mother's lands. It did not matter to him one way or another whether or not his brother ever found out that he had got an equal share of his mother's estate. He told his brother, the Defendant, nothing of what he had done in the administration of their mother's estate.

[7] The Defendant subsequently returned on a visit to St Vincent. He had heard that his brother, the Plaintiff, had administered their mother's estate. He considered that his brother had cheated him. First, he considered that he was entitled to his mother's house as of right. I have already found that the house was his mother's, and that he did no more than his siblings in contributing to its rebuilding for the benefit of his mother and had no greater entitlement in the house than any of them. Secondly, he was offended that his brother, the Plaintiff, had not

communicated with him in the administration of the estate. He rightly felt that he should have been notified of what was being proposed, and should have been asked to consent to it. Thirdly, and this is the crux of his case, he claimed that the deed of assent given to him by his brother was ineffective to vest anything in him. Further, he claimed that the other deeds of assent were equally invalid, and the estate remains as yet unadministered. He based this claim on his interpretation of the land law and administration law of St Vincent and the Grenadines.

[8] The Defendant's point was as follows. The legal estate and the beneficial interest are different things. On the death of an intestate, only the legal estate in the lands of the intestate vests in the Administrator. The Administrator *qua* Administrator has no beneficial interest in the estate of the intestate. The beneficial interest at all times remains vested in the beneficiaries of the deceased's estate. The Administrator may execute a vesting assent. That vesting assent deals only with the interest that the Administrator holds, ie, the legal estate. Only the beneficiaries can deal with the beneficial interests. The beneficiaries hold the beneficial interest in the entire real estate of the deceased intestate as tenants in common. In consequence, a deed of assent executed only by the Administrator as in this case did not affect the beneficial interests of the beneficiaries in the entire estate. Only the beneficiaries could sever and partition the beneficial interests. Until the beneficiaries had executed a deed of severance and partition of the beneficial interests, they all remained beneficially entitled as co-owners to the whole of the estate, regardless of any deed of assent executed by the Administrator. A deed of severance and partition was essential in all distributions of real estate among heirs. No deed of severance and partition had been prepared in this case. Therefore, claimed the Defendant, the four heirs still held the beneficial interest in the entire estate among themselves as owners in common. The Defendant could not be a trespasser on the lands in which he held an interest.

[9] The Plaintiff, in reply, asserted that regardless of what the law was in the old days, since the year 1989 the law had changed. He relied on section 51(4) of the Administration of Estates Act, Cap 377. That provision is as follows:

> (4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall operate to vest in that person the legal estate to which it relates, and an assent not in writing or not in favour of a neamed person shall not be effectual to pass a legal estate.

His submission was that all that an Administrator was now required to do, to vest the legal and beneficial interest in each of the beneficiaries, was to execute and register a deed of assent. The Plaintiff claimed, in effect, that a deed of severence and partition need no longer be executed by all the beneficiaries in the case of an intestacy relating to real estate. The Defendant was adamant that that was not good law, that the law remained that only the legal estate vested in the Administrator while the beneficiaries held the beneficial interests. In consequence, in addition to the vesting assent of the Administrator, the beneficiaries must execute a deed of severence and partition relating to the beneficial interests. Neither party produced any law or legal authority in support of their positions, despite an adjournment of the addresses for that purpose. This decision is therefore based on the court's understanding of the applicable legal principles.

[10] The land law of St Vincent and the Grenadines is archaic to an extreme. It is best described among lawyers as being pre-1925 British land law. The land law reforms carried out in Britain in 1925 have not yet reached St Vincent and the Grenadines. In Britain, for example, under the Law of Property Act, a tenancy in common now takes effect behind a trust for sale. In St Vincent, by contrast, a tenancy in common may be a legal estate in land. The only edition of Halsbury's Laws of England that can throw any light on the land law of St Vincent and the Grenadines is the 1911 first edition. There is no copy of the 1911 edition available in the court-house for a judge to research, and no copy of any part of that edition

or any other legal text relating to the appropriate law was produced to the court in this case by either party. The fourth edition of Halsbury was relied on almost exclusively. That edition is of little assistance with the law relating to land in St Vincent. Few but the introductory paragraphs of each chapter of that edition relate to the law relating to land as it presently exists in St Vincent. Counsel for the Defendant did produce an extract of pages 368-370 of Challis's Law of Real Property 1911 3rd edition. This touched on the nature and quantum of a tenancy in common, but was not very helpful in relation to the issue in dispute.

[11] Fortunately, by contrast, the law relating to the administration of intestates estates in St Vincent is extremely modern. The most important piece of law that relates to the problem that has arisen between these parties in this case is the Administration of Estates Act, Cap 377 of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines. Its preceeding statute was the Administration of Estates Act, Cap 109 of 1926. The way in which the Administrator now deals with the estate of an intestate deceased is governed by Cap 377. That statute came into effect in 1989. It and its 1926 predecessor brought radical changes to the common law as it had affected the way in which the beneficial interests in cases of intestacies were dealt with. So, by section 46 of the Act, the real estate of the deceased is an asset for the payment of the debts of the deceased without any right of the beneficiaries to prevent the sale. Regardless of the beneficial interest of the beneficiaries, the Act gives the Administrator power to deal in the real estate without reference to the beneficiaries. By section 47 of the Act, the Administrator holds the real estate upon a trust for sale. In legal theory, his duty is to sell the real estate and to distribute the proceeds among the beneficiaries. The beneficiaries have no automatic entitlement to receive any land by division of the real estate of the deceased. They are beneficially interested not in the land of the deceased but in the proceeds of the sale of any remaining land after the expenses of administration have been met. The Administrator may in the absence of fraud freely dispose of the real estate to third parties without the concurrence of the beneficiaries. Whatever the law was in earlier years, he is not now required to join

the beneficiaries in the deed whereby the real estate is disposed of. Regardless of the interest of the beneficiaries in the estate of the deceased, the Administrator may now deal in the real estate of the deceased, in the absence of fraud, without reference to the beneficiaries.

[12] Despite the statutory imposition of a trust for sale, the Administrator may instead vest the lands of the intestate in the heirs. By section 51(1) of the Act, the Administrator may assent to the vesting in any beneficiary of any interest to which the beneficiary is entitled. By subsection (4) of the same section, quoted above, the vesting assent is required to be signed by the Administrator only. There is nothing in the Act that indicates that, in the case where he is proposing to vest the lands in the beneficiaries, they are required any longer to execute a deed of severance or partition. In the case of a vesting assent, the only party to the deed is the Administrator. A vesting assent is no longer required to be an indenture, executed by two or more parties. It is a deed poll, a deed executed by one party only. Whatever the position is when tenants in common of land in St Vincent are dealing with the legal estate *inter vivos*, when it comes to an Administrator vesting the estate of a deceased among the beneficiaries of an intestate, there is no longer a requirement that the beneficiaries join in the deed. Where there is a vesting assent, in the case of an administration of an intestate's estate, the beneficiaries are no longer required to execute any further deed of severance or partition as was earlier the case. When an Administrator is distributing the real estate among the beneficiaries, the only deed that the Act now requires of the Administrator is a unilaterally executed deed of assent.

[13] That is not to say that a well-advised Administrator will not as a matter of self-protection attempt to ensure that the beneficiaries assent to what he is doing. He may require them to join in the deed of assent. Such a precaution as the securing in their joining in the deed of assent and by reciting in the deed their concurrence in the severance and partition of their beneficial interests is in practice vital. It will serve to ensure that no future misunderstanding will mushroom into a lawsuit. The

Plaintiff's lack of consultation and failure to attempt to secure the approval and consent of the Defendant did just that in this case. An Administrator of an intestate's estate is a trustee. It is always the duty of an Administrator to satisfy the beneficiaries that he is properly administering the estate. He is required to act at a higher level even than he would in protecting his own interests. He must report and account. More than that, he is well advised to seek consensus and approval. If he tries and fails to secure the approval and consent of a particular beneficiary, he is opening himself up to a law suit. He is not well advised if he then relies on the statutory powers given to him by the Act and acts unilaterally. He is expected in such a case to apply to the court for directions on the administration of the estate. He is not safe in acting unilaterally. Only the shield of directions of the court will protect him absolutely from a law-suit being brought by a discontented beneficiary. Further, where the court is satisfied that an Administrator acted fraudulently in administering the estate, the duty of sale given by the Act will not protect him. The Administrator will, in such a case, be liable to be held personally responsible to make good the loss. For these reasons, among others, an Administrator should never proceed to act unilaterally in administering the estate. He should always consult with the beneficiaries and attempt to secure their consent to what he is proposing.

[14] In this case, I am satisfied that the Defendant got his share, and more than his share, of the estate of his late mother. He got the house of his mother with no consequential diminution in the area of land to make his brother and sisters equal to him. The sisters have not complained. They are happy with what they got. The Plaintiff is not complaining, as it was he who instructed the surveyor. The Plaintiff was wrong to have cut his brother the Defendant out of all communication in the way he did. But, he did not defraud him. He dealt fairly with him in so far as the share or proportion is concerned. The Defendant is not entitled to any of the reliefs he seeks.

[15] The Plaintiff is not entirely innocent, because of the way in which he dealt with his brother, the Defendant. The Defendant was entitled to proper information and, indeed, to have his consent sought to the proposal for distribution before it was put into effect. The Defendant was instead not consulted by the Plaintiff. The Defendant was left to find out accidentally what had happened in the administration of his mother's estate. The Plaintiff has no one but himself to blame for the bringing of this law-suit. In the circumstances, in the exercise of the discretion given to the court in the matter of costs, the order will be that each party will bear his own costs.

[16] Given the above findings there will be judgment for the Plaintiff as follows:

(1) A declaration that the Plaintiff is the lawful owner of 4 roods and 29 poles of land at Belmont in the Parish of Saint David in the State of St Vincent and the Grenadines;

(2) A declaration that the Defendant is not entitled to enter upon the said 4 roods and 29 poles of land at Belmont aforesaid;

(3) Each party will bear his own costs of this suit.

I D MITCHELL, QC
High Court Judge